

IOWA DEPARTMENT OF EDUCATION
(Cite as 26 D.o.E. App. Dec. 233)

<i>In re: Open Enrollment of Reid S.</i>	:	
Quentin and Mandie S., Appellants,	:	
vs.	:	DECISION
Oelwein Community School District, Appellee.	:	[DE Admin. Doc. 4754]

STATEMENT OF THE CASE

The Appellants seek reversal of a May 21, 2012 decision by the Oelwein Community School District Board of Directors denying a late-filed open enrollment request. The affidavit of appeal and attached supporting documents, filed by Quentin and Mandie S. on June 18, 2012, and the school district's response to the appeal are included in the record. 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 13, 2012, pursuant to agency rules found at 281 Iowa Administrative Code [IAC], chapter 6. The Appellants, Quentin and Mandie S., were present with their son, Reid. They were represented by attorney Timothy Luce. Superintendent Steve Westerberg appeared for the Appellee, Oelwein Community School District. The school district was represented by attorney Andrew Bracken.

Mandie S., Reid S., and Cynthia Boyle testified in support of the appeal. Appellants' exhibits 1 – 5 were admitted into evidence without objection. Superintendent Westerberg testified for the school district and school district exhibits 1 – 6 were admitted into evidence without objection.

FINDINGS OF FACT

Quentin and Mandie S. reside within the Oelwein Community School District with their son Reid and daughter Jade. Reid is fifteen years old and will be a high school sophomore during the upcoming 2012-2013 school year. His younger sister Jade is a middle school student. She will be entering eighth grade this fall.

March 1st is the standard filing deadline for an open enrollment for the following school year. On April 30, 2012, Ms. S. filed an application with the Oelwein school district, requesting approval for Reid to open enroll to the Wapsie Valley Community School District for the 2012-2013 school year. The sole issue presented in this case is whether the Oelwein Community School District Board of Directors erred by denying the late-filed application for Reid S. to open enroll out of the district. The record establishes the following circumstances leading to the application.

Reid and Jade were both attending the Oelwein school district at the beginning of the 2011-2012 school year. Through the fall months of 2011, tensions grew between Jade and several other 7th grade students. Jade was the subject of name calling and taunting. Nasty text messages were exchanged. A conflict with a male classmate during a Family and Consumer Science class on November 11, 2011, culminated with the boy poking or stabbing Jade in the thigh with a pair of scissors, with sufficient force to penetrate her jeans and break her skin. During investigation of this incident, the boy said that he stabbed Jade after she spit in his face. Both students were given detention for disrupting class. (Affidavit of Appeal & OCSD Exhibit 3)

Jade's parents were dissatisfied with how the Oelwein school administrators dealt with the November 11th incident. On November 22, 2011, Ms. S. filed an application to open enroll Jade to the Wapsie Valley school district, alleging pervasive harassment of Jade by Oelwein students. After examining the situation, Oelwein Superintendent Steve Westerberg concluded that the evidence did not support a finding that Jade had or was experiencing pervasive harassment/ bullying. Despite this, the Superintendent and the Oelwein school board determined that it was in the best interest of all parties involved to grant an exception to the open enrollment deadline. (Affidavit of Appeal, attached OE Application for Jade, & OCSD Exhibit 3)

Jade began attending Wapsie Valley at the beginning of the second semester in January of 2012. Prior to the March 1, 2012 open enrollment deadline, the family held a meeting to discuss where Reid and Jade would attend the following year. Jade had settled in at Wapsie Valley and had experienced no further negative contact or harassment from the Oelwein students that Ms. S. was aware of. Reid was doing well at Oelwein and was active in extracurricular activities. They decided to keep the same attendance centers for the following school year. (Affidavit of Appeal & Mandie S. testimony)

On April 19th, things changed. Jade and her mother both received text messages that Ms. S. describes as containing "threats of personal harm, false, demeaning and slanderous statements toward her daughter." Ms. S. believes the messages were being sent by Oelwein students involved in prior acts with Jade because they thought that Jade was behind a fake Facebook account. Ms. S. reported the messages to Oelwein Superintendent Westerberg and to law enforcement. On April 30, 2012, approximately 10 days after these messages began, Ms. S. completed an application to open enroll

Reid to Wapsie Valley for the 2012-2013 school year. The request was based on the family's fear for Jade's safety when attending Oelwein events in which Reid was involved. (OCSD Exhibit 1)

