

IOWA STATE BOARD
OF EDUCATION

In re Dana D'Andre	:	
	:	
Cynthia D'Andre,	:	
Appellant,	:	
	:	
v.	:	NOTICE OF APPEAL HEARING
	:	
Bettendorf Community	:	
School District, Appellee.	:	[Admin. Doc. #3613]

TO: Cynthia D'Andre, Superintendent Michael Coury, and Board
Secretary Paul Bobek

You are hereby notified that the above entitled matter has been set down for telephonic hearing on the 16th day of February, 1995, at 1:00 p.m. The hearing panel will be comprised of Edie Eckles, consultant, Bureau of School Administration and Accreditation; Don Wederquist, consultant, Bureau of Educational and Student Services; and Ann Marie Brick, J.D., legal consultant and administrative law judge, presiding.

The authority and jurisdiction for this appeal are found in Iowa Code section 290.1.

Appellant requests a hearing regarding Appellee's denial of open enrollment of her child due to insufficient classroom space.

If you have any questions or need any assistance with this matter, please feel free to contact me.

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**Iowa State Board
of Education**

In re Dana D'Andre

Cynthia D'Andre,
Appellant,

v.

Bettendorf Community
School District,
Appellee.

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PROPOSED
DECISION

[Admin. Doc. #3613]

The above-captioned matter was heard telephonically on February 16, 1995, before a hearing panel comprising Edie Eckles, consultant, Bureau of School Administration and Accreditation; Don Wederquist, consultant, Bureau of Educational and Student Services; and Ann Marie Brick, legal consultant and designated administrative law judge, presiding. Appellant, Cynthia D'Andre, was "present" by telephone, unrepresented by counsel. Appellee, Bettendorf Community School District [hereinafter "the District"] was also present on the telephone, in the persons of Superintendent Dr. Michael J. Coury and Mr. Paul Bobek, Secretary of the School Board, also *pro se*.

An evidentiary hearing was held pursuant to departmental rules found at 281 Iowa Administrative Code chapter 6. Authority and jurisdiction for the appeal are found in Iowa Code section 282.18 and chapter 290. Appellant seeks reversal of the decision of the board of directors [hereinafter "the Board"] of the District made on December 19, 1994, denying her request for open enrollment into the District for her son, Dana, under the Board's policy relating to insufficient classroom space.

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 appeal before them.

Dana D'Andre is a 15 year-old boy who is currently attending 10th grade in the Pleasant Valley Community School District. He is an honors student with a GPA of 3.7. Although he is a resident of Pleasant Valley, he has been commuting to Bettendorf High

200

School during the day to attend German classes. The schools are approximately two miles apart. Nevertheless, this arrangement has

been difficult because Dana's mother is a staff member at Eastern Iowa Community College in Clinton and cannot drive Dana to Bettendorf in the middle of the day. Dana's father is mentally disabled and the family receives SSI benefits. Dana's grandmother has been driving him to school, but cataracts in both eyes have impaired her vision to the extent that this will soon be impossible.¹

Ms. D'Andre really wants Dana to attend Bettendorf full time next year. This is not only so he can continue his German, but so he can attend Advanced Placement courses, which are unavailable at Pleasant Valley. Bettendorf, for example, offers accounting, economics and calculus -- courses unavailable to Dana at Pleasant Valley. If Dana can attend Bettendorf for his junior and senior years, his mother will be able to provide his transportation as she goes to and from work.

Ms. D'Andre filed a timely application for open enrollment for Dana to attend Bettendorf during the 1995-96 school year. Her application was approved by the Pleasant Valley Board but was denied by the Bettendorf Board for insufficient classroom space. The minutes of the December 19th Board meeting reflect that there were four open enrollment requests considered that evening. Three requests were for Bettendorf High School, and one was for the middle school. Superintendent, Dr. Coury, stated at the Board meeting that there are currently 1,429 students enrolled at the high school with an anticipated enrollment of 1,540 students for the 1995-96 school year.² The minutes also reflect that "while overall enrollment may be down slightly, the District still anticipates insufficient classroom space at Bettendorf middle school for the 1995-96 school year." Therefore, all four applications for open enrollment were denied.

Dr. Coury testified that no open enrollment requests have been accepted at the high school level for the past two years. No tuition students have been accepted either. He stated: "There are already large class sizes at the High School. The District will be hard pressed to come up with additional staff to maintain the classes." He further testified that the Board "routinely processes these open enrollment requests in a group, unless it's a residency type of situation where the student's family has moved away from the District and the student is open

201

enrolling to stay."³ The Superintendent stated that open enrollment

¹Appellant submitted a letter from Dr. Thomas A. Castillo, a member of the Eye Institute of Eastern Iowa, to confirm the grandmother's condition.

²The senior class graduating in June 1995 of approximately 318 will be replaced by 430 8th graders.

