

**IOWA STATE BOARD
OF EDUCATION
(Cite as 15 D.o.E. App. Dec. 309)**

In re Jennifer & Laura Hall	:	
Tammy Shaffer, Appellant,	:	
v.	:	DECISION
North Linn Community School District, Appellee.	:	

[Admin. Doc. #3976]

This case was heard on April 8, 1998, before a hearing panel comprising Ms. Sharon Slezak, Office of the Director; Mr. Vic Lundy, Bureau of Technical & Vocational Education; and Amy Christensen, designated administrative law judge, presiding. The Appellant, Ms. Tammy Shaffer, was present and was unrepresented by counsel. The Appellee, North Linn Community School District [hereinafter, "the District"], was present in the persons of Dr. Allan Whitlatch, Superintendent, and Ms. Joyce Miller, Board Secretary. The District was 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(1997). 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 Appellant seeks reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the District made on March 19, 1998, which denied her request for open enrollment for her children, Jennifer and Laura Hall. The Board's decision was based on the determination that Ms. Shaffer's application was filed past the deadline.

**I.
FINDINGS OF FACT**

In November 1995, Ms. Shaffer and her daughters, Jennifer and Laura Hall, moved to Coggen. Prior to that, the girls attended school in Central City. The first year in Coggen was extremely difficult for the girls, especially Ms. Shaffer's older daughter, Jennifer. The girls were taunted by a particular group of girls from the time they got on the bus, at school, and during the ride home on the bus. The group of girls also taunted them during the summer. They did not include Jennifer in their activities, they talked

behind her back, and they played telephone jokes on her. The girls' attitudes toward school became very bad, and they cried and did not want to go to school. Their grades began falling. Ms. Shaffer testified she talked with school officials, but the problems were not solved. She testified the teachers would talk with the students, and the harassment would die down for a day or two, but then start again. She testified she tried to talk with the other parents without success. Ms. Shaffer testified to one instance when a teacher laughed at Jennifer in class in front of other students. She testified she was so angry she called the teacher at home that evening, when he admitted his action and apologized. Ms. Shaffer testified that the harassment of the girls is continuing, but on a smaller scale.

Superintendent Whitlatch testified he spoke with staff, who said they had not seen any incidents of harassment. He also testified District staff is not indifferent to harassment if they are asked for help. He disputes the allegation against the teacher. However, for the purpose of deciding this case, we are going to assume everything Ms. Shaffer testified to is true.

Because her girls were so unhappy, Ms. Shaffer decided to open enroll them back to Central City. She made this decision in the spring or summer of 1997. In July 1997, she called the Central City District, and spoke with Ms. Sharon Timms. Ms. Timms told her she was past the deadline of January 1st to open enroll for the 1997-98 year. She also told her she had to request open enrollment forms from the North Linn District.

Ms. Shaffer then called the North Linn District. She testified she believed she spoke with Ms. Joyce Miller. Ms. Shaffer testified she asked for home schooling forms and open enrollment forms for 1998-99, because she knew the deadline for the 1997-98 year was already past. Ms. Miller testified she does not remember talking with Ms. Shaffer, but she is certain someone in the office told her to send home schooling forms and open enrollment forms for 1997-98, which she did. We find that there was a miscommunication between Ms. Shaffer and whoever she spoke with at the North Linn office. Ms. Shaffer thought she was asking for the 1998-99 forms, and the person she spoke to thought she was asking for the 1997-98 forms.

Ms. Shaffer received the forms, and saw they were for 1997-98. However, she assumed they were the correct forms, since there was no cover letter. She did receive instructions with the forms, which also stated they were for the 1997-98 school year. She filled out the applications and sent them to the District.

The Board of the District considered Ms. Shaffer's applications at its August 21, 1997 meeting. This District assumed the applications were for the 1997-98 school year, since that is what they were entitled. The Board determined they were filed after the January 1st deadline, that there was no good cause for the late applications, and denied them on that basis. On August 27, 1997, Superintendent Whitlatch sent Ms. Shaffer a

letter informing her of the Board's decision. He also told her in the letter that if she wanted to apply for open enrollment for the 1998-99 year, that she must do so by January 1, 1998. Unfortunately, Ms. Shaffer never received this letter. She did not know the Board had acted on her applications.

In February 1998, not having heard anything regarding her applications, Ms. Shaffer called the Central City District office. They said they had not heard anything. She then called the North Linn District office. She learned that the District had denied her applications in August 1997, because it treated them as having been for the 1997-98 school year, which was the date on the forms.

Ms. Shaffer then called Mr. Doug Price, the president of the school board, and explained the situation to him. He told her he would have to see what Dr. Whitlatch said, and asked her to send him 1998-99 open enrollment applications. Ms. Shaffer sent him the applications with a cover letter explaining the circumstances.

Ms. Shaffer was put on the agenda for the March 19, 1998 Board meeting, but she did not attend. The Board considered her applications at its March 19th meeting. At the meeting, Mr. Price did not provide copies of her applications and cover letter to the other Board members. However, he did summarize the situation for them. Dr. Whitlatch testified the Board was aware of Ms. Shaffer's information when it made its decision. The Board voted to deny the applications on the ground they were untimely, and that good cause did not exist. Ms. Shaffer then filed this appeal.

