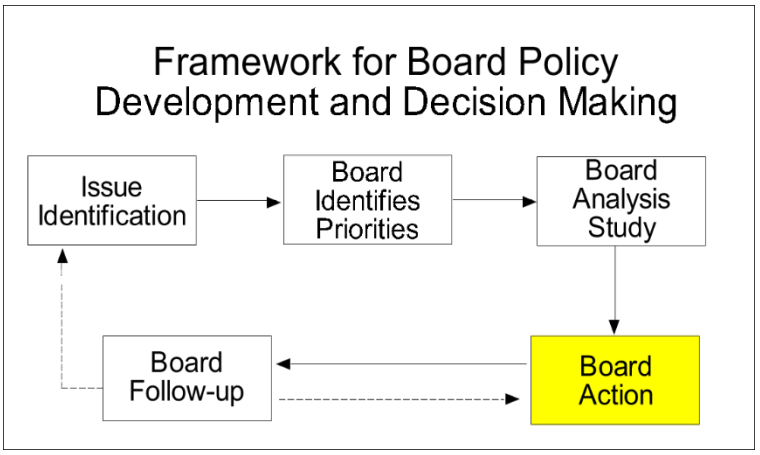
Iowa State Board of Education

Executive Summary

August 16, 2017



Agenda Item: *In re Open Enrollment of K.M. (Riverside Community School District)*

Iowa Goal(s): All PK-12 students will achieve at a high level

State Board Role/Authority: Under Iowa Code section 290.1 the State Board of Education has authority to hear appeals from local school board decisions.

Presenter(s): Jordan Esbrook, Assistant Attorney General

Attachment(s): One

Recommendation: None

Background: At the August 3, 2017, State Board meeting, State Board members did not pass the original recommendation in this decision. Members of the State Board, along with Jordan Esbrook, have modified the attached proposed decision.

At the time of this appeal, K.M. and his parents resided in the Riverside Community School District (RCSD).

Beginning in the 2015-2016 school year when K.M. was in 8th grade, several 9th graders began calling him names and threatened to beat him up. At one point, they threatened to beat him up when he got out of the shower after gym class. After they finally left, K.M. discovered the students put his gym clothes in the toilet. He had to wear

his dirty gym clothes home. This incident was reported to the school, but the outcome was unknown.

During the 2016-2017 school year, the name calling continued. K.M. spoke with his mother several times about it, but nothing was reported to the school. On March 7, 2017, throughout the day, several students were calling K.M. a snitch. They thought he was involved in turning them in for attending a party. After school, K.M. went out to his vehicle and found 'snitch' painted on his windshield. The incident was reported and the student who wrote it apologized to K.M. The student was suspended and others were talked to.

The appellants filed an Application for Open Enrollment on March 12, 2017, alleging pervasive harassment. The Riverside School Board denied the application on March 22, 2017, on the basis that there was lack of good cause, finding that it was not pervasive harassment. They offered to work with K.M. to help him deal with the situation.

In reviewing an open enrollment decision involving a claim of repeated acts of harassment under Iowa Code section 282.18(5), the State Board has set out four criteria that all must be met in order to overturn the decision of the local board. The evidence at the hearing, before the administrative law judge, showed that the extent of the harassment could not have been known before the March 1 deadline. The March 7 incident represented an escalation in the severity of the harassment experienced by K.M. Thus, the appeal satisfies the first part of the criteria. In addition, under the second part of the criteria, K.M. reasonably feared for his safety and for his property. Under the third part of the criteria, the evidence showed that the harassment was likely to continue despite the efforts of school officials. K.M. and Appellants had brought the matter to school officials and the harassment continued. Moreover, the harassment was based upon K.M.'s perceived reporting to school officials. Finally, the evidence showed that changing K.M.'s school would alleviate the situation.

IOWA DEPARTMENT OF EDUCATION
(Cite as ___ D.o.E. App. Dec. ___)

In re Open Enrollment K.M.	)	
	)	
M.M. and M.M.,	)	
	)	PROPOSED DECISION
Appellants,	)	
	)	
v.	)	
	)	
Riverside Community School District,	)	Admin. Doc. No. 5061
	)	
Appellee.	)	

STATEMENT OF THE CASE

The Appellants seek reversal of a March 22, 2017, decision by Riverside Community School District ("District") Board ("Board") denying a late filed open enrollment request on behalf of their minor child K.M. The affidavit of appeal filed by March 31, 2017, attached supporting documents, and the District's supporting documents are included in the record. Authority and jurisdiction for the appeal are found in Iowa Code §§ 282.18(5) and 290.1. The administrative law judge finds that she and the State Board of Education ("State Board") have jurisdiction over the parties and subject matter of the appeal before them.

An in person evidentiary hearing was held in this matter on April 27, 2017, before designated administrative law judge, Nicole M. Proesch, J.D., pursuant to agency rules found at 281 Iowa Administrative Code chapter 6. The Appellants were present with K.M. They were represented by attorney Joe Narmi. Superintendent Tim Mitchell ("Superintendent Mitchell") appeared on behalf of the District and was represented by attorney Kristy Latta. Also present for the District was David Gute, Riverside Junior High and High school Principal ("Principal Gute").

The Appellants and K.M. testified in support of the appeal. Appellants exhibits A-P were admitted into evidence without objection. Superintendent Mitchell and Principal Gute testified for the District and the school district's exhibits 1-8 were admitted into evidence without objection.

FINDINGS OF FACT

The Appellants are lifelong residents of Oakland, Iowa, where they have lived and worked for over thirty years. They reside in the Riverside Community School District ("District") with their children. Three of their four children have already graduated from Riverside High School ("RHS"). The fourth child, K.M., is fifteen years old and currently a freshman at RHS. K.M. is a good student, with good grades, and is active in baseball, basketball, track, football, and soccer. He will be a sophomore in the 2017-2018 school year. The Appellants have been avid supporters of the District and RHS over the years and have volunteered with sports, concessions, and other activities in the District.

Beginning in the 2015-2016 school year when K.M. was in 8th grade, several 9th graders began calling K.M. "fat ass" and "asshole." They also threatened to beat him up if he told anyone about their classroom and locker room discussions about drug and alcohol use. K.M. made it clear that he did not do drugs or alcohol and he would not take part in those activities. On one occasion he told Principal Gute about their threats and Principal Gute talked to the students about it. After this happened several students were waiting for him to get out of the shower after gym class and threatened to beat him up in an area they called the "dungeon" at school. K.M. stayed in the shower until they left. When he finally got out of the shower, the students had taken his clean clothes and put them in the toilet. K.M. put his dirty gym clothes back on and went home. K.M. didn't report this incident to Principal Gute because he did not want something else to happen to him. However, his mom reported this to Mr. Gute anyway. The Appellants were not made aware if anything happened to the students. In February of 2016, K.M. reported several times to his mother that he felt that no one at Riverside liked him and he felt left out. K.M. told his mom he considered harming himself. K.M.'s mom reached out to his teacher for support. The Appellants continued to encourage K.M. to work through issues that came up at school.

During the 2016-2017 school year the same group of 9th graders, now 10th graders, continued to call K.M. names. K.M. spoke with his mother several times about students calling him names and asked to switch to another school. His parents again encouraged him to work through these issues and to be part of the solution. KM's parents reported the continued harassment throughout the year to various school officials, including the school counselor, the at-risk coordinator, coaches, and Principal Gute.

Then, on March 7, 2017, throughout the school day, three students were calling K.M. a "snitch." Apparently, over the weekend there had been a party that several students had attended where drugs and alcohol were present. Someone called the police and they came and broke up the party. These students blamed K.M. for reporting about the party because K.M. has made it clear that he does not use drugs or

alcohol. K.M. contacted his mom and she encouraged him to talk with the school counselor, Principal Gute, or to ignore them.

