

**IOWA DEPARTMENT OF EDUCATION
(Cite as 27 D.o.E. App. Dec. 717)**

<i>In re Open Enrollment of B.P.</i>)	
)	
J.P. and M.P.,)	
)	DECISION
Appellant,)	
)	
v.)	
)	
Treynor Community School District,)	Admin. Doc. No. 5034
)	
Appellee.)	

STATEMENT OF THE CASE

The Appellants, J.P and M.P., seek reversal of an December 14, 2015, decision by the Treynor Community School District (“District”) Board of Directors (“Board”) denying a late filed open enrollment request on behalf of their minor child, B.P. The affidavit of appeal filed by the Appellants on January 6, 2016, 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 February 16, 2016, 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 on behalf of their minor child, B.P. The District was represented by Attorney Joseph Thorton. Superintendent Kevin Elwood (“Superintendent Elwood”) and Principal Gary McNeal (“Principal McNeal”) were also present for the District.

J.P. testified in support of the appeal. Appellant’s exhibits were admitted into evidence without objection. Superintendent Elwood testified for the District and the school district’s exhibits were admitted into evidence without objection.

FINDINGS OF FACT

J.P. and M.P. reside in the Treynor Community School District with their children, B.P. and A.P. B.P. is currently in the 10th grade. B.P.’s sibling A.P. is open enrolled to the CAM Community School District (“CAM”) and attends the Iowa Connections Academy (“ICA”) online school.

B.P. has suffered from migraines and anxiety since the 4th grade. His condition has gotten progressively worse over time. B.P. managed to get through 5th grade on his own and 6th grade with assistance from his parents and teachers. During 7th and 8th grade B.P.'s absences increased dramatically due to his migraines and anxiety. B.P. and his parents continued to work with his teachers to manage his medical condition but his grades declined. During the second semester of his 8th grade year B.P.'s teacher contacted J.P. and M. P. regarding comments he had made to a friend referencing suicide. At this point B.P. increased his treatment with his psychologist to address these concerns.

During the 2014-2015 school year B.P. was a freshman at Treynor High School. That fall B.P.'s anxiety increased to an overwhelming level for B.P. As a result, B.P. quit cross country and contemplated quitting band. J.P. and M.P. continued to work with B.P.'s physician to address his anxiety and medication doses. On September 25, 2014, J.P. sent an email to the high school Principal Tim Navara ("Principal Navara") explaining B.P.'s medical condition and requested that he share this information with B.P.'s teachers. On December 16, 2014, J.P. sent another email to Principal Navara and requested to meet with him regarding B.P. A meeting was held on December 18, 2014 to discuss B.P. however nothing new resulted at that time.

During the second semester B.P. continued to have absences from school and difficulty completing assignments due to his anxiety. However, B.P. managed to make it through his freshman year without failing any classes but getting several Cs and Ds with help from his parents and teachers.

On May 5, 2015, J.P. sent another email to Principal Navara requesting a meeting with him regarding B.P. Principal Navara provided the information to Rita Laughlin ("Ms. Laughlin"), the school counselor. Another meeting was held with Principal Navara on May 6, 2015 to discuss the possibility of a 504 plan for B.P. Shortly after the meeting J.P. provided Principal Navara with a behavioral health assessment that was done on B.P. on April 13, 2015, at the Boystown Center for Behavioral Health. B.P. had been diagnosed with adjustment disorder with mixed anxiety and depressed mood and attention deficit/hyperactivity disorder ADHD. The assessment made several recommendations geared toward helping B.P. cope with and alleviate his anxiety and negative mood. Principal Navara acknowledged receiving the assessment and asked for time to review it with an AEA specialist and determine appropriate accommodations needed for B.P. On May 21, 2015, Principal Navara, filled out a referral for a 504 plan for B.P. and attached the medical assessment to the referral. Principal Navara also wrote a student accommodation plan for B.P.

