

**Iowa State Board  
of Education**  
(Cite as 13 D.o.E. App. Dec. 53)

***In re Blake Reynolds, et al.*** :

Debbie Guest Reynolds [3684], :  
Melissa Gerena [3692], Michael  
Stocker [3694]\*, Henry and Wanda  
J. Long [3696]\*, Jolene  
Rojohn [3697], Steve Wheeler  
[3699]\*, Patricia Coon [3703], :  
Cindy Covalt [3705],  
Christopher & Janna Mathias :  
[3706], Bob & Judith Long :  
[3710], and Cynthia Rominger :  
[3711]. :

LIST OF APPELLANTS

\*These appeals were dismissed either upon Appellants' request or due to failure to appear at the hearing.

**Iowa State Board  
of Education**  
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***In re Blake Reynolds, et al.*** :

Debbie Guest Reynolds, *et al.*, :  
Appellants, :

v. :

DECISION

Des Moines Independent :  
Community School District, :  
Appellee

The above-captioned matters were consolidated and were heard together on February 22, 1996, before a hearing panel comprising Mr. Klark Jessen and Ms. Sharon Slezak, consultants, Office of the Director; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. The Appellants were present, unrepresented by counsel. The Appellee, Des Moines Independent Community School District [hereinafter "the District"], was present in the person of Dr. Tom Jeschke, director of student services, also *pro se*.

A hearing was held pursuant to Departmental rules found at 281--Iowa Administrative Code 6. Appellants seek reversal of a decision of the Board of Directors [hereinafter "the Board"] of the District made on November 21, 1995, which denied their applications for open enrollment out of the district, beginning in the 1996-97 school year. Authority and jurisdiction for the appeals are found in Iowa Code §282.18(5) (1995).

**I.  
FINDINGS OF FACT**

The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter of the consolidated appeals before them.

The following facts are undisputed:

1. All appellants timely-filed applications for their children to open enroll out of the Des Moines District for the 1996-97 school year.

2. The District determined eligibility or ineligibility of each applicant for open enrollment on a case-by-case basis. Each child's racial status was verified; then

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the ratio of minorities to non-minorities at the child's attendance center was determined; and it was then determined whether the child had siblings previously approved for open enrollment. (Testimony of Dr. Jeschke.)

3. All appellants are among the group of 70 non-minority students deemed ineligible for open enrollment because their transfer would adversely effect the District's existing minority/non-minority ratio.
4. The District's existing minority ratio is 1 minority student for every 3.15 nonminority student. This means that for every minority student who open enrolls out of the Des Moines District, roughly three non-minority students will be granted open enrollment.
5. Non-minority students wishing to open enroll out of the Des Moines District who have been deemed ineligible under the District's Desegregation Policy are placed on a waiting list by a computer randomization process. If a minority student leaves the District under open enrollment, then the next three non-minority students at the top of the list will be granted open enrollment for the 1996-97 school year.
6. The parent determines the minority status of the child. In the application for open enrollment, there is a direction for the parent to check one of the following categories:<sup>1</sup>

White/Not Hispanic	Hispanic
Black/Not Hispanic	American Indian/
Asian/Pacific Islander	Alaskan Native

7. Under the District's open enrollment policy, nine schools are closed to open enrollment. In other words, these schools' minority ratios exceed 36% and the release of non-minority students from these schools would violate the District's desegregation policy. None of these Appellants live in an attendance area which is closed to open enrollment.

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<sup>1</sup>This form is prepared by the State Department of Education, not the local school district.

8. Under the second portion of the District's open enrollment/desegregation policy which is involved here, 15 minority students were granted open enrollment for the 1996-97 school year. To preserve the existing minority/non-minority student ratio, 47 non-minority students

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were released for open enrollment under this portion of the policy.<sup>2</sup> However, there were 117 applicants for open enrollment. So, the next step involved a determination of who would be chosen to fill the 47 slots.

9. The District has a "sibling-preference" policy which gives priority to those student applicants who already have a brother or sister attending the receiving district under open enrollment. There were 20 students chosen under the sibling preference policy, which left 27 remaining slots for 97 open enrollment applicants. The 97 applicants were then placed on a waiting list by computer-randomization process. During testimony at the appeal hearing, Dr. Jeschke told each Appellant their present placement on the waiting list as well as their chances of being released for open enrollment for the 1996-97 school year.
10. The District's practice of denying open enrollment applications under this "composite ratio" portion of its open enrollment/desegregation policy has been upheld by Judge Bergeson in his "Ruling on Petition for Judicial Review" filed June 1, 1995.
11. The decision to grant or deny these open enrollment applications was made solely on the minority status of the pupils. The minority status of the pupils was ascertained from the application as completed by the parents. There was no effort to weigh the parents' reasons for seeking open enrollment. "Good cause" was not an issue in the Board's decision.

