

IOWA STATE BOARD OF EDUCATION
(Cite as 26 D.o.E. App. Dec. 373)

<i>In re Samantha H.</i>)	
)	Admin. Doc. 4768
Shannon B.,)	
Appellant,)	
)	
vs.)	BOARD DECISION ON REVIEW
)	
Dallas Center-Grimes)	
Community School District)	
)	
Respondent.)	

On May 20, 2013, the Board of Directors of the Dallas Center-Grimes Community School District denied the open enrollment request that Shannon B. filed on behalf of her daughter, Samantha H. Following an evidentiary hearing, Administrative Law Judge Nicole Proesch issued a proposed decision upholding the Dallas Center-Grimes determination. In accordance with 281 Iowa Administrative Code 6.17(3), the proposed decision has been submitted to the State Board of Education. After consideration and a review of the evidence, the State Board of Education vacates the decision of the Administrative Law Judge and directs the Dallas Center-Grimes district to grant the request.

FACTUAL BACKGROUND

Samantha H. was a student in the Dallas Center-Grimes school district during the 2010-2011 and 2011-2012 school years. Samantha's family later moved into the Johnston school district, where Samantha attended during the 2012-2013 school year. The family presently resides in the Johnston district.

Samantha's transition into the Johnston district proved to be difficult. The record reflects that within weeks of enrolling at the Johnston district, Samantha endured a series of incidents where she was teased and mistreated by fellow students, often while riding the school bus. While the frequency of the teasing decreased due to the involvement of Johnston district administrators and personnel and by Samantha's decision to stop taking the bus, Samantha continued to struggle. She reportedly felt sad and depressed. Samantha also relayed to Johnston district employees that she had no friends at Johnston and felt left out there.

Samantha's difficulties and emotions were apparent enough to Johnston's employees that on at least two separate incidents, teachers pulled Samantha out of the classroom so that she could speak to administrators about the difficulties she was experiencing.

The incidents and environment adversely impacted Samantha's attendance in the 2012-2013 school year. Samantha missed 35 days of school during that year. This caused concern for the Johnston district administrators, who were monitoring Samantha's attendance throughout the year.

In April 2013, Samantha was diagnosed with depression. Later, May 2, 2013, Dr. Deanna Boesen, a Child Psychiatrist at Broadlawns Medical Center in Des Moines, recommended that Samantha return to the Dallas Center-Grimes school district for mental health reasons. The following Monday, on May 6, 2013, Shannon B. submitted the present request for open enrollment back into the Dallas Center-Grimes district.

At hearing, Angela Hunt, student outreach staff at Johnston, testified to her work with Samantha. Ms. Hunt denied being aware of the teasing and mistreatment incidents reported by Samantha to Johnston administrators. She acknowledged Samantha's professed concerns about not connecting to peers. Ms. Hunt also expressed a desire to support Samantha's needs in any way possible, including supporting Samantha in her open enrollment request to Dallas Center-Grimes.

When the Dallas Center-Grimes district learned of the requested transfer, the administrators consulted with Lorie Phillips, a principal in the Dallas Center-Grimes district, who expressed concern about the proposed transfer due to the risky behaviors of Samantha's former friends in the Dallas Center-Grimes district. The ALJ found that based on that inquiry, the Dallas Center-Grimes district voted to deny Samantha's open enrollment request.

CONTROLLING LAW

Designed to "permit a wide range of educational choices for children enrolled in schools in this state and to maximize [the] ability to use those choices", the Iowa open enrollment statute should be broadly construed "to maximize parental choice...." Iowa Code 282.18(1)(a).

Generally, open enrollment applications must be filed prior to March 1. Iowa Code 282.18(2)(a). Except in situations where statutorily defined "good cause" is present, open enrollment applications filed after March 1 are subject to approval by both the resident district and the receiving district. Iowa Code 282.18(5). "Appeals of a denial of approval involving repeated acts of harassment of the student or serious health condition of the student that the resident district cannot adequately address" are subject to appeal to the Board. *Id.* In reviewing and deciding such appeals, "the state [B]oard shall exercise broad discretion to achieve just and equitable results that are in the best interest of the affected child...." Iowa Code § 282.18(5) (emphasis added).

ANALYSIS

While Shannon B. has sought to open enroll Samantha due to both allegations of repeated harassment and due to Shannon's serious health condition, the Administrative Law Judge appropriately focused her analysis on the latter issue.

When construing the Board's authority for granting open enrollment requests due to allegations of repeated harassment, the Board has set criteria for review that include all of the following:

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.

