

**IOWA STATE BOARD
OF EDUCATION
(Cite as 18 D.o.E. App. Dec. 49)**

In re Angelina Ray :

Sue Wilson, :
Appellant, :

v. : DECISION

Southeast Warren Community :
School District, :
Appellee. :

[Admin. Doc. #4178]

The above-captioned matter was heard telephonically on November 30, 1999, before a hearing panel comprising Charlotte Burt, consultant, Bureau of Children, Family & Community Services; Christine Anders, consultant, Bureau of Food and Nutrition; and Susan E. Anderson, J.D., designated administrative law judge, presiding. Appellants, Jerry and Sue Wilson, were present and were unrepresented by counsel. The Appellee, Southeast Warren Community School District [hereinafter, "the District"], was present telephonically in the person of Mr. James Poole, Superintendent. The District was also unrepresented by counsel.

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.

The Appellants seek reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the District made on October 11, 1999, which denied their request for open enrollment for their daughter, Angelina Ray.

**I.
FINDINGS OF FACT**

Angelina Ray is currently in the ninth grade in the Southeast Warren Community School District. At the time of the hearing, she had just turned 15 years of age. She has attended public school in the Southeast Warren Community School District since she was in fourth grade. Angelina has experienced continuing problems from her peers at Southeast Warren from the fourth grade until the present. The problems involve 10 to 15 students out of her 20-student class.

The evidence at the hearing showed that in the fall of 1994, Angelina moved to the District following her mother's marriage to Mr. Wilson, her stepfather. Mr. and Mrs. Wilson testified that Angelina's problems with her peers began right away as she was introducing herself to her new classmates in fourth grade. The Wilsons testified that Angelina shared a lot of personal information with her classmates regarding the fact that she had never known her biological father, that her first stepfather was a drug dealer and that now she was living with her second stepfather.

In fourth grade, Angelina had written in her diary that she was thinking of taking a knife to school. Her classmates somehow discovered this information and taunted her about it during fourth grade. Angelina never actually took a knife to school. Her classmates throughout elementary school called her "J.J. Juice" and "Anna Banana Juice," which upset Angelina. During sixth grade, she was approached by a female, "school bully" who picked a fight with Angelina, which led to Angelina's striking the girl inside the school building. As a result of this fight, both girls were suspended for three days. Also in sixth grade, Angelina's classmates accused her of stealing a T-shirt from someone at school. This caused Angelina much consternation and resulted in her parents contacting the sheriff about the accusations. Later on, the T-shirt that Angelina had allegedly stolen was found at school.

The pattern of teasing continued into the seventh grade, when some of her classmates were passing around some underwear which they falsely claimed were Angelina's. During her eighth grade year, the school counselor did some small-group counseling with Angelina, the "school bully", and at least two other girls to try to solve the problems that Angelina was having with them. Apparently, the counseling was ineffective. However, in between her eighth and ninth-grade years, Angelina participated on the District's softball team and had a good experience with her peers.

Angelina is, and always has been, an honor roll student. Angelina did make requests to her parents during the last three years that they allow her to open-enroll into the Indianola Community School District. Her parents discouraged this, however, because her grades were so good at Southeast Warren and because they felt that once she was in ninth grade, things would become better.

Sometime during the first couple of weeks of ninth grade at Southeast Warren, Angelina was approached by a male classmate in the hallway at school in front of her locker. This male classmate was announcing to the other students in the hallway that he had been dating Angelina, but that they had broken up. He was teasing her about this fictional situation. In fact, Angelina had never dated this young man and has not done any dating at all. As a part of this confrontation, the parents testified that the young man had slammed Angelina into her locker door. Angelina did not report this incident to the school officials. She was not physically injured, and did not seek medical attention.

On September 20, 1999, the District Administration sent out a letter to the parents of all Southeast Warren Community School District students, explaining the District's policy against student-to-student harassment and encouraged the parents to talk to their children about that policy. The letter included a statement that verbal student-to-student harassment was a violation of the District's policy.

During the calendar year of 1999, Angelina's parents testified that she had received a couple of telephone messages on the answering machine from female students who called Angelina a "f—cking bitch". In early October of 1999, some of her classmates told Angelina at school that they had seen her mother and aunt at a convenience store and they "sure were f—cking ugly". Other incidents included classmates ordering pizzas in Angelina's name and having them delivered to the Wilsons' home. On October 1, 1999, Angelina attended the homecoming football game with her mother. Her hair was decorated in green and white braids, the school colors. A male student approached Angelina and told her that "her hair was bothering his date."

On or about the date of the homecoming game, Mr. and Mrs. Wilson filed an open enrollment request for Angelina to attend the Indianola School District. On October 11, 1999, the date of the school board meeting at which this application was denied, Mr. Hook, the high school principal, called Angelina into his office to find out how things were going so far in the semester. The evidence showed that Angelina told Mr. Hook that things were going fairly well and that she thought things were getting better.

At the October 11, 1999, Board meeting the Board voted to deny the Wilsons' open enrollment application for Angelina, because it was filed after the January 1 deadline. The Board has already approved the Wilsons' application for open enrollment for Angelina to attend the Indianola Community School District for the 2000-2001 school year.