³The Board has no discretion to deny this type of request under Iowa Code § 282.18(10) (1995).

requests were being denied due to "a combination of both facility space and teacher-student ratio, but mostly in the area of class size. ..." Class sizes are averaging 28 to 30 students at the high school. However, classes in German III and IV, as well as other Advanced Placement classes, would be much smaller.

II. Conclusions of Law

When the General Assembly passed the Open Enrollment Law, it included a provision allowing a school district to refuse open enrollment into the District "if the receiving district does not have classroom space for the pupil." Iowa Code § 282.18(4) (1995) (The board of the receiving school district shall enroll the pupil in a school in the receiving district for the following school year, unless the receiving district does not have classroom space for the pupil.) Id. Iowa Code § 282.18(13) then states:

[e]very school district shall adopt a policy which defines the term "insufficient classroom space" for that district. (Emphasis added.)

The Department's Administrative Rules implementing this provision of the Code are contained at 281--IAC 17.6(3). The Rules state as follows:

Policy on insufficient classroom space. No receiving district shall be required to accept an open enrollment transfer request if it has insufficient classroom space to accommodate the pupil(s). Each district board shall adopt a policy which defines the term "insufficient classroom space" for that district. This policy shall establish a basis for the district to make determinations on the acceptance or denial, as a receiving district, of an open enrollment transfer request. This policy may include, but shall not be limited to, one or more of the following: nature of the educational program, grade level, available instructional staff, instructional method, physical space, pupil-teacher ratio, equipment and materials, facilities either being planned or under construction, facilities planned to be closed, finances available, sharing agreement in

202

force or planned, bargaining agreement in force, law or rules governing special education class size, or board-adopted district educational goals and objectives. This policy shall be reviewed annually by the district board.

The Bettendorf insufficient classroom space policy reads as

follows:

Insufficient classroom space exists when conditions adversely affect the implementation of the educational philosophy and program of the Board of Directors. The Board of Directors shall determine insufficient classroom space on a case by case basis. Criteria to be used by the Board of Directors in its determination may include, but not be limited to, available personnel, grade level, educational program, instructional method, physical space, equipment and materials available, finances available, facilities either being planned or currently under construction, sharing agreements in force, bargaining agreements in force, school district goals and objectives, and future enrollment projections.

The Board shall not hire additional instructional staff in order to accomodate [sic] open enrollment students. Ratios shall be maintained, as required by law, for special education students.

This policy shall be reviewed by the Board annually between the months of July and October.

Previous Record, Board Policy 603.10. This policy was upheld by the State Board one year ago. See, In re Nicole Rubin, 11 D.o.E. App. Dec. 79, 80 (1994). The only question remaining is whether the Bettendorf Board properly applied its policy in the present case.

As we have said before, it is highly responsible for the District Board to recognize that an influx of open enrollment students can have an adverse impact on the quality of education the District provides to its resident students. See, In re Matthew Ross, 9 D.o.E. App. Dec. 322 (1992). The factors cited in the Board's Policy are good ones. The District Board fulfilled its obligation under the law. The first question is whether the Board's action in denying Dana D'Andre is justified, given the conditions at the high school. The evidence is sufficient in our view to support the Board's decision. Although we were not given actual capacity figures, 1,541 students, an increase of 110 students in the high school is significant. More importantly, it is clear from the testimony of Dr. Coury that the

203

Board took into consideration current class sizes (in many cases, up to 30 students), congested hallways, and the effect on academics, teacher workload, and the quality of education that overcrowding invariably causes. It was not an easy decision, but the result appears justified on the basis of insufficient classroom space.

While Appellant struggles to understand how her son, only one student, could have a significant enough impact on the high school

population to cause a denial of his application, we do understand that school boards often must make policy decisions that, by their very nature, look beyond individual student needs for the good or welfare of a larger population. Accord, In re Matthew Ross, 9 D.o.E. App. Dec. 322 (1992).

It is apparent that was the case here. Clearly the Board was reluctant to close its middle and high schools to open enrollment students as a *policy* decision, but the directors were forced to acknowledge the increased student population there and the many effects it created in all aspects of the high school educational program. This, in conjunction with the normal influx of new resident students and departing residents whose children had a right to remain in the District, put the Board in the position to have to deny Appellant's application for Dana.

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

**III.
Decision**

For the foregoing reasons, the December 19, 1994, decision of the Board of Directors of the Bettendorf Community School District denying the open enrollment application of Cynthia D'Andre on behalf of her son, Dana D'Andre, on the basis of inadequate classroom space is hereby recommended for affirmance. There are no costs to this appeal to be assigned.

Date

Ann Marie Brick, J.D.
Administrative Law Judge

It is so ordered.

Date

Ron McGauvran, President
State Board of Education