

IOWA DEPARTMENT OF EDUCATION
(Cite as 29 D.o.E. App. Dec. 154)

<i>In re Open Enrollment of C.C.</i>)	
)	
J.C.,)	
Appellant,)	DECISION
)	
v.)	
)	
Des Moines Independent Community)	
School District,)	Admin. Doc. No. 5104
)	
Appellee.)	

STATEMENT OF THE CASE

The Appellant, J.C., seeks reversal of a June 4, 2019 decision by Des Moines Independent Community School District (“District”) Board (“Board”) denying a late filed open enrollment request on behalf of her minor child C.C. The affidavit of appeal filed by June 13, 2019, 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.

A telephonic evidentiary hearing was held in this matter on July 18, 2019, 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 present with C.C. The District was represented by attorney Miriam Van Heukelem. Also present for the District was Principal Deb Markert (“Principal Markert”) and Enrollment Supervisor Eleanor Shirley (“Mrs. Shirley”).

C.C. testified in support of the appeal. Appellant’s and District’s exhibits were duplicative, so the parties agreed to use the District’s exhibits marked 1-4 for the hearing. There were no objections to the exhibits submitted by either party. Principal Markert and Mrs. Shirley testified for the District.

FINDINGS OF FACT

C.C. resides in the District with her mother J.C. She has lived in the District since elementary school and attended Brewbaker Elementary. C.C. was in the 7th grade at Brody Middle School in the 2018-2019 school year and will be going into 8th grade this year.

C.C.’s issues began in January of 2019 when another student in her class ran away from home. C.C. was concerned about the student and tried to contact her and the student became

upset with CC. The argument was initially over text messages. The student warned C.C. to "watch her back." C.C. reported the text messages to her teacher and began eating lunch in the office to avoid a confrontation with the other student. J.C. had also contacted the school over email with concerns and was assured that the issue would be addressed and C.C. would be safe. Vice Principal, Mr. Goodhue ("Mr. Goodhue") contacted both girls regarding the issues and both assured him the dispute was over. On or about January 16, the dispute culminated in a physical altercation when the other student came up behind C.C. and began pulling her hair and pinching her, leaving bruises. A friend of CC's contacted her mom who called J.C. to report the incident before the school had made contact with her.

C.C. reported this incident to the police. The police filed an incident report, took pictures of the bruises, and said they would talk with the other student. C.C. and the other student have not spoken to one another since this incident and no other altercations have occurred.

On May 15, another incident occurred at school with another student. The two incidents were unrelated. In this instance, C.C. had made a comment to a boy in her class who was eating paper, that it was gross. C.C. testified that the boy grabbed his binder and started hitting her with his binder. C.C. put her fist up and two other students held her back from the student. The substitute teacher intervened. C.C. was removed to the office and told that the other boy would no longer be in her class. C.C. was provided the option of having lunch in the office with a friend if she felt safer in the office. Principal Markert testified that several students had been teasing this student and that the student swung the binder at C.C. but did not actually hit her. However, both students exchanged punches. The other student was disciplined.

The next day C.C. went to school and the student was in her class and had a knife he was using to cut paper. C.C. testified he was giving her a weird look as he was cutting the paper with the knife and she felt uncomfortable. C.C. testified that she feared the other student was going to hurt her. A friend of C.C.'s told her that the student stated he wanted to hurt someone but did not identify who. C.C. reported to her teacher that the student had a knife. The other student was removed from the classroom and C.C. was assured she would not see him in her class.

The following Monday there was a mix up and when C.C. came to class the student was in the room. C.C. contacted J.C. crying. The incident was reported to Mr. Goodhue. Mr. Goodhue contacted J.C. to let her know there had been a mistake that morning and the student was not supposed to be in that room. He assured J.C. that the situation was taken care of. C.C. testified she did not see the other student for the remainder of the school year and had no further incidents. School ended on May 30, 2019.

Neither of the two incidents had a noticeable impact on C.C.'s grades, attendance, or participation in afterschool activities. However, C.C. testified that she begged her mom not to send her back to school after the incident and that she now has nightmares about the other student attacking her.

On May 15, 2019, J.C. filed an application for open enrollment from the District to Saydel Community School District ("Saydel"). In her application she noted that she was filing a late

filed application based on bullying and harassment of C.C. J.C. outlined in her affidavit of appeal that she has spoken to the District about accommodating C.C. at another school in the District but that transportation is an issue for the family. On June 4, 4019, the Board reviewed the application and voted to deny the open enrollment request on the basis that it did not find pervasive bullying/harassment that could not be addressed by the District and on the basis that it could accommodate C.C. in another school building in the District.

