

**STATE BOARD  
Of EDUCATION**  
(Cite as 21 D.o.E. App. Dec. 48)

---

|                           |   |                   |
|---------------------------|---|-------------------|
| <i>In re Michael Cram</i> | : |                   |
| David & Michelle Cram,    | : |                   |
| Appellants,               | : |                   |
| v.                        | : | DECISION          |
| Ankeny Community School   | : |                   |
| District,                 | : |                   |
| Appellee                  | : | [Adm. Doc. #4458] |

---

The above-captioned matter was heard on June 11, 2002, before designated administrative law judge Susan E. Anderson, J.D. Appellants, David and Michelle Cram, were present and were unrepresented by counsel. Appellee, Ankeny Community School District [hereinafter, "the District"], was present in the persons of Ben Norman, superintendent; Patricia Sievers, director of special programs; and Shelli Larson, administrative assistant. The District was represented by Attorney Sue Seitz, of Belin, Lamsun, McCormick, Zunbach, Flynn, a P.C.

An evidentiary hearing was held pursuant to departmental rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for the appeal are found in Iowa Code sections 282.18 and 290.1(2001). 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.

Appellants seek reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the District made on March 25, 2002, which denied, as a receiving district, their request for open enrollment application for their son, Michael, due to insufficient classroom space in the District's Parkview Middle School special education program.

**I.  
FINDINGS OF FACT**

Appellants and their son, Michael, reside in the Ballard Community School District. Michael is eleven years old and will be attending sixth grade in the 2002-2003 school year. Michael has had an IEP (Individualized Education Plan) for special education in reading from second through fifth grades at Ballard. (Exh. 2).

Sometime in February 2002, during the last semester of Michael's fifth-grade year at Ballard, Michael's parents decided to explore open enrollment for Michael into another district for the following reasons:

We are trying to get Mike taken out of special Ed and put into regular 6<sup>th</sup> grade classes. We feel with a lot of hard work Mike can accomplish this goal. We feel a new school district would be to his advantage due to the fact the Ballard district is discriminatory as far as Mike is concerned. They are stereotyping him as a special ed student since we his parents were special ed students in this same district. Mike is not wanting to go to school and usually ends up going to school in tears and coming home from school in tears due to the conflicts that are going on. This is not good for his health and well-being.

(Cram Affidavit of Appeal.)

On November 4, 2002, Mr. and Mrs. Cram filed an open enrollment application for Michael, listing the Ankeny District as the requested receiving district, starting in the 2002-2003 school year. They marked the "regular education program" on the open enrollment application. The Ballard District approved Michael's open enrollment as the sending district on March 4, 2002, and immediately sent the application to Ankeny for action as the receiving district.

Ankeny received the application on March 5, 2002. The Ankeny District Board denied the open enrollment application on the basis that it had insufficient classroom space in its sixth-grade special education program. (Exh. 5 & 6.) Ankeny officials called the Ballard District and were informed that Michael was a special education student there. On April 2, 2002, Mr. and Mrs. Cram appealed the Ankeny District's denial of their open enrollment application.

The District's written policies on open enrollment as a receiving district provide, in pertinent part:

...The Board shall enroll all students whose requests are received if policies #603.11-Insufficient Classroom Space and #501.31-Approval of Open Enrollment Transfer In are satisfied. ...

(Exh. 4, #501.32, Procedures as a Receiving District—Transfers In.)

#### #501.31 APPROVAL OF OPEN ENROLLMENT TRANSFERS IN

...When deciding whether to approve a request to transfer, the Board:

...

2. May refuse a request to transfer if insufficient classroom space exists.

...

4. Shall not hire additional staff or add space in order to accommodate open enrollment students.
- ...
7. Open enrollment will be allowed to the extent that a balance can be achieved between those students coming in and those going out of the District. The following priorities/guidelines will be used:
  - A. Space must be available in the grade level requested.

...  
(Exh. 4, Bd. Policy #501.31, "Approval of Open Enrollment Transfers In.")