That afternoon K.M. went to track practice. After practice he went out to his car and found the words "SNITCH" painted on his windshield. Two other students saw the message and one offered to help him clean the message off of his car. K.M. went to the other student's house to clean off of his car and he was able to clean the paint off his car without any issues or any sign of permanent damage.

K.M. called and texted his mom and told her what happened. He was really upset and crying. K.M. testified that he felt threatened and didn't know what to expect next. After they cleaned the paint off, K.M. went to his mom's work.

In the meantime, the football coach, Mr. Rice, sent K.M. a message telling him to cool down and not overreact to the situation. Mr. Rice had already talked to Principal Gute about looking at the cameras to see who did it. Mr. Rice was the only school personnel to reach out to K.M. or the appellants on the day of the incident.

K.M. and his mom went home to get ready for the winter sports banquet at RHS. After they got home the student who painted his car sent K.M. a text apologizing and calling it a stupid thing to do. K.M. reluctantly attended the banquet with his parents. The Appellants thought the school may have called the police by then; however, nothing was said to them at the banquet about the incident with K.M.'s car. Mr. Rice told them that he would talk to the other students about what happened. At the banquet the student who wrote "SNITCH" on K.M.'s car came up to K.M. and told him he was just messing around and apologized to him. K.M. testified he felt that student did this to calm him down so he wouldn't get the student in trouble.

The next morning, March 8, 2017, the Appellants contacted Principal Gute and told him what happened. Principal Gute apologized for not contacting her sooner because he was dealing with a situation in which several other students were tearing up the baseball field. Principal Gute investigated the incident and reviewed video cameras from the school to identify the students who were involved. One of the students involved received an in-school suspension while the others were talked to. Principal Gute testified that this was the first incident that had been reported to him by K.M. that year. Additionally, he testified that he was not made aware of other incidents involving name calling until this incident although he did admit that others in the chain of command at the school were aware of the earlier incidents.

K.M.'s father testified that for K.M., and his family, this incident was "the straw that broke the camel's back." On March 12, 2017, the Appellants filed an application for open enrollment from the District to Treynor Community School District ("Treynor") because they felt this was the best thing for K.M. physically and mentally. Since their

request for open enrollment was after March 1st deadline, the Board needed to approve the request. It was put on the Board's agenda for consideration at the March 20, 2017 board meeting.

On March, 13, 2017, Principal Gute spoke with K.M. about his desire to transfer schools. K.M. indicated that he disliked RHS and had several friends from his baseball team that attended Treynor. K.M. also told Principal Gute that he was still being called a "snitch" by upperclassman. Principal Gute told K.M. he needed to report issues to him so they could be addressed and K.M. responded that he would be reporting issues every day.

On March 14, 2017, Principal Gute spoke with K.M.'s mother about her concerns for K.M. if he remained at RHS. Superintendent Mitchell told the Appellants that the application would likely be denied because it did not meet the good cause exception.

At the March 20, 2017, board meeting, the Appellants presented in an open meeting to the Board. K.M.'s mother read out loud a letter she had written to the Board. She told the Board that K.M. was depressed and seeing a counselor. The Appellants did not share with the Board the extent of his depression. The Appellants and K.M. testified in the hearing that K.M. had talked about harming himself if he had to continue to attend RHS. The Board received a copy of the letter, a photo of the windshield, and the relevant laws. K.M. also addressed the Board about the name calling, the incident with his car, and how he felt. The Board tabled the discussion until March 22, 2017, to discuss it at another meeting.

At the March 22, 2017 meeting, the Appellants provided a letter from K.M.'s counselor to the Board. The letter provided a diagnosis of adjustment disorder, mixed anxiety, and depression. The letter also stated that K.M. could benefit from a transfer in schools. K.M. told the Board that students were now calling him "traitor", "fat ass", and "asshole" for leaving.[1] Superintendent Mitchell recommended that the Board deny the late filed application for lack of good cause to approve. He also told the Appellants that he would work with K.M. to help him deal with the situation. The Board unanimously adopted that recommendation and denied the application. The Appellants filed a timely motion to appeal.

CONCLUSIONS OF LAW

The statutory filing deadline for an application for open enrollment for the upcoming school year is March 1. Iowa Code § 282.18. After the March 1 deadline, a parent or guardian shall send notification to the resident district that good cause exists

[1] K.M. testified that after the Board meeting other students continue to call him names and threw raisins at him in class. However, the Board has not heard this testimony so it was not a consideration for this appeal.

for the failure to meet the deadline. *Id*. The law provides that an open enrollment application filed after the statutory deadline, which is not based on statutorily defined "good cause," must be approved by the boards of directors of both the resident district and the receiving district. *Id*. § 282.18(5).

A decision by the board, denying a late-filed open enrollment application that is based on "repeated acts of harassment that the resident district could not adequately address," is subject to appeal to the State Board under Code section 290.1. *Id*. § 282.18(5).

The State Board applies established criteria when reviewing an open enrollment decision involving a claim of repeated acts of harassment. All of the following criteria must be met for this Board to reverse a local decision and grant such a request:

1. The harassment must have occurred after March 1 or the student or parent demonstrates 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:
   (a) Places the student in reasonable fear of harm to the student's person or property.
   (b) Has a substantially detrimental effect on the student's physical or mental health.
   (c) Has the effect of substantially interfering with a student's academic performance.
   (d) 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.

In re: Open Enrollment of Jill F., 26 D.o.E. App. Dec. 177, 180 (2012); *In re: Hannah T.,* 25 D.o.E. 26, 31 (2007) (emphasis added).

1. The evidence demonstrated that the extent of the harassment of KM could not have been known before March 1.

The Board finds that the extent of the harassment could not have been known before March 1. The evidence shows that the harassment began during the 2015-2016 school year. K.M. testified that there was one incident during that year when these

students took his clothes and threw them in the toilet, damaging his property. During the 2016-2017 school year, this harassing behavior continued and students continued to call K.M. names.

On March 7 the harassment suffered by K.M. rose to a new level. Students called K.M. a "snitch" in the hallways of Riverside Community High School, and sometime during the school day, a student or students vandalized K.M.'s vehicle by writing "SNITCH" in large letters, covering the windshield. The District discounts the vandalism of K.M.'s car on March 7 by characterizing it as mere name-calling. The Board disagrees. The district's position ignores the fact that the word "snitch" was written on K.M.'s property, not spoken. We think that the physical act of writing "snitch" on K.M.'s car was harassment of a more severe character than name calling. The harassing student or students communicated to K.M. that they knew which car was his, that they could damage his property, and that they intended to escalate their harassment.

The Board also disagrees with the District's definition of the word snitch as a childish word merely meaning "tattletale." The word "snitch" has entered popular usage from prison culture and high-crime neighborhoods, through hip-hop music and culture. It means a person who disregards community codes of silence and reports crime or misconduct to authority. Jamie Masten, Ain't No Snitches Ridin' Wit Us: How Deception in the Fourth Amendment Triggered the Stop Snitching Movement, 70 Ohio St. L.J. 705 (2009). "Ordinary people who break the code face social ostracism, retribution, and (according to the rap lyrics) physical violence." Id. at 711. K.M.'s parents were aware of this connotation, when they testified that the word "snitch" came from "rap music." People considered "snitches" by their community have been physically harmed, including the case of a fifteen year old boy in Florida who was doused in rubbing alcohol and set on fire after assailants yelled, "He's a snitch, he's a snitch." See CNN, "Police: Juveniles Laughed After Setting 15-year-old on fire," October 14, 2009, available at http://www.cnn.com/2009/CRIME/10/13/florida.teen.burned/index.html. A reasonable person in KM's position would consider this word to be a threat of continued harassment and possibly violence.

2. The harassment was written and physical acts toward the student which created an objectively hostile school environment that placed KM in reasonable fear of harm to his person and property, had a substantially detrimental effect on the student's mental health, and had the effect of substantially interfering with the student's ability to benefit from the services, activities, or privileges provided by the school.

