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

In re Open Enrollment of W.B.,	)	
	)	
W.B. and D.B.,	)	
	)	DECISION
Appellants,	)	
	)	
v.	)	
	)	
Clinton Community School District,	)	Admin. Doc. No. 5070
	)	
Appellee.	)	

STATEMENT OF THE CASE

The Appellants seek reversal of a June 12, 2017, decision by Clinton Community School District ("District") Board of Directors ("Board") denying a late filed open enrollment request on behalf of their minor child, W.B. The affidavit of appeal filed by July 13, 2017, attached supporting documents, and the District's supporting documents are included in the record. Authority and jurisdiction for the appeal are found in Iowa Code sections 282.18(5) and 290.1. The administrative law judge finds that she and the State Board of Education ("State Board") have jurisdiction over the parties and subject matter of the appeal before them.

A telephone evidentiary hearing was held in this matter on August 31, 2017, 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 with their son W.B., and were self-represented. Superintendent Gary Delacy ("Superintendent Delacy") appeared on behalf of the District and was represented by attorney Jerry Van Scoy. Also present for the District was the prior Superintendent, Debra Olson ("Superintendent Olson"), and the Middle school Principal Dan Boyd ("Principal Boyd").

D.B. and her son, W.B., testified in support of the appeal. Appellants presented Appellants Exhibits 1-13 and they were admitted without objection. Mrs. Olson and Principal Boyd testified for the District. The District's Appellee's Exhibits 1-10 were admitted into evidence without objection.

FINDINGS OF FACT

The Appellants and their minor son, W.B., are residents of the District. They have lived in the District for twenty-four years and W.B. has attended school in the District since he was three years old. W.B. is fourteen years old and is currently dual-enrolled in 8th grade at the Clinton Middle School for the 2017-2018 school year. W.B. began homeschooling and dual

enrollment in April of 2017. W.B. has mild Asperger's Syndrome and receives special education services through the District.

D.B. testified that W.B. had issues during the 2015-2016 school year with his locker combination and that he had an iPhone stolen out of his locker. During the 2016-2017 school year, W.B. struggled socially at school and told D.B. that he did not feel safe in school. W.B. would come home crying and upset because students were teasing him.

D.B. testified that in October of 2016, W.B. was having issues during lunch with other students ripping his lanyard off of his neck, taking his glasses and not giving them back. On October 17, 2016, D.B. reported this in an email to Hope Rallie. She responded that she would make others aware of the situation and talk with W.B. when she was back at school. Appellants Exhibit 11. School records indicate Ms. Rallie followed up with W.B. and asked if he felt comfortable telling the outside supervisor if it happened again and he said yes. Appellee's Exhibit 6.

On October 21, 2017, W.B. was talked to by the school counselor, Carmen Loots, for hitting other students with his lanyard at lunch. Appellee's Exhibit 6. When W.B. got home he reported to D.B. that he said something to another student and hit the other student with his lanyard and the other student came back kicking and throwing punches. D.B. was upset because W.B. advised her that he was talked to about the incident but the other student was not. D.B. emailed Ms. Rallie about the incident and stated she felt like this was "becoming bullying." W.B. told her he felt the other student was bullying him. Appellants Exhibit 12.

Ms. Rallie forwarded the email to several other staff members to make them aware of D.B.'s concerns that W.B. was being bullied. On October 24, 2017, Ms. Rallie spoke with W.B. and he took responsibility for hitting others with his lanyard and his other classmate took responsibility for physical contact with W.B. Both students agreed they were "messing around" outside calling each other names, pushing, and hitting each other with their lanyards. Ms. Rallie contacted D.B. and advised her the issue was now resolved. Appellee's Exhibit 6.

D.B. testified that W.B. continued to have issues with his lanyards being broken. At the hearing, W.B. testified that this has stopped. D.B. contacted the social studies teacher, Greg Leslie, about concerns in his classroom and he told W.B. that he needed to let him know if he had any issues. Mr. Leslie characterized the issues as mutual horseplay when Principal Boyd asked him what was going on. D.B. encourage W.B. to tell the teacher if he had any issues. D.B. testified that W.B. struggled more in school with his grades after the second semester. However, Mrs. Olson testified W.B.'s grade dropped after he began dual enrolment.

