

**IOWA DEPARTMENT
OF EDUCATION**
(Cite as 25 D.o.E. App. Dec. 47)

In re Nicole P.

Susan P.,	:	
Appellant,	:	DECISION
vs.	:	[Admin. Doc. 4669]
Waukee Community School District,	:	
Appellee.	:	

The above-captioned matter was heard on February 14, 2008, before designated Administrative Law Judge Carol J. Greta. The Appellant, Susan P., was present on behalf of her minor daughter, Nicole, and was accompanied by her attorney, Emily S. Pontius. The Appellee, the Waukee Community School District, was represented by Superintendent David Wilkerson, and by Executive Director of Administrative Services Duane Van Gorp.

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. The Appellant seeks reversal of the December 17, 2007 decision of the local board of directors of the Waukee District to deny the open enrollment request filed on behalf of Nicole.

**I.
FINDINGS OF FACT**

The Waukee Community School District operates one secondary attendance center which Nicole attended as a 9th and 10th grader. After starting 11th grade at Waukee High School, Nicole is presently in the 11th grade at the ADM Community School District.¹

In the fall of 2006, Nicole was the target of name-calling while riding the school bus. A former friend of Nicole's ("Rachel") was the primary perpetrator of the name-calling, which the Appellant herself characterized as "typical adolescent misbehavior." Nicole was allowed by her mother to drive herself to school, a solution that Ms. P. stated had the effect of making Rachel jealous.

¹ Ms. P. pays tuition for Nicole to attend ADM. The practical impact of this decision – if favorable to the Appellant – is that tuition payments will be returned to Ms. P. because Nicole then would be allowed to attend that District tuition-free

In late November/early December of 2006, a person or persons unknown cut a spark plug wire in Nicole's vehicle.² Ms. P. states that the incident occurred while the car was parked at Waukee High School. After this act was repeated, this time on or about December 21, Waukee officials agreed to allow Nicole to park near the main entrance to the high school, rather than the more remote spot that had been assigned to her. A third incident of the wire(s) being cut occurred on February 16, 2007, presumably while the vehicle was at school. A final incident occurred on March 11 while the vehicle was in the driveway at Ms. P.'s residence. On the final occasion, all spark plug wires were cut, rendering the automobile inoperable. On the prior occasions, not all wires were cut. This meant that the tampering would not be detected immediately because the vehicle was still operable, but ran sluggishly.

Ms. P. contacted the Waukee Police Department after all but the first incident. All "Incident Narratives" were included as evidence herein. The first Incident Narrative states that "Nicole has been having problems with Nick [surname omitted]. Nick has been parking in Nicole's parking space at the school. ... Nicole stated that she has been having problems with Rachel [surname omitted]. Nicole stated that Rachel is jealous of her because Nicole got her license before Rachel. Nicole stated that Rachel has been spreading rumors about her around school. Nicole and her mother stated that they did not want Rachel confronted about the damage because they are afraid that she will retaliate." Ms. P.'s suspicions centered around Rachel when, a few days after the February 16th incident, Rachel reportedly stated to Nicole, "Are you driving okay? I don't want you to get into an accident." The Waukee Police Department did interview Rachel, but has made no arrest after investigating the matter.

There were no further instances of harassment of any nature during the 2006-07 school year following March 11, 2007. No open enrollment application was filed at any point during the 2006-07 school year on behalf of Nicole.

This school year, the first day of classes at Waukee was August 22, 2007. Accordingly to Ms. P., on either that day or the next, one of Nicole's teachers asked in English class, "How do we know we are going to heaven?" Nicole offered an answer that mentioned her belief in Jesus as the Christ. Nicole then reportedly was laughed at in class by the teacher and other students. Ms. P. does not claim that this incident constituted harassment, and she offered no evidence this situation was related in any way to the tampering of Nicole's vehicle the year before. Ms. P. testified that Nicole being laughed at in class was the "last straw."

