IOWA STATE BOARD
OF EDUCATION
(Cite as 19 D.o.E. App. Dec. 37)

In re Krystle Peelen	:	
Wendy Peelen, Appellant,	:	
v.	:	**PROPOSED DECISION**
Sheldon Community School District,	:	
Appellee.	:	**[Adm. Doc. #4236]**

The above-captioned matter was heard on June 28, 2000, before a hearing panel comprised of Dennis Brown and Tom Andersen, consultants, Bureau of Administration and School Improvement Services; and Susan E. Anderson, J.D., designated administrative law judge, presiding. Appellant, Wendy Peelen, and her daughter, Krystle, were present telephonically and were unrepresented by counsel. Appellee, Sheldon Community School District [hereinafter, "the District"], was present in the persons of Superintendent Robin Spears; High School Principal Joe Mueting; and Sherry Zeutenhorst and Darrell Sneiderman, counselors at the high school. The District was represented by Mr. James Hanks of Ahlers, Cooney, Dorweiler, Haynie, Smith & Allbee, P.C., of Des Moines, Iowa.

An evidentiary hearing was held pursuant to departmental rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for this appeal are found at Iowa Code sections 282.18 and 290.1(1999). The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter of the appeal before them.

Appellant seeks reversal of an April 10, 2000, decision of the Board of Directors [hereinafter, "the Board"] of the District which denied her late-filed open enrollment application for her daughter, Krystle.

I.
FINDINGS OF FACT

The preponderance of the evidence at the appeal hearing showed the following:

Krystle Peelen and her parents reside in the Sheldon Community School District. There are approximately 80 students in Krystle's class. Krystle was in ninth grade when her request for open enrollment was filed in the District. The open enrollment application was filed on March 29, 2000, by her mother, Wendy Peelen. As reasons for open enrollment, the application cited harassment of Krystle by several students, a problem with block scheduling, and the desire to have her daughter attend Boyden-Hull High School. The harassment issue is the only one involved in this appeal.

Appellant made several claims regarding harassment during her daughter's eighth and ninth-grade years. The claims centered on four of Krystle's classmates at Sheldon: Bryce Braaksma, Duke Dietrich, Laura Ensz and Valerie Gieser. Krystle testified that she has contact with these four students only at school during school hours and at school-sponsored activities, such as FFA and track.

The initial incident of harassment occurred in eighth grade and involved the placing of dirt and weeds in Krystle's band instrument. This incident was reported by Krystle to the principal of the middle school. She identified Bryce Braaksma and Duke Dietrich as the suspected perpetrators because they called her names and had been unpleasant to her before this incident. The principal discussed the matter with each student, and both boys denied the charges. The middle school principal nevertheless issued a warning to both Bryce Braaksma and Duke Dietrich.

Krystle contends that there was consistent harassment throughout her ninth-grade year from Bryce Braaksma, Duke Dietrich, Laura Ensz and Valerie Gieser. The problems occurred primarily when traveling between classes in the halls. Krystle reported hearing remarks such as "whore," "slut," and "lesbian" made toward her. She said that these remarks were generally coming from Mr. Braaksma and Mr. Dietrich. Besides Krystle's testimony, there was evidence that these two individuals actually made the derogatory or harassing comments. One student, Renie, a friend of Krystle's, kept a diary mentioning comments from Mr. Braaksma and Mr. Dietrich, several pages of which were part of the record. In addition to Renie, two other friends of Krystle told school counselors that they had heard Mr. Braaksma and Mr. Dietrich calling Krystle names in the halls.

The complaints against Ms. Ensz and Ms. Gieser included other name-calling incidents that were reported to Krystle by other students. Krystle participated in FFA and track with these girls. The concrete evident of harassment by the girls was a copy of an e-mail sent on March 26, 2000, to Krystle from Ms. Ensz's e-mail address as follows:

> **Subject: Re: listen ho!!**
>
> I have no life? You are the one that has no life. At least I can get some. Oh wait, so do you. Just from shelley and renie. Bc you are a lesbian. I have told you b4 to stop sending me gay forwards but did you? Gee, let me think. NO!! all the forwards you send are gay like you. So fuckin stop or I will have to kick your fat skanky ass.

