Iowa State Board of Education
(Cite as 12 D.o.E. App. Dec. 14)

In re Phillip Brandt

Lisa Brandt, Appellant,	:	
v.	:	DECISION
Cedar Rapids Community School District, Appellee.	:	[Admin. Doc. #3520]

The above-captioned matter was heard telephonically on October 12, 1994, before a hearing panel comprising Dick Boyer, administrative consultant, Bureau of School Administration and Accreditation; Lyle Wilharm, administrative consultant, Bureau of Food and Nutrition; and Ann Marie Brick, legal consultant and designated administrative law judge, presiding. Appellant Lisa Brandt was telephonically "present" and represented herself. Appellee, Cedar Rapids Community School District, [hereinafter "the District"] was also present by telephone, in the person of Mr. Nelson Evans, Jr., Director of Student Services, and also unrepresented by counsel.

An evidentiary hearing was held pursuant to departmental rules found at 281 Iowa Administrative Code chapter 6. Appellant seeks reversal of the decision of the board of directors [hereinafter "the Board"] of the District made on August 17, 1994, denying her request for open enrollment for her son, Phillip ("Harry"), for the 1994-95 school year. The Board denial was based on the application of its open enrollment policy rejecting the applications of students whose departure would have an adverse affect on the District's desegregation plan.

Authority and jurisdiction for the appeal are found in Iowa Code sections 282.18 and 290.

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.

Appellant Lisa Lou Norton Brandt and her husband, Christopher Samuel Brandt, are the parents of Phillip "Harry" Brandt who is presently in first grade in Central City Community School District. Harry is the couple's only child.

The family resides in the Cedar Rapids Community School District where Harry attended kindergarten during the 1993-94 school year. Mr. Brandt works at Aegron U.S.A. Life Investors, an insurance company which is located at the far south side of Cedar Rapids. He is required to be on the job from 8:00 a.m. to 4:30 p.m., but he is on call 24 hours a day and has an unpredictable schedule. Often he has to work quite late.

The change in circumstance which gave rise to the application for open enrollment occurred on May 4, 1994. At that time, Ms. Brandt received approval of the small business loan which enabled her to open her shop in Central City. She operates a fabric and sewing machine business in a building her family has owned for years. Her business is open six days a week from 9:00 a.m. to 5:00 p.m. She teaches classes in the evening and is often working the same time her husband is gone. It was the need for reliable day care which prompted the Brandts' application for open enrollment from the Cedar Rapids Community School District to Central City.

Ms. Brandt's mother lives in Central City 2 1/2 blocks from the elementary school. Ms. Brandt's business is located only 3 1/2 blocks from the Central City school. Since day care is not available in Cedar Rapids as late as it would be required by the parents, the best alternative was to send Harry to the Central City schools where his mother is close by and his grandmother can provide evening day care. Ms. Brandt also feels that the Central City school provides a better classroom environment because the ratio is much smaller than that in the Cedar Rapids' attendance area. Harry is presently attending Central City and has only 21 students in his classroom. His attendance area in Cedar Rapids (Johnson Elementary) has about 28 students per teacher.

Lisa Brandt applied for open enrollment for the 1994-95 school year on May 6, 1994, two days after receiving the approval on her business loan. By action at the Board meeting of June 13, 1994, Harry's open enrollment application was denied. According to the Board minutes "[t]his denial is due to integration/ segregation guidelines."

Appellants' open enrollment application had two problems to overcome: (1) the fact it was filed late; and (2) the fact that as a nonminority student, Harry's departure from the Johnson attendance center in Cedar Rapids would have an adverse effect on

the District's desegregation plan. The open enrollment application was not denied for being late without "good cause". The application was denied because of its adverse effect on the District desegregation plan. On appeal, Appellant's position is that the District's decision is based solely on race and is therefore discriminatory.

Since the 1970s, the District has been operating under a voluntary desegregation plan after it was found to be out of compliance with state-monitored race equity guidelines. The voluntary plan addresses open enrollment applications for transfers within as well as statutory open enrollment out of the District. It is based upon the State guidelines establishing that a school district is in violation of desegregation efforts if a school building's racial composition exceeds the district's minority student population plus 20 percent.

In Cedar Rapids, the minority student population was 11 percent as of Fall 1993-94 enrollment. This figure, when plugged into the State formula, means a building approaching 31 percent minority population would be in danger of being out of compliance with the State standard. In order to avoid actually reaching the noncompliance figure (31%), the District Board set as its policy for "closing its doors" to transfers that worsen the racial balance (whether into or out of the building) a figure of 15% above the District-wide minority population figure. This translates to 25% minority student population in any attendance center, given the (then) current 11% minority student figure District-wide. This policy was established with the approval of the equity consultants of the Department of Education. The policy (#602.5a) allows the District to control *some* of the traffic into and out of each building. It will never be able to control all of it due to the mobility factors inherit in our society.

Johnson Elementary School, a K-5 building where Harry is scheduled to attend, had a minority student makeup of 26% as of Spring 1994 when Appellant's open enrollment application was made. The desegregation policy has a clause that provides when any individual attendance center comes within 5% of the noncompliance figure (31%), the desegregation impact policy kicks in to prevent minority students from transferring into that attendance center and denying nonminority students' requests to transfer out. This prohibition applies whether the students are within the District or outside of it.

II.
Conclusions of Law

Iowa's open enrollment law took effect July 1, 1989, creating an advance application process beginning in the fall of 1989

for open enrollment effective in the 1990-91 school year. The law included an exception for those school districts under voluntary or court-ordered desegregation, including the District here, whereby they could opt not to participate the first year and use that time to make preparations and devise a policy for interrelating open enrollment and district desegregation plans.[1] That provision of the law 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.

Iowa Code §282.18(14)(1993). Thus the legislature, in creating and adopting the open enrollment law, which by its own terms is designed "to permit a wide range of educational choices for children enrolled in schools in this state and to maximize ability to use those choices," still included provisions that would negatively affect a parent's right to school choice. One of those provisions is clearly to prevent the open enrollment law from upsetting a school district's desegregation efforts.

> . . . In all districts involved with volunteer [sic] or court-ordered desegregation, minority and non-minority pupil ratio shall be maintained according to the desegregation plan or order. The superintendent of a district subject to volunteer 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.

Iowa Code §282.18(4)(1993). It is apparent that the general assembly's language reflects a priority for a public policy in

---

[1]The District in this case did not exercise its option to sit out the first year of open enrollment, but participated fully as a sending and receiving district.

favor of continued desegregation over a public policy in favor of parental choice. When the two are in conflict, as they are in this case, the latter gives way to the former. Whether or not in implementing this law the actions of a school district that deny open enrollment out of the district to non-minority students constitutes impermissible discrimination under the U.S. and Iowa constitutions is not for us to say. However, the equal protection clause does not prohibit all race-based treatment or classification by government; it prohibits only those that do not rest upon a "compelling interest." Bolling v. Sharpe, 347 U.S. 497, 74 S.Ct. 693 (1954). In our view, the prevention of second and third generation segregation is such a compelling interest.

Appellant's principal argument is that the Board's policy is racially discriminatory and violates the Equal Protection Clause of the Constitution. The District Board Policy and Procedure 602.5 and 602.5a were adopted in June, 1989. Mr. Evans testified that the policy had not been changed since that time up to its application to Appellant's open enrollment request. Consequently, we take official notice of the facts and conclusions found in In re Anthony, Daniela and Jessica Ausborn, 8 D.o.E. App. Dec. 243 (1991) and In re William Croskrey, Craig and Jan Croskrey, Appellants v. Cedar Rapids Comm. Sch. Dist., Appellee, 10 D.o.E. App. Dec. 323, which uphold the District's policy and procedure.

Finding no basis in law or fact in which to overturn the Board, the decision to deny Appellant's application for open enrollment for Phillip Brandt is recommended for affirmance.

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

III.
Decision

For the foregoing reasons, the decision of the Cedar Rapids Community School District Board of Directors to deny open enrollment for Phillip Brandt is hereby recommended for affirmance. There are no costs of the hearing to be assigned under Iowa Code section 290.

November 7, 1994
Date

Ann Marie Brick
Ann Marie Brick, J.D.
Administrative Law Judge

It is so ordered.

Nov. 16, 1994
Date

Ron McGauvran
Ron McGauvran, President
State Board of Education