

**IOWA STATE BOARD  
OF EDUCATION**  
(Cite as 17 D.o.E. App. Dec. 260)

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*In re Taylor Ballard; In re Alexander* :  
*Beames; and In re Jordan Marie Gerst* :  
  
Lyle & Tami Ballard; Tim &, :  
Sharyl Beames; and Eric & :  
Stephanie Gerst, Appellants, :  
  
v. : DECISION  
  
Burlington Community :  
School District, [Adm. Doc. #s 4085, 4087,  
Appellee. : & 4098]

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The above-captioned matters were consolidated and were heard on June 10, 1999, before Ann Marie Brick, J.D., legal consultant and designated administrative law judge. The following Appellants were "present" telephonically, unrepresented by counsel: Tami Ballard, Sharyl Beames, and Eric and Stephanie Gerst. The Appellee, Burlington Community School District [hereinafter, "the District"], was "present" telephonically in the person of Larry MacBeth, Director of Instruction & Educational Programs. The District was represented by Ann Tompkins of Gruhn Law Firm.

An evidentiary hearing was held pursuant to department rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for the appeal are found at Iowa Code sections 282.18 and 290.1(1999). The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter of this appeal.

The Appellants seek reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the District made on January 25, 1999, that denied their applications for open enrollment out of the District, beginning in the 1999-2000 school year

**I.  
FINDINGS OF FACT**

All Appellants are residents of the Burlington Community School District, and all Appellants timely filed applications for their children to open enroll out of the District for the 1999-2000 school year.

**In re Taylor Ballard:**

Taylor Ballard, a non-minority, will enter second grade for the 1999-2000 school year. He has been attending Sunnyside Elementary School in the District. His parents applied for open enrollment for him to West Burlington for the following reasons. Taylor has attention deficit hyperactivity disorder, although he has not been in a special class. His parents believe that he would benefit from the smaller classes in the West Burlington District. In addition, the Ballard home is in West Burlington, and Taylor would have a shorter bus ride if he attended there rather than Sunnyside Elementary.

The Ballards' application for open enrollment was denied because the District determined that the departure of this student would have an adverse affect on the District's desegregation plan.

**In re Alexander Beames:**

Alexander Beames, a non-minority, will enter kindergarten for the 1999-2000 school year. Tim and Sharyl Beames, his parents, applied for open enrollment for him to the Danville Community School District for the following reasons. Mrs. Beames is a teacher in the Danville District, and it would be more convenient for the family if Alexander were to attend school there. He would be able to ride with his mother, rather than take a school bus, and he would be able to avoid what they have been told is a long bus ride home from school.

In addition, before- and after-school child care will need to be arranged for Alexander if he attends kindergarten in the District. This would be an additional inconvenience for the parents, who also take their other, younger child to a babysitter in the mornings. Mrs. Beames testified that the parents are concerned about discipline on the Burlington school bus, but provided no details.

The Beames' application for open enrollment was denied because the District determined that the departure of this student would adversely affect the District's desegregation plan.

**In re Jordan Marie Gerst:**

Jordan Marie Gerst, a non-minority, will enter kindergarten for the 1999-2000 school year. Her parents would like her to attend the Danville District for several reasons. The Gerst home is in Middleton, and the Danville Elementary School is a 15-minute bus ride from the home, according to Mr. Gerst's testimony. He testified that Jordan's assigned attendance center in Burlington, Prospect Hill, is over 11 miles from

the home. The Gersts also expressed concern about discipline problems in the District and submitted newspaper clippings about such problems as part of their affidavit of appeal.

The Gersts' application for open enrollment was denied because the District determined that the departure of this student would have an adverse affect on the District's desegregation plan.

