

**IOWA STATE BOARD
OF EDUCATION
(Cite as 15 D.o.E. App. Dec. 290)**

In re Alan Faulkner	:	
Julie Faulkner, Appellant,	:	
v.	:	PROPOSED DECISION
Waterloo Community School District, Appellee.	:	
	:	[Admin. Doc. #3966]

This case was heard on March 26, 1998, before a hearing panel comprising Mr. Jeff Berger, Bureau of Administration, Instruction, and School Improvement; Ms. Christine Anders, Bureau of Food and Nutrition; and Amy Christensen, designated administrative law judge, presiding. The Appellant, Ms. Julie Faulkner, was present and was unrepresented by counsel. The Appellee, Waterloo Community School District [hereinafter, “the District”], was present in the persons of Mr. Saul Austin, Assistant Principal at West High School; Mr. Bernard Cooper, Director of Student Services; Officer Jeff Duggan, Waterloo Police Department and School Liaison Officer to West High; and Ms. Sharon Miller, Board Secretary. The District was represented by Mr. Steven Weidner.

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 February 23, 1998, which denied her request for open enrollment for her son, Alan. The Board’s decision was based on the determination that Ms. Faulkner’s application was filed past the deadline.

**I.
FINDINGS OF FACT**

The Faulkners live in the Waterloo District. Alan Faulkner is in the tenth grade at West High School in the Waterloo District. Alan has asthma, and is thin. Mrs. Faulkner testified that when Alan was in junior high, he did well in school, and was happy and

energetic. She also testified that his grades have fallen, and he is depressed. She testified this is due to threats and assaults against her son, which have occurred since the summer of 1997. Ms. Faulkner filed for open enrollment for her son to the Hudson District because she and Alan fear for his safety at West High. Ms. Faulkner has other children who attend school in the Waterloo District, but she is not filing for open enrollment for those children. Alan's brother attends school at East High. Alan did not appear or testify at the hearing. Ms. Faulkner testified that the following events were what led to the request for open enrollment.

During the summer of 1997, Alan and a friend were walking home, and were assaulted by four young men. Alan does not know who the four young men were. Alan was knocked to the ground and his face was kicked. He had to have stitches, and several teeth were knocked loose. One tooth had to be removed. Later, in the fall, Alan saw one of the young men in the hall at school, although he still does not know who he is. He did not report seeing the young man to school officials or ask for assistance when he saw him.

In the fall of 1997, Alan was threatened by another student in one of his classes. He asked to be transferred to another class, but the counselor refused, and told him he could not change classes in the middle of the semester. Neither Alan nor his mother pursued this with school officials.

The events that occurred on November 20, 1997 are somewhat in dispute. Ms. Faulkner testified that Alan was outside the building during lunch, and was approached by six students who asked him for a cigarette. He told them he did not have any cigarettes. They then asked him for money. When he told them he had none, the students assaulted him. He was punched in the face and kicked in the back and chest. Alan told his mother he spent the afternoon in a school restroom lying on the floor. No other student saw him in the bathroom or reported he was there to school officials. Alan did not report the assault to school officials. Ms. Faulkner was out of town. Alan was picked up from school by a friend's father, who noticed something was wrong. Alan reluctantly told him what happened. The friend's father took Alan to the hospital, where he was treated and released. A x-ray and CT scan revealed no broken bones or injuries to organs. He had rib and abdominal contusions. Ms. Faulkner submitted hospital records, which are consistent with the testimony regarding the assault. Ms. Faulkner testified that she and Alan know the name of one of the students who attacked him. However, Ms. Faulkner testified Alan is afraid to tell the name of the student because he fears retaliation. Ms. Faulkner testified she respects that decision.

The following day Ms. Faulkner went to West High. She met with Officer Duggan and Assistant Principal Austin. They requested the name of the student Alan knew, but Ms. Faulkner would not reveal it, giving Alan's fear of retaliation as the reason. Mr. Austin spoke with Ms. Faulkner regarding options available. One of the options discussed was open enrollment. Mr. Austin referred Ms. Faulkner to Mr. Cooper

in the District's central administration office. Officer Duggan told Ms. Faulkner that he needed to talk to Alan about the incident. Ms. Faulkner told him Alan did not want to pursue the matter because he was afraid of retaliation. Officer Duggan told her without Alan's cooperation and without a name, there was little he could do. He told her if Alan changed his mind, to contact him. Ms. Faulkner testified she didn't expect the school administration to do anything. She understood that school officials were hampered in what they could do without the name of the student Alan knew. School officials did not pursue any further investigation. They also did not document the report by Ms. Faulkner.

The District does not dispute that Alan was assaulted just outside the school. They do not necessarily believe that his version of events is entirely true. In particular, Vice Principal Austin testified he does not believe Alan could have lain on the floor of a school bathroom for an entire afternoon without someone noticing him and reporting the situation, because the bathrooms are high traffic areas. In addition, West High has a closed campus during lunch for ninth and tenth graders, so Alan was not supposed to be outside the building during lunch. Ms. Faulkner suggested in her questioning of Vice Principal Austin that Alan left the building because the lunchrooms were too crowded and he could not get lunch in the building. We find this suggestion to be unreasonable and difficult to believe. First, Mr. Austin denied there was a problem with students getting fed. Second, he testified that any student who explained there was a problem would be fed. Third, the solution to such a problem, if Alan perceived there was one, was not to violate the rules, but to either 1) ask school officials for help, or 2) bring his lunch from home. Nonetheless, the testimony is undisputed that Alan was assaulted outside school by fellow students on November 20, 1997.

After speaking with Officer Duggan and Vice Principal Austin, Ms. Faulkner called Mr. Cooper, Director of Student Services. What was said during that conversation is disputed. Ms. Faulkner and Mr. Cooper both agree that the two discussed whether Alan could open enroll out of the District immediately. Both agree Mr. Cooper told her he could not, and that Mr. Cooper said students would not be transferred for fighting. Ms. Faulkner is understandably upset that Mr. Cooper referred to the incident as fighting, rather than an assault, since there were six students who attacked her son. Ms. Faulkner testified that Mr. Cooper told her she could not open enroll Alan for the 1998-99 year, because the deadline was already past. She testified she thought the deadline was October 31st, so she did not dispute Mr. Cooper's statement. Ms. Faulkner testified that Mr. Cooper did not tell her the deadline was October 31st. Mr. Cooper denied that the two discussed open enrollment for the 1998-99 year, and he testified he did not tell her the deadline for the following year was past during this conversation.

The panel believes that there was a misunderstanding, that Ms. Faulkner thought the two were talking about open enrollment for the 1998-99 school year, and that Mr. Cooper thought they were talking about immediate open enrollment, for which the deadline had already past. The panel does not believe Mr. Cooper intentionally misled Ms. Faulkner regarding deadlines for open enrollment.

Ms. Faulkner testified that she did not apply for open enrollment for her son at the time because she thought the deadline was already past and she hoped things would improve. She did talk with her pastor, Rev. Melz, and asked him to intervene on her behalf. Upon Rev. Melz's request, Mr. Cooper spoke with Vice-Principal Austin and Officer Duggan. However, since Alan was unwilling to reveal the name of the student who attacked him, school officials felt there was nothing further they could do. Mr. Cooper denied Rev. Melz's request for immediate transfer for Alan. Ms. Faulkner took Alan to Success Street for counseling as a result of these incidents. Success Street is a counseling center located at West High, but operated by Black Hawk County, not the Waterloo District.

In December, Alan was delivering papers, and the student who threatened Alan (his name was not given at the hearing) drove up in his car and parked. Alan was so afraid he went to a customer's home and asked the customer to go with him to the next street. The customer called the police and Ms. Faulkner, who came to the scene. The student used foul language to Ms. Faulkner. Since he had not done anything, the police directed him to leave with a warning. Alan quit his paper route because he was frightened by this incident. Ms. Faulkner and Alan did not discuss this with school officials because it did not happen at school.

On January 26, 1998, another student hit Alan and shoved him into a locker. Alan told his mother there was an adult male nearby, but he did nothing. Alan talked to a counselor at Success Street after this happened, but did not feel it was helpful. Ms. Faulkner is upset that no one from Success Street called her that day. However, since Success Street is not operated by the District, and Alan did not talk with school officials that day, the lack of a call cannot be the fault of school officials. The following day, Ms. Faulkner called Mr. Austin to discuss the incident. She did not give Mr. Austin the name of the other student, and told him she did not want anything done. However, Mr. Austin promised to talk with Alan the next day. When he did so, he promised Alan he would not take any action based on Alan's attack, but would watch the other student if Alan revealed his name. Alan told him the name of the other student. Mr. Austin has watched the other student since then. There have been two incidents involving this student, but no attacks on Alan, since Mr. Austin began watching him. There are surveillance cameras in the West High halls that recorded this incident. Since Mr. Austin believed Alan's version of what happened, he saw no need to view the videotape. After two weeks, the videotapes are destroyed, so no tape of this incident remains.

