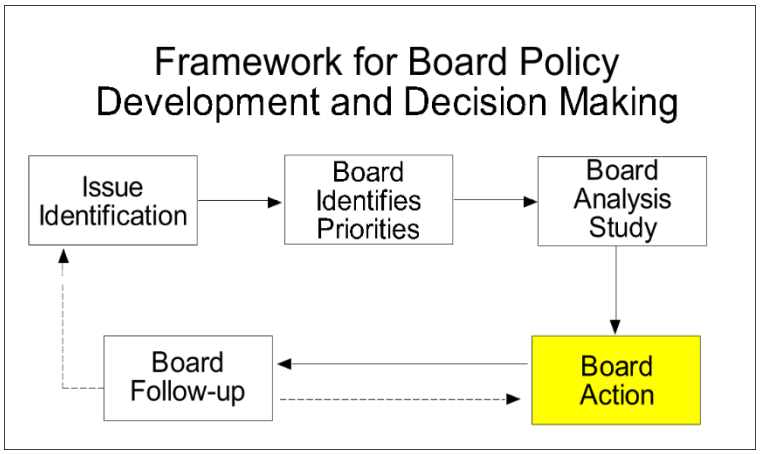
Iowa State Board of Education

Executive Summary

November 13, 2024



Agenda Item: Appeal Decision, # 5203 – Clear Creek Amana Community School District

State Board Priority: Goal 1: Promote safe, orderly, and welcoming learning environments

State Board Role/Authority: The State Board has the duty to decide this case under Iowa Code section 290.1.

Presenter(s): None – consent agenda

Attachment(s): Two

Recommendation: The Department recommends that the State Board adopt the proposed decision in this matter, which reverses the decision of the Clear Creek Amana Community School District.

Background: The administrative law judge issued a proposed decision on August 26, 2024, recommending that the decision to deny a late-filed open enrollment request be reversed. No party appealed this proposed decision, which is to be affirmed by operation of law. Iowa Admin. Code r. 281—6.6(3).

IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
CENTRAL PANEL BUREAU

In Re Open Enrollment of O.J., a child: Krista Johnson, Complainant, v. Clear Creek Amana Community School District, Respondent.	Case No. 25DOE0003 DOE Admin Doc. No. 5203 PROPOSED DECISION

STATEMENT OF THE CASE

A hearing in the above-captioned case was held on August 22, 2024. Krista Johnson appeared and provided testimony. Two representatives of the Clear Creek Amana Community School District ("Clear Creek") also appeared and testified. The entire administrative file was admitted into the record, and the matter is now fully submitted.

FINDINGS OF FACT

O.J. is a minor that resides within the boundaries of Clear Creek and attended ninth grade at a high school in that school district last school year. Starting in April of 2024, O.J. began experiencing a variety of medical symptoms and conditions. On April 22, 2024, she was diagnosed with mononucleosis and influenza, and she subsequently had minor surgeries on April 28, 2024 and May 10, 2024. Due to this, she missed school from approximately April 22, 2024, to the last week of school on May 22, 2024. While she attempted to do some homework during her absence, her health condition and the limited amount of work the school sent home resulted in her being substantially behind in her coursework and essentially failing her classes when she resumed attending school at the end of May. She had been a student receiving As and Bs in her classes.

Because O.J. was concerned that the reduction in her GPA would jeopardize her ability to attend the college of her choice and secure scholarships, she—through her mother—requested accommodations from her teachers to allow her a reasonable amount of time to complete her classwork, including attending summer school if necessary. However, her teachers denied the request, stating she could have extra assistance and time during her study halls and during some before and after care. The teachers also stated summer school was not an option unless she actually failed her classes. O.J.—again through her mother—sought help from the guidance counselor, who simply directed her back to the teachers. Unaware of the appeal process that allowed O.J. to challenge the lack of requested accommodations to Clear Creek's management, O.J. accepted the denials of her request and ultimately ended the school year with Cs and Ds. Of note, the appeal process was outlined in the school handbook and on the school website.

The stress of her situation, including the potential damage to her future prospects from the lower GPA, resulted in O.J. experiencing a rapid and significant mental-health decline. While O.J. waited to be seen by a mental-health provider for this emerging problem (as the waitlists in the area were long), O.J.

eventually decided she wanted to attend another high school and submitted an open-enrollment request to enroll at North Liberty no earlier than July 5, 2024, which was after the general deadline for open-enrollment requests (as discussed below). While the request focused on O.J.'s prior health condition and perceived lack of school support, the request nonetheless indicated O.J. was experiencing depression and anxiety.

In response to the open enrollment request, Clear Creek essentially looked up the Department of Education's ("DOE") guidance for this situation, and it determined it was not authorized to grant the request since O.J. no longer appeared to have a serious medical condition given she had seemingly recovered from her illnesses and surgery by July of 2024. After the denial, O.J. was seen by a mental-health professional on July 31, 2024, who diagnosed her with "panic attacks, adjustment disorder with depression, and anxiety as an acute reaction to exceptional stress." July 31, 2024, Letter. With respect to O.J.'s current state and the placement of her at Clear Creek, the mental-health provider opined:

> This situation has caused [O.J.] to have panic attacks where she gets short of breath, racing thoughts, inability to relax, hyper vigilant, at times has been nauseated and has committed and she "just wants to cry." She started crying in the middle of a basketball game and had to leave. She has become depressed and complains of anhedonia. Most of the day, she will lay in bed in the dark, is more isolated, cries a lot, and wants to quit extracurricular activities. She has told mom she is not even sure she wants to play basketball, and she has been on a traveling team for years and playing at the high school level. Previously, she was very outgoing, wanted to go places but now she is just "really dark." Her sleep has deteriorated and some nights she doesn't sleep at all because of the racing thoughts. She had previously even contemplated suicide thinking about having to go back to [Clear Creek].
>
> I have instructed her parents that, if she does complete suicide because of the situation, the school system should be held liable because they are not allowing her to do what is best for her mental health and putting her back in a situation that worsens her depression.

Id., at p. 2. O.J. then appealed the denial, claiming that her severe mental-health condition justifies allowing her to open enroll into another school district.

At the hearing, O.J. argues that she meets the requirements for open enrollment because: she has a serious health condition given her mental health diagnoses that have resulted in severe distress that includes the risk of suicide; Clear Creek is not able to address her mental health needs because its high school is the location of her trauma and because, regardless of the support Clear Creek can provide, it cannot undo the stress inherent to the environment of its school; and it would be in the best interest of O.J. to transfer schools given the risk of further mental harm and possible loss of life if she attended Clear Creek. In response, Clear Creek indicated that its denial was based on the information it had and that it is only seeking to the follow the law in a manner that ensures O.J.'s best interests. Clear Creek did note that they have extensive assistance for students with similar mental-health difficulties, including nursing and counseling staff, and it is unclear of any reason why it could not adequately assist O.J. Clear Creek further noted that much of the issue in the prior year was due to it not being fully informed for O.J.'s condition and O.J. not using the appeal process to seek redress of any issue she had with her teachers.

CONCLUSIONS OF LAW

A.

i.

With the expressed goal "to permit a wide range of educational choices for children enrolled in schools in [Iowa] and to maximize ability to use those choices," the Iowa legislature crafted an open-enrollment statute that permits children residing in one school district to attend another school district in certain circumstances. Iowa Code 282.18(1)("For the school year commencing July 1, 1989, and each succeeding school year, a parent or guardian residing in a school district may enroll the parent's or guardian's child in a public school in another school district in the manner provided in this section."). Broadly speaking, for children not requiring special education, evaluation of open-enrollment requests follow a three-step process, each of which has different requirements. Id.

