

**IOWA DEPARTMENT
OF EDUCATION**
(Cite as 24 D.o.E. App. Dec. 82)

In re Amanda Schamerhorn

Cheryl Schamerhorn, Appellant,	:	
	:	DECISION
vs	:	
	:	[Admin. Doc. 4635]
Des Moines Independent Public Schools, Appellee.	:	

The above-captioned matter was heard telephonically on July 12, 2006, before designated administrative law judge Carol J. Greta, J.D. The Appellant, Cheryl Schamerhorn was present on behalf of herself and her minor daughter, Amanda. The District was represented by attorney Andrew Bracken.¹ Also present were Goodrell Middle School principal Dawn Stahly and Amanda Schamerhorn. Amanda was not present at the start of the hearing; she did not offer any testimony herself.

An evidentiary hearing was held pursuant to agency rules found at 281 – Iowa Administrative Code (IAC) chapter 6. Authority and jurisdiction for the appeal are found in Iowa Code §§ 282.18(5) and 290.1 (2003). The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter of the appeal.

Ms. Schamerhorn seeks reversal of the June 6, 2006 decision of the local board of directors of the Des Moines District to deny the open enrollment request filed on behalf of Amanda.

**I.
FINDINGS OF FACT**

The Des Moines District has 11 middle school and five high school attendance centers. During the 2005-06 school year Amanda attended Goodrell Middle School, whose principal is Dawn Stahly.

On or about May 15, 2006, Ms. Schamerhorn filed an open enrollment application for Amanda for the 2006-07 school year. Saydel is the District that Ms. Schamerhorn wants her daughter to attend. In the application Ms. Schamerhorn expressed her reason for the request as follows:

I feel she would do better in smaller class size and this school [Saydel High School] is closer to our home². There are students going to North that she had issues with and I feel she would be better in a different school.

¹ It was earlier disclosed to Ms. Schamerhorn in writing that the same law firm of which Mr. Bracken is a member employs the spouse of ALJ Greta. She stated on the record that she had no objection to ALJ Greta acting as the hearing officer herein.

² In her appeal notice, Ms. Schamerhorn elaborated, explaining that Saydel High School is 4.26 miles from their residence whereas Des Moines North is 4.51 miles and Des Moines East 4.96 miles.

No further written information was provided to the District by Ms Schamerhorn, which denied the open enrollment request. The local Board upheld the administrative denial.

The parties do not disagree about any of the salient facts, which we find to be as follows. In setting out our findings of fact, we shall use first names only for the other students involved.

1. Amanda and Heidi were friends with each other. Heidi's circle of friends included Victoria and two Jessicas. Therefore, to be Heidi's friend, Amanda also needed to regularly interact with Jessica, Jessica, and Victoria. All five girls were in the 8th grade at Goodrell during the 2005-06 school year.
2. Victoria is very verbal and often expressed herself socially via verbal threats. Amanda was subjected to many verbal threats of physical harm from Victoria during the entire 2005-06 school year. The two Jessicas verbally harassed Amanda from time-to-time, but Victoria was acknowledged to be the primary source of verbal harassment.
3. Neither Victoria nor any of the other girls physically harmed Amanda at any time.
4. The verbal threats started in August of 2005 and continued throughout the 2005-06 school year. Amanda appropriately reported her concerns to school staff, which in turn talked to the girls. This intervention worked, but only in the short-term.
5. This coming school year (2006-07) Victoria will attend Des Moines East High School; Amanda's designated attendance center is North High School. To the best of any party's knowledge, one of the Jessicas is to attend East High and the other, North High.

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. Subsection (5) of the law involves applications filed after March 1, seeking open enrollment due to "repeated acts of harassment of the student."

This Board has given relief to students who have been harassed in only 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. 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 perpetrators of the harassment. 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 physical assaults at school. In the *Myers* case, John's schoolbooks and supplies had also been stolen, defaced, or otherwise rendered useless as educational tools.

On the other hand, denials of open enrollment were upheld by this Board in cases where the alleged harassment had been more in the nature of "on-again/off-again friends" constantly bickering with each other [*In re Lauren Hales*, 23 D.o.E. App. Dec. 39 (2004)], and where the resident district had other attendance centers in which the targeted student could enroll to escape her harassers [*In re Mary Oehler*, 22 D.o.E. App. Dec. 46 (2004)] In *Oehler*, while determining that Mary had been the innocent victim of very specific incidents of physical harassment, this Board denied her open enrollment request because there were other attendance centers within the Davenport Community School District for Mary to attend. In that case, we also clarified the six criteria that we use to determine whether to grant relief in these types of appeals. The criteria 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 in its severity. Schools are cautioned not to be bound by a strict formula of what constitutes typical adolescent cruelty, as this can depend 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.

Timing. Ms. Schamerhorn testified that the verbal threats against Amanda started at the beginning of the 2005-06 school year, well before the March 1 open enrollment deadline. She said she was unaware of the existence of open enrollment as an option. Her ignorance of the law cannot operate as an excuse for noncompliance with the March 1 deadline. See, e.g., *Lolkus v. Vander Wilt*, 141 N.W.2d 600 (Iowa 1966). The fact remains that but for her lack of inquiry into legal enrollment options, she could have filed her application in a timely manner.³

All six of the foregoing criteria must be met before we overturn a local board's decision to deny an open enrollment request based on harassment. Therefore, failure to meet even one criterion dooms an appeal. Ms. Schamerhorn has not met the first criterion. Nevertheless, because these written decisions also serve to educate all parents and school officials, we shall discuss some of the other criteria.

Severity. We further conclude that the evidence does not show the kind of pervasive harassment for which we have granted relief via the open enrollment statute previously. The incidents of verbal threats typify immature adolescent behavior. To be sure, these girls were being cruel to each other, but there is no evidence of any intent to physically harm Amanda. When put into context, the verbal behaviors exhibited by all the girls are not outside the realm of typical adolescent misbehavior. They cannot be ignored, but the evidence shows that Ms. Stahly and her staff dealt with the verbal harassment appropriately and (in the short-term) effectively.

³ The web site for the District contains all pertinent enrollment and open enrollment information.


Change of District. As in the *Oehler* and *Hales* cases, this case involves a resident district with multiple attendance centers. The District here offered (letter to Ms. Schamerhorn from Ellen McGinnis-Smith) to discuss enrollment for Amanda to a high school other than her neighborhood school (North). Ms. Schamerhorn admits that Victoria, the primary verbal aggressor, is not assigned to North High School. There was no evidence presented as to why Amanda would not feel safe at Roosevelt, Hoover, or Lincoln High Schools. Because the bulk of the evidence submitted by Ms. Schamerhorn deals with the distance from her residence to Saydel High School relative to North or East High, we conclude that convenience is the primary concern behind the open enrollment request.

This is not the type of case that the Legislature envisioned in creating an open enrollment remedy for students who have been the victims of repeated acts of harassment.

III. DECISION

For the foregoing reasons, it is recommended that the decision of the Board of Directors of the Des Moines Public Community School District made on June 6, 2006, denying the open enrollment request filed on behalf of Amanda Schamerhorn be AFFIRMED. There are no costs of this appeal to be assigned.

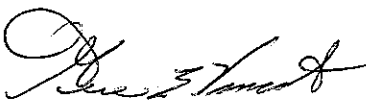
7-21-06
Date



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

It is so ordered.

9-14-06
Date



Gene E. Vincent, President
State Board of Education