

**IOWA DEPARTMENT
OF EDUCATION
(Cite as 23 D.o.E. App. Dec. 25)**

<i>In re Whitney Jacobs</i>	:	
Marilyn Jacobs, Appellant,	:	
vs.	:	DECISION
Atlantic Community School District, Appellee.	:	[Admin. Doc. 4586]

The above-captioned matter was heard telephonically on August 27, 2004, before designated administrative law judge Carol J. Greta, J.D. Appellant, Marilyn Jacobs, appeared on behalf of her minor daughter, Whitney, who was personally present. Steve Jacobs, Whitney’s father and Marilyn’s spouse, was also present. Mrs. Jacobs was not represented by legal counsel. The Atlantic Community School District was represented by attorney Brett Nitzschke, Gruhn Law Firm. Also appearing for the District were Superintendent Wendy Prigge, Board Secretary Barb Nelson, and local Board members Dennis Davis, Jody Lorence, and Phil Hascall.

An evidentiary hearing was held pursuant to agency rules found at 281 Iowa Administrative Code 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 before them.

Mrs. Jacobs seeks reversal of the June 28, 2004 decision of the local board of directors of the Atlantic District to deny the open enrollment application filed on behalf of Whitney.

**I.
FINDINGS OF FACT**

Whitney Jacobs is presently in the 11th grade. She and her family reside in the Atlantic Community School District, and her father is a member of the local school Board. Until the 2004-05 school year, Whitney was enrolled in the Atlantic District. This year, Whitney attends high school at the Harlan Community School District.

The open enrollment application filed on behalf of Whitney on June 17, 2004 states, “Whitney does not want to have to continue enduring verbal abuse/harassment by an athletic coach to herself and teammates. She is also concerned about retaliation in an academic course (adv. chemistry) for not participating in basketball.” The District did

not dispute the facts offered by Mrs. Jacobs. Rather, the District does not believe that these facts are sufficient as grounds for allowing the open enrollment request. The facts are as follows.

Whitney played varsity basketball during the 2003-04 school year. The older Jacobs sisters, Stephanie and Courtney, also played high school basketball at Atlantic. While the oldest sister, Stephanie, was in school, the family made a complaint on her behalf to the District administrators about the head coach. The gist of the complaint was the degrading and bullying verbal comments made by the coach to his players.

Whitney and both of her parents testified herein. According to them, nothing has changed in the time that their family has been associated with Atlantic basketball. They state that the head coach, who has coached basketball at Atlantic for 23 years, is still verbally berating his teams. Mrs. Jacobs provided examples of comments in her appeal.

Only one comment was directed to Whitney personally. After Whitney had made a bad pass in practice, the coach asked her, “Are you going to do that tomorrow night? Whose side are you going to be on, Atlantic’s or Harlan’s?” One other comment – “The sad thing is I have to deal with you idiots next year.” – was directed to a group of players that included Whitney. Other comments directed to the team as a whole were as follows:

- “Are you going to be academically eligible?”
- “If you can’t handle it [verbal remarks], maybe you need to find another sport.”
- “This is the worst team I’ve coached in Atlantic’s history.”
- “I’m embarrassed to be your coach.”
- “If you can’t see it, or figure it out, get off the floor.”
- “I have to deal with special ed kids in class. I shouldn’t have to deal with them in practice.”

On the basis of the coach’s remarks, Whitney decided not to play basketball for Atlantic anymore. Her parents indicated that this decision was made during the 2003-04 basketball season, but that they were, in Mr. Jacobs’ words, “watching to see how the year went” before deciding whether to file for open enrollment.

Mrs. Jacobs testified that the primary reason for filing for open enrollment was “purely academics” and that Whitney was concerned about “possible academic retaliation” from the coach’s wife, who is the District’s only chemistry teacher. One of the courses she teaches is advanced chemistry, a course Whitney intended to take during the 2004-05 school year.

Prior to filing for open enrollment, according to Mrs. Jacobs, Whitney felt a “perceived threat” from this teacher, based on vague allegations of unfair treatment against unnamed students “a few years ago,” and based on a fear that the teacher’s loyalty

to her husband, the basketball coach, would cause her to treat Whitney unfairly. According to Whitney's testimony on cross-examination, she took chemistry from this teacher last year, and received a grade of A. The only noteworthy incident that occurred during that class was resolved in Whitney's favor. Accused of cheating (along with three other girls in the class), Whitney was allowed by the teacher to re-take a quiz rather than be given a "zero" for the quiz grade. Dr. Prigge believes that the teacher would "bend over backwards" to be fair to Whitney and to all students.

