

**IOWA DEPARTMENT
OF EDUCATION**
(Cite as 26 D.o.E. App. Dec. 164)

In re Kiley W.

Kevin and Ann W.
Appellants,

vs.

West Bend-Mallard Comm. School District,
Appellee.

:
:
DECISION

:
[Admin. Doc. 4738]

The above-captioned matter was heard telephonically on December 5, 2011, before designated Administrative Law Judge Carol J. Greta. The Appellants, Kevin and Ann W., were present on behalf of their minor daughter, Kiley, who was also present. The Appellee, the West Bend-Mallard Community School District, was represented by Superintendent Nancy Schmitz. Also present on behalf of the Appellee was secondary principal, Amanda Schmidt.

The Appellants seek reversal of the October 18, 2011 decision of the local board of directors of the West Bend-Mallard District to deny the open enrollment request filed on behalf of Kiley.

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

Kiley W. is a 10th grader who resides with her parents in the Gilmore City-Bradgate Community School District. As a freshman, she attended Twin River Valley High School (“TRV”) under a whole grade sharing agreement between Gilmore City-Bradgate and Twin Rivers Community School Districts.¹ That sharing agreement ended at the end of last school year. Under new sharing agreements, students who reside in

¹ A whole grade sharing agreement is defined in Iowa Code section 282.7(1) as an arrangement between school districts in which a district discontinues certain grades and negotiates an agreement for attendance of the students enrolled in those grades in the schools of one or more contiguous school districts having accredited school systems. Going back several years prior to the 2011-2012 school year, the Twin Rivers District discontinued grades 4 – 8, sending those students to Gilmore City-Bradgate; the Gilmore City-Bradgate District discontinued grades 9 – 12, sending those students to Twin Rivers. The resulting attendance centers were called, respectively, Twin River Valley Middle School and Twin River Valley High School.

the Twin Rivers District attend high school at Humboldt, while students such as Kiley who reside in the Gilmore City-Bradgate District attend high school at West Bend-Mallard.

The Appellants admit that all TRV students had ample opportunity to file timely applications for open enrollment to other districts last spring. Kiley and her family thought that West Bend-Mallard would "be a good fit" for Kiley, who was very active at TRV, both in sports and student leadership groups. When Kiley's family made the choice to enroll her at West Bend-Mallard, they were aware that Kiley would be the only female from TRV in her class to attend West Bend-Mallard and that her closest friends would be attending either Humboldt High School or Pocahontas High School.

The first day of school this year at West Bend-Mallard was August 18. On or about August 24, Don Hasenkamp, the former principal at TRV, called one of the West Bend-Mallard administrators to state that some unnamed former TRV parents had complained to him about unspecified harassment of their students by West Bend-Mallard students. Supt. Schmitz immediately took action. On August 26, she, Mrs. Schmidt, and school counselor Grant Elsbernd visited every high school classroom. Principal Schmidt's email to all of the high school staff at West Bend-Mallard describes the visits as follows:

"We have been hearing some rumors that the WBM students are harassing/bullying the TRV students. We are going to take about 5 minutes of your class periods to address this. At this point, we have no proof if this is really happening because I don't have any names so this is going to be a general statement in hopes to encourage students to report if it is and to stop spreading these rumors if it isn't happening. ... We are sorry for the interruption, but we are trying to solve this issue."

From August 18 through September 28 (Kiley's last day at West Bend-Mallard) there were 30 instructional days of school at West Bend-Mallard. Kiley was absent from classes from 11 to 17 days of those 30 days (depending on the time of day the class was scheduled). In early September, she had surgery to remove her gall bladder and appendix, causing her to miss five days of school.

In the days she was in attendance at West Bend-Mallard, Kiley talked to Principal Schmidt about the following specific incidents of alleged harassment:

1. During the first week of school (a two day week), students made fun of her for being "a ginger,"² saying "gingers" do not belong at West Bend-Mallard.
2. One female student gave Kiley a "ginger punch" while they were standing in the lunch line.
3. When she returned from her surgery, a male student made fun of her because she did not return immediately to action on the volleyball team, saying he went back to playing basketball right after his appendectomy.

Mrs. Schmidt dealt with all incidents in a timely and responsible manner. Inasmuch as Kiley was new to West Bend-Mallard, she could not identify by name any of the students who used the term "ginger." Mrs. Schmidt instructed all of the teachers at

² "Ginger" refers to a person with red or reddish hair color.

the high school to be vigilant for the name-calling, especially in the hallways between class periods. The Appellants do not allege that the name-calling continued after the first week of school.

Mrs. Schmidt witnessed the lunch line "ginger punch" and immediately intervened. Mrs. Schmidt characterized this one-time incident as one girl ("Student A") "playfully" saying to Kiley and another female student "ginger punch" and then punching them in the arm. Mrs. Schmidt immediately approached the group and told the girls to keep their hands to themselves and to cease using the word "ginger." Right after lunch, Mrs. Schmidt spoke alone to Student A, and asked her to apologize to Kiley. Student A said that the group was joking around, but that she would do so. When Mrs. Schmidt got back to her office following supervision of lunch, the Appellants were already on the phone to her, asking for an explanation of why their daughter had been hit while standing in the lunch line. Mrs. Schmidt described fully the episode, adding that she had addressed this with Student A and that the student would apologize to Kiley. In an explanatory email to Supt. Schmitz, Mrs. Schmidt stated that she felt that she had a good relationship with Mrs. W., and that Mrs. W. was very supportive of the school and "the actions that we were taking to help Kiley get adjusted." This was not refuted by the Appellants.

