

**IOWA DEPARTMENT
OF EDUCATION**
(Cite as 24 D.o.E. App. Dec. 107)

In re Kohl R.

Stacy R.,
Appellant,
vs.
Bettendorf Community School District,
Appellee.

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DECISION
[Admin. Doc. 4636]

The above-captioned matter was heard on August 31, 2006, before designated administrative law judge Carol J. Greta, J.D. The Appellant, Stacy R., was present on behalf of herself and her minor son, Kohl. The District was represented by attorney Cameron Davidson. Also present was Bettendorf Superintendent Marty Lucas.

An evidentiary hearing was held pursuant to agency rules found at 281 – Iowa Administrative Code (IAC) chapter 6. Authority and jurisdiction for the appeal are found in Iowa Code §§ 282.18(5) and 290.1 (2005). The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter of the appeal.

Ms. R. seeks reversal of the July 10, 2006 decision of the local board of directors of the Bettendorf District to deny the open enrollment request filed on behalf of Kohl.

**I.
FINDINGS OF FACT**

The Bettendorf District has six elementary attendance centers. During the 2005-06 school year Kohl attended kindergarten at Hoover Elementary School.

On or about June 16, 2006, Jeff R. (Kohl's father and Stacy's spouse) filed an open enrollment application on behalf of Kohl, requesting open enrollment to the Pleasant Valley Community School District. The open enrollment application form actively solicits explanations for missing the March 1 filing deadline by providing ten pre-populated lines of reasons as well as a sizable space for narrative explanation. Mr. R. did not check any of the pre-populated lines, one of which was for pervasive harassment; Mr. R. wrote nothing in the narrative space. In short, the District was provided with no reason as to why the family had missed the March 1 statutory deadline.

The minutes of the July 10 local Board meeting reflect that Ms. R. expressed to the Board that she felt that there was a "negative environment" at Hoover due to "unresolved incidents."

Her testimony at the hearing before the undersigned was that the open enrollment request was prompted by the following events, all of which occurred after March 1:

- a. Kohl began "begging" not to have to go to school, exhibited enuresis and what his mother termed "night terrors."
- b. Kohl had two bruises on his buttocks.

- c. Ms. R. saw Kohl licking the buttocks area of a doll at their residence, and another time heard Kohl tell one of his action figure dolls to "quit being a baby. Just pull down your pants and pee."

Ms. R. also stated that she was not aware of the March 1 deadline for filing an open enrollment application. She expressed frustration with Bettendorf's enforcement of the deadline, stating that where Kohl attends school should be a "family decision." Her testimony began with a statement that Kohl's placement should be a "personal choice," and ended with her complaint that Bettendorf should not have "so much power over where my child goes to school."

Although Ms. R. stated here that Kohl's behavior with the doll and the action figure indicated that something "horrific" happened to Kohl at Hoover, she presented no evidence of the same. She reached her conclusion solely through process of elimination, stating that because Kohl did not attend daycare, because he never slept over at the homes of friends, and because the family's two teenage sons are in college, therefore, school was the logical locus of an incident to Kohl.

Ms. R. did discover that Kohl's bruises were inflicted by two of his classmates. The other boys had pinched Kohl's buttocks, Kohl retaliated, and all were sent to the principal's office for discipline (all lost a recess privilege). Ms. R. does not allege that these classmates further injured or harassed Kohl. She was upset that Kohl was also punished in the same manner as the other two boys.

Ms. R. presented two letters here; one from a chiropractor and one from a clinical psychologist. Neither piece of correspondence was offered to prove that Kohl had been harassed at school.¹ There is nothing in either letter concluding that any traumatic event happened to Kohl, much less that anything occurred to him at school.

Finally, because the family offered no reason on the open enrollment application² and had made no complaints during the school year to put the District on notice that anything was amiss, Bettendorf Superintendent Marty Lucas contacted Pleasant Valley Superintendent Jim Spelhaug to see if the latter knew why the family filed for open enrollment. Superintendent Spelhaug provided the District with a sworn statement (Exhibit D). Superintendent Spelhaug stated in his affidavit that Ms. R. did talk to him about wanting Kohl to attend Pleasant Valley. The pertinent statements in the affidavit are as follows:

To the best of my recollection [Ms. R.] provided me with the following two reasons for requesting the transfer:

- a. The [family] were housing a foreign exchange student during the 2006-07 school year, and
- b. Kohl [R.] was not being academically challenged in the Bettendorf Community School District.

To the best of my recollection [Ms. R.] did not discuss with me any assertions of harassment of her son at school in the Bettendorf Community School District.

Superintendent Spelhaug's statement is consistent with Ms. R.'s submission into evidence before this Board of Kohl's academic progress report, with her statements that he is very gifted in mathematics, and with her complaint that Bettendorf lacked enrichment materials for Kohl in the area of math.

¹Ms. R. used the letters to justify several days' absences of Kohl from Hoover.

² Ms. R. explained the lack of any information from the family on the open enrollment application as the result of a concern for confidentiality.

II. CONCLUSIONS OF LAW

The controlling statute for this appeal is the open enrollment law, Iowa Code section 282.18. By law, open enrollment requests must be filed on or before March 1 of the school year preceding the school year for which open enrollment is requested. Subsection (5) of the law involves applications filed after March 1, seeking open enrollment due to "repeated acts of harassment of the student."

This Board takes very seriously allegations of harassment of students as well as the integrity of the criteria it has developed by which to adjudicate these appeals. We have given relief to students who have alleged harassment in only three cases. In the first such case, *In re Melissa J. Van Bommel*, 14 D.o.E. App. Dec. 281 (1997), the student had experienced harassment by a group of about 20 students that had caused her to seek medical and mental health treatment for a variety of physical ailments, as well as for anorexia, depression, and insomnia. The harassment of Melissa culminated on a highway; the vehicle in which Melissa was riding was twice intentionally forced off the road by other vehicles driven by the other students. 14 D.o.E. App. Dec. at 283. This Board ordered that Melissa be allowed to open enroll out of the district.

The other cases in which relief was granted are *In re Jeremy Brickhouse*, 21 D.o.E. App. Dec. 35 (2002) and *In re John Myers*, 22 D.o.E. App. Dec. 271 (2004). Both students in those cases had been subjected to numerous and specific physical assaults at school. In the *Myers* case, John's schoolbooks and supplies had also been stolen, defaced, or otherwise rendered useless as educational tools.

In each appeal case involving a late-filed open enrollment application in which harassment is the issue, we apply a set of six criteria, which are as follows:

1. The harassment must have happened after March 1, or the extent of the problem must not have been known until after March 1, so the parents could not have filed their applications in a timely manner.
2. The harassment must be beyond typical adolescent cruelty in its severity. Schools are cautioned not to be bound by a strict formula of what constitutes typical adolescent cruelty, as this can depend heavily on the circumstances, the age and maturity level of the students involved, etc. *Usually* such immature behavior as name-calling, taunting, and teasing – when done with no intent to physically harm or scar the other child's psyche – can be viewed as typical adolescent cruelty.
3. The evidence of harassment must be specific.
4. The evidence must show that the harassment is likely to continue.
5. School officials, upon notification of the harassment, must have worked without success to resolve the situation.
6. Finally, there must be reason to think that changing the student's *school district* – and not just the student's attendance center – will alleviate the situation.

Timing. Ms. R. said she was unaware of the March 1 deadline for filing open enrollment. Except for their lack of inquiry into legal enrollment options, Kohl's family could have filed the application in a timely manner.³ Their ignorance of the deadline does not operate as an excuse.

³ The web site for the District contains all pertinent open enrollment information, including the March 1 deadline.

See, e.g., *Lolkus v. Vander Wilt*, 141 N.W.2d 600 (Iowa 1966). But in this case, we cannot ascertain whether the harassment happened after March 1 or could not have been known until after March 1, because of the lack of specificity of details regarding harassment. Therefore, we discuss that and other of the remaining criteria. We do not have to address all criteria because failure to meet even one of the six criteria is fatal to a section 282.18(5) appeal. (Our discussion of multiple criteria is for the purpose of assisting school districts and parents by giving them further interpretation of the criteria, even where some of the criteria are not determinative of the outcome in this case.)

