**IOWA STATE BOARD**
**OF EDUCATION**
**(Cite as 21 D.o.E. App. Dec. 35)**

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| *In re Jeremy Brickhouse* | : | |
| Polly Brickhouse, Appellant, | : | |
| v. | : | DECISION |
| Hubbard-Radcliffe Community School District, Appellee. | : | [Admin. Doc. #4468] |

The above-captioned matter was heard on June 13, 2002, before Susan E. Anderson, J.D., designated administrative law judge, presiding. Appellant, Polly Brickhouse, and her mother, JoeAnn Ennenga, were present and were unrepresented by counsel. Appellee, Hubbard-Radcliffe Community School District [hereinafter, "the District"], was present in the persons of Dorance Hefte, Superintendent; and Michael Allyn Monaghan, High School Principal. The District was also unrepresented by counsel.

An evidentiary hearing was held pursuant to departmental rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for these appeals are found at Iowa Code sections 282.18 and 290.1(2001). The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter of the appeal before them.

Appellant seeks reversal of decisions of the Board of Directors [hereinafter, "the Board"] of the District made on March 18 and April 15, 2002, which denied her open enrollment applications for her son, Jeremy Brickhouse.

## I.
## FINDINGS OF FACT

Jeremy Brickhouse ["Jeremy"] lives with his mother, Polly Brickhouse, in the Hubbard-Radcliffe School District. Ms. Brickhouse is a single parent. They have lived in Hubbard since February of 1997, when they moved from Ames during Jeremy's fourth-grade year. Jeremy attended fifth through eighth grades in Hubbard-Radcliffe. In the fall of 2001, Jeremy began high school as a freshman in the Hubbard-Radcliffe High School, which houses grades nine through twelve. Jeremy's freshman class consisted of 38 students (18 males and 20 females). The high school had an enrollment of about 158 students during the 2001-2002 school year (87 males and 71 females). The District had a

total enrollment of about 484 students during the 2001-2002 school year. During the 2000-2001 school year, 50 resident students were open enrolled out of the District. In 2001-2002, 42 students were open enrolled out of the District.

At the time of the appeal hearing, Jeremy had just turned sixteen years old. Jeremy's mother stated in her testimony that she didn't bring Jeremy to the board meetings or appeal hearing because, "these are adult issues. I don't think it's my son's responsibility to fix it. I think it's my job to fix it ... the adults in this community have let our children down, and we need to find out where. It's up to the adults to fix the problems." She stated that she thinks the boys involved in the locker room incidents, which are the subject of these appeals, "are good kids. My question is not did they do it, but why did they do it? Where did we fail as grownups that we're not fostering them in a positive manner, so that they don't feel the need to degrade another human being to fit in. That's why my son is not here, because this is an issue that we need to embrace. They are our future... these aren't bad children, and so I have to think the grownups have let them down. Because when I told Mr. Monaghan I wasn't going to lose my son to that (Hubbard-Radcliffe] school, I don't want to see any other kid get lost, too." (P. Brickhouse testimony.)

During the first few weeks of his freshman year (2001-2002), Jeremy experienced name calling in the hallways from other boys in the school. These names included "faggot" and "mama's boy." Ms. Brickhouse had always told Jeremy that he could not respond to name calling in any physical way and to just ignore it. Jeremy is 5'5" tall and lifted weights in his basement during the first few weeks of school. In October 2001, Jeremy told his mother that he had been threatened with "golden showers" (being urinated on) in physical education class. Ms. Brickhouse called the P.E. teacher, who said he would take care of it. Ms. Brickhouse noticed a two-inch cut on Jeremy's arm and one on his back, but Jeremy told her that he had been body-checked into the bleachers accidentally during a volleyball game in physical education class.

On or about Monday, October 1, 2001, Jeremy was attending his co-ed physical education class with about 10 other male students, some of whom were fellow freshman classmates; the rest were juniors and seniors. The physical education class meets every day. At the end of the class on October 1, the boys were in the locker room but the physical education teacher was not present. One of the junior boys in the class grabbed Jeremy and restrained him on a bench in the locker room. One of the senior boys was asked if he was done "taking a dump" and the senior's response was "I'm done." While the junior boy continued to restrain Jeremy, the senior boy came out of the restroom stall and, with his bare posterior and scrotum exposed and visible to Jeremy, began backing up toward Jeremy. Jeremy was able to free his feet from the bench to kick the senior boy's posterior away as he backed up toward Jeremy. Jeremy believed that the senior boy had feces on his posterior, after having a bowel movement and then purposely not wiping the feces away. (J. Brickhouse Affidavit, Exh. 9.)

