IOWA STATE DEPARTMENT OF EDUCATION
(Cite as 16 D.o.E. App. Dec. 131)

In re Brittany and Scott Brown	**:**	
Janet Brown,	**:**	
Appellant,	**:**	
		DECISION ON
v.	**:**	REHEARING
River Valley Community	**:**	
School District,	**:**	
Appellee.	**:**	[Docket # 3981]

Appellant's initial appeal involved her late-filed open enrollment application for her children to attend the Cherokee Community School District for the Fall of 1999. She filed her applications on February 27, 1998, with the River Valley Community School District [Appellee]. Her applications were denied on March 16, 1998. Her appeal was consolidated with three other appeals from the River Valley Community School District, which were heard telephonically on May 7, 1998.

A decision was issued by the Director of the Department of Education on May 26, 1998, affirming the River Valley Community School District Board's decision. Mrs. Brown filed a timely Application for Rehearing on June 8, 1998. A telephonic State Board of Education meeting was held on June 24, 1998, to specifically determine whether Mrs. Brown's request for rehearing would be granted. (See, 281 Iowa Administrative Code 6.13.)

Mrs. Brown alleged that on or about the time of her appeal hearing, a threat was made against everyone from Quimby. She stated in her request for rehearing:

> "It happened in an Algebra class that my nephew was in. A student from Correctionville, last name FORBES, made this statement in class, that they should go get some GUNS and KILL ALL the QUIMBY people. The teacher's name is Miss Ruby Wych. Nothing was done to him. The administration did nothing. ..." (Emphasis in original.)

Based on the seriousness of the allegations, a Rehearing was granted by the State Board to determine whether sufficient grounds for harassment existed to compel the State Board to exercise its discretionary power to grant the open enrollment applications.

A Rehearing was scheduled for July 1, 1998. At the request of the District, a Continuance was granted until July 15, 1998, to assure the attendance of certain District witnesses.

The hearing was held telephonically before a hearing panel comprising Ms. Mary Jo Bruett, Bureau of Planning, Research & Evaluation; Ms. Geri Sudtelgte, Bureau of Administration/School Improvement Services; and Ann Marie Brick, J.D., designated administrative law judge, presiding. Janet Brown, Appellant, was present telephonically and was unrepresented by counsel. The Appellee, River Valley Community School District [hereinafter, "the District"], was present telephonically in the persons of Mrs. Julie DeStigter, Middle School Principal; Mr. Dean Schnoes, High School Principal; and Zane Forbes, a 15-year-old River Valley Community School District student. The District was represented by Drew Bracken, of Ahlers Laws Firm, Des Moines, Iowa.

I.
FINDINGS OF FACT

Appellant made a very emotional argument for the fact that there was a hostile environment in the District toward Quimby residents that was "dangerous and threatening". As a result of the threat by the student in Mrs. Wych's algebra class coupled with the fact that nothing had been done to punish that student, Quimby families were suffering a great deal of hardship and expense to send their children to other districts next Fall. Other than these bald assertions, however, Mrs. Brown presented no evidence to support her assertions these threats had actually been made. She testified that she had not contacted a school counselor, a student nurse, the principal of either the elementary or middle schools, or the police. Not only had she not contacted the administration to discuss her fears of threats and intimidation, neither had she contacted the local law authorities. In all, the nature of her response to the alleged "threats" seemed inconsistent with the level of "atmospheric hostility" that she maintains is present in the District.

In contrast, the District testified that upon receiving Mrs. Brown's Application for Rehearing, it began an immediate investigation of the incident occurring in Ms. Wych's algebra class. Julie DeStigter, the middle school principal, is also the person in charge of receiving harassment complaints. She testified that she undertook an investigation by contacting seven of the eight students present that day in Ms. Wych's class to determine the nature of any threats against Quimby students. The eighth student was not contacted because he is the nephew of Mrs. Brown and, on advice of counsel, the District did not wish to place this individual in a more difficult position than he already was in. Mrs. DeStigter testified that there was no indication by any of these students and their families that a threat had been made against any Quimby students by Zane Forbes.

The District also produced Zane Forbes to testify at the rehearing. He is the student Mrs. Brown stated had made the threatening comments against Quimby students. Zane is a 15-year-old River Valley student who has just completed the 9th grade. He is in the Gifted and Talented program and has been extremely shakened by Mrs. Brown's allegations. He emphatically denied that he had ever stated that he or anyone else should "get some guns and kill all the Quimby people."

