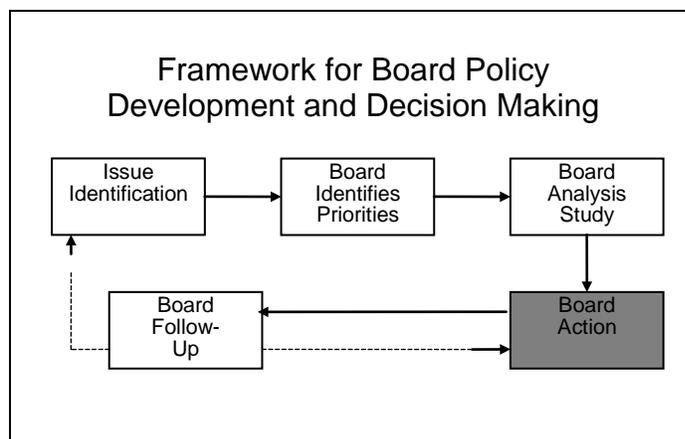


Iowa State Board of Education

Executive Summary

May 15, 2014



Agenda Item: *In Re Open Enrollment of C.L. (Dike-New Hartford 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, designated Administrative Law Judge and 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 Dike-New Harford Community School District denying the open enrollment application filed on behalf of C.L.

Background: C.L.’s family resides in the Dike-New Hartford Community School District (DNCS). C.L. transferred from South Carolina to DNCS the first week of September 2013. During the first month of school, C.L. was given the nickname “Chuckles” by his peers. Students in his class and additionally one teacher were calling C.L. Chuckles. C.L. did not like the nickname and reported this to his mother, Paula, who reported it to the principal, Jerry Martinek. Principal Martinek immediately spoke to the teacher and the teacher apologized and offered to speak with the other students to tell them to address C.L. by his proper name. Several students continued to tease C.L. and call him Chuckles. Paula reported these incidents to Principal Martinek and he addressed each incident as it occurred.

On November 5, 2013, Paula met with Superintendent Larry Hunt to discuss open enrolling C.L. out of the district to the Cedar Falls Community School District (CFCSD). Paula told Superintendent Hunt that C.L. had been bullied and students were calling him names. She felt that Principal Martinek had addressed each incident appropriately but she still felt CFCSD was a better fit for C.L.

On November 11, 2013, a student slammed C.L.'s locker door catching C.L.'s finger in the door because C.L. was getting on the students nerves by telling him the things he was doing wrong in basketball practice. The incident appeared to be an accident by all accounts. The student received a one-day in-school suspension for the incident. That same day Paula and her husband met with Superintendent Hunt and indicated they wanted to open enroll C.L. out of the district. On December 16, 2013, the local school board denied the late filed open enrollment application because the board did not feel that the incidents fit pervasive harassment. Additionally, the Board felt that each incident was addressed by the district and things had gotten better.

In reviewing an open enrollment decision involving a claim of repeated acts of harassment under Iowa Code § 282.18(5) the 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 the conduct did not rise to the level of pervasive harassment contemplated by the statute. Even if the conduct had risen to the level of pervasive harassment, the district was addressing the issue. Therefore, the second and third criterions 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 ___ D.o.E. App. Dec. ___)

<i>In Re: Open Enrollment, C.L.,</i>)	
)	
Gary and Paula L.,)	
)	PROPOSED DECISION
Appellant,)	
)	
v.)	
)	
Dike-New Hartford Community School)	Admin. Doc. No. 4781
District,)	
)	
Appellee.)	

STATEMENT OF THE CASE

The Appellants, Gary (“Gary”) and Paula L. (“Paula”), seek reversal of a December 16, 2013 decision by the Dike-New Hartford Community School District Board of Directors (“DNCS Board”) denying a late filed open enrollment request on behalf of their minor son, C.L. The affidavit of appeal filed by the Appellants on January 14, 2014, 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.

An in-person evidentiary hearing was held in this matter on February 25, 2014, before designated administrative law judge, Nicole M. Proesch, J.D. pursuant to agency rules found at 281 Iowa Administrative Code chapter 6. The Appellants were present on behalf of their minor son; C.L. C.L. and his sister were also present. Superintendent Larry Hunt (“Superintendent Hunt”) appeared on behalf of the Dike-New Hartford Community School District (“DNCS”). Also present was Jerry Martinek, the junior high principal (“Principal Martinek”) and Julie Merfeld (“Mrs. Merfeld”), who is the DNCS Board secretary.

The Appellants and C.L. testified in support of the appeal. Appellant’s exhibits 1-12 were admitted into evidence over objections of Superintendent Hunt.¹ Superintendent Hunt and Principal Martinek testified for DNCS and the school district’s exhibits were admitted into evidence without objection. The State Board will not consider any evidence submitted by either party containing events or information that occurred after the December 16, 2013 decision, which is the subject of this appeal.

¹ Superintendent Hunt objected to Appellants exhibits 1-6 and 8-12 stating that the contents of those exhibits all occurred after December 16, 2013, and the DNCS Board had already made its decision.

FINDINGS OF FACT

Gary, Paula, and their son C.L. reside within the DNCSD. C.L. is in the 7th grade and at the time of this hearing was attending the Dike-New Hartford Junior High School (“DNJHS”) in New Hartford, Iowa. March 1 is the statutory deadline for filing a request for open enrollment for the following school year. *See* Iowa Code § 282.18(2) (2013). After November 11, 2013, the Appellants filed an application with DNCSD requesting approval for C.L. to open enroll to the Cedar Falls Community School District (“CFCSD”) for the remainder of the 2013-2014 school year. The sole issue presented in this case is whether or not the DNCSD erred by denying the late-filed application for C.L. to open enroll out of the district. The record in this case establishes the following facts and circumstances leading to the application for open enrollment.

C.L. and his family moved from South Carolina to Iowa during the first week of September 2013. C.L. was enrolled to attend school at DNJHS. During the first week of school, C.L. told his mother, Paula, that his teacher had a nickname for him. He reported that Mr. Connolly was calling him “Chuckles.” Paula asked C.L. if he liked his new nickname and C.L. told her “no, but what am I supposed to do I’m the new kid?” C.L. told Paula that lots of students including the “jocks” were calling him Chuckles on many occasions.² On September 20, 2013, Paula reported this to Principal Martinek.

Principal Martinek spoke to Mr. Connolly about the incident and Mr. Connolly explained that he heard other students call C.L. Chuckles and thought it was his nickname. Mr. Connolly apologized, requested to meet with the entire group of 7th grade boys, and instructed them to address students by their proper names. Principal Martinek also emailed the other teachers and instructed them to correct any student who was not properly addressing C.L.

On September 24, 2013, the day after the class wide announcement Paula emailed Principal Martinek about Student A and Student B who were also calling C.L. Chuckles and those students were instructed to stop. Several days later Paula L. reported to Principal Martinek that Student B had made comments to C.L. Principal Martinek met with C.L., then met with Student B, and told him to stop bothering C.L. Principal Martinek also made teachers aware of the issue.

On October 28, 2013, Paula reported two incidents that occurred at a non-school sponsored dance she had chaperoned on October 26, 2013 to Principal Martinek. Paula reported that C.L. had danced with another student’s girlfriend and was threatened³ by the other student’s friends. Paula did not report a student’s name so Principal Martinek was unable to follow up on this incident. Paula also reported that Student C also called C.L. Chuckles. Principal Martinek met with Student C the next morning and instructed him not to call C.L. that. Student C reported he meant no harm to C.L. The next day, Paula reported that Student C apologized to C.L. and continued to be friendly to C.L. Paula also testified about a third incident that occurred off school grounds when C.L. and his family went out to eat at a

² The affidavit of appeal estimates at least 20-30 times before it was reported to the principal.

³ There was no testimony regarding a specific threat.

restaurant. Paula testified that several boys in his class were at the restaurant and stared at C.L. and would not talk to him.⁴

On October 29, 2013, Paula emailed Principal Martinek reporting that Student D called her son Chuckles in a sarcastic way. Principal Martinek spoke with Student D, who admitted it. Principal Martinek warned him and encouraged him to apologize to C.L. Again, on October 31, 2013, Principal Martinek received another email from Paula reporting that Student E had called C.L. Chuckles in a sarcastic way. Student E was told it was not appropriate to call C.L. anything other than his proper name.