On August 23, Ms. P. filed an open enrollment application asking that Nicole be released from the Waukee District on the grounds of repeated acts of harassment. She wrote on the application the following as justification for her late request: "harassment by cutting wires of distributor cap 4 times last year; mental health counseling – Waukee counselor refusal to contact Nicole's counselor upon request and further request to principal; Nicole's stress and anxiety is not conducive to learning within Waukee."

Consistent with Ms. P.'s testimony, the incident in English class is not the basis of the open enrollment request. She filed the application because at that point Nicole

² Some of the written statements herein refer to distributor cap wires. Distributor cap wires and spark plug wires are one and the same thing.

"had no will to go to school." In her testimony herein, Ms. P. stated that she was unaware of the statutory deadline of March 1 for filing an open enrollment application. She further testified that she did not file an open enrollment application earlier because she wanted Nicole to learn how to deal with adversity for herself.

The open enrollment application filed by Ms. P. on August 23 was not heard by the local Waukee board until December 17, a delay addressed in the Conclusions of Law section herein. Nicole had transferred to the ADM District in August. When the open enrollment application was denied by Waukee administrators, ADM officials correctly informed Ms. P. that the only means by which Nicole could remain at ADM was by paying tuition. Ms. P. agreed to this, and states that "Nicole has not been harassed and her grades have improved markedly" at ADM.

A letter dated November 8, 2007, from a licensed child and adolescent psychologist was submitted to the local school board by Ms. P. The psychologist makes no recommendation in her brief letter, which states as follows:

I am writing this letter . . . at the request of Sue [P] Nicole is an intelligent, articulate, young lady who is highly creative and artistic. This young lady was in treatment with me during her 9th and 10th grade years at Waukee High School. During that time I treated her for difficulties including anxiety and depression. Nicole expressed significant difficulties with feelings of alienation and trouble connecting within her peer group at Waukee HS.

In February 2007 she came in quite upset, reporting repeated vandalism of her car while she attended classes in her high school. Specifically, she described that her distributor cap was cut in her car for the third time, and that she filed a police report. Nicole's difficulties with anxiety and depression appeared to be exacerbated during this period of time. The vandalism and harassment seemed to intensify her feelings of alienation and discomfort about safety in her school environment. At that time she became more adamant about needing to change schools.

I hope this is helpful in clarifying this young lady's experiences and perceptions that impacted her decision to change schools.

In addition to submitting the documentary evidence of the above letter and the police reports to the local board at its meeting of December 17, 2007, Ms. P. personally appeared to plead her daughter's case. The minutes from this meeting show that the Waukee board was in closed session for just over 40 minutes to hear the evidence and discuss Nicole's open enrollment application. Upon reconvening to open session, its members voted unanimously to deny the request that Nicole open enroll. Thereafter, Ms. P. filed her timely appeal to this Board.

II. CONCLUSIONS OF LAW

The controlling statute for this appeal is the open enrollment law, Iowa Code section 282.18, 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."

In our recent decision, *In re Hannah T.*, 25 D.o.E. App. Dec. 26 (2007), we set out the following history of such appeals.

This Board has given relief under section 282 18(5) to students who have been harassed in three cases. In the first such case, *In re Melissa J. Van Bemmel*, the student had experienced harassment by a group of about 20 students that had caused her to seek medical and mental health treatment for a variety of physical ailments, as well as for anorexia, depression, and insomnia. This Board noted that the "District is unable to effectively address the situation at school and the police are unable to effectively address the situation outside of school." 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].

Hannah T. was the first appeal decision rendered by this Board following the enactment of the "school anti-harassment and anti-bullying law," Iowa Code section 280.28. Because the new law includes a statutory definition of harassment and bullying, this Board rewrote the criteria for appeals of denials of open enrollment requests based on repeated acts of harassment results. The resulting criteria 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.

As we apply these criteria to the facts herein, the chronology of events becomes crucial. The chronology here shows that all but one of the acts regarding one or more spark plug wires being cut occurred prior to March 1, 2007. It also shows that there were no incidents of any kind between March 11 and the end of the 2006-07 school year.

