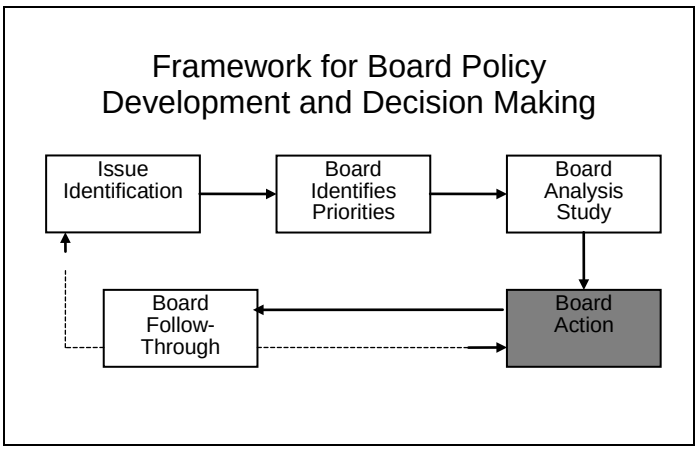
Iowa State Board of Education

Executive Summary

November 20, 2013



Agenda Item: *In Re Open Enrollment of Kali B. (Missouri Valley Community School District)*

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

State Board Role/ Authority: Under Iowa Code sections 282.18(5) and 290.1, the State Board of Education has authority to hear appeals from local school board decisions denying applications that seek open enrollment due to a "repeated acts of harassment of the student that the resident district cannot adequately address."

Presenter: Nicole Proesch, Designated Administrative Law Judge
Legal Counsel, Office of the Director

Attachments: 1

Recommendation: It is recommended that the State Board approve the proposed decision affirming the decision of the local board of directors of the Missouri Valley Community School District denying the open enrollment application filed on behalf of Kali B.

Background: Kali and her mother, Missy B. (Ms. B.) reside in the Missouri Valley Community School District (MV). Kali is in the 7th grade and is currently attending the Tri-Center Community School District (TC) for the 2013-2014 school year by paying tuition to TC. Kali had attended MV during her 6th grade year and reported several concerns about alleged behaviors of several teachers to her mother. Ms. B. reported these issues to the principal of Kali's school, Principal Hoesing, in December of 2012. Ms. B. felt that Principal Hoesing was appalled by the behavior, listened to her concerns, and said he would address the issues. In January or February, Ms. B. called Principal Hoesing to follow-up on her complaints and he advised her that he had addressed the complaints but could not tell her about specific outcomes. Ms. B. assumed that he

reprimanded the teachers because some of the behaviors improved. However, Ms. B. testified that some of the behaviors continued and she did not report them to Principal Hoesing because she felt nothing would be done. Instead, Ms. B. decided to open enroll Kali out of MV. Ms. B. filed a late open enrollment application on August 2, 2013, alleging issues with the teachers and a concern that Kali was not in a safe learning environment.

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The local school board denied the late filed open enrollment application finding that good cause was not met to open enroll Kali out of the district. In reviewing an open enrollment decision involving a claim of repeated acts of harassment under Iowa Code § 282.18(5) the State Board has set out four criterion that all must be met in order to overturn the decision of the local board. The evidence at the hearing before the administrative law judge showed that under the first criterion the harassing behavior alleged occurred in December of 2012 which is three months prior to the March 1 statutory deadline for the filing of open enrollment. Ms. B. decided in January or February that she would file for open enrollment. The evidence also showed that under the second criterion the behavior complained of would not meet the statutory definition of pervasive harassment. Because the first and second criterion were not met, it is difficult to examine the third and the fourth criterion. Nonetheless, all criterions are required and the first two were not met.

Thus, it is recommended that the State Board affirm the denial of the open enrollment application.

IOWA DEPARTMENT OF EDUCATION
(Cite as 26 D.o.E. App. Dec. 383)

In Re: Open Enrollment of Kali B.	)	
	)	
Missy B.,	)	
	)	PROPOSED DECISION
Appellant,	)	
	)	
v.	)	
	)	
Missouri Valley Community School District,	)	Admin. Doc. No. 4774
	)	
Appellee.	)	

STATEMENT OF THE CASE

The Appellant, Missy B. ("Ms. B."), seeks reversal of an August 19, 2013 decision by the Missouri Valley Community School District Board of Directors ("MV Board") denying a late filed open enrollment request on behalf of her minor daughter, Kali. The affidavit of appeal filed by Ms. B. on September 9, 2013, attached supporting documents, and the school districts supporting documents are included in the record. Authority and jurisdiction for the appeal are found in Iowa Code §§ 282.18(5) and 290.1 (2013). 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.