**In re Blake Reynolds:**

Appellants Joe and Debbie Reynolds seek open enrollment for their son Blake. He is presently attending McCombs School as a 5th grader and seeks open enrollment to Norwalk. The Reynolds have a daughter, Meredith, who is attending first grade. They are not seeking open enrollment for Meredith at this time. They intend to move to Norwalk in a year or two and would like their

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<sup>2</sup>This ratio is presently 1 minority for every 3.15 nonminority student (1:3.15 or 15 minority:47 nonminority students).

son to attend middle school there next fall to minimize the disruption of a move after he starts middle school. Joe Reynolds coaches football and basketball for the Parks and Recreation Department in Norwalk and grew up in Warren County. They have more ties to that community than to Des Moines and want to return there. The Reynolds were advised that they were presently 47th

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on the waiting list and will probably not be selected for open enrollment next fall.

**In re Adam and Alyssa Gerena:**

Adam Gerena is presently a fifth grader at Hoyt and Alyssa Gerena is a first grader at Stowe Elementary. Their parents filed timely applications seeking open enrollment of their children to the Southeast Polk School District. At the appeal hearing, Zaldy Gerena, the children's father, testified that he was 100% Filipino. However, the parents did not complete the section on the open enrollment application which asked them to designate the race of their children's. They testified that they did not feel that race was a relevant factor in their decision to seek open enrollment. They simply had planned to move to Southeast Polk and wanted the children to begin attending there to ease the transition. Dr. Jeschke explained that the designation of their children's minority status was completely up to the parents, but that for the purposes of open enrollment under the requirements of desegregation guidelines, minority status was critical in the decision of whether or not their applications would be granted. As a result, the Gerenas' designated their children as minorities under the "Asian-Pacific Islander" category. Dr. Jeschke told them that their applications would be recommended for approval at the next District Board meeting.

**In re Rebecca Rojohn**

Appellant Jolene Rojohn seeks open enrollment for her daughter, Rebecca, who is currently in the 9th grade at Hoover High School. On behalf of her daughter, Appellant seeks open enrollment to Southeast Polk for the 1996-97 school year. Because she was number five on the waiting list and because the two Gerena children were released for open enrollment, Dr. Jeschke informed Jolene Rojohn that her daughter would be recommended for approval at the next District Board meeting under the District's composite ratio policy.

**In re Tara, Eric and Justin Coon**

Patricia Coon is a teacher in the Carlisle Community School District and the mother of three children seeking open enrollment to Carlisle for the 1996-97 school year. She was advised that at the commencement of the appeal hearing, her children were 27th, 28th and 29th on the "waiting list" but that because of the

release of the two Gerena children, the Coons had moved up to 14th, 15th, and 16th place. She was advised by Dr. Jeschke to monitor her children's position on the waiting list by calling him on April 15, 1996, when he would have a better idea of her chances of being released under the District's composite ratio policy.

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#### **In re Louise Ann Covalt**

Louise Ann Covalt (LuAnn) is presently an eighth grader at Hoyt School. Her mother would like her to attend high school in Southeast Polk. Appellant works in Mitchellville and drives past the Southeast Polk School twice a day. She would prefer the smaller Southeast Polk School for her daughter. Unfortunately, Dr. Jeschke advised Appellant that she was 51st on the "waiting list" and should renew her application for open enrollment next year because the odds of her being released for the 1996-97 school year are very slim.

#### **In re Austin Spencer Mathias**

Appellant Janna Mathias is a substitute teacher-associate in the Johnston School District. She would be able to work full-time as a teacher associate in the District if Austin could open enroll to first grade in the Johnston School District next fall. She and her husband have decided that they would rather have Janna quit her job as a teacher associate than put their son in the before-and-after school day care. If Austin attends school in Johnston, he can be with his mother both before and after school which they find a more desirable alternative. However, Dr. Jeschke informed her that her son is number 36 on the "waiting list" and will probably not be released for open enrollment for the 1996-97 school year.

#### **In re Rusty Hutchison**

Rusty is 10 years old and attends Douglas School in Des Moines. His mother, Cindy Rominger, seeks open enrollment for him to attend Southeast Polk next fall so that he can be in the care of his grandparents who live in that district. Rusty's father was killed in May of 1994 and both Rusty and his mother have had a very difficult time adjusting to the loss. Rusty's mother works at Firestone from 6:00 p.m. through 6:00 a.m. and cannot find another job with the types of benefits or pay that she earns there. Although she has been very pleased with the support given to Rusty by the staff at Douglas Elementary, she needs the support of her family to help Rusty deal with his loss and the attendant depression and medical problems he has experienced along with it. Because he is 38th on the waiting list, Dr. Jeschke did not feel the chances of him being released were very good. However, Dr. Jeschke did feel that there would be a way for the District to provide help for this family given their

hardship and the unique circumstances of the case. Dr. Jeschke gave Appellant his number and asked her to contact him after the hearing so that the District could address her problems privately and on an individual basis.

