

**IOWA DEPARTMENT OF EDUCATION**  
**(Cite as 27 D.o.E. App. Dec. 657)**

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<i>In re Open Enrollment of H.H. and H.H.2</i>	)	
	)	
R.H. and M.H.,	)	
	)	DECISION
Appellant,	)	
	)	
v.	)	
	)	
Okoboji Community School District,	)	Admin. Doc. No. 5017
	)	
Appellee.	)	

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**STATEMENT OF THE CASE**

The Appellants, R.H. and M.H., seek reversal of an June 8, 2015 decision by Okoboji Community School District (“OCSD”) Board of Directors (“OCSD Board” or “Board”) denying a late filed open enrollment request on behalf of their minor children. The affidavit of appeal filed by the Appellants on July 6, 2015, attached supporting documents, and the District’s supporting documents are included in the record. Authority and jurisdiction for the appeal are found in Iowa Code §§ 282.18(5) and 290.1 (2015). The administrative law judge finds that she and the State Board of Education (“the State Board”) have jurisdiction over the parties and subject matter of the appeal before them.

A telephonic evidentiary hearing was held in this matter on August 18, 2015, before designated administrative law judge, Nicole M. Proesch, J.D., pursuant to agency rules found at 281 Iowa Administrative Code chapter 6. The Appellants were present with their children. Superintendent Gary Janssen (“Superintendent Janssen”) appeared on behalf of OCSD. Also present was Football Coach John Allan (“Coach Allan”), Athletic Director Ryan Paulson (“AD Paulson”), School Board Member Jeff Nielsen (“Mr. Nielsen”), High School Principal Ryan Downing (“Principal Downing”), Elementary Principal Justin Blouse, and Board Secretary Katie Sporrer.

The Appellants and their children testified in support of the appeal. Appellants’ exhibits were admitted into evidence without objection. Superintendent Janssen testified for OCSD and the District offered no exhibits.

## FINDINGS OF FACT

At the time of this appeal the Appellants and their children resided within the OCSD. The Appellants have since moved to Spirit Lake and are now residents of the Spirit Lake Community School District (SLCSD).<sup>1</sup> H.H. was a sophomore and his sister H.H.2 was a freshman at Okoboji High School (OHS) for the 2014-2015 school year. H.H. played boys basketball and football for OHS and all parties agree H.H. is well respected, a good student, and a good athlete.

In March of 2015, after the basketball season had just ended H.H. had a meeting with his basketball coach, AD Paulson, to discuss his shooting averages for the year and predictions for what his averages should be going forward. H.H. was told he was going to score eleven points a game or around that. The coach also met with other team members to go over the same figures for each individual player. H.H. and the other members were concerned about these predictions and felt that their averages should not be predetermined. Other students expressed concerns to H.H. about their roles going forward and about playing time for the next year.

On March 23, 2015, H.H. and two other students went to Superintendent Janssen and AD Paulson to discuss their concerns with the OHS basketball program. Superintendent Janssen advised the students that winning is not a goal. However, H.H. and the other students told him that winning is a goal for them. AD Paulson's coaching record for the last ten years is 44-218. During this meeting H.H. also expressed concerns about an incident with AD Paulson where he told students on the junior varsity team that they were losers and a disgrace to the community after they lost a game.<sup>2</sup> H.H. testified that the students were not going after AD Paulson as an athletic director or as a teacher because "he is a great person with numbers and everything else he does besides coaching." However, the students disagree with his coaching philosophy,<sup>3</sup> his coaching decisions, and believe that winning should be a goal of the program.<sup>4</sup> Superintendent Janssen declined to accept the students' requests for a new coach or a change in the coaching philosophy. AD Paulson testified the message to the junior varsity team was they did not give their best effort.

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<sup>1</sup> The Appellants notified the parties after the record was closed that they were moving to Spirit Lake on August 28, 2015. The Appellants have since provided a new address to the Department in Spirit Lake.

<sup>2</sup> H.H. was not present during this incident but it was reported to him by teammates.

<sup>3</sup> AD Paulson's philosophy is: "We believe that hard work and dedication to constantly improve one skills and cornerstones of a successful program. Our program is not about wins and losses but rather about planning on doing everything we can to prepare for and expect success."

<sup>4</sup> H.H. read OCSD policy statements that supported this philosophy. The policies state they will "[P]ursue success through the primary goal of winning games or contests. Coaches and directors will play to win." philosophy and said AD Paulson was not aligned with this.

H.H. advised Superintendent Janssen that they wanted to go before the Board to express their concerns and the students were put on the Board's agenda. H.H. testified that prior to board meeting, Principal Downing called H.H. into his office and told him he should not bring this issue to the Board because it would make them look like ignorant children.<sup>5</sup> In the meeting Principal Downing told H.H. it was his decision, but that he believed he should not do it. H.H. testified that Principal Downing did not threaten him or make him feel threatened. Principal Downing testified he did not want the students to create an unflattering image by going to the Board. Coach Allan also met with members of the football team prior to the board meeting and told the students to "do the right thing."<sup>6</sup>

On April 13, 2015, the students<sup>7</sup> went before the OCSD Board to express their concerns with the program and AD Paulson. They told the Board they wanted a change in the coaching philosophy or to get a new coach. The Board advised them that a change would not occur for another three years. The students requested a private meeting with members of the Board to ask questions and address their concerns. A private meeting with Superintendent Janssen, Principal Downing, Mrs. Sporer, and two board members, Mr. Neilson and Mr. Droegmiller was held on April 24, 2015, to discuss the students' concerns. At that meeting the students indicated they wanted a new coach and that request was denied. Superintendent Janssen believed the main issue was about winning and losing.

After this meeting H.H. testified that he started getting dirty looks from students and teachers who supported Mr. Paulson. H.H. believes other students and teachers were talking about him in the hallways but he could not hear what they were saying. Two teachers, Mrs. Turner and Mr. Stephens, told H.H. they heard he was leaving OHS. The District offered testimony that the teachers asked H.H. if he was leaving because they were concerned and did not want him to leave the district.

On April 28, 2015, AD Paulson sent a text to H.H., asking to meet with him. During their meeting, AD Paulson asked H.H. what happened between the season and now. He told H.H. he was going to be the coach next year. H.H. testified that AD Paulson said "he was the best coach since sliced bread." AD Paulson gave H.H. a chart to fill out to answer how they could be a better team.<sup>8</sup> Exhibit 1. AD Paulson told H.H. he could not list that he wants a new coach on the form. H.H. testified that AD Paulson

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<sup>5</sup> H.H. recalls being called the ring leader of the group and AD Paulson recalls calling H.H. the leader of the group.

<sup>6</sup> H.H. testified in his eyes this was Coach Allan "backing up his own." H.H. testified that the students were not threatened during this meeting; however, they felt threatened. H.H. was not present during the meeting.

<sup>7</sup> Only five of eleven students went to the meeting.

<sup>8</sup> The chart included three headings: 1) 3 Things You Want to Continue Next Year; 2) 3 Things You Want Different Next Year; and 3) 3 Things We Can Do to Build More Camaraderie.

did not threaten him during this meeting. After this meeting, H.H. decided to open enroll in another district.

After this meeting, H.H. testified that AD Paulson began driving by their house. H.H. never saw AD Paulson drive by prior to this situation arising and he started seeing him up to three times a day. AD Paulson and Superintendent Janssen both testified that AD Paulson lived in the same neighborhood as the Appellants. There is a north entrance and a south entrance to the neighborhood. If one takes one of the two entrances one would have to drive by the Appellants' house to get to AD Paulson's residence. For the remainder of the year, H.H. avoided contact with AD Paulson.

H.H.'s sister, H.H.2, testified that after the incidents with her brother she was getting messages from friends asking her if she was going to go to another district. She was told not to respond so she did not and one of her friends was upset with her for not responding. Over the summer, while H.H. played baseball, H.H.2's friend would sit with other students at the games. H.H.2 testified that AD Paulson never talked to her about H.H., but he made her nervous because he was driving by their house. H.H.2 no longer felt welcome at OHS; therefore, she no longer wants to attend OHS. Additionally, H.H.2 wants to attend SLCSO because they offer dual credit classes that OHS does not.

On May 20, 2015, R.H. and M.H. met with Superintendent Janssen about the meeting with Principal Downing and advised him they were filing applications for open enrollment.<sup>9</sup> R.H. and M.H. also requested that AD Paulson stop driving by their house. Superintendent Janssen advised them he would deny the application. The application was placed on the OCSD Board agenda for June 8, 2015. At the board meeting the Appellants were not present. Superintendent Janssen recommended that the Board deny the application because it was made after the March 1st deadline and he believed it did not meet the good cause exception for a pervasive harassment. The OCSD Board voted 3-2 to deny the application.

On July 6, 2015, the Appellants mailed a timely notice of appeal.

### CONCLUSIONS OF LAW

In this case, the Appellants' circumstances have changed since they originally filed their applications for open enrollment. The Appellants are no longer residents of the OCSD and in fact are residents of the district to which they seek to open enroll. Under these new circumstances, any outcome of State Board's decision in the merits of this appeal no longer matters. The issue is now moot. *See Homan v. Brandstad*, 864

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<sup>9</sup> On the application the Appellants indicated that H.H. was intimidated by administration and the basketball coach after trying to get a new coach.

N.W.2d 321, 328 (2015). “A case is moot if it no longer presents a justiciable controversy because the issues involved are academic or non-existent.” *Id.* (quoting *Iowa Bankers Ass’n v. Iowa Credit Union Dep’t*, 335 N.W.2d 439, 442 (Iowa 1983)). Even if the Appellants’ applications for open enrollment had been approved by the District, open enrollment terminates if the students move to the receiving district. Iowa Admin. Code r. 281 -- 17.8(10)(a). This is precisely what happened here. Thus, the State Board dismisses this appeal as moot.

However, because parents and school districts look to these decisions for guidance we will analyze the facts of this case against the criterion we have previously set out in these cases.

A decision by either board denying a late-filed open enrollment application that is based on “repeated acts of harassment of the student or serious health condition of the student that the resident district cannot adequately address” is subject to appeal to the State Board of Education under Code section 290.1. Iowa Code § 282.18(5). The State Board applies established criteria when reviewing an open enrollment decision involving a claim of repeated acts of harassment.

All of the following criteria must be met for this Board to reverse a local decision and grant such a request:

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.

*In re: Open Enrollment of Jill F.*, 26 D.o.E. App. Dec. 177, 180 (2012); *In re: Hannah T.*, 25 D.o.E. 26, 31 (2007) (emphasis added).

Under the first criteria, the harassment must have happened or the extent of the harassment not known until after March 1. The objective evidence shows that each of the incidents of alleged harassment the Appellants have complained about occurred after H.H.'s meeting with Superintendent Janssen and AD Paulson on March 23, 2015. This is well after the March 1 deadline. Thus, the first criteria is met.

Under the second criteria, the requirement of an *objectively* hostile school environment means that the conduct complained of would have negatively affected a reasonable student in H.H.'s position. Therefore, we must determine if the behavior of the teacher, students, and the coach created an objectively hostile school environment that placed H.H. in reasonable fear of harm to his person or property, or had a substantially detrimental effect on his physical or mental health, or substantially interfered with his academic performance, or substantially interfered with his ability to participate in or benefit from the services, activities, or privileges provided by the school.

The State Board has granted relief under Iowa Code section 282.18(5) in only three other cases. In each case, the facts established that the experienced harassment involved serious physical assaults and destruction of property of those students.<sup>10</sup> Here the evidence presented at the hearing shows that the environment was not objectively hostile. The conflict with administration and AD Paulson was a disagreement in coaching philosophy and decisions, decisions which are properly left with the coach. See, e.g., *Munger v. Jesup Cmty. Sch. Dist.*, 325 N.W.2d 377 (Iowa 1982). While we do not agree with some of the vocabulary chosen by administration in some of these meetings, this does not rise to the level of harassment. And while we agree that getting dirty looks and hearing whispers in the hallway is not nice and would make anyone feel uncomfortable this does not rise to the level of harassment either. Nor do we believe that a student or a teacher asking H.H. or his sister if they are going to another district is harassment. In fact, the District testified that teachers were concerned and did not want H.H. or his sister H.H.2 to leave.

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<sup>10</sup> See *In re: Melissa J. Van Bommel*, 14 D.o.E. App. Dec. 281(1997)(The board ordered a student to be allowed to open enroll out of the district for the harassment of the student by a group of 20 students that climaxed when the vehicle the student was riding in was forced off the road twice by vehicles driven by other students); See also *In re: Jeremy Brickhouse*, 21 D.o.E. App. Dec. 35 (2002) and *In re: John Meyers*, 22 D.o.E. App. Dec. 271 (2004). The students in both cases had been subjected to numerous physical assaults and destruction of property at school.

H.H.'s meeting with AD Paulson appears to be an attempt to mend the relationship between H.H. and AD Paulson before the start of a new season. Adults are frequently are put in situations with individuals they have to work with, like it or not, and need to find a way to make it work. This is precisely what happened here. Finally, we do not believe AD Paulson was driving by H.H.'s house to harass him. There was no evidence of direct or indirect threats to H.H. or his family. From an objective standpoint AD Paulson could have been driving by the Appellants residence to get to his own residence. While we do not doubt that H.H. subjectively felt uncomfortable after the meetings he had with AD Paulson and administration there is no evidence to suggest that H.H. was a victim of pervasive harassment under the law. Nor do we believe that the conduct complained of by H.H.2. rises to the level of pervasive harassment. Thus, the conduct complained of does not rise to the level of pervasive harassment that the legislature and the State Board remedy by allowing late-filed open enrollment applications.

Thus, the appeal falls short on the second criteria. Since, the Appellants have now moved into the receiving district and the issues are now moot we need not examine the other criteria.

### DECISION

For the foregoing reasons, the appeal is hereby DISMISSED. Even if the issues were not moot the decision of the OCSD Board to deny the open enrollment application would be AFFIRMED for the reasons stated above. There are no costs of this appeal to be assigned.

11/18/2015  
Date

/s/  
Nicole M. Proesch, J.D.  
Administrative Law Judge

11/18/2015  
Date

/s/  
Charles C. Edwards Jr., Board President  
State Board of Education