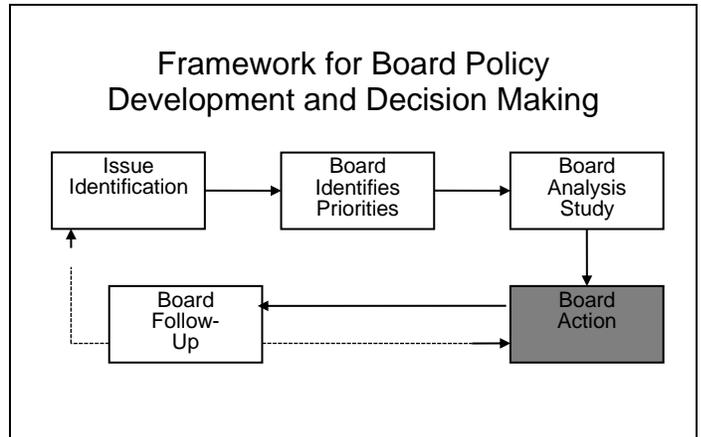


Iowa State Board of Education

Executive Summary

September 15, 2016



Agenda Item: *In re Student A, Good Conduct Violation*

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

State Board Role/Authority: Under Iowa Code section 290.1, the State Board of Education has authority to hear appeals from local school board decisions regarding good conduct policies.

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 affirming the decision of the local board of directors of the Lenox Community School District affirming the administration's decision suspending Student A for the remainder of his high school career from participation in extracurricular activities for a violation of the district's Student Good Conduct Policy.

Background: Student A is a resident of the Lenox Community School District (LCSD). Student A is a member of the football, wrestling, track and baseball teams at Lenox High School (LHS). Prior to the incident leading to a career suspension, Student A received three other violations of LHS's Student Good Conduct Policy and served his punishments. The current violation stems from an incident on April 19, 2016, where Student A stole a Trophy from the Adams County Speedway, left the speedway, and later returned it with his father. Student A

admitted to taking the trophy as a joke, but stated that he did not believe this should be a violation of the Student Good Conduct Policy. Student A was notified that he would be suspended for the remainder of his high school career for a fourth violation of the Student Good Conduct Policy and Student A appealed the decision to the local board. The local board upheld the decision and the decision was appealed to the State Board.

The State Board does not have before it the prior unchallenged violations of the Student Good Conduct Policy and we will not deal with those violations. In reviewing the decision of the local board, we find that the determination that Student A violated the policy is reasonable and the determination that this is a fourth violation is reasonable. We will not allow the student to re-litigate prior unchallenged violations here.

Thus, it is recommended that the State Board affirm the decision of the local board.

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

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|---|---|----------------------|
| <i>In re Student A, Good Conduct Violation,</i> |) | |
| |) | |
| Parent of Student A, |) | |
| |) | PROPOSED DECISION |
| Appellant, |) | |
| |) | |
| v. |) | |
| |) | |
| Lenox Community School District, |) | Admin. Doc. No. 5042 |
| |) | |
| Appellee. |) | |

STATEMENT OF THE CASE

The Appellant seeks reversal of an April 25, 2016, decision by Lenox Community School District (“LCSD”) Board of Directors (“LCSD Board”) suspending Student A for the remainder of his high school career from participation in extracurricular activities for a violation of the schools Good Conduct policy (“GC Policy”). The affidavit of appeal filed by the Appellant on May 24, 2015, 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 § 290.1. 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 July 21, 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 with his minor child, Student A, and was represented by Attorney Rod Maharry. Superintendent David Henrichs (“Superintendent Henrichs”) was present for the LCSD and represented by Attorney Matt Hansen. Also present for the district was Secondary Principal Michael Still (“Principal Still”).

The Appellant and Student A testified in support of the appeal. Jodie Mabin, an Adams County Speedway employee, also testified. Appellant’s Exhibit A was admitted into evidence without objection. Superintendent Henrich and Principal Still testified for LCSD. Appellees Exhibits A, B, E-O and U were admitted into evidence without objection. Exhibits C, D, and Q-T were excluded since they were not part of the record before the LCSD Board.

