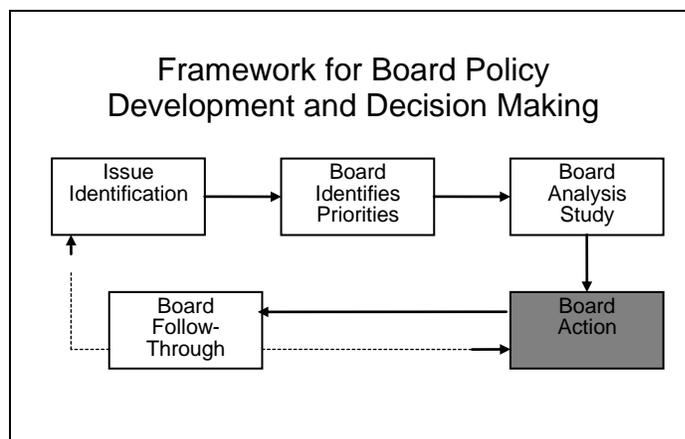


Iowa State Board of Education

Executive Summary

November 18, 2009



Agenda Item: *In re Sophie H., 25 D.o.E. App. Dec. 179*

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

Equity Impact Statement: All districts receive guidance from the legal questions answered in this decision.

Presenter: None (Consent agenda)*

Attachments: 1

Recommendation: It is recommended that the State Board approve the Administrative Law Judge's decision to affirm the decision of the Roland-Story Community School District local school board to deny the late-filed open enrollment application filed on behalf of the student.

Background: Sophie H. lived with her mother in the Roland-Story School District and is in the 11th grade. An open enrollment application was filed on her behalf by her mother on July 31, alleging harassment that dates back to when Sophie was in grade school. Without examining all four criteria by which late-filed open enrollment applications alleging pervasive harassment are to be analyzed, the Proposed Decision concludes that the first criterion (that the harassment occurred after the March 1 deadline) has not been met. (After the local board's denial, Sophie's mother had Sophie move to Boone with Sophie's father; Sophie attends school in the Boone Community School District.)

*In the event of an appeal of a final decision, the State Board is represented in district court by the Iowa Attorney General's office. Therefore, if any State Board member has questions for the Attorney General's office, let us know several days in advance of the November 18 meeting so we can arrange for an assistant Attorney General to be present either in person or via telephone.

**IOWA DEPARTMENT
OF EDUCATION**
(Cite as 25 D.o.E. App. Dec. 179)

In re Sophie H.

Cindy H.,	:	
Appellant,	:	PROPOSED DECISION
vs.	:	
	:	[Admin. Doc. 4690]
Roland-Story Community School District,	:	
Appellee.	:	

The above-captioned matter was heard telephonically on September 16, 2009, before designated Administrative Law Judge Carol J. Greta. The Appellant, Cindy H., was present on behalf of her minor daughter, Sophie. The Appellee, the Roland-Story Community School District, was represented by Superintendent Mike Billings. Also present on behalf of the Appellee was its board secretary, Candi Holm.

An evidentiary hearing was held pursuant to agency rules found at 281—Iowa Administrative Code chapter 6. Authority and jurisdiction for the appeal are found in Iowa Code §§ 282.18(5) and 290.1.

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. Ms. H. seeks reversal of the August 10, 2009 decision of the local board of directors of the Roland-Story District to deny the open enrollment request filed on behalf of Sophie.

FINDINGS OF FACT

Sophie H. is now a junior. Ms. H. lives in the Roland-Story District; Sophie's father, Don H., from whom Ms. H. is divorced, resides in the Boone Community School District. Sophie now lives with her father and attends school in Boone.

Alleging pervasive harassment of Sophie, Ms. H. filed an open enrollment application with Roland-Story on July 31, 2009, seeking to enroll Sophie in the Ames Community School District.¹ Ms. H. alleged that the harassment of Sophie dates back to when Sophie was in the 3rd or 4th grade.

When asked why she did not attempt to transfer Sophie via open enrollment earlier, Ms. H. testified that she knew there was a deadline, but did not know what it was;

¹ If her appeal is successful, Ms. H. stated that it is her intent to immediately enroll Sophie at Ames High School.

that she was not aware of how the harassment was affecting her daughter²; and that she wanted to wait to transfer Sophie until her house, which has been on the market for two years, sold so that she and Sophie could move to Ames.

Superintendent Billings testified that the March 1 deadline is printed in the District's newsletter, which Ms. H. acknowledged receiving. He also testified that his staff has not been approached by Sophie or her mother regarding any harassment with one exception. When she was a freshman, Sophie spoke to the high school principal about a male classmate of hers who was directing stupid and demeaning comments at Sophie in a science class. There is no evidence that Sophie or her mother indicated to any school official that the harassment continued after the principal intervened.

The Roland-Story school board considered the application at its regular meeting of August 10. Both of Sophie's parents attended this meeting. The local board unanimously voted to deny the request. Cindy H. then filed a timely appeal to this Board.

CONCLUSIONS OF LAW

The controlling statute for this appeal is the open enrollment law, Iowa Code section 282.18, and the exception to the statutory filing deadline of March 1 in 282.18(5) regarding applications that seek open enrollment due to "repeated acts of harassment of the student."

In *In re Hannah T.*, 25 D.o.E. App. Dec. 26 (2007), this Board set out the following history of such appeals.

This Board has given relief under section 282.18(5) to students who have been harassed in three cases. In the first such case, *In re Melissa J. Van Bemmel*, the student had experienced harassment by a group of about 20 students that had caused her to seek medical and mental health treatment for a variety of physical ailments, as well as for anorexia, depression, and insomnia. This Board noted that the "District is unable to effectively address the situation at school and the police are unable to effectively address the situation outside of school." The harassment of Melissa culminated on a highway; the vehicle in which Melissa was riding was twice intentionally forced off the road by other vehicles driven by the other students. This Board ordered that Melissa be allowed to open enroll out of the district.

The other cases in which relief was granted are *In re Jeremy Brickhouse* and *In re John Myers*. Both students in those cases had been subjected to numerous and specific physical assaults at school. The degradations to which Jeremy was subjected in his high school locker room are well-documented in the *Brickhouse* decision. In the *Myers* case, John was frequently physically assaulted at school, and his schoolbooks and supplies had been stolen, defaced, or otherwise rendered useless as educational tools by bullying classmates.

25 D.o.E. App. Dec. at 28 [cites omitted].

² Ms. H. testified that she became aware of the impact of bullying on a child when she attended a community workshop on bullying held at the Roland-Story Middle School in August, 2009.

The criteria regarding open enrollment requests based on repeated acts of harassment, all of which must be met for this Board to give the requested relief, are as follows:

1. The harassment must have occurred after March 1 or the student or parent demonstrates that the extent of the harassment could not have been known until after March 1.
2. The harassment must be specific electronic, written, verbal, or physical acts or conduct toward the student which created an objectively hostile school environment that meets one or more of the following conditions:
 - (a) Places the student in reasonable fear of harm to the student's person or property.
 - (b) Has a substantially detrimental effect on the student's physical or mental health.
 - (c) Has the effect of substantially interfering with a student's academic performance.
 - (d) Has the effect of substantially interfering with the student's ability to participate in or benefit from the services, activities, or privileges provided by a school.
3. The evidence must show that the harassment is likely to continue despite the efforts of school officials to resolve the situation.
4. Changing the student's school district will alleviate the situation.

We conclude that the first criterion has not been met; therefore, we do not analyze the other criteria.

We do not minimize what Sophie experienced. But we conclude that there was no legal excuse for Ms. H. to have missed the March 1 deadline. Turning first to Ms. H.'s statement of ignorance of the statutory deadline, it is axiomatic that ignorance of the law is no excuse. See, e.g., *In re Amanda Schamerhorn*, 24 D.o.E. App. Dec. 82 (2006).

Secondly, we may excuse the lack of timeliness if the student's parent or guardian demonstrates that the extent of the harassment could not have been known until after March 1. Here, Ms. H. states that Sophie has been harassed since she was in the 3rd or 4th grade at Roland-Story. There was no evidence that Ms. H. was not aware of any harassment that occurred before March 1, 2009. The only event that occurred after March 1, 2009, was that Ms. H. attended a community workshop in August on the topic of mobbing (group bullying), led by a local author on the subject, Gail Pursell Elliott. Ms. H. had already filed the open enrollment application on July 31. While Ms. Elliott's speech may have enhanced Ms. H.'s awareness of the effects of bullying, it had nothing to do with her filing an open enrollment application on July 31.

We conclude that it would not be appropriate for this Board to grant the relief requested by Cindy H. by reversing the decision of the local school board to deny her open enrollment request filed on behalf of Sophie.

DECISION

For the foregoing reasons, the August 10, 2009 decision of the Board of Directors of the Roland-Story Community School District, denying the open enrollment request filed on behalf of Sophie H., is AFFIRMED. There are no costs of this appeal to be assigned.

9/23/09
Date

/s/
Carol J. Greta, J.D.
Administrative Law Judge

It is so ordered.

Date

Rosemarie (Rosie) Hussey, President
State Board of Education