An evidentiary hearing was held pursuant to agency rules found at 281 Iowa Administrative Code 6. The above-captioned matter was heard by a telephone conference call on October 10, 2013, before designated administrative law judge, Nicole M. Proesch, J.D. The Appellant was present on behalf of her minor daughter, Kali B. Superintendent Deidre Drees ("Superintendant Drees") appeared on behalf of the Missouri Valley Community School District ("MV"). Also present was Rhonda Oliphant, who is the MV Board secretary.

Ms. B. testified in support of the appeal. Appellant's exhibits were admitted into evidence without objection. Superintendent Drees testified for MV and the school district's exhibits were admitted into evidence without objection.

FINDINGS OF FACT

Ms. B. and her daughter Kali reside within MV. Kali is in the 7th grade and is currently attending the Tri-Center Community School District ("TC") for the 2013-2014 school year by paying tuition to TC. March 1st is the statutory deadline for filing for open enrollment for the following school year. On August 2, 2013, Ms. B. filed an application with MV requesting approval for Kali to open enroll to TC for the 2013-2014 school year. The sole issue presented in this case is whether the MV Board erred by denying the late filed application for Kali to open enroll out of the district. The record establishes the following facts and circumstances leading to the application.

Kali attended MV for the 2012-2013 school year. During that year, Kali was in the 6th grade at Missouri Valley Middle School. Several issues surfaced during the fall of 2012 with three of Kali's teachers. Kali reported to Ms. B. that she was afraid her teacher, Mr. Cihacek, would hit her because he has anger issues and loud outbursts in class.[1] On one occasion, Kali reported that Mr. Cihacek was so angry that he kicked the trashcan across the room. On another occasion, he was so upset with Kali that he screamed in her face and was so close to her that she could feel the spit. (Affidavit of Appeal & Ms. B. Testimony)

Kali also reported an incident with another teacher, Mrs. Voster. On this occasion Mrs. Voster became angry and yelled at the entire class "I will be goddamned if I am going to put up with this shit from you kids!" Kali reported that Mrs. Voster spends the majority of class complaining about her job, the kids, and gossiping about other teachers and students. (Affidavit of Appeal & Ms. B. Testimony)

Ms. B. testified that another teacher, Mrs. Guinan, has a bias against Kali. During conferences, Mrs. Guinan told her that Kali was witty but that she needed to shut up. Mrs. Guinan advised Ms. B. that if she yells at Kali, her response is to pout and Ms. B. advised that she should ignore Kali if she pouts instead of arguing with her. Additionally, Kali has requested help in algebra from Mrs. Guinan and Kali says she will not help her. Ms. B. testified she finds this behavior unprofessional. (Affidavit of Appeal & Ms. B. Testimony)

Ms. B. reported these issues to the principal, Principal Hoesing, on December 19, 2012.[2] (Ms. B. Testimony & Superintendant Drees Testimony). Ms. B. felt that Principal Hoesing was appalled by the behavior, listened to her concerns, and said he would address the issues. (Affidavit of Appeal & Ms. B. Testimony)

In January or February, Ms. B. called Principal Hoesing to follow-up on her complaints and he advised her that he had addressed the complaints but could not tell her about specific outcomes. Ms. B. assumed that he reprimanded the teachers because some of the behaviors improved. Mrs. Voster stopped swearing and complaining, however Ms. B. felt there was no change in the behavior of the other teachers. Mrs. Voster continued to gossip, Mr. Cihacek's anger management issues continued, and Mrs. Guinan refused to help Kali. (Ms. B. Testimony)

Ms. B. testified that from January to the end of the school year, Mr. Cihacek had several outbursts and the other teachers made comments that they were going to tell Kayli's new teachers about her next year. There was also one incident in PE class when another student made the comment that the teacher could get Kali to run faster by putting a donut in front of her and Mr. Cihacek did nothing about the comment. Ms. B. admits that neither she nor Kali reported any of these new incidents to Principal Hoesing because she felt nothing would be done. Instead of reporting these incidents, Ms. B. decided to pursue open enrollment in January or February of 2013. (Affidavit of Appeal & Ms. B. Testimony)

Ms. B. contacted Superintendent Drees in July of 2013 to discuss her options for open enrollment after she decided to enroll Kali at TC. Ms. B. told Superintendent Drees about the issues she was having with the teachers at Kali's school. Superintendent Drees advised her that TC would have to agree to the open enrollment. Ms. B. contacted TC and they advised her that MV would have to agree to the open enrollment. (Ms. B. Testimony).

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[1] Kali was not present at the hearing and did not testify for the appellant.

[2] No written complaint was filed.

