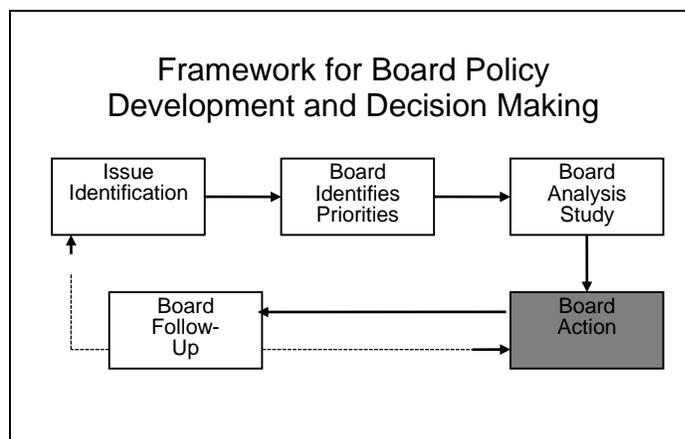


Iowa State Board of Education

Executive Summary

January 21, 2016



Agenda Item: *In re Expulsion of M.K. (West Des Moines Community School District)*

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.

Presenter: Legal Counsel

Attachments: 1

Recommendation: It is recommended that the State Board consider and decide this matter.

Background: For prior background, see agenda items for State Board meetings from November 18, 2015, and December 14, 2015. For the reasons stated on the record at the December 14, 2015, State Board meeting, the Administrative Law Judge's decision is modified: (1) to conclude the State Board has jurisdiction to hear this appeal; and (2) to clarify the discipline imposed by the West Des Moines Community School District's board. In all other respects the Administrative Law Judge's decision is adopted.

IOWA DEPARTMENT OF EDUCATION

<i>In re Expulsion of M.K.</i>)	
)	
R.K.,)	
)	
Appellant,	)	DECISION
)	
v.)	
)	
West Des Moines Community	)	Admin. Doc. No. 5015
School District,)	
)	
Appellee.)	

This matter came before the Iowa State Board of Education (Board) at its regularly scheduled meetings on November 18, 2015 and December 14, 2015. Appellant filed an appeal of the West Des Moines Board of Education decision. The State Board reviewed both the local decision and the proposed decision of Administrative Law Judge Nicole Proesch. That proposed decision is attached hereto and incorporated by this reference.

After reviewing the briefs and motions filed by counsel, having discussed this matter in open session, and being fully advised in the premises, a majority of the Board modifies the proposed decision as follows.

The motion to dismiss for lack of jurisdiction is overruled. The Board finds that under these unique circumstances, the Board has jurisdiction over this matter under Iowa Code section 290.1 (2015).

Both Iowa Code section 290.1 and Department rules require an appeal to be initiated by filing an affidavit. This requirement is jurisdictional and cannot be waived by the Board--even for good cause. Here, Appellant filed a letter signed by both himself and his attorney. In a footnote, the letter urged the Board to treat the filing as his affidavit. The letter was not stylized as an affidavit nor is it in a form customarily used for affidavits.

While the Appellee asserts that Appellant's failure to file a "traditional" affidavit is dispositive of this appeal, the Board disagrees. "No technical form for motions is required." 281 IAC 6.6(1). The failure to caption the letter as an affidavit is not dispositive and does not deprive this Board of jurisdiction.

More importantly, the letter conformed to all the substantive requirements for filing an appeal—namely, it "set forth the facts, any error complained of, or the reasons for the appeal in a plain and concise manner." 281 IAC 6.3(1). The letter was further signed by the appellant as required by 281 IAC 6.3(1).

The Iowa Supreme Court has rejected hyper-technical compliance with the statutory requirements for filing an appeal in judicial review actions. The Court has determined that only substantial compliance, not strict or literal compliance, is necessary to invoke the court's jurisdiction. *Brown v. John Deere Waterloo Tractor Works*, 423 N.W.2d 193, 194 (Iowa 1988); see also *Birchansky v. Iowa Dep't of Pub. Health*, No. 12-1827, 2013 WL 3830196 (Iowa Ct. App. July 24, 2013). "Substantial compliance is said to compliance in respect to essential matters necessary to assure the reasonable objectives of the statute." *Sims v. HCI Holding Corp.*, 759 N.W.2d 333, 338 (Iowa 2009).

Appellant's letter substantially complied with the requirements of Iowa Code 290.1 and 281 IAC 6.3(1). The letter met the substantive requirements for an appeal and reasonably appraised the school district and the Board as to the basis of the appeal. As a result, this Board has jurisdiction to consider the appeal.

Although this Board overruled the proposed decision on the procedural ground, we affirm Judge Proesch's decision on the merits. We, however, want to clarify the sanction imposed by the West Des Moines Community School District.

On May 27, 2015, West Des Moines Community School District voted to suspend M.K for the remainder of the 2014-2015 school year and to expel M.K. for the first semester of the 2015-2016 school year. The District furthered suspended M.K. for the first

quarter of the second semester of the 2015-2016 school year and placed him in an alternate educational setting. Thereafter M.K. **may be readmitted** to the regular program.

DECISION

For the forgoing reasons, Judge Proesch's proposed decision is MODIFIED IN PART.

Appellant's Motion for Summary Judgment is GRANTED. All other motions currently pending are moot and are therefore DENIED.

Date

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

IOWA DEPARTMENT OF EDUCATION

<i>In re Expulsion of M.K.</i>)	
)	
R.K.,)	
)	
Appellant,	)	PROPOSED DECISION
)	
v.)	
)	
West Des Moines Community	)	Admin. Doc. No. 5015
School District,)	
)	
Appellee.)	

On June 26, 2015, the Appellants filed an the appeal of the West Des Moines Community School District (“WDCSD” or “District”) Board of Directors’ (“WDCSD Board” or “Board”) decision rendered on May 27, 2015, to suspend M.K for the remainder of the 2014-2015 school year, to expel M.K. for the first semester of the 2015-2016 school year, and to suspend him for the first quarter of the second semester of the 2015-2016 school year. Thereafter M.K. was to be placed in an alternative educational setting.

Appellee filed a Motion to Dismiss on July 7, 2015. Appellant’s filed a Resistance to the Motion to Dismiss on July 17, 2015 and Appellee filed a reply on July 22, 2015. Appellants also filed a Motion for Summary Judgment on August 7, 2015. On August 24, 2015, the Appellee’s filed a Resistance to the Motion for Summary Judgment and a Cross-Motion for Summary Judgment. Appellants filed a Motion to Strike Appellee’s Untimely Cross Motion for Summary Judgement on September 3, 2015. After reviewing the parties’ motions the undersigned makes the following findings and conclusions.

MOTION TO DISMISS

It is clear under Iowa Code section 290.1, that an appeal “shall be an affidavit filed with the State Board by the party aggrieved within the time for taking the appeal.” Iowa Code § 290.1; *see also* 281 IAC § 6.1(1). “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.” Iowa Code § 622.85. The Appellees argue in the Motion to Dismiss that the appeal letter is not an “affidavit” as required under Iowa Code section 290.1 because it was not notarized and did not contain any other indication that the declarations of the Appellant were sworn to and made under oath. The letter of appeal contains the signature of the Appellant and his Attorney, who is a notary, but it is void of a notary stamp or a statement that the appeal was

made under oath. *See* Iowa Code § 622.1 (allowing certification under the penalty of perjury). While we recognize that the appeal letter contains a footnote that states “this letter and its attachments are referred in this document as the appeal of [M.K.], but despite the nomenclature attached hereto, should be construed as M.K.’s ‘Affidavit’ needed to appeal the Board’s decision as required by Iowa Code § 290.1,” this statement does not make the letter an affidavit for purposes of the State Board’s jurisdiction over the appeal. The State Board has found that lack of compliance with statutory requirements will result in no jurisdiction. *In re Intra District Transfers*, 27 D.o.E. App. Dec. 568 (2015).

Additionally, the Appellant cannot cure this defect by attempting to file an affidavit after the time for filing the appeal has run. 281 --- Iowa Administrative Code rule 6.3(6) only allows a substantive amendment to an affidavit already on file, it does not allow for an extension of the filing deadline. As such, the State Board lacks jurisdiction to hear the appeal.

However, given that this is a very time sensitive issue involving a student’s suspension and expulsion we will review the merits of the parties’ motions for Summary Judgment below and attempt to resolve those issues for purposes of further review. Even if we broadly construe the letter of appeal as a properly filed affidavit, we find that the Appellants would not be entitled to relief for the reasons stated below.

MOTION FOR SUMMARY JUDGMENT

A. Undisputed Facts

The pleadings and exhibits reveal the following undisputed facts:

M.K. was a fifteen year old freshman at Valley Southwoods (“Valley”) during the 2014-2015 school year. M.K. has a diagnosis of ADHD and as a result is prescribed to take Adderall. Despite this diagnosis M.K. has a 3.69 GPA. On April 30, 2015, Valley Administration was contacted by a concerned parent and informed that several Valley students were selling or using Adderall. During an investigation into the allegations Student A and Student D identified M.K. as a person that was selling or possessed Adderall. Administration interviewed M.K. regarding the allegations, which M.K. denied. A search of M.K. and M.K.’s locker found nothing.

On May 8, 2015, Student B submitted a revised statement to administration identifying M.K. as a person Student B purchased Adderall from. In Student B’s initial interview she had not identified M.K. as the source of Adderall because she did not want to get a friend in trouble. In the revised statement Student B admitted to purchasing the Adderall from M.K. for her own use and not for redistribution to another student, thereby eliminating her risk of expulsion for distribution. On May 12, 2015, administration was provided screen shots from Student B’s cell

phone showing the following conversation with Student B and M.K. between April 25, 2015 and April 28, 2015:

Sunday, April 25, 2015

Student B: can u bring me addy tomorrow :-).

M.K.: Sorry I'm all out rn. I'm buying some more soon though

Student B: [expletive deleted] me ok
thx tho

M.K.: Lol, I'll have some more Wednesday

Student B: ok ok

Tuesday, April 28, 2015

Student B: can you bring me some tomorrow :-)

M.K.: How much

Student B: can u bring me 2 20s and a 30 me for 7\$

M.K.: Ya

On May 15, 2015, Valley administration interviewed M.K. regarding the allegations. M.K. requested the presence of his father and the interview was stopped. The parties both agree the interview did not continue after M.K.'s father arrived but they dispute who stopped the interview from continuing. M.K. was immediately suspended for the remainder of the 2014-2015 school year. On May 22, 2015, Valley provided written notice to M.K. that it was seeking a one semester expulsion for M.K. and referred the matter to the West Des Moines School District Board.

A hearing was held on May 27, 2015. At the hearing Valley administration a packet to the Board which contained the written statements of the Students A, D, and B, and screenshots from Student B's phone with the text messages. No oral testimony of the Students was presented. Student B's mother testified as did administration. There was testimony presented regarding the color of the pills Student B received and whether or not it matched the color Adderall comes in. Despite Student B's statement and the text messages, M.K. admitted he sent the text messages but stated that he never delivered Adderall to Student B. M.K. claimed he was just being nice to a friend by saying he would help her out. M.K. testified that he did not possess or sell a controlled substance, except for properly consuming a prescription in the nurse's office. The WDCSD Board found M.K. violated board policies 503.1, 502.7B and 502.8, for possessing and distributing a controlled substance at Valley.

Board policy 503.1 prohibits the:

Possession of a controlled substance or a controlled substance lookalike . . . While on school premises, while on school owned and or operated school or chartered buses,

while attending or engaged in school sponsored activities, while away from school grounds if misconduct will directly affect the good order, efficiency, management and welfare of the school.

Board policy 502.7B 1 provides that a student may be discipline for:

Possessing, using or being under the influence of any controlled substance . . . and manufacturing, possessing, or selling drug paraphernalia are strictly prohibited while a student is on any school property or under school supervision.¹

Board Policy 502.8 provides that:

[S]ale or distribution, attempted sale or distribution and or purchase or acquisition with the intent to sell or distribute by a student of any prohibited substance.... Is strictly prohibited while the student is on any school property or under school supervision. This includes attendance at school or a school sponsored event.

After considering the evidence, testimony, and arguments of the parties the WDCSD Board found M.K. violated the above board policies and voted to suspend M.K for the remainder of the 2014-2015 school year, to expel M.K. for the first semester of the 2015-2016 school year, and to suspend him for the first quarter of the second semester of the 2015-2016 school year. Thereafter M.K. was to be placed in an alternative educational setting. In the Board's written decision the Board noted:

[M.K.] has denied the allegations that he possessed or sold a controlled substance except by properly consuming his medication either at home or at the school nurses office. However, the text messages, taken in conjunction with the statements of the students, indicate intent to distribute and actual distribution of a prohibited substance. The standard in a discipline case is a preponderance of the evidence, not proof beyond a reasonable doubt. [M.K.'s] explanation of the text messages was not credible, and the statements of the three others are persuasive. Student A's reports regarding other students have proved accurate to the degree that others she has named have admitted to their participation in the conduct.

The Appellants filed a timely notice of appeal.

¹ An exception to this policy is possession of a medication prescribed by the individual student's licensed health care provider and which is taken in accordance with the licensed health care provider instructions.

B. Conclusions of Law

Both parties have submitted Motions for Summary Judgment. Summary Judgment is appropriate if in viewing the evidence in the light most favorable to the nonmoving party, “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Iowa R. Civ. Pro 1.981(3); *Weddum v. Davenport Comm. Sch. Dist.*, 750 N.W.2d 114, 117 (Iowa 2008). For summary judgment purposes an issue of fact is material only if the dispute is over facts that might affect the outcome. *Weddum*, 750 N.W.2d at 117 (internal citations omitted). “When the only controversy concerns the legal consequences flowing from undisputed facts, summary judgment is the proper remedy.” *Id.* In the present case the parties do not dispute the facts. The issue is whether or not the Appellants or the Appellees are entitled to judgment as a matter of law.

The review of a local school board’s decision is for abuse of discretion. *See Sioux City Comm. Sch. Dist. v. Iowa Dep’t of Educ.*, 659 N.W.2d 563, 569 (Iowa 2003). In applying abuse of discretion we look at whether a reasonable person could have found sufficient evidence to come to the same conclusion. *Id.* “[W]e will find a decision was unreasonable if it was not based on substantial evidence or was based upon an erroneous application of the law.” [Citations Omitted] *Id.* at 569. The State Board will not disturb a local decisions in school discipline issues unless they are “unreasonable and contrary to the best interest of education.” *In re Jesse Bachmann*, 13 D.o.E. App. Dec. 363, 369 (1996). The decision of a local board to suspend or expel a student is clearly an issue of discretion. The question here is whether or not the decision of the WDCSD Board to suspend and expel M.K. was reasonable under the facts and circumstances. If the decision was reasonable we must find in favor of the local board as a matter of law. If not we must find in favor of the Appellants.

The Iowa Legislature has conferred broad authority to local school boards to adopt and enforce its own rules and disciplinary policies. *See* Iowa Code §§ 279.8 & 282.4. Under section 279.8, “the 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 corporation, and shall aid in enforcement of the rules.” Local school boards have the explicit statutory authority to expel or suspend students for violating school rules pursuant to Iowa Code section 282.4. Additionally, under Iowa Code section 279.9 a board “shall prohibit . . . the use or possession of . . . any controlled substance . . . by any student of the schools and the board may suspend or expel a student for a violation of this rule under this section.” Iowa Code § 279.9. Thus, school districts have broad discretion to punish students who break the rules as long as the district follows appropriate due process requirements. *In re Suspension of A.W.*, 27 D.o.E. App. Dec. 587 (2015).

The Appellants argue there was not substantial evidence to support a finding that M.K. violated board policies. Specifically, they argue there was no evidence this violation occurred

on school grounds. However, Board Policy 503.1 provides that it is also a violation to possess a controlled substance “while away from school grounds if misconduct will directly affect the good order, efficiency, management and welfare of the school.” Under the circumstances here three students came forward and identified M.K. as an individual who sells Adderall. These students all attend Valley. Thus, it is a reasonable interpretation of the rule that this type of behavior directly affected the good order and welfare of the school. Additionally, there was no evidence presented that the transactions did not occur on school grounds. One could infer from the text messages that were sent on a Tuesday night, a school night, from M.K. to Student B that M.K. planned to provide the Adderall the next day at school. Additionally, several of the witness statements indicated that some of the drug transactions occurred at school or afterschool, although M.K. was not specifically indicated in those transactions. “An inference of knowledge and intent can be drawn from the circumstances.” *In re Amy Cline*, 2 D.P.I. App. Dec. 16, 19 (1979).

The WDCSD Board found by a preponderance of the evidence that M.K. violated the board’s policies. “A ‘preponderance of the evidence’ exists when there is enough evidence to ‘tip the scales of justice one way or the other’ or enough evidence is presented to outweigh the evidence on the other side.” *In re Shinn*, 14 D.o.E. App. Dec. 185 (1996). Specifically, the WDCSD Board noted in its findings that it did not find M.K.’s testimony at the hearing to be credible given the other evidence from other students and the text messages from M.K.’s phone. We will not substitute our judgment regarding witness credibility for that of the local board. It is the factfinder’s duty to weigh credibility. *See Iowa Supreme Court Attorney Disciplinary Board v. Weaver*, 750 N.W.2d 71 (Iowa 2008). “It is entirely reasonable to give credibility to the students who admitted their own guilt and implicated the Perrys... .” *In re Perry*, 22 D.o.E. App. Dec. 175, 181 (2003). Even if Student B was not forthcoming in her first statement to administration, the text messages given to administration provided support to the truth of her amended statement. Based on the evidence presented at the hearing we find the Board’s determination that M.K. violated board policies was reasonable.

