

District to attend kindergarten elsewhere during the 1996-97 school year.¹

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 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.²
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:³

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

¹These Appellants have an application deadline of June 30, 1997, since they are open enrolling for kindergarten during the 1996-97 school year. See, 281 -- Iowa Administrative Code 17.7.

²Of those 70 students who were denied eligibility for open enrollment, 20 appealed from the Board's November 21, 1995, decision. Those 20 appeals were consolidated in three separate actions: all kindergarten students were consolidated; all students who were denied because their buildings were closed to open enrollment were consolidated in one appeal hearing; and all students who were denied under the District's "composite ratio" portion of the policy were consolidated in a separate hearing appeal.

³This form is prepared by the State Department of Education, not the local school district.

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.
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 were released for open enrollment under this portion of the policy.⁴ 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.
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 Mark Heirigs:

Appellant Lisa Heirigs testified that she and her husband, Tom, plan on moving to West Des Moines some time during the next year or two. They would like to have Mark begin kindergarten in

⁴This ratio is presently 1 minority for every 3.15 nonminority student (1:3.15 or 15 minority:47 nonminority students).

West Des Moines commencing with the Fall of 1996 so that he is not disrupted when this move occurs. Mark has a younger brother who is two years old. An additional reason for the decision to open enroll is the fact that Mark's mother suffers from Lupus and there are family members in West Des Moines who could care for and transport Mark to school in the event that his mother becomes ill. Since the Heirigs do not believe that Mark's absence from Windsor School (which is his attendance center) would adversely affect the desegregation of that school, they appealed the decision of the Des Moines Board to deny their open enrollment application.

In re James Long:

Mr. and Mrs. Long applied for open enrollment for James to attend kindergarten in West Des Moines, specifically at the Clive Elementary School. Bob Long has been on the faculty at Clive Elementary for the past four years and feels that his son would flourish in the learning environment of the school. He testified that the faculty at Clive Elementary are of the highest caliber and that he and his wife want their son to attend kindergarten there. Additionally, it would be easy for Mr. Long to transport James to Clive every day since he goes there himself. The Longs did not want James to be considered a "statistic for desegregation plans when he is not yet enrolled in school," so they filed this appeal of Des Moines' denial of their open enrollment application.⁵

In re Brooke Goodman

The Goodmans have three children; Brooke who will be attending kindergarten in the Fall of 1996, a three-year old and a baby who was two weeks old at the time of the appeal hearing. Pamela Goodman is a pension administrator who works at Principal Financial Group. She leaves for work very early in the morning and currently has all three children at "Kids' World," which is located in Altoona. Her husband is a salesperson who works from 5:00 a.m. until approximately 7:00 p.m. and is out of town two nights a week. He cannot support her with child care transportation. Since the Altoona daycare facility will transport to S.E. Polk, it would be much more convenient for her to have Brooke in that District next fall.

⁵We need to note the fact that a school district has the absolute right to designate the student's attendance center when open enrollment is granted. The Longs would not have the right to specify Clive attendance center. See, 281--Iowa Administrative Code § 17.6(4).

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,⁶ 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.

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:

⁶No 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.

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. Finding no basis in law or fact to overturn the Appellants' cases, the District's decision to deny their applications for open enrollment is recommended for affirmation.

Any motions or objections 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 made on November 21, 1995, denying open enrollment for these Appellants is hereby recommended for affirmance. There are no costs of this appeal to be assigned.

4-1-96
DATE

Ann Marie Brick
ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

4-11-96
DATE

Betty L. Dexter
BETTY DEXTER, VICE-PRESIDENT
STATE BOARD OF EDUCATION