This is one of four e-mail messages that were received from either Ms. Ensz or Ms. Gieser. There was some confusion concerning the sender of the e-mail because Krystle was told by other individuals that although the messages came from Ms. Ensz's

e-mail address, they were in fact written by Ms. Gieser. Krystle had deleted approximately three prior e-mails because she was embarrassed to show her parents.

Krystle did not report the harassment to her parents or to school officials until after she received the March 26, 2000, e-mail. She was frightened and upset. She printed this e-mail from her computer and showed it to her mother, who then filed her open enrollment application on March 29, 2000. The open enrollment application was the first notice to the District that Krystle was being harassed. On March 30, 2000, High School Principal Joe Mueting directed Counselor Sherrie Zeutenhorst to conduct an investigation into the alleged harassment. On April 2, 2000, Krystle filed harassment complaints against each of the four students under the District's harassment policy.

Board Policy 502.10, entitled "Student-To-Student Harassment," provides, in pertinent part:

> Harassment of students by other students will not be tolerated in the school district. This policy is in effect while students are on school grounds, school district property, or on property within the jurisdiction of the school district; while on school-owned and/or school-operated buses, vehicles or chartered buses; while attending or engaged in school activities; and while away from school grounds if the misconduct directly affects the good order, efficient management and welfare of the school district.
>
> Harassment prohibited by the district includes, but is not limited to, harassment on the basis of race, sex, creed, color, national origin, religion, marital status or disability. Students whose behavior is found to be in violation of this policy will be subject to the investigation procedure which may result in discipline, up to and including, suspension and expulsion.
>
> Sexual harassment means unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:
>
> …
>
> - such conduct has the purpose or effect of unreasonably interfering with a student's performance or creating an intimidating, offensive or hostile learning environment.
>
> …
>
> Sexual harassment as set out above, may include, but is not limited to the following:
>
> - verbal or written harassment or abuse;

> …
> - repeated remarks to a person with sexual or demeaning implications;
>
> …

Id.

Board Policy 502.10R1, entitled "Student-to-Student Harassment Investigation Procedures," repeats the language of Policy.502.10 and goes on to provide, in pertinent part:

> INVESTIGATION PROCEDURE
>
> Upon completion of the investigation, the investigator shall make written findings and conclusions as to each allegation of harassment and report the findings and conclusions to the principal. The investigator will outline the findings of the investigation to the principal.
> …
>
> … The principal shall file a written report closing the case and documenting any disciplinary action taken or any other action taken in response to the complaint. The complainant, the alleged harasser and the investigator shall receive notice as to the conclusion of the investigation.
> …

On April 3, 2000, Zeutenhorst and Counselor Darrell Sneiderman met with the students involved and with Krystle's witnesses to discuss the problems included in the complaints. They met with Mr. Braaksma and Mr. Dietrich, then with Ms. Ensz and Ms. Gieser, and then with Krystle. The counselors reviewed the harassment policy with the students. The boys denied making the comments to Krystle. The girls admitted sending the e-mail. The four students mentioned in the complaints were told to avoid contact with Krystle and to refrain from any retaliation. On April 5, 2000, Ms. Zeutenhorst held a meeting with Ms. Ensz, Ms. Gieser and Krystle to try to resolve the problems. The evidence showed that Ms. Gieser became hostile during that meeting.

The culmination of the investigation and the efforts to resolve the conflict came at a meeting on April 12, 2000, after the Board's decision to deny Mrs. Peelen's open enrollment request. This meeting included Krystle, Mr. and Mrs. Peelen, and the two boys who were charged with harassment, accompanied by their parents. Principal Mueting did not invite the two girls because "their conduct occurred out of school." Principal Mueting's notes from this meeting state: "Nothing resolved." The evidence showed that Bryce Braaksma's father told Krystle at this meeting that she was just trying

to get attention by falsely accusing his son of calling her names. On April 13, Principal Mueting again talked to the boys and their parents. His notes regarding the harassment complaints against the boys state:

> I again talked to the boys and parents about this – not definitive in my mind after visiting with them."

