

**IOWA STATE BOARD
OF EDUCATION
(Cite as 14 D.o.E. App. Dec. 281)**

In re Melissa J. Van Bommel :

Robert and Jennie Van Bommel, :
Appellants,

v. : DECISION

Exira Community :
School District,
Appellee. :

[Admin. Doc. #3887]

The above-captioned matter was heard telephonically on July 15, 1997, before a hearing panel comprising Mr. Marv Hrubes, Bureau of Administration, Instruction, and School Improvement; Ms. Sandy Sandvick, Bureau of Food and Nutrition; and Amy Christensen, designated administrative law judge, presiding. The Appellant, Mrs. Jennie Van Bommel, was present telephonically and was unrepresented by counsel. Mr. Van Bommel was not present at the hearing. The Appellee, Exira Community School District [hereinafter, "the District"], was present telephonically in the person of Mr. Otto Faaborg, 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(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 Appellants seek reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the District made on May 7, 1997, which denied their request for open enrollment for their daughter, Melissa.

**I.
FINDINGS OF FACT**

Melissa Van Bommel will be in eleventh grade in the fall of 1997. She has attended public school in Exira since she was in kindergarten. She has gotten along well with other students prior to the 1996-97 school year. The Van Bommels have two other children who attend school in Exira, but are not seeking open enrollment for those children at this time.

The evidence at the hearing showed that in the fall of 1996, the Van Bommel's niece moved to town and began attending school with Melissa. The niece had problems with several other girls at school. The other girls threatened to kill the niece. Melissa came to her cousin's defense. After that, Melissa was also subject to threats and late night telephone calls. Melissa was upset by this. Mrs. Van Bommel went to school and discussed the situation with Mr. Washburn, the principal¹, to try to resolve the situation. Mr. Washburn was able to resolve the situation by talking with the girls' parents, it improved, and eventually the other girls involved moved away.

Mrs. Van Bommel testified that in January 1997, Melissa began dating a boy from Audubon. Since then, she has been subject to harassment by a group of about twenty students both in and out of school. This harassment is not due to any actions by Melissa or her boyfriend. One night in January, when Melissa and her boyfriend were driving into Exira, they were surrounded by a group of four to six vehicles. The students in those vehicles threatened to beat up Melissa and her boyfriend. They were able to get away from the vehicles for awhile, but were chased and were surrounded on the highway by the vehicles, twice pushed off the road, and almost hit a telephone pole. Mrs. Van Bommel reported this incident to both the police and to Mr. Washburn.

Mrs. Van Bommel testified that soon after this, Melissa and her boyfriend were followed and threatened by the same group of boys. A pattern of harassment and threats has continued by these students and others. Melissa and her boyfriend have been stopped and told to get out of town. They are followed around. The students drive around the Van Bommel house at night. Both boys and girls have harassed Melissa at school and outside of school. She has been repeatedly subjected to threats. Every time her boyfriend comes to Exira, the two are threatened and harassed. The boys made sexual remarks and gestures to Melissa both in class and in the hallways at school. One girl in particular repeatedly pestered Melissa on a daily basis by flicking her ears and pushing her chair over in chorus. Students made up lies about her. About twenty students are involved in this pattern of harassment.

Evidence at the hearing showed that once Melissa and her boyfriend were confronted by one of the students who was drunk, and told to get out of town. They reported this to the police. Nothing was solved, and the students continued to harass Melissa and her boyfriend. Mrs. Van Bommel went to the police to try to get help, and the police told her they had told the student that Melissa and her boyfriend had reported him to the police. Mrs. Van Bommel was upset by this and it made the problem worse.

¹ Unfortunately, Mr. Washburn is retired and was not available at the hearing to testify. Testimony on behalf of the District was given by Superintendent Faaborg.

Mrs. Van Bommel testified Melissa reported the sexual harassment to Mr. Washburn. Mrs. Van Bommel has repeatedly talked with the police and Mr. Washburn to attempt to resolve the situation and protect her daughter. She also met with Mr. Washburn and Mr. Faaborg at least once. Mr. Faaborg has also spoken with Melissa. Mrs. Van Bommel called the parents of the girl who was pestering Melissa in chorus. These efforts have not been successful. The day after she called the parents of the girl, the girl threatened Melissa. This girl and her friends harassed Melissa every day at school. The harassment has continued at school and outside of school. The police and school authorities have not been able to solve the problem.