The Jacobs' state that the "perceived threat" became a "real threat" of academic retaliation due to an incident that occurred June 23, after they had filed the open enrollment application. On that date, the chemistry teacher was supervising open gym at Atlantic High School. Many high school girls were present to scrimmage basketball, including a number of girls from the neighboring community of Audubon. When Whitney arrived at the gym she decided to play on the Audubon team. Although there is dispute as to whether Whitney was told only that she couldn't play with the Audubon girls or was told that she couldn't play at all, it is not disputed that the chemistry teacher told the supervisor of the Audubon team that Whitney was not welcome in open gym. From this incident, Whitney and her parents believe that Whitney will not be treated fairly in advanced chemistry class by the teacher.

The open enrollment application was filed the day after Mrs. Jacobs and all three of her daughters met with Dr. Prigge to review the family's concerns with the basketball program. After this June 16th meeting, Dr. Prigge sent to Mr. Jacobs a list of questions that the family should be prepared to answer before the Board. The list of questions demonstrated that the local Board would need specific details of incidents of harassment and whether Whitney experienced any physical or emotional harm. Dr. Prigge also urged Mr. Jacobs to have Whitney, who is very articulate, address the Board directly.

Mr. Jacobs appeared alone at the local Board meeting. When his fellow Board members asked Mr. Jacobs for specifics about the statements on the open enrollment application, he does not dispute that he gave no details. Thus, the Board only knew what was written on the open enrollment application. Board members Davis and Lorence both testified that they were told only that the family had long-standing concerns about the girls basketball program. Mr. Jacobs did not refute their testimony that he told the Board that Whitney loves to play basketball, that she couldn't be happy in Atlantic because of her unhappiness with the coach, and that she needed to open enroll out to play basketball.

Davis and Lorence also stated that no details about possible academic retaliation were given to the Board. Mr. Jacobs did attempt to talk about the open gym incident of June 23. Because the incident occurred after the open enrollment application had been filed, the Board felt "that wasn't the issue." Both Board members also spoke of their frustration at the lack of specific information. One of them stated that they "pushed and pushed" for details. Ms. Lorence stated that Mr. Jacobs, when asked if there was any

other information he wanted the Board to consider, said no, and that he seemed “comfortable “ with the information the Board had before it.

The minutes of the June 28 local Board meeting reflect that the Board was in closed session for 68 minutes regarding the open enrollment request for Whitney. Once in open session again, the request was denied on a vote of 4-0, with Steve Jacobs abstaining.

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 January 1 of the school year preceding the school year for which open enrollment is requested. Subsection (5) of the law involves applications filed after January 1, seeking open enrollment due to “repeated acts of harassment of the student or serious health condition of the student that the resident district cannot adequately address.”

Only four prior cases serve as precedent for this type of appeal. In all such cases, fellow students have been the perpetrators of the harassment. The District does not argue that section 282.18(5) applies only when a student has been harassed by one or more peers. Certainly, there are unique protections available to students who allege harassment by a school employee.¹ However, we need not decide in this case whether those other protections are sufficient because we determine on other grounds that the local Board’s decision should be upheld.

The guidelines by which this Board determines the merits of an open enrollment request due to alleged harassment are as follows:

- 1) The harassment must have happened after January 1, or the extent of the problem must not have been known until after January 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.
- 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.

¹ A student or the student’s parent/guardian may file a formal complaint with the Iowa Board of Educational Examiners. A student or the student’s parent/guardian may make the local school administrators aware of a problem by filing a “Chapter 102” complaint. Finally, local board policies themselves may provide an avenue of complaint for an aggrieved student.

We conclude that we need only analyze the first two principles to decide this case.

- 1) *Timing*. The Jacobs were adamant that they have had concerns for many years about the head coach. Thus, they knew well before January 1st that they were unhappy with the District's basketball program.
- 2) *Severity*. The coach's comments ranged from those that were legitimately intended exhortations and concerns about academic eligibility to those that were crude and unnecessary. None were intended to harm Whitney. The comments fall short of the type of harassment for which we have given children relief previously by way of the open enrollment process. However, we take this opportunity to remind educators that they are role models, and need to carefully examine their actions and words.

As to "possible academic retaliation," we do not grant relief for supposition.

Having concluded that whatever problems existed between the Jacobs family and the coach were present long before the January 1st deadline, and having further concluded that the facts presented here do not describe harassment severe enough to permit a late-filed open enrollment request, we need not analyze the remaining principles.

III. DECISION

For the foregoing reasons, it is recommended that the decision of the Board of Directors of the Atlantic Community School District made on June 28, 2004, denying the open enrollment request filed on behalf of Whitney Jacobs be AFFIRMED. There are no costs of this appeal to be assigned.

Date

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

It is so ordered.

Date

Gene E. Vincent, President
State Board of Education