First, for timely open-enrollment requests (that is, requests submitted by the statutory deadline), the law provides very little discretion for school districts. Id. § 282.18(2). In fact, for a parent or guardian that timely submits an open-enrollment request, "[t]he board of the receiving district shall enroll the pupil in a school in the receiving district for the following school year unless the receiving district has insufficient classroom space for the pupil or unless the receiving district has prohibited the pupil from enrolling pursuant to subsection 11A," which pertains to truant students. Id. In short, the process is nearly automatic, turning generally on whether the new district has space for the child.

Second, if a parent or guardian submits a request for open enrollment after the deadline, then the district that is to receive the student is to determine if "good cause exists for failure to meet the [] deadline." Id. 282.18(3A)(a); see also id. § 282.18(2) ("If a parent or guardian fails to file a notification that the parent or guardian intends to enroll the parent's or guardian's child in a public school in another district by the deadline specified in this paragraph, the procedures of subsection 3A apply."). The statute defines good cause as follows:

> For purposes of this section, "good cause" means a change in a child's residence due to a change in family residence, a change in a child's residence from the residence of one parent or guardian to the residence of a different parent or guardian, a change in the state in which the family residence is located, a change in a child's parents' marital status, a guardianship or custody proceeding, placement in foster care, adoption, participation in a foreign exchange program, initial placement of a prekindergarten student in a special education program requiring specially designed instruction, or participation in a substance use disorder or mental health treatment program, 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, revocation of a charter school contract as provided in section 256E.10 or 256F.8, 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.

Id. § 282.18(9)(a)(8). Of note, "[a] denial of a request by the board of a receiving district is not subject to appeal." Id. § 282.18(3A)(a).

Third, if a parent or guardian submits an open-enrollment application after the statutory deadline and if there is no good cause for the untimely request, then the request is "subject to the approval of the

board of the resident district and the board of the receiving district." Id. § 282.18(3A)(a). A "decision of either board to deny an application . . . involving 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[.]" Id. In such an appeal, the Tribunal "shall exercise broad discretion to achieve just and equitable results that are in the best interest of the affected child or children." Id.

ii.

To understand the full scope of the statute's requirement concerning the third-step in the process relating to untimely open-enrollment requests without good cause, the Tribunal must turn to the traditional tools of statutory interpretation. The overarching purpose behind any statutory interpretation is to effectuate the legislature's intent, and the "first step when interpreting a statute is to determine whether it is ambiguous." State v. Iowa Dist. Court for Scott Cty., 889 N.W.2d 467, 471 (Iowa 2017). "A statute is ambiguous if reasonable minds could differ or be uncertain as to the meaning of the statute." The Sherwin-Williams Co. v. Iowa Dep't of Revenue, 789 N.W.2d 417, 424 (Iowa 2010) (internal quotation marks omitted). "Ambiguity arises in two ways—either from the meaning of specific words or from the general scope and meaning of the statute when all of its provisions are examined." State v. McCullah, 787 N.W.2d 90, 94 (Iowa 2010) (internal quotation marks omitted). A term or phrase is given its "common and ordinary meaning" often from a common usage dictionary, unless the legislature chose to define it or it had "a well-settled legal meaning" at the time the legislature passed the law. Miller v. Marshall Cty., 641 N.W.2d 742, 748 (Iowa 2002). "If no ambiguity exists, [a] statute is rationally applied as written." Andover Volunteer Fire Dep't, 787 N.W.2d at 81. This is true absent the most exceptional circumstances where confidence exists that "the legislature did not intend the result required by literal application of the statutory terms." Brakke v. Iowa Dep't of Nat. Res., 897 N.W.2d 522, 541 (Iowa 2017). Indeed, "the task is to interpret the statute, not improve it," and statutory interpretation cannot be used as a guise for redrafting a statute, even one that is at best a "half measure" on an important issue. Id.

In this case, a plain reading of the statute requires the Tribunal to find three elements to grant an untimely open-enrollment request lacking good cause, namely: (1) the presence of "repeated acts of harassment" or a "serious health condition"; (2) the inability of the resident school district to "adequately address" the qualifying harassment or medical condition; and (3) the requested transfer be in the "best interest" of the student at issue. Iowa Code § 282.18(3A)(a). As the statute and the applicable administrative rules do not define the phrase "serious health condition" and as there does not appear to be a well-settled legal meaning of the term (apart from the FMLA statutory definition), the Tribunal turns to the dictionary for insight. The word "condition" generally refers to "a state of being," and "medical" is often understood to mean "requiring or devoted to medical treatment." Merriam-Webster (2024). "Serious" generally means "having important or dangerous possible consequence," and together the phrase includes those with health states that require medical treatment where the state at issue presents a material danger to the individual's health or wellbeing. Id.

The definition of the statutory phrase "adequately address" is similarly nebulous. Again, neither the governing statute nor the applicable administrative rules define the concept, and the Tribunal cannot find any settled legal meaning of the term in a similar context. The dictionary defines the concept of "adequate" to include to "as sufficient degree or extent" and the concept of "address" to include "to deal with," which means the phrase in this context includes the resident school district being unable to respond the qualifying medical condition or harassment in a manner to reduce such to inconsequentiality.

As for "best interests" of the student, this concept is likewise not specifically defined by statute or rule, but it does tap into the broader and well-established doctrine concerning the best interests of children,

and such doctrine summarizes the concept as "decisions based on whatever best advances the child's welfare" regardless of the personal concerns of others involved. BEST-INTERESTS-OF-THE-CHILD DOCTRINE, Black's Law Dictionary (12th ed. 2024). As the DOE once stated, "we are mandated by statute to do what is in the best interests of the child . . . , not what is in the best interests of the education system as a whole." In re Anna C., 24 D.o.E. App. Dec. 9 (2006). When applying these broad standards to specific circumstances, it must be done in the light of the legislature's overall command that the open-enrollment law must be "construed broadly to maximize parental choice and access to educational opportunities which are not available to children because of where they live." Iowa Code 282.18(1)(a). In short, any material doubt is resolved in the parent's favor concerning the appropriate placement of the student.

B.

Turning the case at hand, the third provision relating to untimely open-enrollment requests without good cause governs this matter. This is because no dispute exists the student's open-enrollment request was made after the statutory deadline and because no good cause exists as that term is defined in statute (as there has been no change in the family setting or anything else the statute recognizes as good cause). This aligns with the procedural posture of the case, and turning to the merits, O.J. has proven each of the three requirements for open enrollment when the request is untimely and without good cause.

O.J. has demonstrated she suffers from a "serious health condition" because the credible evidence from her psychiatric evaluation reveals she has been diagnosed with panic attacks, adjustment disorder with depression, and anxiety and because this has resulted in her withdrawing from activities and contemplating suicide. While the precise contours of the concept of "serious health condition" may never be known given the evolving nature of science and the diversity of the human condition, little doubt exists O.J.'s specific condition qualifies. In fact, the only material issue in finding O.J. met this statutory requirement is the fact she did not meaningfully alert Clear Creek to her mental health status in her open-enrollment request in the first part of July. Indeed, her request focused on her experience at the end of her last school year and only contained passing references to her current depression and anxiety. The omission of this information was likely due to O.J. not being able to be formally evaluated until the end of July 2024 due to the scarcity of mental-health resources, and it is understandable why Clear Creek would not realize there was a present mental-health concern and deny the open-enrollment transfer on the grounds no serious health condition existed. In fact, the Tribunal is skeptical this case would even exist had the Clear Creek known the true facts. Regardless, though, it is enough to state that the condition currently exists and there is no provision of law requiring the Tribunal to ignore the true facts of the case and limit itself to only the matters raised in the initial open-enrollment request. Such a policy would be at odds with the purpose of the statute and needlessly jeopardize the welfare of students. It would also ignore the fact that students' health conditions may change and O.J. could simply file another open-enrollment request, with the only product been a loss of time and certainty as to her schooling.

