

**IOWA DEPARTMENT OF EDUCATION**  
**(Cite as 26 D.o.E. App. Dec. 189)**

*In re Jordan B.*

Kelly Peters,	:	
Appellant,	:	DECISION
vs.	:	
	:	[Admin. Doc. 4748]
Hamburg Community School District,	:	
Appellee.	:	

The above-captioned matter was heard telephonically on February 21, 2012, before designated administrative law judge Carol J. Greta, J.D. The Appellant was present on behalf of her minor daughter, Jordan. Superintendent Jay Lutt appeared on behalf of the Hamburg Community School District (“Hamburg”). Also present throughout the hearing were Hamburg board members Hilary Christiansen and Susan Harris.

Ms. Peters seeks reversal of the January 30, 2012 decision of the local board of directors of the Hamburg Community School District to deny the open enrollment request filed on behalf of Jordan.

An evidentiary hearing was held pursuant to agency rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for the appeal are found in Iowa Code §§ 282.18(5) and 290.1 (2011). The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter of the appeal before them.

### FINDINGS OF FACT

Following the 2010-11 school year, the Hamburg Community School District discontinued its high school. It entered into a whole grade sharing agreement with the Farragut Community School District whereby all 9 – 12 grade resident students of Hamburg attend high school at Farragut.<sup>1</sup> This high school goes by the name Nishnabotna High School. As Ms. Harris explained, both districts have worked hard to create a climate where there are no “Farragut” kids and no “Hamburg” kids, but that everyone is a Nishnabotna student.

Ms. Peters is a resident of Hamburg; she is Jordan’s primary custodial parent. Jordan’s father is a resident of the Red Oak Community School District. After the whole grade sharing agreement was reached last year by Hamburg and Farragut, Jordan and her

<sup>1</sup> Middle school students (those in grades 5 – 8) from both districts attend school in Hamburg.

family discussed whether to have Jordan enroll elsewhere, but decided that she would become a student at Nishnabotna High School.

On January 25, 2012, roughly one-quarter to one-third of the Nishnabotna students participated in a “sit-in” at lunch. The students were protesting their unhappiness with the administration’s decision to move the lunch period from about 12:15 p.m. to 12:38 p.m. The secondary principal was not amused and used a profanity, for which he later apologized. This incident was said by Ms. Peters to be the tipping point where she decided to remove her daughter from the “negative environment” of Nishnabotna High School.

That same day, January 25, Ms. Peters filed an open enrollment application on behalf of Jordan, alleging a severe health concern. She wrote the following explanation on the application:

Jordan can’t go the day without being upset about something that happened at school. She has been getting headaches and is very stressed out. ...She is miserable with the environment at Nishnabotna High School. We want to send her to Sidney High School ASAP.

Ms. Peters told the local board members at the board meeting on January 30 that Jordan suffered from headaches. She admits that she said nothing before January 30 to any school official about Jordan’s headaches. The local board voted 4 – 1 to deny the late-filed open enrollment request. Jordan is presently a student at Sidney High School.

### CONCLUSIONS OF LAW

The controlling statute for this appeal is the open enrollment law, Iowa Code section 282.18 (2011), and the exception to the statutory filing deadline of March 1 in 282.18(5) regarding applications that seek open enrollment due to a “serious health condition of the student that the resident district cannot adequately address.”

This Board has had only one prior appeal from a parent seeking open enrollment because the resident district cannot adequately address the student’s serious health condition.<sup>2</sup> We gave relief to the student in that case, and introduced the set of guidelines for districts and local boards of education to use when faced with an open enrollment request based on a child’s serious health need that the parent believes is not being adequately addressed by the district. The parents or guardians of the child must show 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.

---

<sup>2</sup> See *In re Anna C.*, 24 D.o.E. App. Dec. 5 (2006).

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.

This case is decided solely on the third criterion. Ms. Peters admits that no one at Nishnabotna High School had notice of Jordan's headaches. Thus, Hamburg had no means to know "what specific steps its staff can take to meet" Jordan's health needs.

Ms. Peters has the right to keep Jordan's health information from school officials, and she has the right to decide that transferring Jordan to another high school is in Jordan's best interests. But a parent cannot withhold information from school officials and then attempt to use that information to justify a late-filed open enrollment application.

### DECISION

For the foregoing reasons, the decision of the Board of Directors of the Hamburg Community School District made on January 30, 2012, denying the open enrollment request filed on behalf of Jordan B. is AFFIRMED. There are no costs of this appeal to be assigned.

2/24 /12  
Date

/s/  
Carol J. Greta, J.D.  
Administrative Law Judge

It is so ordered.

3/29/12  
Date

/s/  
Rosie Hussey, President  
State Board of Education