On November 5, 2013, Paula met with Superintendent Hunt to discuss open enrolling C.L. out of DNCS D to CFCS D. Paula reported that C.L. had been bullied and students were calling him names. She advised that students and even a teacher, Mr. Connolly, called C.L. Chuckles and she did not feel this was appropriate. Paula advised that she had reported these incidents to Principal Martinek and she felt that the district handled the situation appropriately. However, Paula explained that she felt CFCS D was a better fit for C.L. because it offered him swimming and orchestra. Superintendent Hunt provided Paula an open enrollment application and explained the process.

On November 11, 2013, Student E slammed C.L.'s locker door during passing time and caught C.L.'s finger in the door. Student E admitted slamming C.L.'s locker door because C.L. was getting on his nerves by telling him what he does wrong in basketball practice all the time. Student E stated he intended to slam the door but did not intend for C.L.'s finger to be in the door. C.L. told Principal Martinek that he did not think that Student E would physically harm him. Principal Martinek testified that he thought the incident was an accident however, he told Student E this was not the appropriate way to handle the situation and noted that C.L. was injured. Student E received a one day in-school suspension for the incident. Paula testified that after the incident, another student told C.L. not to tell or no one would like him, however this was not reported to Principal Martinek or the board before the hearing.⁵

On that same day, Gary and Paula met with Superintendent Hunt to discuss open enrolling C.L. to CFCS D. They advised Superintendent Hunt of the incident that occurred with the locker door. Superintendent Hunt discussed all of the incidents with them. Both stated that the district had been very good about addressing everything but they felt it would be better for C.L. to transfer to CFCS D because of the opportunities he would have there.

There were no other reported incidents of harassment that occurred before the next school board meeting. On December 16, 2013, the DNCS D Board denied the application for open enrollment finding that the behavior C.L. was subjected to did not meet the requirements of pervasive harassment. Additionally, the DNCS D Board felt that each incident had been dealt with by Principal Martinek, the teaching staff, and that things had gotten better.

⁴ This incident was not reported to Principal Martinek or any other school official.

⁵ Paula also testified regarding what she felt was hazing-like behaviors occurring at DNJHS that were occurring at the school; however, these behaviors were not reported to school officials prior to the hearing either.⁵

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 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. 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). Because the evidence here fails to meet the second and third Criteria, the board does not analyze the first or fourth criterion.

Under the second criterion, the focus is on the terms *objectively* hostile school environment and *reasonable* fear of the student, which means that the conduct complained of must have negatively affected a reasonable student in C.L.'s position. There is no doubt that C.L. felt picked on and did not like the nickname Chuckles given to him by his peers. It is clear that several students continued to call C.L. Chuckles in an attempt to annoy him. While this name calling is certainly hurtful, it is mere adolescent cruelty and not harassment. The incident with the locker door, while not acceptable behavior, appears to be accidental by all accounts and not harassment.⁶ Although, Gary, Paula, and C.L. felt the repeated name calling and the locker incident as a whole were pervasive harassment, 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, assuming *arguendo* that the name calling and incident at the locker (if not accidental) 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. Here Principal Martinek addressed each and every incident that was reported to him almost immediately. In fact, in some instances those students apologized to C.L. the next day. The incident with the locker resulted in a one day suspension for the student. Even Gary and Paula indicated they felt the district had dealt with each incident that occurred. In this case, the district was clearly taking appropriate steps to resolve each situation as it arose. At this juncture, it is impossible to predict that the harassment is likely to continue despite the efforts of the district.

While the board is sympathetic to C.L. and his feelings of being picked on by his peers, 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.

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. 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. The DNCSB Board correctly applied Iowa Code section 282.18(5) when it denied the late open enrollment application filed on behalf of C.L. Therefore, we must uphold the local board decision.

⁶ C.L. stated that he did not think Student E would physically harm him.

DECISION

For the foregoing reasons, the decision of the Board of Directors of the Dike-New Hartford Community School District made on December 16, 2013, denying the open enrollment request filed by Gary and Paula on behalf of C.L. 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

President Elect
State Board of Education