On May 28, 2015, Principal Navara stated in an email to J.P. that he was working on a 504 plan for B.P. and that he had sent a copy of the assessment to Marcia Lippert ("Ms. Lippert"), the school nurse, for her review and comments. Principal Navara indicated that a 504 plan would be ready for the 2015-2016 school year. However, notes from Ms. Lippert to Principal Navara indicated that "[she] didn't see any information here that would definitely suggest a need for a 504 Plan." There was no evidence that this was communicated to J.P. and M.P. at that time. Nor was there evidence that Principal Navara discussed the 504 plan with the AEA Specialist.

On August 4, 2015, J.P. emailed the new high school Principal Mr. McNeal, to schedule a meeting regarding the 504 plan for B.P. that had been started the previous year. On August 17, 2015, J.P. and M.P. met with Mr. McNeal. During that meeting he indicated that a 504 plan was not necessary. Instead, Principal McNeal stated that he would monitor B.P.'s grades and talk with his teachers to get him extra help to ensure B.P. did not fall behind.

On October 6, 2015, J.P. emailed Principal McNeal to schedule another meeting regarding B.P.'s behavior cycling into the same pattern as when he was a freshman. On October 7, 2015, J.P. and M.P. met with Principal McNeal. He offered to have B.P. work with Thad Nelson ("Mr. Nelson"), B.P.'s Algebra teacher, on his failing classes. However, B.P. indicated to J.P. and M.P. that he tried to stay after school on several occasions and tried to get help from Mr. Nelson, but no help was provided.

On November 3, 2015, B.P.'s anxiety level was so high that B.P. struggled to get to school. J.P. and M.P. had to drag B.P. out of bed, into the car and drive him to school and Ms. Laughlin had to help get him out of the vehicle and into the school. J.P. emailed Ms. Laughlin that day asking for more assistance and she suggested discussing a Digital Electronics course. B.P. was absent from November 7 through November 10. On November 10, 2015, J.P. and Ms. Laughlin emailed back and forth about possible options for B.P. whose anxiety level was becoming a barrier to getting him to school. Ms. Laughlin recommended reviewing B.P. for a 504 plan and J.P. indicated that they had tried to do this in the past and were not given one. He also indicated B.P. was supposed to get additional tutoring which did not occur. J.P. and M.P. decided at this point to take B.P. out of school and homeschool him.

On December 2, 2015, J.P. and M.P. filed an application for open enrollment on behalf of B.P. from the District to CAM and checked off in the application that B.P. had good cause to file a late application on the basis of pervasive harassment or a serious health condition. Superintendent Elwood reviewed the application and it was placed on the board agenda for the December 14, 2015, board meeting.

At the board meeting when the Board asked if there was a 504 plan in place for B.P. Principal McNeal advised the board that "we were monitoring [B.P.'s] progress in the fall but, you know, he is an average student whose grades are average in all classes but two. He seemed to be doing well socially. He participated in band in the fall. You know, he was pretty much an average student." Thus, no 504 plan was put into place. Neither the Superintendent nor the Board were provided with any information regarding the Boystown assessment or the 504 referral that had been done by Principal Navara.

The Board inquired whether the parents had gone through any other avenues to serve B.P. and Superintendent Elwood advised the Board that the parents withdrew B.P. to homeschool him. The Board discussed serving B.P. through Edgenuity courses. Principal McNeal indicated he felt this alternative program could meet B.P.'s needs. Superintendent Elwood told the Board that there was no doctor's diagnosis and "it's the family's perception of medical." Superintendent Elwood recommended that the application be denied because the district had not had the opportunity to meet B.P.'s needs. J.P. and M.P. were not present for the

meeting and did not present any evidence or testimony to the Board.¹ Thus, the Board voted to deny the application.

On January 4, 2016, J.P. and M.P. mailed 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. 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).