FINDINGS OF FACT

At the time of his suspension, Student A was a seventeen year old junior in the Lenox High School (“LHS”) and finishing his second semester of the 2015-2016 school year. Student A participated in football, wrestling, track, and baseball for LHS. Prior to coming to LHS Student A attended school in Des Moines and was getting into trouble and hanging out with the wrong

people so he moved to Lenox to live with his father to go to school. Student A had been disciplined on two prior occasions for three separate violations of the school's GC Policy before the incident involved in this appeal.

On September 4, 2013, Student A received a letter of notice that he was being cited for violations of the GC Policy for stealing and for smoking marijuana. Student A was issued two separate violations for each infraction. There is no dispute that the two infractions arose out of an incident that occurred on the same day. Student A self-reported the incidents and thus was deemed to be ineligible for activities for forty-five days.¹ Student A was also required to complete a treatment program prior to reinstatement. Student A was also notified that a third infraction would result in a one year suspension from the date of the third violation. Student A did not appeal the decision, sat out for forty-five days, and was later reinstated.²

On November 6, 2013, Student A received a letter of notice that he was being cited for a violation of the policy for charges pending with the Lenox Police Department.³ According to the Officer Statement, the incident involved a group of minors who were at a party and consuming alcohol. Several minors left the party and took a vehicle without the owner's consent. Student A was with the group and drove the vehicle at some point. Principal Still spoke with Student A about this incident. Student A stated he understood this was a violation of the policy. Student A was deemed to be ineligible for activities for one year from the date of the violation. Student A was also notified that a fourth infraction would result in ineligibility for the rest of his high school career. Student A did not appeal the decision, sat out for one year, and was later reinstated.⁴

The facts regarding the incident that resulted in the current local board action are largely undisputed. On April 19, 2016, a community member reported to Principal Still that Student A had stolen a trophy from the Adams County Speedway. The trophy was in the grandstand area waiting to be given out when Student A took it on a dare because he thought it would be funny. Speedway staff noticed that the trophy was missing and reviewed surveillance video. After reviewing the video, they determined that Student A had taken the trophy. The Speedway announcer made an announcement asking that the trophy be returned immediately without punishment. Student A admitted that he heard the Speedway announcer ask for the trophy to be returned, but stated that he was scared to so he left the Speedway and took it home. In the meantime, Student A's father received a message from a raceway worker that Student A had taken the trophy. Student A spoke with his father on the way home and told him he had the trophy. Student A and his father returned the trophy to the Speedway and there were no

¹ Under the GC Policy a student who admits the violation within 24 hours is entitled to half off of the suspended days. A first violation is a thirty day suspension and a second violation is 60 days. Thus, Student A received forty-five days total.

² The Appellant now argues that Student A should have only received one violation for this incident and not two.

³ The charges that were being investigated were operating a motor vehicle without owner's consent, criminal mischief, and operating without a license.

⁴ The Appellant now argues that Student A should not have received a violation for this incident because there were no charges pending at the time the district found a violation of the GC Policy. Student A pled guilty to a traffic violation for driving on a permit on December 28, 2013, nearly two months after the violation of the GC Policy was found. (See Exhibit A).

charges filed. Principal Still spoke with Student A, who admitted to taking the trophy from the Speedway as a joke because his friends were daring him to. Student A stated he did not believe it was a big deal and he should not be issued a violation of the GC policy for the incident.

On April 19, 2016, Principal Still sent a letter to Student A's parents notifying them he found Student A's taking of the trophy to be a violation of the school's GC policy. The letter also notified them that this was Student A's fourth offense, thus he would be ineligible for extracurricular activities for the rest of his high school career. On April 20, 2016, the Appellant sent a letter of appeal to Superintendent Henrichs.

On April 20, 2016, Superintendent Henrichs sent a letter to the Appellant notifying him that he reviewed the GC Policy and the information provided by Principal Still, the Appellant, Student A, and a law enforcement officer and determined that he would uphold the decision of Principal Still. Superintendent Henrichs found the following:

The decision is based upon two factors found within the "Good Conduct Policy."

- A. Students will be subject to suspension from extracurriculars for violating any of the following . . . The commission of a crime under any governmental law or ordinance except those merely regulating the use of a motor vehicle.
- B. Determination of a violation will be based upon . . . Admission by the Student.

(April 20, 2016, Letter from Superintendent Henrichs).

On April 21, 2016, the Appellant sent a letter of appeal to Superintendent Henrichs. On April 25, 2016, the LCSD Board held a hearing to review the decision of the Superintendent to uphold the decision of Principal Still. The Appellant and Student A were present and provided evidence and testimony to the LCSD Board. A representative from the Speedway also testified before the LCSD Board.

The LCSD Board GC Policy states in relevant part:

Student Good Conduct Rule, Code No. 503.9

It is the believe of the Lenox Community School District that students should conduct themselves as good citizens if they desire to represent the school in any activity sponsored by our school. Not only is it a privilege and an honor to be able to participate and represent the Lenox Community School in its extra-curricular activities, but students should realize they serve as models to many other people and their behavior and attitude have an important impact on themselves and others. In short, directly, and indirectly, the conduct of the student reflects in the standards, attitudes, and philosophy of our school and community. . . .

Student will be subject to suspension from extracurricular activities for violating any of the following while in season:

1. Possession or consumption of alcohol, controlled substances, or tobacco in any form with the knowledge, intent, and control thereof.
2. The commission of a crime under any governmental law or ordinance except those merely regulating the use of a motor vehicle.

Determination of a violation will be based upon:

- Admission by the student, or
- Conviction by court of law, or
- An investigation by school officials and determination that some evidence exists that a violation has occurred. This investigation may include, but is not limited to, a report from law enforcement, or interviews and/or statements from other students, staff, or members of the community. . . .

(Student Good Conduct Policy. Code No. 503.9, Page 1).

The LCSD Board voted 4-1 to uphold the decision of administration finding that Student A had a fourth violation of the GC Policy and holding that Student A would be suspended from activities for the remainder of his high school career. On May 24, 2016, the Appellant filed a timely notice of appeal to the State Board.

CONCLUSIONS OF LAW

Under Iowa Code section 290.1, a parent or guardian of an affected student who is aggrieved by a decision or order of the board of directors of a school corporation may appeal the decision to the State Board. Iowa Code § 290.1. In these appeals the Legislature has mandated that the State Board render a decision that is both “just and equitable.” The State Board will not disturb a local Board’s decision in school discipline issues unless it is “unreasonable and contrary to the best interest of education.” *In re Jesse Bachmann*, 13 D.o.E. App. Dec. 363, 369 (1996). Thus, the test is reasonableness.

School districts have the authority to promulgate rules for the governance of pupils. Under Iowa Code section 279.8, a local school board “shall make rules for its own government and that of the . . . pupils, and for the care of the school house, grounds, and property of the school cooperation, and shall aid in the enforcement of the rules, and require the performance of duties imposed by law and the rules.” Iowa Code § 279.8. Inherent in this law is the school board’s authority to adopt and enforce a good conduct policy. The Iowa Supreme Court has ruled that schools and school districts may govern out of school conduct of its students who participate in extracurricular activities because “these student leaders are looked up to and emulated” and “they represent the school and depict its character.” *Bunger v. Iowa High School Athletic Association*, 197 N.W. 2d 555, 564 (Iowa 1972).

Brands v. Sheldon Community School District remains the paramount case in good conduct appeals. 671 F. Supp. 627, 630-631 (N.D. Iowa 1987). The Court in *Brands* established several principles regarding good conduct violations that are still followed by the State Board today. Those principles are as follows:

- 1) A secondary student has no “right” to participate in interscholastic athletics or other extracurricular activities.
- 2) Since there is no right to participate, the amount of due process owed to a student in such cases is minimal. Due process requires only two elements: 1) the student must be told what he is accused of; and 2) the student must be given an opportunity to tell his side of the story.
- 3) In order for a student to be disciplined under a school’s good conduct policy there need only be “some evidence”⁵ that a student violated the policy.

Id.

There is no argument that the Appellants were deprived Due Process. In this case, there are two issues raised by the Appellants. The first is whether or not Student A committed a crime under the terms of the GC Policy. If Student A violated the policy, the second issue is whether or not this violation should be counted as a fourth offense subjecting Student A to a suspension from extracurriculars for the remainder of his high school career.

The Appellants argue that Student A did not commit a crime as required under the policy because he was never charged. They also argue that Student A did not have the requisite intent to deprive the owners of the trophy because he returned it. We find this argument unpersuasive. First, by the policy’s plain language, the fact that Student A was not charged with a crime does not bar the LCSD Board from finding a violation of the policy. Admission of the violation alone is enough under the policy to determine that there was a violation without a charge or conviction in a court of law. Student A admitted that he took the trophy. Furthermore, Student A only returned the trophy after he knew that the raceway requested over the intercom that it be returned and after he had already left the raceway with the trophy in hand and drove home with it. By this point Student A’s father was aware that he had taken the trophy and then went with him to return it. There is certainly “some evidence” Student A violated the policy as required under *Brands*. Even if it was a “joke” or “dare” as Student A characterizes it, “these student leaders are looked up to and emulated” and “they represent the school and depict its character.” *Bunger*, 197 N.W. 2d at 564. Student A’s behavior in this instance is not the type of behavior that the school expects students to emulate. Thus, the determination that Student A violated the GC Policy under these circumstances is reasonable.

We now turn to the second issue which is the determination of whether or not this violation should be deemed a fourth violation. First, we note that Student A was no stranger to the GC Policy because he had violated it on two prior occasions. Second, Student A was provided with written notice for all three of the prior violations and Student A did not appeal any of those violations. Finally, Student A was also provided with notice that any further violations would result in a suspension of his privileges to participate in extracurricular for the remainder of his high school career. To his credit Student A took responsibility for the prior violations, admitted them to administration, and was given a lesser suspension because he cooperated with administration. However, the time to appeal those prior violations expired in 2013. We cannot allow the Appellant to re-litigate those prior violations as part of the instant

⁵ Due process does not require courtroom evidence standards. “Some evidence” is less than preponderance of evidence and far from beyond a reasonable doubt.

appeal.⁶ Thus, we find the LCSD Board finding that this is Student A's fourth violation of the GC Policy reasonable under the circumstances.

Therefore, the State Board finds that the decision of the LCSD Board that Student A violated the GC Policy for taking a trophy from the Speedway was reasonable and the decision to treat this violation as a fourth violation resulting in Student A being suspended from participation in extracurricular activities for the remainder of his high school career is also reasonable under the circumstances.

DECISION

For the foregoing reasons, the decision of Lenox Community School District Board of Directors made on April 25, 2016, suspending Student A for the remainder of his high school career from participation in extracurricular activities for a violation of the school's Student Good Conduct policy is hereby AFFIRMED. There are no costs of this appeal to be assigned.

Date

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

Date

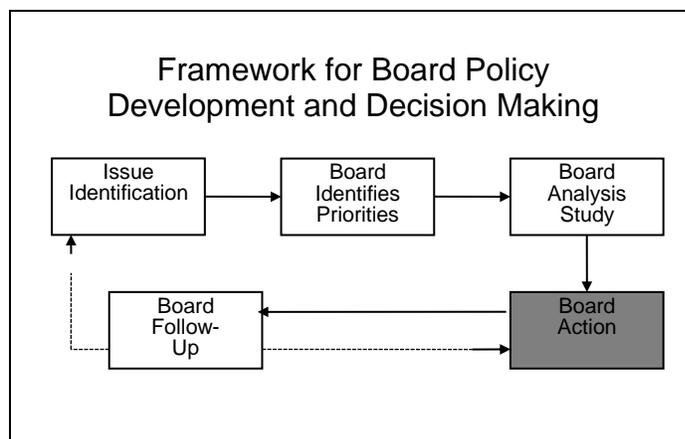
Charles C. Edwards Jr., Board President
State Board of Education

⁶ Even if we were to re-examine the number of infractions issued to Student A, we would conclude that the Board's decision to issue two infractions for the string of occurrences on September 4, 2013, was reasonable and in the interest of education. Secondly, even if we found this violation to be a third and not a fourth violation Student A would still be suspended for a year from participation in activities under the GC Policy which would still result in a suspension for the remainder of his high school career since he will be a senior.

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. ___)

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| <i>In re Open Enrollment of E.M.</i> |) | |
| |) | |
| 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.



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

8/15/2016
Date

Date

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