

**IOWA DEPARTMENT
OF EDUCATION
(Cite as 22 D.o.E. App. Dec. 265)**

In re Jennifer Johnson

Jolene Johnson, Appellant,	:	DISMISSAL OF APPEAL
vs.	:	
Twin Rivers Community School District, Appellee.	:	[Admin. Doc. 4571]

The above-captioned matter was heard on April 19, 2004, before designated administrative law judge Carol J. Greta, J.D. The Appellant [“Miss Johnson”] appeared personally on behalf of her daughter [“Jennifer”], who was also personally present. The Appellee, the Twin Rivers Community School District, was represented by Superintendent Dr. James Kenton and by Secondary Principal Don Hasenkamp, both of whom participated in the hearing by telephone. Neither party was represented by legal counsel.

An evidentiary hearing was held pursuant to agency rules found at 281 Iowa Administrative Code 6. Miss Johnson seeks reversal of the February 9, 2004 decision of the local board of directors of the Twin Rivers District to deny two open enrollment requests she filed in January on behalf of Jennifer. She filed a timely appeal to this agency on behalf of her minor daughter. However, for the reasons recited herein, the undersigned finds that the State Board of Education has no jurisdiction over this appeal.

**I.
FINDINGS OF FACT**

Jolene Johnson is a resident of the Twin Rivers Community School District. Her daughter, Jennifer, is presently in the 9th grade. After finishing the first semester of the present school year at Twin Rivers, Jennifer moved in with a relative in the Humboldt District for the remainder of her freshman year. She continues to attend school in Humboldt.

On January 15, 2004, two weeks after the January 1 filing deadline, Miss Johnson filed an open enrollment application for the 2004-05 school year for Jennifer to attend the Humboldt Community School District. That application was filed properly with both the Twin Rivers and Humboldt Districts. There is a space on the application for a parent to indicate whether “good cause” exists to have filed after January 1. One choice is to check “family moved to a new district of residence.” Inasmuch as the family had not changed its residence, Miss Johnson struck the word “family” from that line. She then wrote, “‘student’ moved to a new district of residence.”

The application also contains the following statement:

If the application is being made in response to a severe health need or pervasive harassment, please explain below and send application to RESIDENT district for action.

In the space that follows that statement, Miss Johnson wrote a question mark (“?”).

A few days later, on January 26, she also filed an open enrollment application seeking approval for Jennifer to finish the 2003-04 school year at Humboldt. The second application was filed only with the Humboldt District. On this second application, Miss Johnson wrote that she filed due to “harassment – see attachment.” There is a three-page attachment to this second application.

Miss Johnson did not give this second application and its attachment to the Twin Rivers District. The Twin Rivers Board voted unanimously on February 9 to deny Jennifer’s open enrollment request. The minutes of that meeting state that Miss Johnson “did not file in a timely manner and did not meet the criteria for good cause. No reasons for good cause were provided on the application.” Neither Miss Johnson, Jennifer, nor any other person on their behalf attended that Board meeting. Miss Johnson stated that she was told that she did not have to be present, but she acknowledged that no one told her that she was prohibited from appearing and speaking on February 9.

The Humboldt Board – which did have both open enrollment applications – denied the requests also. Miss Johnson did not file an appeal from the Humboldt decision. In a memo to this agency, Humboldt Superintendent Joyce H. Judas states that Miss Johnson “describes a recent situation between the building principal of [Twin Rivers] and their family. It does not appear to fit the description of pervasive harassment outlined by the Department of Education.” (Indeed, the attachment submitted to Humboldt describes an incident in early December, 2003, where Jennifer was sent home from school by the high school principal because of a cold sore. Miss Johnson reports that this incident humiliated Jennifer and was done “with no regards to her feelings.”)

But it was only after the Twin Rivers Board denied open enrollment for Jennifer that Miss Johnson stated to that District that she was claiming harassment of Jennifer. After she filed her appeal here, she added a claim that three of Jennifer’s peers have been verbally harassing her for three years, calling her derogatory names, and choosing her last in physical education class for teams.

II. CONCLUSIONS OF LAW

The controlling statute for this appeal is Iowa’s open enrollment law, Iowa Code § 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. This statute was significantly amended in 2002. New subsection (5) of the law states as follows:

Open enrollment applications filed after January 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. ... 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. [Emphasis added.]

Thus, the only open enrollment appeals over which this Board now has jurisdiction are those involving “repeated acts of harassment of the student or serious health condition of the student that the resident district cannot adequately address.” This appeal involves neither.

Miss Johnson made only one local school board aware that she was claiming harassment of her daughter. That board was the Humboldt Board, and Miss Johnson filed no appeal from its denial of open enrollment. The Twin Rivers Board did not know that Miss Johnson had filed for open enrollment because of alleged harassment. She gave no indication of harassment to the Twin Rivers Board. The open enrollment application she filed with Twin Rivers stated that because Jennifer had moved to the Humboldt District, she was seeking open enrollment. That she belatedly claims years of harassment does not change the fact that she failed to make such a claim before the Twin Rivers Board.¹

Accordingly, Miss Johnson lacks statutory jurisdiction to appeal the open enrollment denial made on February 9, 2004 by the Board of Directors of the Twin Rivers Community School District. Her appeal herein is DISMISSED.

Date

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

¹ For the sake of clarity and to provide further guidance to the parties, we note that even had she made the Twin Rivers Board aware that she was claiming peer harassment of Jennifer and/or the December incident involving the secondary principal, her claim would have failed. The first guideline that must be met in such cases is that the harassment occurred or was not known by the parent until after January 1. Here, Miss Johnson claimed years of peer harassment. She also acknowledged that she was fully aware of the December cold sore incident when it occurred in early December. There is no reason why she could not have filed a timely open enrollment application on behalf of Jennifer.