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 an allegation of pervasive harassment or a 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) (emphasis added). 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.*

In this case the appellants assert that B.P. has a serious health condition that cannot be adequately addressed by the District. In these cases it is well established that an appellant seeking to overturn the local board’s decision involving a serious medical condition must meet all of the following criteria for the State Board to reverse the decision and grant the request:

1. The serious health condition of the child is one that has been diagnosed as such by a licensed physician, osteopathic physician, doctor of chiropractic, licensed physician assistant, or advanced registered nurse practitioner, and this diagnosis has been provided to the school district.
2. The child’s serious health condition is not of a short-term or temporary nature.
3. The district has been provided with the specifics of the child’s health needs caused by the serious health condition. From this, the district knows or should know what specific steps its staff can take to meet the health needs of the child.

¹ There was no evidence in the record that J.P. or M.P. had been provided with notice that the open enrollment application would be on the board’s agenda.

4. School officials, upon notification of the serious health condition and the steps it could take to meet the child's needs, must have failed to implement the steps or, despite the district's best efforts, its implementation of the steps was unsuccessful.
5. A reasonable person could not have known before March 1 that the district could not or would not adequately address the child's health needs.
6. It can be reasonably anticipated that a change in the child's school district will improve the situation.

In re Anna C., 24 D.o.E. App. Dec. 5 (2006); *see also In re Kathryn K.*, 26 D.o.E. App. Dec. 197, 199-200 (2012) and *In re Samantha H.*, 26 D.o.E. App. Dec. 373 (2013).

Here, there is no question that B.P. has been diagnosed with adjustment disorder with mixed anxiety and depressed mood and attention deficit/hyperactivity disorder ADHD which was inhibiting his ability to access school and a regular education program. B.P. has been and continues undergoing treatment for his diagnosis. The State Board has found that depression alone is a serious medical condition. *In re Samantha H.*, 26 D.o.E. App. Dec. at 376. There is no question B.P. has a serious medical condition limiting B.P.'s ability to learn. Principal Navara was made aware of the diagnosis in May of 2015 and accepted the diagnosis. Furthermore, the District appears to have observed behavior that is consistent with this diagnosis and attempted to respond to that behavior during the 2014-2015 and 2015-2016 school years. The record shows that B.P.'s medical condition has been ongoing and has become progressively worse over time. There is no indication that this is a temporary condition for B.P. Thus, criteria one and two are met.

Under the third and fourth criterion the District was provided with the specifics of B.P.'s health needs caused by his condition in May of 2015. J.P. consistently communicated with Principal Navara, Principal McNeal, and Mrs. Laughlin about his concerns for B.P. and what his health needs were. Additionally, the behavioral health assessment the District received contained a diagnosis and recommendations for B.P.'s treatment. While we acknowledge the recommendations were not specific to B.P.'s academic needs or placement we believe the District had ample information available to them to know what specific steps they could take to meet B.P.'s medical needs and address his anxiety. In fact, Principal Navara recognized the need to provide additional assistance to B.P. and filled out a 504 referral and plan aimed at meeting B.P.'s needs. However, this 504 referral and plan was never provided to J.P. or M.P. for discussion or implementation. Although Principal Navara told J.P. that B.P.'s 504 plan would be ready for the fall, when the 2015-2016 school year arrived Principal McNeal declined to implement the 504 and failed to follow through with the 504 process.

Under Section 504 of the Rehabilitation Act of 1973, which was signed by President Nixon, a school district is responsible for providing a free appropriate public education to students with disabilities. 34 C.F.R. § 104.33. A student with disability is one with a physical or mental impairment that substantially limits the student in one or more major life activities. 34 C.F.R. § 104.3(j). Learning is one of many major life activities in a nonexhaustive list, *see id.* § 104.3(j)(2)(ii), and schools err when they restrict their inquiry under Section 504 solely to the major life activity of learning, *see, e.g., Virginia Beach City Pub. Sch.*, 54 IDELR 202 (OCR 2009). Schools must identify

and evaluate students with disabilities. 34 C.F.R. § 104.32. When a request for an evaluation for a 504 plan occurs, the District's Section 504 Coordinator must ensure the following process has occurred 1) a referral for an evaluation; 2) notification of the intent to evaluate is provided to the parents; 3) evaluation of the student; 3) placement; 5) implementation; and 6) review. *See id.* § 104.35.

