

IOWA DEPARTMENT OF EDUCATION
(Cite as 26 D.o.E. App. Dec. 467)

<i>In Re Anneliese Z.</i>)	
)	
Christa C., Appellant)	
)	DECISION
Appellant,)	
)	
v.)	
)	
Des Moines Independent Community)	Admin. Doc. No. 4775
School District,)	
)	
Appellee.)	

STATEMENT OF THE CASE

The above-captioned matter was heard by a telephone conference call on October 23, 2013, before designated administrative law judge, Nicole M. Proesch, J.D, presiding on behalf of the State Board of Education (“State Board”). The Appellant, Christa C. was represented by her mother and Anneliese’s grandmother, Mari Holt. Attorney Patricia Lantz represented the Des Moines Independent Community School District (“DM”). Also present for DM was Eleanor Shirley, an enrollment specialist, Cindy Roerig, the Samuelson Elementary School Principal, and school counselor, Holly Barcus. An evidentiary hearing was held pursuant to agency rules found at 281 Iowa Administrative Code chapter 6.

The Appellant, Christa C., seeks reversal of an August 20, 2013 decision by the Des Moines Independent Community School District Board of Directors (“DM Board”) denying a late filed open enrollment request on behalf of her minor daughter, Anneliese Z. The affidavit of appeal filed by Christa on September 9, 2013, attached supporting documents, and the school districts supporting documents are included in the record. Ms. Holt testified on behalf of the appellant. Appellant’s exhibits were admitted into evidence without objection. Ms. Shirley, Principal Roerig, and Ms. Barcus testified for DM and the school district’s exhibits were admitted into evidence without objection.

The State Board has authority and jurisdiction to hear open enrollment appeals pursuant to Iowa Code §§ 282.18(5) and 290.1 (2013). The administrative law judge finds that she and the State Board lack subject matter jurisdiction in the appeal before them.

FINDINGS OF FACT

Christa C. and her daughter Anneliese Z. reside within DM with Ms. Holt. Anneliese is ten years old, in the 5th grade, and is currently being homeschooled for the 2013-2014 school year. March 1 is the statutory deadline for filing for open enrollment for the following school year. On August 9, 2013, Christa and Ms. Holt filed an application with DM requesting approval for Anneliese to open enroll to Urbandale Community School District (UCSD) for the 2013-2014 school year. The sole issue presented in this appeal is whether the DM Board erred by denying the late filed application for Anneliese to open enroll out of the district. The record establishes the following facts and circumstances leading to the application.

Annaliese attended DM for the 2012-2013 school year. During that year, Annaliese was in the 4th grade at Samuelson Elementary School. Several issues surfaced during the 2012-2013 school year when a girl who Annaliese was formerly best friends with began harassing Annaliese at school. This girl instigated the alienation of Annaliese from other students in her class and in other classes often leaving Annaliese to play alone at recess. Ms. Holt testified that the alleged harassment included rumors that Annaliese was having sex and using drugs. As a result, Annaliese's personality changed and she began having sleep problems, breathing problems, and breaking out in a rash. Annaliese was so upset at one point she talked about suicide. Christa and Ms. Holt reported the situation to Principal Roerig several times throughout the year but the behavior continued. The school continued to monitor the situation in class and at recess but the school could not see or hear everything that was going on. Christa decided to wait to see if things would get better over the summer and improve in 5th grade before switching schools. (Affidavit of Appeal and Testimony of Ms. Holt)

For the 2013-2014 school year, Annaliese started the 5th grade at Samuelson Elementary with a good attitude but shortly after school started, the harassment began again. There were no physical threats to Annaliese or her property while Annaliese was still enrolled in the district. However, Ms. Holt testified that in the weeks just prior to this hearing Annaliese had rocks and a dead bird thrown at her while she was walking through her neighborhood.¹ (Testimony of Ms. Holt) On August 9, 2013, Christa and Ms. Holt filed an application for open enrollment to enroll Annaliese out of DM to UCSD. The application alleged pervasive harassment. Attached to the application was a note that Dr. Ajluni wrote on August 9, 2013, on prescription pad paper recommending that Annaliese attend Urbandale or be homeschooled due to bullying. (Application for Open Enrollment)

¹ During this time Annaliese was being homeschooled.

Ms. Shirley received the application for open enrollment on August 12, 2013, and contacted the executive director for Samuelson Elementary, Barry Jones, to see what information she could gather regarding the alleged harassment. Mr. Jones learned that an investigation into harassment was conducted in May of 2013 and it was unfounded. (Testimony of Ms. Shirley)

Ms. Barcus testified she was not aware of any issues with bullying until she received a doctor's note requesting that Annaliese be moved out of the district due to bullying.² After receiving the note, she talked with Annaliese and was provided with several names of girls who were involved in the behavior. Ms. Barcus interviewed three witnesses and the accused. The witnesses all wanted to be friends with both Annaliese and the accused but explained that Annaliese would not be friends with them if they were friends with the other girl. Annaliese could not point to a particular incident of harassment that occurred between her and the accused. The complaint was unfounded. (Testimony of Ms. Barcus)

Principal Roerig also received complaints from Ms. Holt that some girls were calling Annaliese names. Annaliese believed these girls were talking about her but she could not hear what they were saying. Principal Roerig assigned a counselor to watch the girls at recess, talked to the teachers in the classrooms, and checked on Annaliese several times a day to see if Annaliese was ok. Annaliese did not report any issues. (Testimony of Principal Roerig)

