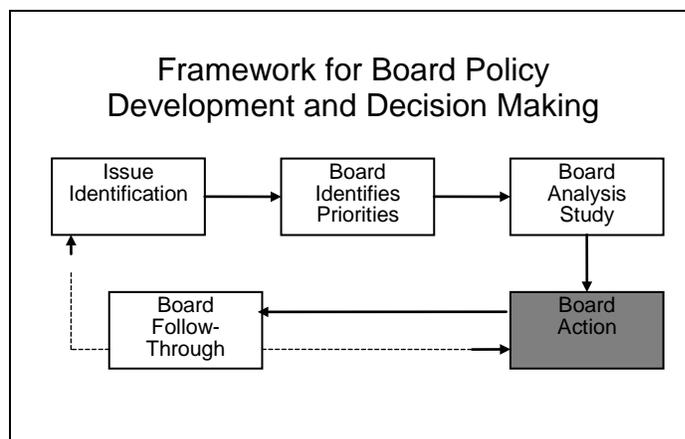


Iowa State Board of Education

Executive Summary

January 23, 2014



Agenda Item: *In Re Open Enrollment of T.D. (Andrews Community School District)*

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

State Board 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 “repeated acts of harassment of the student that the resident district cannot adequately address.”

Presenter: Nicole Proesch, 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 Andrews Community School District denying the open enrollment application filed on behalf of T.D.

Background: T.D. and her family reside in the Andrews Community School District (ACSD). ACSD has a whole grade sharing agreement in place which allows students in grades 9-12 to attend high school at either Maquoketa High School (MHS) or Bellevue High School (BHS) since the Andrews High School closed three years ago.

T.D. chose to attend MHS for the 2012-2013 school year as a freshman. Several issues surfaced during the 2012-2013 school year when Student A began harassing T.D. at school and during volleyball practice by calling her names and taunting T.D. T.D. spoke to the school counselor several times about the harassment and found other ways to cope with the situation which included confronting Student A, ignoring

her, avoiding the situation, choosing to refrain from activities Student A was involved in, and making new friends.

Over the summer, T.D. bounced back and seemed to be happy again. T.D. and her mother Lisa D. hoped that things would be better during the new school year. T.D. continued to attend Maquoketa during the first few weeks of the 2013-2014 school year until the harassment began again. T.D. was subjected to more taunts and name calling. Additionally, T.D. had a pair of scissors thrown at her in class, received threatening text messages telling her to get out of Maquoketa, and someone loosened the lug nuts on T.D.'s car. Subsequently Lisa D. filed an application to open enroll T.D. from ACSD to the Central Community School District (CCSD) so T.D. could attend Dewitt High School (DHS) citing harassment as good cause for the late filed application. ACSD denied the application because the district found that it could offer T.D. the opportunity to get away from her harassers and attend BHS which is another attendance center in the district. Lisa D. appeals the denial of the application arguing that there was pervasive harassment.

The board does not disagree that the behavior here amounts to pervasive harassment of T.D. However, this case involves a resident district with multiple attendance centers due to a whole grade sharing agreement. In cases involving multiple attendance centers, the State Board also looks at whether an intradistrict transfer would alleviate the harassment. Here the district has offered T.D. the opportunity to get away from T.D.'s harassers and attend BHS. Lisa D. offered little if any evidence that the harassment would continue if T.D. transferred to BHS. When a district has another attendance center, the district should be given a fair opportunity to continue to serve that student at the other attendance center.

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

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

<i>In Re: Open Enrollment of T.D.,</i>)	
)	
Lisa D.,)	
)	PROPOSED DECISION
Appellant,)	
)	
v.)	
)	
Andrew Community School District,)	Admin. Doc. No. 4776
)	
Appellee.)	

STATEMENT OF THE CASE

The Appellant, Lisa D. (“Lisa”), seeks reversal of an October 21, 2013 decision by the Andrew Community School District Board of Directors (“ACSD Board”) denying a late filed open enrollment request on behalf of her minor daughter, T.D. The affidavit of appeal filed by Lisa on November 4, 2013, attached supporting documents, and the school district’s 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 (“the State Board”) have jurisdiction over the parties and subject matter of the appeal before them.

A telephonic evidentiary hearing was held in this matter on December 5, 2013, before designated administrative law judge, Nicole M. Proesch, J.D pursuant to agency rules found at 281 Iowa Administrative Code chapter 6. The Appellant was present on behalf of her minor daughter, T.D. Superintendent Andy Crozier (“Superintendent Crozier”) appeared on behalf of the Andrew Community School District (“ACSD”). Also present was Karen Kilburg, who is the ACSD Board secretary.

Lisa testified in support of the appeal. Appellant’s exhibits were admitted into evidence without objection. Superintendent Crozier and Ms. Kilburg testified for ACSD and the school district’s exhibits were admitted into evidence without objection.