Since the open enrollment request was denied, Angelina has gone into the superintendent's office on two occasions in November 1999. She went in because two different male students had addressed her by the name of "Angela" and this was against her wishes. Testimony showed that she has no friends and spends a significant amount of time alone in her bedroom at home where she says she "feels safe." She also frequently cries at home when describing the incidents to her parents. Just prior to the date of the hearing, she had been chosen to be on the Southeast Warren Cheerleading Squad

Angelina has not had psychological or psychiatric counseling nor has she had medical treatment as a result of these continuing incidents over the past five years. She has had no adverse physical symptoms. She continues to earn good grades. At the hearing, Superintendent Poole offered more school counseling for Angelina should Mr. and Ms. Wilson desire that for their daughter.

II. CONCLUSIONS OF LAW

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 June 30. 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 §282.18(16)(1999); 281 IAC 17.4. Angelina’s situation involves neither a change in residence nor a change in the status of the District. The pattern of harassment experienced by Angelina is, therefore, not “good cause” 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. Iowa Code §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.”

The State Board exercised its “extraordinary power” under §282.18(18)(1999) in the case of *In re Melissa J. Van Bommel*, 14 D.o.E. App. Dec. 281(1997). In that case, the State Board decided that the student harassment situation “cried out for extraordinary exercise of power bestowed upon the State Board” and was “a case of such unique proportion that justice and fairness required the State Board to overlook the regular statutory procedures. *Id.* at 286. The student in that case had experienced an “egregious, longstanding pattern” of harassment after the January 1 deadline for open enrollment so that her parents could not have filed for open enrollment in a timely manner. The student had experienced harassment by a group of about 20 students that had resulted in physical illnesses, i.e., stomachaches, headaches, backaches, anorexia, depression, and insomnia. That student had seen a physician and had seen a psychiatrist and counselors on a continuing basis. Her grades had dropped dramatically. The harassment against that student included life-threatening behavior on at least one occasion where she was chased in a vehicle and twice pushed off the road, almost hitting a telephone pole. The police officials had also been involved. The students had made sexual remarks and gestures to the student in class and in the hallways at school. Numerous attempts by the school officials to solve the problem had failed. Given this dramatic set of circumstances, the State Board reversed the school district’s open enrollment denial and allowed Melissa to open enroll into another school district.

In that decision, the State Board made the following statement:

In order to provide guidance for school districts regarding when the State Board will follow Iowa Code section 282.18(18)(1997) in open enrollment cases involving harassment, we offer 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 286-87. (paragraph numbering added.)

We, therefore, must apply those principles to the facts regarding Angelina's situation. For the following reasons, we must conclude that the facts in Angelina's situation do not satisfy the six principles that the State Board has set forth to guide districts in making decisions regarding open enrollment applications where student harassment is alleged.

1. Angelina's harassment has been occurring for five years, beginning in the fourth grade to the present. Therefore, her harassment did not happen after January 1, 1999. Her parents could have filed their application in a timely manner.
2. Although the evidence showed that the harassment is continuing, there was some evidence that showed it was lessening or likely to improve.

- 3 and 5. The harassment was widespread in terms of numbers of students in Angelina's particular class. The testimony showed that she had incidents with 10 to 15 students out of her 20-student class.

The length of time the harassment has occurred, as stated before, has been over a 5-year period. However, the harassment must have been "relatively severe with serious consequences." Any evidence that the harassment has caused physical or emotional harm is important. The evidence in Angelina's situation shows that, although she has had emotional problems including crying at home and spending a significant amount of time in her bedroom, she has had no psychological or psychiatric counseling beyond what the school counselor has provided. She has never seen a physician as a result of any of these incidents. The evidence was undisputed that she has suffered no physical harm. Angelina participated successfully on the softball team in the summer of 1999 and she is currently on the cheerleading squad. Her grades have always been good enough to put her on the honor roll and her grades have not suffered as a result of any these incidents.

4. Mr and Mrs. Wilson have tried to work with school officials to solve the problems. Their efforts appear to have resulted in some success from the fact that Angelina believes things are getting better
6. Changing Angelina's school district may alleviate the situation by giving her a fresh start with a larger group of students. However, moving to a larger school may reduce her opportunities to participate on cheerleading squads, softball teams, or on the honor roll.

Although we do not condone any harassment of students, we conclude that Angelina's situation is not "beyond typical adolescent cruelty." The incidents described in the testimony, which included name-calling, playing practical jokes, leaving messages on the answering machine, teasing, and insulting family members, fall far short of the pattern of harassment which occurred in *In re Melissa J. Van Bommel*. In conclusion, we feel that the principles as applied to Angelina's situation do not constitute a case of such unique proportion that justice and fairness require the State Board to exercise its extraordinary power under §282.18(18)(1999).

All motions or objections not previously ruled upon are hereby denied and overruled.

**III.
DECISION**

For the foregoing reasons, the decision of the Board of Directors of the Southeast Warren Community School District made on October 11, 1999, which denied the Appellant's late-filed request for open enrollment for Angelina Ray for the 1999-2000 school year is hereby recommended for affirmance. There are no costs of this appeal to be assigned.

12-22-99

DATE

Susan E. Anderson

SUSAN E. ANDERSON, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

1-13-2000

DATE

Corine A. Hadley

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION