

IOWA DEPARTMENT OF EDUCATION
(Cite as 28 D.o.E. App. Dec. 523)

<i>In re Open Enrollment K.M.</i>)	
)	
M.M. and M.M.,)	
Appellants,)	DECISION
)	
v.)	
)	
Riverside Community School District,)	Admin. Doc. No. 5061
)	
Appellee.)	

STATEMENT OF THE CASE

The Appellants seek reversal of a March 22, 2017, decision by Riverside Community School District ("District") Board ("Board") denying a late filed open enrollment request on behalf of their minor child K.M. The affidavit of appeal filed by March 31, 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 §§ 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 April 27, 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 K.M. They were represented by attorney Joe Narmi. Superintendent Tim Mitchell ("Superintendent Mitchell") appeared on behalf of the District and was represented by attorney Kristy Latta. Also present for the District was David Gute, Riverside Junior High and High school Principal ("Principal Gute").

The Appellants and K.M. testified in support of the appeal. Appellants exhibits A-P were admitted into evidence without objection. Superintendent Mitchell and Principal Gute testified for the District and the school district's exhibits 1-8 were admitted into evidence without objection.

FINDINGS OF FACT

The Appellants are lifelong residents of Oakland, Iowa, where they have lived and worked for over thirty years. They reside in the Riverside Community School District ("District") with their children. Three of their four children have already graduated from Riverside High School ("RHS"). The fourth child, K.M., is fifteen years old and currently a freshman at RHS. K.M. is a good student, with good grades, and is active in baseball, basketball, track, football, and soccer. He will be a sophomore in the 2017-2018 school year. The Appellants have been avid supporters of the District and RHS over the years and have volunteered with sports, concessions, and other activities in the District.

Beginning in the 2015-2016 school year when K.M. was in 8th grade, several 9th graders began calling K.M. "fat ass" and "asshole." They also threatened to beat him up if he told anyone about their classroom and locker room discussions about drug and alcohol use. K.M. made it clear that he did not do drugs or alcohol and he would not take part in those activities. On one occasion he told Principal Gute about their threats and Principal Gute talked to the students about it. After this happened several students were waiting for him to get out of the shower after gym class and threatened to beat him up in an area they called the "dungeon" at school. K.M. stayed in the shower until they left. When he finally got out of the shower, the students had taken his clean clothes and put them in the toilet. K.M. put his dirty gym clothes back on and went home. K.M. didn't report this incident to Principal Gute because he did not want something else to happen to him. However, his mom reported this to Mr. Gute anyway. The Appellants were not made aware if anything happened to the students. In February of 2016, K.M. reported several times to his mother that he felt that no one at Riverside liked him and he felt left out. K.M. told his mom he considered harming himself. K.M.'s mom reached out to his teacher for support. The Appellants continued to encourage K.M. to work through issues that came up at school.

During the 2016-2017 school year the same group of 9th graders, now 10th graders, continued to call K.M. names. K.M. spoke with his mother several times about students calling him names and asked to switch to another school. His parents again encouraged him to work through these issues and to be part of the solution. K.M.'s parents reported the continued harassment throughout the year to various school officials, including the school counselor, the at-risk coordinator, coaches, and Principal Gute.

Then, on March 7, 2017, throughout the school day, three students were calling K.M. a "snitch." Apparently, over the weekend there had been a party that several students had attended where drugs and alcohol were present. Someone called the police and they came and broke up the party. These students blamed K.M. for reporting about the party because K.M. has made it clear that he does not use drugs or

alcohol. K.M. contacted his mom and she encouraged him to talk with the school counselor, Principal Gute, or to ignore them.

That afternoon K.M. went to track practice. After practice he went out to his car and found the words "SNITCH" painted on his windshield. Two other students saw the message and one offered to help him clean the message off of his car. K.M. went to the other student's house to clean off of his car and he was able to clean the paint off his car without any issues or any sign of permanent damage.

K.M. called and texted his mom and told her what happened. He was really upset and crying. K.M. testified that he felt threatened and didn't know what to expect next. After they cleaned the paint off, K.M. went to his mom's work.

In the meantime, the football coach, Mr. Rice, sent K.M. a message telling him to cool down and not overreact to the situation. Mr. Rice had already talked to Principal Gute about looking at the cameras to see who did it. Mr. Rice was the only school personnel to reach out to K.M. or the appellants on the day of the incident.

K.M. and his mom went home to get ready for the winter sports banquet at RHS. After they got home the student who painted his car sent K.M. a text apologizing and calling it a stupid thing to do. K.M. reluctantly attended the banquet with his parents. The Appellants thought the school may have called the police by then; however, nothing was said to them at the banquet about the incident with K.M.'s car. Mr. Rice told them that he would talk to the other students about what happened. At the banquet the student who wrote "SNITCH" on K.M.'s car came up to K.M. and told him he was just messing around and apologized to him. K.M. testified he felt that student did this to calm him down so he wouldn't get the student in trouble.

The next morning, March 8, 2017, the Appellants contacted Principal Gute and told him what happened. Principal Gute apologized for not contacting her sooner because he was dealing with a situation in which several other students were tearing up the baseball field. Principal Gute investigated the incident and reviewed video cameras from the school to identify the students who were involved. One of the students involved received an in-school suspension while the others were talked to. Principal Gute testified that this was the first incident that had been reported to him by K.M. that year. Additionally, he testified that he was not made aware of other incidents involving name calling until this incident although he did admit that others in the chain of command at the school were aware of the earlier incidents.

K.M.'s father testified that for K.M., and his family, this incident was "the straw that broke the camel's back." On March 12, 2017, the Appellants filed an application for open enrollment from the District to Treynor Community School District ("Treynor") because they felt this was the best thing for K.M. physically and mentally. Since their

request for open enrollment was after March 1st deadline, the Board needed to approve the request. It was put on the Board's agenda for consideration at the March 20, 2017 board meeting.

On March, 13, 2017, Principal Gute spoke with K.M. about his desire to transfer schools. K.M. indicated that he disliked RHS and had several friends from his baseball team that attended Treynor. K.M. also told Principal Gute that he was still being called a "snitch" by upperclassman. Principal Gute told K.M. he needed to report issues to him so they could be addressed and K.M. responded that he would be reporting issues every day.

On March 14, 2017, Principal Gute spoke with K.M.'s mother about her concerns for K.M. if he remained at RHS. Superintendent Mitchell told the Appellants that the application would likely be denied because it did not meet the good cause exception.

At the March 20, 2017, board meeting, the Appellants presented in an open meeting to the Board. K.M.'s mother read out loud a letter she had written to the Board. She told the Board that K.M. was depressed and seeing a counselor. The Appellants did not share with the Board the extent of his depression. The Appellants and K.M. testified in the hearing that K.M. had talked about harming himself if he had to continue to attend RHS. The Board received a copy of the letter, a photo of the windshield, and the relevant laws. K.M. also addressed the Board about the name calling, the incident with his car, and how he felt. The Board tabled the discussion until March 22, 2017, to discuss it at another meeting.

At the March 22, 2017 meeting, the Appellants provided a letter from K.M.'s counselor to the Board. The letter provided a diagnosis of adjustment disorder, mixed anxiety, and depression. The letter also stated that K.M. could benefit from a transfer in schools. K.M. told the Board that students were now calling him "traitor", "fat ass", and "asshole" for leaving.¹ Superintendent Mitchell recommended that the Board deny the late filed application for lack of good cause to approve. He also told the Appellants that he would work with K.M. to help him deal with the situation. The Board unanimously adopted that recommendation and denied the application. The Appellants filed a timely motion to 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

¹ K.M. testified that after the Board meeting other students continue to call him names and threw raisins at him in class. However, the Board has not heard this testimony so it was not a consideration for this appeal.

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 applies 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).

1. **The evidence demonstrated that the extent of the harassment of K.M. could not have been known before March 1.**

The Board finds that the extent of the harassment could not have been known before March 1. The evidence shows that the harassment began during the 2015-2016 school year. K.M. testified that there was one incident during that year when these

students took his clothes and threw them in the toilet, damaging his property. During the 2016-2017 school year, this harassing behavior continued and students continued to call K.M. names.

On March 7 the harassment suffered by K.M. rose to a new level. Students called K.M. a "snitch" in the hallways of Riverside Community High School, and sometime during the school day, a student or students vandalized K.M.'s vehicle by writing "SNITCH" in large letters, covering the windshield. The District discounts the vandalism of K.M.'s car on March 7 by characterizing it as mere name-calling. The Board disagrees. The district's position ignores the fact that the word "snitch" was written on K.M.'s property, not spoken. We think that the physical act of writing "snitch" on K.M.'s car was harassment of a more severe character than name calling. The harassing student or students communicated to K.M. that they knew which car was his, that they could damage his property, and that they intended to escalate their harassment.

The Board also disagrees with the District's definition of the word snitch as a childish word merely meaning "tattletale." The word "snitch" has entered popular usage from prison culture and high-crime neighborhoods, through hip-hop music and culture. It means a person who disregards community codes of silence and reports crime or misconduct to authority. Jamie Masten, *Ain't No Snitches Ridin' Wit Us: How Deception in the Fourth Amendment Triggered the Stop Snitching Movement*, 70 Ohio St. L.J. 705 (2009). "Ordinary people who break the code face social ostracism, retribution, and (according to the rap lyrics) physical violence." *Id.* at 711. K.M.'s parents were aware of this connotation, when they testified that the word "snitch" came from "rap music." People considered "snitches" by their community have been physically harmed, including the case of a fifteen year old boy in Florida who was doused in rubbing alcohol and set on fire after assailants yelled, "He's a snitch, he's a snitch." See CNN, "Police: Juveniles Laughed After Setting 15-year-old on fire," October 14, 2009, available at <http://www.cnn.com/2009/CRIME/10/13/florida.teen.burned/index.html>. A reasonable person in K.M.'s position would consider this word to be a threat of continued harassment and possibly violence.

2. The harassment was written and physical acts toward the student which created an objectively hostile school environment that placed K.M. in reasonable fear of harm to his person and property, had a substantially detrimental effect on the student's mental health, and had the effect of substantially interfering with the student's ability to benefit from the services, activities, or privileges provided by the school.

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 K.M.'s position. Therefore, the Board must determine if the behavior of these students created an objectively hostile school environment that placed K.M. in reasonable fear of harm to his person or property, or had a substantially detrimental effect on his physical or mental health, or substantially interfered with his academic performance, or substantially interfered with his ability to participate in or benefit from the services, activities, or privileges provided by the school.

Generally, name-calling alone would not rise to the level of harassment required here. What is more concerning is the incident involving damage to K.M.'s property in a very public manner which caused him to fear for his safety and harmed his mental health. We have no doubt that K.M. feared harm to himself or his property and that this had an impact on his mental health, and that a reasonable person in K.M.'s position would have feared for himself and his property. While there is no hard and fast rule on what it means to be objectively hostile, we do think the threat written on K.M.'s car, combined with the other harassment, when viewed objectively, created a hostile environment for K.M.

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

The evidence shows that the harassment is likely to continue despite the efforts of the school officials to resolve the situation. First, the Board notes that the harassment began during the 2015-2016 school year, and despite some efforts of school officials at that time, the harassment continued into the 2016-2017 school year.

Second, K.M.'s parents testified that they contacted many school officials during the 2016-2017 school year: Mrs. Hensley, the At-Risk Coordinator; Mr. Gute, the principal; Dr. Mitchell, the superintendent; athletic coaches; Mr. Conover, the guidance counselor. The harassment continued despite these efforts to engage school officials. The evidence on this point was conflicting. Mr. Gute testified that the parents had not contacted him to discuss bullying or harassment during the 2016-2017, although they had contacted him to discuss drug use in the schools. According to K.M. and his parents, the harassment is related to K.M.'s refusal to use drugs and perceived reporting of other students' drug use. Given the parents' testimony, and Mr. Gute's admission that the parents contacted him to discuss drug use in the schools, the Board believes that K.M.'s parents did contact school officials during the 2016-2017 school year to discuss the harassment of K.M. Even if they had not done so, however, the remainder of the evidence supports the conclusion that the harassment was likely to continue.

Third, on March 7, a coach contacted K.M., and told him to calm down and not to overreact to the situation. This response on the part of a school official is ineffective and disappointing. It served to again blame K.M. for activities and for any future punishment that may come to students involved in the harassment.

Fourth, K.M. and his parents testified at the hearing before the Department of Education that the harassment continued after the March 22 school board meeting. K.M. was called a "Treyner traitor" and an "asshole" for asking to leave the district. Mr. Gute's "contact log" with K.M. also states that harassment continued after March 22. Ex. 7.

Finally, the use of the word "snitch" indicates that K.M. has been targeted for harassment and will continue to be targeted because of his perceived cooperation with school authorities and police. That being the case, it seems likely that any further efforts by school officials would be likely to exacerbate, not alleviate, the harassment K.M. experiences.

4. Changing K.M.'s school district will alleviate the situation.

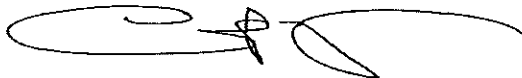
Under the fourth criterion, the appellant must also show that changing the student's school district will alleviate the situation. K.M. and his parents testified that changing schools would alleviate the situation. K.M. has friends that he made through participating in athletics that attend school in Treyner. In addition, K.M.'s counselor specifically stated that a change in school districts would be beneficial to K.M.

Open enrollment appeals of this type are about protecting children when school environments become openly hostile and the child's mental health is detrimentally affected. In this situation K.M.'s open enrollment transfer to Treyner should be approved as the events of March 7 could not have been known by K.M. or his parents prior to March 1; the harassment was very public, written name calling that had a substantially detrimental effect on K.M.'s mental health; and it is likely the harassment will continue as the same students had harassed K.M. in the past. School efforts not only did not protect K.M., but actions by the football coach on the date of the incident and the lack of action by other school personnel on the same date served to belittle K.M.'s concern with and reaction to the public, written name calling and also reinforced the importance of the students harassing K.M.

Our review focus is on the local school board decision. The issue for review here, as in all other appeals brought to us under Iowa Code section 282.18(5), is limited to whether the local school board made error of law in denying the late-filed open enrollment request. We have concluded that the Board incorrectly applied Iowa Code section 282.18(5) when it denied the late open enrollment application filed on behalf of K.M. Therefore, we reverse the local board decision.

DECISION

For the foregoing reasons, the decision of the Board made on March 22, 2017, denying the open enrollment application of the Appellants on behalf of K.M. is hereby REVERSED. There are no costs of this appeal to be assigned.



August 16, 2017

Date

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