

IOWA DEPARTMENT OF EDUCATION

(Cite as 26 D.o.E. App. Dec. 177)

In re Open Enrollment of Jill F.

Kevin and Lisa F., Appellants,	:	
	:	DECISION
vs.	:	
	:	[Admin. Doc. 4744]
Clay Central-Everyly Comm. School Dist., Appellee.	:	

The above-captioned matter was heard telephonically on February 1, 2012, before designated Administrative Law Judge Carol J. Greta. Appellant Kevin F. was present on behalf of his minor daughter, Jill, who was also present. The Appellants were represented by attorney Sean J. Barry. The Appellee, the Clay Central-Everyly Community School District, was represented by Superintendent Robert Raymer. Also present on behalf of the Appellee was secondary principal, Curt Busch.

The Appellants seek reversal of the December 21, 2011 decision of the local board of directors of the Clay Central-Everyly District to deny the open enrollment request filed on behalf of Jill.

An evidentiary hearing was held pursuant to agency rules found at 281—Iowa Administrative Code chapter 6. Authority and jurisdiction for the appeal are found in Iowa Code §§ 282.18(5) and 290.1. 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

The sole issue presented here is whether the incident described herein meets the criteria established by this Board for granting a late-filed open enrollment in which pervasive harassment of the student is alleged.

Jill resides with her parents in the Clay Central-Everyly (“CCE”) Community School District. She attended CCE from kindergarten through the first semester of the 8th grade during the present school year. Her father, Kevin, was the former head varsity football coach at CCE high school. He resigned his coaching contract with CCE in January, 2011.

In February of 2011, the family filed open enrollment applications on behalf of Jill and her older sister. These applications were timely filed for the present school year. Jill, however, decided to remain at CCE, where she started 8th grade this past fall. As of January 4, 2012, she is enrolled at and attends the Sioux Central Community School District.

On November 28, 2011, the family filed another open enrollment application on behalf of Jill, asking that it be granted immediately. The application was based on an incident described in the application as follows:

In early October, a senior in high school was allowed to wear clothing and a sign during Homecoming Week mocking Jill's father. The student continued to wear this the entire day without any teacher or administrator telling him to remove it. Our daughter witnessed this and it upset her greatly.

At this hearing, Kevin related the following events as further background:

- Jill is the middle of five children of the Appellants; the oldest is a CCE graduate, the next child, Taylor, attends Sioux Central, and the two youngest attend the CCE elementary school.
- After coaching the CCE football team since 1991, Kevin resigned his position of head varsity coach in January, 2011. He expressed his willingness to be an assistant coach, but testified that this offer was not conveyed to members of the team.
- In January, 2011, allegations were made against Kevin by CCE staff that he inappropriately altered Taylor's basketball statistics on a Web site maintained by the Iowa Girls High School Athletic Union and on which girls basketball coaches are required to report team and individual player statistics. At a meeting with CCE administrators and the head girls basketball coach, Kevin brought forth an allegation that an assistant coach for girls basketball was not properly credentialed by the Iowa Board of Educational Examiners (BoEE) and thus, could not coach in any capacity.
- In June, 2011, the CCE school board president – acting on behalf of the local board – filed a formal complaint against Kevin with the BoEE. The complaint, which alleges a violation of BoEE rule 282—IAC25.3(6)¹, was raised by Kevin at this hearing. He further stated that the complaint has not been adjudicated yet by the BoEE.
- In June, 2011, the Appellants expressed to the softball coach their belief that the coach was not treating Taylor fairly. The minutes of the local board's meeting of June 20, 2011, include a report that the softball coach "spoke of concerns about bullying /harassment by a couple of softball parents toward" the coach. Kevin testified that the board adopted a policy about fan behavior that was directed at him. He also expressed here his disappointment that neither the CCE administration nor board has acknowledged poor conduct on the part of the softball coach.

¹ This rule prohibits any licensee of the BoEE from "unethical practice toward other members of the profession, parents, students, and the community," and is based on the allegation that Kevin F. "deliberately distort[ed] statistics" of his daughter for her benefit.

Kevin's testimony amply demonstrated that many events had occurred prior to the start of this school year which, in his words, "created animosity." Nevertheless, Jill stated that, prior to Homecoming Week, everything was going well for her at CCE and she was very happy that she had decided not to go to Sioux Central. Jill was clear that, while she was aware of all of the events involving her family, none of those events caused her to have a negative experience at CCE prior to October 3 – 7, Homecoming Week.

Career Day was the first day of Homecoming Week. A young man in the senior class who was a captain of the football team wore a football shirt and a sign on his back on which he had written "I file complaints." This student (Tyler) was not coy about his actions; he fully admitted that he was emulating Kevin, his former coach.

At CCE, students in grades 7 through 12 attend classes under one roof, although 8th graders have no classes with 12th graders. Jill testified that she saw Tyler once that day, mid-morning in a hallway. She stated that seeing him made her "uncomfortable," "angry," and also "disappointed that he would do that." Jill did not see Tyler any more that day, although when she was in the school library that afternoon she was aware that he was in the hallway outside the library. According to Jill, Tyler was refusing to enter the library because he was aware that she was present in the library. Jill stated in this hearing that she understood that Tyler's conduct was not aimed at her, but she was understandably affected by it.

Her parents asked Mr. Busch for a meeting with Mr. Busch and Tyler. This meeting took place on October 14. Prior to the meeting, Mr. Busch had ensured that there would be no pictures of Tyler, dressed as his former coach, used in the local newspapers or the CCE yearbook. At the meeting, Tyler did not apologize to Jill or her father. He explained that he dressed as Kevin "out of anger" toward Kevin for his resignation as football coach. His written statement, submitted herein, states Tyler's perception that Kevin "did not fulfill his commitment" to be the head football coach. Tyler's statement concludes, "As a captain of my football team...I felt the need to rise and be a leader within my team. In all of this my goal was to stand up for what I believe in."

Roughly six weeks after the meeting with Mr. Busch and Tyler, Jill's parents filed the present open enrollment application on her behalf, requesting approval for a mid-year transfer to Sioux Central. The application was based on the incident from Career Day. The family also stated the following on the application:

We had hoped the school would take disciplinary action, but has not, so we would like to remove her to prevent anything else from happening to Jill.

Although Jill testified that she had no fear of retaliation from CCE students, she stated that after the meeting with Mr. Busch, students "were not being nice anymore" to her. Jill testified that one student told her to let it go because it was not that big of a deal. She did not make any CCE staff aware her perception that CCE students were giving her the "cold shoulder" and "frowning" or "glaring" at her. Stating that she did not trust that anything would be done, Jill admitted that she said nothing to CCE staff and did not use the CCE written complaint form to report any harassment. In response to evidence submitted by the District that staff were unaware that Jill believed she was

being harassed, Jill stated that she did not “show any upset on [my] face because I didn’t want people to ask me questions. Jill also testified that she was on the “A” honor roll for the first quarter of the 2011-12 school year, but was on the “B” honor roll for the second quarter.

The Clay Central-Everly school board considered the open enrollment application at its regular meeting of December 21. The local board voted 3 – 2 to deny the open enrollment application. The family chose to transfer Jill to Sioux Central between semesters; Jill stated that she is happy at her new district of enrollment.

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 “repeated acts of harassment of the student.”

The criteria regarding open enrollment requests based on repeated acts of harassment, all of which must be met for this Board to give the requested relief, are as follows:

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 [emphasis added] 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.

Because the evidence herein fails to meet the second and third criteria, this Board does not analyze the first and fourth criteria as applied to these facts.

The conduct complained of must have been aimed at Jill. Tyler’s action was not “conduct toward the student;” it was conduct toward her father. We take Jill at her word that Tyler’s conduct angered and disappointed her, and made her feel uncomfortable. We cannot change the plain wording of the statute, however.

Nor can we conclude that the post-Homecoming Week conduct Jill testified regarding was conduct that created an objectively hostile school environment for Jill. While this Board does not discount Jill's perceptions of hard stares and cold shoulders, there is no evidence that Jill felt unsafe at CCE. As in our recent decision, *In re Kiley W.*, 26 D.o.E. App. Dec. 164 (2012), we must determine "whether the incidents created an objectively hostile school environment, which requires this Board to go beyond a student's perceptions." Jill's demeanor herein was of a remarkably mature young lady, and to her credit, she testified that she feared no retaliation from her fellow students.

The third criterion requires a showing that the harassment is likely to continue despite school officials' efforts to the contrary. Here, school officials were not notified of any ongoing discomfort experienced by Jill. The District had to have been given a chance to alleviate the situation for Jill; it was not given that chance.

We remind school officials, students, and families that these types of open enrollment appeals are not about a family's right to transfer their children to other school districts. Families are free to make the decisions they deem to be best for their children. This appeal and all others brought under the open enrollment law is about whether the local school board erred legally. We conclude that the Clay Central-Everyly school board applied Iowa Code section 282.18(5) appropriately when it denied the late open enrollment application filed on behalf of Jill.²

DECISION

For the foregoing reasons, the December 21, 2011 decision of the Board of Directors of the Clay Central-Everyly Community School District, denying the open enrollment request filed on behalf of Jill F., is AFFIRMED. There are no costs of this appeal to be assigned.

2/13/12
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

² We have reversed local boards that denied open enrollment applications. See *In re Hannah T.*, 25 D.o.E. App. Dec. 26, 28 (2007) [cites omitted].