IOWA DEPARTMENT
OF EDUCATION
(Cite as 24 D.o.E. App. Dec. 5)

In re Anna C.

Julie and Robert C.,	:	
Appellants,		PROPOSED
	:	DECISION
vs.		
	:	[Admin. Doc. 4626]
A-H-S-T Community School District,		
Appellee.	:	

The above-captioned matter was heard telephonically on January 11, 2006, before designated administrative law judge Carol J. Greta, J.D. The Appellants were both present on behalf of their minor daughter, Anna, and were represented by attorney Steve Rosman. Superintendent Chuck Scott appeared on behalf of the A-H-S-T Community School District. Also present throughout the hearing was A-H-S-T board member Gene McCool.

An evidentiary hearing was held pursuant to agency rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for the appeal are found in Iowa Code §§ 282.18(5) and 290.1 (2005). The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter of the appeal before them.

Mr. and Mrs. C. seek reversal of the November 30, 2005 decision of the local board of directors of the A-H-S-T School District to deny the open enrollment request filed on behalf of Anna.

I.
FINDINGS OF FACT

The A-H-S-T Community School District has but one elementary attendance center. The 2005-06 school year was young Anna's first year in attendance at A-H-S-T, where she had been in the 2nd grade.

Anna experienced complications at birth, one of the consequences of which is that she has organic brain syndrome with secondary aspects of concentration and attention problems, leading to – among other issues- enuresis. Put more simply, Anna needs to be prompted regularly to go to the bathroom or she wets herself.

Mrs. C. testified that she spoke to Anna's teacher and elementary principal at the beginning of the school year about the need to prompt Anna on a regular basis to use the

bathroom. Documents filed with this Board indicate – with no contradiction by the District – that Mrs. C. provided a change of clothes for Anna with the school nurse.

The parties do not agree about what occurred to bring this matter to a head. Mrs. C. states that Anna wet her pants while at school a total of six times the first semester of this school year; the District acknowledges that Anna's teacher was aware of one such incident, but suggests that the others may have occurred on the bus or otherwise after school. Mrs. C. is adamant that on two dates certain – November 18 and 21 – Anna arrived home after school with her inner thighs red, chapped, and blistered from sitting in her own urine.

The local Board held a regular meeting the evening of November 21. Mr. and Mrs. C. appeared at that meeting, and were allowed to speak. They asked for Board approval of an immediate open enrollment of Anna to another district. The Board could take no action because this matter was not on its agenda; to have voted on the request would have been a violation of Iowa's Open Meetings Law, Iowa Code chapter 21. The minutes of the November 21 meeting reflect that "the family agreed to meet with Supt. Scott and Cindy Sorensen [elementary principal] on Tuesday, November 22nd to develop an adaptation plan [for Anna]."

The meeting on November 22 took place with Anna's classroom teacher joining Mrs. C. and the two administrators. Superintendent Scott's letter dated November 23 that summarized the meeting stated, "Information about wetting was found in Anna's cumulative folder. [Anna's former school] indicated that they provided restroom breaks every hour for Anna. AHST offered to provide this adaptation." His letter also states that the District offered "several times" at the meeting to develop a section 504 accommodation plan, but that the family's response was that they wanted to go to another school. The family does not refute this; their position is that they asked for accommodations at the start of the school year and are no longer willing to work with the District.[1]

Anna's family requested the open enrollment not just because it perceived that A-H-S-T could not adequately address Anna's health condition. Mrs. C. explained that the family was also displeased with the reading curriculum used for Anna and with her placement in what she believed to be a special education classroom. While this may be true, the exceptions in the open enrollment statute do not give parents the right to appeal to this Board based on anything except "repeated acts of harassment of the student or serious health condition of the student that the resident district cannot adequately address." The family has not alleged that Anna has been harassed; they are limited to arguing that A-H-S-T cannot adequately address Anna's short-term processing problem as it relates to her enuresis.

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[1] In fact, Anna is now enrolled at another school district.

There are written communications from Anna's nurse practitioner and from her pediatric neurologist.[2] The neurologist, a Dr. Richard Andrews, wrote on November 21 that Anna needs special accommodations for her enuresis. Just one week later he wrote that the family believed that Anna's "educational and educational-psychosocial needs are not being met," and that Anna's enuresis was thought by "the family to be directly related to avoidance behavior because of the situation she finds herself in the classroom setting." He recommended that Anna attend a different school. For reasons stated in our Conclusions of Law, we give little weight to Dr. Andrews' second letter.

These communications were made available to local Board members when they met again at a special meeting on November 30. Six members of the local Board were present for the meeting; they were evenly split on the question of whether to allow the untimely open enrollment request. Thus, by operation of law the Board denied the request.

II.
CONCLUSIONS OF LAW

The controlling statute for this appeal is the open enrollment law, Iowa Code section 282.18 (2005), specifically subsection (5), which states:

> Open enrollment applications filed after March 1 of the preceding school year that do not qualify for good cause as provided in subsection 4 shall be subject to the approval of the board of the resident district and the board of the receiving district. The parent or guardian shall send notification to the district of residence and the receiving district that the parent or guardian seeks to enroll the parent's or guardian's child in the receiving district. A decision of either board to deny an application filed under this subsection involving 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 under section 290.1. 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.

This Board has given relief in three cases[3] to students who sought open enrollment due to repeated acts of harassment. This case, seeking open enrollment

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[2] The nurse practitioner wrote only of Anna's "learning needs." Because this communication does not address Anna's enuresis, we do not take the comments into consideration.

[3] Those cases are *In re Melissa J. Van Bemmel*, 14 D.o.E. App. Dec. 281 (1997), *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).

because the resident district cannot adequately address the student's serious health condition, is a case of first impression.

The guidelines in place for claims of severe harassment are instructive, and we use them as our starting point. Those guidelines 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; (2) the harassment must be beyond 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; and (6) there must be reason to think that changing the student's school district will alleviate the situation.

We now introduce a set of guidelines for districts and local boards of education to use when faced with an open enrollment request based on a child's serious health need that the parent believes is not being adequately addressed by the district. The parents or guardians of the child must show the following:

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.

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 know 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.

Finally, we determine how the facts of this case interact with the guidelines for our conclusion.

1. It is indisputable that Anna has a serious health condition, organic brain syndrome with secondary aspects of concentration and attention problems that causes enuresis, that has been diagnosed by a licensed pediatric neurologist.

2. Her condition is not short-term or temporary.

3. Mrs. C. was specific in her instructions to the District at the beginning of the school year that Anna needed periodic prompts to use the bathroom. This was reinforced by her provision to the school nurse of a change of clothes for Anna, as well as by the cumulative records from Anna's prior school that showed that providing hourly bathroom breaks was a reasonable and successful accommodation.

4. This guideline is at the heart of this particular dispute. Although the burden of proof is on the Appellants to show that the District failed to implement reasonable steps or accommodations to meet Anna's needs, this does not mean that the District need not respond to the Appellants' proof. We understand that the District was frustrated because it believed that the family made its decision to enroll Anna elsewhere before giving that District what it perceived to be a chance to work with the family. However, from the record, we cannot discern very much of *why* the District so believed. The family's evidence is that the District knew from Anna's first day of enrollment – either from Mrs. C. or from Anna's cumulative folder – that Anna had a serious health condition that required that school personnel take certain specific steps. When we are left to speculate as to why the District apparently did not take such steps from the start of the school year, we shall resolve any doubts in favor of the student inasmuch as this is the one appellate issue that comes before us when we are mandated by statute to do what is in the best interests of the child [section 282.18(5)], not what is in the best interests of the education system as a whole. In addition, there is some written evidence that the District took lightly the notion that it use a timer to remind the teacher and/or Anna to take care of Anna's bathroom needs, but this is precisely the step needed.

5. When the family enrolled Anna in the District in the fall, it had no reasonable expectation one way or the other as to whether Anna's needs would be met. Thus, this guideline is also met here.

6. The hourly bathroom breaks is a proven successful accommodation. Implementation of it in any school would work. We are not surprised that use of the breaks at Anna's new school is proving successful. We ask that the parties here, as well as all parents and school officials note that if this District had had another elementary attendance center, our expectation would be that Anna's family would also have to show why a change to that building would not be legally satisfactory.

Although we are resolving this appeal in favor of Anna and her family, for the benefit of future parties to such appeals, we now discuss why we discount Dr. Andrews' second letter.

There is evidence from Mrs. C.'s written statement that Dr. Andrews merely dictated and signed a letter that he asked her to prepare. Even if that were not so, Dr. Andrews made no observation of Anna while she was at school, and he talked to no one at the District. When a healthcare provider makes a specific non-medical recommendation that directly impacts a student's educational setting without talking to education officials, such recommendation is to be taken solely at face value and is not to be given additional weight merely because it comes from a medical expert.

Finally, we are mindful that section 282.18(5) demands that we "exercise broad discretion to achieve just and equitable results that are in the best interest of the affected child… ." [Emphasis added.] We have previously stated herein and in a previous appeal that we view the language of section 282.18(5) as a mandate to give the benefit of doubt to the child. *In re John Myers*, 22 D.o.E. App. Dec. 271 (2004). We do so in this case, but caution that parents and school officials are not to read any deeper or broader meaning into this decision. Each case will continue to be decided on that case's own merits.[4] The burden of proof remains with the party bringing the appeal. This appeal was brought by Anna's family, and they met their burden.

III.
DECISION

For the foregoing reasons, it is recommended that the decision of the Board of Directors of the A-H-S-T Community School District made on November 30, 2005, denying the open enrollment request filed on behalf of Anna C. be REVERSED. There are no costs of this appeal to be assigned.

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

It is so ordered.

_____ _____

Date Gene E. Vincent, President
State Board of Education

[4] For example, there are procedures under the federal Rehabilitation Act (colloquially known as "Section 504") that parents may be required to follow as a prerequisite for requesting accommodations for a child with a disability. Under the record developed in this case, we simply have no way of determining whether or the extent to which Section 504 is applicable here.