Jeremy had been told as a freshman that part of the initiation of freshmen at Hubbard-Radcliffe High School included having "hair bares" performed by upper classmen. The upper classmen explained to him and other freshmen that a "hair bare" involved an upper classman having a bowel movement, not cleaning himself, and then spreading his posterior and placing himself on the freshman's face. (J. Brickhouse Affidavit.) At the time of the "hair bare" attempt and the trash can incident described below, Jeremy was 15 years old. He turned 16 years old on May 26, 2002, right before the appeal hearing.

After Jeremy escaped the "hair bare" attempt on October 1, 2001, an upper classman threatened that if he told anyone, "things would get worse." People also asked him in the hallway how he liked having feces on his face. Jeremy did not tell any adults about the incident that day. The next day, on October 2, 2001, Jeremy once again had physical education class. In the locker room after the class, the upper classmen told Jeremy that there were two ways out of the locker room. He had a choice between another "hair bare" and going into the locker room's trash can. Jeremy did not want to do either of those choices, but he chose the trash can.

Once again, the upper classmen restrained him; one of them held the trash can sideways while another grabbed his legs and thrust his head into the trash can. They told Jeremy that he had to repeat the words, "I'm lost" five times before they would take his head out of the trash can. Jeremy did as he was told. The upper classmen took him of the trash can, but did not let him take a shower or clean his face in the locker room before he had to go to his next class. Jeremy was again threatened that if he told anyone, "things would get worse." Jeremy went to the drinking fountain and wiped off his face the best he could, then he returned to regular classes. Jeremy did not tell anyone about either incident.

Instead, Jeremy kept going to school. On October 10, 2001, the physical education teacher was present in the locker room after class. When the other boys saw the teacher, they said, "No hazing, no hazing." Jeremy finally left school on October 10, 2001, and told his mother that he just couldn't stay there any longer. Ms. Brickhouse tried to talk to Jeremy, who was very upset, at which point he told her that the students had been calling him names and that he "just couldn't go back to school there." Jeremy then developed a severe case of hives, which took six weeks to heal. Jeremy increased his weight lifting at home and told his mom he'd "be safer if he got big enough." He still did not tell her about the locker room incidents.

On October 15, 2001, Ms. Brickhouse went to the school and told them that she was withdrawing him from school to home school him, which she did through the aide of a volunteer tutor until March 2002. Ms. Brickhouse, who had been attending college to finish her master's degree, left college to tend to Jeremy's education at home. In February 2002, Jeremy told his mother that he wanted to finish his high school education at another

school. Jeremy refused to go back to Hubbard-Radcliffe. Ms. Brickhouse talked to the officials at the Eldora-New Providence District and asked if they had room for Jeremy starting at the beginning of their fourth quarter in March 2002. The Eldora-New Providence District agreed to let Jeremy attend school there at the beginning of the fourth quarter.

Ms. Brickhouse filed an open enrollment application for Jeremy to attend Eldora-New Providence for the remainder of the 2001-2002 school year. The open enrollment application was filed on March 14, 2002. Ms. Brickhouse's explanation for the late filing of the open enrollment application for the 2001-2002 school year, was

> Good cause unrelated to either item ("change in the pupil's residence or change in the pupil's resident district"). Student has been homeschooled since parent removed him from Hubbard-Radcliffe. I would like this effective immediately so he can be in final quarter at Eldora-New Providence.

(Exh. 6, parenthetical information added.)

On March 18, 2002, the Hubbard-Radcliffe Community School District's Board voted to deny the open enrollment application because it was filed after the January 1 deadline without good cause. Ms. Brickhouse and Mrs. Ennenga, Jeremy's grandmother, attended the March 18th Board meeting. They told the Board that Jeremy had been called names at school, such as "faggot," but that he had always been told that physical violence was never an option. Jeremy had still not told Ms. Brickhouse about the locker room incidents that had occurred in October 2001. Ms. Brickhouse told the Board that she had first homeschooled him, then registered him at Eldora-New Providence at Jeremy's request. The minutes of the meeting state: "After a lengthy discussion, a motion by Morris, seconded by Benson to deny the open enrollment out, request was not filed on time, for Jeremy Brickhouse for school year 2001-2002 with a roll call. ... Motion carried unanimously." (Exh. 7.)

Ms. Brickhouse went home and told Jeremy that the open enrollment application had been denied and that she would try to find the money to pay tuition to Eldora-New Providence so that he could finish his education there. The next day, March 19, 2002, Ms. Brickhouse came home from work and Jeremy met her at the door. He stated that they needed to talk. Jeremy started the conversation by saying, "Mom, we need to talk. What were the two most embarrassing things that happened to you in high school?" After she answered, Jeremy stated he had not been telling her the whole truth about what had really happened at Hubbard-Radcliffe. She sat down with Jeremy and he told her that he had not been telling her all of the incidents that had happened to him at Hubbard-Radcliffe because he had been threatened, because he was embarrassed to tell her and because he was trying to protect her.

On that night, Jeremy finally told his mother, with a good deal of emotion, about the "hair bare" attempt and the trash can incident that had happened over five months earlier in October 2001. He told her that he couldn't believe that the Hubbard-Radcliffe Board would not let him open enroll out and he knew that she didn't have enough money to pay tuition to Eldora-New Providence. Ms. Brickhouse immediately called a member of the School Board that night and told him the details of what Jeremy had just told her. Jeremy started school at Eldora-New Providence the next day. On April 12, 2002, she filed an open enrollment application for the 2002-2003 school year, to allow Jeremy to finish his high school education tuition-free at Eldora-New Providence, where he was by then successfully attending classes. The second open enrollment application states: "It has been brought to my attention there are 'unusual circumstances' under good cause. Board is aware of unusual circumstances in my son's case." (Exh. 6A.)

Ms. Brickhouse called two teachers and some former students, who knew what "hair bares" were. Ms. Brickhouse and her mother both wrote letters to Board members explaining the reasons for the late-filed open enrollment application and discussing some of Jeremy's locker room experiences. (Exh. 2 and 3.)

On April 15, 2002, the Hubbard-Radcliffe Board met and considered Ms. Brickhouse's second open enrollment application for Jeremy to go to Eldora-New Providence, this time during the 2002-2003 school year. Ms. Brickhouse attended the meeting in open session, along with Jeremy's grandmother, JoeAnn Ennenga. They told the Board everything that Jeremy had told them in detail about the "hair bare" attempt and the trash can incident. Although Ms. Brickhouse didn't discuss the bowel movement component at the meeting, she testified that she had told Board members specifically about it prior to the meeting. Ms. Brickhouse told the Board that Jeremy had said that the "hair bare" initiation process was well known by the students at school. Jeremy was not allowed to attend the meeting because Ms. Brickhouse didn't want to put him in such a humiliating public situation. She stated, "The adults have failed the children in this District by allowing this situation to exist. It is up to the adults to fix it."

While Ms. Brickhouse was telling the Board about the details of the "hair bare" attempt on Jeremy, a Hubbard-Radcliffe teacher who was attending the Board meeting for another reason, said that he felt he needed to speak. He stated that the "hair bare" process had been going on in the District for some time and he was losing sleep over it. He also told the Board that the teachers in the District were familiar with what a "hair bare" is and knew the initiation purpose that it served for Hubbard-Radcliffe freshman.

Superintendent Hefte did not make a recommendation to the Board, but he told them that they could consider special circumstances. The Board members then voted 3 to 2 to deny Jeremy's open enrollment application. Some of the Board members expressed concern about the "hair bare" practice in the District. No one denied that it was going on.

Some Board members stated that they needed to try to stop it from continuing. The minutes state: "after a lengthy discussion," the Board voted 3 to 2 to deny Jeremy's application because it was not filed in a timely manner. (Exh. 8.)

The next day, on April 16, 2002, Ms. Brickhouse filed appeals of the Hubbard-Radcliffe's Board of Education's denials of her two open enrollment applications for Jeremy. She didn't want to make the issues public in the appeal process, because she didn't think it would be good for Jeremy or good for the Hubbard-Radcliffe District, which was trying to rebuild after an explosion in Hubbard. She felt forced to appeal in order to get a high school education for her son.

Ms. Brickhouse testified that she did not take Jeremy to a doctor or counselor because she cannot afford insurance or medical bills. She stated, however, that since Jeremy started school at Eldora-New Providence, he has been earning good grades and he is having a good experience there. He wants to finish his high school education at Eldora-New Providence.

Principal Monaghan testified that after the April 15th board meeting, he called all of the boys in Jeremy's physical education class into his office individually and asked them each to explain what happened. Each of the boys confirmed that Jeremy's story was, indeed, true for both the "hair bare" and the trash can incidents. Principal Monaghan identified the senior and junior boys involved in the "hair bare" incident and read the student harassment policy to them. He gave them detention time, a letter to their parents and one visit to the school counselor. Mr. Monaghan and Mr. Hefte stated that they didn't know about the bowel movement part of the "hair bare" until the appeal hearing. Mr. Monaghan testified that he had reported the incident to the deputy sheriff in late April or early May 2002, but that the sheriff's office never investigated.

Mr. Monaghan testified that there had been a confirmed "hair bare" incident during the 1999-2000 school year and that he had suspended the student involved in that incident for three days. He decided not to suspend the junior and senior boys involved in Jeremy's incident because the "hair bare" attempt was not successful (since Jeremy had managed to free his feet and kick the boy away as he backed up to Jeremy). Principal Monaghan never brought the previous "hair bare" incident to the Board's attention.

At the appeal hearing, the District did not dispute that the "hair bare" attempt and trash can incident took place on Jeremy on October 1 and October 2, 2001. Nor it did deny that another confirmed "hair bare" had been completed at the high school in the past couple of years. The only difference that Mr. Monaghan mentioned was that the previous "hair bare" attempt had not involved feces as far as he had known. In other words, the previous "hair bare" had just involved an upper classman placing his bare posterior and scrotum onto the student's face while being restrained in the locker room.

When Mr. Hefte became superintendent in the summer of 2000, he was aware that there was a parent in the District who had held community meetings about the environment at the high school and who presented Mr. Hefte with a list of items of concern. Mr. Hefte testified that the list did not include "hair bare" incidents, although it did include student behavior concerns. Mr. Hefte testified that there is a student behavior problem at the High School, but the District is working on it. He stated that he believes the District is "making progress but it won't be done overnight." He stated that the Board didn't want to approve Jeremy's open enrollment application and state in the minutes that it was due to student harassment, because it could set precedent for more late-filed open enrollment applications. The District publishes the open enrollment deadlines every fall and has consistently denied late-filed open enrollment applications. (Exh. 10.)

After Ms. Brickhouse filed the appeal to the State Board of Education, the Hubbard-Radcliffe Board of Education decided to institute a list of changes at the high school for the 2002-2003 school year. Superintendent Hefte testified that the changes include: having adult supervision in the locker room areas at all times when students are present; having adult supervision in the hallways before and after school; meeting with the student body regarding the District's student harassment policy; meeting with student leaders and student athletes about character education; having in-service training for teachers and staff about character education; and dividing the freshmen from the juniors and seniors for physical education classes. The Board plans to ask for volunteers to serve on a special Board committee to study student behavior in the District.

The District also surveyed its students with an anonymous form (identified only by class and gender) that asked about their student harassment experiences at Hubbard-Radcliffe. The District introduced the survey into evidence at the hearing. There was a "comments" section of the form, and those comments which specifically mentioned Jeremy's name, were admitted into the record at the appeal hearing. The handwritten comments from nine juniors and seniors included:

> Bullying does not happen here. Brickhouse is a idiot that can't stick up for himself. He should have learned to become a man.
>
> I feel that our school is fine. The freshman class is is [sic] a bunch of wouses. They need to grow up. ... Jeremy Brickhouse is just a mamma's boy and nothing bad happened to him. He just got a little teasing. You can talk to many former students who got it far worse.
>
> I don't see why people are making a big deal out of this now, because I think this is the best this school has ever been. Compared to my freshmen year, and from past stories I have heard this is the

> easiest year to be a freshmen. ... With this many kids in one building every day a few bad things are bound to happen. Brickhouse just couldn't deal with his problem which made this whole mess.
>
> I don't think the bullying is bad. It has been worse in the past it was Much Worse! ... There are people in our class that got it much worse than that and they didn't do anything about it.
>
> It is high school if you can't take shit here, you won't make it in the work place. It is necessary to get razzed because it is part of growing up. The reason Brickhouse got picked on because he was mouthy and didn't know his role.
>
> The freshmen this year are like none other 9th grade class before them. When told to shut up, they won't. ... the point is that freshmen need to know their role by the seniority rules.
>
> Things have changed a lot since I was a freshman; not that the Bullying has increased or decreased, but that younger kids don't have respect or know when to keep there mouths shut.
>
> When you're a freshman, you get picked on a little bit, it's been this way for years upon year. It's like initiation, if you don't smart mouth to the seniors, they won't bother you at all. I've been made fun and picked on, I don't care. I accept it, leave it be, and move on with life.
>
> Being picked on and having fun with someone (not hazing) has been going on for years. Which has led to nothing. The only thing that brought this on was not hazing, but an over protective mother.

(Exh. 5; Jeremy's name had been blackened out by the Superintendent in an attempt to protect Jeremy's privacy.)

## II.
## CONCLUSIONS OF LAW

At the time the Open Enrollment Law was written, the Legislature recognized that certain events would prevent a parent from meeting the January 1 deadline. Therefore, there are exceptions in the statute for two groups of late filers: the parents or guardians of

children who will enroll in kindergarten the next year, and parents or guardians of children who have "good cause" for missing the January 1 filing deadline. Iowa Code sections 282.18(2), (4), and (16)(2001).

The Legislature has defined the term "good cause" rather than leaving it up to parents or school boards to determine. The statutory definition of "good cause" addresses two types of situations that must occur after the January 1 deadline and before the count date in September, as follows:

> a change in a child's residence due to a change in family residence, a change in the state in which the family residence is located, a change in a child's parents' marital status, a guardianship proceeding, placement in foster care, adoption, participation in a foreign exchange program, or participation in a substance abuse or mental health treatment program, or a similar set of circumstances consistent with the definition of good cause; a change in the status of a child's resident district, such as removal of accreditation by the state board, surrender of accreditation, or permanent closure of a nonpublic school, the failure of negotiations for a whole-grade sharing, reorganization, dissolution agreement, or the rejection of a current whole-grade sharing agreement, or reorganization plan, or a similar set of circumstances consistent with the definition of good cause. If the good cause relates to a change in status of a child's school district of residence, however, action by a parent or guardian must be taken to file the notification within forty-five days of the last board action or within thirty days of the certification of the election, whichever is applicable to the circumstances.

Iowa Code §282.18(16)(2001).

The "good cause" exception relates to two types of situations: those involving a change in the student's residence, and those involving a change in the status of the student's school district. Iowa Code §282.18(16)(2001); 281 IAC 17.4. Jeremy's situation involves neither a change in residence nor a change in the status of the District. The harassment experienced by Jeremy is, therefore, not "good cause" for a late-filed open enrollment application as defined by the Legislature.

The Legislature, however, granted important authority to the State Board of Education to deal with extraordinary situations involving open enrollment. Iowa Code §282.18(18)(2001) provides as follows:

> "Notwithstanding the general limitations contained in this section, in appeals to the state board from decisions of school boards relating to student transfers under open enrollment, the state board shall exercise broad discretion to achieve just and equitable results which are in the best interest of the affected child or children."

*Id.*

The State Board exercised its "extraordinary power" under §282.18(18)(2001) in the case of *In re Melissa J. Van Bemmel*, 14 D.o.E. App. Dec. 281(1997). In that case, the State Board decided that the student harassment situation "cried out for extraordinary exercise of power bestowed upon the State Board" and was "a case of such unique proportion that justice and fairness required the State Board to overlook the regular statutory procedures." *Id.* at 286. The student in that case had experienced an "egregious, longstanding pattern" of harassment after the January 1 deadline for open enrollment so that her parents could not have filed for open enrollment in a timely manner. The student had experienced harassment by a group of about 20 students that had resulted in physical illnesses, i.e., stomachaches, headaches, backaches, anorexia, depression, and insomnia. That student had seen a physician and had seen a psychiatrist and counselors on a continuing basis. Her grades had dropped dramatically. The harassment against that student included life-threatening behavior on at least one occasion where she was chased in a vehicle and twice pushed off the road, almost hitting a telephone pole. The police officials had also been involved. The students had made sexual remarks and gestures to the student in class and in the hallways at school. Numerous attempts by the school officials to solve the problem had failed. Given this dramatic set of circumstances, the State Board reversed the school district's open enrollment denial and allowed Melissa to open enroll into another school district.

In that decision, the State Board made the following statement:

> In order to provide guidance for school districts regarding when the State Board will follow Iowa Code section 282.18(18)(1997) in open enrollment cases involving harassment, we offer the following principles.
>
> 1) The harassment must have happened after January 1, or the extent of the problem must not have been known until after January 1, so the parents could not have filed their applications in a timely manner.
>
> 2) The evidence must show that the harassment is likely to continue.

