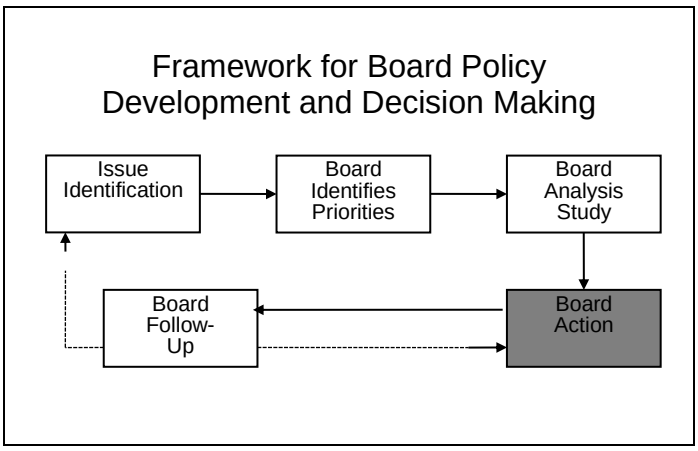
Iowa State Board of Education

Executive Summary

September 15, 2016



Agenda Item: *In re Open Enrollment of E.M.*

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 "pervasive harassment of the student that the resident district cannot adequately address."

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

Attachments: 1

Recommendation: It is recommended that the State Board approve the proposed decision reversing the decision of the local board of directors of the Ankeny Community School District and remanding the case back to the district to decide the case by applying the appropriate legal standards.

Background: E.M. resides in the Ankeny Community School District (ACSD). E.M.'s parents filed an application for open enrollment from the district on May 9, 2016, and indicated that the application was being filed due to pervasive harassment or severe health. Included with the application was a paragraph describing bullying that E.M. had been subjected to. The district received that application and contacted administrators familiar with E.M. to inquire about the allegations. After speaking with

several administrators about E.M., district administration concluded that the incidents did not meet the definition of bullying and harassment and advised the Appellants they would make a recommendation to the local board (board) to deny the application. The district offered to transfer E.M. to another attendance center or have E.M. fill out a bullying and harassment complaint so they could investigate.

The issue was placed on the board agenda for June 5, 2016; however, the Appellants were never notified or given an opportunity to be heard at the board meeting. At the board meeting, the board received the recommendation of administration to deny the application, but heard no evidence or testimony regarding the allegations or response. Thus, the board did not apply the criteria outlined by the State Board for incidents of pervasive harassment before making a decision.

In reviewing an open enrollment decision involving a claim of a pervasive harassment under Iowa Code § 282.18(5) the State Board has set out four criteria that all must be met in order to overturn the decision of the board. Here the district failed to apply that criteria to this case. Since the law contemplates that the resident district is in the best position to make a decision about an open enrollment application filed on the basis of pervasive harassment, the board must now review E.M.'s application in light of this criteria.

Thus, it is recommended that the State Board reverse and remand the decision of the ACSD with instructions to review the facts of this case in light of State Board criteria.

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

In re Open Enrollment of E.M.	)	
	)	
G.M.,	)	
	)	PROPOSED DECISION
Appellant,	)	
	)	
v.	)	
	)	
Ankeny Community School District,	)	Admin. Doc. No. 5043
	)	
Appellee.	)	

STATEMENT OF THE CASE

The Appellant, G.M., seeks reversal of a June 5, 2016, decision by Ankeny Community School District ("District") Board ("Board") denying a late filed open enrollment request on behalf of his minor child E.M. The affidavit of appeal filed by July 1, 2016, 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 (2015). The administrative law judge finds that she and the State Board of Education ("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 August 2, 2016, 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 E.M. with E.M.'s mother S.B. Superintendent Bruce Kimpston ("Superintendent Kimpston") appeared on behalf of the District and was represented by attorney Jeff Krausman. Also present for the District was Jennifer Owenson, Chief Human Resource Officer.

The Appellant and S.B. testified in support of the appeal. Appellant presented no exhibits. Superintendent Kimpston, Principal Nancy Lehman ("Principal Lehman"), Associate High School Principal Chris Feldhans ("Associate Principal Feldhans"), School Counselor Malynda Zuck ("Ms. Zuck"), and Chief Operating Officer Matt Adams ("Mr. Adams") testified for the District and the school district's exhibits A-Q were admitted into evidence without objection.[1]

FINDINGS OF FACT

Here are the facts that are pertinent to this decision:

[1] However, none of the exhibits A-Q were received into evidence or reviewed by the local board.

On May 9, 2016, the Appellant filed an application for open enrollment on behalf of his minor child E.M. In the application, the Appellant indicated that the application was being filed due to pervasive harassment or severe health. Included with the application was a paragraph describing bullying that E.M. had been subjected to. The District received the application that day and Mr. Adams began reviewing the application. Mr. Adams sent an email to staff who may be familiar with E.M. Associate Principal Feldhans called Mr. Adams later that day to discuss E.M. Mr. Adams also made contact with the prior principal at Ankeny Southwoods Middle School, Principal Lehman, since some issues that occurred there were also referenced in the application. Both indicated there were some issues with adolescent cruelty but nothing that they would define as bullying and harassment.

After reviewing the material Mr. Adams determined that it did not meet the criteria for pervasive harassment and he contacted Associate Principal Feldhans and asked him to contact the Appellant. The Appellant was contacted and advised that the application did not meet the criteria for a good cause exception.

On May 25, 2016, the Appellant sent an email to the Board and to Associate Principal Feldhans asking for a meeting. Superintendent Kimpston set up a meeting with the Appellant for June 1, 2016. Superintendent Kimpston met with the Appellant and S.B. and advised them that he did not support the open enrollment request because he determined there was no good cause. He offered the Appellant an opportunity to file a formal bullying and harassment complaint and he also offered E.M. the option of transferring to another attendance center in the district.

The Appellant and S.B. testified this was the first time a district staff member offered them an opportunity to fill out a bullying and harassment complaint during the two year period that E.M. was having issues. After discussing this option with E.M. they declined to file a complaint due to a concern for retaliation and making the situation worse. They also declined to transfer to another attendance center.

The Appellant's application for a late filed open enrollment on behalf of E.M. was placed on the Board's agenda for June 5, 2016. The Appellant was not notified or given an opportunity to be present or provide evidence or testimony to the Board. At the Board meeting, Superintendent Kimpston addressed the Board and made a recommendation that the Board deny the late filed request on the basis that he did not find good cause or pervasive harassment. No other evidence or testimony was provided to the Board. The Board voted to deny the application.

On July 1, 2016, the Appellant filed a timely appeal of the Board's decision with the Board of Education. At the hearing before the undersigned, the Appellants provided testimony about the social turmoil that E.M. had been going through over a period of two years and the District provided evidence and testimony about their response. However, none of this evidence or testimony was ever received or heard by the Board before making its decision. Therefore, for purposes of this decision, we will not outline those facts here.

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. After the March 1 deadline a parent or guardian shall send notification to the resident district that good cause exists for the failure to meet the deadline. *Id*. 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. *Id*. § 282.18(5).

A decision by the board denying a late-filed open enrollment application that is based on "repeated acts of harassment that the resident district could not adequately address" is subject to appeal to the State Board under Code section 290.1. *Id*. § 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).

The issue for review in this case is whether or not the Board made an error of law in denying the late filed open enrollment request. Here, the open enrollment application alleged that E.M. was the victim of pervasive harassment by other peers. Upon receiving the application, there was an inquiry made by Mr. Adams of local administrators to provide any

information about whether or not E.M. had been a victim of bullying and harassment in middle school or high school. Mr. Adams and Superintendent Kimpston reviewed the information gathered and determined that E.M. was not a victim of bullying and harassment.

The application was placed on the Board agenda for review by the Board. However, neither the Appellant nor S.B. received notice that this was placed on the board agenda for review or that they could attend and provide additional information to the Board. At the time of the agenda item before the Board, the Board received a recommendation from Superintendent Kimpston to deny the application and heard no further evidence or testimony regarding the allegations of harassment. The Board did not receive or review any of the exhibits provided to the State Board in this proceeding. It is not enough in these decisions for a local board to serve as a rubber stamp of the recommendations of administration. Due process requires the Appellants have notice and an opportunity to be heard by the Board. The local board must then apply the above criterion to the Appellant's application and make a decision. *Cf. In re Seth L.*, 21 D.o.E. App. Dec. 209 (2002) (board at issue did not examine the facts). We find no evidence that this occurred here. It is entirely possible after hearing evidence and testimony that the Board will agree with administration's recommendation. But it still needs to hear the evidence and testimony before making a decision. The State Board sits in an appellate capacity. How can the State Board receive and review evidence of bullying and harassment or the lack thereof that was never received or reviewed by the local board and make a decision as to whether or not the Board acted within the law? It cannot. That would not comply with the requirements of the law.

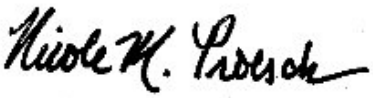
Under these circumstances, we must conclude that the Board made an error of law by not reviewing the facts and circumstances of the case and applying the appropriate standards. Therefore, we must reverse the Board's decision. Since the law contemplates that the resident district is in the best position to make a decision about an open enrollment application involving repeated acts of harassment, we remand the case back to the Board to make a decision. The Board must now review the application in light of the criterion the State Board has established.

Since this is the second time in recent years the State Board has reversed a decision of this Board on procedural grounds, the Board should make a concerted effort to review its processes and procedures regarding these appeals to determine if changes need to be made. These appeals are an opportunity for the Board to hear the evidence, individual facts, and circumstances involving individual students. If need be, the Board can apply discretion in each individual case to do what is right for an individual student. *See* Iowa Code § 282.18(5) (Open enrollment applications received after the March 1 deadline that do not qualify for good cause are subject to the approval of both the resident and receiving districts.) However, a board cannot apply discretion if it does not hear the evidence. In the meantime, the student here is left to wait for a decision from the Board because of the Board's own procedural error, unless the Appellants choose to pay tuition to attend school in another district. The Board may want to consider exercising discretion in this case under the totality of the circumstances, especially given the Board's failure to follow procedure under Iowa law causing this delay.

DECISION

For the foregoing reasons, the decision of the Board made on June 6, 2016, denying the open enrollment request filed on behalf of E.M. is REVERSED and REMANDED to the Board with instructions to review the Appellant's application for good cause under Iowa Code section 282.18(5) with respect to whether or not E.M. had been subjected to repeated acts of harassment that the District could not adequately address.

REVERSED AND REMANDED WITH INSTRUCTIONS.



8/15/2016
Date

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

_____
Date

_____
Charles C. Edwards Jr., Board President
State Board of Education