

IOWA DEPARTMENT OF EDUCATION

CITE AS 30 D.o.E. App. Dec. 097 (2021)

<i>In re Open Enrollment of A.G., J.G., &</i>)	
<i>M.G.,</i>)	
)	
<i>M.U. & T.A.,</i>)	
)	Admin. Docket No.: 5144
Appellants,)	
)	
vs.)	PROPOSED DECISION
)	
AGWSR Community School District,)	
)	
Appellee.)	

Appellants M.U. and T.A. applied for open enrollment of their three children (A.G., J.G., and M.G.) after the March 1, 2021, deadline, alleging "repeated acts of harassment." Iowa Code § 282.18(5) (2020). AGWSR Community School District ("AGWSR") denied the requests, and the Appellants timely appealed to the Iowa State Board of Education. *Id.*; see also *id.* § 290.1.

The parties appeared before the undersigned, sitting as administrative law judge, for an in-person hearing on August 13, 2021, at 8:30 a.m. M.U. and T.A. appeared and testified, as did A.G. and J.G. M.G. was also present for the hearing, but did not testify. AGWSR was represented by Superintendent Erik Smith, who testified.

Governing Law

The undersigned has jurisdiction of the parties and the subject matter.

Open enrollment requests based on "repeated acts of harassment" are evaluated under the four-part framework first adopted by the State Board in *In re Hannah T.*, 25 D.o.E. App. Dec. 26 (2007).

1: The harassment must have occurred after March 1 or the student or parent is able to demonstrate 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:

(1) Places the student in reasonable fear of harm to the student's

person or property.

(2) Has a substantially detrimental effect on the student's physical or mental health.

(3) Has the effect of substantially interfering with a student's academic performance.

(4) 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.

Id. at 31. Superintendent Smith testified that the AGWSR school board denied the applications based on the third factor. The board believed that AGWSR did not have the opportunity to address the harassment. Since that is the only factor AGWSR used to deny the application, the other three factors are -- in effect -- conceded.

Factor 3 -- The District's Attempts to Resolve the Harassment.

The nature and existence of the harassment, although conceded, is relevant to determining whether the Appellants' evidence satisfied the third factor.

Harassment of J.G. The harassment of J.G. can only be described as despicable. On March 11, 2021, one of J.G.'s classmates told J.G. that she would like to "slit his throat and serve it on a platter." The next day, J.G. was the target of an altercation during gym class. After being attacked and refusing to fight back because he did not want to be disciplined for fighting, classmates made fun of him for not fighting back. Based on an exchange of e-mails, AGWSR was aware of these instances, and placed the student who threatened to slit J.G.'s throat in a separate class.

Peers continued to verbally and physically torment J.G. throughout the remainder of the school year. He was called derogatory names based on actual or perceived disabilities. Members of a school sports team told him their lives would be better if he were dead. J.G. testified that peers would push him down or into the bleachers during gym class. At least three students told him he should kill himself. At one point, he wondered aloud if he should.

On May 20, 2021, M.U. sent an e-mail to AGWSR personnel, describing the toll harassment has taken on J.G., who is currently seeing a mental health professional. While this is the first e-mail since the March exchange of e-mails, the evidence suggests that AGWSR knew of the harassment and took steps in response to it. In particular, J.G. testified that a paraeducator was helpful, was aware of the harassment, and kept an eye on J.G. The evidence showed that J.G. also told another teacher about an incident of

harassment, but begged the teacher not to take action due to fear of retaliation or being labelled a "snitch." Cf. *In re M.M.*, 28 D.o.E. App. Dec. 523 (2017).

Harassment of A.G. The harassment directed to A.G. is more subtle and insidious, but still harmful. Since March 2021, A.G. has been harassed in person and virtually by a group of approximately a dozen girls. She was called "stupid, anorexic, and self-centered." A.G. is a high achieving student who has enjoyed school in the past, but came home from school on multiple occasions in tears. For an extended period, A.G. would not eat lunch in the cafeteria; rather, she would spend the lunch period in the library to avoid her tormentors. A.G. also is receiving services from a mental health professional.