This conversation was the first time Superintendent Drees was aware of the issues that Kali reported. She had not received any other complaints about these teachers since beginning her employment with the district three years ago. Ms. B. advised her that she had spoken to Principal Hoesing about the issues and she felt he had addressed them and things had improved. Superintendent Drees followed-up with Principal Hoesing regarding the issues with these teachers and learned that Principal Hoesing had investigated the complaints. (Superintendent Drees Testimony).

Principal Hoesing advised Superintendant Drees that neither of the incidents were directed solely toward Kali. The first incident with Mr. Cihacek involved a group of girls in the locker room who were involved in inappropriate comments and behavior. Mr. Cihacek warned the group of girls several times to cease inappropriate behavior. Kali was one of the girls who were reprimanded. A number of other students were outside the locker-room and overheard the incident. Those students reported that Mr. Cihacek yelled and raised his voice, but did not scream, use inappropriate language or make threats to the group, or kick a trash can.[3] Principal Hoesing did address the situation with the teacher though formal action. (Superintendent Drees Testimony).

The second complaint against Mrs. Voster was investigated and resolved when she admitted to making an inappropriate comment to the entire class due to the lack of homework completion. She admitted losing her composure and using the words damn and shit in her classroom. Formal action was taken against Mrs. Voster. (Superintendent Drees Testimony)

Neither Principal Hoesing nor Superintendant Drees had any information regarding the complaints regarding Mrs. Guinan, email exchanges, pranks on students, or other behaviors that Ms. B testified about. The complaints regarding Mr. Cihacek and Mrs. Voster were investigated by Principal Hoesing and resolved prior to Christmas break. No other incidents were reported subsequently to Principal Hoesing or Superintendent Drees. (Testimony of Superintendent Drees)

On August 2, 2013, Ms. B. filed an application with both districts to open enroll Kali to TC for the 2013-2014 school year. The request did not allege good cause or pervasive harassment on the application however; the affidavit attached alleged unprofessional and inappropriate behavior by multiple teachers. Due to issues with these teachers, Ms. B. is concerned that Kali is not in a safe learning environment. (Open Enrollment Application)

TC Superintendant Brett Nanninga contacted Superintendant Drees about the open enrollment application and Superintendant Drees indicated she was not inclined to approve the application because she felt Kali was not subjected to pervasive harassment and therefore it did not meet good cause. The incidents reported by Ms. B. occurred before March 1st and were each addressed individually by the district. Neither incident was directed solely at Kali. Nor were there any additional reports to MV after March 1st about any other incidents. Neither Principal Hoesing nor Superintendant Drees were aware of any continuing behaviors by the teachers. (Testimony of Superintendent Drees)

On August 5, 2013, Superintendant Drees advised Ms. B. over the phone that she did not believe the application met good cause and therefore board action was required. They spoke again on August 6, 2013. On August 12, 2013, TC approved the application for open

[3] Ms. B. offered testimony that this incident was not the same incident where the trashcan was kicked; however, Ms. B. did not offer any additional testimony regarding the details of the incident.

enrollment. On August 13, 2013, Superintendant Nanninga contacted Superintendent Drees and advised her that they approved the application. That same day Ms. B. also contacted Superintendant Drees and asked that the MV Board approve the application. Superintendent Drees informed Ms. B. that she would not recommend the MV Board approve the open enrollment application because she believed the application lacked good cause. On August 19, 2013, the MV Board reviewed the application and found that it did not meet good cause. The MV Board denied the application.

CONCLUSIONS OF LAW

Under Iowa Code section 282.18, the statutory filing deadline for an application for open enrollment for the upcoming school year is March 1. The law provides that an open enrollment application filed after the statutory deadline, which is not based on statutorily defined "good cause," must be approved by the boards of directors of both the resident district and the receiving district. Iowa Code § 282.18(5) (2011). Open enrollment may be granted at any time with approval of both the resident and receiving school districts. Iowa Code § 282.18(14).

A decision by either board denying a late-filed open enrollment application that is based on "repeated acts of harassment of the student or serious health condition of the student that the resident district cannot adequately address" is subject to appeal to the State Board of Education under Code section 290.1. Iowa Code § 282.18(5). The State Board applies established criteria when reviewing an open enrollment decision involving a claim of repeated acts of harassment.

<u>All</u> of the following criteria must be met for this Board to reverse a local decision and grant such a request:

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.

In re: Open Enrollment of Jill F., 26 D.o.E. App. Dec. 177, 180 (2012); *In re: Hannah T.,* 25 D.o.E. 26, 31 (2007) (emphasis added).

Under the first criterion, the harassment must have happened or the extent of the harassment not known until after March 1. The objective evidence shows that each of the incidents of alleged harassment Ms. B. complained about to Principal Hoesing were addressed with each individual teacher and resolved before Christmas break. This is well before the March 1 deadline. Ms. B. herself testified that she felt Principal Hoesing had addressed her complaints because some of the behaviors of the teachers improved. Ms. B. does not argue that she did not know the extent of the harassment until after March 1.

