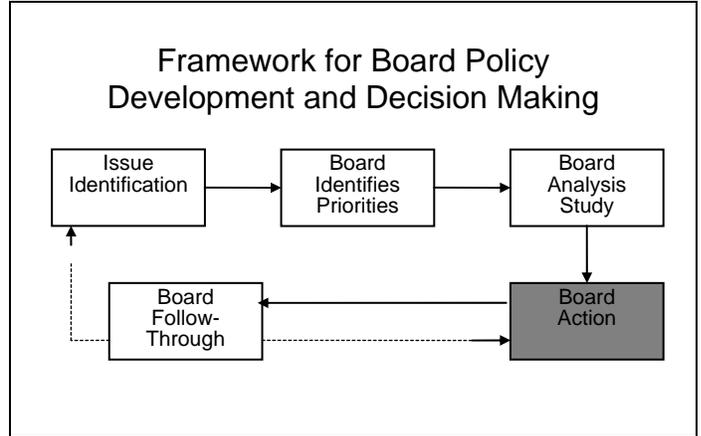


Iowa State Board of Education

Executive Summary

February 6, 2008



Agenda Item: Chapter 17 rules, Open Enrollment (Adopt)

Iowa Goal: (2) All K-12 students will achieve at a high level.

Equity Impact Statement: All school districts are governed by the open enrollment law and its rules.

Presenter: Carol Greta, Legal Counsel

Attachments: 1

Recommendation: It is recommended that the State Board adopt the following amendments to this chapter.

Background: The amendments are in response to the June 28, 2007, decision of the United States Supreme Court that student assignments may not be based solely or primarily on race. Thus, under the amended rules, eligible school districts will still be able to deny open enrollment requests if the gain or loss of the student will negatively impact the district's voluntary diversity plan. Rather than defining "minority student" solely in terms of race, the amendments allow eligible districts to define the term for themselves as long as race is not the sole or the determinative factor.

During the public comment period, the DE received one written and one verbal comment prior to the public hearing. At the public hearing held on January 8, 2008, three persons attended and commented. Two persons who attended the public hearing were in favor of neighborhood schools, but had no opinion about the rules under notice. Persons representing two school districts that are not eligible districts under these rules stated that their districts wanted

the rules to be changed to retain the option for more districts to adopt a voluntary diversity plan as a means of regulating open enrollment. Finally, attorneys representing three of the eligible districts (Davenport, Des Moines, and Waterloo) submitted a written comment offering a technical correction to Item 2, asking for a specific definition of socioeconomic status, and also opining that “eligible district” should be more broadly defined. Agency staff met several times with personnel and legal counsel from affected districts to assist them as they transition from desegregation plans to diversity plans.

Since the Notice of Intended Action was published, the department has added a definition of socioeconomic status [SES] to clarify that SES is to be measured by the percentage of a district’s student population that meets the financial eligibility criteria for free meals or reduced price meals offered under the Child Nutrition Program. Regarding the request to expand the definition of eligible district, this agency believes that any decision in that regard is a policy decision that should be made by the General Assembly.

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education amends Chapter 17, “Open Enrollment,” Iowa Administrative Code.

The amendments are in response to the June 28, 2007, decision of the United States Supreme Court that student attendance center assignments may not be based solely or primarily on race. Thus, under the amended rules, eligible school districts will still be able to deny open enrollment requests if the enrollment or release of the student will negatively impact the district’s voluntary diversity plan. Rather than defining “minority student” solely in terms of race, the amendments allow eligible districts to define the term for themselves as long as race is not the sole or the determinative factor. There are five eligible school districts as that term is defined in rule: the school districts of Davenport, Des Moines, Postville, Waterloo, and West Liberty.

An agencywide waiver provision is provided in 281—Chapter 4.

Notice of Intended Action was published in the December 19, 2007, Iowa Administrative Bulletin as ARC #6480B. A public hearing was held January 8, 2008, and public comments were allowed until 4:30 p.m. that same date. Three persons attended the public hearing. Two persons who attended the public hearing were in favor of neighborhood schools, but had no opinion about the rules under Notice. Persons representing two school districts that are not eligible districts under these rules stated that their districts wanted the rules to be changed to retain the option for more districts to adopt a voluntary diversity plan as a means of regulating open enrollment. Finally, attorneys representing three of the eligible districts (Davenport, Des Moines, and Waterloo) submitted a written comment offering a technical correction to Item 2, asking for a specific definition of socioeconomic status, and also opining that “eligible district” should be more broadly defined.

Since the Notice of Intended Action was published, minor edits have been made to Item 2 to add “court-ordered” before segregation plans to avoid confusion. The department has also added a definition of socioeconomic status [SES] to clarify that SES is to be measured by the percentage of a district’s student population that meets the financial eligibility criteria for free meals or reduced price meals offered under the Child Nutrition Program. Regarding the request to expand the definition of eligible district, this agency believes that any decision in that regard is a policy decision that should be made by the General Assembly.

