

IOWA DEPARTMENT OF EDUCATION
(Cite as 27 D.o.E. App. Dec. 571)

<i>In re: Open Enrollment of C.N.,</i>)	
)	
Lisa N.,)	
)	DECISION
Appellant,)	
)	
v.)	
)	
Charles City Community School District,)	Admin. Doc. No. 4796
)	
Appellee.)	

<i>In re: Open Enrollment of C.N.,</i>)	
)	
Lisa N.,)	
)	DECISION
Appellant,)	
)	
v.)	
)	
Clayton Ridge Community School District,)	Admin. Doc. No. 4799
)	
Appellee.)	

STATEMENT OF THE CASE

The Appellant, Lisa N. (“Lisa”), seeks reversal of an September 2, 2014 decision by the Charles City Community School District (“Charles City”) School Board (“Charles City Board”) to deny a late filed open enrollment request on behalf of her minor daughter, C.N., to open enroll from Charles City to Clayton Ridge Community School District (“Clayton Ridge”) and the September 11, 2014, decision by the Clayton Ridge School Board (“Clayton Ridge Board”) to deny a late filed open enrollment request. The affidavits of appeal filed by Lisa on October 2, 2014, and October 9, 2014, attached supporting documents, and the school 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 (2013). 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 December 8, 2014, before designated administrative law judge, Nicole M. Proesch, J.D. pursuant to agency rules found at 281 Iowa Administrative Code chapter 6. Lisa, Jay N., and C.N. were present and represented by Attorney Judith O'Donohoe. Charles City was represented by Attorney Miriam Van Heukelem. Superintendent Daniel Cox ("Superintendent Cox") appeared on behalf of Charles City. Also present for Charles City was Jason Walker and Scott Dight of the Charles City Board. Clayton Ridge was represented by Attorney Bret Nitzschke. Superintendent Allan Nelson ("Superintendent Nelson") appeared on behalf of Clayton Ridge.

Lisa and C.N. testified in support of the appeal. Appellant's exhibits B-E were admitted into evidence without objection. Exhibits A and F-L were objected to and a determination of admissibility was reserved. Exhibit A¹ was ruled inadmissible at the hearing. After further review of exhibits F-L the undersigned finds that Exhibit F² was not available to the board at the time of the board decision and thus is not admissible. The undersigned further finds that Exhibits G-L³ are relevant to the proceedings and were available to the board at the time of the decision because the district had access to these exhibits, although not directly provided to the board by Superintendent Cox. Thus, G-L are admissible. Superintendent Cox, Mr. Walker, and Mr. Dight testified for Charles City and Appellee's exhibits 1-3 were admitted into evidence without objection. Superintendent Nelson testified for Clayton Ridge and offered no additional exhibits.

FINDINGS OF FACT

Lisa and her daughter C.N. reside in Charles City. C.N. was in the 9th grade for the 2013-2014 school year and attended Charles City High School ("CHS"). C.N. turned sixteen in November of this year and is not currently enrolled in school pending the outcome of this appeal. March 1st is the statutory deadline for filing open enrollment for the following school year. On July 26, 2014, Lisa filed an application with Charles City requesting approval for C.N. to open enroll to the Clayton Ridge Community School District ("Clayton Ridge") for the 2014-2015 school year. Lisa and C.N. wanted to enroll in the Iowa Virtual Academy ("IAVA"), which is an online program offered by Clayton Ridge. The sole issue presented is whether Charles City and Clayton Ridge erred by denying the late filed application for C.N. to open enroll out of Charles City. The record established the following facts and circumstances leading up to the application.

Prior to the 2013-2014 school year, C.N. attended the Dike New-Hartford Community School District. For the 2013-2014 school year, C.N. attended CHS. At the time Lisa registered C.N., she provided information that C.N. was suffering from depression⁴ and polycystic ovarian

¹ Exhibit A was medical records that were printed on October 7, 2014. There was no evidence that medical records had been printed prior to this date and there was no evidence that these records were made available to the district or the board at or before the board meeting.

² Exhibit F is a Charles City Police Report Regarding the incident with C.N. on the bus.

³ Exhibits G - L all relate to truancy proceedings that C.N. was involved in prior to the open enrollment application being filed. The school initiated the truancy proceedings and were parties directly involved in those proceedings.

⁴ During the summer of 2013 C.N. was hospitalized for her depression. Upon her release she was recommended to attend counseling and continue medications.

syndrome (“PCOS”). C.N. has a treating physician and is on several medications for these conditions. Lisa discussed these conditions with Nancy Heiter, the principal (“Principal Heiter”), and Diane Niezwaag, the school nurse (“Mrs. Niezwaag”). C.N. was also having issues with two students who Lisa and C.N. believe harassed C.N.

C.N. had several issues with Student A, who she had gone to the prom with as a friend. After prom Student A would hang around her in the lunch room and would not leave her alone when she asked. C.N. described Student A’s behavior as annoying. Lisa called Principal Heiter and Pat Rottinghaus, the school counselor (“Mrs. Rottinghaus”), to report that Student A was harassing C.N. After Lisa reported this, Student A continued to drive by their house every day after school. Student A also tried to communicate with C.N. on Facebook. Lisa was concerned that Student A was potentially violent⁵ and would hurt C.N. Lisa told the school and they advised her they would talk to him. No further complaints were made to the school about Student A and Student A graduated from CHS in May of 2014.