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) *Timing*

The first criterion requires that the harassment must have happened to the extent of the harassment could not have been known until after March 1. Here, the objective evidence establishes that there were two isolated incidents that occurred between C.C. and two different students. One of the incidents occurred in January and was resolved in January. This was well before the March 1 deadline. There have been no other incidents with that student since then. The second incident occurred on May 15, 2019, only 15 days before school ended for the year and well after the March 1 open enrollment deadline. Under these circumstances, we find that the harassment could not have been known before March 1 deadline. Thus, the first criteria 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 C.C.'s position. Thus, the State Board must determine if the May 15, 2019 incident and subsequent incident with the knife created an objectively hostile school environment that meets one or more of the above conditions. The Board has granted relief in only a handful of other cases. In each of those cases, the facts established that the harassment involved serious physical assaults, degradation, and destruction of property directed toward the student.¹ Here, while the incident with the binder was not initially directed at C.C. the altercation occurred between C.C. and the other student. The next day C.C. certainly felt threatened when the student brought a knife into class and made sure that C.C. observed him with it. Although, we note there was no direct verbal threat to C.C. and no altercation occurred. Clearly, the incident with the knife placed C.C. in reasonable fear of harm to herself or her property. Since the incident occurred, C.C. has had nightmares about the other student attacking her. We question whether these two incidents taken together is enough to meet the definition of pervasive harassment under these circumstances. However, even if we found that these two incidents combined meet the definition of pervasive harassment, the appeal still fails to meet criterion three and four as outlined below.

(3) *Efforts of the District*

Under the third criterion, the evidence must show that the harassment is likely to continue despite the best efforts of school officials to resolve the situation. In this case, the

¹ See *In re: Melissa J. Van Bommel*, 14 D.o.E. App. Dec. 281(1997) (The board ordered a student to be allowed to open enroll out of the district for the harassment of the student by a group of 20 students that climaxed when the vehicle the student was riding in was forced off the road twice by vehicles driven by other students); See also *In re: Jeremy Brickhouse*, 21 D.o.E. App. Dec. 35 (2002) and *In re: John Meyers*, 22 D.o.E. App. Dec. 271 (2004). The students in both cases had been subjected to numerous physical assaults and destruction of their property at school.

District immediately handled the binder situation with the other student and removed the student from C.C.'s class. While, we understand there was a miscommunication the following week that resulted in the student being in CC's classroom, the District was quick to correct its mistake and make sure the student was not in C.C.'s class for the remainder of the school year. C.C. also testified that she had no further incidents with the student. Thus, the evidence shows that the harassment is not likely to continue, and the District resolved the situation. Thus, the appeal fails on the third criterion. Although the third criterion is met, this does not end the State Board's inquiry.

(4) *Change of District*

Finally, under the fourth criterion, the appellant must show that changing the school district C.C. 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). There was no evidence presented that shows C.C. will continue to experience harassment in the District. Furthermore, changing school districts is not the only option available that would alleviate the situation. This case involves a resident district with multiple attendance centers. In cases involving multiple attendance centers, the State Board also looks at whether an intradistrict transfer would alleviate the harassment. *See id.* On at least four other occasions, the State Board has upheld the denial of open enrollment in cases where the residence district had another attendance center in which the targeted student could enroll to escape their harassers. *See id;* *see also In re Lauren Hales*, 23 D.o.E. App. Dec. 39 (2004) and *In re Ananda Schamerhorn*, 24 D.o.E. App. Dec. 82 (2006);

The District offered to transfer C.C. to another school in the District if that would make C.C. more comfortable. The appellant in her affidavit indicates she will try another school in the District if it is an option but that transportation would not be convenient for the family. Under these circumstances, we conclude the record establishes that preference and convenience are the primary concerns behind the open enrollment request. Thus, this appeal falls short on third and fourth criteria.

This case is not about limiting parental choice. The State Board understands that J.C. wants what is best for C.C. who was involved in an incident of pervasive harassment. The State Board does not fault J.C. for her decision to enroll C.C. at Saydel. Nor does the outcome of this decision limit her ability to transfer to another district or remain.

However, our review focus is not upon the family's choice, but upon the local school board's decision under statutory requirements. 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 erred as a matter of law in denying the late-filed open enrollment request. We have concluded that the Board correctly applied Iowa Code sections 282.18(5) and 280.28(2)(b) when it denied the late open enrollment application filed on behalf of C.C. Therefore, we must uphold the local board decision.

DECISION

For the foregoing reasons, the decision of the Board made on June 5, 2019, denying the open enrollment request filed on behalf of C.C. is AFFIRMED. There are no costs of this appeal to be assigned.

9/13/2019
Date

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

9/12/2019
Date

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