

IOWA DEPARTMENT OF EDUCATION
(Cite as 26 D.o.E. App. Dec. 197)

In re Kathryn K.

Jacqueline and Phillip Kuhr,	:	
Appellants,	:	DECISION
vs.	:	
	:	[Admin. Doc. 4750]
Hamburg Community School District,	:	
Appellee.	:	

The above-captioned matter was heard telephonically on March 6, 2012, before designated administrative law judge Carol J. Greta, J.D. The Appellants were present on behalf of their minor daughter, Kathryn. Superintendent Jay Lutt appeared on behalf of the Hamburg Community School District (“Hamburg”). Also present throughout the hearing were Hamburg board members Hilary Christiansen and Dave Mincer.

Mr. and Mrs. Kuhr seek reversal of the January 30, 2012 decision of the local board of directors of the Hamburg Community School District to deny the open enrollment request filed on behalf of Kathryn.

An evidentiary hearing was held pursuant to agency rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for the appeal are found in Iowa Code §§ 282.18(5) and 290.1 (2011). 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.

FINDINGS OF FACT

Following the 2010-11 school year, the Hamburg Community School District discontinued its high school. It entered into a whole grade sharing agreement with the Farragut Community School District whereby all 9 – 12 grade resident students of Hamburg attend high school at Farragut.¹ This high school goes by the name Nishnabotna High School.

Kathryn started the 2011-12 school year as a sophomore at Nishnabotna High School.² As early as September, her parents noticed that their daughter was sad and

¹ Middle school students (those in grades 5 – 8) from both districts attend school in Hamburg.

² Kathryn now attends Sidney High School.

argumentative, and stayed in her room when she came home from school. She told her parents that the best part of her day was coming home from school. Kathryn related to her parents that teachers were not welcoming to her and others from Hamburg, calling them “Hamburg kids” and saying “you should have been taught that at Hamburg.”

Mr. Kuhr talked to the high school principal in September about the family’s concerns. At that point, the signage for the high school had not yet been changed from “Farragut High School” to “Nishnabotna High School,” and the former mascot of Farragut High School was still on prominent display, adding to the feelings of Kathryn of not being fully welcome at her new school. Mr. Pearson, the principal, said that he would look into the concerns raised.

After Kathryn was chosen to be a school Homecoming attendant that fall, she was not so anxious to leave Nishnabotna High School. Thus, the family waited. Mrs. Kuhr filed the open enrollment application on January 27, 2012, stating in the application that Kathryn “hasn’t been bullied in the usual sense but doesn’t get a word from any of the girls in her class. She feels like an outsider with no voice. This situation hasn’t gotten better as we had thought, and has only gotten worse.” In her affidavit of appeal to this Board, Mrs. Kuhr included the information that Kathryn was experiencing stress-induced cold sores. Mrs. Kuhr testified herein that she included the information about cold sores in her statement to the local board. Board members Christiansen and Mincer had no recollection of cold sores or any health issues being raised on behalf of Kathryn at the school board meeting of January 30. The local board voted 3 – 2 to deny the open enrollment application.

CONCLUSIONS OF LAW

The controlling statute for this appeal is the open enrollment law, Iowa Code section 282.18 (2011), 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” or a “serious health condition of the student that the resident district cannot adequately address.”

This Board does not dispute the prerogative of parents to remove their child from a school environment in which the child is comfortable. The Kuhr family has taken action it believes to be in Kathryn’s best interests; that action is not at issue before us. The sole issue is whether the State Board can find that the Hamburg school board erred in denying the late-filed open enrollment application filed on behalf of Kathryn.

A local school board has authority under the open enrollment law to approve late-filed open enrollment applications if the local board believes that the parent has demonstrated either repeated acts of harassment of the student or a serious health condition of the student that the resident district cannot adequately address. This Board has developed criteria to assist local boards in making those complex decisions.

Harassment Criteria

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.

Severe Health Need Criteria

Regarding an application that is based on a child's serious health need that the parents believe is not being adequately addressed by the school district, the parents of the child must show all of the following:

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.

Application of Facts Herein to the Criteria

The evidence shows that none of the six criteria regarding severe health need were met. The gist of the criteria is that school officials must have been made aware of a serious health condition and given a chance to address the child's health needs. Even assuming that the local board was informed on January 30 of Kathryn's outbreak of cold sores, Hamburg school officials had no means to know "what specific steps its staff can take to meet" Kathryn's health needs.

This Board does not question that Kathryn was not happy in a high school where, as her parents state on the affidavit of appeal, "there are only 1 or 2 other girls from Hamburg." According to the affidavit of appeal, Kathryn also did not appreciate the skimpy portions served at school lunch or the vigilance during lunchtime of staff "continually walking down the aisles to be sure [students] aren't doing something like texting." Given the rise in incidents of cyber-bullying, this Board is not going to fault any school staff for such vigilance.

The first year of any whole grade sharing agreement presents the challenge of bringing together students and staff previously unknown to each other. Kathryn was already understandably uneasy about attending a new school. Careless remarks by teachers could well have enhanced that unease. However, this Board cannot conclude that anything occurred that intentionally created an objectively hostile school environment for Kathryn at Nishnabotna High School.

This decision does not discount Kathryn's perception of feeling unwelcome at Nishnabotna High School. This decision does not condone any real or perceived insensitivity of school personnel in their efforts to integrate two discrete student bodies into one. This decision is merely that there was no evidence presented to the local school board of an objectively hostile school environment.³ The State Board of Education concludes that the Hamburg school board did not err when it denied the late open enrollment application filed on behalf of Kathryn.

³ Kathryn's brother does not share her perception; he is doing well under the new whole grade sharing environment and has not asked to leave.

DECISION

For the foregoing reasons, the decision of the Board of Directors of the Hamburg Community School District made on January 30, 2012, denying the open enrollment request filed on behalf of Kathryn K. is AFFIRMED. There are no costs of this appeal to be assigned.

3/6/12
Date

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

It is so ordered.

3/29/12
Date

/s/
Rosie Hussey, President
State Board of Education