On May 8, 2000, Principal Mueting wrote a letter to Krystle's parents stating that he was hopeful that "the issues that led to Krystle's harassment complaints are a thing of the past." Principal Mueting made no written findings and conclusions about the four harassment complaints that Krystle had filed.

At the time of this appeal hearing, Krystle had not reported any further problems with harassment from the four students. Her grades and attendance have not been affected and she has not sought professional counseling outside the school. She testified, however, that she is afraid of being physically attacked outside of the FFA building and of being verbally harassed at school. She is so afraid of continued sexual harassment that she is prepared to leave her friends to attend a new high school in Boyden-Hull Community School District.

The Board denied the request for open enrollment at a meeting on April 10, 2000, because it had not been filed in a timely manner. Two days later, on April 12, 2000, the District concluded that the evidence was inconclusive on whether or not harassment had occurred. After the Board reached its decision, Appellant filed this appeal to the State Board of Education.

II.
CONCLUSIONS OF LAW

A timely request for open enrollment must be filed by January 1 of the previous year. Iowa Code subsection 282.18(2)(1999). At the time the Open Enrollment Law was written, the Legislature recognized that certain events would prevent a parent from meeting the January 1 deadline. Therefore, there is an exception in the statute for two groups of late filers: the parents or guardians of children who will enroll in kindergarten the next year, and parents or guardians of children who have "good cause" for missing the January 1 filing deadline. Iowa Code sections 282.18(2), (4), and (16)(1999).

The Legislature has defined the term "good cause" rather than leaving it up to parents or school boards to determine. The statutory definition of "good cause" addresses two types of situations that must occur after the January 1 deadline and before the Thursday before the third Friday of September of that school year. That provision states that "good cause" means:

> a change in a child's residence due to a change in family residence, a change in the state in which the family residence is located, a change in a child's parents' marital status, a guardianship proceeding, placement in foster care, adoption, participation in a foreign exchange program, or participation in a substance abuse or mental health treatment program, or a similar set of circumstances consistent with the definition of good cause; a change in the status of a child's resident district, such as removal of accreditation by the state board, surrender of accreditation, or permanent closure of a nonpublic school, the failure of negotiations for a whole-grade sharing, reorganization, dissolution agreement, or the rejection of a current whole-grade sharing agreement, or reorganization plan, or a similar set of circumstances consistent with the definition of good cause. If the good cause relates to a change in status of a child's school district of residence, however, action by a parent or guardian must be taken to file the notification within forty-five days of the last board action or within thirty days of the certification of the election, whichever is applicable to the circumstances.

Iowa Code §282.18(16)(1999).

Although the State Board of Education has rulemaking authority under the Open Enrollment Law, the rules do not expand the types of events that constitute "good cause". 281 IAC 17.4. The State Board has chosen to review potentially "similar sets of circumstances" on a case-by-case basis through the contested case appeal process. *In re Ellen and Megan Van de Mark*, 8 D.o.E. App. Dec. 405, 408.

The “good cause” exception relates to two types of situations: those involving a change in the student’s residence, and those involving a change in the student’s school district. Iowa Code sec. 282.18(16)(1999); 281 IAC 17.4. The pattern of harassment and threats experienced by Krystle do not meet the “good cause” definition for a late-filed open enrollment application as defined by the Legislature and the Department rules.

The Legislature has granted important authority to the State Board of Education to deal with extraordinary situations such as this one. Iowa Code section 282.18(18)(1999) provides as follows: “Notwithstanding the general limitations contained in this section, in appeals to the state board from decisions of school boards relating to student transfers under open enrollment, the state board shall exercise broad discretion to achieve just and equitable results which are in the best interest of the affected child or children.”