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 1st deadline. Therefore, there is an exception in the statute for parents or guardians of children who have "good cause" for missing the January 1st filing deadline. Iowa Code sections 282.18(2), (4), and (16)(1997).

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. Id.

Even though Mrs. Brown does not have "good cause" for her late filing, the Legislature has granted authority to the State Board of Education to deal with extraordinary situations. Iowa Code section 282.18(18) (1997) 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 has been reluctant to exercise its subsection (18) authority absent extraordinary circumstances. *In re Chrysta Fournier,* 13 D.o.E. App. Dec. 106 (1996); *In re Paul Farmer,* 10 D.o.E. App. Dec. 299(1993). In using subsection (18) authority, the State Board requires that a case be one "of such unique proportions that justice and fairness require the State Board to overlook the regular statutory procedures". (*See, Fournier, supra*; Iowa Code section 282.18(18)(1997).)

The State Board has dealt with the issue of harassment of students by other students in several cases. The State Board used its subsection (18) authority in two cases to allow a student to open enroll, even though a late application was submitted, because of the severity and pervasiveness of the harassment, coupled with the inability of school officials and parents to solve the problem, despite their working together to do so. *In re Nicholas Olson,* 15 D.o.E. App. Dec. 55 (1997); *In re Melissa J. Van Bemmel,* 14 D.o.E. App. Dec. 281 (1997). The State Board approved a late-filed open enrollment application

involving a student subject to harassment in *In re Katie Webbeking,* 10 D.o.E. App. Dec. 268(1993). There have been other cases involving harassment of students brought to the State Board and the Board has not found the harassment to be either "good cause" for the late filing, or an extraordinary circumstance which called for the Board to exercise its discretionary authority under Iowa Code section 282.18(18)(1997).

In order to provide guidance to districts regarding when the State Board will follow Iowa Code section 282.18(18)(1997) in open enrollment cases involving harassment, the State Board provided several principles in the *Van Bemmel* case. Those principles are listed below with discussion of how each applies in this case.

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

In this case, there is no competent evidence that any harassment took place after January 1. The threat that allegedly occurred in Ms. Wych's class has not been substantiated. While Mrs. Brown may have personal reasons for not calling her nephew to testify regarding the nature of the threat, or of failing to take her fears to the local police for documentation against the individual(s) involved, the result is a total absence of any proof of harassment.

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

Since we have no evidence that the harassment actually exists, we have no evidence that suggests any harassment is likely to continue.

III. 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(18) authority, the harassment must be beyond typical adolescent cruelty.

In this case, the harassment has been alleged to be serious in nature and widespread. However, there have been no contacts with counselors or medical personnel which would indicate that the harassment has any, much less severe, consequences on Appellant's children.

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

This is clearly not the case in the present action. When asked why she did not report her fears of threats or harassment to either the principal or the superintendent, Mrs. Brown dismissed any attempts to communicate with the administration as futile. However, she did not demonstrate that her fears of futility were well-founded. She has never attempted to communicate with them in the past[1] Mrs. Brown has not tried to work with the school officials and has the attitude that they will not do anything to help. If Mrs. Brown wants the State Board to use authority it exercises only in extraordinary cases, she must have first tried to work with the school officials without success.

V. The evidence of harassment must be specific.

The allegation of harassment was specific, but there is no evidence that it was factual.

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

While there appears to be evidence that allowing Appellant's children to attend school in Cherokee would alleviate the situation for both parties, it does not compel the exercise of the State Board's subsection (18) authority.

In summary, this case does not meet the *Van Bemmel* criteria. Indeed, it does not even come close. The only solution appears to be an effort to mediate the relationships among the various communities involved in the River Valley Community School District. Unfortunately, that is a remedy which is beyond the power of the State Board to compel.

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[1] **. It appears that a more productive avenue for the parents involved in the Quimby appeal would be to investigate some type of alternative dispute resolution, perhaps mediation, to resolve their differences with the school The Iowa Peace Institute provides mediation for situations such as this. The Institute is located at Grinnell College, Box 805, Grinnell, Iowa (515) 269-4000.**

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

III.
DECISION

For the foregoing reasons, the decision upon rehearing reaffirms the Director's Decision made on May 26, 1998. That decision affirmed the decision of the Board of Directors of the River Valley School District made on March 16, 1998, which denied the Appellant's late-filed requests for open enrollment for her children for the 1998-99 school year. There are no costs of this appeal to be assigned.

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DATE ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

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DATE CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION