

# Iowa State Board of Education

## Executive Summary

January 20, 2022



**Agenda Item:** Appeal # 5152 – Ankeny Community School District (open enrollment)

**State Board Priority:** N/A – Action required by statute

**State Board Role/Authority:** Iowa Code section 290.1 provides the State Board’s authority to decide appeals from school board decisions.

**Presenter(s):** Thomas A. Mayes, General Counsel

**Attachment(s):** One

**Recommendation:** It is recommended that the State Board DISMISS that appeal for lack of jurisdiction.

**Background:** This matter concerns two requests for open enrollment to Ankeny Community School District, filed after the March 1 deadline, which did not claim harassment as the reason or otherwise inform the Ankeny board of claimed harassment. Since these two requests were not based on harassment, the State Board lacks jurisdiction to hear any appeals of their denial.

Even if the State Board had jurisdiction, the requests would fail on the merits, as they did not meet this Board’s standards for harassment.

IOWA DEPARTMENT OF EDUCATION

Cite as \_\_\_ D.o.E. App. Dec. \_\_\_

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*In re Open Enrollment of C.S. & J.S.,* :  
G.S., :  
Appellant, : **PROPOSED DECISION**  
vs. :  
Ankeny Community School District, : [Admin. Doc. #5152]  
Appellee. :

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On December 27, 2021, this matter was heard by video conference before the undersigned. This case concerns the open enrollment application, filed with the Bondurant Community School District on October 21, 2021 (after March 1, 2021, statutory deadline) for C.S. and J.S. to attend the Ankeny Community School District (“District”), which was denied by the District’s board of directors (“School Board”). The Appellant, G.S., appeared without counsel and testified, as did C.S., one of the students at issue. Administrator Jessica Dirks testified on behalf of the District, which was represented by attorney Melissa Schilling. The District’s exhibits were admitted without objection. The Appellant’s Exhibit A was admitted subject to an objection from the District.

The District filed a motion to dismiss, alleging that the State Board had no jurisdiction under Iowa Code section 282.18(5). After considering the record presented

to the School Board and the applicable law, the motion is GRANTED and this case is DISMISSED.

As of July 1, 2021, the Iowa Code vests the State Board with jurisdiction over appeals concerning the denials of late-filed open enrollment applications in three instances: “repeated acts of harassment of the student that the resident district cannot adequately address, a consistent failure of the resident district to reasonably respond to a student’s failure to meet basic academic standards after notice provided by a parent or guardian, or a serious health condition of the student that the resident district cannot adequately address.” Iowa Code § 282.18(5) (2022).

In both students’ applications, G.S. circled “no” in response to the following question: “Is the application being filed due to pervasive harassment or severe health?” G.S. attached the following statement to her applications: “I am requesting a transfer to the Ankeny school district from Bondurant for [C.S. and J.S.], as they wish to become Ankeny Hawks in honor of their late father....<sup>1</sup>” Nothing in C.S.’s submissions to the School Board even hint at the pervasive harassment of C.S. she alleges in this present appeal. The School Board’s decision was not based on “repeated acts of harassment,” because whether such harassment existed was not properly before it. Since the question that gives the State Board jurisdiction was neither asked of nor answered by the School Board, the State Board lacks jurisdiction under section 282.18. *See, e.g., In re Open Enrollment of M.W. & L.W.*, 29 D.o.E. App. Dec. 377 (2021).

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<sup>1</sup> The children’s father died in December 2020.

At the hearing on this matter, G.S. stated her family are “private people” as justification for not providing the School District with information about harassment occurring at the resident district. In certain circumstances, a family has the right to withhold information from a school district; however, the family cannot simultaneously claim the benefits that would have accrued had the information been shared. *See, e.g., Hamburg Cmty. Sch. Dist.*, 26 D.o.E. App. Dec. 189, 191 (2012) (“But a parent cannot withhold information from school officials and then attempt to use that information to justify a late-filed open enrollment application.”).

This is not a situation where the harassment question was answered “no” but other information, when given a liberal reading, would suggest the open enrollment application was grounded on pervasive harassment.<sup>2</sup> *See, e.g., In re Open Enrollment of E.B. & M.B.*, 30 D.o.E. App. Dec. 167, 168-69 (2021). This is not a circumstance where the School Board was “sufficiently apprised” of a claim of pervasive harassment. *Id.* at 169. The School Board decided the matters properly before it, which did not include pervasive harassment.

The motion to dismiss must be sustained. Even if the State Board were to bypass the jurisdictional defects that are fatal to this appeal, the State Board would affirm the denial on the merits.

First, there is no evidence that J.S. is bullied or harassed. G.S. asserts that it is likely J.S. will be bullied in the future; however, a possibility of future bullying and

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<sup>2</sup> The only information before the School Board was a reference to “becoming Ankeny Hawks” to honor their late father.

harassment is not sufficient to justify a late-filed open enrollment request under section 282.18(5). See, e.g., *In re Open Enrollment of A.G., J.G., & M.G.*, 30 D.o.E. App. Dec. 175, 176-77 (2021).

Second, claims concerning C.S. fail under the four-part framework first adopted by the State Board in *In re Hannah T.*, 25 D.o.E. App. Dec. 26, 31 (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<sup>3</sup> 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.

The Appellant has the burden of proving each of these elements true. *Open Enrollment of E.B. & M.B.*, 30 D.o.E. App. Dec. at 169. The Appellant's proof fails as to the first, third, and fourth factors.<sup>4</sup>

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<sup>3</sup> At the hearing, the Appellee seemingly asserted that harassment must be based on a protected trait or characteristic. The Department will not impose this limitation, which is not contained in section 282.18(5).

<sup>4</sup> The undersigned will assume, for sake of this discussion, that the alleged harassment (name calling, social media posts, etc.) meets the second factor.

As to the first factor, there was some evidence in the record (including the affidavit of appeal) that the alleged harassment began after the death of the children's father, well before the March 2021 statutory deadline. As to the third and fourth factors, the Appellant only reported the harassment to Bondurant on December 13, 2021, well after the open enrollment request was filed. C.S. testified that Bondurant has responded to the harassment report, including taking steps to adjust schedules. The undersigned cannot find or conclude, under these facts, that the harassment will likely continue or that a transfer to Ankeny is *necessary* to alleviate the situation.

If the State Board had jurisdiction of this matter, it would affirm the decisions of the Ankeny Community School District's board of directors.

*Proposed Order*

The undersigned has considered all evidence and issues presented, whether or not discussed in this decision. It is recommended that this appeal be DISMISSED.

No costs.

This proposed decision will be presented to the State Board of Education at its regularly scheduled meeting on January 20, 2022. 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 G.S. and the same amount of time for the Ankeny Community School District.

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 January 11, 2022.

/s/ Original Signed  
Thomas A. Mayes  
Administrative Law Judge

IOWA DEPARTMENT OF EDUCATION

<i>In re Open Enrollment of C.S. &amp; J.S.,</i>	)	
	)	
G.S.,	)	
	)	Admin. Docket No.: 5152
Appellant,	)	
	)	
vs.	)	DECISION
	)	
Ankeny Community School District,	)	
	)	
Appellee.	)	

After due consideration by the State Board of Education at its meeting on January 20, 2022, the proposed decision in this matter is

\_\_\_ 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: \_\_\_\_\_

Iowa State Board of Education, by:

Brooke Axiotis, President