In *In re Melissa Van Bemmel,* 14 D.o.E. App. Dec. 281 (1997), in order to provide guidance to districts regarding when the State Board will exercise Iowa Code section 282.18(18)(1999) in open enrollment cases involving harassment, we offered the following principles:

> 1. The harassment must have happened after January 1, or the extent of the problem must not have been known until after January 1, so the parents could not have filed their applications in a timely manner.
>
> 2. The evidence must show that the harassment is likely to continue.
>
> 3. The harassment must be widespread in terms of numbers of students and the length of time harassment has occurred. The harassment must be relatively severe with serious consequences, such as necessary counseling, for the student who has been subject to the harassment. Evidence that the harassment has been physically or emotionally harmful is important. Although we do not condone any harassment of students, in order to use section 282.18(20) authority, the harassment must be beyond typical adolescent cruelty.
>
> 4. The parents must have tried to work with school officials to solve the problem without success.
>
> 5. The evidence of harassment must be specific.
>
> 6. Finally, there must be reason to think that changing the student's school district will alleviate the situation.

Id. at 286-7.

These principles have been applied in subsequent cases involving alleged harassment. *See, In re Angelina Ray*, 18 D.o.E. App. Dec. 49 (2000); *In re Tyna and Anthony Ritchie*, 16 D.o.E. app. Dec. 125 (1998); *In re Elijah Berry*, 16 D.o.E. App. Dec. 154 (1998); *In re Brittany and Scott Brown*, 16 D.o.E. App. Dec. 131 (1998); *In re Nicholas Olson*, 15 D.o.E. App. Dec. 55 (1997). In *Brown* and *Olson*, the State Board applied the six principles and exercised its subsection 18 power to reverse the districts' denials of late-filed open enrollment applications.

We will apply each of these principles to the facts in Krystle's appeal. We first conclude that the name-calling by the boys and the e-mails by the girls were harassment under the District's policy as "verbal or written harassment or abuse" or "repeated remarks to a person with sexual or demeaning implications" which "have the purpose or effect of … creating an intimidating, offensive or hostile learning environment." The hearing panel found Krystle's first-hand testimony to be credible. None of the four students testified, so Krystle's first-hand testimony is undisputed by any other first-hand

testimony. Her testimony is supported by evidence such as the written copy of the e-mail, the diary excepts, and some of the other students' statements during the investigation.

1. **The harassment must have happened after January 1, or the extent of the problem must not have been known until after January 1, so the parents could not have filed their applications in a timely manner.**

The extent of the harassment problem was not known until the e-mail message sent from Ms. Ensz and/or Ms. Gieser on March 26, well after the January 1 deadline. Therefore, Appellant has demonstrated that there has been a significant increase in harassment after the January 1 deadline.

2. The evidence must show that the harassment is likely to continue.

In this case, there is no evidence of harassment following the actions of the District after receiving Krystle's complaints. Krystle testified that there has been no further harassment since April 12, 2000. She testified that she believes that the cycle will begin again during the next school year. Of course, we cannot know for certain what might happen in the future. The undisputed evidence, however, showed that the harassment stopped in April and did not reoccur for the remaining weeks of the school year. Therefore, the second principle under *Van Bemmel* was not met.

3. The harassment must be widespread in terms of numbers of students and the length of time harassment has occurred. The harassment must be relatively severe with serious consequences, such as necessary counseling, for the student who has been subject to the harassment. Evidence that the harassment has been physically or emotionally harmful is important. Although we do not condone any harassment of students, in order to use section 282.18(20) authority, the harassment must be beyond typical adolescent cruelty.

The harassment reported by Krystle came from four students out of her class of 80 students and persisted for her entire ninth-grade year. Krystle has remained a consistent honor roll student, has continued to participate in numerous extracurricular programs at Sheldon High School, and did not suffer from the harassment to the extent that medical or counseling assistance has been required outside the school. Krystle has sought the help and guidance of the school counselor. She is so afraid of future harassment and physical harm that she is willing to leave her friends and activities at Sheldon to attend a new district. She has not yet suffered physical harm or danger to her grades and we are not willing to require students or parents to wait for medical documentation or poor grades before they can get relief from student harassment. Nevertheless, the name-calling that Krystle experienced is not "beyond typical adolescent cruelty." We conclude that the third *Van Bemmel* principle is not met.

We emphasize , however, that we do not condone the verbal harassment that Krystle suffered, nor do we find it acceptable. When students spend their school days feeling frightened, embarrassed and threatened, they are not in an atmosphere which is conducive to learning. Districts have a proactive responsibility to create acceptable norms for student behavior.