We now review the imposition of discipline for reasonableness. The State Board has found that imposing an expulsion for possession and/or distribution of drugs is reasonable and not contrary to the best interest of education. *See In re Colton L.*, 24 D.o.E. App. Dec. 177 (2007); *see also In re Hodges*, 22 D.o.E. App. Dec. 279 (2004). In fact, Iowa Code section 279.9 provides that it is a permissible punishment. *See Iowa Code § 279.9*. Thus, we also find that the sanction imposed on M.K. in this case was reasonable under the circumstances and not contrary to the best interest of education. Although the Appellants also argue that M.K. was denied due process, we find no evidence that M.K. was denied due process.

The record conclusively establishes that the WDCSD Board’s decision was within the zone of reasonableness. Thus, in viewing the evidence in the light most favorable to the

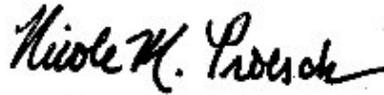
Appellants the pleadings and exhibits offered in this case show that there is no genuine issue as to any material fact and that the Appellees are entitled to judgment as a matter of law.

DECISION

For the forgoing reasons, the Appellee's Motion to Dismiss is GRANTED, the Appellant's Motion for Summary Judgment is DENIED, and the Appellee's Motion for Summary Judgment is GRANTED in favor of the West Des Moines Community School District Board. All other motions currently pending are moot and are therefore DENIED.

9/4/2015

Date



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

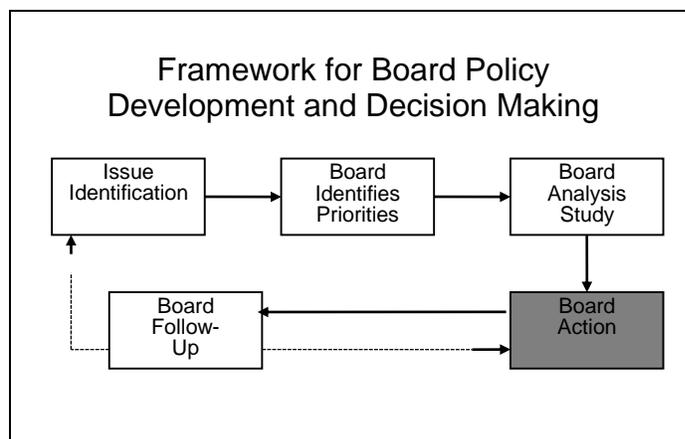
Date

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

Iowa State Board of Education

Executive Summary

January 21, 2016



Agenda Item: *In re Open Enrollment of B.M. & J.M. (Lisbon Community School District)*

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

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

Presenter: Legal Counsel

Attachments: 1

Recommendation: It is recommended that the State Board consider and issue the attached order.

Background: Attached is an order directing the parties to file responses detailing why this appeal is not moot.

Following the Board’s December meeting where it voted to grant B.M.’s request for open enrollment based on a serious health condition, but deny J.M.’s open enrollment appeal, the Board received information that both children have moved and are now enrolled in the preferred school district.

Both parties should be afforded an opportunity to explain why this appeal is not moot and why the Board should issue a final decision on this appeal. If the parties fail to respond to this order, the appeal will be dismissed.

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

<i>In re Open Enrollment of B.M. & J.M.</i>)	
)	
T.M. and K.M.,)	
Appellant,	)	ORDER
)	
v.)	
)	
Lisbon Community School District,	)	Admin. Doc. No. 5014
)	
Appellee.)	

This matter came before the Iowa State Board of Education at its regularly scheduled meeting on December 14, 2015. The Board reviewed the proposed decision made by Administrative Law Judge Nicole Proesch. That decision is attached hereto.

Subsequently it has come to the Board's attention that T.M. and K.M. have moved out of the Lisbon Community School District and are now enrolled in the Mount Vernon Community School District.

ORDER

Within fifteen (15) days of the issuance of this Order, the parties shall submit to the Board in writing reasons why this appeal should not be dismissed as moot. If both parties fail to respond to this Order, this appeal shall be dismissed as moot.

Date

Charles C. Edwards Jr., Board President

State Board of Education

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

<i>In re Open Enrollment of B.M. & J.M.</i>)	
)	
T.M. and K.M.,)	
	)	PROPOSED DECISION
Appellant,)	
)	
v.)	
)	
Lisbon Community School District,	)	Admin. Doc. No. 5014
)	
Appellee.)	

STATEMENT OF THE CASE

The Appellants, T.M. and K.M., seek reversal of a May 14, 2015, decision by the Lisbon Community School District (“LCSD” or “District”) Board of Directors (“LCSD Board” or “Board”) denying a late filed open enrollment request on behalf of B.M. and J.M., to open enroll from LCSD to Mount Vernon Community School District (“MVCSD”). The affidavit of appeal filed by the Appellants on June 16, 2015, attached supporting documents, and the District’s supporting documents are included in the record. Authority and jurisdiction for the appeal are found in Iowa Code § 290.1 (2015). 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 August 14, 2015, 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 children and represented by attorney Guy P. Booth. Superintendent Patrick Hocking (“Superintendent Hocking”) appeared on behalf of the District. Also present was Ian Dye, the secondary principal, Eric Ries, who is the K-12 Dean of Students, and Roger Teeling, the elementary principal.

The Appellants testified in support of the appeal. Appellant’s exhibits #1-4 were admitted into evidence without objection. Superintendent Hocking testified for the District and no exhibits were offered by the District.