FINDINGS OF FACT

Lisa¹ and T.D. reside within ACSD. T.D. is in the 10th grade and is currently attending Central High School (“CHS”)² in Dewitt, Iowa, which is in the Central Community School District (“CCSD”). March 1 is the statutory deadline for filing a request for open enrollment for

¹ Lisa is an English Language Learner (“ELL”) and reading teacher for ACSD. (Testimony of Superintendent Crozier)

² CHS is approximately 29 miles south of Andrew. (Testimony of Superintendent Crozier)

the following school year. *See* Iowa Code § 282.18(2) (2013). On September 25, 2013 Lisa filed an application with ACSD requesting approval for T.D. to open enroll to CCSD for the 2013-2014 school year. The sole issue presented in this case is whether the ACSD Board erred by denying the late-filed application for T.D. to open enroll out of the district. The record establishes the following facts and circumstances leading to the application.

ACSD is a kindergarten through eighth grade school district that services grades nine through twelve through a whole grade sharing agreement³ with both Maquoketa Community School District (“MCSD”) and the Bellevue Community School District (“BCSD”) due to the closing of the ACSD high school three years ago. The whole grade sharing agreements allow ACSD resident students in grades nine through twelve to choose to attend either Maquoketa High School (“MHS”)⁴ or Bellevue High School (“BHS”)⁵. ACSD also has a policy in place regarding mid-year transfers for whole grade share students which allows a student to transfer from one attendance center in the ACSD district to another for issues involving bullying and harassment, academic issues, or drug and alcohol related issues.⁶ (Testimony of Superintendent Crozier)

T.D. attended ACSD from preschool through eighth grade. During the spring of T.D.’s eighth grade year, she toured both MHS and BHS and chose to attend MHS for the 2012-2013 school year.⁷ During the fall of her freshman year T.D. played volleyball and participated in homecoming events. Beginning in November of 2012 several issues surfaced with another girl (“Student A”) in T.D.’s class. Student A began spreading rumors about T.D. being a drunk and a druggie which quickly spread to the rest of the student body. Additionally, she spread rumors that T.D. was a whore, that she had gotten pregnant, and that she had an abortion. T.D. discussed the rumors and name calling with the school guidance counselor, Mrs. Julie Kinrade. Mrs. Kinrade advised T.D. to confront Student A, tell her to stop, and avoid the situation.⁸ T.D. subsequently asked Student A why she was spreading rumors, repeatedly told her to stop, and took Mrs. Kinrade’s advice to avoid the situation. Lisa testified that MHS participates in Olweus⁹ bullying prevention programs to address bullying. Student A attended the Olweus training and actively participated in it. However, after the training Student A continued to taunt T.D. (Testimony of Lisa)

³ Whole grade sharing is a procedure used by school districts whereby all or a substantial portion of the pupils in any grade in two or more school districts share an educational program for all or a substantial portion of a school day under a written agreement. Iowa Code § 282.10 (2013).

⁴ MHS is approximately 9 miles south of Andrew. (Testimony of Superintendent Crozier)

⁵ BHS is approximately 12 miles north of the Andrew. (Testimony of Superintendent Crozier)

⁶ Students can make a request for a transfer to the ACSD Board at any time during the school year. ACSD has received only two requests to transfer mid-year in the three years the district has been whole grade sharing. One request was denied and the other one was granted. (Testimony of Superintendent Crozier)

⁷ Lisa testified that T.D. chose MHS because it was more welcoming, T.D. had closer friends attending MHS, and T.D. wanted to take advantage of the college credits that were offered at MHS. T.D. felt that BHS’s teachers were not as welcoming. When the eighth grade students visited BHS, they sat in a class and were not asked any questions. As the eighth graders were walking to another classroom, a BHS student told the eighth graders “you don’t belong here; the bus is outside, just leave.” The eighth graders also told Lisa they were given dirty looks in the lunch room. (Testimony of Lisa)

⁸ No formal bullying report was filed with the school. (Testimony of Lisa)

⁹ Olweus is a recognized bullying prevention program used by AEAs and local school districts.

During the winter of 2012-2013 T.D. had a good peer group that supported her while T.D. was dealing with the rumors and name-calling. During the spring of 2013, T.D. had planned to go out for softball but decided against it because Student A was going to be on the team. Lisa tried to talk to Student A's father; however, he denied that there were any issues between T.D. and his daughter. T.D.'s friends who went out for softball told T.D. they could no longer be friends with her because they wanted to be friends with Student A. T.D. again talked to Mrs. Kinrade about the loss of these friends, how to cope with the situation, and brainstormed ideas for making new friends. For the remainder of the school year T.D. made new friendships with some of the girls who played on the soccer team, attended their games, and seemed to be doing well. During the summer of 2013, T.D. bounced back and appeared to be happy and enjoying the summer off. (Testimony of Lisa)