M.U.'s May 20, 2021, e-mail also addressed concerns about A.G. The record reflects that AGWSR was aware of these concerns, based on A.G.'s contacts with the high school principal's secretary as well as another individual. While AGWSR would have preferred A.G. contact someone other than a clerical staff member, the most important factor is who the child trusts.

Is the harassment of J.G. and A.G. likely to continue? At the outset, it bears observing that this factor does not require that the school fail to act or act unreasonably. If a school fails to act or acts unreasonably in response to harassment, of course the factor is met. However, the factor is also met when harassment is likely to continue, notwithstanding a district's reasonable actions. That describes the present case. AGWSR took reasonable measures, such as schedule changes and heightened adult surveillance of interactions with A.G. and J.G. The undersigned is unwilling to state that AGWSR did not take reasonable actions. Rather, AGWSR's reasonable actions were not successful. AGWSR believes that it needs additional time to "dig in" and create a better plan. While this may be a noble desire, section 282.18 does not require a family to wait until a plan is successful before a harassment-based open enrollment application is granted.

Given the severity of the harassment (taking special note of the suicide related bullying of J.G.), the credible description of A.G.'s and J.G.'s peers and their conduct, and the reasonable responses already provided by AGWSR, the undersigned finds and concludes that the harassment will "likely continue." *Hannah T.*, 25 D.o.E. App. Dec. at 31; cf. *In re M.J.V.B.*, 14 D.o.E. App. Dec. 281, 285 (1997) (harassment that even the police were unable to prevent).

As to J.G. and A.G., the decision must be reversed.

Application of M.G.

M.U. and T.A. also sought open enrollment on behalf of a sibling. Appellants concede that M.G. was not subject to harassment, but they want M.G. to attend the same district as M.G.'s siblings. That desire, while laudable, is foreclosed by prior State Board precedent. *In re S.W.*, 12 D.o.E. App. Dec. 69 (1994) (sibling who was not harassed = no "good cause"). *S.W.* addresses a similar factual scenario, and there is no way to distinguish between *S.W.* and the present case.

As to M.G., the decision must be affirmed.

Proposed Order

The undersigned has considered all evidence and issues presented, whether or not discussed in this decision.

It is recommended that the decision of the Board of Directors of the AGWSR Community School District in this matter be AFFIRMED as to M.G. and REVERSED as to A.G. and J.G.


No costs.

This proposed decision will be presented to the State Board of Education at its regularly scheduled meeting on September 16, 2021. The State Board will review this proposed decision based on the record made. The parties are able to present arguments during the public comment period on the Board's agenda. The Board's presiding officer may also allow oral argument during the Board's deliberations.

If the Board's presiding officer allows oral argument during the Board's deliberations, oral argument will be at the discretion of the Board's presiding officer, but not to exceed seven minutes, thirty seconds for M.U. and T.A. and the same time for AGWSR.

If either party desires additional proceedings pursuant to the Department's chapter 6, the party may notify the undersigned and this matter will be rescheduled for later State Board consideration.

Done on September 9, 2021.


Thomas A. Mayes
Administrative Law Judge

IOWA DEPARTMENT OF EDUCATION

<i>In re Open Enrollment of A.G., J.G., &</i>)	
<i>M.G.,</i>)	
)	
<i>M.U. & T.A.,</i>)	
)	Admin. Docket No.: 5144
Appellants,)	
)	
vs.)	PROPOSED DECISION
)	
AGWSR Community School District,)	
)	
Appellee.)	

After due consideration by the State Board of Education, the proposed decision in this matter is

 X AFFIRMED.

 OTHER:

This is final agency action in a contested case proceeding.

Any party that disagrees with the Department’s decision may file a petition for judicial review under section 17A.19 of the Iowa Administrative Procedure Act. That provision gives a party who is “aggrieved or adversely affected by agency action” the right to seek judicial review by filing a petition for judicial review in the Iowa District Court for Polk County (home of state government) or in the district court in which the party lives or has its primary office. Any petition for judicial review must be filed within thirty days of this action, or within thirty days of any petition for rehearing being denied or deemed denied.

Dated: 9/16/2021

Iowa State Board of Education, by:



Brooke Axiotis, President