FINDINGS OF FACT

T.M. and K.M. reside in the Lisbon Community School District with their children B.M. and J.M., and have for the last fourteen years. B.M. was in the 9th grade during the 2014-2015

school year and attended Lisbon High School (“LHS”). B.M. is entering his 10th grade year for the 2015-2016 school year. J.M. was in the 6th grade during the 2014-2015 school year and is entering the 7th grade for the 2015-2016 school year.

On April 16, 2015, the school nurse, Julie Light, contacted T.M. and K.M. and notified them that B.M. had told her he was contemplating suicide. She advised them that the school would be calling an ambulance pursuant to school procedures to take B.M. to the hospital and they needed to come to the school. Up to this point in the school year Mrs. Light had been in contact with K.M. via email about B.M. and discussed his issues with anxiety. However, T.M. and K.M. had no idea B.M. was contemplating suicide or was having issues with depression. T.M. and K.M. immediately went to the school and met with Mrs. Light and the high school counselor, Mrs. Bischof. They were told that B.M. had contemplated taking pills that morning and that he was depressed and anxious. B.M. was taken to the hospital and was committed to a ward designed to deal with patients with B.M.’s medical needs. He was under the care of Dr. Jeffery D. Wilharm and therapist Tina Reiter. B.M. was there for five nights and was then released to T.M. and K.M. While in the hospital K.M. tried to make arrangements for B.M. to get his homework assignments but there was some confusion over what his assignments were.¹

After B.M. was released from the hospital and returned to school neither T.M. nor K.M. contacted the school regarding B.M.’s health needs. They testified they did not do so because they were overwhelmed and they thought the school would contact them to see how B.M. was doing. K.M. and Mrs. Light kept in contact via email regarding B.M.’s anxiety level from the time he returned until school ended. However, no one else from the school attempted to contact T.M. or K.M. about B.M.’s issues and how to deal with him for the rest of this school year. K.M. did contact Mr. Ries when he first returned to school regarding the confusion with B.M.’s homework and Mr. Ries helped B.M. get the homework back on track for the remainder of the school year.

After returning home from his hospitalization, B.M. continued to have issues with anxiety and he had to leave the classroom on several occasions due to anxiety. On one occasion, Mrs. Anderson had posted a sign about suicide in the bathroom and B.M. thought the poster was meant for him because he had been discussing his issues with her. On another occasion, Mr. Hofmeister, who is B.M.’s Algebra teacher, stated he could not hold B.M.’s hand through everything and this created more anxiety for B.M. There was no evidence that the District was made aware of these incidents. The school set up several interventions for B.M., which included allowing B.M. to go to the guidance office when he got anxious, rearranging his schedule to accommodate his needs, and providing for class attendance interventions for B.M. However, many of these accommodations were arranged directly with B.M. and K.M. felt like she was left out of the conversations.

B.M. ended the year failing some of his classes even though he had previously been an honor roll student. Over the summer the family did not have any contacts with LCSD. T.M. testified that he is concerned that if B.M. returns to LCSD he will be overwhelmed by his classes

¹ LCSD has a one to one laptop program and the assignments are given over Google Docs. Although, B.M. had his laptop in the hospital he was not sure about his assignments and this caused him to fall further behind.

and he feels that B.M. needs a fresh start at a larger school that is equipped with dealing with suicide.² T.M. believes that MVCSD really works with students in these situations. K.M. feels that MVCSD staff and coaches have made extra efforts to check on B.M. and LCSD has not. B.M. is currently seeing Dr. Wilharm and Mrs. Reiter every few weeks and is taking four medications for his condition.³

There was very little testimony regarding J.M. J.M. also suffers from anxiety and has been seeing a physician and therapist. J.M. was diagnosed three years ago shortly after the family's home was burglarized. J.M. seemed to be doing better until the issues with B.M. arose and now she is getting regular treatment. The District has not been made aware of J.M.'s diagnosis or been asked for any support. However, T.M. and K.M. feel like MVCSD would be a better fit for both of their children. T.M. and K.M. believe J.M. would benefit from the many clubs and organizations that MVCSD offers. B.M. participates in soccer and cross country for MVCSD and the coach has been in contact with K.M. about B.M.'s anxiety. K.M. feels MVCSD is constantly checking on them to see how things are going. The family also attends St. John Baptist Church in Mt. Vernon and the children already have many friends in the district. They would also like to keep both children in the same district for scheduling and transportation reasons.

On or about May 7, 2015, K.M. filed an application for Open Enrollment for B.M. and J.M. from LCSD to MVCSD and noted on the application that B.M. was in the hospital for anxiety and depression and with help of counseling he feels more comfortable with fresh start in a new school. It further stated that B.M. participates in soccer and cross country for MVCSD, they attend church in Mt. Vernon, and they already feel like they are more part of Mt. Vernon than Lisbon. Superintendent Hocking reviewed the application and it was placed on the LCSD Board agenda for May 14, 2015. At the board meeting T.M. and K.M. spoke and read a letter from their children's therapist to the Board.⁴ Superintendent Hocking recommended that the Board deny the application because it was made after the March 1st deadline and he believed it did not meet the good cause exception for a serious medical condition because the District had not been provided with information on the specific health needs of B.M. and it had not been given an opportunity to respond to B.M.'s health needs. Additionally, he did not feel they were given enough information from the family to make that determination. The LCSD Board voted 3-1 to deny the application.

On June 9, 2015, the Appellants mailed a timely notice of appeal.

CONCLUSIONS OF LAW

The Iowa Legislature has given the State Board wide latitude in reviewing appeals under Iowa Code section 290.1 to make decisions that are "just and equitable." Iowa Code § 290.3. The standard of review in these cases requires that the State Board affirm the decision of

² MVCSD has a program called "You Matter, We Care" which deals with students who are at risk of suicide. Exhibits 2-4.

³ Dr. Wilharm wrote a letter regarding these proceedings dated June 2, 2015; however this letter was never provided to the local board so we give it no weight in this appeal.