Under the second criterion, the requirement of an objectively hostile school environment means that the conduct complained of would have negatively affected a reasonable student in K.M.'s position. Therefore, the Board must determine if the behavior of these students created an objectively hostile school environment that placed K.M. in reasonable fear of harm to his person or property, or had a substantially detrimental effect on his physical or mental health, or substantially interfered with his academic performance, or substantially interfered with his ability to participate in or benefit from the services, activities, or privileges provided by the school.

Generally, name-calling alone would not rise to the level of harassment required here. What is more concerning is the incident involving damage to K.M.'s property in a very public manner which caused him to fear for his safety and harmed his mental health. We have no doubt that K.M. feared harm to himself or his property and that this had an impact on his mental health, and that a reasonable person in K.M.'s position would have feared for himself and his property. While there is no hard and fast rule on what it means to be objectively hostile, we do think the threat written on KM's car, combined with the other harassment, when viewed objectively, created a hostile environment for K.M.

3. The evidence showed that the harassment is likely to continue despite the efforts of Riverside school officials to resolve the situation.

The evidence shows that the harassment is likely to continue despite the efforts of the school officials to resolve the situation. First, the Board notes that the harassment began during the 2015-2016 school year, and despite some efforts of school officials at that time, the harassment continued into the 2016-2017 school year.

Second, K.M.'s parents testified that they contacted many school officials during the 2016-2017 school year: Mrs. Hensley, the At-Risk Coordinator; Mr. Gute, the principal; Dr. Mitchell, the superintendent; athletic coaches; Mr. Conover, the guidance counselor. The harassment continued despite these efforts to engage school officials. The evidence on this point was conflicting. Mr. Gute testified that the parents had not contacted him to discuss bullying or harassment during the 2016-2017, although they had contacted him to discuss drug use in the schools. According to K.M. and his parents, the harassment is related to K.M.'s refusal to use drugs and perceived reporting of other students' drug use. Given the parents' testimony, and Mr. Gute's admission that the parents contacted him to discuss drug use in the schools, the Board believes that K.M.'s parents did contact school officials during the 2016-2017 school year to discuss the harassment of K.M. Even if they had not done so, however, the remainder of the evidence supports the conclusion that the harassment was likely to continue.

Third, on March 7, a coach contacted K.M., and told him to calm down and not to overreact to the situation. This response on the part of a school official is ineffective and disappointing. It served to again blame K.M. for activities and for any future punishment that may come to students involved in the harassment.

Fourth, K.M. and his parents testified at the hearing before the Department of Education that the harassment continued after the March 22 school board meeting. K.M. was called a "Treynor traitor" and an "asshole" for asking to leave the district. Mr. Gute's "contact log" with KM also states that harassment continued after March 22. Ex. 7.

Finally, the use of the word "snitch" indicates that K.M. has been targeted for harassment and will continue to be targeted because of his perceived cooperation with school authorities and police. That being the case, it seems likely that any further efforts by school officials would be likely to exacerbate, not alleviate, the harassment KM experiences.

4. Changing K.M.'s school district will alleviate the situation.

Under the fourth criterion, the appellant must also show that changing the student's school district will alleviate the situation. K.M. and his parents testified that changing schools would alleviate the situation. K.M. has friends that he made through participating in athletics that attend school in Treynor. In addition, K.M.'s counselor specifically stated that a change in school districts would be beneficial to K.M.

Open enrollment appeals of this type are about protecting children when school environments become openly hostile and the child's mental health is detrimentally affected. In this situation K.M.'s open enrollment transfer to Treynor should be approved as the events of March 7 could not have been known by K.M. or his parents prior to March 1; .the harassment was very public, written name calling that had a substantially detrimental effect on K.M.'s mental health; and it is likely the harassment will continue as the same students had harassed K.M. in the past. School efforts not only did not protect K.M., but actions by the football coach on the date of the incident and the lack of action by other school personnel on the same date served to belittle K.M.'s concern with and reaction to the public, written name calling and also reinforced the importance of the students harassing K.M.