Ms. Shirley testified that the district offered Annaliese attendance in another attendance center or homeschooling with the district as an alternative to attending Samuelson. Additionally, Annaliese's name was moved to the number one spot on the waitlist to get into the district's home school assistance program. Ms. Shirley recommended to the DM Board to deny the open enrollment application because the harassment was not founded and the district was able to offer other options to Annaliese. (Testimony of Ms. Shirley)

On August 20, 2013, the DM Board denied the open enrollment application. Ms. Shirley sent a letter to Christa notifying her that the application was denied and that she could contact the district regarding other options that may be available. Ms. Holt testified that she and Christa contacted the district about other options and they were told that Annaliese could attend Oak Park, Monroe, or Pleasant Hill Elementary Schools, or be homeschooled. They enrolled her in Oak Park for three weeks but they did not have the money to drive back and forth so they decided to home school her. Annaliese is currently being homeschooled.

² There was no doctor's note offered into evidence supporting the investigation in May of 2013 by either party.

CONCLUSIONS OF LAW

A decision by either board denying a late-filed open enrollment application that is based on “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 to the State Board under Code section 290.1. Iowa Code § 282.18(5). However, the Legislature has set minimum procedural requirements in order to trigger the State Board’s review of an open enrollment denial. The affected pupil, or the parent or guardian of that affected pupil if the pupil is a minor, must file an appeal within thirty days after the decision. Iowa Code § 290.1 (emphasis added). Further, the aggrieved party must file an affidavit with the State Board setting forth the basis of the appeal. *Id.*

Viewing the entire statute in context, it is clear that the Legislature has determined that the “aggrieved party” is the parent or guardian. Therefore, in order to trigger State Board review, the parent or guardian must both file an appeal and submit the affidavit.

In this case, the parent (Christa C.) and the non-guardian grandmother (Mari) signed and submitted a statement in support of this appeal. However, the statement was not made under oath. *See* Iowa Code 622.85 (“An affidavit is a written declaration made under oath, without notice to the adverse party, before any person authorized to administer oaths within or without the state.”) Further, only Mari -- the non-guardian grandmother -- had the statement in question notarized. Mari cannot file an appeal on Annaliese’s behalf.

The State Board is not in a position to second guess or overlook the technical requirements for appeal set by the Legislature. Since, the requirements of the statute were not met, the State Board lacks jurisdiction to hear the appeal. *See Anderson v. W.Hodgeman & Sons, Inc.*, 524 N.W.2d 418, 420 (Iowa 1994) (concluding the reviewing body lacked jurisdiction to even consider an agency appeal because the appealing party did not comply with statutory requirements).

Since the State Board lacks jurisdiction over the parties it need not examine the subject matter of the appeal. However, because parents and school districts look to these decisions for guidance in these cases we will analyze the facts of this case against the criterion we have previously set out in these cases.

The State Board applies established criteria when reviewing an open enrollment decision involving a claim of repeated acts of harassment. All of the following criteria must be met for this Board to reverse a local decision and grant such a request:

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. 26, 31 (2007) (emphasis added).

Even assuming *arguendo* the board had jurisdiction here the appeal would still fail for the reasons set forth below. Because the evidence here fails to meet the second, third, and fourth criteria, the board does not analyze the first criterion.

Under the second criterion, the references to an objectively hostile school environment and the reasonable fear of the student means that the conduct complained of must have negatively affected a reasonable student in Annaliese's position. While the board does not discount that Annaliese felt "bullied" by the adolescent behavior of her peers, the behavior reflected in the record does not rise to the level of pervasive harassment that the Legislature or the State Board intended to remedy by allowing late-filed open enrollment applications.

Even, if the behavior here rose to the level of pervasive harassment required by Legislature, under the third criterion the appellant must also show that the behavior is likely to continue despite the efforts of school officials to resolve the situation. The evidence in this case shows that school officials addressed the behavior during the 2012-2013 school year and Annaliese reported no further incidents to school officials. In fact,

Christa chose to refrain from moving Annaliese from Samuelson hoping things would improve over the summer. Upon returning to school for the 2013-2014 school year the behaviors started again and rather than contacting school officials in an attempt to address the situation Christa and Ms. Holt filed an application for open enrollment. By not notifying the district of the reoccurrence of this behavior, the district was not given the opportunity to resolve the situation. Under these circumstances, one cannot conclude the behavior was likely to continue despite the efforts of school officials.

Finally, under the fourth criterion Christa must show that changing the school district would alleviate the situation. This case involves a resident district with multiple attendance centers. The District here offered to discuss enrollment for Annaliese to three other attendance centers or to enroll her in the home school assistance program in the district. In fact, Annaliese attended Oak Park Elementary school for three weeks but then stopped attending because of the cost of transportation associated with driving her to school. Instead of incurring the cost of transportation, Christa chose to home school Annaliese. Ms. Holt testified at the hearing that UCSD was just up the road from her residence and therefore, Annaliese could walk to school and they would not incur the cost of transportation. Under these circumstances, we conclude that convenience is the primary concern behind the open enrollment request. Thus, this appeal would fall short on the fourth criterion as well.

While the board is certainly sympathetic to the situation Annaliese is experiencing, this is not the type of case foreseen by Legislature when it created an open enrollment remedy for students who have been victims of repeated acts of harassment.

DECISION

For the foregoing reasons, the appeal is dismissed. There are no costs associated with this appeal to be assigned to either party.

1/23/2014
Date

/s/
Nicole M. Proesch, J.D.
Administrative Law Judge

1/23/2014
Date

/s/
Rosie Hussey, Board President
State Board of Education