We do not minimize Nicole's anxiety, depression, and feelings of alienation. We do not know – nor do we need to know – the full dynamics of Nicole's situation. What we do know is that no open enrollment application was filed on her behalf following any of the instances when Nicole's vehicle was vandalized. The remainder of the 2006-07 school year was apparently incident-free for Nicole. She started the new school year at Waukee High School on August 22, 2007.

We note that all four of the criteria listed above must be met for this Board to give the requested relief. After careful analysis of the evidence and the chronology of events, we conclude that the first and third criteria have not been met.

The third criterion states that the evidence shows that the harassment is likely to continue despite the efforts of school officials to resolve the situation. *The harassment complained of here did not continue.*³ After March 11, 2007, no acts against Nicole or her property are reported. Regarding the single incident in English class that occurred on August 22 or 23, Ms. P. does not argue that this constituted harassment, nor does she state that it was related to the earlier acts of vehicle tampering.

We further conclude that there was no legal excuse for the Appellant to have missed the March 1 deadline. Turning first to Ms. P.'s statement of ignorance of the statutory deadline, it is axiomatic that ignorance of the law is no excuse. *See, e.g., In re Amanda Schamerhorn*, 24 D.o.E. App. Dec. 82 (2006). The March 1 deadline is not an absolute. It is conditioned on the student's parent or guardian demonstrating that the extent of the harassment could not have been known until after March 1. Ms. P.'s statement that the first three instances of tampering with Nicole's car "did not put us on notice that Nicole was being harassed to the point where she should consider open enrolling to another district" simply does not overcome the balance of her own evidence. By March 1, the Ms. P. had contacted the Waukee Police Department twice, and Nicole had presented to her psychologist as "quite upset." Nothing that occurred after March 1, including the incident in English class on the first or second day of school this year, heightened Ms. P.'s awareness of Nicole's desire to attend a school district other than Waukee.

Accordingly, Ms. P.'s statement that she affirmatively chose not to file for open enrollment before August 23, 2007 is the more credible statement. While Ms. P. certainly has the right to determine where her daughter should be educated, her choice to wait until after March 1 to file for open enrollment does not supersede the

³ The instances of vehicle tampering, when viewed in a light most favorable to Nicole, may have constituted harassment. We do not have to decide this for a certainty because the first and third criteria have not been met.

requirements of Iowa's open enrollment law. Stated another way, as Nicole's parent, Ms. P. could, and did, lawfully transfer her daughter to another district by means of paying tuition to the other district. Our decision is that she may not, under the facts herein, use the open enrollment provisions to have Waukee pay for the transfer for this school year.

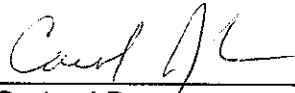
Having concluded that the criteria by which Nicole should be allowed to open enroll from Waukee to ADM have not been met, Ms. P. must continue to pay tuition to ADM for the remainder of this school year.⁴ She, therefore, has not shown that she was prejudiced by any delay in the hearing of this matter by the local school board. We do not address that issue other than by noting by way of instruction for the future for all school districts that Iowa Code section 282.18(5) and rule 281—IAC 17.5(1) state that open enrollment applications that are filed after March 1 and that allege repeated acts of harassment or serious health condition that the resident district cannot adequately address, even if initially acted upon by the superintendent, must go to the local board. In fact, the rule states, "The board of the resident district shall act on the request within 30 days of its receipt." While Waukee did not comply with that timeframe, there has been no prejudice to Ms. P. or Nicole attributable to the delay.

We conclude that it would not be appropriate for this Board to grant the relief requested by the Appellant by reversing the decision of the local school board to deny her open enrollment request filed on behalf of Nicole.

III. DECISION

For the foregoing reasons, it is recommended that the decision of the Board of Directors of the Waukee Community School District made on December 17, 2007, denying the open enrollment request filed on behalf of Nicole P. be AFFIRMED. There are no costs of this appeal to be assigned.


03/06/08
Date



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

It is so ordered.

4-3-08
Date



Gene E. Vincent, President
State Board of Education

⁴ A timely open enrollment application on behalf of Nicole was filed and approved for the upcoming 2008-09 school year; therefore, Waukee will pay ADM for Nicole's open enrollment for 2008-09.