> 3) The harassment must be widespread in terms of numbers of students and the length of time harassment has occurred. The harassment must be relatively severe with serious consequences, such as necessary counseling, for the student who has been subject to the harassment. Evidence that the harassment has been physically or emotionally harmful is important. Although we do not condone any harassment of students, in order to use section 282.18(20) authority, the harassment must be beyond typical adolescent cruelty.
>
> 4) The parents must have tried to work with school officials to solve the problem without success.
>
> 5) The evidence of harassment must be specific.
>
> 6) Finally, there must be reason to think that changing the student's school district will alleviate the situation.

*Id.* at 286-87. (paragraph numbering added.)

We, therefore, will apply those six principles to the facts of Jeremy's situation. For the following reasons, we conclude that the facts in Jeremy's situation satisfy the six principles that the State Board has set forth to guide districts in making decisions regarding open enrollment applications where student harassment is alleged:

1. Jeremy's harassment occurred in October of 2001, near the beginning of his freshman year. However, he did not tell his mother about the "hair bare" and trash can incidents that had occurred in the locker room until March 19, 2002. Therefore, the extent of the problem was not known to his parent until after January 1, 2001 and January 1, 2002. His mother could not have filed her applications in a timely manner because she did not know about the extent of the problem until after the deadlines.

2. We do not know whether the harassment would have continued, because Jeremy removed himself from the environment by refusing to go back to school at Hubbard-Radcliffe. However, the comments from the student survey indicate that Jeremy could have been subjected to student's disdain and blame, at the very least, if he had returned to Hubbard-Radcliffe. The harassment might also be likely to continue because it had apparently been an established tradition of behavior known to adults and there was not evidence of prior aggressive steps to end the behavior.

3. The harassment was widespread in terms of numbers of students in Jeremy's high school class. Some of the ten boys in his freshman class were in the locker room when Jeremy was physically restrained two times: once when the hair bare was attempted and once when he was held in the trash can. The rest of the boys in the locker room were upper classmen from the high school population of about 158 students. The length of time the harassment actually occurred was during the first two months of Jeremy's freshman year. The harassment Jeremy experienced was severe. Jeremy could not bring himself to stay in school at Hubbard-Radcliffe or to tell an adult until over five months later. Jeremy never saw a physician or counselor as a result of any of these incidents because his mother could not afford health insurance. The evidence in Jeremy's situation showed that, once he escaped the environment at Hubbard-Radcliffe, he successfully attended school at Eldora-New Providence without psychological counseling.

4. Ms. Brickhouse could not have worked with school officials to solve Jeremy's harassment problems, because Jeremy did not tell her until months after he left Hubbard-Radcliffe. She has tried, however, to work with school officials to get Jeremy open enrolled out and to make the Board aware of the potential harassment problem for other Hubbard-Radcliffe students.

5. The evidence of Jeremy's harassment by other Hubbard-Radcliffe students was not only specific and detailed, it was undisputed by the students who participated in it and by the school officials who investigated it.

6. Changing Jeremy's school district has alleviated the situation by giving him a fresh start with a different group of students. He has already attended school at Eldora-New Providence as a freshman and wants to finish his high school education there.

Although we do not condone any verbal or physical harassment of students, we conclude that the Hubbard-Radcliffe students' treatment of Jeremy was "beyond typical adolescent cruelty." The incidents described in the record, which included name-calling, physical restraint, and attempted physical contact of a particularly degrading nature, are beyond what any fifteen-year-old could be expected to endure at school. "When students spend their school days feeling frightened, embarrassed and threatened, they are not in an atmosphere which is conducive to learning. Districts have a proactive responsibility to create acceptable norms for student behavior." *In re Krystle Peelan*, 19 D.o.E. App. Dec. 37, 45(2000).

In conclusion, we believe that the *Van Bemmel* principles as applied to Jeremy's situation constitute a case of such unique proportion that justice and fairness require the State Board to exercise its extraordinary power under §282.18(18)(2001) in the best interest of Jeremy Brickhouse.

All motions or objections not previously ruled upon are hereby denied and overruled.

## III.
## DECISION

For the foregoing reasons, the decisions of the Board of Directors of the Hubbard-Radcliffe Community School District made on March 18 and April 15, 2002, which denied Appellant's open enrollment applications for Jeremy Brickhouse for both the 2001-2002 school year and the 2002-2003 school year, are hereby recommended for reversal. There are no costs of this appeal to be assigned.

7-8-2002 — Susan E. Anderson

DATE — SUSAN E. ANDERSON, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

8-1-02 — Gene E. Vincent

DATE — GENE VINCENT, PRESIDENT
STATE BOARD OF EDUCATION