IOWA DEPARTMENT OF EDUCATION
(Cite as 26 D.o.E. App. Dec. 509)

In Re: Open Enrollment, C.L.,	)	
	)	
Gary and Paula L.,	)	
	)	DECISION
Appellant,	)	
	)	
v.	)	
	)	
Dike-New Hartford Community School District,	)	[Admin. Doc. No. 4781]
	)	
	)	
Appellee.	)	

STATEMENT OF THE CASE

The Appellants, Gary ("Gary") and Paula L. ("Paula"), seek reversal of a December 16, 2013 decision by the Dike-New Hartford Community School District Board of Directors ("DNCSD Board") denying a late filed open enrollment request on behalf of their minor son, C.L. The affidavit of appeal filed by the Appellants on January 14, 2014, attached supporting documents, and the school district's supporting documents are included in the record. Authority and jurisdiction for the appeal are found in Iowa Code §§ 282.18(5) and 290.1 (2013). The administrative law judge finds that she and the State Board of Education ("the State Board") have jurisdiction over the parties and subject matter of the appeal before them.

An in-person evidentiary hearing was held in this matter on February 25, 2014, before designated administrative law judge, Nicole M. Proesch, J.D. pursuant to agency rules found at 281 Iowa Administrative Code chapter 6. The Appellants were present on behalf of their minor son; C.L. C.L. and his sister were also present. Superintendent Larry Hunt ("Superintendant Hunt") appeared on behalf of the Dike-New Hartford Community School District ("DNCSD"). Also present was Jerry Martinek, the junior high principal ("Principal Martinek") and Julie Merfeld ("Mrs. Merfeld"), who is the DNCSD Board secretary.

The Appellants and C.L. testified in support of the appeal. Appellant's exhibits 1-12 were admitted into evidence over objections of Superintendant Hunt.[1] Superintendent Hunt and Principal Martinek testified for DNCSD and the school district's exhibits were admitted into evidence without objection. The State Board will not consider any evidence submitted by either party containing events or information that occurred after the December 16, 2013 decision, which is the subject of this appeal.

[1] Superintendant Hunt objected to Appellants exhibits 1-6 and 8-12 stating that the contents of those exhibits all occurred after December 16, 2013, and the DNCSD Board had already made its decision.

FINDINGS OF FACT

Gary, Paula, and their son C.L. reside within the DNCSD. C.L. is in the 7th grade and at the time of this hearing was attending the Dike-New Hartford Junior High School ("DNJHS") in New Hartford, Iowa. March 1 is the statutory deadline for filing a request for open enrollment for the following school year. *See* Iowa Code § 282.18(2) (2013). After November 11, 2013, the Appellants filed an application with DNCSD requesting approval for C.L. to open enroll to the Cedar Falls Community School District ("CFCSD") for the remainder of the 2013-2014 school year. The sole issue presented in this case is whether or not the DNCSD erred by denying the late-filed application for C.L. to open enroll out of the district. The record in this case establishes the following facts and circumstances leading to the application for open enrollment.

C.L. and his family moved from South Carolina to Iowa during the first week of September 2013. C.L. was enrolled to attend school at DNJHS. During the first week of school, C.L. told his mother, Paula, that his teacher had a nickname for him. He reported that Mr. Connolly was calling him "Chuckles." Paula asked C.L. if he liked his new nickname and C.L. told her "no, but what am I supposed to do I'm the new kid?" C.L. told Paula that lots of students including the "jocks" were calling him Chuckles on many occasions.[2] On September 20, 2013, Paula reported this to Principal Martinek.

Principal Martinek spoke to Mr. Connolly about the incident and Mr. Connolly explained that he heard other students call C.L. Chuckles and thought it was his nickname. Mr. Connolly apologized, requested to meet with the entire group of 7th grade boys, and instructed them to address students by their proper names. Principal Martinek also emailed the other teachers and instructed them to correct any student who was not property addressing C.L.

On September 24, 2013, the day after the class wide announcement Paula emailed Principal Martinek about Student A and Student B who were also calling C.L. Chuckles and those students were instructed to stop. Several days later Paula L. reported to Principal Martinek that Student B had made comments to C.L. Principal Martinek met with C.L., then met with Student B, and told him to stop bothering C.L. Principal Martinek also made teachers aware of the issue.

On October 28, 2013, Paula reported two incidents that occurred at a non-school sponsored dance she had chaperoned on October 26, 2013 to Principal Martinek. Paula reported that C.L. had danced with another student's girlfriend and was threatened[3] by the other student's friends. Paula did not report a student's name so Principal Martinek was unable to follow up on this incident. Paula also reported that Student C also called C.L. Chuckles. Principal Martinek met with Student C the next morning and instructed him not to call C.L. that. Student C reported he meant no harm to C.L. The next day, Paula reported that Student C apologized to C.L. and continued to be friendly to C.L. Paula also testified about a third incident that occurred off school grounds when C.L. and his family went out to eat at a

[2] The affidavit of appeal estimates at least 20-30 times before it was reported to the principal.
[3] There was no testimony regarding a specific threat.

restaurant. Paula testified that several boys in his class were at the restaurant and stared at C.L. and would not talk to him.[4]

On October 29, 2013, Paula emailed Principal Martinek reporting that Student D called her son Chuckles in a sarcastic way. Principal Martinek spoke with Student D, who admitted it. Principal Martinek warned him and encouraged him to apologize to C.L. Again, on October 31, 2013, Principal Martinek received another email from Paula reporting that Student E had called C.L. Chuckles in a sarcastic way. Student E was told it was not appropriate to call C.L. anything other than his proper name.

