

**IOWA DEPARTMENT  
OF EDUCATION  
(Cite as 25 D.o.E. App. Dec. 26)**

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*In re Hannah T.*

Janet T.,	:	
Appellant,	:	DECISION
vs.	:	
Woodbine Community School District,	:	[Admin. Doc. 4651]
Appellee.	:	

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The above-captioned matter was heard on October 25, 2007, before designated Administrative Law Judge Carol J. Greta. Appellant Janet T. was present, as was her spouse, Rich T., on behalf of their minor daughter, Hannah, with her attorney, Kathleen Kohorst. Appellee, the Woodbine Community School District, was represented by its attorney, Rick Franck. Also present on behalf of the Appellee were Superintendent Terry Hazard, Elementary Principal Kathy Waite, and 4<sup>th</sup> grade teacher Sharon Royer.<sup>1</sup>

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 July 16, 2007 decision of the local board of directors of the Woodbine District to deny the open enrollment request filed on behalf of Hannah.

**I.  
FINDINGS OF FACT**

The Woodbine Community School District has but one elementary attendance center. Ten-year-old Hannah attended Woodbine Elementary School, whose principal is Ms. Waite, from Kindergarten through 4<sup>th</sup> grade. Hannah is presently in the 5<sup>th</sup> grade at the Logan-Magnolia Community School District.<sup>2</sup>

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<sup>1</sup> Rich T. and Ms. Waite testified herein, as did Ms. Royer. However, Ms. Royer's testimony is not admitted to the evidentiary record herein inasmuch as the local board did not hear from her at its hearing on July 16, 2007. For that same reason, the District's Exhibit 105 is not admitted, nor is any testimony about Hannah's current experience in 5<sup>th</sup> grade in the Logan-Magnolia Community School District.

<sup>2</sup> Her family pays tuition for Hannah to attend Logan-Magnolia. The practical impact of this decision – if favorable to the Appellant – is that tuition payments will be returned to the family because Hannah then would be allowed to attend that District tuition-free.

In mid-June of this year, Ms. T. filed an open enrollment application asking that Hannah be released from the Woodbine District on the grounds of repeated acts of harassment. She attached to the application a "To Whom it May Concern" letter dated June 11, 2007, and signed by Blake Lancaster, Ph.D., a pediatric psychologist at the University of Nebraska (Omaha) Medical Center. Dr. Lancaster's letter states in part as follows:

After reviewing Hannah's history and having several visits with her and her mother, it appears that this child is having significant difficulty functioning in her current school setting. According to [Hannah's mother] there have been multiple incidents of "teasing" and "bullying" directed at Hannah over the past couple of school years. ...

Hannah's parents feel strongly that she would be more successful in the academic environment if she were allowed to attend another school. ...Based on the report from Hannah's parents, we would agree that the current situation is serious enough to warrant Hannah changing schools and believe this to be a reasonable course of action considering the reported circumstances.

At this hearing, the Appellant submitted documentary evidence that Hannah has been "picked on" by one child ("Child A") since preschool. [Appellant's Exhibit 3.] In kindergarten and 1<sup>st</sup> grade, the two girls were placed in different classrooms, but since midway through 2<sup>nd</sup> grade, the District has had just one section for Hannah's grade.

The Appellant testified that the one incident of physical violence against Hannah took place when Hannah and Child A were in the 2<sup>nd</sup> grade. One day after school in March of that year, Hannah reported to her mother that a group of female classmates held her against an exterior wall of the school at recess while Child A repeatedly threw a ball at Hannah, "hitting her over and over." Hannah did not tell her teacher about this, but the incident was verified by the other girls involved when the Appellant called their parents that night.

Ms. T. wrote [in her Exhibit 3] that in 3<sup>rd</sup> grade there were no incidents, just "small nitpicking." In the District's Exhibit 103 (which, along with the Appellant's Exhibit 3, was provided to the local board), Hannah's 3<sup>rd</sup> grade teacher related that she felt the tension between Hannah and Child A, so she made it a point to keep the two girls separated from each other within her classroom. This teacher described Hannah as a child who over-reacted to situations and who "was equally guilty of dealing out comments and looks to [Child A]."