O.J. has also demonstrated Clear Creek "cannot adequately address" her serious health condition under the *specific* record made in this case. As an initial matter, the Tribunal tends to find the testimony of Clear Creek's representatives credible that they have extensive staff to respond to the mental-health needs of their students and that such staff have dealt with depression and anxiety in students in the past. Whatever the details of O.J. and her parents with specific staff members at the end of her last school year, the overall district appears deeply committed to the welfare of all its students and experienced in responding to the students' various needs. Nonetheless, the facially credible letter from O.J.'s mental-health professional indicates that O.J. is at material risk of further injury or even death (through suicide) if she remains at the school due to her prior experience at the location itself. While the sequence of events in this case have

resulted in Clear Creek not being given the chance to respond once altered to the gravity of the mental-health difficulty, such an opportunity may cost O.J. what remains of her health, if not life. Thus, while the Tribunal has substantial misgivings about relying the letter of a non-testifying expert with strong conclusions, this is the best evidence in the case. The letter is tailored to O.J.'s specific condition and arises from her evaluation, whereas Clear Creek's conclusion is general in nature about its standard practice and success. In light of the unequivocal statutory command to interpret the law broadly to "maximize parental choice," little choice exists but to find this requirement met.

O.J. has also proven it is in her best interest to open enroll to another high school. O.J.'s mental health status has deteriorated considerably in the past few months, and her condition will likely require protected treatment (with her recently starting medication and counseling). Given Clear Creak cannot provide *specific* assurances of being able to address her needs, trying a new school appears to advance O.J.'s needs the most with the facts known to the Tribunal. The understandable needs of the school district, including to have a relatively stable student based for planning and instructional purposes, do *not* factor into this analysis since the concern is solely the best interests of O.J. With all three elements met, the request must be approved.

DOE's often cited six-part test for determining the propriety of untimely, open-enrollment requests without good cause does not change the analysis. In 2006, DOE issued a decision that "introduce[d] a set of guidelines for districts and local boards of education to use when faced with an open enrollment request based on a child's serious health need," and the requirements are:

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., at 9; 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, 376 (2013). While such guidelines are useful in analyzing requests, it is worth noting such are not binding because, like any other internal agency policy or manual, guidelines are not administrative rules with the force of law that be applied rotely to a case. See, e.g., Fears v. Iowa Dep't of Hum. Servs., 382 N.W.2d 473, 476 (Iowa Ct. App. 1985)("The manual provision was a statement of general applicability and future effect. An agency cannot avoid using rulemaking procedures by issuing such statements in contested case proceedings.").

In addition, while each element of the six-part test is generally useful to weighing the strength of the evidence, the test itself runs afoul of the open-enrollment statute when taken too literally in some cases, thereby revealing its limited usefulness since agencies cannot go beyond their enabling statutes. See, e.g., Nw. Bell Tel. Co. v. Iowa Utilities Bd., 477 N.W.2d 678, 682 (Iowa 1991) ("Iowa Code section 17A.19(8)(b) calls upon the reviewing court to reverse an agency action that is in excess of the statutory authority of the agency. An administrative agency has only such jurisdiction and authority as expressly conferred by statute or necessarily inferred from the power expressly granted."). For example, the fifth requirement—namely, that a "reasonable person could not have known before [the deadline] the [school] district could not or would not adequately address the child's health needs"—has no basis in law. While knowing whether a parent or guardian knew of an issue and failed to take action may be insightful on whether the evidence presented is being shaded in a manner to affect credibility, this requirement simply does not exist. DOE's seminal decision does not cite any statutory authority for the concept. Once more, taken it its logical conclusion, a child in crisis facing serious injury or death would not be allowed to open-enroll away from a school where the child would be hurt if a reviewing body months after the statutory deadline for typical open-enrollment requests decided with the benefit of hindsight and distance from the traumatized parent—who likely was struggling to deal with the situation and likely does not fully know the complex mesh of law governing education—that a reasonable person with the parents' knowledge should have known to file a piece a paper earlier. Few concepts are more antithetical to the legislature's stated goal of maximizing "educational" and "parental" choices or the specific statutory requirements to only consider whether a qualifying serious health condition/harassment exists, whether a school can mitigate the issue, and the best interest of students.

