

IOWA DEPARTMENT OF EDUCATION
(Cite as 28 D.o.E. App. Dec. 169)

<i>In re Open Enrollment of L.T.</i>)	
)	
G.T.,)	
)	DECISION
Appellant,)	
)	
v.)	
)	
Des Moines Independent Community)	Admin. Doc. No. 5075
School District,)	
)	
Appellee.)	

STATEMENT OF THE CASE

The Appellant, G.T, seeks reversal of a November 7, 2017 decision by the Des Moines Independent Community School District ("District") Board ("Board") denying a late filed open enrollment request on behalf of her minor child L.T. The affidavit of appeal filed by November 27, 2017, attached supporting documents, and the school district's supporting documents are included in the record. Authority and jurisdiction for the appeal are found in Iowa Code §§ 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.

An in-person evidentiary hearing was held in this matter on January 5, 2018, before designated administrative law judge, Nicole M. Proesch, J.D., pursuant to agency rules found at 281 Iowa Administrative Code chapter 6. The Appellant was self-represented and present with L.T. and her husband J.T. Also present was Ralph Hernandez, L.T.'s uncle. Eleanor Shirley ("Ms. Shirley"), who is the Enrollment Supervisor, appeared on behalf of the District, which was represented by attorney Miriam Van Heukelem.

The Appellant and L.T. testified in support of the appeal. Appellant's presented exhibits A-C and the Appellee objected to A & B. A & B were not admitted since they were not available to the Board during its hearing. Ms. Shirley testified for the District and the District's exhibits 1-4 were admitted into evidence without objection.

FINDINGS OF FACT

The Appellant, her husband, and her minor daughter, L.T., are residents of the Des Moines Independent Community School District. L.T. has attended school in the District since preschool. L.T. is fourteen years old and a freshman at Roosevelt High School ("RHS"). Prior to the 2017-2018 school year, she attended Merrill Middle School (Merrill").

L.T. testified that during the summer of 2017, before beginning her freshman year, she began dating another student at Merrill. L.T. was intimate with the other student, who unbeknownst to L.T., recorded the encounter. After the school year began, L.T. and the other student stopped dating and were not getting along. L.T. and the other student spoke with the school's behavioral coach, Emily Burroughs ("Mrs. Burroughs") on at least one occasion regarding their disagreements and were told to stay away from each other.

During October of 2017, L.T. learned that the other student had been showing her classmates a video of their intimate encounter on his cell phone. L.T. is not aware of whether or not others have possession of the video, but heard about it from several classmates who viewed the video. Students began harassing L.T. about the video and calling her vulgar names. As a result, L.T. found it difficult to be at school and sit in class because of the harassment. L.T. was suffering from anxiety over the situation.

Shortly after learning of the video, L.T. shared this with her parents. The Appellant contacted the High School Principal, Kevin Biggs, and Tasha Brown, who is the ninth grade Administrator at RHS, regarding the video and the harassment. The Appellant testified that she was given the option of having the other student expelled; however, she did not want to do that. Instead, the other student received a short suspension from athletic competition and then returned to the team after a month. Mrs. Brown and Mrs. Burroughs referred L.T. to a crisis counselor to help her handle the situation and arrangements were made for L.T. to go to the office if she felt uncomfortable in class. L.T.'s attendance in class and at school decreased. The Appellant testified she picked up L.T. early on several occasions because she could not deal with her anxiety at school. The Appellant also contacted Officer Michael Moody with the Des Moines Police Department and filed a complaint. The investigation is still pending. L.T. did testify that she and this student have since come to an agreement not to share details of their relationship with others and that things have gotten better since the fall. She has not encountered any other instances of harassment since November.

Before winter break, the Appellant spoke with Mrs. Brown about moving L.T. to another school. On October 26, 2017, the Appellant filed an application to open enroll L.T. from the District to Urbandale Community School District ("UCSD"). The late filed application was filed on the basis of sexual harassment. Attached to the application was a letter indicating that L.T.'s crisis counselor felt prompt removal and starting over at a new school was best for the situation. The letter also indicated that L.T.'s aunt is a teacher at UCSD and she can assist with transportation and L.T.'s transition to a new school. The Appellant and her husband are also UCSD alums.

Eleanor Shirley, who is the Enrollment Supervisor, testified that she received the open enrollment application and contacted Principal Biggs to get more information about L.T. Principal Biggs was aware of the video and the situation. Principal Biggs had spoken with both L.T. and the other student and they were advised not to interact with each other. Ms. Shirley compiled the application, the letter, and a summary of what she had learned from Mr. Biggs to provide to the Board. The Appellant was offered the option of L.T. attending one of the other four high schools in the district - Lincoln, North, East, or Hoover. They declined the offer because they would like L.T. to attend UCSD with her aunt.

On November 7, 2017, the Board reviewed the Appellant's application for open enrollment. The application was denied because the Board concluded that the District could accommodate L.T. at another high school in the District.

The Appellant filed a timely notice of appeal to the State Board. The Appellant argues that they want L.T. to go to UCSD because L.T. has an aunt located there who can help with transportation and any transition. They also believe the policies at UCSD better address social media and this would be a better school for L.T. The District argues that it can serve L.T. in another school in the District and that this is consistent with the State Board's precedent in these cases.

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*

Under the first criterion, 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 show that the main incident of harassment that gave rise to the open enrollment began well after the March 1st deadline. Thus, the first criterion is met.

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 L.T.'s position. This requirement means the State Board must determine if the behavior that occurred created an objectively hostile school environment that meets one or more of the above criteria listed above.

Because of the nature of the sexual exploitation in this case, there is no doubt that L.T. was the victim of pervasive sexual harassment by an ex-boyfriend and classmate who shared with other classmates a video of L.T. and him being intimate. Additionally, as a result of his exploitation, other students began harassing L.T. by calling her names. L.T. is suffering from anxiety as a result of these incidents and has reported that she does not feel safe in school. This incident was substantially detrimental to L.T.'s mental health and it substantially interfered with her ability to attend school causing her to have to leave the classroom or school altogether. Thus, under these circumstances we find that the second criterion is also met.

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 objective evidence shows that after the incident with the video was reported to the Principal, the other student was punished and both students were advised to stay away from each other. The District offered crisis counseling to L.T. and put steps in place to allow L.T. to leave the classroom and work in the office as needed. Law enforcement was contacted and the situation is currently under investigation. L.T. testified that there were no other notable incidents of harassment since November and that things have gotten better. She also testified that she and the other student have agreed not to discuss their relationship with others. Thus, under the third criterion we find

that the appeal fails because the harassment subsided. Nevertheless, the District still offered to transfer L.T. to another attendance center as outlined below.

4) *Change of District*

Finally, under the fourth and final criterion, the Appellant must show that changing the school district that L.T. attends would alleviate the situation. The crux of this criterion is determining whether putting the student in a different environment will make a difference. See *In re Mary Oelker*, 22 D.o.E. App. Dec. 46 (2004). However, under our prior precedent where a resident district has other attendance centers in which the targeted student could enroll to escape his/her harassers, we have consistently upheld the resident district's denial of the open enrollment request. See *id.* (Finding that the district's offer to transfer Mary to another attendance center in the district could adequately address the issues of assault); see also *In re Lauren Hales*, 23 D.o.E. App. Dec. 39 (2004); *In re Amanda Schamerhornm*, 24 D.o.E. App. Dec. 82 (2006); *In re Open Enrollment of T.D.*, 26 D.o.E. App. Dec. 473 (2014); *In re Anneliese Z.*, 26 D.o.E. App. Dec. 467 (2014); *In re Open Enrollment of J.W. & E.W.*, 27 D.o.E. App. Dec. 682 (2015). In *T.D.*, although we found that T.D. had been a victim of pervasive harassment when T.D. received threatening cell phone messages telling her to get the "F*** out of town," was assaulted with a pair of scissors thrown at her head, and had the lug nuts on her tires loosened, we affirmed the local board's decision to deny the request for open enrollment because the district offered the opportunity for the student to attend school in another attendance center in the district.

The Appellant argues that L.T.'s counselor has recommended a change of schools: Although, the harassment has subsided the District here is still offering L.T. the opportunity for L.T. to attend any of the District's other high schools to include Lincoln, East, North, and her home attendance center, Hoover. However, the Appellant has rejected all of these options because L.T. has an aunt that is a teacher at Urbandale High School and she would be able to help with transportation of L.T. to UHS and help L.T. transition to a new normal. The Appellant has not offered any evidence that L.T.'s needs could not be met by the District at another attendance center. Based on this record we find that the Appellant's desire to attend UHS is a matter of choice, not because L.T. would not be safe at another Des Moines attendance center.

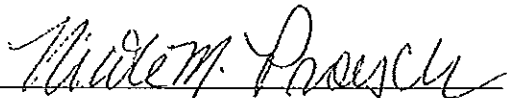
Thus, the appeal fails on both the third and fourth criterion. This case is not about limiting parental choice. The State Board understands that the Appellant wants to do what is best for L.T., who was the victim of a harassment at Roosevelt. We do not fault them for their desire to enroll her at UHS. Nor, does the outcome of this appeal limit their ability to transfer L.T. to UHS. L.T. may still attend UHS by paying tuition, or she may attend another school in the District at no cost. The Appellant is not without options, they are just not the options she would prefer.

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

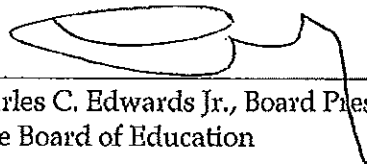
For the foregoing reasons, the decision of the Board made on November 7, 2017, denying the open enrollment request filed on behalf of L.T., is AFFIRMED. There are no costs of this appeal to be assigned.

3/29/18
Date



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

3/29/18
Date



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