During Hannah's final year at Woodbine Elementary (4<sup>th</sup> grade), her mother recorded the following in Exhibit 3: that other girls in the class gave Hannah "dirty looks," that Hannah was teased because she needed eyeglasses, that Hannah was teased once at lunch regarding whether she liked a certain boy, and that the girls in her class once made fun of Hannah's clothes. In addition to being in the same grade, Hannah and Child A were in an after school "Kids Club" together, and carpooled together for two years to private dance lessons. Ms. T. was told by the coordinator of Kids Club that "[Child A] and Hannah constantly bicker back and forth." In her testimony herein, Ms. T. stated that she witnessed this bickering firsthand on her turns to drive the girls to dance class.

Toward the end of 4<sup>th</sup> grade, Hannah had one outburst at home – characterized by her mother as being “out of the blue” – in which Hannah cried that she had no friends, that she hated school, and that she didn’t want to live anymore. Shortly thereafter, her family saw to it that Hannah was provided counseling with a pediatric psychologist from Ms. T.’s place of employment. The entirety of Dr. Lancaster’s letter (excerpts appearing above) was provided to the local school board. At no time has Dr. Lancaster spoken to any teachers or administrators of the Woodbine District about Hannah.

Prior to becoming an elementary principal, Ms. Waite was an elementary teacher for over 25 years. She has been the principal at Woodbine Elementary for nine years. Ms. Waite’s perspective on the situation is that Hannah is a very bright girl who likes to have things her way, and that the conflicts with her peers are nothing atypical of that age group. Hannah’s report cards [Appellant’s Exhibit 6] support the statement that she is an excellent student who, in the 4<sup>th</sup> grade (the first level for which letter grades were assigned in report cards), received all As in her academic subjects.

## II. CONCLUSIONS OF LAW

The controlling statute for this appeal is the open enrollment law, Iowa Code section 282.18. In general, open enrollment requests must be filed on or before March 1 of the school year preceding the school year for which open enrollment is requested. One of the exceptions to the March 1 deadline is in subsection (5) of section 282.18, which involves late-filed applications that seek open enrollment due to “repeated acts of harassment of the student.”

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 Bommel*, 14 D.o.E. App. Dec. 281 (1997), 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.” 14 D.o.E. App. Dec. at 285. 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. 14 D.o.E. App. Dec. at 283. 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*, 21 D.o.E. App. Dec. 35 (2002) and *In re John Myers*, 22 D.o.E. App. Dec. 271 (2004). 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.

To date, the six criteria used by the State Board to analyze open enrollment requests based upon allegations of harassment are as follows:

1. The harassment must have happened after March 1, or the extent of the problem must not have been known until after March 1, so the parents could not have filed their applications in a timely manner.
2. The harassment must be beyond typical adolescent cruelty. What constitutes typical adolescent cruelty depends heavily on the circumstances, the age and maturity level of the students involved, etc. Usually such immature behavior as name-calling, taunting, and teasing – when done with no intent to physically harm or scar the other child's psyche – can be viewed as typical adolescent cruelty.
3. The evidence of harassment must be specific.
4. The evidence must show that the harassment is likely to continue.
5. School officials, upon notification of the harassment, must have worked without success to resolve the situation.
6. Finally, there must be reason to think that changing the student's school district will alleviate the situation.

Effective July 1, 2007, the Iowa Legislature enacted Senate File (S.F.) 61, known as the "school anti-harassment and anti-bullying law," which created new Iowa Code section 280.28. For the first time, the State of Iowa has a statutory definition of harassment and bullying, which is as follows:

"Harassment" and "bullying" shall be construed to mean any electronic, written, verbal, or physical act or conduct toward a student which is based on any actual or perceived trait or characteristic<sup>3</sup> of the student and which creates an objectively hostile school environment that meets one or more of the following conditions:

- (1) Places the student in reasonable fear of harm to the student's person or property.
- (2) Has a substantially detrimental effect on the student's physical or mental health.
- (3) Has the effect of substantially interfering with a student's academic performance.
- (4) 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.

The school anti-harassment and anti-bullying law does not provide for a remedy to the target of harassment or bullying, such as transfer to another attendance center

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<sup>3</sup> The statute further defines "trait or characteristic of the student" to include, but not be limited to age, color, creed, national origin, race, religion, marital status, sex, sexual orientation, gender identity, physical attributes, physical or mental ability or disability, ancestry, political party preference, political belief, socioeconomic status, or familial status.

within the district or to another district.<sup>4</sup> S.F. 61 does not reference the open enrollment law, section 282.18, nor was the open enrollment law amended when S.F. 61 was passed. Students who experience repeated acts of harassment may still file for open enrollment after March 1. With the enactment of S.F. 61 and its inclusion of a definition of harassment and bullying, the time is right for this Board to re-examine the criteria by which we determine whether a late-filed application for open enrollment that alleges repeated acts of harassment of the student should be granted.

