

IOWA STATE BOARD  
OF EDUCATION

(Cite as 12 D.o.E. App. Dec. 156)

*In re Lin Weeks* :  
*In re Rosemary Norman* :  
  
Dan Weeks and Jan Fassler :  
and Nina Lentini Norman, :  
Appellants, :  
  
v. : DECISION  
  
Iowa City Community :  
School District, :  
Appellee. : [Admin. Doc. #s 3541 & 3539]

The above-captioned matter was consolidated and heard telephonically on November 29, 1994, before a hearing panel comprising Milt Wilson and Jim Tyson, consultants, Bureau of School Administration and Accreditation; and Ann Marie Brick, legal consultant and designated administrative law judge, presiding. Appellants were "present" by telephone, unrepresented by counsel. Appellee, Iowa City Community School District [hereinafter, "the District"], was also present by telephone and represented by Attorney John Cruise; Superintendent Dr. Barbara Grohe; Dr. Tim Grieves, Associate Superintendent; and Jerald Palmer, Board Secretary and Director of Administrative Services.

An evidentiary hearing was held in accordance with departmental rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for the appeal are found at Iowa Code § 282.18(5) and chapter 290.

Appellants seek reversal of the decisions of the board of directors [hereinafter "the Board"] of the District made on September 12, 1994, denying the Appellants' timely request for open enrollment into the Iowa City Community School District for the Fall of the 1995-96 school year. The basis of the District's denial was insufficient classroom space to receive open enrollment students.

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 case before them.

These two open enrollment appeals were consolidated for hearing because they both involve pre-school aged children whose parents seek open enrollment for them to attend kindergarten in the Iowa City Community School District for the 1995-96 school year. Both children, Lin Weeks and Rosemary Norman, have been denied open enrollment; not by the sending district, but by the receiving district! The grounds for the District's denial are "insufficient classroom space." The impetus for the open enrollment applications was the merger of Clear Creek and Amana School Districts this past year. The reorganization changed the elementary school attendance area to Oxford, Iowa. Although the facts forming the basis of the two appeals are similar, the parties' positions will be separately stated.

### **In re Lin Weeks**

Lin Weeks will be five years old on December 9, 1994. His father, Dan Weeks, is an associate professor of bio-chemistry at the University of Iowa in Iowa City. His mother, Jan Fassler, is an associate professor of biology and also works at the University. When the family moved to their present home, which is in the southeast corner of Johnson County, they were in the small Clear Creek School District. The school was within a mile of their home and on the way to Iowa City where both parents work. The Weeks also have a two year-old daughter, so the location of the school for their children was an important consideration in deciding where to live.

The merger of the Clear Creek and Amana school districts placed the elementary school attendance center for the district in Oxford. This is a distance of approximately 25 miles from the Weeks' work place. Because the bus ride for their son would be longer than the 60 minutes allowed under State law for elementary school children, the school district will be obliged to send a driver to transport Lin to school.

At the time the petition for merger was filed, the residents of the southeast corner of the district petitioned for exemption from the redistricting and for annexation by the Iowa City Community School District. The reasons for the objection to the reorganization and the request for annexation included the extended bus rides that would be required for grade school and middle school students; the employment, social and commercial ties of the parents in the region to Iowa City; better conditions of roads leading to Iowa City as opposed to Oxford and Amana; and the proximity of Iowa City to homes and parents' work places.

The Appellants were initially supported and encouraged by the Iowa City Community School District to petition for the annexation. However, the issue became emotionally charged and there were some accusations by the Clear Creek-Amana school

boards that Iowa City was trying to usurp their districts' territory. Consequently, Iowa City withdrew its support for the annexation. The Grant Wood AEA denied petitioners' objections to the reorganization and allowed the petition for redistricting to go forward.<sup>1</sup> As a last resort, the Weeks filed their application for open enrollment.

### In re Rosemary Norman

Rosemary Norman will be five years old in March 1995. Her mother, Nina Lentini Norman, is managing editor and part-owner of **Iowa City Magazine**. Mr. Norman also works in Iowa City for American College Testing. In addition to Rosemary, the Normans have a daughter who just turned two years old. The Normans live approximately 50 yards from the boundary of the Iowa City Community School District. The house next door to them is in the Iowa City attendance area. When they purchased their house in 1989, they were under the assumption that their children would be attending Iowa City schools. In fact, the child of the previous owners of their home did attend school at Roosevelt in Iowa City.

As a result of the reorganization, the Normans will be required to send their daughter to Oxford, which is 10 miles from their home and over 20 miles from their work place. They, too, joined in the petition for exemption from redistricting and for annexation by the Iowa City Community School District, and were also unsuccessful. They then filed a timely application for open enrollment.

### The Open Enrollment Process

On September 12, 1994, the Iowa City Community School District Board of Directors denied Appellants' applications for open enrollment. When the Open Enrollment Law became effective, it provided that receiving districts could deny timely filed applications for open enrollment because of insufficient classroom space. Iowa Code § 282.18(13). The Law requires each district board to adopt a policy defining the conditions constituting insufficient classroom space, and the District has done so. See Board Policy 507, adopted on October 10, 1989.

The District submitted numerous documents detailing the

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<sup>1</sup>Iowa Law prevents the Normans and the Weeks from appealing the AEA's denial of their objection to the merger. According to Iowa Code § 275.15 "... the decision rendered by the area education agency board may be appealed to the district court in the county involved by any school district affected. For purposes of the appeal, only those school districts who filed reorganization petitions are school districts affected. An appeal from a decision of an area education agency board or joint area education boards under §§ 275.4, 275.16 or this section is subject to appeal procedures under this chapter and is not subject to appeal under chapter 290."

enrollment trends for the past three years as well as the projec-

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tions for the 1995-96 school year.<sup>2</sup> This information provides ample support for the District's policy on insufficient classroom space and the criteria outlined therein.

## II. CONCLUSIONS OF LAW

Iowa's open enrollment law contains few restraints on what is otherwise an unfettered right of a parent to choose the public school district of enrollment for his or her child(ren). Timeliness is required; therefore, late applications can be denied. Iowa Code §§ 282.18(2), (18) (1993). An application can be denied if the student has been suspended or expelled from, and not yet reinstated in, the student's resident district. *Id.* at (16). If a district has a desegregation plan or order in effect and a student's departure or entry would adversely affect the plan or order, the application can be denied. *Id.* at (5). The legislature also passed the following limitation on open enrollment:

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.* at (4).

Every school district shall adopt a policy which defines the term "insufficient classroom space" for that district.

*Id.* at (13).

The District Board fulfilled its obligation under the law and its primary obligation is to serve the students within its boundaries. The evidence presented by the Board supports its position that there is insufficient classroom space in the Iowa City Community School District to accommodate students who wish to attend from outside of that District.

Unfortunately, that does little to satisfy the Normans and

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<sup>2</sup>The Iowa City Community Schools' 1994-95 enrollment report shows that for the past two years, all regular open enrollment requests into the District have been denied because of lack of space. Indeed, since the commencement of open enrollment, there has never been an elementary student allowed to open enroll into the District.

the Weeks who are struggling to understand why neither their resident district nor the desired receiving district seem to care about the best interest of Appellants' children. As stated by Appellant Dan Weeks in his Affidavit of Appeal:

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An inspection of the facts of this appeal leads us to conclude that none of the educational boards have so far demonstrated to us that their concern is in 'providing, where possible, the best educational opportunities for each student.' The main concern of Clear Creek-Amana was avoiding the loss of investment of the Amana community in their schools, and increased student-base for district.

Grant Wood chose to let an unamended proposal of redistricting go forward, even though it was within their charge to consider the long-range wisdom of the district borders. Finally, the Iowa City Community School District's concern for students appears to end at their district border.

Mrs. Norman's Affidavit of Appeal reflected the same frustration:

We have thus far not met with any official body that shows concern for our child. It seems to me that Iowa City could allow open enrollment in my case but its denial shows me that its officials are not concerned with the best interests of my child.

It is very difficult for us to acknowledge and sympathize with Appellants' plight without affording them any relief. Appellants surely cannot understand how the admission of two kindergarten students could have any significant impact on the District's population. However, the State Board cannot make that decision. The State Board does not sit as a "super school board" to make policy decisions for those involved at the local level. The State Board of Education sits to correct errors of law and actions by local boards which are arbitrary and capricious.

In the present case, there have been no legal mistakes made by the Iowa City Community School District Board. That Board, like all other school boards in Iowa, 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). In this situation, we have no alternative but to affirm the Board of Directors' decisions denying the open enrollment applications in these two cases.

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

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III.  
DECISION

For the foregoing reasons stated above, the decision of the Iowa City Community School District board of directors denying the open enrollment application of Dan Weeks and Jan Fassler on behalf of their son, Lin Weeks, and the application of Nina Lentini Norman on behalf of her daughter, Rosemary, for insufficient classroom space are hereby recommended for affirmance. There are no costs of these appeals to be assigned.

DATE

ANN MARIE BRICK, J.D.  
ADMINISTRATIVE LAW JUDGE

It is so ordered.

DATE

RON MCGAUVVRAN, PRESIDENT  
STATE BOARD OF EDUCATION