

IOWA DEPARTMENT OF EDUCATION
(Cite as 26 D.o.E. App. Dec. 239)

<i>In re: Open Enrollment of Tiffany B.</i>	:	
Timothy and Jean B., Appellants,	:	
vs.	:	DECISION
Cedar Falls Community School District, Appellee.	:	[DE Admin. Doc. 4756]

STATEMENT OF THE CASE

The Appellants seek reversal of a July 23, 2012 decision by the Cedar Falls Community School District Board of Directors denying a late-filed open enrollment request. The State Board of Education has jurisdiction over the parties and subject matter of the appeal, pursuant to Iowa Code sections 282.18(5) and 290.1.

Hearing for this appeal was conducted before the undersigned administrative law judge by telephone conference call on August 14, 2012, pursuant to agency rules found at 281 Iowa Administrative Code [IAC], chapter 6. Appellant Timothy B. appeared on behalf of his daughter. Superintendent Mike Wells appeared for the Appellee, Cedar Falls Community School District. Mr. B. and Mr. Wells both testified. The record also includes the affidavit of appeal, a copy of the Open Enrollment Application, and minutes of the school board meeting.

FINDINGS OF FACT

Tim and Jean B. and their family live within the Cedar Falls Community School District. Their daughter Tiffany will be a 9th grade student during the upcoming 2012-2013 school year.

March 1st is the standard filing deadline for an open enrollment application for the following school year. On May 7, 2012, Mr. B. filed an application with the Cedar Falls school district, requesting approval for Tiffany to open enroll to the CAM Community School District – Iowa Connections Academy for the 2012-2013 school year. The sole issue presented in this case is whether the Cedar Falls Community School District Board of Directors erred by denying the late-filed application for Tiffany B. to open enroll out of the district. The record establishes the following circumstances leading to the application.

Tiffany attended Holmes Junior High, in the Cedar Falls district, as an 8th grade student during the 2011-2012 school year. In February of 2012, one of the girls in Tiffany's class (Student A) began bullying Tiffany on Facebook. Mr. B. spoke twice with the vice principal about this, hoping the school would do something. Soon thereafter, Student A began bullying Tiffany in-person – in the school lunch room. Tiffany reported that Student A was sticking her finger in her lunch tray, mixing food items or pulling her tray away, and telling her that she did not need to eat. (Affidavit of Appeal & Tim B. testimony)

Mr. B. and his daughter met with the building principal, Mr. Welter to discuss the Facebook posts and Student A's behavior in the lunch room. They were told that school staff would monitor lunch room behavior and take care of it, but the bullying did not stop. As Tiffany was leaving the school on the last day of the school year, Student A told Tiffany that she was going to "kick her ass." Student A previously made one threat on Facebook. This was the first in-person threat of physical violence Student A made toward Tiffany. (Affidavit of Appeal & Tim B. testimony)

On May 7, 2012, Mr. B. filed an application to open enroll Tiffany to the CAM program for the 2012-2013 school year. The request alleged pervasive harassment, based on Student A's bullying of Tiffany. Due to the lunch room problems and threat of injury at the end of the school year the family is concerned for Tiffany's safety.

Upon receipt of the application, Superintendent Mike Wells contacted the junior high principals and requested all reports of harassment or discipline involving Tiffany during the prior school year. Several entries from Tiffany's school record were provided, three related to harassment complaints. On March 2, 2012, Tiffany and her father came in and reported that she was being bullied by another student on Facebook and at school. The associate principal, Bill Boevers, noted that he told them the school could address the at-school behavior. He suggested "unfriending" Student A on Facebook and was told they had already done that. (Wells testimony)

On April 3, 2012, Mr. B. called and spoke to Principal Welter. Mr. Welter contacted the associate principal, noting that Mr. B. told him about the prior visit with the associate principle and said that it did not appear that anything had been said or done. Welter noted that he asked Mr. B. and Tiffany to write a statement detailing what was happening. In response, Mr. Boevers told Mr. Welter that that he had not heard a thing from the family since the meeting on March 2nd. (Wells testimony)

After the April 3rd report, the vice principal noted that he brought Student A in and spoke with her and her parents about the harassment allegation. He indicated that he told them that he knew the school could not control out of school student conduct, but that if anything happened in school there would be consequences. On April 11th Tiffany's parents took a written statement to the school, along with 15 to 20 pages of Facebook communications going back and forth between Tiffany and Student A. The

most recent Facebook page was from early March.¹ The building principal and associate principal received no further reports of bullying or harassment and they assumed that there was no further conduct of concern at school. (Wells testimony)

Based upon review of the harassment reports noted in school records, Superintendent Wells did not believe that the reported incidents showed pervasive harassment. He also assumed that the misconduct had been shut down before the end of the school year. He recommended denial of the late-filed open enrollment request for Tiffany. (Wells testimony) The Cedar Falls Community School District Board of Directors denied the application on July 23, 2012, and Mr. and Mrs. B. filed a timely appeal request.

Mr. B.'s main concern is Tiffany's safety. Based on things the school administrators have told him, he believes that they have had trouble with Student A before. The family reported Student A's bullying behavior to both the associate principal and the principal, but the bullying continued through the last day of school. Tiffany is afraid to return to Holmes Junior High and Mr. B. is afraid to have her there.