When school started again in the fall and the volleyball season began, T.D. joined the sophomore volleyball team. Student A was also a member of the team. If T.D. missed a spike, bump, or dig Student A would taunt her by saying "are you stupid or what?", "you're a retard anyone could make that dig." Others members of the team who had supported T.D. during the winter of 2012-2013 began to join in the behavior. When T.D. was moved from the sophomore volleyball team to the junior varsity team the girls continued to taunt her by calling T.D. names like bitch, whore, traitor, ass kisser, fat slut, and pregnant. T.D. again reported this behavior to Mrs. Kinrade and she advised T.D. to try several different ways of coping with the situation. Mrs. Kinrade told her again to try to confront the girls, to not talk to the girls, to walk away, and to avoid the situation. T.D. stopped attending any school events and began staying home, in her room, crying. T.D. cried before school, during school, and after school. The quality of her schoolwork dropped and she quit turning in her homework. Lisa testified that T.D. had a total personality change. (Testimony of Lisa)

The behavior got worse after T.D. attended a Dewitt football game with some of her friends in Dewitt she met over the summer.¹⁰ When T.D.'s friends found out she attended a rival team's football game, T.D. received several anonymous harassing messages on her smart phone application called "AskFM."¹¹ The messages included the following exchanges:

8:52 P.M.

Sender: "Get the fuck out of Maquoketa you ugly bitch. No one likes you here. Just go die."
"FYI Chubb = YOU A FAT BITCH"
T.D.: "Aww thank you!! You from Maq?"

Sender: "Chubb city right here."
T.D.: "Wha?"

¹⁰ Dewitt is a rival team of MHS. (Testimony of Lisa)

¹¹ Lisa testified she made T.D. stop using the application because you could not see who the comments were coming from. (Testimony of Lisa)

7:54 P.M.

Sender: "Just sit on the Dewitt side no one wants you on our side"

T.D.: "Go cry about it, it's not a big deal"

Sender: "Fuck u then!"

T.D.: "Alrightyy lol I honestly don't care. Say it to my face"

Sender: "So your sitin on the dewitt side for varsity"

T.D.: "No. I never was. Since when are sophomore games such a big deal? No one even goes to them."

Sender: "U just went last week an skipped a maq game, and now your being a traitor to again this week."

T.D.: "I'm watching the sophomore game on the Dewitt side.. I'll be late because of volleyball anyways.. I'll be there for like 20 minutes.. and then cheer for varsity. If I wasn't dating Student B I'd be on our side. Why do you even care.. it's a game"

Sender: "Why don't u just fucking move to Dewitt then since maq isn't good enough for you to cheer for & the people there are "so much better." We don't want u anymore then either."

T.D.: Well then.. lol sorry I want to support my boyfriend. And sorry that I have friends outside of Maquoketa. I don't see that the big deal is just drop it."

(Exhibit 2)

T.D. again reported this to Mrs. Kinrade. Mrs. Kinrade told T.D. that girls would be girls and she would sit down with the girls and talk to them. T.D. feared retaliation from the girls. (Testimony of Lisa)

On September 18, 2013, T.D. was sitting in Spanish class at the front of the room and when the teacher had her back turned she felt something hit the back of her head. When she looked down to see what hit her she saw a pair of scissors on the floor. T.D. reported to Lisa that it must have been the handle that hit her and not the blade. T.D. and Lisa made a formal bullying complaint to MHS that was filled out by the assistant principal Tracy Wilkens.¹² This incident was also reported to the school police officer. Mr. Wilkens investigated the incident the following day. The teacher indicated her back was turned and she did not see anyone throw anything. The report indicated that two students, who were football players, were questioned in the incident. The two boys stated that scissors were not thrown in class and T.D. was mistaken. Mr. Wilkens determined that there was not enough evidence to proceed. The teacher

¹² Neither party submitted a copy of this formal report. Lisa testified that she was reading from the report during her testimony.

was advised to change some of her classroom rules to redirect bad behaviors and T.D. was advised to let Mr. Wilkens know if anything else happened. (Testimony of Lisa)

Lisa testified she believed one of the boys involved in the incident was targeting T.D. because he was upset that T.D. went to a Dewitt football game, although Lisa admits she has no proof of this. Lisa testified that football players in the school put a bounty on the girls' heads to get their virginity. T.D. had a \$75.00 bounty on her head to get her virginity. Football players would line the halls of MHS and while the girls walked by would chant, "I want your pussy." Lisa indicated that T.D. did not report this behavior to MHS staff but she believed the principal was aware of the behavior because he told the boys to go back to class. (Testimony of Lisa)

On the same day as the scissors incident, T.D. went out to her car after volleyball practice and a boy was standing alone by her car waiting for her. The boy told T.D. that the lug nuts on her Jeep were loose and then helped her tighten them. Lisa testified that the lug nuts on T.D.'s car were tightened before school started and there was no reason for them to be loose unless someone loosened them. T.D. did not report this to Mrs. Kinrade, MHS, or the police because she had already had the lug nuts retightened. This incident scared both T.D. and Lisa. (Testimony of Lisa)

On September 25, 2013, Lisa filed her application to open enroll T.D. from ACSD to the Central Community School District ("CCSD"). Lisa testified that she felt T.D. needed a fresh start in a new school in a community that had a bigger population than Jackson County. Lisa testified that Jackson County is a very small, tight knit community, where everyone knows what's going on with each other. Lisa testified that Clinton County is three times the population of Jackson County. Lisa made the decision to send T.D. to CHS in Dewitt because Lisa has a family support system¹³ in Dewitt, T.D. could still use her drivers permit, Lisa had arranged for car pooling, and Student A had no relatives at CHS.¹⁴ Lisa also offered evidence that CHS is rated a ten out of ten with "Great Schools" ratings and BHS is a five out of ten.¹⁵ Lisa testified that part of the reason for this rating is the tests scores. Lisa also testified she feels CHS is a very proactive school with support for students and BHS is a reactive school. (Testimony of Lisa, Exhibits 6 & 7)

After she filed the application, Lisa spoke to both ACSD Superintendent Crozier¹⁶ and Charlie Peters, who is the ACSD Board president, about the open enrollment application. Mr. Peters encouraged her to enroll T.D. at Marquette Catholic School in Bellevue, Iowa, where his kids attended. (Testimony of Lisa)

Superintendent Crozier spoke with Lisa regarding the harassment situation and offered T.D. the opportunity to transfer midyear to BHS under ACSD's transfer policy. He felt that BHS

¹³ Lisa testified she has five different households of cousins living in Dewitt. (Testimony of Lisa)

¹⁴ Lisa testified that Student A has two cousins she is very close with who attend BHS and she was concerned the bullying would continue. There was no evidence presented at the hearing showing that the cousins were aware of, or had joined in, this behavior.

¹⁵ See exhibits 6 & 7.

¹⁶ Prior to receiving the application for open enrollment Superintendent Crozier had not received any information from Lisa or T.D. regarding bullying and harassment. (Testimony of Superintendent Crozier)

could provide T.D. with a change of scenery since she was having issues at MHS. If T.D. transferred to BHS and continued to have issues, Superintendent Crozier said he would be open to approving an open enrollment request to CCSD. Superintendent Crozier testified the district wants what is best for T.D., but what he believes is best differs from what Lisa believes is best. He advised Lisa that the ACSD Board would likely not approve her application for open enrollment and she would have to pay tuition to CCSD because the ACSD Board could offer T.D. the opportunity to transfer to BHS. (Testimony of Superintendent Crozier)

On October 2, 2013, Lisa also spoke with Dr. Kim Huckstadt, the Superintendent of MCSD regarding the instances of harassment at MHS. He stated he would talk to the girls that T.D. named, but he never got back to her. While T.D. reported many of the issues to Mrs. Kinrade, Lisa admits that she never discussed the issues T.D. was having with the high school principal or the volleyball coach. T.D. started attending CHS on October 2, 2013. (Testimony of Lisa)

On October 21, 2013, the ACSD Board denied Lisa's application for open enrollment because the board found they had a second high school –BCS–that T.D. could transfer to under the whole grade sharing agreements. They felt BCS could meet T.D.'s needs academically, activity wise, and would provide a safe and secure environment for T.D. (Testimony of Superintendent Crozier)

CONCLUSIONS OF LAW

The statutory filing deadline for an application for open enrollment for the upcoming school year is March 1. Iowa Code § 282.18 (2013). 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) (2013). Open enrollment may be granted at any time with approval of both the resident and receiving school districts. Iowa Code § 282.18(14) (2013).

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 under Iowa Code section 290.1. Iowa Code § 282.18(5) (2013). The State Board applies established criteria when reviewing an open enrollment decision involving a claim of repeated acts of harassment.

All of the following criteria must be met for the State 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.

Iowa Code § 280.28(2)(b) (2013); *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).

(1) *Timing*

The first criterion requires that the harassment must have happened or the extent of the harassment could not have been known until after March 1. The objective evidence presented shows that the issues complained of by T.D. arose well before March 1, 2013 and began as early as November of 2012. Under these circumstances, there must be some showing why Lisa could not have filed her application in a timely manner. Lisa must show that the extent of the harassment she relies upon could not have been known until after March 1.

T.D. had issues with Student A beginning in November of 2012 that she reported to Mrs. Kinrade. However, with the guidance of Mrs. Kinrade over the 2012-2013 school year, T.D. did a remarkable job of coping with those issues by confronting Student A, telling her to stop, and finally avoiding situations with Student A. T.D. made new friends in other peer groups and appeared to bounce back over the summer. It was not until the 2013-2014 school year that the taunts and name calling resurfaced and then began to escalate. Not only did the extremely adolescent behavior resurface, but along with it came threatening cell phone messages, a physical assault with a pair of scissors being thrown at T.D.'s head, and the lug nuts on her tires being loosened. Under these circumstances, it is clear that the situation escalated and the extent of the harassment could not have been known before September 18, 2013. Accordingly, the first criterion is met.