4. The parents must have tried to work with school officials to solve the problem without success.

When school officials in Sheldon became aware of the problem, they started to investigate immediately. The school counselors began an investigation and interviewed several students. The investigation culminated in the April 12 meeting with the two male students and their parents. At the meeting, Principal Mueting explained the harassment policy to the students. Following the meeting, the counselors maintained contact with Krystle to inquire about her wellbeing. Krystle testified that she was not harassed during the remaining six or seven weeks of her freshman year. We, therefore, conclude that the evidence shows that the school officials' efforts solved the problem. We conclude that the fourth *Van Bemmel* principle is not met.

We take this opportunity to note, however, that the hearing panel was troubled by the fact that the District did not follow the procedures in its own harassment policy. Krystle filed four separate complaints against Mr. Braaksma, Mr. Dietrich, Ms. Ensz, and Ms. Gieser. Although the harassment policy requires "written findings and conclusions as to each allegation of harassment and a written report closing the case," Principal Mueting's handwritten notes to himself from April 12 and 13 and his letter of May 8 do not meet this standard. In addition, the notes and the letter pertain only to the two boys and contain only vague phrases like "nothing resolved" or "nothing definitive."

There are no written documents at all regarding Principal Mueting's thoughts on Krystle's complaints against Ms. Ensz and Ms. Gieser. Principal Mueting testified that the two girls were not included in the April 12 meeting because he determined that the e-mails occurred off school property. The hearing panel was disturbed by this halt to further investigation or consequences to the two girls because the hearing panel believed that the sexual harassment and threats of physical harm against Krystle could fall within the policy's language covering harassment "while away from school grounds if the misconduct directly affects the good order … of the school district." Krystle testified that she comes into contact with these students only in the hallways, in FFA activities on school grounds, and in school-sponsored activities such as track. Although the District took steps to stop the harassment once it was reported, the hearing panel believed that the efforts were not thorough under its own procedures. The hearing panel was also concerned that even at the April 12 meeting, Krystle was subjected to accusatory comments by the father of one of the boys.

5. The evidence of harassment must be specific.

In this appeal, there is specific evidence of harassment. The most concrete piece of evidence is the e-mail message that was sent from Ms. Ensz and/or Ms. Gieser to Krystle. Krystle's testimony regarding the name-calling by the boys in the hallway was corroborated by other students. We conclude that the fifth *Van Bemmel* principle is met.

6. Finally, there must be reason to think that changing the student's school district will alleviate the situation.

Krystle has been a good student at Sheldon High School. She has been on the honor roll consistently and has participated in numerous extracurricular activities during her academic career. At the Boyden-Hull Community School District, her class would consist of approximately 40 students. It is possible that Krystle would have a more successful experience at another district where she could have a fresh start away from the harassment. It is equally possible that there may be students in the Boyden-Hull District who could engage in similar name-calling and conduct. We conclude that the evidence is inconclusive on whether or not Krystle's situation meets the sixth *Van Bemmel* principle.

In conclusion, we find substantial evidence to conclude that four out of the six *Van Bemmel* principles have not been met.[1] We therefore conclude that this is not an extraordinary situation which warrants exercise of the State Board's power under section 282.18(18).

Any motions or objections not previously ruled upon are hereby overruled.

III.
DECISION

For the foregoing reasons, the decision of the Board of Directors of the Sheldon Community School District made on April 10, 2000, which denied Appellant's late-filed open enrollment request for Krystle Peelen, is hereby recommended for affirmance. There are no costs to this appeal to be assigned.

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[1] **We take this opportunity to point out that it would have been reasonable for the Sheldon Board to wait until the harassment investigation was finished two days later before it voted on Krystle's open enrollment application. The Board voted on April 10. The meeting with the students and parents wasn't held until April 12.**

______________________________	______________________________________
DATE	SUSAN E. ANDERSON, J.D. ADMINISTRATIVE LAW JUDGE

IT IS SO ORDERED.

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DATE	CORINE HADLEY, PRESIDENT STATE BOARD OF EDUCATION