

IOWA DEPARTMENT OF EDUCATION  
(Cite as 28 D.o.E. App. Dec. 257)

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<i>In re Open Enrollment of H.T.</i>	)	
	)	
N.T. and J.T.,	)	
	)	DECISION
Appellants,	)	
	)	
v.	)	
	)	
Des Moines Independent Community	)	Admin. Doc. No. 5084
School District,	)	
Appellee.	)	

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STATEMENT OF THE CASE

The Appellants, N.T. and J.T., seek reversal of a June 5, 2018 decision by Des Moines Independent Community School District ("District") Board ("Board") denying a late filed open enrollment request on behalf of their minor child, H.T. The affidavit of appeal filed on June 18, 2018, 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 July 31, 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, N.T., was present on behalf of H.T. and was self-represented. 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, N.T., testified in support of the appeal. Appellants presented no exhibits. 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 their four daughters, including H.T., are residents of the Des Moines Independent Community School District. H.T. has attended school in the District since preschool. H.T. is eleven and will be twelve in September. She is going into the 7<sup>th</sup> grade at Harding Middle School. ("Harding"). Prior to the 2017-2018 school year she attended Madison Elementary School.

During her first year at Harding, H.T. was called names and harassed in the beginning of the school year by a boy in her class on a daily basis. N.T. encouraged H.T. to ignore the boy

because you cannot make everyone like you. However, the boy continued to harass H.T. calling her names and telling others not to be friends with her because she was calling them racial slurs. H.T. did not want to go to school anymore. After N.T. received a call from another parent who told her that H.T. was crying in the bathroom at school, she went to the school and spoke with Principal Joy Linqvist ("Principal Linqvist"). Principal Linqvist investigated the incident and found that the harassment was so frequent and pervasive that the other student needed to be moved away from H.T. The other student was given a new schedule and H.T. was given several office passes to use if she needed them.

N.T. testified she could not recall when this occurred however, Ms. Shirley testified that the Principal's report indicated this was addressed in the fall of 2017. N.T. did not have a reason to disagree with this timeline. After Principal Linqvist moved the other student the harassment stopped. H.T. reported no further issues with this student.

However, in February or March of 2018, a female student threatened to fight H.T. at school. H.T. was afraid to go to school. This was not reported to the principal or other staff. H.T. reported no further incidents with this student.

Finally, in May of 2018, there was an incident in class with five girls. Another student had stolen balloons from the teacher's desk and was handing them out to students. H.T. declined to take a balloon because she knew they belonged to the teacher. The next day in class the teacher confronted the class. Several girls accused H.T. of taking the balloons and threatened to jump H.T. This all occurred in front of the teacher. The teacher then asked H.T. if she was instigating it and told H.T. not to call her mother but to resolve the issue in class. H.T. left the classroom crying and called her mother.

N.T. came to the school to address the issue. She spoke with the teacher and the school counselor. The teacher admitted her statements but advised that she was trying to resolve the issue in class. H.T. was sent home with N.T. and told it was the end of the year so they would see what they could do about the other girls. N.T. did not feel like the issue was resolved. There was no incident report filed and N.T. did not speak with Principal Linqvist about the incident. N.T. testified that every time there is an issue H.T. has to go home because it's easier than dealing with the other students' parents who sometimes do not respond. N.T. also testified that the principal was frequently busy dealing with other fights in the school when she would come to the school to address an issue with H.T.

N.T. testified that Harding is not a good environment for her daughter. H.T. started out the school year with good attendance, good grades, and great behavior and she feels this is impacting her in a negative way. N.T. and her husband believe moving schools is the right thing for H.T. She testified that Saydel Community School District ("Saydel") is close to them and makes the most sense. H.T. plays softball with other girls from Saydel and has friends there. She also testified that since it is so close to their house it would be easier for her to transport H.T.

On or about May 14, 2018, N.T. filed an application for open enrollment requesting to open enroll H.T. from the District to Saydel. N.T. noted on the application that H.T. was a victim of bullying and harassment.

Eleanor Shirley, who is the enrollment supervisor, testified that she received the application on May 14, 2018, and sent an email to N.T. notifying her of the date of the Board meeting and the opportunity to be present or provide additional information or documentation. She testified that she contacted the building Principal, Joy Linquist, and the Assistant Principal, Jason Snow to inquire into the harassment. Principal Linquist reported the incident in the fall that was handled with a safety plan and resolved. She was not aware of any other incidents. Mr. Snow was not aware of any other incidents. Ms. Shirley compiled the application, the letter, and a summary of what she had learned to provide to the Board. Based on the information that Ms. Shirley obtained, she recommended that the Board deny the application. Ms. Shirley found that the issue in the fall had been resolved and there were no other reported incidents. Ms. Shirley also noted that H.T. could be transferred to another middle school in the District if she desired.

On June 5, 2018, the Board reviewed the Appellant's application for open enrollment. The Appellant was not present for the hearing because she had another engagement to attend. The Board denied the application finding that H.T. could transfer to another middle school in the District. The Appellant was offered the option of H.T. attending one of the other middle schools in the district.

The Appellant filed a timely notice of appeal to the State Board. The Appellant argues that they want H.T. to go to Saydel because H.T. has friends there and it is the closest to their current residence. The District argues that it can serve H.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 before the March 1<sup>st</sup> deadline. However, there were two other incidents that occurred after the March 1 deadline that prompted N.T. to file her application. These two incidents appear to be isolated incidents with different students involved and may not rise to the level of harassment required under the statute as discussed below.

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 H.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.

The District found that the incident of harassment in the fall met the definition of harassment and instituted a safety plan by changing the other student's schedule. This relieved the situation and no further incidents of harassment occurred with this student. However, this was well before the March 1 deadline.

The other two incidents that occurred after the March 1 deadline appeared to be isolated, involved other students, and were handled in a swift manner. There was no evidence that those

incidents were pervasive in nature or that they would continue. Thus, under these circumstances we find that the second criterion was not 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 fall incident was reported to the Principal, the other student's schedule was changed and there were no further incidents with that student. As noted above, the other two incidents that occurred after the deadline appear to be isolated and there was no evidence presented to show that it was ongoing or would continue. Thus, under the third criterion, we find that the appeal fails because the harassment ended and the other incidents were isolated and involved different students. Nevertheless, the District still offered to transfer H.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 H.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 Oehler*, 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 Schamerhorn*, 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 re Open Enrollment of L.T.*, 28 D.o.E. App. Dec. 169 (2018).

The Appellant argues that H.T. has friends at Saydel and it is closer to her home so it would be easier to transport her to school. While we do not disagree this may be more convenient for their family, when there is another attendance center in the District that can accommodate the needs of a student we have consistently upheld the decision of the local board to deny the open enrollment application on the basis that the residential district can meet the needs of its students. The Appellant has not offered any evidence that H.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 Saydel is a matter of convenience, not because H.T. would not be safe at another Des Moines attendance center.

Thus, the appeal fails to meet second, 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 H.T., who was the victim of a harassment at Harding in the fall of 2017. We do not fault them for their desire to enroll her at Saydel. Nor, does the outcome of this appeal limit their ability to transfer H.T. to Saydel. H.T. may still attend Saydel by paying tuition, or she may attend another school in the District at no cost. The Appellants are not without options, they are just not the options they 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 June 5, 2018, denying the open enrollment request filed on behalf of H.T., is AFFIRMED. There are no costs of this appeal to be assigned.

9/13/18  
Date

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

9/13/18  
Date

Brooke Miller Axiotis  
Brooke Miller Axiotis, Board President  
State Board of Education