Our review focus is on the local school board decision. The issue for review here, as in all other appeals brought to us under Iowa Code section 282.18(5), is limited to whether the local school board made error of law in denying the late-filed open enrollment request. We have concluded that the Board incorrectly applied Iowa Code section 282.18(5) when it denied the late open enrollment application filed on behalf of K.M. Therefore, we reverse the local board decision.

DECISION

For the foregoing reasons, the decision of the Board made on March 22, 2017, denying the open enrollment application of the Appellants on behalf of K.M. is hereby REVERSED. There are no costs of this appeal to be assigned.

_____ _____

Date

Charles C. Edwards Jr., Board President
State Board of Education

BEFORE THE STATE BOARD OF THE
IOWA DEPARTMENT OF EDUCATION

M.M. and M.M., Appellants, v. RIVERSIDE COMMUNITY SCHOOL DISTRICT, Appellee.	Admin. Doc. No. #5061 **APPLICATION FOR REHEARING/ MOTION FOR RECONSIDERATION OF STATE BOARD ACTION**

COMES NOW Appellee Riverside Community School District (the "School District"), pursuant to 281 Iowa Administrative Code Section 6.20 and Iowa Rule of Civil Procedure 1.904, and submits this application for rehearing and motion for reconsideration of the action taken by the State Board of the Iowa Department of Education ("State Board") on August 3, 2017, in the above-referenced case. Rehearing/reconsideration is necessary to correct mistakes of law or fact. 281 Iowa Admin. Code § 6.20; Iowa R. Civ. P. 1.904.

I. THE STATE BOARD'S ACTIONS

The administrative law judge for the State Board rendered the proposed decision in this matter on June 2, 2017, following an in-person evidentiary hearing on April 27, 2017. The proposed decision affirmed the School District. The State Board reviewed the proposed decision at its meeting on August 3, 2017.

In discussing the decision during open session, the State Board made various comments. A State Board member speculated that one of the Appellants' alleged harassers "must have been a football player" and remarked that the School District was "whining" about not getting an opportunity to correct harassment at the local level. Another State Board member expressed disdain that the School District did not share with the Appellants the discipline imposed on the

alleged harassers, even though federal law renders such information confidential, and opined how he subjectively would have "lost confidence" in the School District. Yet another State Board member asked, hypothetically, whether there would be an exception to the open enrollment law "if a student was raped." And, another State Board member declared that they should vote with "heart" despite what the law may be.

The State Board then acted to reject the proposed decision of the administrative law judge, without any appeal of the proposed decision by the Appellants or other urging from any party to the case. The State Board also appointed and directed a subcommittee – comprised of an Iowa Assistant Attorney General and two members of the State Board admittedly "passionate about this issue" – to make changes to the decision which would reverse the School District. The State Board planned a meeting to be held by telephone at some undetermined time in the coming weeks, so they can hurriedly vote on the changed decision in order to finalize it before the Appellants begin the next school year.

II. THE STATE BOARD ERRED PROCEDURALLY

The State Board's actions constitute fundamental legal errors in the procedural respects described below.

A. <u>The State Board failed to afford the School District the same due process protections it gave to the Appellants.</u>

The State Board's own administrative rules state, "Any *adversely affected party* may appeal a proposed decision to the state board within 20 days after issuance of the proposed decision." The notice of appeal must set forth "the *specific findings or conclusions to which exception is taken* and any other exceptions to the decision," "*the relief sought*," and "*the grounds for relief*." (Emphasis added.) The parties may then file

responsive briefs and request oral argument before the State Board. 281 Iowa Admin. Code § 6.17(4)-(6).

The clear import of these rules is that any party that is adversely affected by a proposed decision of the State Board may choose to appeal and be given basic due process, in the form of notice of the decision and an opportunity to be heard. Indeed, the entire premise of judicial review, whether by an administrative body like the State Board or a forum like the Iowa Supreme Court, hinges on this concept. **Here, the Appellants did not file any appeal of the proposed decision. Yet, the State Board members took it upon themselves to do the Appellants' job for them – all without any notice to the School District or any opportunity for the School District to be heard.**

B. Some of the State Board members were not impartial decision makers.

Another basic element of due process missing in this case is an impartial tribunal to arrive at a decision. The requirement for neutrality is to avoid decisions being made "on the basis of an erroneous or distorted conception of the facts or the law" and to "preserve[] both the appearance and reality of fairness." *Marshall v. Jerrico*, 446 U.S. 238 (1980).

In discussing the decision during open session, numerous State Board members made speculative and unsubstantiated comments as described above. **Some of these comments – particularly the remark likening this case of name-calling to a case of rape – were prejudicial. It was apparent these State Board members were predisposed against the School District and inclined to change the outcome of the case.** But none of the State Board members attended any part of the hearing or received

any evidence, and thus are not in a position to raise new issues, make credibility determinations, and adjudge other findings of fact to suit their preferred result.

C. The State Board acted arbitrarily and capriciously when it rejected the proposed decision rendered by its own administrative law judge.

The State Board's administrative rules state, "The board may affirm, modify, or vacate the decision, or may direct a rehearing before the director or the director's designee." 281 Iowa Admin. Code § 6.17(7). The State Board took none of the actions authorized by the rules. There was a vote to affirm the decision, but this failed. There was no vote to modify or vacate the decision, nor any direction for a rehearing.

Instead, the State Board created a subcommittee, consisting of individual State Board members and an Assistant Attorney General, to make changes to the decision which would reverse the School District and arrive at the outcome they want. **None of these persons attended any part of the hearing or received any evidence, and thus they are not in a position to make credibility determinations and adjudge other findings of fact to suit their preferred result. There is no legal authority whatsoever – in the administrative rules or otherwise – for the State Board to arrive at a legally binding decision in such a haphazard manner.**

D. The State Board's plan for a telephonic meeting to finalize the decision is not appropriate.

The Iowa Open Meetings Law provides that a governmental body may depart from the normal requirements for noticing and holding meetings only in instances of "good cause" justifying such departures. Iowa Code § 21.4(2)(b). The law further provides that a governmental body may conduct a meeting by electronic means "only in

circumstances where such a meeting in person is impossible or impractical." Iowa Code § 22.8. Such circumstances are not present in this case.

The reason articulated by the State Board for the need for a telephonic meeting, rather than waiting for the next regular in-person meeting on September 14, 2017, is the wish of the State Board members to have the case finalized before the Appellants begin the next school year. However, the timing of when the Appellants will begin school is totally irrelevant to the outcome of this appeal, and undermines the substantive issues of the case. **Moreover, the notion that a quicker timeline for approval is for the benefit of the Appellants was not even urged by the Appellants – rather, it is a totally bald and conclusory concoction of the State Board members.** Final approval of the decision can, and should, be reasonably deferred to a later meeting. *KCOB/KLVN, Inc. v. Jasper County Bd. of Sup'rs*, 473 N.W.2d 171 (Iowa 1991).

III. THE STATE BOARD ERRED SUBSTANTIVELY

The State Board's actions constitute fundamental legal errors in the substantive respects described below.

A. The State Board misconstrued the law applicable to the open enrollment exception at issue.

There is an exception to the March 1 deadline for open enrollment applications that allows late-filed applications for open enrollment due to "*repeated* acts of harassment of the student." Iowa Code § 282.18(5) (emphasis added). **However, the record in this case is crystal clear that the March 7 incident alleged by the family was the only report of harassment that the School District received from the**

Appellants during the school year, and thus was not "repeated" for purposes of this exception.

The State Board may not alter the statutory requirements for the exception to apply, just as it may not pick and choose which other statutory requirements it wants to enforce. The State Board does not have any legal authority to waive or allow variances from statutory requirements. 281 Iowa Admin. Code § 4.3.

The State Board seems to want to reverse the School District in order to support the Appellants' right to choose a different school to attend. However, the question here is not whether the Appellants can go elsewhere. Instead, the question is whether they can go via open enrollment and require the School District to pay for such attendance. *In re Hannah T.*, 25 D.o.E. App. Dec. 26 (2007).