While the other elements of the tests could in some circumstances also run afoul of the statute, the purpose of the Tribunal raising this issue lies in whether O.J. could meet the third and fourth elements of DOE's guidelines, which requires O.J. to provide her specific needs and requirements to the school district and to provide the school district the chance to comply with the requirements. Due the unusual sequence of events over the summer months, Clear Creek only now has been provided with O.J.'s current, mental-health information, but it has not had the chance to see if it can respond adequately. From the Tribunal's perspective, these requirements are not a barrier even if they had the force of law because O.J.'s stated need is to be away from the high school where she was traumatized and because it is unclear how Clear Creek could secure this. In short, the request is for an action Clear Creek cannot satisfy, which would appear to be enough. Once more, to the extent that the real issue is Clear Creek should have had a chance to provide an alternative response to O.J.'s mental-health condition, its evidence of its *general* ability to help similar students in crisis does not overcome O.J.'s *specific* evidence with the record made (even if it is possible the school's judgement would be proven correct if O.J. remained). As such, with the finding that O.J. meets the statutory requirements for open-enrollment and with finding that DOE's test is not controlling but would be met in any event, the denial of O.J.'s open-enrollment request is REVERSED.

ORDER

For the foregoing reasons, the decision of the Clear Creek Amana Community School District denying the open-enrollment request filed on behalf of O.J. is REVERSED.

It is so ORDERED.

Dated this the 26th day of August 2024.

Jonathan M. Gallagher
Administrative Law Judge

Appeal Rights

Any adversely affected party may appeal a proposed decision to the state board within 20 days after issuance of the proposed decision. 281 I.A.C. § 6.6(4). An appeal of a proposed decision is initiated by filing a timely notice of appeal with the office of the director. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. Id. The requirements for the notice are found at Iowa Admin. Code r. 281-6.6(4). Appeal procedures can be found at Iowa Admin. Code r. 281-6.6(5). The board may affirm, modify, or vacate the decision, or may direct a rehearing before the director or the director's designee. Id. § 6.6(8).

Case Title: IN RE: OPEN ENROLLMENT OF O.J., BY K.J., APPELLANT V. CLEAR CREEK AMANA COMMUNITY SCHOOL DISTRICT

Case Number: 25DOE0003

Type: Proposed Decision

IT IS SO ORDERED.

Jonathan Gallagher, Administrative Law Judge

IOWA DEPARTMENT OF EDUCATION

CITE AS ___ D.o.E. App. Dec. ____

In re Open Enrollment of O.J., a child,	)	
Krista Johnson,	)	
Appellant,	)	Docket 5203
vs.	)	
Clear Creek Amana Community School District,	)	FINAL AGENCY DECISION
Appellee.	)	

There being no appeal of the proposed decision dated August 26, 2024, the proposed decision in this matter is AFFIRMED by operation of law.

This is final agency action in a contested case proceeding.

Any party that disagrees with the Department's decision may file a petition for judicial review under section 17A.19 of the Iowa Administrative Procedure Act. That provision gives a party who is "aggrieved or adversely affected by agency action" the right to seek judicial review by filing a petition for judicial review in the Iowa District Court for Polk County (home of state government) or in the district court in which the party lives or has its primary office. Any petition for judicial review must be filed within thirty days of this action, or within thirty days of any petition for rehearing being denied or deemed denied.

Dated: November 13, 2024

Iowa State Board of Education, by:

John Robbins, President