In re: Open Enrollment of Jill F., 26 D.o.E. App. Dec. 177, 180 (2012); In re: Hannah T., 25 D.o.E. at p. 31.

Without attempting to minimize Samantha's experiences, the allegations raised in this case do not fit the criteria outlined here. The harassment alleged occurred prior to March 1st. Further, school officials intervened and lessened the occurrence and impact of the alleged harassment. The record presented does not support a finding for open enrollment on that ground.

However, the allegations raised that relate to Samantha's serious health condition are another matter. As the ALJ noted, in past cases, an appellant seeking to overturn the

denial of an open enrollment request on this ground must present evidence reflecting 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.

In re Kathryn K., 26 D.o.E. App. Dec. 197, 199-200.

We believe Shannon and Samantha have met this standard in this case. Samantha has been diagnosed with depression. The record does not reflect that the diagnosed health condition is temporary in any way. Grounds one and two, therefore, appear satisfied.

Shannon made the Johnston district aware of Samantha's diagnosis in May 2013, but the Johnston district appears from the record to have both observed behavior consistent with depression and attempted to respond to the same several months prior to that time. In this situation, the Board does not believe the Johnston district needed specific medical instructions to identify and attempt to deal with symptoms of depression, an occurrence that is sadly so common that the federal Health and Human Services department says afflicts almost a quarter of Iowa's high school students. U.S. Department of Health and Human Services, Office of Adolescent Health, "Iowa Adolescent Mental Health Facts", <http://www.hhs.gov/ash/oah/adolescent-health-topics/mental-health/states/ia.html>.

The Board does not question the efforts or good intentions of the Johnston district. Had the Johnston district challenged the present open enrollment request on the grounds that it had not been given a fair opportunity to address Samantha's mental health and

educational needs, this would have been a closer case. However, Johnston's employees went on record in this proceeding as ready to support Samantha's open enrollment request. The Dallas Center-Grimes district, who opposed the request for open enrollment, is not in a better position than Samantha or the Johnston district to provide relevant evidence for review by the Board on these criteria. On the record presented to the Board, it appears grounds three and four are also satisfied.

The record does not identify Shannon as a medical professional, or someone who would have the types of exposure to depressive symptoms as school district employees would. Shannon did not get the official diagnosis of depression until May 2013. Shannon acted promptly thereafter to take the action she deemed necessary to obtain the educational environment needed by Samantha to alleviate the impact of Samantha's medical condition. On the record presented to the Board, it appears ground five has been satisfied.

The focus of the Dallas Center-Grimes administration appears to be on the last prong, whether it can be "reasonably anticipated" that a change would help. The Dallas Center Grimes admittedly performed a limited inquiry relating to Samantha's prior enrollment in the Dallas Center-Grimes district. While the Board does not doubt the sincerity of the Dallas Center-Grimes administrative staff and their beliefs on the best environment for Samantha, the fact that that a receiving district after a brief review formed an adverse opinion on a single prong of the Board's criteria does not and cannot end the Board's analysis. If it did, there would be no reason to have an open enrollment appeal process in Iowa Code § 282.18(5).

Samantha and Shannon clearly believe the change would be beneficial. While not dispositive, their views should at least be considered. Further, Dr. Boesen also believes such a change will be beneficial. While the Board agrees with the ALJ that a nonspecific recommendation in favor of an enrollment change will not be given "additional weight" simply because it is from a medical provider, the Board must give some weight to the view of a medical professional trained in diagnosing and treating the health condition at issue in the enrollment request. Finally, the Johnston district also appears supportive of the request. The Board has no reason to believe that the Johnston district would support a request that Johnston administrative officials believed would not result in an improved situation for the student in question.

When considering a student's appeal from a denied open enrollment request relating to a serious health condition, the Legislature has granted the Board "broad discretion to achieve just and equitable results that are in the best interests of the affected child". Iowa Code § 282.18(5) (emphasis added). Based upon the record presented and in light of Samantha's serious medical condition, the Board believes that it is in Samantha's best interest to be permitted to finish her high school career in Dallas Center-Grimes, an environment where we believe Samantha will be better able to learn and achieve.

DECISION

For the foregoing reasons, the proposed decision of the Administrative Law Judge in this case is vacated. The decision of the Board of Directors of the Dallas Center Grimes Community School District made on May 30, 2013, denying the open enrollment request filed on behalf of Samantha H. is REVERSED. There are no costs of this appeal to be assigned.

11/20/2013
Date

/s/
Rosie Hussey, President
State Board of Education