Mrs. Schmidt also spoke immediately to the male student who Kiley identified as having made fun of her for not returning to action on the volleyball court following her surgery. His version of the conversation he had with Kiley was that he indeed had shared with her that he had also had an appendectomy, but he was trying to express empathy with her regarding trying to return to normal physical activities.

On September 29, Kiley's parents removed her from school, immediately enrolling her at Humboldt High School. Ann W. filed an open enrollment application on behalf of Kiley on September 29 alleging pervasive harassment. Also on September 29, the family sent harassment complaint forms filled out by Kiley to the high school principal, Mrs. Schmidt, via facsimile transmission. These forms included the following descriptions of misconduct:

- "Everytime I talk or do something I will get laughed at and get very nasty looks."
- "I get pushed around in the hallways and get very disrespected."
- "I'm scared to even go back to school at WBM. I'm scared I'll get made fun of or something bad will be said."
- "I will get 'yelled' at if I sit in the wrong seat in class and get told that that's 'their' spot."

Supt. Schmitz asked all of Kiley's teachers for their observations of how Kiley was treated by her peers. Most of the teachers reported that Kiley was quiet in class, and because of her absences they did not have a pattern of interactions between Kiley and the other students in class. One paraprofessional responded to Supt. Schmitz that, having known Kiley's mother for several years, she told Mrs. W. that she would watch out for her at school. The paraprofessional then reported that in the class in which she was present each day, three female students consistently included Kiley in their work group, working "well together, interacting, conversing, laughing, and studying." The paraprofessional continued, "Kiley seemed to be adjusting well with her peers during this

class period, contributing to conversation and enjoying herself with these girls. From my observations, I never saw any negative verbal exchanges or conflicting issues.”

The West Bend-Mallard school board considered the open enrollment application at its regular meeting of October 18. Prior to the hearing, both parties were provided with a copy of the most recent decision of the State Board of Education regarding late open enrollment applications based on an allegation of pervasive harassment so that they would be familiar with the four criteria to be met. The local board unanimously voted to deny the open enrollment application.

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 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.

The first criterion is irrelevant to this decision; only the remaining three criteria are relevant to this appeal.

The requirement of an *objectively* hostile school environment means that the conduct complained of would have negatively affected a reasonable student in Kiley's position. We do not discount what Kiley perceived. The specific incidents that Kiley complained of are the three listed at the bottom of page 165. There is no doubt that these incidents did not set a positive tone in Kiley's mind for her experience at West

Bend-Mallard. There is no doubt that these incidents reinforced Kiley's desire to leave West Bend-Mallard High School. The issue is whether the incidents created an objectively hostile school environment, which requires this Board to go beyond a student's perceptions.

The following incident illustrates the power of perception and predispositions: One of Kiley's complaints (received by the District on September 29 via fax, the day after Kiley left West Bend-Mallard to enroll at Humboldt) was that Mrs. Schmidt told her that her vote for Homecoming royalty "won't matter and doesn't matter to me." This may be in fact how Kiley perceived it. Mrs. Schmidt explained that during Homecoming week Kiley was in Mrs. Schmidt's office discussing her feelings of alienation from the West Bend-Mallard students. Mrs. Schmidt asked Kiley if she would be interested in talking with the school counselor, at which point the bell rang for homeroom, where the vote for Homecoming royalty would take place. The counselor was free during that time, so Mrs. Schmidt offered the option to Kiley to talk to the counselor in lieu of voting because Kiley had told Mrs. Schmidt she did not know any of the students. The statement Kiley heard as "your vote won't matter" was intended by Mrs. Schmidt to convey "if you do not know any of the students it might be difficult for you to vote." Kiley was already reluctant to attend West Bend-Mallard High School knowing that her closest friends had chosen to attend other high schools. This reluctance colored what she experienced at West Bend-Mallard.

The objective evidence shows that the specific incidents of harassment were all addressed immediately. None of the incidents were repeated. There is evidence that students were making an attempt to be inclusive of Kiley. The incidents enhanced her unhappiness at West Bend-Mallard, but this Board cannot conclude that the incidents created an objectively hostile school environment for Kiley at West Bend-Mallard High School.

In *In re Hannah T.*, 25 D.o.E. App. Dec. 26 (2007), this Board recounted that it has given relief under section 282.18(5) in three cases.

In the first such case, *In re Melissa J. Van Bommel*, 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 the 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* and *In re John Myers*. 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.

25 D.o.E. App. Dec. at 28 [cites omitted].

Kiley's father testified that this was a "he said/she said" situation, and that he really did not care where the truth lay because the family's goal was simply to remove

Kiley from an education environment in which she was very unhappy to one in which she would not be unhappy. We certainly do not fault parents for making family decisions, including enrollment of their children. This appeal is about whether the local school board made a mistake.

We conclude that the West Bend-Mallard school board did not err when it denied the late open enrollment application filed on behalf of Kiley.

DECISION

For the foregoing reasons, the October 18, 2011 decision of the Board of Directors of the West Bend-Mallard Community School District, denying the open enrollment request filed on behalf of Kiley W., is AFFIRMED. There are no costs of this appeal to be assigned.

12/15/11

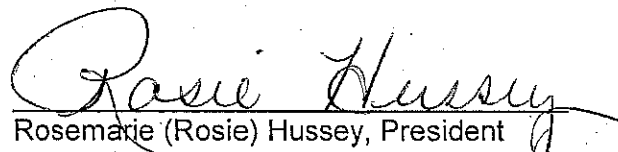
Date



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

It is so ordered.

1/26/12
Date



Rosemarie (Rosie) Hussey, President
State Board of Education