Another incident happened at a middle school track meet held at Oelwein on May 1, 2012. Jade was on the Wapsie Valley track team. Ms. S. spoke to the Wapsie Valley track coach before the meet, to make sure the coach was aware of Jade's prior difficulties with some of the Oelwein middle school students. Ms. S. attended the meet. At some point she lost sight of Jade and went to look for her. She found a group of Wapsie Valley girls near the restroom and they told her they were waiting for Jade. A group of Oelwein girls who were also standing near the restroom walked away as Ms. S. approached. The Wapsie Valley students told Ms. S. that the Oelwein students were being mean and derogatory toward Jade. Jade was not aware that the Oelwein students had been there until she came out of the restroom. Ms. S. testified that some of these Oelwein students taunted her as she returned to her seat in the stands. Ms. S. believes that the students might have hurt Jade if she had not walked up when she did. (Affidavit of Appeal & Mandie S. testimony)

Ms. S. reported this incident to the Oelwein track coach and called Superintendent Westerberg about it the following day. Westerberg followed up with the Oelwein middle school principal and the activities director. Westerberg and the activities director both contacted their counterparts at Wapsie Valley. At that point, the incident had not been reported to Wapsie Valley. (Westerberg testimony)

On May 5, 2012, after reviewing the open enrollment application for Reid, Superintendent Westerberg wrote to Reid's parents to let them know that he did not believe the Facebook and text communication with Jade established good cause for the late open enrollment request for Reid. Reid's parents requested review by the Oelwein school board. The board considered the application on May 21, 2012. Superintendent Westerberg provided the board with a briefing about the background events and Ms. S. addressed the board about the open enrollment request. The board unanimously voted to deny the request. (OCSD Exhibits 4 – 6)

Reid S. completed the 2011-12 school year at Oelwein. He is a good student and has been active in many extracurricular activities at Oelwein, including: FFA, band, chorus, football, and basketball. He is also a fine athlete and would like to play sports at the college level. He has had college scouts observing him. Reid was not personally harassed or bullied while attending Oelwein, but is concerned about his sister's safety. After the May 1st incident he became worried that she might be targeted again if she attended his sporting and academic events at Oelwein. He decided to stop participating in these events to avoid putting Jade in danger. (Reid S. testimony)

Reid and his parents met with Certified Mental Health Counselor Cynthia Boyle about the situation. Reid discussed his decision to withdraw from extracurricular activities

with her. Ms. Boyle believes that Reid is genuinely concerned about Jade's physical safety. She believes that Reid's withdrawal from extracurricular activities would be very detrimental to his psychological and emotional well-being. Ms. Boyle also believes that both Reid and his family are making a reasonable request to open enroll Reid to a different school district, where he and his family feel the children will be safe. (Boyle testimony & Appellants' Exhibit 1)

Reid's parents do not think that Reid should have to give up football, basketball, and other activities to protect his sister. They decided that it was a better option for him to enroll at Wapsie Valley, rather than making this sacrifice. Reid is enrolled to attend Wapsie Valley this fall. If the open enrollment application is denied, his parents will pay tuition. (Mandie S. testimony)

Reid and his family believe that Jade was been harassed by Oelwein students and that this harassment has had a detrimental impact on Reid. They argue that the definition of harassment in the context of open enrollment should be expanded to include a student, like Reid, who is negatively affected by repeated acts of harassment even though the student has not been the subject or target of the harassment.

The school district questions whether the conduct directed toward Jade amounted to harassment or bullying. Regardless of whether the conduct directed toward Jade technically met the definition of harassment, it is clear that no bullying or harassment was directed toward Reid. The school district argues that in the absence of evidence showing that the student requesting open enrollment was the subject of harassment the local board decision to deny open enrollment must be upheld.

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 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).

In order for us to reverse the local board in this case, the Appellants must show that the conduct complained of was aimed at Reid and created an objectively hostile school environment for him. *In re: Open Enrollment of Jill F.*, 26 D.o.E. App. Dec. at p. 180-81. We accept that Reid was aware of threatening conduct directed toward his sister and was concerned for her safety if he continued to play football and basketball for Oelwein and she attended his sporting events. His desire to protect Jade is commendable.

We cannot, however, change the plain wording of 282.18(5) which limits this board's review cases involving "repeated acts of harassment of the student." The criteria we use to assess local school board decisions have been crafted to be consistent with both section 282.18(5) and section 280.28, which defines harassment and bullying for purposes of the development of school policy. *In re: Hannah T.*, 25 D.o.E. at p. 31 (revising criteria following enactment of Senate File 61 – 2007 Iowa Acts (82 G.A), ch. 9, codified as Code section 280.28). The evidence in this case fails to meet the second criterion, no harassment directed toward Reid has been shown.

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. We do not fault Reid or his parents for their decision to enroll Reid in the Wapsie Valley school district and the outcome of this appeal does not limit Reid's ability to transfer to and attend Wapsie Valley.

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. We have concluded that the Oelwein school board correctly applied Iowa Code section 282.18(5) when it denied the late open enrollment application filed on behalf of Reid. Therefore, we must uphold the local board decision.

DECISION

For the foregoing reasons, the decision of the Board of Directors of the Oelwein Community School District made on May 21, 2012, denying the open enrollment request filed on behalf of Reid S., 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