Superintendent Wells acknowledged that bullying goes on to some degree in all school districts. The Cedar Falls staff and administrators do their best to promptly and firmly respond to reports of bullying and to protect all students. In this case, the building administrators addressed the situation with Tiffany by directly approaching Student A and her parents about the reports. No further incidents of bullying or harassment were brought to the school's attention after this action. The district maintains that pervasive and ongoing harassment has not been shown.

CONCLUSIONS OF LAW

Iowa Code section 282.18 governs the open enrollment process. March 1st is the standard filing-deadline for an application to open enroll for the upcoming school year. The law provides that an open enrollment application filed after the statutory deadline, which is not based on statutorily defined "good cause," must be approved by the boards of directors of both the resident district and the receiving district. Iowa Code § 282.18(5) (2011). Open enrollment may be granted at any time with approval of the resident and receiving school districts. Iowa Code § 282.18(14).

A local board decision 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. The criteria have been crafted to be consistent with both section 282.18(5) and section 280.28, which defines harassment and bullying

¹ The statement and copies of Facebook pages were not offered into evidence by either party and are not included in the appeal record.

for purposes of the development of school policy. See *In re: Hannah T.*, 25 D.o.E. 26, 31 (2007) (revising criteria following enactment of Senate File 61 – 2007 Iowa Acts (82 G.A), ch. 9, codified as Code section 280.28).

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. at p. 31.

Because the evidence here fails to meet the second and third criteria, the Board does not analyze the first and four criteria as applied to the facts of this case.

Tiffany reported Student's A's Facebook communications and lunch room behavior to her parents. She was clearly bothered by Student A's taunts and interference with her lunch. We do not question the fact that Tiffany was upset by Student A's behavior. But the requirement of an *objectively hostile* school environment means that the conduct at issue would have negatively affected a reasonable person in Tiffany's position. We must determine whether Student A's behavior created an objectively hostile school environment that placed Tiffany in reasonable fear of harm to her person or property, or had a substantially detrimental effect on her physical or mental health, or substantially interfered with her academic performance, or substantially interfered with

her ability to participate in or benefit from the services, activities, or privileges provided by the school.

This Board has granted relief under section 282.18(5) in three cases:

In the first such case, *In re: Melissa J. Van Bommel*, [14 D.o.E. App. Dec. 281 (1997)] the student had experienced harassment by a group of about 20 students. . . . The harassment of Melissa culminated on a highway; the vehicle in which Melissa was riding was twice intentionally forced off the road by other vehicles driven by other students. This Board ordered that Melissa be allowed to open enroll out of the district.

The other cases in which relief was granted are *In re: Jeremy Brickhouse* [21 D.o.E. App. Dec. 35 (2002)] and *In re: John Myers* [22 D.o.E. App. Dec. 271 (2004)]. Both students in those cases had been subjected to numerous and specific physical assaults at school. The degradations to which Jeremy was subjected in his high school locker room are well-documented in the *Brickhouse* decision. In the *Myers* case, John was frequently physically assaulted at school, and his schoolbooks and supplies had been stolen, defaced, or otherwise rendered useless as educational tools by bullying classmates.

In re: Kiley W., 26 D.o.E. App. Dec. 164, 168 (2011), quoting *In re: Hannah T.*, 25 D.o.E. App. Dec. at p. 28.

It is always inappropriate when a student chooses to create conflict with a peer. No student should be subjected to taunting and non-verbal misconduct, such as the touching and mixing of food on their lunch tray by another student. But, as described at hearing, the behavior that Student A directed toward Tiffany during the school year did not include any direct threats to Tiffany's personal safety or property. While extremely immature and boorish, the described behavior simply does not rise to the level of pervasive harassment that the Legislature and this Board remedy by allowing late-filed open enrollment transfers.

Further, the third criterion requires a showing that the harassment is likely to continue despite school officials' efforts to the contrary. The record here shows that the school officials responded to the reported incidents of misconduct and promptly took action to resolve the problems reported on April 3rd. Although Mr. B. testified that Student A continued to bully and harass Tiffany in the lunch room and threatened her on the final day of school, none of this conduct was reported to the school. Indeed, no new bullying or harassment by Student A was reported to the school after April 3rd. The school officials were not given a reasonable chance to address the subsequent behavior.

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. Tiffany and her parents are free to make the decisions they deem to be in her best interest and we do not question the wisdom of their choices. Rather, our focus is on the local school board decision.

The issue for review here is limited to whether the local school board made an error of law in denying the late-filed open enrollment request. We have concluded that pervasive harassment has not been shown. The Cedar Falls school board correctly applied Iowa Code section 282.18(5) when it denied the late open enrollment application filed on behalf of Tiffany. Therefore, we must uphold the local board decision.

DECISION

For the foregoing reasons, the decision of the Board of Directors of the Cedar Falls Community School District made on July 23, 2012, denying the open enrollment request filed on behalf of Tiffany B., is AFFIRMED. There are no costs of this appeal to be assigned.

It is so ordered.

September 13, 2012
Date



Christie J. Scase, J.D.
Administrative Law Judge

September 13, 2012
Date

/s/

Rosie Hussey, President
State Board of Education