IOWA DEPARTMENT
OF EDUCATION
(Cite as 23 D.o.E. App. Dec. 39)

In re Lauren M. Hales	:	
James A. Hales,	:	
Appellant,	:	
vs.	:	DECISION
	:	
Burlington Community School District,		
Appellee.	:	[Admin. Doc. 4587]

The above-captioned matter was heard telephonically on August 27, 2004, before designated administrative law judge Carol J. Greta, J.D. Appellant, James A. Hales, who is also an attorney, was present on behalf of his minor daughter, Lauren. Superintendent Mike Book appeared on behalf of the Burlington Community School District, which was represented by attorney Sue L. Seitz. Also present throughout the hearing were Lauren's mother, Lori Montz-Hales, District employees, Karen Waldorf (elementary school principal), Shawna Casady (3rd grade teacher), and Michelle Giertz (elementary guidance counselor), and Alan Maupin, a paralegal assisting Ms. Seitz.

An evidentiary hearing was held pursuant to agency rules found at 281 Iowa Administrative Code Chapter 6. Authority and jurisdiction for the appeal are found in Iowa Code §§ 282.18(5) and 290.1 (2003). 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.

Mr. Hales seeks reversal of the July 26, 2004 decision of the local board of directors of the Burlington District to deny the open enrollment request filed on behalf of Lauren.[1]

I.
FINDINGS OF FACT

The Burlington Community School District has six elementary attendance centers. Nine-year-old Lauren attended Blackhawk Elementary, whose principal is Ms. Waldorf, from Kindergarten through 3rd grade. Her 3rd grade teacher was Ms. Casady. The Hales presently live in Burlington, but own a residential building lot in the West Burlington Community School District. They anticipate building a house sometime after the present school year.

[1] The minutes of the July 26 local Board meeting reflect that Dr. Book's denial of the open enrollment request was upheld by virtue of the fact that no motion was made to reverse his decision.

The District has implemented an anti-bullying initiative. At Blackhawk, the staff is taught how to respond properly to harassment and the students are taught how to recognize harassment. Ms. Giertz, the guidance counselor, testified that she goes into each classroom at appointed times to conduct activities with the students designed to assist them to calmly confront a bully and to extend kindness toward each other. She also leads lessons based on the six pillars of character at the classroom level. Principal Waldorf stated that the school also uses a conflict resolution program known as STAR, an acronym meaning Stop, Talk, And Resolve. The STAR program, which has been used at Blackhawk for the past three years, implements role-playing in the classroom.

In early June 2004, Mr. Hales filed an open enrollment application, requesting enrollment of Lauren to the West Burlington Community School District. Attached to the application was a written document, signed by both of Lauren's parents, going into some detail about examples of harassment against Lauren. At this hearing, Ms. Montz-Hales addressed these examples.

Three examples involved an "on-again/off-again friend" of Lauren calling her a b---h at school. Mr. Hales writes that the name-calling occurred "fairly early in the school year," admittedly prior to January 1, 2004. The first name-calling incident was apparently in retaliation when Lauren reported her friend (Aaliyah) for having peeked at Lauren while Lauren was in a bathroom stall at school. Aaliyah missed a recess for the peeking offense, but not for the name-calling. The Hales do not dispute that Lauren and Aaliyah were friends. Ms. Casady described the nature of their friendship as "very thick one day and not speaking [to each other] the next day," something she stated was "very typical" for 3rd grade.

In early April, another friend of Lauren's (Chelsie) called Lauren a " 'ho." Chelsie was also in the 3rd grade at the time. Lauren asked Ms. Giertz, the school counselor, to meet with her, which she did. Lauren admitted that she had also been cursing. Ms. Giertz had the two girls talk to each other, and believed the matter to be resolved. She heard no more about problems with name-calling from Lauren, Chelsie, or staff members.

Another example, occurring in April, 2004, involved a playground incident between Lauren and Aaliyah. The accounts of this incident vary greatly from each other. The Hales state that Aaliyah "jumped" Lauren for complaining that Aaliyah called her a name, and "clawed" her forearms, leaving bloody fingernail wounds and permanent scars.