While, Ms. B. testified that other incidents occurred after this deadline even she admits that neither she nor Kali notified anyone at MV about any specific incidents that occurred after March 1 because she felt nothing would be done. This concern is not substantiated given the fact that her prior concerns were investigated and addressed in a timely manner by Principal Hoesing. The law does not recognize an exception to the notice requirement based on a parent's subjective perception that notice to the district would be futile. Nonetheless, Ms. B decided to pursue open enrollment instead of notifying school officials as early as January of 2013. Ms. B. testified she was not aware of the deadline at that time. The fact that Ms. B was unaware of the deadline is not an excuse to filing a late open enrollment application.

Therefore, the first criterion has not been met. Accordingly, the board need not examine the other criteria. However, because parents and school districts look to these decisions for guidance in these cases we will analyze the facts of this case under the second criterion.

Under the second criterion, the requirement of an *objectively* hostile school environment means that the conduct complained of would have negatively affected a reasonable student in Kali's position. Therefore, the board must determine if the behavior of the teachers created an objectively hostile school environment that placed Kali in reasonable fear of harm to her person or property, or had a substantially detrimental effect on her physical or mental health, or substantially interfered with her academic performance, or substantially interfered with her ability to participate in or benefit from the services, activities, or privileges provided by the school.

The board has granted relief under Iowa Code section 282.18(5) in only three other cases. In each case, the facts established that the experienced harassment involved serious physical assaults and destruction of property of those students.[4] In this case, it is certainly inappropriate for teachers to behave in the manner alleged. No student should be subjected to frequent outbursts, inappropriate language, pranks, or disparaging comments by teachers or by other students. But, the evidence presented at the hearing did not include any direct threats to Kali's personal safety or property. In fact, some of the behavior was not even directed towards Kali. Nor, did the evidence show an effect on Kali's mental or physical health, academic performance, or her ability to benefit from services, activities, or privileges provided by the school. While inappropriate, the behavior alleged does not rise to the level of pervasive

[4] *See In re: Melissa J. Van Bemmel,* 14 D.o.E. App. Dec. 281(1997)(The board ordered a student to be allowed to open enroll out of the district for the harassment of the student by a group of 20 students that climaxed when the vehicle the student was riding in was forced off the road twice by vehicles driven by other students); *See also In re: Jeremy Brickhouse,* 21 D.o.E. App. Dec. 35 (2002) and *In re: John Meyers,* 22 D.o.E. App. Dec. 271 (2004). The students in both cases had been subjected to numerous physical assaults and destruction of property at school.

harassment that the legislature and this board remedy by allowing late-filed open enrollment applications.

Because the first and second criterion were not met, it is difficult to examine the third and fourth criterion. However, even assuming arguendo that the board found the behavior to be pervasive harassment it would be difficult to show under the third criterion that the harassment is likely to continue despite school official's efforts because Ms. B chose not to tell school officials of any other incidents that occurred after March 1. By not notifying the district of further incidents, Ms. B. has not provided the district with an opportunity to resolve the situation. Without this opportunity, it cannot be said that the harassment is likely to continue despite the efforts of school officials under the third criterion.

Open enrollment appeals of this type are not about a family's right to transfer their children to other school districts. A transfer may be made even though open enrollment is denied. The approval, or denial, of open enrollment does affect payment for the student's education. When a student transfers to a nonresident school district under open enrollment, the district of residence must pay for the student to attend the receiving district. When a student transfers to a nonresident school district outside of the open enrollment process, the nonresident district must charge the student tuition.

Parents are free to make the decisions they deem to be best for their children. We do not fault Kali or her mother for her decision to enroll Kali in TC and the outcome of this appeal does not limit Kali's ability to attend TC.

Our review focus is not upon the family's decision, but on the local school board decision. The issue for review here, as in all other appeals brought to us under Iowa Code section 282.18(5), is limited to whether the local school board made error of law in denying the late-filed open enrollment request. We have concluded that the MV Board correctly applied Iowa Code section 282.18(5) when it denied the late open enrollment application filed on behalf of Kali. Therefore, we must uphold the local board decision.

DECISION

For the foregoing reasons, the decision of the Board of Directors of the Missouri Valley Community School District made on August 19, 2013, denying the open enrollment request filed on behalf of Kali B., is AFFIRMED. There are no costs of this appeal to be assigned.

It is so ordered.

_____	_____
Date	Nicole M. Proesch, J.D. Administrative Law Judge
_____	_____
Date	Rosie Hussy, Board President State Board of Education