*Discussion of Existing Criteria in Light of S.F. 61*

1

*The harassment must have happened or not have been known until after March 1.*

As noted above, nothing in S.F. 61 altered the open enrollment law. Therefore, it is still appropriate to require a showing from the student or parents as to why the open enrollment application could not have been filed on or before March 1. That is, there must be evidence that the alleged harassment either occurred after March 1, or that the extent of the problem could not have been known until after March 1.

2

*The harassment must be beyond typical adolescent cruelty.*

This criterion is the working definition of harassment that this Board has used. To leave this criterion untouched would confuse school district personnel, parents, and students. We see no reason why the definition of harassment to be used under section 282.18(5) should not be identical to the definition in S.F. 61. School districts (and accredited nonpublic schools) were required to adopt the statutory definition from S.F. 61 in their anti-harassment/anti-bullying policies. Thus, having this criterion mirror the statutory definition will be familiar to schools, parents, and students.

3

*The evidence of harassment must be specific.*

This criterion has been interpreted uniformly by the State Board to mean that vague or generalized allegations of harassment are not sufficient for us to grant relief under section 282.18(5). In the Myers case we stated, “The purpose of this guideline is to ensure that this Board is not left to guess at what happened in a given case. The allegations of harassment [must be] specific enough for us to know what occurred.” *In re John Myers, supra* at 277. This criterion is included within the statutory definition of harassment and bullying, and should be combined with the second criterion.

4, 5

*The evidence must show that the harassment is likely to continue.  
School officials must have worked without success to resolve the situation.*

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<sup>4</sup> By way of information only, we note that under our “Unsafe School Choice Option” rules in 281—IAC Chapter 11, a student who is the victim of a violent criminal offense at school must be given the opportunity to transfer within the district to another attendance center. “Violent criminal offense” includes crimes of physical violence against a student that are more serious than simple misdemeanor assaults.

In the open enrollment context, this Board believes that these criteria are still valid, but should be made one. We believe that it is very telling that the Legislature chose not to include any remedies for the target of bullying or harassment in S.F. 61 (and did not dictate the punishment of any perpetrator of the bullying or harassment). This indicates that our lawmakers recognize that local school officials must be given a reasonable opportunity to alleviate the situation before granting an application for open enrollment out of the district.

6

*Changing the student's school district will alleviate the situation.*

The gist of this criterion is whether putting the target of the harassment in a different environment will make a difference. This requires a determination to be made on a case-by-case basis. It is particularly pertinent in districts with multiple attendance centers. That is, the student or parent must show why it is necessary for the student to leave the district rather than transfer to another attendance center within the district. This criterion remains valid.

*Updated Criteria*

Our foregoing analysis of the existing six criteria for appeals of denials of open enrollment requests based on repeated acts of harassment results in the following updated four criteria:

**1:** The harassment must have occurred after March 1 or the student or parent is able to demonstrate 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:

(1) Places the student in reasonable fear of harm to the student's person or property.

(2) Has a substantially detrimental effect on the student's physical or mental health.

(3) Has the effect of substantially interfering with a student's academic performance.

(4) 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.

*Application of the New Criteria to this Case*

1 (Timing).

Ms. T. and her counsel repeatedly stated herein that the harassment of Hannah had been occurring for three years. When asked if she was aware of the March 1 deadline for filing an open enrollment application, Ms. T. answered in the affirmative. She stated that the family would have filed earlier “had we known Hannah was in so much trouble.”

This first criterion, although slightly reworded by us in this case, has not changed. The parties both acknowledge that the problems complained of by Hannah’s family arose well before March 1, 2007. Therefore, there must be some showing why her parents could not have filed their application in a timely manner. This demands proof not merely that the extent of the harassment was unknown until after March 1, but that the extent of the harassment could not have been known until then.

Hannah had issues with Child A and other children from preschool through 4<sup>th</sup> grade, marked by one nasty physical incident in 2<sup>nd</sup> grade that Hannah did not report to her teacher. Ms. T. had firsthand knowledge of the tensions between Hannah and Child A, and she is clearly an involved, interested, intelligent parent who knows her daughter well. There is nothing in the record that indicates that her peers’ actions against Hannah were becoming more numerous or more severe after March 1<sup>st</sup>. Following Hannah’s outburst at home, it is commendable that her parents immediately provided their daughter with professional counseling. But there is nothing in the psychologist’s letter of June 11 to indicate that there had been an escalation in her peers’ behavior toward Hannah post-March 1.

This criterion has not been met. Accordingly, we need not examine the other criteria. However, we briefly analyze the facts of this case under the second criterion because other parents and school officials reasonably look to this Board’s appeal decisions for guidance.

2 (Severity).

While the incidents here typify immature adolescent behavior, we must determine whether they created an objectively hostile school environment that placed Hannah in reasonable fear of harm to her person or property, or had a substantially detrimental effect on Hannah’s physical or mental health, or substantially interfered with her academic performance, or substantially interfered with Hannah’s ability to participate in or benefit from the services, activities, or privileges provided by a school.

There is no evidence in the record that Hannah experienced an objectively hostile school environment as defined in this criterion. Because her family would not have filed for open enrollment but for Hannah’s one outburst at home, we turn again to Dr. Lancaster’s letter of June 11.<sup>5</sup> His letter does not state that Hannah’s one-time statement that she didn’t want to live anymore was an expression of suicidal ideation.

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<sup>5</sup> The opinion of a medical professional is neither sufficient nor necessary to prove repeated acts of harassment under section 282.18(5). The opinion is but another piece of evidence.

He notes no immediate physical or mental health issues. While Dr. Lancaster states that changing schools is a reasonable course of action for Hannah (and it indeed may be, but that is not the issue before this Board), he also noted in his letter as follows:

...[Changing schools] is not the only treatment strategy we are recommending with Hannah and we are working, with Hannah's parents, to improve her social skills, her tolerance of "teasing" and her emotional reactivity to "teasing." We are hopeful that these strategies will help Hannah avoid these types of problems in the future, in all situations.

Hannah's last report card from Woodbine Elementary belies her parents' statements to Dr. Lancaster that the school incidents were limiting Hannah's social and academic performance at Woodbine. We sympathize with any parents whose daughter cried that she had no friends, hated school, and didn't want to live anymore. However, Dr. Lancaster's letter was prepared at the request of Hannah's parents, and therefore, presumably was stated as forcefully and positively in Hannah's favor as the psychologist felt was prudent. It is not unreasonable for this Board to assume that Dr. Lancaster would have indicated if he had concerns about Hannah's physical or mental health, her academic performance, or her ability to participate in or benefit from the services, activities, or privileges provided by a school.

We conclude that Hannah was not harassed as that term is now defined in our criteria and in the school anti-harassment and anti-bullying law.

#### *Remaining criteria*

Because the basic showing of harassment under the second criterion has not been satisfied, it is difficult to analyze these facts under the third and fourth criteria. We cannot adequately address whether the immature behavior here is likely to continue because of our conclusion that harassment meeting the definition above did not occur. Likewise, it would not be prudent for us to try to determine whether changing school districts is likely to alleviate the poor relationships between Hannah and Child A and other classmates.

#### *Summary*

We acknowledge that Hannah's family has an absolute right to withdraw Hannah from the Woodbine School District, assuming they comply with our compulsory education law, Iowa Code chapter 299. However, that does not mean that the District has a corresponding obligation to allow the withdrawal to occur via open enrollment. This case is not about limiting parental choice. The open enrollment law provides such choice, but when the statutory deadline of March 1 is missed without legal excuse, the resident district will not be compelled to pay for the student to attend a receiving district. In this case, because the behaviors of the other Woodbine students do not meet the definition of harassment, there is no reason under Iowa Code section 282.18(5) for the family to be allowed to use open enrollment to pay for their daughter's education at another district.



**III.  
DECISION**

For the foregoing reasons, it is recommended that the decision of the Board of Directors of the Woodbine Community School District made on July 16, 2007, denying the open enrollment request filed on behalf of Hannah T. be AFFIRMED. There are no costs of this appeal to be assigned.

11/20/07  
Date

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

It is so ordered.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Gene E. Vincent, President  
State Board of Education