Section 504 also provides the following procedural safeguards for parents:

- 1) Parents have a right to be notified in writing of any decisions made by the school district concerning the identification, evaluations or educational placement of students pursuant to Section 504.
- 2) Parents have a right to examine, copy, and request amendments to the student's educational records.
- 3) Parents have a right to an impartial hearing regarding school district decisions.
- 4) Parents have a right to further review the impartial hearing officer's decision and a right to file a formal complaint with the Office of Civil Rights.

See id. § 104.36.

Here J.P. and M.P. requested the District evaluate B.P. for a 504 plan and Principal Navara began that process in May of 2015. However, the evidence shows that the District failed to complete the 504 evaluation process on B.P., even after further prompting by J.P. The District also failed to provide J.P. and M.P. with appropriate notifications, a description of the evaluation, or a description of their procedural safeguards. J.P. and M.P. repeatedly tried to engage the District in the 504 evaluation process and the District failed to follow through as required. If the district believed that no 504 plan was necessary, or that B.P. was not 504-eligible, it was obligated to follow the process laid out in the 504 regulations. This shifting ground places the family in an untenable position, which we cannot approve. *See, e.g., In re C.N.*, 27 D.o.E. App. Dec. 571 (2015) (resident district initially suggested open enrollment during truancy mediation and then declined a request for open enrollment: decision reversed). We conclude this failure to follow the 504 process was a failure by the District to implement steps to meet B.P.'s needs; therefore criteria three and four are met.

Criterion five is also easily met here. J.P. and M.P. in good faith diligently tried to work with the school beginning in May of 2015 to get a 504 plan in place for B.P. for the 2015-2016 school year. They also continued to work with the District in the fall of 2015 to get assistance for B.P. even after Principal McNeal failed to follow through with the 504 process. Under these facts, the appellants could not have known before March 1 that the District could not or would not meet B.P.'s needs.

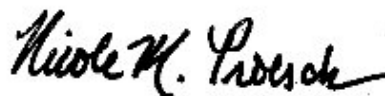
Finally under the sixth criteria, we must determine if it can be reasonably anticipated that a change in the child's school district will improve the situation. Both J.P. and M.P. believe that changing districts will improve B.P.'s medical condition. Since getting to school was a significant issue for B.P. and this contributed to his anxiety, the ability to work from home in a self-paced online program will likely alleviate B.P.'s anxiety. B.P. will now be taking classes with oversight of his parents who have already been diligently working to help B.P. get through school. We have no doubt that J.P. and M.P. will continue to support B.P. with his medical

condition and through his schooling. This is compounded by the lack of follow-through with federally mandated 504 process on the part of the school and the lack of support offered to B.P. in lieu of a 504 plan. The failure to follow through with this process and to support B.P. is troubling. Thus, we find it can be reasonably anticipated that a change in B.P.'s school district will likely improve the situation.

In appeals of this nature the Legislature has granted the State Board "broad discretion to achieve just and equitable results that are in the best interests of the affected child." Iowa Code § 282.18(5)(emphasis added). Based on the record before us and in light of B.P.'s serious medical condition, we believe that it is in B.P.'s best interest to be permitted to finish high school in ICA online academy at CAM.

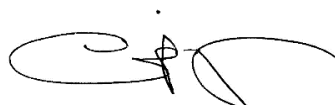
DECISION

For the foregoing reasons, the decision of Treynor Community School District Board of Directors made on December 14, 2015 denying a late filed open enrollment request on behalf of their minor child B.P. is hereby REVERSED. There are no costs of this appeal to be assigned.



3/31/2016
Date

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



3/31/2016
Date

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