IOWA DEPARTMENT OF EDUCATION
(Cite as 27 D.o.E. App. Dec. 697)

In re Open Enrollment of M.R.	)	
	)	
K.R.,	)	
	)	DECISION
Appellant,	)	
	)	
v.	)	
	)	
Clear Creek-Amana Community School District,	)	Admin. Doc. No. 5021
	)	
Appellee.	)	

STATEMENT OF THE CASE

The Appellant, K.R., seeks reversal of an August 19, 2015, decision by the Clear Creek-Amana Community School District ("CCACSD") Board ("CCACSD Board") denying a late filed open enrollment request on behalf of her minor daughter, M.R. The affidavit of appeal filed by K.R. on September 3, 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. 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 28, 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 and her daughter M.R. were present and represented by their attorney John Wagner. The CCACSD was represented by Attorney Kristy Latta. Superintendent Tim Kuehl ("Superintendent Kuehl") appeared on behalf of the CCACSD.

K.R. and M.R. both testified in support of the appeal. Appellant's exhibits A-B were objected to and not admitted into evidence on the basis that they were not submitted to the CCACSD Board at the time of the board meeting. Superintendent Kuehl testified for CCACSD and the school district's exhibits 1-9 were admitted into evidence without objection.

FINDINGS OF FACT

K.R. and her daughter M.R., and other two children reside in the CCACSD. M.R. is fifteen years old, in the 10th grade, and is currently attending school in the Solon Community School District ("SCSD") for the 2015-2016 school year by paying tuition to SCSD. March 1 is the statutory deadline for filing for open enrollment applications for the following school year. On

July 22, 2015, after the March 1 deadline, K.R. filed an application with CCACSD requesting to open enroll M.R. to SCSD for the 2015-2016 school year on the basis that M.R. has suffered from pervasive harassment at CCACSD. On August 19, 2015, the CCACSD Board denied the application. The sole issue in this appeal is whether the CCACSD Board erred by denying the late filed open enrollment application. The record establishes the following facts and circumstances.

M.R. attended the Clear Creek-Amana High School ("CHS") as a freshman during the 2014-2015 school year. During that year M.R. began having issues with three upper-class girls in the fall of 2014. The behavior began after M.R. beat out an upper-class girl for a varsity position on the CCACSD Softball Team. The girls were calling M.R. vulgar names on a daily basis in person and on Instagram and spreading rumors that M.R. was promiscuous. As a result of this behavior M.R. came home crying on a daily basis and would lock herself in her room and not talk to anyone. Up until this point this behavior was uncharacteristic of M.R., who was a good student and generally a happy individual. M.R. also had a difficult time completing her school work. K.R. had to provide her extra support to ensure that the work was completed and turned in.[1] M.R. also had a hard time sleeping. However, M.R. continued to have good attendance, except for a short illness and attended extracurricular activities.

In the fall of 2014 K.R. contacted the school counselor, Mr. Hovey, about the issues that M.R. was having with these students.[2] Admittedly, K.R. did not tell M.R. that she had contacted Mr. Hovey because M.R. had asked her not to make things worse. Mr. Hovey tried to approach M.R. to set up a time to talk about the issues K.R. brought up but M.R. told him everything was okay.[3] M.R. testified that she did not feel comfortable talking to Mr. Hovey, her teachers, or other administrators about the incidents because she afraid this would make things worse. Neither K.R. nor M.R. reported any other issues to Mr. Hovey or anyone else at CHS after the fall of 2014. In December of 2014 M.R. began coming home for lunch each day instead of eating at school.

In January or February of 2015 M.R. was in the school gym attending a basketball game with friends when another student told her there was a group of girls who wanted to talk to her waiting outside the gym for her. M.R. was also told that one of the girls wanted to hit her; however, she was not directly threatened by anyone. Among the girls waiting for her was one of the three girls who had been calling her names. M.R. called K.R. crying and K.R. advised her to let them hit her first and then she should protect herself. M.R. waited in the gym and later left with a group of friends without incident. M.R. did not see anyone waiting for her when she left. Neither M.R. nor K.R. reported this incident to the district.

In the spring of 2015, after school M.R. was in the school parking lot talking to a group of friends in a car when according to M.R. she accidentally had her head slammed in a car door by

[1] The record indicates M.R.'s grades improved from the first semester of 2014-2015 to the second semester.

[2] At this point K.R. was not aware of the names of the students who were involved in this behavior.

[3] Superintendent Kuehl testified that M.R. told Mr. Hovey everything was okay when he approached her and this is consistent with M.R.'s testimony she did not want to tell anyone because she was afraid it would get worse. However, M.R. testified she told him that she didn't want to talk at the moment he approached her but she would have talked to him later. M.R. made no attempts to talk to Mr. Hovey at a later time.

another student. When this occurred the three girls who had been calling her names witnessed it and made fun of M.R. for crying, calling her a baby. K.R. was going to report this incident to the school; however, M.R. asked K.R. not to because she did not want to make things worse. Consequently, it was never reported. M.R. continued to be called names on a daily basis until the end of the school year.

By the summer of 2015 M.R. was happy to be out of school. As the new school year approached M.R. did not want to go back to school. On July 22, 2015, K.R. filed an application to open enroll M.R. from CCACSD to SCSD on the basis of pervasive harassment. In August of 2015, M.R. and K.R. met with Principal Moody and he wanted to know the specifics of M.R.'s situation. However, they testified he told them nothing they said would change his mind regarding the open enrollment application.