These amendments are intended to implement Iowa Code section 282.18(3) and Parents Involved in Community Schools v. Seattle School District No. 1, et al., 551 U.S. ____ (2007).

These amendments shall become effective April 2, 2008.

The following amendments are proposed.

ITEM 1. Amend rule ~~281—17.2(282)~~ as follows:

Amend the definitions of “minority student” and “voluntary or court-ordered desegregation plan,” as follows:

“Minority student” ~~means a student who is a member of one of the following four groups (as used by the federal Department of Education): Black (not of Hispanic origin), Hispanic, American Indian/Alaskan Native, or Asian/Pacific Islander. For purposes of these rules, a student who is biracial or multiracial may be categorized as a minority student~~ shall be defined by a local school board in its diversity plan, and may include consideration of any one characteristic or a combination of any of the following characteristics except that race may not be either the sole or the determinative characteristic: socioeconomic status, ethnicity/national origin, English language learner status, or race.

~~“Voluntary or court-ordered~~ Court-ordered desegregation plan” means a plan that is ~~either~~ under direct court order ~~or is voluntarily adopted~~ to avoid racial isolation in the district.

Adopt the following new definitions in alphabetical order:

“Diversity plan” or “voluntary diversity plan” means a plan that is voluntarily adopted by a local school board to promote diversity and to avoid minority student isolation in the district.

“Eligible district” means a school district whose board had adopted a voluntary desegregation plan under this chapter prior to June 28, 2007.

“Socioeconomic status” means the income level of a student or the student’s family, and shall be measured by whether a student or the student’s family meets the financial eligibility criteria for free meals or reduced price meals offered under the Child Nutrition Program.

ITEM 2. Amend subrule 17.6(2) as follows:

17.6(2) Voluntary diversity plans or court-ordered desegregation plans. In districts ~~involved with voluntary~~ or court-ordered desegregation (see 17.2(282)) or voluntary diversity plans where there is a requirement to maintain minority and nonminority student ratios according to ~~a desegregation~~ the plan ~~or order~~, the superintendent of the district may deny a request for open enrollment if it is found that the enrollment or release of a pupil will adversely affect the district’s court-ordered desegregation plan or ~~order~~ voluntary diversity plan.

Open enrollment requests that would facilitate the court-ordered desegregation plan or ~~order~~ voluntary diversity plan shall be given priority over other open enrollment requests received by the district. A parent/guardian whose request for open enrollment is denied by the superintendent of the district on the basis of its adverse effect on the district's court-ordered desegregation plan or voluntary diversity plan may appeal that decision to the district board.

ITEM 3. Amend rule 281—17.14(282) as follows:

281—17.14(282) Voluntary *diversity plans* or court-ordered desegregation plans.

17.14(1) Applicability. These rules govern only the components of a voluntary diversity plan or court-ordered desegregation plan as the plan affects open enrollments. Nothing herein shall prohibit a district from implementing a lawful voluntary ~~desegregation~~ diversity or court-ordered desegregation plan or components thereof for transfers other than open enrollment.

17.14(2) Eligibility to adopt and implement a plan applicable to open enrollments.

a. Adoption. The board of a an eligible school district may adopt a voluntary ~~desegregation~~ diversity plan with a component that applies to open enrollments if either of the following conditions exists: (1) ~~The district's total student population consists of at least 20 percent minority students~~ The percentage of minority students in the district exceeds the percentage of minority students in the state by at least 20 percentage points; or (2) The percentage of minority students in one or more attendance centers in the district exceeds the percentage of minority students in the district as a whole by at least 20 percentage points.

b. Implementation. The open enrollment component of the plan adopted by the district board shall only be implemented by the district if other components of the ~~desegregation~~ diversity plan describe the steps the district is taking internally to avoid or reduce ~~racial~~ minority student isolation, and the district demonstrates the extent to which it has implemented those steps. For districts with multiple attendance centers at the same grade level, such steps may include intradistrict student transfer policies, pairing of attendance centers, revision of boundaries of attendance centers, selecting school sites, realignment of feeder systems, magnet schools, and the placement of specialized programs and services. In a district without multiple attendance centers at the same grade level, such steps may include pupil assignments to classrooms, classroom pairing, community and family outreach programs, student-to-student mentoring or grouping designed to promote understanding and acceptance of and positive interactions with all ~~racial and ethnic~~ groups of minority students, and professional development activities designed to promote understanding and acceptance of and positive interactions with all

~~racial and ethnic~~ groups of minority students. The open enrollment component of the plan adopted by the district board may remain in effect for so long as the district's total minority student population exceeds 15 percent, and shall remain in effect for so long as the district demonstrates is necessary to avoid ~~racial~~ minority student isolation in the district.