**The District:**

The Burlington Community School District has a formally adopted desegregation plan, Board Policy 105.1 (Appellee's Exh. A), a formally adopted open enrollment policy, Board Policy 105 (Appellee's Exh. B), and formally adopted administrative procedures to implement the desegregation plan and the open enrollment policy, Board Policy 105R (Appellee's Exh. C). The open enrollment policy prohibits granting open enrollment when the transfer would have "a negative effect on the racial balance of the district established in support of the District's Desegregation Plan." (Appellee's Exh. B.) The policy and the procedures contain objective criteria that the District uses to determine whether a request for transfer would adversely affect the desegregation plan and to prioritize those deemed not to have an adverse impact. Board Policy 105R states, "Open Enrollment – Standard Program transfers at any level (elementary, middle, or high school) may not cause an alteration to the District-wide Composite Ratio of minority to nonminority students. Applications for all students requesting a transfer out of the District will be denied if the release of the student (minority or non-minority) will adversely affect the District's 'Composite Ratio'". (*Id.*) The procedures describe the District's random selection process to determine which students will be approved if more non-minority students apply for open enrollment than can be allowed according to the composite ratio. The procedures also describe the Board's policy of giving preference to siblings of students already open enrolled out of the District. (*Id.*)

Mr. MacBeth testified that the District's minority enrollment for the 1998-1999 school year was 15% and the non-minority enrollment was 85%, resulting in a composite ratio of 1:7. This means that for every minority student who open enrolls out of the District for 1999-2000, seven non-minority students would be approved to leave. One minority student applied for the 1999-2000 school year and 29 non-minorities. Fourteen of the non-minorities qualified under the sibling preference policy and were approved to open enroll out of the District even though their numbers exceeded the seven called for by the composite ratio. The remaining applications, including those of these Appellants, were denied because they exceeded the 1:7 composite ratio. The denials occurred at the January 25, 1999, Board meeting.

## II. CONCLUSIONS OF LAW

Two important interests conflict in this case: the right of parents to choose the school they believe would be best for their children under the Open Enrollment Law, and the requirement that school districts affirmatively act to eliminate segregated schools. The Open Enrollment statute sets out these two interests, and provides as follows:

Iowa Code section 282.18(1)(1999) states, "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 section 282.18(3)(1999) states, "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."

Iowa Code section 282.18(12)(1999) states, "The board of directors of a school district subject to voluntary or court-ordered desegregation shall develop a policy for implementation of open enrollment in the district. 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."

In this case, the parents have valid reasons for requesting open enrollment. They are genuinely interested in what is best for their children and are seeking to obtain it by filing for open enrollment. If the Burlington District did not have a desegregation plan, there is no question that these parents could open enroll their children as requested, so long as the application was filed in a timely manner. However, the District does have such a plan. The District's open enrollment policy contains objective criteria for determining when open enrollment transfers would adversely impact the desegregation plan as required by Iowa Code section 282.18(12) (1999). The policy also includes a provision for maintaining a district-wide ratio of minority to non-minority students (Bd. Policy 105R). The District's policy is similar to that of the Des Moines Independent Community School District. The Des Moines District's open enrollment policy was

upheld by the Polk County District Court in Des Moines Ind. Comm. Sch. Dist. V. Iowa Dept. of Education, AA2432 (June 1, 1995). That decision upheld the Des Moines District Board's right to deny timely-filed open enrollment applications using the district-wide composite ratio. That right also applies to the Burlington Board.

Two of the Appellants claimed that they had been discriminated against because the denial of their open enrollment requests was based on their non-minority racial status. The District's policy does impose race-conscious remedies to further its desegregation efforts. The use of race in this manner is not prohibited. *Id.* Judge Bergeson stated in that decision, "The District's policy does not prefer one race over another. While the policy may have differing impacts, depending on the number and race of students applying, it does not prefer or advance one race over another." *Id.*

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)], "in the best interest of the affected child or children" [Iowa Code section 282.18(18)], and "in the best interest of education" [281--IAC 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.)*

The facts discovered at the appeal hearing do not show that the District's policy was inappropriately or incorrectly applied to the facts of any individual student's case. Therefore, the Board's decisions to deny these applications were reasonable. The facts also show that the Board's denials were consistent with the Law and its own policy.

### III. DECISION

For the foregoing reasons, the decision of the Board of Directors of the Burlington Community School District made on January 25, 1999, that denied open enrollment requests for Taylor Ballard, Alexander Beames, and Jordan Marie Gerst for the 1999-2000 school year, is hereby recommended for affirmance. There are no costs of this appeal to be assigned.

Aug. 27, 1999  
DATE

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

It is so ordered.

Sept. 9 1999  
DATE

Corine Hadley  
CORINE HADLEY, PRESIDENT  
STATE BOARD OF EDUCATION