⁴ T.M. and K.M. had medical records with them at the board meeting but the Board did not ask for those documents.

the local board unless the local board decision is “unreasonable and contrary to the best interest of education.” *In re Jesse Bachman*, 13 D.o.E. App. Dec. 363 (1996).

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 *either* board denying a late-filed open enrollment application that is based on an allegation of pervasive harassment or a 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. *Id.* § 282.18(5) (emphasis added). The State Board “shall exercise broad discretion to achieve just and equitable results that are in the best interest of the affected child or children.” *Id.*

In this case T.M. and K.M. assert the both B.M. and J.M. have serious health conditions that cannot be adequately addressed by the District. It is well settled that an appellant seeking to overturn a local board’s decision involving a claim of a serious medical condition must meet all of the following criteria for the State Board to reverse the decision and grant such a request:

1. The serious health condition of the child is one that has been diagnosed as such by a licensed physician, osteopathic physician, doctor of chiropractic, licensed physician assistant, or advanced registered nurse practitioner, and this diagnosis has been provided to the school district.
2. The child’s serious health condition is not of a short-term or temporary nature.
3. The district has been provided with the specifics of the child’s health needs caused by the serious health condition. From this, the district knows or should know what specific steps its staff can take to meet the health needs of the child.
4. School officials, upon notification of the serious health condition and the steps it could take to meet the child’s needs, must have failed to implement the steps or, despite the district’s best efforts, its implementation of the steps was unsuccessful.
5. A reasonable person could not have known before March 1 that the district could not or would not adequately address the child’s health needs.
6. It can be reasonably anticipated that a change in the child’s school district will improve the situation.

In re Anna C., 24 D.o.E. App. Dec. 5 (2006); *see also In re Kathryn K.*, 26 D.o.E. App. Dec. 197, 199-200 (2012) and *In re Samantha H.*, 26 D.o.E. App. Dec. 373 (2013).

In this case, there is no question that B.M. has been diagnosed with both anxiety and depression and that the District was aware of the diagnosis. The State Board has found that depression is a serious medical condition. *In re Samantha H.*, 26 D.o.E. App. Dec. at 376. The record does not reflect that B.M.'s medical condition is temporary in any way. Thus, criteria one and two are met with regard to B.M.

The question in this case is whether or not the District was provided with specifics of B.M.'s health needs caused by his condition thus, putting the District on notice of what specific steps the district's staff could do to meet those needs. Here the evidence shows that the Appellants made little if any attempts to communicate with the District about B.M.'s health needs once he returned to school. While we sympathize with the Appellants who felt overwhelmed in this situation, we cannot overlook the fact that they made no attempts to communicate with the District about B.M. or any additional health needs that he had. The record shows the District accommodated B.M. upon his return to school, and the supports provided were objectively reasonable in the circumstances. If B.M. required more than the accommodations he was receiving, the Appellants should have communicated those needs to the District. That is not to say that the District could not have made more attempts to communicate with the Appellants upon B.M.'s return. However, under these circumstances the District cannot be expected to know what specific steps its staff can take to meet the health needs of B.M. Nor, has the District had a chance to implement those needs. Thus, the Appellants failed to carry their burden of proving the existence of the third and fourth criteria.

The appeal regarding J.M. is clearer from a legal standpoint. We do not doubt that J.M. is struggling with anxiety, although there was little evidence presented regarding her diagnosis. Nonetheless, the record is clear that the District was not provided with J.M.'s diagnosis or provided with any specific health needs caused by J.M.'s condition. Thus, criteria one and three are not met with regard to J.M.

The bigger issue for the Appellants appears to be sending both B.M. and J.M. to the same District for convenience. Understandably, if B.M. was allowed to open enroll to another district because of his health condition the Appellants would want J.M. to move also. The family also feels tied to MVCSD because they attend church in that community and B.M. participates in athletics there as well. Clearly, the family feels more support from the MVCSD. However, our open enrollment law does not contemplate an exception for siblings, comfort, or for convenience and even if we had allowed B.M. to open enroll out of the District we could not also allow J.M. to open enroll out of the District under the facts here.⁵

The State Board does not question that B.M. is suffering from anxiety and depression. Clearly, this is a serious condition for B.M. and we do not discount the seriousness of his condition. This case is not about limiting parental choice. The State Board understands that T.M. and K.M. want what is best for B.M. and J.M., who have serious medical conditions.

⁵ The Appellants have a third child for whom they have not requested open enrollment.

We do not fault them for their decision to enroll their children at MVCSD. Nor does the outcome of this decision limit their ability to transfer to another district or remain at MVCSD.

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 LCSD Board correctly applied Iowa Code sections 282.18(5) when it denied the late open enrollment application filed by the Appellants. Therefore, we must uphold the local board decision.

DECISION

For the foregoing reasons, the decision of LCSD Board made on May 12, 2015, to deny the open enrollment application of B.M. and J.M. to open enroll from LCSD to MVCSD is hereby AFFIRMED. There are no costs of this appeal to be assigned.

Date

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

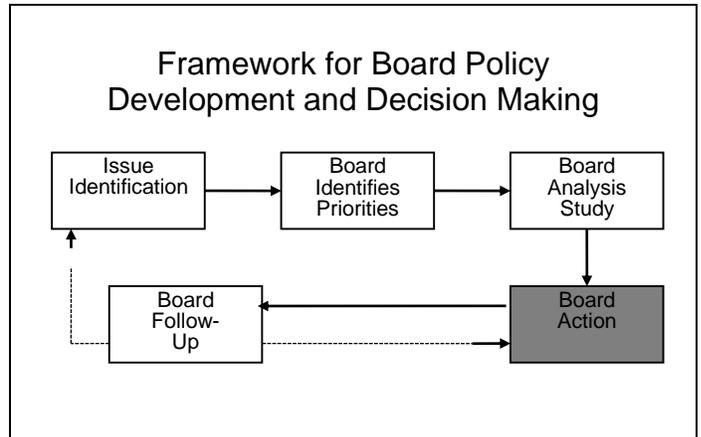
Date

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

Iowa State Board of Education

Executive Summary

January 21, 2016



Agenda Item: *In re Open Enrollment of M.R. (Clear Creek-Amana Community School District)*

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

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

Presenter: Nicole Proesch, Administrative Law Judge

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 Clear Creek-Amana Community School District denying the open enrollment application filed on behalf of M.R.