In early February, W.B. and his girlfriend were disciplined for standing on another student's calves while the student was bent down to get things from his locker. W.B. admitted the incident. On February 27, 2017, D.B. emailed Ms. Loots about W.B. being teased by a group of girls for bringing a valentine to his girlfriend, about his voice and mustache, and about W.B. lightening his hair. W.B.'s girlfriend reported the W.B. goes home crying because of the teasing. Appellants Exhibit 10. D.B. testified they told him he looked like he had sperm in his hair. W.B. testified he was called names and that students said he and his girlfriend were having sex. Principal Boyd testified that this had not been previously reported to him.

D.B. sent a follow-up email to Mrs. Loots on March 9, 2017, expressing her concerns about not receiving a response. In the email, D.B. indicated that W.B. told her that Mrs. Loots tried to talk to him about her concerns but he is not comfortable talking to her. Ms. Loots responded that she checked with W.B. and "he does now answer when I ask him how things are going." D.B. also noted her concerns that W.B. and his girlfriend could not sit together at lunch. W.B. believes Ms. Loots is the "mean" one because she does not allow him to sit with his girlfriend at lunch. Ms. Loots explained that students are assigned to sit with certain groups because of school schedules. Appellants Exhibit 8.

On March 24, 2017, D.B. sent another email to Ms. Loots concerned that other students were being allowed to sit where they want at lunch but W.B. and his girlfriend were not allowed to. Ms. Loots responded that they work hard to make sure students sit with their assigned team but she would look into the specific students D.B. referenced. Appellants Exhibit 6.

On March 27, 2017, W.B. got angry at lunch when staff asked his girlfriend to sit with her group at lunch. W.B. slammed his phone down on the table several times and yelled at staff. D.B. came to the school after receiving a text message from W.B.'s girlfriend that W.B. was upset. W.B.'s girlfriend reported that W.B. was hit in the back of the head by another student while they were sitting in the cafeteria. W.B. reported that he was in the lunch line and he stepped in front of someone and felt that someone either pushed him or hit him from behind, but he wasn't sure. The school pulled the video tapes to review what happened and advised D.B. there was no evidence that W.B. was hit during lunch. D.B. spoke with Ms. Loots about lunch expectations and assigned seating. Appellee's Exhibit 6. W.B.'s phone was taken from him during the incident because staff thought he may break the phone and D.B. testified she didn't think they had a right to take his phone. D.B. took W.B. home and W.B. has not returned to school.

On March 31, 2017, D.B. spoke with Jessica Leal, from the AEA, on the phone about her concerns with W.B. D.B. told Ms. Leal she wanted to open enroll W.B. to Northeast but she missed the open enrollment deadline and she wanted to know what the AEA could do about this. Ms. Leal advised her that open enrollment was not part of the AEA's role. Ms. Leal asked if there was a special education issue and D.B. responded no. D.B. said she was going to homeschool W.B. Appellee's Exhibit 6.

On April 5, 2017, D.B. took W.B. to school to attend an orchestra trip that he had planned to attend. Principal Boyd had a conversation with D.B. about W.B. attending the trip when he had not been in school. School policies would not allow a student to attend a trip if they are not attending school. D.B. explained she was looking into dual enrollment. Principal Boyd allowed W.B. to attend the trip. Later that day, D.B. sent Principal Boyd an email expressing her frustrations and informing him that W.B. would not be returning to school and they were looking into dual enrollment. D.B. indicated W.B. felt bullied and picked on and he would not be returning. Appellants Exhibit 4.

On April 20, 2017, D.B. filed her application for open enrollment of W.B. from the District to Northeast with a letter outlining her concerns. Appellee's Exhibit 1. D.B. would like W.B. to attend a smaller school. On May 4, 2017, Superintendent Debra Olson sent a letter

denying the application on the basis that they missed the March 1st deadline and that no exception was applicable based on a review of the information. Appellee's Exhibit 2.

D.B. requested to have the board review the decision and it was put on the agenda for June 12, 2017. At the board meeting, D.B. presented her concerns to the board and requested that they approve her application for open enrollment. The board denied the application. D.B. filed a timely notice of appeal.

CONCLUSIONS OF LAW

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 the board denying a late-filed open enrollment application that is based on "repeated acts of harassment that the resident district could not adequately address" is subject to appeal to the State Board under Code section 290.1. Id. § 282.18(5).

The State Board applied established criteria when reviewing an open enrollment decision involving a claim of repeated acts of harassment. All of the following criteria must be met for this Board to reverse a local decision and grant such a request:

1. The harassment must have occurred after March 1 or the student or parent demonstrates that the extent of the harassment could not have been known until after March 1.
2. The harassment must be specific electronic, written, verbal, or physical acts or conduct toward the student which created an objectively hostile school environment that meets one or more of the following conditions:

   (a) Places the student in reasonable fear of harm to the student's person or property.
   (b) Has a substantially detrimental effect on the student's physical or mental health.
   (c) Has the effect of substantially interfering with a student's academic performance.
   (d) Has the effect of substantially interfering with the student's ability to participate in or benefit from the services, activities, or privileges provided by a school.

3. The evidence must show that the harassment is likely to continue despite the efforts of school officials to resolve the situation.

4. Changing the student's school district will alleviate the situation.

In re: Open Enrollment of Jill F., 26 D.o.E. App. Dec. 177, 180 (2012); *In re: Hannah T.*, 25 D.o.E. 26, 31 (2007) (emphasis added).

The issue for review in this case is whether or not the Board made an error of law in denying the late filed open enrollment request.

1) March 1 Deadline

The first criterion requires that the harassment must have occurred after March 1 or that the extent of the harassment could not be known until after the deadline. Here the objective evidence shows that the all alleged incidents of harassment complained of - broken lanyards, name-calling, and lewd comments - all occurred just before the March 1 deadline. There is no evidence that the extent of harassment was not known until after the March 1 deadline and there is no evidence that the harassment got worse after the deadline. The events that occurred after the March 1 deadline were not about harassment but related to W.B. not being able to sit with his girlfriend at lunch. We understand the need for socialization at this age; however, the lunch rules are applied equally to all students so the school can maintain a schedule. W.B. and his girlfriend were not being singled out of lunch policies by staff. These were the only issues after the deadline identified by D.B. While we understand her concerns, these concerns do not amount to harassment. Thus, the appeal fails under the first criterion.

2) Pervasive Harassment

Under the second criterion, the requirement of an *objectively* hostile school environment means that the conduct complained of would have negatively affected a reasonable student in W.B.'s position. Thus, we must determine if the behavior that occurred created an objectively hostile school environment that meets one or more of the above criteria listed above. Here the objective evidence shows that the conduct complained of was childish name-calling, lewd comments, and adolescent horseplay that was not one-sided. We have consistently said that name-calling alone does not meet the definition of pervasive harassment. *See In re Allison J.*, 25 D.o.E. 153 (2009) (finding that name-calling such as "move, bitch," "fat whore," and non-verbal misconduct such as staring does not "rise to the level of harassment that the legislature and this Board remedy by allowing late-filed open enrollment transfer"); *see also In re Open Enrollment of C.L.*, 26 D.o.E. App. Dec. 509 (2014); *see also In re Open Enrollment of M.R.*, 27 D.o.E. App. Dec. 697 (2016). While we do not condone the name calling or lewd comments they do not amount to harassment under the law. Nor do we believe that the mutual horseplay described here amounts to harassment. Thus, the appeal fails on the second criterion.

3) Efforts of the District

Under the third criterion, the evidence must show the harassment is likely to continue despite the efforts of school officials to resolve the situation. Here the evidence shows every instance that was brought to the attention of school officials was dealt with and addressed within days of D.B. reporting it to school officials. W.B. also testified that the issues with the lanyard had stopped. Under these facts we cannot say that the behavior is likely to continue despite the efforts of school officials.

Since the appeal fails on the first three criterion, there is no need to review the fourth criterion.

This case is not about limiting parental choice. The State Board understands that the Appellants want to do what is best for W.B. We do not fault them for choosing to enroll him at another school. Nor, does the outcome of this appeal limit their ability to transfer W.B.

However, our review focus is not upon the family's choice, but upon the local school board's decision under statutory requirements. The issue in this appeal, as with all other appeals brought under Iowa Code section 282.18(5), is limited to whether or not the local school board erred as a matter of law in denying the late filed open enrollment request. We have concluded that the Board correctly applied the law and therefore, we must uphold the local Board's decision.

DECISION

For the foregoing reasons, the decision of the Board made on June 12, 2017, denying the open enrollment request filed on behalf of W.B. is AFFIRMED. There are no costs of this appeal to be assigned.

11/15/17
Date

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

12/13/17
Date

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