(2) *Pervasive Harassment*

The requirement of an objectively hostile school environment under the second criterion means that the conduct complained of would have negatively affected a reasonable student in T.D.'s position. This requirement means that the State Board must determine if the behavior of the students created an objectively hostile school environment that meets one or more of the above conditions. The State Board has granted relief under Iowa Code section 282.18(5) in cases of harassment in only three other cases. In each case, the facts established that the experienced

harassment involved serious physical assaults, degradation, and destruction of property of those students.¹⁷

In this case, not only was T.D. subjected to pure adolescent cruelty by way of taunts and name calling, but she was also subjected to threatening messages telling her to “get the fuck out of Maquoketa you ugly bitch,” a physical assault with a pair of scissors, and someone tampering with the tires on her Jeep while she was in volleyball practice. Clearly, these incidents placed T.D. in reasonable fear of harm to herself and her property. The harassment was also affecting T.D. both physically and mentally. Lisa testified that T.D. stopped attending school events, cried constantly, and that she stopped doing her homework. The evidence presented overwhelmingly supports a finding of pervasive harassment and ACSD does not argue otherwise.

(3) Efforts of the District

Under the third criterion, the evidence must show that the harassment is likely to continue despite the efforts of school officials to resolve the situation. The district points out that none of these instances were reported to the principal or the volleyball coach. However, the district was on notice when T.D. notified Mrs. Kinrade. T.D. repeatedly reported the harassment to her. Mrs. Kinrade’s response was to encourage T.D. to confront the girls, tell them to stop, and avoid the situation. Although T.D. actively followed the advice of Mrs. Kinrade, the harassment continued and got exceedingly worse after T.D. attended a rival school’s football game. T.D. again reported the harassing text messages that she received to Mrs. Kinrade, and Mrs. Kinrade told T.D. that she would talk to the girls.

Subsequently, T.D. was struck from behind with a pair of scissors while sitting in class, and the lug nuts on T.D.’s car were loosened. The rapid sequence and proximity of events is only more evidence that MHS could not control the harassment despite the efforts of Mrs. Kinrade and Mr. Wilkens, who investigated the scissors incident. Furthermore, ACSD did not offer any evidence to support continued efforts to resolve the situation. In fact, ACSD is supportive of T.D. transferring to another attendance center. The State Board can only conclude that it is very likely the harassment would continue if T.D. remained at MHS. Although the third criterion is met, this does not end the State Board’s inquiry.

(4) Change of District

Finally, under the fourth criterion, Lisa must show that changing the school district T.D. attends would alleviate the situation. ACSD argues this is where Lisa’s argument fails. The State Board agrees.

¹⁷ See *In re: Melissa J. Van Bommel*, 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 their property at school.

The crux of this criterion is determining whether putting the student in a different environment will make a difference. *See In re Mary Oehler*, 22 D.o.E. App. Dec. 46 (2004). There is no evidence that T.D. did anything to provoke the pervasive harassment that she experienced. Under the facts here, it is likely that if T.D. stayed at MHS the harassment would continue. Therefore, it is logical to think that changing T.D.'s district will alleviate the situation and as Lisa testified, it has alleviated the situation. However, changing school districts is not the only option available that would alleviate the situation. This case involves a resident district with multiple attendance centers due to a whole grade sharing agreement. In cases involving multiple attendance centers, the State Board also looks at whether an intradistrict transfer would alleviate the harassment. *See id.* On at least three other occasions, the State Board has upheld the denial of open enrollment in cases where the residence district had another attendance center in which the targeted student could enroll to escape their harassers. *See id; see also In re Lauren Hales*, 23 D.o.E. App. Dec. 39 (2004) and *In re Amanda Schamerhorn*, 24 D.o.E. App. Dec. 82 (2006).

ACSD offered to transfer T.D. to BHS to help alleviate the situation. However, Lisa and T.D. gave little thought to transferring T.D. to BHS because they had already decided that T.D. wanted to attend CHS. Lisa testified that Student A had two cousins attending BHS, and she was concerned the harassment would continue. She offered no credible evidence that the cousins were involved in any harassment of T.D. Nor did she offer any evidence that other BHS students were involved in the harassment of T.D.¹⁸ At this point, Lisa's concerns—while valid—are mere speculation and the State Board gives little weight to them.

ACSD Superintendent Crozier testified that he and the ACSD Board believed that BHS could provide a change of scenery and a safe learning environment for T.D. Furthermore, he testified that if T.D. transferred and continued to have issues, he was open to approving an open enrollment request for T.D. to enroll to CCSD. While enrolling T.D. at BHS is not Lisa's preferred outcome, this option could alleviate the situation for T.D. and get T.D. away from her harassers. When a district has another attendance center, the district should be given a fair opportunity to continue to serve that student at the other attendance center. To find otherwise based on the record before the State Board would go against prior State Board precedent.

Lisa also testified that she wanted T.D. to attend school in a county that was not as small as Jackson County. She indicated that she had a family support system in Dewitt that would make it more convenient for T.D. to attend school there. The record also provides evidence that T.D. has friends and a boyfriend that attend Dewitt.¹⁹ This is certainly another motivating factor for T.D. to choose CHS over BHS. Finally, Lisa testified that CHS had a higher rating than BHS and appeared to be an all around better school. Under these circumstances, we conclude the record establishes that preference, convenience, and school performance are the primary concerns behind the open enrollment request. Thus, this appeal falls short on the fourth and final criterion.