Ms. Faulkner testified she applied for open enrollment after the January 26th incident because it was the "last straw". She submitted her application on January 30th. She knew she was past the deadline at the time she submitted her application.

At the hearing, Ms. Faulkner was asked whether she would consider the option of Alan attending East High. She testified she would not, because she said, it would not alleviate Alan's fear for his safety. Also, she testified, there are more stairs at East High because it is a four story building than at West High, and Alan would have trouble with them during passing time because of his asthma. Vice-Principal Austin testified that if Alan had trouble with the stairs because of his asthma, he would be given additional time to get to classes.

The Waterloo District has a written open enrollment policy, Policy JECCE-R, which requires parents to file open enrollment applications by the January 1st deadline contained in the Iowa Code. The only exception is for those parents with good cause as defined by law, and kindergarten students. There are no other exceptions. The District publishes notice in the newspaper of the open enrollment deadlines each year prior to the deadline. In 1997, the press release was issued October 30th. The District also puts the information out over cable television. Although there were no District employees or Board members who could testify to the Board's practice prior to July 1, 1997, there was no evidence that the Board has not followed its written open enrollment policy regarding late-filed applications. Since July 1, 1997, the Board has always denied late-filed open enrollment applications.

The District also has a desegregation plan that limits the number of students who may leave the District through open enrollment. The District places the names of students applying for open enrollment on a list in the order they are received after July 1st, over a year prior to the date the open enrollment is desired. It is an advantage to be at the top of the list. Therefore, for example, if parents wished to open enroll their students for the 1999-2000 school year, they would have the best chance to leave under the desegregation plan if they filed for open enrollment on July 1, 1998.

The Waterloo Board first considered Ms. Faulkner's application at its February 9th Board meeting. Ms. Faulkner could not attend, so a friend represented her at the meeting. Ms. Faulkner submitted a letter to the Board giving details of the incidents. She also submitted photographs of Alan's injuries taken after the summer incident. Ms. Faulkner testified that although she submitted this information, Mr. Cooper did not provide it to the Board. Mr. Cooper testified he did not include the information with the Board packets because he did not think the information should be public.¹ He testified he laid her letter at each Board member's place on February 9th. He also testified he did not submit her pictures because he only had one copy and the incident had occurred the previous summer not on school property.

¹ Local Boards are subject to the open records law, and all information submitted is public unless one of the exceptions in the law applies.

At the February 9th Board meeting, the Board voted to delay action on the application so it could review the materials submitted. On February 18, Mr. Cooper sent a memo to the Board members regarding the Faulkner application. In the memo, Mr. Cooper stated: "As I stated at the School Board meeting on February 9, 1998, Mrs. Faulkner's allegation that her son was attacked at West High School had no validity." He also stated: "I talked to Officer Duggan and Mr. Austin regarding this incident. They told me that there was no report of anyone being assaulted." He also stated: "There was no proof that this incident ever happened." At the hearing, Mr. Cooper agreed there was proof that an incident occurred in which Alan was assaulted on school property on November 20, 1997. He disputed the details of Alan's version of events, but not that the attack occurred. He did not explain why he wrote the memo to the Board telling them the allegation had no validity and there was no proof it had occurred.

At the February 23, 1998 Board meeting, the Board voted to deny Ms. Faulkner's application on the ground that it was filed past the January 1, 1998 deadline. There was no discussion regarding the application at the meeting. Ms. Faulkner filed her appeal on February 26, 1998.

Ms. Faulkner submitted a photograph of Alan with a cut on his cheek. She testified that the photograph was taken on February 26, 1998. She testified Alan had been injured when he came too near two students who were having a belt fight on school grounds right after school on February 26th. Alan was not the target of the fight, and one student apologized to him for accidentally hitting him. Ms. Faulkner submitted this as evidence that the school is unsafe. Since this incident occurred after the Board's decision made on February 23rd, it is not relevant to the decision made by the Board on February 23rd. Since the incident was not directed at Alan, we do not consider it of great weight in reaching our decision in this case.

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 assaults and threats experienced by Alan, and his resulting fear, 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.

The District has a written policy on late-filed applications, and requires parents to apply by the January 1st deadline. The only evidence we have shows there are no exceptions other than those required by statute, and the District consistently follows its policy. The District published notice of the deadlines by issuing a press release October 30, 1997. We have some concern that the District did not provide a witness at the hearing who could definitively testify as to the date the notice was actually published in

the paper. 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). In a prior case, the State Board held that publication of the deadline in November prior to the deadline substantially complied with the rule, because the rule was promulgated when the statutory deadline was October 30th, and the rule has not been changed to reflect the change in statutory deadline. *In re Clark Daniel Campos*, 14 D.o.E. App. Dec. 301(1997). Therefore, we hold that the District substantially complied with the rule.

Even though Ms. Faulkner 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 Crysta 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 D.o.E. 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, the most egregious assaults took place in the summer of 1997 and on November 20, 1997. The threat in class occurred during the fall semester, and the paper route incident took place in December. The only incident which took place after January 1st was the assault on January 26. The belt fight incident was not directed at Alan, so was not an incident of harassment. Clearly, the majority of incidents and the most severe incidents occurred prior to the January 1st deadline. It is unfortunate that Ms. Faulkner thought the deadline was October 31st, but we have not allowed parents who were ignorant of the deadline to open enroll in the past. *In re Candy Sue Crane*, 8 D.o.E. App. Dec. 198 (1990).

2. The evidence must show that the harassment is likely to continue. We have no evidence which suggests any harassment is likely to continue. Rather, the evidence indicates the situation is calming down.

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. In this case, the harassment meets this test in terms of the severity of the harassment, but not in terms of the number of students. In addition, the harassment in this case appears to be several isolated incidents, rather than a pattern of harassment occurring on a regular basis.

4. The parents must have tried to work with school officials to solve the problem without success. This is clearly not the case here. Ms. Faulkner and Alan have not always told school officials what happened the day it happened so they could deal with the situation. Alan has not come to the office to ask for help after each incident. Alan has refused to talk with Officer Duggan and Vice-Principal Austin. He has refused to provide the name of a student he knew assaulted him. While we can be somewhat sympathetic to his fear of retaliation, we cannot condone his refusal to work with school officials. As demonstrated after the January incident,

school officials can take action without letting it be known that Alan gave specific names. Furthermore, Alan should be working with school officials to prevent both future incidents and retaliation for giving information about past ones. By not talking with school officials or giving names, Alan has effectively hamstrung the officials in their investigating efforts. Ms. Faulkner has also not even tried to work with school officials, and has the attitude that she does not expect them to do anything. If Ms. Faulkner wants the State Board to use authority that it exercises only in extraordinary cases, she must at first have tried to work with school officials without success. In addition, one of the options offered to Ms. Faulkner, to let Alan transfer to East High, was quickly rejected without even trying it.

5. The evidence of harassment must be specific. The evidence of each incident was specific, except that Ms. Faulkner and Alan continue to refuse to provide the name of one student who they know attacked Alan, and they do not know the names of the other individuals, except the individual who threatened Alan on his paper route and in class. Furthermore, it is difficult to believe that Alan could have spent an entire afternoon on a school bathroom floor without detection. This leads us to question Alan's credibility on this point.

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 Alan to get away from the particular students who have assaulted and threatened him. However, we do not understand why a transfer to East High would not accomplish the same purpose, as Alan would be getting away from the students just as effectively as he would at Hudson. Two of the incidents occurred off school property. Since Alan would continue to live in the same house, we do not believe he would be any safer attending Hudson than he would be attending East High.

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. Faulkner could have submitted a timely application. Also, Alan and Ms. Faulkner have simply not worked with school officials to solve Alan's problems, which is a key element before we will exercise subsection (18) authority in harassment cases. Finally, there is an effective solution that does not require open enrollment: transfer to East High. We strongly urge Ms. Faulkner and the District to pursue this option for Alan.

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 Waterloo Community School District made on February 23, 1998, which denied Ms. Faulkner's late-filed request for open enrollment for Alan 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