Ms. Casady testified that Lauren immediately reported to her that Aaliyah scratched her. Ms. Casady's examination of Lauren's arm (Lauren showed her just one arm) disclosed that the skin was not broken; there was no blood. Ms. Casady talked to Aaliyah, who admitted scratching Lauren, but stated that she did so only after Lauren scratched her. No injuries were visible on Aaliyah's arms. The two girls talked to each

other in Ms. Casady's presence, and the teacher felt that the girls had resolved their differences. When school ended that day, Ms. Casady called Ms. Montz-Hales to make her aware of the incident "in case Lauren went home with a different story." Ms. Montz-Hales thanked her for the phone call. The next day Lauren came to school with no bandages of any kind covering either arm.

The Hales also submit a generalized complaint that, by the end of the 2003-04 school year, other children were calling Lauren " 'four-eyes' and the like," and were shunning Lauren at recess. It is their belief that Ms. Casady exacerbated this type of treatment of Lauren by allegedly expressing, in the presence of many of Lauren's classmates, relief that Lauren had missed a fieldtrip.[2]

The Hales note that, as the school year progressed, Lauren was a changed child. She was coming home from school in tears, had frequent headaches and trouble sleeping, and was proclaiming that she hated life and did not want to return to school at Blackhawk. They attribute the change to peer harassment and lack of appropriate response from school personnel.

Since February of 2004, the Hales have provided mental health counseling for Lauren. The child psychologist whom Lauren met with states in a letter provided to District officials and to this Board that "Lauren's best interests will be best served if she is allowed to attend a school other than Blackhawk Elementary School." Jonathan Weinand, Ph.D., further states that the "chronic headaches and other physical manifestations of stress" suffered by Lauren are not likely to ameliorate "without a significant change in Lauren's psycho-social school environment."

The school personnel who testified herein stated that Dr. Weinand had not contacted any of them about Lauren. Ms. Giertz, the guidance counselor, testified that she is the usual point of contact from mental healthcare providers. She also stated that no District employees let her know that Dr. Weinand or his office had made a contact.

The school employees also uniformly testified that they were unaware of any harassment against Lauren. Ms. Casady stated that she became aware in March that Lauren was seeing Dr. Weinand, but that Ms. Montz-Hales told her that the counseling was due to Lauren's frequent headaches and that nothing was said about school.

All three were adamant that the Hales made no reports of harassment of Lauren to any of them.

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[2] The allegation is that upon returning to school from the fieldtrip to a park, Ms. Casady remarked, "It's probably better that she [Lauren] didn't get to go." Ms. Casady disputed this, testifying that an unnamed classmate told Lauren, "I'm glad you didn't go [on the fieldtrip]." Ms. Casady states that she rebuked the classmate for being rude.

Ms. Montz-Hales was a volunteer during the 2003-04 school year in Ms. Casady's classroom, working one hour per week from November 11, 2003, until March 17, 2004, and then once in May. It is the contention of Ms. Montz-Hales that she talked to Ms. Casady several times about Lauren's problems, but she did not offer specifics as to times and dates. Ms. Casady denies that Lauren's mother said anything to her that caused her to belief that Lauren was being harassed.

On the other hand, Ms. Casady testified that she tried, to no avail, to express her concerns to the Hales about Lauren's behavior. On September 24, 2003, she sent home a note to the Hales about Lauren's preoccupation with "tattling" on other students if Lauren perceived they were not following directions, rather than paying attention to her own work. Ms. Casady states that she talked to Lauren about the difference between tattling to get friends in trouble versus reporting genuine safety issues. She also states that at the October and March parent-teacher conferences, she mentioned these behaviors to the Hales. Ms. Casady's recollection was that the Hales did not respond to her concerns, and that their stated priority was Lauren's academic performance.

Lauren's report cards from grades 1 – 3 were admitted as exhibits herein. The reports for 1st and 2nd grade are mostly unremarkable, save for a notation during two quarters of 1st grade that Lauren "needs improvement" in showing tolerance and compassion with peers. Ms. Casady made the following notations on Lauren's 3rd grade report card:

- (March, 2004) "Lauren needs to focus on her learning – and not worry so much about everyone else! She's also gotten herself into trouble by saying nasty things to others."