On August 13, 2015, M.R. and K.R. met with Superintendent Kuehl. M.R. described to Superintendent Kuehl the name-calling, snapchat messages, incident at the gym, and incident in the parking lot. This was the first time M.R. told anyone in the district about these incidents and named the girls involved. M.R. felt like this meeting went better than her meeting with Mr. Moody and she was going to be able to change schools. Superintendent Kuehl found the behavior unacceptable and advised he wanted to address it.

A hearing was held on August 19, 2015, before the CCACSD Board regarding the open enrollment application. Superintendent Kuehl reviewed the application and recommended the CCACSD Board deny the application on the basis that there was no good cause to grant it. In particular the district was not made aware of the name-calling and other incidents until after the application for open enrollment was filed and had not had an opportunity to address the behaviors complained of. The CCACSD Board voted to deny K.R. and M.R.'s open enrollment application.

CONCLUSIONS OF LAW

Under Iowa Code section 282.18, the statutory filing deadline for an application for open enrollment for the upcoming school year is March 1. Iowa Code § 282.18. After the March 1 deadline a parent or guardian shall send notification to the resident district that good cause exists for the failure to meet the deadline. *Id*. 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. *Id*. § 282.18(5).

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 under Code section 290.1. *Id*. § 282.18(5). The State Board "shall exercise broad discretion to achieve just and equitable results that are in the best interest of the affected child or children." *Id*. 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 criterion, the harassment must have happened or the extent of the harassment not known until after March 1. In the instant case, the objective evidence shows that the alleged harassment began in the fall of 2014. Additionally, the incident in the school gym which caused a fear of harm to M.R.'s person occurred in January or February of 2015, which is well before the March 1 deadline. While, M.R. testified that there was also an incident in the spring of 2015 which sparked additional insults and the name-calling continued there is no evidence that the Appellants did not know the extent of the harassment until after March 1, nor is there any evidence that the alleged harassment got worse after the deadline. Under these facts the Appellants have failed to meet their burden on the first criterion.

Since, all four criteria must be met in order for the Appellants to prevail we need not examine the other criteria. However, because school districts and parents alike look to these decisions for guidance we will continue to apply the remaining criteria to the facts.

Under the second criterion, the requirement of an *objectively* hostile school environment means that the conduct complained of would have negatively affected a reasonable student in M.R.'s position. Therefore, the Board must determine if the behavior of these girls created an objectively hostile school environment that placed M.R. in reasonable fear of harm to her person

or property, or had a substantially detrimental effect on her physical or mental health, or substantially interfered with her academic performance, or substantially interfered with her ability to participate in or benefit from the services, activities, or privileges provided by the school.

The 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.[4] In this case, it is inappropriate to engage in vulgar name-calling and spreading rumors of promiscuity. No student should be subjected to these cruel adolescent behaviors. Generally, name-calling alone would not rise to the level of pervasive harassment required here. What is more troubling is the incident that occurred in the winter of 2015 at the basketball game and the threat of a physical assault which caused M.R. to have a reasonable fear for her personal safety. The question is whether or not the behavior is pervasive enough to meet the legal definition. While there is no hard and fast rule on what it means to be pervasive, when taken together the daily name-calling, rumors, and incident in the gym clearly had an effect on M.R.'s mental health and interfered with her ability to benefit from services, activities, or privileges provided by the school. However, even if we assume for the sake of this case that it meets the definition of pervasive harassment under the first and third criteria, discussed below, M.R.'s appeal fails.

Under the third criterion the appellant must also show that the behavior is likely to continue despite the efforts of school officials to resolve the situation. Here the objective evidence shows that the Appellants made one attempt in the fall of 2014 to address the behaviors with the school counselor. However, when the counselor approached M.R. about the issues M.R. told him everything was okay. After that, neither K.R. nor M.R. made any other attempts to tell the district about the harassment until after the application for open enrollment had been filed. While we understand that M.R. was concerned if she told anyone about the situation that the behavior would get worse, we cannot overlook the fact that the district was not made aware of the conduct that was occurring and thus was not in a position to resolve the situation it knew nothing about. Without this opportunity, it cannot be said that the harassment is likely to continue despite the efforts of school officials under the third criterion. Since the appeal fails on the first and third criteria we need not analyze the fourth criterion.

Open enrollment appeals of this type are not about a family's right to transfer their children to other school districts. A transfer may be made even though open enrollment is denied. The approval, or denial, of open enrollment does affect payment for the student's education. When a student transfers to a nonresident school district under open enrollment, the district of residence must pay for the student to attend the receiving district. When a student transfers to a nonresident school district outside of the open enrollment process, the nonresident district must charge the student tuition.

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[4] *See In re: Melissa J. Van Bemmel*, 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.

Parents are free to make the decisions they deem to be best for their children. We do not fault K.R. for her decision to enroll M.R. in SCSD and the outcome of this appeal does not limit M.R.'s ability to attend SCSD.

Our review focus is not upon the family's decision, but on the local school board decision. 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 made error of law in denying the late-filed open enrollment request. We have concluded that the CCACSD Board correctly applied Iowa Code section 282.18(5) when it denied the late open enrollment application filed on behalf of M.R. Therefore, we must uphold the local board decision.

DECISION

For the foregoing reasons, the decision of the CCACSD Board made on August 19, 2015 denying the open enrollment application of K.R. on behalf of M.R. is hereby AFFIRMED. There are no costs of this appeal to be assigned.

1/21/2016
Date

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

1/21/2016
Date

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