The District's written policy defining insufficient classroom space states:

#### #603.11 – INSUFFICIENT CLASSROOM SPACE

Insufficient classroom space exists when conditions adversely affect the implementation of the educational philosophy, goals/objectives, and programs of the District. The Board shall determine insufficient classroom space on a case by case basis. Criteria to be used by the Board 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, and District goals and objectives.

...

The District will review the enrollments in grades 6-12 each year to determine if space will be available for open enrollment requests beginning the year after the year of application. The determination will be done by grade level using the established criteria.

(Exh. 4, Bd. Policy 603.11, Insufficient Classroom Space.)

The Ankeny District has determined that there is insufficient classroom space in its special education programs at its sixth/seventh grade middle school level for 2002-2003. Ms. Sievers, director of special programs, testified that the District would be serving 101 students in its special education program at the sixth and seventh grade levels at Parkview Middle School. Fifty-six of those special education students will be sixth grade students in 2002-2003. There are five resource teachers assigned to the District's sixth and seventh grade special education program, or 2.5 teachers per grade level. The District's sixth grade next year would average between 22 and 23 students per special education teacher.

Ms. Sievers testified that although she believes that 25 students per teacher is the maximum allowed by law, the District cuts the number off at 20 to allow spaces for incoming resident students and to allow the teachers to go out into the regular classrooms according to its "inclusive special education model approved by the Heartland AEA." The Board members, therefore, denied Michael's open enrollment application because of inadequate classroom space in its special education program. A non-resident, fourth-grade student was also denied open enrollment for next year because of insufficient classroom space in the elementary special education program.

On April 15, 2002, after the Ankeny Board's decision, Michael's staffing team at Ballard held a meeting at Mr. and Mrs. Cram's request. The written report of that meeting includes the following statements:

David and Michelle Cram requested to have a meeting to staff thier [sic] Mike out of special education. They stated that the Ankeny School District would only accept Mike as an open enrolled student if he were not staffed into a special education program and that once Mike was accepted he would be staffed back into special education.<sup>1</sup> ... The Crams, with full understanding of Mike's reading level and the concerns about his ability to succeed in the regular classroom reading program, were still adamant in their request to staff Mike out of special education. While the rest of the team is not in agreement with the Crams we were willing to honor their request and staff Mike out of special education.

(Exh. 7.) Ms. Sievers testified that even if the District had had this report when it made its decision to deny Michael's open enrollment application, the same decision would have been made, since it was clear to the District that Michael was already a special education student according to all the professionals on Michael's staffing team at Ballard.

## II. CONCLUSIONS OF LAW

The State Board of Education has been directed by the legislature to render decisions that are "just and equitable" [Iowa Code section 282.18(18)(2001)], "in the best interest of the affected child or children" [Iowa Code section 282.18(18) (2001)], and "in the best interest of education" [281 Iowa Administrative Code 6.17(2)]. Based on this mandate, the State Board's standard of review is as follows:

A local school board's decision will not be overturned unless it is unreasonable and contrary to the best interest of education.

*In re Jesse Bachman*, 13 D.o.E. App. Dec. 363(1996).

---

<sup>1</sup> The record shows that the Crams had that impression, but that no one at the Ankeny District had told them that.

Iowa Code section 282.18(2)(2001) provides that a receiving district must enroll an open enrolled student "unless the receiving district does not have classroom space for the pupil." *Id.* Similarly, an Iowa Department of Education rule provides: "No receiving district shall be required to accept an open enrollment transfer request if it has insufficient classroom space to accommodate the pupil(s)." 281 IAC 17.6(2). The rationale behind this statute and rule is that a District's first obligation is to its resident pupils. *In re Brie Hodges*, 15 D.o.E. App. Dec. 1 (1997); *In re Abigail Anne Legg*, 15 D.o.E. App. Dec. 200 (1998); *In re Ji Yoon Jeong*, 18 D.o.E. App. Dec. 7 (2000); *In re Edward Schmidt*, 20 D.o.E. App. Dec. 121, 124(2001).