In response to inquiry at the hearing, Mr. Faaborg testified he has no reason to doubt the testimony of Mrs. Van Bommel. He testified that he was not present during many of the incidents, and therefore has no first hand knowledge of them, but that he had spoken with both Mrs. Van Bommel and Melissa, and generally knew of the situation. He testified that he, Mr. Washburn, and the Board are very concerned about the problems Melissa is having. Mr. Faaborg testified the District has been somewhat ineffective in its ability to address the problem. He and Mr. Washburn believe it would help the District if the Van Bommels file charges against each of the students involved. The Van Bommels are reluctant to do this because Exira is a small town of 800-900 people, Mrs. Van Bommel works with the mothers of several of the students, and the Van Bommels believe life would be hell on earth if they did this. Mrs. Van Bommel also testified they did file harassment charges against one boy, and he and his friends are still harassing Melissa, so it did not do any good to file charges.

Mrs. Van Bommel testified that one of Melissa's teachers made inappropriate sexual comments in class in Melissa's presence. Mrs. Van Bommel testified to the specific comments which are not related here. Melissa was upset by the comments, Mrs. Van Bommel spoke with Mr. Washburn about them, and Melissa was transferred out of the class. Mrs. Van Bommel testified the teacher resigned at the end of the 1996-97 school year.

Evidence at the hearing showed Melissa is scared someone will beat her up, and is upset all the time. Mrs. Van Bommel testified she has suffered a number of illnesses as a result of the harassment: stomach aches, headaches, backaches, anorexia, depression, and insomnia. Prior to this year she has always been a good student, and her grades dropped dramatically. She does not want to return to school next year. She has seen a physician, and has seen a psychiatrist and counselors at the Southwest Mental Health Clinic in Atlantic. She is continuing to see a counselor at the clinic in Atlantic.

The Van Bemmels applied for open enrollment for Melissa for the 1997-98 school year on April 14, 1997. They met with the Board at their April meeting and discussed the problem. At the Board meeting on May 7, 1997, the Board denied the application because it was filed past the January 1st deadline. The Board was concerned about setting a precedent if it allowed the late-filed application².

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 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), (4), 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 and before June 30th. 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

² When granting a late application, the Board should state the particular and unique facts of the situation which prompted the Board's approval in the minutes of the Board meeting. Thereafter, the Board will only be obligated to approve future late applications of the same factual nature. In re Shawn & Derek Swenson, 12 DoE App. Dec. 150 (1995).

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 pattern of harassment and threats experienced by Melissa, and the inability of the District to solve the problem, are not "good cause" for a late-filed open enrollment application as defined by the Legislature and the Department rules.

However, the Legislature has granted important authority to the State Board of Education to deal with extraordinary situations such as this one. 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."

This case is very unusual. Melissa experienced harassment and threats in school beginning in the fall of 1996. The problem in the fall was corrected with the help of Mr. Washburn. However, beginning in January 1997, a group of approximately twenty students has continually harassed and threatened Melissa both in and out of school. At least one of the incidents was life threatening. This is not the same as a situation where a student is being harassed by one or two other students one or even several times. The second period of harassment at school occurred on a daily basis for the entire semester. There is no reason to believe the students involved in the harassment will stop. The Van Bemmels have repeatedly attempted to work with school officials to solve the problem, and have reported multiple incidents to the police. These efforts have not solved the problem. The District is unable to effectively address the situation at school, and the police are unable to effectively address the situation outside of school. Melissa has experienced multiple medical problems as a result of the harassment and is seeing a counselor to help her cope.

We agree with Mrs. Van Bommel that her daughter should not have to continue to experience this level of harassment and threats. The most egregious pattern of harassment began after the January 1st deadline for open enrollment, so the Van Bommels could not have filed for open enrollment in a timely manner.

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 sec. 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 applications, but were written before Iowa Code section 282.18(18) [formerly Iowa Code section 282.18(20)] was put into the code in 1992. *In re Shari Allen*, 8 DoE App. Dec. 93 (1990).

However, none of these cases involved such an egregious, longstanding pattern of conduct by such a large group of students, and such specific evidence of incidents both in and out of school. None involved such repeated reporting of incidents to school authorities and local police to try to solve the problem, with such inability of school authorities and police to solve the problem. Rarely was harassment and threatening behavior life threatening, as it was on at least one occasion in this case. None involved such extensive physical and emotional problems and resulting treatment by a physician and counselors.

The State Board did approve 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). As best we can determine from the decision in that case, the harassment suffered by Melissa in this case is much more extensive than that suffered in the *Webbeking* case.

This is a case which “cries out for extraordinary exercise of power bestowed upon the State Board”, and is “a case of such unique proportions that justice and fairness require the State Board to overlook the regular statutory procedures”. *In re Katie Webbeking*, 10 D.o.E. App. Dec. 268(1993). It is in Melissa’s best interest that she be allowed to open enroll to another school district.

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, we offer the following principles.

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.

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

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.

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

The evidence of harassment must be specific.

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

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 Exira Community School District made on May 7, 1997, which denied the Van Bommel's late-filed request for open enrollment for Melissa for the 1997-98 school year is hereby recommended for reversal. 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