Background: At the time of this appeal, M.R. resided in the Clear Creek-Amana Community School District (CCACSD). M.R. currently attends the Solon Community School District by paying tuition. During the 2014-2015 school year, M.R. attended Clear Creek-Amana High School. Beginning in the fall of 2014, M.R. was having issues with several upper-class girls who were calling her vulgar names on a daily basis and spreading rumors about M.R. M.R. was very upset by the harassment and would cry on a daily basis and lock herself in her room. M.R.’s mother reported the behavior to a school counselor who then approached M.R. about it, but M.R. said everything was fine. In the winter of 2015, M.R. was at a basketball game and was told that several girls were waiting outside the gym for her. She was told one wanted to hit her. M.R. waited to leave the gym and when she exited, no one was there waiting for

her. M.R. did not report the incident to the school. During the spring of 2015, the girls continued to call her names and make fun of her. M.R. did not report this because she did not want the behavior to get worse.

M.R. filed an application for open enrollment July 22, 2015. The CCACSD board denied the application on August 19, 2015, on the basis that they were not made aware of the harassment and thus had no opportunity to fix it.

In reviewing an open enrollment decision involving a claim of repeated acts of harassment under Iowa Code § 282.18(5) the State Board has set out four criteria 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 harassing behavior was known well before the March 1 deadline and it did not escalate or get worse after March 1. Thus, under the first criterion M.R.'s appeal fails. Even if the behavior met the definition of harassment under the second criterion, the appeal would also fail under the third criterion because M.R. did not report the behavior to school officials.

Thus, it is recommended that the State Board affirm the proposed decision of the CCACSD Board.

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

<i>In re Open Enrollment of M.R.</i>)	
)	
K.R.,)	
	)	PROPOSED DECISION
Appellant,)	
)	
v.)	
)	
Clear Creek-Amana Community	)	Admin. Doc. No. 5021
School District,)	
)	
Appellee.)	

STATEMENT OF THE CASE

The Appellant, K.R., seeks reversal of an August 19, 2015, decision by the Clear Creek-Amana Community School District (“CCACSD”) Board (“CCACSD Board”) denying a late filed open enrollment request on behalf of her minor daughter, M.R. The affidavit of appeal filed by K.R. on September 3, 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 §§ 282.18(5) and 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.

A telephonic evidentiary hearing was held in this matter on October 28, 2015, before designated administrative law judge, Nicole M. Proesch, J.D., pursuant to agency rules found at 281 Iowa Administrative Code chapter 6. The Appellant and her daughter M.R. were present and represented by their attorney John Wagner. The CCACSD was represented by Attorney Kristy Latta. Superintendent Tim Kuehl (“Superintendent Kuehl”) appeared on behalf of the CCACSD.

K.R. and M.R. both testified in support of the appeal. Appellant’s exhibits A-B were objected to and not admitted into evidence on the basis that they were not submitted to the CCACSD Board at the time of the board meeting. Superintendent Kuehl testified for CCACSD and the school district’s exhibits 1-9 were admitted into evidence without objection.

FINDINGS OF FACT

K.R. and her daughter M.R., and other two children reside in the CCACSD. M.R. is fifteen years old, in the 10th grade, and is currently attending school in the Solon Community School District (“SCSD”) for the 2015-2016 school year by paying tuition to SCSD. March 1 is the statutory deadline for filing for open enrollment applications for the following school year. On

July 22, 2015, after the March 1 deadline, K.R. filed an application with CCACSD requesting to open enroll M.R. to SCSD for the 2015-2016 school year on the basis that M.R. has suffered from pervasive harassment at CCACSD. On August 19, 2015, the CCACSD Board denied the application. The sole issue in this appeal is whether the CCACSD Board erred by denying the late filed open enrollment application. The record establishes the following facts and circumstances.

M.R. attended the Clear Creek-Amana High School (“CHS”) as a freshman during the 2014-2015 school year. During that year M.R. began having issues with three upper-class girls in the fall of 2014. The behavior began after M.R. beat out an upper-class girl for a varsity position on the CCACSD Softball Team. The girls were calling M.R. vulgar names on a daily basis in person and on Instagram and spreading rumors that M.R. was promiscuous. As a result of this behavior M.R. came home crying on a daily basis and would lock herself in her room and not talk to anyone. Up until this point this behavior was uncharacteristic of M.R., who was a good student and generally a happy individual. M.R. also had a difficult time completing her school work. K.R. had to provide her extra support to ensure that the work was completed and turned in.¹ M.R. also had a hard time sleeping. However, M.R. continued to have good attendance, except for a short illness and attended extracurricular activities.

In the fall of 2014 K.R. contacted the school counselor, Mr. Hovey, about the issues that M.R. was having with these students.² Admittedly, K.R. did not tell M.R. that she had contacted Mr. Hovey because M.R. had asked her not to make things worse. Mr. Hovey tried to approach M.R. to set up a time to talk about the issues K.R. brought up but M.R. told him everything was okay.³ M.R. testified that she did not feel comfortable talking to Mr. Hovey, her teachers, or other administrators about the incidents because she afraid this would make things worse. Neither K.R. nor M.R. reported any other issues to Mr. Hovey or anyone else at CHS after the fall of 2014. In December of 2014 M.R. began coming home for lunch each day instead of eating at school.

In January or February of 2015 M.R. was in the school gym attending a basketball game with friends when another student told her there was a group of girls who wanted to talk to her waiting outside the gym for her. M.R. was also told that one of the girls wanted to hit her; however, she was not directly threatened by anyone. Among the girls waiting for her was one of the three girls who had been calling her names. M.R. called K.R. crying and K.R. advised her to let them hit her first and then she should protect herself. M.R. waited in the gym and later left with a group of friends without incident. M.R. did not see anyone waiting for her when she left. Neither M.R. nor K.R. reported this incident to the district.

In the spring of 2015, after school M.R. was in the school parking lot talking to a group of friends in a car when according to M.R. she accidentally had her head slammed in a car door by

¹ The record indicates M.R.’s grades improved from the first semester of 2014-2015 to the second semester.

² At this point K.R. was not aware of the names of the students who were involved in this behavior.

³ Superintendent Kuehl testified that M.R. told Mr. Hovey everything was okay when he approached her and this is consistent with M.R.’s testimony she did not want to tell anyone because she was afraid it would get worse. However, M.R. testified she told him that she didn’t want to talk at the moment he approached her but she would have talked to him later. M.R. made no attempts to talk to Mr. Hovey at a later time.

another student. When this occurred the three girls who had been calling her names witnessed it and made fun of M.R. for crying, calling her a baby. K.R. was going to report this incident to the school; however, M.R. asked K.R. not to because she did not want to make things worse. Consequently, it was never reported. M.R. continued to be called names on a daily basis until the end of the school year.

By the summer of 2015 M.R. was happy to be out of school. As the new school year approached M.R. did not want to go back to school. On July 22, 2015, K.R. filed an application to open enroll M.R. from CCACSD to SCSD on the basis of pervasive harassment. In August of 2015, M.R. and K.R. met with Principal Moody and he wanted to know the specifics of M.R.'s situation. However, they testified he told them nothing they said would change his mind regarding the open enrollment application.

On August 13, 2015, M.R. and K.R. met with Superintendent Kuehl. M.R. described to Superintendent Kuehl the name-calling, snapchat messages, incident at the gym, and incident in the parking lot. This was the first time M.R. told anyone in the district about these incidents and named the girls involved. M.R. felt like this meeting went better than her meeting with Mr. Moody and she was going to be able to change schools. Superintendent Kuehl found the behavior unacceptable and advised he wanted to address it.

A hearing was held on August 19, 2015, before the CCACSD Board regarding the open enrollment application. Superintendent Kuehl reviewed the application and recommended the CCACSD Board deny the application on the basis that there was no good cause to grant it. In particular the district was not made aware of the name-calling and other incidents until after the application for open enrollment was filed and had not had an opportunity to address the behaviors complained of. The CCACSD Board voted to deny K.R. and M.R.'s open enrollment application.

CONCLUSIONS OF LAW

Under Iowa Code section 282.18, the statutory filing deadline for an application for open enrollment for the upcoming school year is March 1. 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 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. *Id.* § 282.18(5). The State Board "shall exercise broad discretion to achieve just and equitable results that are in the best interest of the affected child or children." *Id.* 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).

Under the first criterion, the harassment must have happened or the extent of the harassment not known until after March 1. In the instant case, the objective evidence shows that the alleged harassment began in the fall of 2014. Additionally, the incident in the school gym which caused a fear of harm to M.R.'s person occurred in January or February of 2015, which is well before the March 1 deadline. While, M.R. testified that there was also an incident in the spring of 2015 which sparked additional insults and the name-calling continued there is no evidence that the Appellants did not know the extent of the harassment until after March 1, nor is there any evidence that the alleged harassment got worse after the deadline. Under these facts the Appellants have failed to meet their burden on the first criterion.

Since, all four criteria must be met in order for the Appellants to prevail we need not examine the other criteria. However, because school districts and parents alike look to these decisions for guidance we will continue to apply the remaining criteria to the facts.

Under the second criterion, the requirement of an *objectively* hostile school environment means that the conduct complained of would have negatively affected a reasonable student in M.R.'s position. Therefore, the Board must determine if the behavior of these girls created an objectively hostile school environment that placed M.R. in reasonable fear of harm to her person

or property, or had a substantially detrimental effect on her physical or mental health, or substantially interfered with her academic performance, or substantially interfered with her ability to participate in or benefit from the services, activities, or privileges provided by the school.

The Board has granted relief under Iowa Code section 282.18(5) in only three other cases. In each case, the facts established that the experienced harassment involved serious physical assaults and destruction of property of those students.⁴ In this case, it is inappropriate to engage in vulgar name-calling and spreading rumors of promiscuity. No student should be subjected to these cruel adolescent behaviors. Generally, name-calling alone would not rise to the level of pervasive harassment required here. What is more troubling is the incident that occurred in the winter of 2015 at the basketball game and the threat of a physical assault which caused M.R. to have a reasonable fear for her personal safety. The question is whether or not the behavior is pervasive enough to meet the legal definition. While there is no hard and fast rule on what it means to be pervasive, when taken together the daily name-calling, rumors, and incident in the gym clearly had an effect on M.R.'s mental health and interfered with her ability to benefit from services, activities, or privileges provided by the school. However, even if we assume for the sake of this case that it meets the definition of pervasive harassment under the first and third criteria, discussed below, M.R.'s appeal fails.

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 the objective evidence shows that the Appellants made one attempt in the fall of 2014 to address the behaviors with the school counselor. However, when the counselor approached M.R. about the issues M.R. told him everything was okay. After that, neither K.R. nor M.R. made any other attempts to tell the district about the harassment until after the application for open enrollment had been filed. While we understand that M.R. was concerned if she told anyone about the situation that the behavior would get worse, we cannot overlook the fact that the district was not made aware of the conduct that was occurring and thus was not in a position to resolve the situation it knew nothing about. Without this opportunity, it cannot be said that the harassment is likely to continue despite the efforts of school officials under the third criterion. Since the appeal fails on the first and third criteria we need not analyze the fourth criterion.

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

⁴ 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 property at school.

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

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

DECISION

For the foregoing reasons, the decision of the CCACSD Board made on August 19, 2015 denying the open enrollment application of K.R. on behalf of M.R. 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