The open enrollment law and Department of Education rules require each school district to adopt a policy, which defines the term "insufficient classroom space" for that district. Iowa Code subsection 282.18(11)(2001); 281 IAC 17.6(3). 281 IAC 17.6(3) states that the "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 force or planned, bargaining agreement in force, law or rules governing special education class size, or board-adopted district educational goals and objectives." The policy must be reviewed annually. 281 IAC 17.6(3).

The Ankeny Board has determined that there is insufficient classroom space in the District's special education program at its sixth-and-seventh grade middle school. The law provides that the Board makes the determination of insufficient classroom space based on the factors in the rules and the Board's own policy. The Board has made the determination that there is insufficient classroom space in its special education program for Michael or any other special education student who wishes to open enroll into the District for the 2002-2003 school year. The evidence presented by the District supports the Board's determination.

The first issue presented in this appeal is whether the Board reasonably denied Michael's open enrollment application as a receiving district. The Board's determination that it will first look to the needs of its resident pupils is reasonable and is to be supported. Prior cases of the Department of Education called similar determinations "highly responsible." *In re Ji Yoon Jeong*, 18 D.o.E. App. Dec. 7 (2000); *In re Alida Congden*, 15 D.o.E. App. Dec. 169, 173 (1998); *In re Amanda J. Baker*, 12 D.o.E. App. Dec. 210, 212 (1995); *In re Edward Schmidt*, 20 D.o.E. App. Dec. 121(2001). The Ankeny Board has applied its open enrollment/insufficient classroom space policy consistently. The District correctly looked at the impact of not just Michael's application, but of all similarly situated applicants. We conclude that it was reasonable for the Board to determine that there is insufficient classroom space in the District's special education program for Michael.

A second question is presented because Michael's parents believe it would be in his best interest to open enroll to Ankeny. Iowa Code section 282.18(18)(2001) provides that "Notwithstanding the general limitations contained in this section, in appeals to the state board from decisions of school boards relating to student transfers under open enrollment, the state board shall exercise broad discretion to achieve just and equitable results which are in the best interest of the affected child or children." *Id.*

The State Board does not often exercise the discretion contained in 282.18(18). It is important that the balancing of interests provided for in the open enrollment statute is followed in most cases. *In re Beth Randolph*, 15 D.o.E. App. Dec. 128 (1998). The State Board has viewed section 282.18(18) as "an award by the legislature of an extraordinary power to be used by the State Board sparingly," and to be used only in cases where "a child's unique situation cries out for state board intervention." *In re Paul Farmer*, 10 D.o.E. App. Dec. 299, 302 (1993).

If the only consideration were with regard to Michael himself, one could say that it might be in Michael's best interest to go to Ankeny. However, Michael is not the only child involved. Iowa Code 282.18(18) directs the State Board to "achieve just and equitable results which are in the best interest of the affected child or children." In this case, the affected children are Michael and the resident students who attend the Parkview Middle School. We are sympathetic to the Crams' wishes. However, we must consider the needs of all the children who live in the District, not just what would be easiest or best for one child who does not live there. Given the record at the appeal hearing, we conclude that it would not be in the best interest of the resident students of the District to allow even one nonresident student to enroll in the sixth-grade special education program through open enrollment during the 2002-2003 school year.

The Board's decision was consistent with state law, the rules of the Iowa Department of Education, and its own policy. Therefore, there are no grounds to justify reversing the District Board's denial of the open enrollment application for Michael.

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

### III. DECISION

For the foregoing reasons, the decision of the Board of Directors of the Ankeny Community School District made on March 25, 2002, that denied Mr. and Mrs. Cram's open enrollment application for Michael, is hereby recommended for affirmance. There are no costs of this appeal to be assigned.

7-10-2002

DATE

*Susan E. Anderson*

SUSAN E. ANDERSON, J.D.  
ADMINISTRATIVE LAW JUDGE

It is so ordered.

8-1-02

DATE

*Gene Vincent*

GENE VINCENT, PRESIDENT  
STATE BOARD OF EDUCATION