17.14(3) Open enrollment elements of a ~~desegregation~~ diversity plan.

a. All applicable deadlines for the filing and determination of open enrollment requests, including the exceptions for good cause under rule 17.4(282), apply to open enrollment requests filed in a district that has adopted an open enrollment component in its voluntary ~~desegregation~~ diversity plan.

b. The plan shall establish a districtwide ratio of minority-to-nonminority students to be maintained, consistent with subrule 17.14(2). All open enrollment requests, both those into and out of the district, shall be acted on according to whether the request will adversely affect or will positively affect the implementation of the plan. Under Iowa Code section 282.18, if an open enrollment request would positively affect the plan, the district shall give priority to granting the request over other requests.

c. A district with multiple attendance centers at the same grade level shall specify in the open enrollment component of its ~~desegregation~~ diversity plan which attendance centers are affected by the open enrollment component. For each of those attendance centers, the district shall establish and specify the individual attendance center ratios of minority-to-nonminority students, consistent with subrule 17.14(2). The plan may provide for an initial determination of whether a requested open enrollment will negatively affect the specific attendance center ratio. With respect to a request to open enroll out of the district, if such enrollment will negatively affect the ratio established for the student's current attendance center, the request may be denied by the district with no further determination of the impact of the request on the districtwide ratio. For a request to open enroll either into or out of the district, if the open enrollment will not negatively affect the attendance center ratio, the request shall be denied only if there would be a negative impact on the districtwide ratio. As of July 1, 2003, if a district's plan sets a threshold lower than allowed in paragraph 17.14(2)"a" and that plan has not been disapproved by a court of competent jurisdiction, the district may implement its individual attendance center ratios in addition to its districtwide ratio.

d. The plan shall include provision for the formation and operation of a waiting list for those requests that could not be granted immediately. A parent/guardian of a child on the waiting list must be informed by the

district of the details of the operation of the list and whether the parent/guardian must refile a timely request for open enrollment in order to remain on the waiting list.

e. The plan shall specify a district contact person to whom questions may be directed from parents/guardians.

f. The plan shall include a provision whereby a parent/guardian has a means to request that the district determine whether a hardship exists for granting a request that may not otherwise be granted under the plan.

17.14(4) Exceptions. The following exceptions shall apply:

a. If an open enrollment request is filed on behalf of a student whose sibling is already participating in open enrollment to the same district to which the student desires open enrollment, the request shall be granted.

b. If an open enrollment request is filed on behalf of a student whose parent/guardian moves out of the school district of residence and who wishes to remain in the district of residence as an open enrolled student without interruption in the student's educational program under subrule 17.8(7), the request shall be granted. This option is not available to the parent/guardian of a student who is entering kindergarten for the first time.

c. A request for open enrollment based on repeated acts of harassment of the student shall not be denied on the basis that such request would have an adverse impact on the district's ratio of minority-to-nonminority students.

d. A request for open enrollment based on a serious health condition of the student that the district cannot adequately address shall not be denied on the basis that such request would have an adverse impact on the district's ratio of minority-to-nonminority students.

17.14(5) Review by department.

~~a. Initial submission of plan. A district whose board has adopted a voluntary desegregation plan for open enrollment before July 1, 2004, shall submit a copy of its plan to the department by September 1, 2004. A district that adopts such a plan on or after July 1, 2004, shall submit a copy to the department within 60 days of the adoption of the plan. All changes to voluntary desegregation plans for open enrollment shall be submitted to the department within 60 days of local board action.~~

~~b. Compliance plans adopted before July 1, 2004. With respect to plans adopted prior to July 1, 2004, the department initially shall inform the district within 90 days whether the plan complies with this rule. The district has until July 1, 2006, to comply with this rule. The department shall work with the district toward compliance by providing technical assistance. If a district's plan is not in compliance with this rule by July 1,~~

~~2006, the district shall not use its plan to deny any timely open enrollment requests filed after July 1, 2006, until the district's plan is determined by the department to be in compliance with this rule. A district whose board adopted a plan prior to July 1, 2004, may use its plan for the 2004-2005, 2005-2006, and 2006-2007 school years.~~

~~e. Compliance plans adopted on or after July 1, 2004. With respect to plans adopted on or after July 1, 2004, the department initially shall inform the district within 90 days of submission of the plan to the department whether the plan complies with this rule. The department shall work with the district toward compliance by providing technical assistance. Until a district's plan is in compliance with this rule, the district shall not use its plan to deny any timely open enrollment requests.~~

17.14(5) Review by department. All voluntary desegregation plans adopted under this rule prior to June 28, 2007, are no longer valid. An eligible district whose board desires to adopt a voluntary diversity plan for open enrollment must do so by March 1, 2008. The district shall submit a copy of its plan to the department for review within 10 days of the adoption of the plan. Open enrollment requests received prior to March 1, 2008, by a district that has a voluntary diversity plan may be held by the district for action pursuant to the district's new voluntary diversity plan.

The department shall inform the district within 10 days of receipt of the district's voluntary diversity plan whether the plan complies with this rule. All changes to voluntary diversity plans for open enrollment shall be submitted to the department within 60 days of local board action.