On November 5, 2013, Paula met with Superintendant Hunt to discuss open enrolling C.L. out of DNCSD to CFCSD. Paula reported that C.L. had been bullied and students were calling him names. She advised that students and even a teacher, Mr. Connolly, called C.L. Chuckles and she did not feel this was appropriate. Paula advised that she had reported these incidents to Principal Martinek and she felt that the district handled the situation appropriately. However, Paula explained that she felt CFCSD was a better fit for C.L. because it offered him swimming and orchestra. Superintendent Hunt provided Paula an open enrollment application and explained the process.

On November 11, 2013, Student E slammed C.L.'s locker door during passing time and caught C.L.'s finger in the door. Student E admitted slamming C.L.'s locker door because C.L. was getting on his nerves by telling him what he does wrong in basketball practice all the time. Student E stated he intended to slam the door but did not intend for C.L.'s finger to be in the door. C.L. told Principal Martinek that he did not think that Student E would physically harm him. Principal Martinek testified that he thought the incident was an accident however, he told Student E this was not the appropriate way to handle the situation and noted that C.L. was injured. Student E received a one day in-school suspension for the incident. Paula testified that after the incident, another student told C.L. not to tell or no one would like him, however this was not reported to Principal Martinek or the board before the hearing.[5]

On that same day, Gary and Paula met with Superintendant Hunt to discuss open enrolling C.L. to CFCSD. They advised Superintendant Hunt of the incident that occurred with the locker door. Superintendent Hunt discussed all of the incidents with them. Both stated that the district had been very good about addressing everything but they felt it would be better for C.L. to transfer to CFCSD because of the opportunities he would have there.

There were no other reported incidents of harassment that occurred before the next school board meeting. On December 16, 2013, the DNCSD Board denied the application for open enrollment finding that the behavior C.L. was subjected to did not meet the requirements of pervasive harassment. Additionally, the DNCSD Board felt that each incident had been dealt with by Principal Martinek, the teaching staff, and that things had gotten better.

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[4] This incident was not reported to Principal Martinek or any other school official.

[5] Paula also testified regarding what she felt was hazing-like behaviors occurring at DNJHS that were occurring at the school; however, these behaviors were not reported to school officials prior to the hearing either.[5]

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 of Education under Code section 290.1. Iowa Code § 282.18(5).

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). Because the evidence here fails to meet the second and third Criteria, the board does not analyze the first or fourth criterion.

Under the second criterion, the focus is on the terms *objectively* hostile school environment and *reasonable* fear of the student, which means that the conduct complained of must have negatively affected a reasonable student in C.L.'s position. There is no doubt that C.L. felt picked on and did not like the nickname Chuckles given to him by his peers. It is clear that several students continued to call C.L. Chuckles in an attempt to annoy him. While this name calling is certainly hurtful, it is mere adolescent cruelty and not harassment. The incident with the locker door, while not acceptable behavior, appears to be accidental by all accounts and not harassment.[6] Although, Gary, Paula, and C.L. felt the repeated name calling and the locker incident as a whole were pervasive harassment, 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, assuming *arguendo* that the name calling and incident at the locker (if not accidental) 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. Here Principal Martinek addressed each and every incident that was reported to him almost immediately. In fact, in some instances those students apologized to C.L. the next day. The incident with the locker resulted in a one day suspension for the student. Even Gary and Paula indicated they felt the district had dealt with each incident that occurred. In this case, the district was clearly taking appropriate steps to resolve each situation as it arose. At this juncture, it is impossible to predict that the harassment is likely to continue despite the efforts of the district.

While the board is sympathetic to C.L. and his feelings of being picked on by his peers, 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.

Open enrollment appeals of this type are not about a family's right to transfer their children to other school districts. A transfer may be made even though open enrollment is denied. The approval, or denial, of open enrollment does affect payment for the student's education. When a student transfers to a nonresident school district under open enrollment, the district of residence must pay for the student to attend the receiving district. When a student transfers to a nonresident school district outside of the open enrollment process, the nonresident district must charge the student tuition.

Parents are free to make the decisions they deem to be best for their children. Our review focus is not upon the family's decision, but on the local school board decision. The issue for review here, as in all other appeals brought to us under Iowa Code section 282.18(5), is limited to whether the local school board made error of law in denying the late-filed open enrollment request. The DNCSD Board correctly applied Iowa Code section 282.18(5) when it denied the late open enrollment application filed on behalf of C.L. Therefore, we must uphold the local board decision.

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[6] C.L. stated that he did not think Student E would physically harm him.

DECISION

For the foregoing reasons, the decision of the Board of Directors of the Dike-New Hartford Community School District made on December 16, 2013, denying the open enrollment request filed by Gary and Paula on behalf of C.L. is AFFIRMED. There are no costs of this appeal to be assigned.

It is so ordered.

5/15/2014_____ /s/_____
Date Nicole M. Proesch, J.D.
Administrative Law Judge

5/15/2014_____ /s/_____
Date Charles C. Edwards, Board President
State Board of Education