¹⁸ The incident that occurred during T.D.'s visit during eighth grade was not directed at T.D. and occurred more than one year prior to this open enrollment application.

¹⁹ *See* Exhibit 2.

This case is not about limiting parental choice. The State Board understands that Lisa wants what is best for T.D., who has been the victim of pervasive harassment. The State Board does not fault T.D. or Lisa for their decision to enroll T.D. at CHS. Nor does the outcome of this decision limit T.D.'s ability to transfer to another district or remain at CHS.

However, our review focus is not upon the family's choice, but upon the local school board's decision under statutory requirements. 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 erred as a matter of law in denying the late-filed open enrollment request. We have concluded that the ACSD Board correctly applied Iowa Code sections 282.18(5) and 280.28(2)(b) when it denied the late open enrollment application filed by Lisa on behalf of T.D. Therefore, we must uphold the local board decision.

DECISION

For the foregoing reasons, the decision of the Board of Directors of the Andrew Community School District made on October 21, 2013, denying the open enrollment request filed by Lisa on behalf of T.D. is AFFIRMED. There are no costs of this appeal to be assigned.

It is so ordered.

12-30-2013
Date

/s/
Nicole M. Proesch, J.D.
Administrative Law Judge

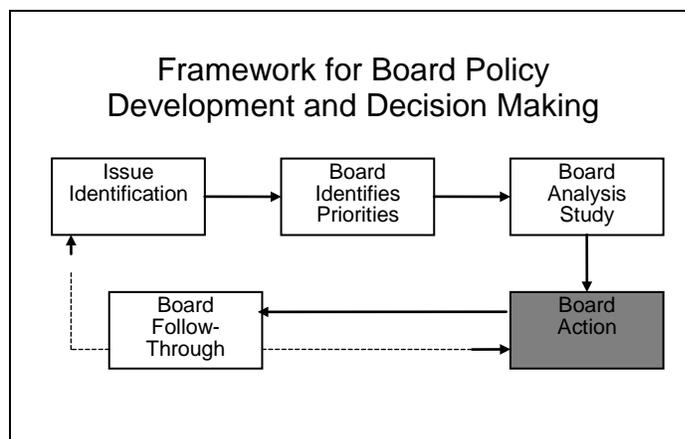
Date

Rosie Hussey, Board President
State Board of Education

Iowa State Board of Education

Executive Summary

January 23, 2014



Agenda Item: *In Re Open Enrollment of Annaliese Z. (Des Moines Independent Community School District)*

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

State Board 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 “repeated acts of harassment of the student that the resident district cannot adequately address.”

Presenter: Nicole Proesch, Legal Counsel
Office of the Director

Attachments: 1

Recommendation: It is recommended that the State Board approve the proposed decision dismissing the appeal for lack of jurisdiction.

Background: Annaliese Z. and her mother Christa C. reside in the Des Moines Independent Community School District (DM) with Annaliese’s grandmother Mari Holt. Annaliese attended Samuelson Elementary School during the 2012-2013 school year. Several issues surfaced during the 2012-2013 school year when a girl who Annaliese was formerly best friends with began harassing Annaliese at school. The school investigated a complaint of bullying which came back unfounded. The school began to monitor the situation. Annaliese continued to attend Samuelson during the first few weeks of the 2013-2014 school year until the harassment began again. Subsequently, Christa filed an application to open enroll from DM to the Urbandale Community School District (UCSD) citing harassment as good cause for the late filed application. DM denied the application because the district found that the complaint of harassment was unfounded and the district could offer other attendance centers for Annaliese to attend.

Annaliese transferred to another attendance center for a few weeks and then began homeschooling. Christa and Mari appeal the denial of the application.

Under Iowa Code section 290.1 the affected pupil, or the parent or guardian of that affected pupil if the pupil is a minor, must file an appeal within 30 days after the decision. Additionally, the aggrieved party must file an affidavit with the State Board setting forth the basis of the appeal. It is clear the aggrieved party is the parent or guardian. In order for the State Board to review the appeal, the parent or guardian must both file an appeal and submit an affidavit.

Christa (the Parent) and Mari (the non-guardian grandmother) signed and submitted a statement in support of an appeal in this case. This statement was not made under oath. Only Mari had the statement in question notarized. The written statement submitted is not an affidavit. Even if it was, only Mari signed the statement. Mari cannot file an appeal on Annaliese's behalf.

Thus, it is recommended that the State Board affirm the dismissal of the appeal for lack of jurisdiction.

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

<i>In Re Anneliese Z.</i>)	
)	
Christa C., Appellant)	
)	PROPOSED DECISION
Appellant,)	
)	
v.)	
)	
Des Moines Independent Community)	Admin. Doc. No. 4775
School District,)	
)	
Appellee.)	

STATEMENT OF THE CASE

The above-captioned matter was heard by a telephone conference call on October 23, 2013, before designated administrative law judge, Nicole M. Proesch, J.D, presiding on behalf of the State Board of Education (“State Board”). The Appellant, Christa C. was represented by her mother and Anneliese’s grandmother, Mari Holt. Attorney Patricia Lantz represented the Des Moines Independent Community School District (“DM”). Also present for DM was Eleanor Shirley, an enrollment specialist, Cindy Roerig, the Samuelson Elementary School Principal, and school counselor, Holly Barcus. An evidentiary hearing was held pursuant to agency rules found at 281 Iowa Administrative Code chapter 6.