The District has a written policy on late-filed applications, and requires parents to apply by December 31st. Dr. Whitlatch has been Superintendent of the District for three years. During that time, the District has consistently followed its policy, and only made one exception. That exception involved a father who was court ordered to provide certified day care for his children as part of a custody order. He was allowed to open enroll his children to a district with certified day care. There have been no other exceptions. The District published notice of the open enrollment deadlines in its September 1997 newsletter.

II. CONCLUSIONS OF LAW

Parents must file open enrollment requests by a deadline of January 1st. Iowa Code section 282.18(2)(1997). However, 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 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 1st filing deadline. Iowa Code sections 282.18(2) and (16)(1997).

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 1st deadline. 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)(1997).

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)(1997); 281 IAC 17.4. The harassment and mean behavior experienced by Jennifer and Laura are not good cause for a late-filed open enrollment application as defined by the legislature and the department's rules. This does not mean they are not good reasons for wanting to leave the school, they are just not good cause as the legislature has defined it. In addition, the unfortunate fact that Ms. Shaffer did not receive Dr. Whitlatch's August 27, 1997 letter, and therefore her applications for the 1998-99 year were late, is also not good cause as the legislature has defined it.

The District has a written policy on late-filed applications, and requires parents to apply by December 31st. The District has consistently followed its policy, and only made one narrow exception. The District published notice of the open enrollment deadlines. The Department of Education rule requires that “By September 30 of each school year, the district shall notify parents of open enrollment deadlines, This notification may be published in a school newsletter, a newspaper of general circulation, or a parent handbook provided to all patrons of the district”. 281 IAC 17.3(2). The District complied with the requirements of the rule.

Even though Ms. Shaffer 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 Crysta 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 it to overlook the regular statutory procedures. See *Fournier, supra*; Iowa Code §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 Bommel*, 14 D.o.E. App. Dec. 281 (1997). The State Board approved a late application for open enrollment 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 calls the Board to exercise its discretion under Iowa Code section 282.18(18)(1997). *In re Chrysta Fournier*, 13 D.o.E. App. Dec. 106 (1996); *In re Misty Deal*, 12 D.o.E. App. Dec. 128 (1995); *In re Lee, Craig, and Erin Haveman*, 11 D.o.E. App. Dec. 375 (1994). Several harassment cases denied late applications, but were written before Iowa Code section 282.18(18) was put into the code in 1992. *In re Shari Allen*, 8 DoE App. Dec. 93 (1990).

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.

1. 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, most of the taunting and mean behavior occurred prior to January 1, 1998, to the extent Ms. Shaffer made the decision to open enroll in the summer of 1997.
2. The evidence must show that the harassment is likely to continue. The evidence in this case shows that the harassment is continuing, but on a smaller scale than before.
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. We question whether the harassment meets this part of the test. In this case, the harassment, although very difficult for the girls, does not appear to be the extreme and physically threatening type of behavior contemplated by *Van Bemmel*. Obviously, if the allegation against the teacher is true, it would provide support for this aspect of the harassment criteria. However, in order for the school to be able to address such a problem, the parent must notify the District (not just the teacher) of the teacher's behavior at the time it occurred. In this case, Ms. Shaffer did not.
4. The parents must have tried to work with school officials to solve the problem without success. Although Ms. Shaffer testified she spoke with school officials without success, we are not convinced that she did all that she could to enlist the aid of school officials to solve the problems encountered by her daughters. Also, with regard to the allegation against the teacher, she only called the teacher and did not call any other school official.
5. The evidence of harassment must be specific. The evidence was not specific in this case.

6. Finally, there must be reason to think that changing the student's school district will alleviate the situation. This is probably true in this case. It would help Jennifer and Laura to get away from the particular students who have harassed them.

In summary, this case simply does not meet the Van Bommel criteria. We decline to exercise our subsection (18) authority primarily because most of the incidents, and the most egregious incidents, occurred before January 1st, and therefore Ms. Shaffer could have submitted a timely application.

As a matter of fact, Ms. Shaffer thought she did submit a timely application when she submitted the 1997-98 form. It is extremely unfortunate that Ms. Shaffer did not receive Superintendent Whitlatch's August letter, or know that the Board had acted on her application until February 1998. However, we do not believe this makes the case one appropriate for use of subsection (18) authority. There was a miscommunication between Ms. Shaffer and the North Linn staff member as to what forms were requested in July. The form she submitted was entitled for 1997-98, as were the instructions. Superintendent Whitlatch is correct when he testified that a Board can only act on what it actually receives, and cannot know what the intent of the person submitting a form is when the intent is different from the form. The Board promptly acted on the application at its August meeting. Superintendent Whitlatch sent Ms. Shaffer a letter informing her of the Board's decision. We decline to exercise our extraordinary authority when the District acted correctly with respect to the actual forms submitted to it, and promptly informed Ms. Shaffer of its action, even though it is very unfortunate Ms. Shaffer did not receive the letter. When it learned of the mistake in February 1998, it was within the Board's discretion to act as it did, and deny the 1998-99 applications as late-filed, even though it knew Ms. Shaffer thought she had submitted timely forms for the 1998-99 year.

We strongly encourage the parties to work together to attempt to stop and prevent any harassment of Jennifer and Laura while they are at school in the North Linn District.

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 North Linn Community School District made on March 19, 1998, which denied Ms. Shaffer's late-filed request for open enrollment for Jennifer and Laura for the 1998-99 school year is hereby recommended for affirmance. There are no costs of this appeal to be assigned.

DATE

AMY CHRISTENSEN, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

DATE

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION