

**IOWA DEPARTMENT OF EDUCATION
(Cite as 27 D.o.E. App. Dec. 682)**

<i>In re Open Enrollment of J.W. & E.W,</i>)	
)	
L.W.,)	
)	DECISION
Appellant,)	
)	
v.)	
)	
Des Moines Independent Community)	Admin. Doc. No. 5019
School District,)	
)	
Appellee.)	

STATEMENT OF THE CASE

The Appellant, L.W. seeks reversal of a July 7, 2015 decision by the Des Moines Independent Community School District (“DICSD”) Board of Directors (“DICSD Board”) denying a timely filed open enrollment request on behalf of their minor children E.W. and J.W. The affidavit of appeal filed by the Appellants on July 29, 2015, attached supporting documents, and the school 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 October 1, 2015, before designated administrative law judge, Nicole M. Proesch, J.D., pursuant to agency rules found at 281 Iowa Administrative Code chapter 6. The Appellant was present on behalf of her minor children. The appellee was represented by attorney, Miriam Van Heukelem. Also present with DICSD was Eleanor Shirley, Enrollment Supervisor.

L.W. testified in support of the appeal. Appellant had no exhibits. Mrs. Shirley testified for DICSD and the school district’s exhibits 1-7 were admitted into evidence without objection.

FINDINGS OF FACT

L.W. resides in DICSD with her children, J.W. and E.W. and have been residents of Des Moines for 26 years. During the 2014-2015 school year J.W. was in 8th grade at Hoyt Middle School. He currently attends Des Moines East as a freshman with many of his middle school classmates. His sister E.W. was in the 6th grade at Hoyt Middle School last year. She currently attends Weeks Middle School and is now in the 7th grade.

During November of the 2014-2015 school year J.W. began being picked on in class by several classmates. At first, the students would kick his chair or take his pencil. As time passed the behavior escalated to one of the students flicking his head or ear or bumping J.W. in the shoulder. The group of students also called him crude names along with other names. One student threatened to “kick [J.W.’s] ass” after school if J.W. talked to a girl. In December of 2014, while L.W. was out looking at Christmas lights the same group of students went to L.W.’s house and slashed all of their holiday inflatables they had displaying in the front lawn.¹ L.W. witnessed the students running from their house as they drove up.

The behavior finally culminated in an incident on or about February 8, 2015. J.W. was leaving his math class to meet a friend outside. When he got outside the room, a large group of students was waiting for him. Student A got in J.W.’s face and J.W. told him he did not want to fight. Student A punched J.W. in the face. The entire incident was videotaped on another student’s cell phone and then posted on Facebook.² The school principal, Mr. Goodhue, called the police and charges were filed on Student A.³ Student A was suspended for the incident. After the incident was over as J.W. walked to the bus, he was verbally threatened by several other students. Later that evening other students posted messages on Facebook threatening to kick J.W.’s ass and stating they would find out where he lives.

J.W. continued to be verbally teased for the remainder of the school year. Students would say things like J.W. “smells.” However, there were no other threats, physical assaults to J.W., and no other incidents with Student A. Although, there were no other notable incidents, J.W. started having stomach aches and expressed several times that he did not want to go to school. J.W. started to take alternate routes to class to avoid certain students in the halls and in the bathrooms at school because he was afraid of getting attacked. As a result, J.W. also had several tardies.

In March of 2015, when E.W. was in 6th grade, several male students began verbally harassing E.W. every day as she was getting on the metro bus at school. These students made extremely vulgar comments to E.W. The Appellant reported this to Principal Goodhue. However, E.W. could not identify which students were bothering her because she did not know their names. Principal Goodhue arranged for E.W. to be escorted to the bus for four days by a hall monitor. There were no other reported incidents. However, the taunts affected E.W.’s self-esteem. E.W. started to pull her hair back in a ponytail and wearing a hooded sweatshirt to school. E.W. also refused to dress out for gym class and this resulted in a failing grade. In April of 2015 L.W. learned from one of E.W.’s teachers that E.W. was cutting herself. L.W. quickly addressed this with E.W. and E.W. has not done this since.

In June 2015, L.W. filed an application for Open Enrollment for both J.W. and E.W. from DICSD to Carlisle Community School District (CCSD). L.W. believes a smaller school with smaller class sizes would be better for J.W. and E.W. On July 7, 2015, the DICSD Board was provided with a short summary of information regarding L.W.’s application from Mrs. Shirley. Mrs. Shirley handles all applications for open enrollment in the district. When she receives an application for open enrollment she contacts the Executive Director for Elementary Schools, Tim

¹ This was reported to Principal Goodhue after they returned from winter break.

² The video of the incident was not provided as an exhibit.

³ The police report of the incident was not provided as an exhibit.

Schott, and he follows up with the building principal to determine if a student has been a victim of bullying and harassment. Mrs. Shirley was not provided with any information to indicate that J.W. and E.W. had been bullied or harassed. The summary she provided to the DICSD Board included the following information:

Mom states students have been harassed at current school. No harassment issues have been documented at current school. Additionally, the family recently moved to another MS attendance area in DMPS which should resolve any issues with the MS student. DMPS is able to accommodate the HS student at another building if the family desires.

Based on this limited information the Superintendent recommended that the district could accommodate J.W. and E.W.'s needs in another attendance center. The DICSD Board denied L.W.'s application. On July 29, 2015, L.W. filed a timely notice of appeal.

CONCLUSIONS OF LAW

The Iowa Legislature has given the State Board wide latitude in reviewing appeals under Iowa Code section 290.1 to make decisions that are "just and equitable." Iowa Code § 290.3 (2013). The standard of review in these cases requires that the State Board affirm the decision of the local board unless the local board decision is "unreasonable and contrary to the best interest of education." *In re Jesse Bachman*, 13 D.o.E. App. Dec. 363 (1996).

Under Iowa Code section 282.18, the statutory filing deadline for an application for open enrollment for the upcoming school year is March 1st. The law provides that an open enrollment application filed after the statutory deadline, which is not based on statutorily defined "good cause," must be approved by the boards of directors of both the resident district and the receiving district. Iowa Code § 282.18(5). Open enrollment may be granted at any time with approval of both the resident and receiving school districts. *Id.* § 282.18(14).

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:

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).

(1) Timing

The first criterion requires that the harassment must have happened or the extent of the harassment could not have been known until after March 1.

In this case, the objective evidence shows that the harassing behavior complained of by J.W. arose well before March 1, 2015, with the final reportable incident occurring or about February 8, 2015. The school proactively handled that situation and the offending student was disciplined. After that, the harassment subsided with students resorting to adolescent name calling, which was not reported to the district. Thus, L.W. was aware of the extent of the harassment well before the March 1 deadline. Therefore, the first criterion with regard to J.W. is not met and we need not review the remaining criteria for J.W. However, we find it troubling that none of the information related to the harassment of J.W. and E.W. was communicated to the DICSD Board at the time of the hearing. It appears there is a lack of communication between the local attendance centers and those individuals responsible for making decisions on open enrollment.

With regard to E.W. the objective evidence shows that the objectionable behavior complained of began in March of 2015, just after the deadline had past. Thus, the first criterion is met with regard to E.W.

(2) Pervasive Harassment

The requirement of an objectively hostile school environment under the second criterion means that the conduct complained of would have negatively affected a reasonable student in

E.W.'s position. This requirement means that the State Board must determine if the behavior of the students created an objectively hostile school environment that meets one or more of the above conditions. The State Board has granted relief under Iowa Code section 282.18(5) in cases of harassment in only three other cases. In each case, the facts established that the experienced harassment involved serious physical assaults, degradation, and destruction of property of those students.⁴

In this case, E.W. was subjected to extremely vulgar and inappropriate sexual comments which would be offensive to anyone. The harassment was affecting E.W. emotionally, physically, and had negative impact on at least one grade. L.W. testified that E.W. started to hide behind a hooded sweatshirt and at one point was self-mutilating. There is no doubt that E.W. was subjected to an objectively hostile school environment. However, the question is whether or not the behavior was pervasive enough to meet the legal definition. While there is no hard and fast rule on what it means to be pervasive, even if we assume for the sake of this case that it meets the definition, under the third and fourth criteria discussed below E.W.'s appeal fails.

(3) Efforts of the District

Under the third criterion, the evidence must show that the harassment is likely to continue despite the efforts of school officials to resolve the situation. Here the evidence shows that L.W. contacted the principal about the harassment that E.W. was experiencing and the principal assigned a hall monitor to accompany E.W. to the bus. After this was done there were no other reportable incidents of harassment. Under these circumstances we conclude the district resolved the situation. Furthermore, E.W. is no longer attending Hoyt Middle School due to her families' recent move to another area of the district. Thus, the third criterion is not met.

(4) Change of District

Although we find the third criterion was not met will analyze the fourth criterion which was the basis of the DICSD Board's decision to deny the open enrollment applications.

Under the fourth criterion, L.W. must show that changing the school district E.W. attends would alleviate the situation. The crux of this criterion is determining whether putting the student in a different environment will make a difference. See *In re Mary Oehler*, 22 D.o.E. App. Dec. 46 (2004). Here it is clear that the principal handled the situation with E.W. and the harassment stopped. Thus, the school has already alleviated the situation and there is no need to move E.W. to another school. Nonetheless, at the time of the hearing before the DICSD Board E.W. had already moved to a new attendance center. Thus, the appeal would also fail on the fourth criterion. The district has also offered to serve J.W. at a different high school then he is currently at if he so chooses.

⁴ 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 their property at school.

This case is not about limiting parental choice. The State Board understands that L.W. wants what is best for both J.W. and E.W. The State Board does not fault L.W. for her desire to enroll her children into Carlisle. Nor does the outcome of this decision limit her ability to transfer them there.

However, our review focus is not upon the family's choice, but upon the local school board's decision under statutory requirements. The issue for review here, as in all other appeals brought to us under Iowa Code section 282.18(5), is limited to whether the local school board erred as a matter of law in denying the late-filed open enrollment request. We have concluded that the DICSD Board correctly applied Iowa Code sections 282.18(5) and 280.28(2)(b) when it denied the late open enrollment application filed by L.W. Therefore, we must uphold the local board decision.

DECISION

For the foregoing reasons, the decision of Des Moines Independent Community School District Board made on July 7, 2015, denying the open enrollment request for J.W. and E.W. is hereby AFFIRMED. There are no costs of this appeal to be assigned.

12/14/2015
Date

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

12/14/2015
Date

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