The Appellant, Christa C., seeks reversal of an August 20, 2013 decision by the Des Moines Independent Community School District Board of Directors (“DM Board”) denying a late filed open enrollment request on behalf of her minor daughter, Anneliese Z. The affidavit of appeal filed by Christa on September 9, 2013, attached supporting documents, and the school districts supporting documents are included in the record. Ms. Holt testified on behalf of the appellant. Appellant’s exhibits were admitted into evidence without objection. Ms. Shirley, Principal Roerig, and Ms. Barcus testified for DM and the school district’s exhibits were admitted into evidence without objection.

The State Board has authority and jurisdiction to hear open enrollment appeals pursuant to Iowa Code §§ 282.18(5) and 290.1 (2013). The administrative law judge finds that she and the State Board lack subject matter jurisdiction in the appeal before them.

FINDINGS OF FACT

Christa C. and her daughter Anneliese Z. reside within DM with Ms. Holt. Anneliese is ten years old, in the 5th grade, and is currently being homeschooled for the 2013-2014 school year. March 1 is the statutory deadline for filing for open enrollment for the following school year. On August 9, 2013, Christa and Ms. Holt filed an application with DM requesting approval for Anneliese to open enroll to Urbandale Community School District (UCSD) for the 2013-2014 school year. The sole issue presented in this appeal is whether the DM Board erred by denying the late filed application for Anneliese to open enroll out of the district. The record establishes the following facts and circumstances leading to the application.

Annaliese attended DM for the 2012-2013 school year. During that year, Annaliese was in the 4th grade at Samuelson Elementary School. Several issues surfaced during the 2012-2013 school year when a girl who Annaliese was formerly best friends with began harassing Annaliese at school. This girl instigated the alienation of Annaliese from other students in her class and in other classes often leaving Annaliese to play alone at recess. Ms. Holt testified that the alleged harassment included rumors that Annaliese was having sex and using drugs. As a result, Annaliese's personality changed and she began having sleep problems, breathing problems, and breaking out in a rash. Annaliese was so upset at one point she talked about suicide. Christa and Ms. Holt reported the situation to Principal Roerig several times throughout the year but the behavior continued. The school continued to monitor the situation in class and at recess but the school could not see or hear everything that was going on. Christa decided to wait to see if things would get better over the summer and improve in 5th grade before switching schools. (Affidavit of Appeal and Testimony of Ms. Holt)

For the 2013-2014 school year, Annaliese started the 5th grade at Samuelson Elementary with a good attitude but shortly after school started, the harassment began again. There were no physical threats to Annaliese or her property while Annaliese was still enrolled in the district. However, Ms. Holt testified that in the weeks just prior to this hearing Annaliese had rocks and a dead bird thrown at her while she was walking through her neighborhood.¹ (Testimony of Ms. Holt) On August 9, 2013, Christa and Ms. Holt filed an application for open enrollment to enroll Annaliese out of DM to UCSD. The application alleged pervasive harassment. Attached to the application was a note that Dr. Ajluni wrote on August 9, 2013, on prescription pad paper recommending that Annaliese attend Urbandale or be homeschooled due to bullying. (Application for Open Enrollment)

¹ During this time Annaliese was being homeschooled.

Ms. Shirley received the application for open enrollment on August 12, 2013, and contacted the executive director for Samuelson Elementary, Barry Jones, to see what information she could gather regarding the alleged harassment. Mr. Jones learned that an investigation into harassment was conducted in May of 2013 and it was unfounded. (Testimony of Ms. Shirley)

Ms. Barcus testified she was not aware of any issues with bullying until she received a doctor's note requesting that Annaliese be moved out of the district due to bullying.² After receiving the note, she talked with Annaliese and was provided with several names of girls who were involved in the behavior. Ms. Barcus interviewed three witnesses and the accused. The witnesses all wanted to be friends with both Annaliese and the accused but explained that Annaliese would not be friends with them if they were friends with the other girl. Annaliese could not point to a particular incident of harassment that occurred between her and the accused. The complaint was unfounded. (Testimony of Ms. Barcus)

Principal Roerig also received complaints from Ms. Holt that some girls were calling Annaliese names. Annaliese believed these girls were talking about her but she could not hear what they were saying. Principal Roerig assigned a counselor to watch the girls at recess, talked to the teachers in the classrooms, and checked on Annaliese several times a day to see if Annaliese was ok. Annaliese did not report any issues. (Testimony of Principal Roerig)

Ms. Shirley testified that the district offered Annaliese attendance in another attendance center or homeschooling with the district as an alternative to attending Samuelson. Additionally, Annaliese's name was moved to the number one spot on the waitlist to get into the district's home school assistance program. Ms. Shirley recommended to the DM Board to deny the open enrollment application because the harassment was not founded and the district was able to offer other options to Annaliese. (Testimony of Ms. Shirley)

On August 20, 2013, the DM Board denied the open enrollment application. Ms. Shirley sent a letter to Christa notifying her that the application was denied and that she could contact the district regarding other options that may be available. Ms. Holt testified that she and Christa contacted the district about other options and they were told that Annaliese could attend Oak Park, Monroe, or Pleasant Hill Elementary Schools, or be homeschooled. They enrolled her in Oak Park for three weeks but they did not have the money to drive back and forth so they decided to home school her. Annaliese is currently being homeschooled.