B. The State Board failed to apply its own legal framework for analyzing late-filed open enrollment applications based upon allegations of harassment.

The State Board ignored its own criteria requiring that the Appellants show why their open enrollment application could not have been timely filed, i.e., on or before March 1. *In re Hannah T.*, 25 D.o.E. App. Dec. 26 (2007). The record is replete with statements from the Appellants that they knew the alleged harassment had occurred the previous school year. Moreover, the crux of the alleged harassment was name-calling by other students, which the State Board has said does not rise to the level of harassment under the open enrollment law. *Id.*

The State Board also ignored its criteria requiring that the Appellants show that school officials have worked without success to resolve the situation, such that the harassment is likely to continue. *Id.* It is undisputed that the Appellants did not make

any report of harassment to the School District during the school year. The School District has not been given a reasonable opportunity to work to alleviate the situation.

It is obvious that some members of the State Board do not like the existing legal framework. However, this framework is of their own creation and is binding legal precedent for Iowa schools. The School District did not make the open enrollment rules, but it is required to follow them.

C. The State Board is not a super school board.

It is a longstanding principle that the State Board does not act as a "super school board," substituting its own judgment for that of the local school board. *Cf. In re Jerry Eaton*, 7 D.o.E. App. Dec. 137 (1987). Only in a very limited number of cases, and under extreme facts, has the State Board reversed a local school board in this area. See, e.g., *In re Melissa J. Van Bem*mel, 14 D.o.E. App. Dec. 281 (1997) (granting open enrollment to student who experienced harassment by twenty students, culminating with a vehicle in which the student was riding being intentionally forced off the road); *In re Jeremy Brickhouse*, 21 D.o.E. App. Dec. 35 (2002) (granting open enrollment to student who was subjected to numerous and specific physical assaults); *In re John Myers*, 22 D.o.E. App. Dec. 271 (2004) (granting open enrollment to student who was frequently physically assaulted and had his books and supplies taken at school). The Appellants' situation sits in stark contrast to these cases.

It is difficult to envision a more obvious case of the State Board acting as a super school board and substituting its judgment, than in the instant appeal. Without ever holding an evidentiary hearing, the State Board members proceeded to speculate, criticize, and hypothesize as to what transpired at the local level. In

doing so, the State Board failed to appreciate the critical distinction between the State Board and local boards.

IV. CONCLUSION

In light of the foregoing, the action taken by the State Board in this case constitutes grounds for reversal by the Polk County District Court upon a petition for judicial review. *See* Iowa Code § 17A.19(10). Therefore, it is now necessary to correct the mistakes of law or fact.

Accordingly, the School District respectfully requests rehearing of the action taken by the State Board, pursuant to 281 Iowa Administrative Code Section 6.20(1). In the event rehearing is granted, the School District requests the proposed decision of the administrative law judge be affirmed, pursuant to 281 Iowa Administrative Code Section 6.20(2).

Additionally, the School District respectfully requests enlargement and/or amendment of the factual findings and legal conclusions made by the State Board on all issues raised in taking its action, and modification and/or substitution of the action in accordance therewith, pursuant to Iowa Court Rule 1.904(2).

/s/ Kristy M. Latta

Kristy M. Latta (AT0004519)
AHLERS & COONEY, P.C.
100 Court Avenue, Suite 600
Des Moines, Iowa 50309-2231
Telephone: 515/243-7611
Facsimile: 515/243-2149
E-mail: klatta@ahlerslaw.com
ATTORNEY FOR APPELLEE

Original filed.
Copy to:
Joe Narmi
Narmi Law
535 West Broadway, Suite 202
Council Bluffs, IA 51503
ATTORNEY FOR APPELLANTS

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings, on August 8, 2017

By X **U.S. Mail** ☐ **Fax**
☐ **Hand Delivery** ☐ **Overnight Carrier**
☐ **Electronically through CM-ECF** ☐ **E-mail**
☐ **Electronically through Efile**

Signature */s/ Anne Stokely*