- (May, 2004) "Lauren's behavior has really changed for the worse this quarter. She seems to always get in trouble – says snide/rude comments to others – can't seem to play fairly – this behavior is beginning to get in the way of her school work."

The Hales accurately point out that Lauren's music and physical education teachers gave her high marks for working cooperatively with others and working well in a group. Ms. Waldorf testified that the nature of the disciplines of music and physical education could explain the difference in Lauren's behavior in those classes versus her behavior in the regular classroom. She also stated that she purposefully placed Lauren in Ms. Casady's classroom because Lauren needed educational structure and because Ms. Casady is a teacher who would not be manipulated by a student. She described Ms. Casady as traditional, firm, and consistent.

Ms. Casady attributed Lauren's behavior to natural changes in friendship patterns and to the fact that Lauren did not always get her way with her friends and did not always get to play what she wanted to at recess. This observation was shared by Ms. Giertz, the

guidance counselor, who testified that, while on daily lunchroom duty during the 2003-04 school year, she observed Lauren bothering other students a "handful of times" to the point that Lauren had to be moved to other lunch tables. Toward the end of the school year, Ms. Casady moved Lauren's desk twice because of complaints from her classmates.

On March 17 Lauren was given detention by a teacher who overheard Lauren use the term "f-----g b---h" to refer to Ms. Casady. When brought to Ms. Waldorf's office, Lauren told the principal that she was angry because she had not been permitted to sit by her friends at lunch. Lauren did not complain to Ms. Waldorf that she was the victim of similar verbal abuse.

The Hales had a conference – at their request – with Ms. Giertz on May 12, 2004. Ms. Giertz remembers that the Hales expressed concerns with Ms. Casady's inconsistencies of discipline, whereas the Hales testified that they told Ms. Giertz that Lauren was being harassed and asked what could be done.

On March 18th, when Ms. Montz-Hales came to school to pick up Lauren, she approached Ms. Waldorf and stated, "I have concerns about Mrs. Casady." The nature of the concerns was not stated. Rather than elicit more information at that time and place (the end of the school day in a crowded hallway), Ms. Waldorf asked that Ms. Montz-Hales first address her concerns directly with the teacher. Ms. Waldorf testified that she was not aware of any allegations of any harassment against Lauren until June, when she read the Hales' attachment to the open enrollment application filed for Lauren. The Hales point to their March 18 and May 12 communications as evidence that they unsuccessfully tried to get the attention of the District.

II.
CONCLUSIONS OF LAW

The controlling statute for this appeal is the open enrollment law, Iowa Code section 282.18. In general, open enrollment requests must be filed on or before January 1 of the school year preceding the school year for which open enrollment is requested. Subsection (5) of the law involves applications filed after January 1, seeking open enrollment due to "repeated acts of harassment of the student or serious health condition of the student that the resident district cannot adequately address."

This Board has given section 282.18(5) relief to students who have been harassed in only three prior cases. In the first such case, *In re Melissa J. Van Bemmel*, 14 D.o.E. App. Dec. 281 (1997), the student had experienced harassment by a group of about 20 students that had caused her to seek medical and mental health treatment for a variety of physical ailments, as well as for anorexia, depression, and insomnia. This Board noted that the "District is unable to effectively address the situation at school and the police are unable to effectively address the situation outside of school." 14 D.o.E. App. Dec. at 285.

In ordering that Melissa be allowed to open enroll out of the district, the State Board provided six guiding principles for districts to use to analyze open enrollment requests based upon allegations of harassment.[3] Those guidelines were affirmed in *In re Jeremy Brickhouse*, 21 D.o.E. App. Dec. 35 (2002). However, concluding that the original six guidelines are too restrictive for victims of harassment, this Board promulgated a new set of guidelines in *In re Mary Oehler*, 22 D.o.E. App. Dec. 46 (2004). [While determining that Mary had been the innocent victim of harassment, this Board denied her open enrollment request because there were a handful of other attendance centers within the Davenport Community School District for Mary to attend.] The new guidelines are as follows:

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 harassment must be beyond typical adolescent cruelty. Schools are cautioned not to be bound by a strict formula of what constitutes typical adolescent cruelty, as this can depend heavily on the circumstances, the age and maturity level of the students involved, etc. *Usually* such immature behavior as name-calling, taunting, and teasing – when done with no intent to physically harm or scar the other child's psyche – can be viewed as typical adolescent cruelty.

3. The evidence of harassment must be specific.

4. The evidence must show that the harassment is likely to continue.

5. School officials, upon notification of the harassment, must have worked without success to resolve the situation.

6. Finally, there must be reason to think that changing the student's school district will alleviate the situation.

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[3] Those guidelines were as follows: (1) The harassment must have happened after January 1, or the extent of the problem must not have been known until after January 1. (2) 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; relatively severe with serious consequences, such as necessary counseling, for the student who has been subject to the harassment; and 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) There must be reason to think that granting the student's open enrollment request will alleviate the situation.

Timing. The Hales admit that some of the name-calling occurred before January 1st. However, they argue, the severity and effect of the totality of the harassment was not apparent until after that date. We conclude that this is not the dispositive principle. If the incidents cited by the Hales rise to the level of acts of repeated harassment for which an open enrollment request should be granted, timing will not be an obstacle to relief.

Severity. It is here that the appeal fails. We conclude that the evidence does not show the kind of pervasive harassment for which we have granted relief via the open enrollment statute previously. The name-calling and playground incidents typify immature adolescent behavior. To be sure, these young girls were being unkind to each other, but there is no evidence of any conscious intent to physically harm Lauren or scar her psyche. When put into context, the behaviors exhibited by all three girls are not outside the realm of typical adolescent misbehavior. They cannot be ignored, but the evidence shows that Ms. Casady dealt with the name-calling and playground incidents appropriately. The evidence also shows that Lauren did not display crying or distress while at school, giving Ms. Casady reasonable cause to believe that resolution efforts at school were effective.

As to the other criteria we look to (specificity, likelihood that harassment will continue, resolution attempts by school officials, and effect of change), because we conclude that the behaviors described herein are nothing more than typical adolescent cruelty, we do not go further with our analysis. The other guidelines are premised on the existence of harassment, and we have concluded that Lauren was not harassed. We do, however, briefly address the final guideline – whether changing Lauren's school district will alleviate the situation.

Mr. Hales stated that the family owns a building lot in the West Burlington District and plans to build a residence for themselves on the lot. He and Ms. Montz-Hales rejected the District's offer to transfer Lauren to another elementary attendance center because it would be Lauren's third attendance center in as many years (3rd grade at Blackhawk, 4th grade in another Burlington building, 5th grade at West Burlington). If this is the family's concern, they may – after moving to West Burlington – open enroll Lauren to Burlington so that she has continuity and is spared any move at all.

Burlington is one of a handful of school districts in Iowa with a voluntary desegregation plan, giving the local Board authority to deny open enrollments that would adversely affect the plan. Mr. Hales believes that the local Board felt pressure to deny the open enrollment request for Lauren, who is a non-minority child, because of the desegregation plan. We do not give any credence to this argument. By law, specifically 281—IAC 17.14(4)(c), one exception to enforcement of a desegregation plan is an open enrollment application based on repeated acts of harassment. The District's administration and Board simply did not view this as a case involving repeated acts of harassment. We agree.

We are mindful that section 282.18(5) demands that we "exercise broad discretion to achieve just and equitable results that are in the best interest of the affected child… ." We have previously stated that we view the language of section 282.18(5) as a mandate to give the benefit of any doubt to the child. However, even the broadest of discretion cannot be exercised when there is no doubt to be resolved.

III.
DECISION

For the foregoing reasons, it is recommended that the decision of the Board of Directors of the Burlington Community School District made on July 26, 2004, denying the open enrollment request filed on behalf of Lauren Hales be AFFIRMED. There are no costs of this appeal to be assigned.

9-21-04
Date

Carol J. Greta, J.D.
Administrative Law Judge

It is so ordered.

11-17-04
Date

Gene E. Vincent, President
State Board of Education