² There was no doctor's note offered into evidence supporting the investigation in May of 2013 by either party.

CONCLUSIONS OF LAW

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 under Code section 290.1. Iowa Code § 282.18(5). However, the Legislature has set minimum procedural requirements in order to trigger the State Board’s review of an open enrollment denial. The affected pupil, or the parent or guardian of that affected pupil if the pupil is a minor, must file an appeal within thirty days after the decision. Iowa Code § 290.1 (emphasis added). Further, the aggrieved party must file an affidavit with the State Board setting forth the basis of the appeal. *Id.*

Viewing the entire statute in context, it is clear that the Legislature has determined that the “aggrieved party” is the parent or guardian. Therefore, in order to trigger State Board review, the parent or guardian must both file an appeal and submit the affidavit.

In this case, the parent (Christa C.) and the non-guardian grandmother (Mari) signed and submitted a statement in support of this appeal. However, the statement was not made under oath. *See* Iowa Code 622.85 (“An affidavit is a written declaration made under oath, without notice to the adverse party, before any person authorized to administer oaths within or without the state.”) Further, only Mari -- the non-guardian grandmother -- had the statement in question notarized. Mari cannot file an appeal on Annaliese’s behalf.

The State Board is not in a position to second guess or overlook the technical requirements for appeal set by the Legislature. Since, the requirements of the statute were not met, the State Board lacks jurisdiction to hear the appeal. *See Anderson v. W.Hodgeman & Sons, Inc.*, 524 N.W.2d 418, 420 (Iowa 1994) (concluding the reviewing body lacked jurisdiction to even consider an agency appeal because the appealing party did not comply with statutory requirements).

Since the State Board lacks jurisdiction over the parties it need not examine the subject matter of the appeal. However, because parents and school districts look to these decisions for guidance in these cases we will analyze the facts of this case against the criterion we have previously set out in these cases.

The State Board applies established criteria when reviewing an open enrollment decision involving a claim of repeated acts of harassment. All 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).

Even assuming *arguendo* the board had jurisdiction here the appeal would still fail for the reasons set forth below. Because the evidence here fails to meet the second, third, and fourth criteria, the board does not analyze the first criterion.

Under the second criterion, the references to an objectively hostile school environment and the reasonable fear of the student means that the conduct complained of must have negatively affected a reasonable student in Annaliese's position. While the board does not discount that Annaliese felt "bullied" by the adolescent behavior of her peers, the behavior reflected in the record does not rise to the level of pervasive harassment that the Legislature or the State Board intended to remedy by allowing late-filed open enrollment applications.

Even, if the behavior here rose to the level of pervasive harassment required by Legislature, under the third criterion the appellant must also show that the behavior is likely to continue despite the efforts of school officials to resolve the situation. The evidence in this case shows that school officials addressed the behavior during the 2012-2013 school year and Annaliese reported no further incidents to school officials. In fact,

Christa chose to refrain from moving Annaliese from Samuelson hoping things would improve over the summer. Upon returning to school for the 2013-2014 school year the behaviors started again and rather than contacting school officials in an attempt to address the situation Christa and Ms. Holt filed an application for open enrollment. By not notifying the district of the reoccurrence of this behavior, the district was not given the opportunity to resolve the situation. Under these circumstances, one cannot conclude the behavior was likely to continue despite the efforts of school officials.

Finally, under the fourth criterion Christa must show that changing the school district would alleviate the situation. This case involves a resident district with multiple attendance centers. The District here offered to discuss enrollment for Annaliese to three other attendance centers or to enroll her in the home school assistance program in the district. In fact, Annaliese attended Oak Park Elementary school for three weeks but then stopped attending because of the cost of transportation associated with driving her to school. Instead of incurring the cost of transportation, Christa chose to home school Annaliese. Ms. Holt testified at the hearing that UCSD was just up the road from her residence and therefore, Annaliese could walk to school and they would not incur the cost of transportation. Under these circumstances, we conclude that convenience is the primary concern behind the open enrollment request. Thus, this appeal would fall short on the fourth criterion as well.

While the board is certainly sympathetic to the situation Annaliese is experiencing, this is not the type of case foreseen by Legislature when it created an open enrollment remedy for students who have been victims of repeated acts of harassment.

DECISION

For the foregoing reasons, the appeal is dismissed. There are no costs associated with this appeal to be assigned to either party.

Date

Nicole M. Proesch, J.D.
Administrative Law Judge

Date

Rosie Hussey, Board President
State Board of Education