Before moving on to other criteria, we address the annoyance Ms. R. expressed about the existence of a deadline and Bettendorf's enforcement thereof. The March 1 deadline is set in statute by the state legislature. Each school district is expected to enforce the deadline, which was changed two years ago from January 1. Without a reasonable deadline in place, districts would have a difficult task certifying budgets and making personnel and other decisions that are necessarily driven by knowing within a reasonable degree of certainty how many students will populate their attendance centers each school year. Iowa's open enrollment law (called "student choice" or "family choice" in other states) is quite liberal, and the filing deadline imposed is more than reasonable.

Severity, specificity. The evidence here is completely lacking in specifics, other than the buttocks-pinching incident in which the perpetrators were immediately punished. That incident alone does not show the kind of pervasive harassment for which we have granted relief via the open enrollment statute previously. We have nothing additionally except Ms. R.'s testimony about Kohl acting out and her conclusion that something "horrific" happened to Kohl at school. While we do not discount her concern that something happened to Kohl, there simply is no proof of any incident and no proof that anything occurred at his attendance center. With no specific evidence of harassment, we have no way of determining either severity or the likelihood that any harassment would continue at Hoover Elementary School.

Change of District. As in three previous cases⁴, this case involves a resident district with multiple attendance centers. The District here offered to transfer Kohl's enrollment to any of its five other elementary attendance centers. There was no evidence presented as to why Kohl would not feel safe at another school within the District other than Ms. R.'s assertion that she perceives a district-wide lack of respect regarding "academic and social concerns" raised by parents.

The criteria this Board worked diligently to create to protect students who truly have been the victims of repeated acts of harassment have not been met here.

One final point was raised several times by Ms. R., so we shall address that also. She mentioned that District personnel were remiss by not reporting suspicions of abuse of Kohl to the Iowa Department of Human Services (DHS). Ms. R. was referring to Iowa's mandatory reporting law, Iowa Code sections 232.68-77. All school employees who are licensed by the Iowa Board of Educational Examiners are mandatory reporters of child abuse, if, "in the scope of professional practice or in their employment responsibilities, [the licensee] examines, attends, counsels, or treats a child and reasonably believes a child has suffered abuse." Suspected child abuse is reportable to DHS only if the suspected abuser is a parent or other caretaker of the child. Other students are not caretakers of their peers; in addition, our Attorney General has formally stated that caretakers do not include teachers (OAG #79-7-13). To clarify, there is no evidence before us that would indicate that the personnel at Hoover Elementary had any reason to suspect that Kohl was the victim of any type of abuse. Had there been such evidence, however, the

⁴ *In re Amanda Schamerhorn*, 24 D.o.E. App. Dec. 82 (2006); *In re Lauren Hales*, 23 D.o.E. App. Dec. 39 (2004); *In re Mary Oehler*, 22 D.o.E. App. Dec. 46 (2004).

appropriate report would not have been to DHS. Rather, chapter 102 of our agency rules provides the appropriate reporting/investigating vehicle where physical or sexual abuse at the hands of a school employee is reasonably suspected or alleged.⁵

**III.
DECISION**

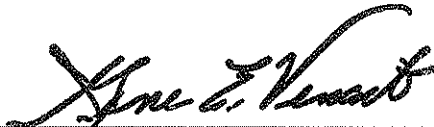
For the foregoing reasons, it is recommended that the decision of the Board of Directors of the Bettendorf Community School District made on July 10, 2006, denying the open enrollment request filed on behalf of Kohl R. be AFFIRMED. There are no costs of this appeal to be assigned.

9/18/06
Date

/s/
Carol J. Greta, J.D.
Administrative Law Judge

It is so ordered.

10/19/06
Date


Gene E. Vincent, President
State Board of Education

⁵ If a district employee suspects that a fellow school employee has physically or sexually abused a student, there is a means to report the same. 281—IAC chapter 102 was adopted as a response to OAG #79-7-13, and requires each school district and accredited nonpublic school to investigate allegations of student abuse by school employees.