IOWA DEPARTMENT
OF EDUCATION
(Cite as 25 D.o.E. App. Dec. 153)

In re Allison J.

Martha J., Appellant,	:	
	:	DECISION
vs.	:	[Admin. Doc. 4692]
Malvern Community School District, Appellee.	:	

The above-captioned matter was heard telephonically on February 12, 2009, before designated Administrative Law Judge Carol J. Greta. The Appellant, Martha J., was present on behalf of her minor daughter, Allison. The Appellee, the Malvern Community School District, was represented by Superintendent Curtis Barclay. Also present on behalf of the Appellee were Malvern board secretary Sue Davis and Nishna Valley Community School District middle school principal Deborah Taylor.

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.

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. The Appellant seeks reversal of the January 12, 2009 decision of the local board of directors of the Malvern District to deny the open enrollment request filed on behalf of Allison.

I.
FINDINGS OF FACT

The Malvern and Nishna Valley Community School Districts whole grade share their students pursuant to an agreement entered into under Iowa Code section 282.10. Malvern sends its middle school students (those in grades 5 through 8) to Nishna Valley. Allison J. is an 8th grade resident of the Malvern District, attending middle school in Nishna Valley.[1]

The District does not dispute that Allison has been targeted by another female 8th grader (Student A) for name-calling. At the end of October 2008, Student A pushed Allison in the hallway at school and said "move, bitch" to Allison. Roughly one month later, Student A referred to Allison as a "fat whore" to a third student in Allison's presence.

[1] The attendance center is called the East Mills Middle School.

Allison reported the first incident to Principal Taylor, who addressed the situation with Student A and who believed that the misbehavior of Student A toward Allison then stopped. She was not aware of the second incident until early December when she received a letter from an attorney dated December 4 on behalf of Allison and her family. At that point Principal Taylor spoke again to Allison, who informed her that she was experiencing "stares" from Student A in study hall. Moving the girls to separate study halls alleviated that issue.

Nevertheless, on December 8, Martha J. filed an open enrollment application requesting immediate transfer of Allison from Malvern Community School District (East Mills Middle School) to Lewis Central Community School District. Martha J. indicated on the application that the reason for the untimely request was pervasive harassment, and she cited the two incidents above. The Malvern school board considered the application at its regular meeting of January 12, and unanimously voted to deny the request. Martha J. then filed a timely appeal to this Board.

II.
CONCLUSIONS OF LAW

The controlling statute for this appeal is the open enrollment law, Iowa Code section 282.18, and the exception to the statutory filing deadline of March 1 in 282.18(5) regarding applications that seek open enrollment due to "repeated acts of harassment of the student."

In *In re Hannah T.*, 25 D.o.E. App. Dec. 26 (2007), this Board set out the following history of such appeals.

> This Board has given relief under section 282.18(5) to students who have been harassed in three cases. In the first such case, *In re Melissa J. Van Bemmel*, 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." The harassment of Melissa culminated on a highway; the vehicle in which Melissa was riding was twice intentionally forced off the road by other vehicles driven by the other students. This Board ordered that Melissa be allowed to open enroll out of the district.
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> The other cases in which relief was granted are *In re Jeremy Brickhouse* and *In re John Myers*. Both students in those cases had been subjected to numerous and specific physical assaults at school. The degradations to which Jeremy was subjected in his high school locker room are well-documented in the *Brickhouse* decision. In the *Myers* case, John was frequently physically assaulted at school, and his schoolbooks and supplies had been stolen, defaced, or otherwise rendered useless as educational tools by bullying classmates.

25 D.o.E. App. Dec. at 28 [cites omitted].

The criteria regarding open enrollment requests based on repeated acts of harassment, all of which must be met for this Board to give the requested relief, are as follows:

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.

We conclude that the criteria have not been met.

The testimony showed that the school officials have been working to resolve problems experienced by Allison while in middle school. Martha J. testified that there were three incidents of harassment (none involving Student A) when Allison was in 6th grade severe enough that she called law enforcement. When Allison was in 7th grade, she struggled in math and missed 23 days of school. Martha J. admits that Allison's attendance record is vastly improved this year (3 absences in 8th grade versus 23 in 7th grade).

It is not clear whether or how the situations experienced by Allison in prior years in middle school are related to the recent harassment. However, the fact that Martha J. offered that Allison's situation is not unique to this school year negates her ability to meet the first criterion above.

We make mention of Allison's history from 6th and 7th grades solely to show that school officials have responded appropriately and with some success. In addition to the improvement in her attendance at school, Allison has "a lot" of friends, according to Principal Taylor, who makes a point of being on the lookout for "isolated" students.

It is always disgusting when a student chooses to create conflict with a peer. No student should be subjected to name-calling and nonverbal misconduct such as staring from another student. But the behavior of Student A in this case, while incredibly boorish, simply does not rise to the level of harassment that the Legislature and this Board remedy by allowing late-filed open enrollment transfers.

We conclude that it would not be appropriate for this Board to order the local school board to deny the open enrollment request filed on behalf of Allison.

III.
DECISION

For the foregoing reasons, the January 12, 2009 decision of the Board of Directors of the Malvern Community School District, denying the open enrollment request filed on behalf of Allison J., is AFFIRMED. There are no costs of this appeal to be assigned.

2-27-09
Date

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

It is so ordered.

4-30-09
Date

Rosemarie (Rosie) Hussey, President
State Board of Education