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## II. CONCLUSIONS OF LAW

This case involves the delicate balance of two very important public policies: parental choice and effective desegregation of schools. In enacting Iowa's Open Enrollment Law, effective July 1, 1989, our Legislature codified its purpose:

It is the goal of the general assembly to permit a wide range of educational choices for children enrolled in schools in this state and to maximize ability to use those choices. It is therefore the intent that this section be construed broadly to maximize parental choice and access to educational opportunities which are not available to children because of where they live. ...

Iowa Code §282.18(1) (1995).

A portion of the new law was directed specifically to the school district's under court-ordered or voluntary desegregation plans,<sup>3</sup> including the District here. That provision reads as follows:

The board of directors of a school district subject to volunteer [sic] or court-ordered desegregation may vote not to participate in open enrollment under this section during the school year commencing July 1, 1990, and ending June 30, 1991. If a district chooses not to participate in open enrollment under this paragraph, the district shall develop a policy for implementation of open enrollment in the district for that following school year. The policy shall contain objective criteria for determining when a request would adversely impact the desegregation order or plan and criteria for prioritizing requests that do not have an adverse impact on the order or plan.

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<sup>3</sup>No school districts in Iowa are currently under court-ordered desegregation. Nine school districts are subject to an annual review and required to report to the State Board of Education due to race equity concerns. An additional three districts also report voluntarily.

Id. at par. (14) (1993).

The law also presently includes a directive to those urban school districts regarding the maintenance of existing desegregation plans as they affect the racial composite:

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In all districts involved with voluntary or court-ordered desegregation, minority and nonminority pupil ratios shall be maintained according to the desegregation plan or order. The superintendent of a district subject to voluntary or court-ordered desegregation may deny a request for transfer under this section if the superintendent finds that enrollment or release of a pupil will adversely affect the district's implementation of the desegregation order or plan. If, however, a transfer request would facilitate a voluntary or court-ordered desegregation plan, the district shall give priority to granting the request over other requests.

Id. at par. (4) (1995).

The role of the State Board of Education in appeals brought under Iowa Code §290, is to determine whether the local school board's decision comports with existing policy and law. More specifically, since the Board's policy has been judicially approved, the only question that remains is whether the District followed its own policy when it denied these open enrollment applications.

In the appeals under consideration here, the only operative question is whether these are "**non-minority**" students who are ineligible because their transfers would adversely affect the District's existing minority/non-minority ratio. (Bd. tr. at 54.) Once that has been determined, the controlling legal principles are applied to determine if the District's denials should be reversed or affirmed.

Although the hearing panel sympathizes with each of the Appellants' reasons for seeking open enrollment and their attempts to provide an educational environment which they feel is most supportive for their children's needs, the controlling legal principles for this open enrollment case have already been decided by the Polk County District Court in Des Moines Independent Community School District v. Iowa Department of Education, AA2432 (June 1, 1995). That case upheld the Des Moines District Board's right to deny timely-filed open enrollment applications



that adversely affect the racial composite of the District. The only basis upon which the State Board of Education could overrule any of these open enrollment cases is if the District's policy was not appropriately or correctly applied to the facts of an individual student's case.

Under the facts discovered at the appeal hearing, the District's policy was not appropriately applied in denying the **Gerena's** applications. Once it is established that the children

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are minorities, there is no basis to deny their applications for open enrollment. Under the newly designated minority status offered by the Gerenas on appeal, their applications must be granted. However, finding no basis in law or fact to overturn the remaining Appellants' cases, the District's decision to deny their applications for open enrollment is recommended for affirmance.

Any motions or objectives not previously ruled upon are hereby denied and overruled.

### III. DECISION

For the foregoing reasons, the decision of the Des Moines Independent Community School District's Board of Directors to deny open enrollment for Adam and Alyssa Gerena is hereby recommended for reversal since those children have been designated as minority students. The decision of the Des Moines Independent Community School District's Board of Directors to deny open enrollment for all the other applicants is hereby recommended for affirmance. There are no costs of this appeal to be assigned.

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DATE

ANN MARIE BRICK, J.D.  
ADMINISTRATIVE LAW JUDGE

It is so ordered.

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DATE

CORINE HADLEY, PRESIDENT  
STATE BOARD OF EDUCATION