On April 28, 2014, there was an incident on the school bus with another student, also one of C.N.’s friends. C.N. went to sit by Student B on the bus and Student B pushed C.N. away and C.N. fell to the floor. After this incident C.N. was embarrassed and humiliated and did not want to go to school anymore. During this time C.N. became more depressed and it was difficult to get her out of bed. Principal Heiter and Mrs. Rottinghaus visited with Lisa several times about getting C.N. to go to school. They offered to come to Lisa’s house to attempt to get C.N. to go to school. Rae Lynn Chase, the district’s truancy officer (“Mrs. Chase”), and Mrs. Niezwaag came to their residence several times attempting to get C.N. to attend school. During one incident the Charles City Police Department came to the house and tried to get C.N. to go to school. C.N. continued to get counseling during this time for her depression but there was no improvement.

On May 12, 2014, C.N. was notified that she had been referred to the Floyd County Attorney’s Office for criminal truancy proceedings. The parties⁶ attempted truancy mediation on May 22, 2014. Lisa and the school discussed alternative options such as attending the Carrie Lane Alternative High School; however, Lisa was advised that C.N. wasn’t old enough to attend. No one talked to Lisa about an online program available at Charles City. Instead the district insisted C.N. had to attend the brick-and-mortar school. As part of Truancy Mediation Agreement C.N. agreed to obtain a mental health evaluation, attend summer school from June 9th through June 27th, and attend subsequent mediations. Lisa was supposed to receive information about summer school in the mail and she never did. Lisa and C.N. continued to have truancy mediation meetings on June 30th, one in July, and one in August, until Assistant County Attorney withdrew the truancy action while the open enrollment issues were pending.

⁵ There was no evidence or testimony to support that the student was violent or that the student threatened C.N. in any way.

⁶ The parties involved in the truancy proceedings included C.N., Lisa, Jay, Mrs. Chase, Mrs. Niezwaag, Principal Heiter, and Todd Prichard, the assistant county attorney (ACA Prichard). After Principal Heiter left Principal Johnson and AP Wolfe were involved.

At the mediation in July 2014, Larry Wolfe, the assistant principal (“AP Wolfe”), and Josh Johnson, the new high school principal (“Principal Johnson”) attended and encouraged Lisa and C.N. to apply to the Iowa Connections Academy (“ICA”) at CAM Community School District (“CAM”). Lisa testified that they thought the online school would be a good idea for C.N. because of her testing out. Lisa also testified that Assistant Principal Wolfe wrote a letter to help her get in to the online school. Lisa purchased a laptop and internet connection so C.N. could attend. Neither AP Wolfe, nor Principal Johnson provided her any information about an online program at Charles City.

On July 23, 2014, AP Wolfe wrote a memorandum⁷ regarding discussions he had with ICA about C.N. enrolling in ICA. His memo indicated that he dropped off enrollment papers for the Iowa Connections Academy to Lisa and C.N. at their residence that morning. He also called ICA, which indicated it had not received paperwork from Lisa. AP Wolfe communicated this to ACA Prichard. However, Lisa applied instead to Clayton Ridge’s online academy called the Iowa Virtual Academy (“IAVA”), which is another online school.

On July 26, 2014, Lisa filed her application for open enrollment from Charles City to Clayton Ridge. In her application, Lisa stated “[C.N.] was bullied, but more importantly has health issues that interfere with her attendance, PCOS, and depression.” AP Wolfe helped Lisa fax the open enrollment application to Clayton Ridge on August 20, 2014.

On August 22, 2014, Lisa received a letter from Superintendent Nelson advising that he will recommend to the Clayton Ridge Board to deny her application for open enrollment at the September board meeting. The letter indicated that since her application was filed under the good cause exception it is the decision of the resident district to accept the late filed application. Should the resident district approve her application then Clayton Ridge could reconsider their decision to deny the application. Superintendent Nelson never spoke with Charles City to determine what they had done with the application. Lisa was never invited to attend a board meeting.

On August 25, 2014, Superintendent Cox sent a letter to Lisa notifying her that he would be recommending to the Charles City Board that they deny her open enrollment request because it was received after the March 1 deadline. The letter indicated that Superintendent Cox had directed AP Wolfe to share information with Lisa about enrolling C.N. in online classes at Charles City. Finally, the letter indicated that since Lisa claimed pervasive harassment on the application she is entitled to a hearing before the board to try to prove that C.N. has been repeatedly harassed if requested. Upon receipt of the letter Lisa went to Superintendent Cox’s office to discuss his recommendation. Superintendent Cox testified that Lisa demanded that he sign the application. He advised her he was not going to recommend the board approve it and asked her to leave his office or he would call the police.

On August 27, 2014, Superintendent Cox sent another letter to Lisa notifying her that a hearing was set before the board on September 2, 2014. In the letter Superintendent Cox outlined what Lisa would need to prove to the board to show that C.N. had been a victim of

⁷ See Exhibit J.

pervasive harassment. The letter did not address Lisa's claims regarding attendance or a serious medical condition.

At the hearing before the Charles City Board on September 2, 2014, Lisa was provided a limited opportunity⁸ to offer additional evidence or testimony to the board regarding pervasive harassment. Lisa tried to bring up the medical issues but the Board focused their attention on the harassment issue. She asked the board to approve her application. There was some testimony regarding the incident on the bus. Superintendent Cox concluded this incident did not constitute harassment and recommended that the board deny the application. The board did not address C.N.'s serious health condition or the attendance issues that were alleged in the application. After hearing from Lisa the board voted to deny the application for two reasons: 1) due to lack of evidence of pervasive harassment and 2) because Charles City offers online programming similar to IAVA that could meet C.N.'s needs.

On September 11, 2014, the Clayton Ridge Board received a recommendation from Superintendent Nelson to deny Lisa's open enrollment application filed on behalf of C.N. for the reasons provided in the August 22, 2014 letter and the board voted to deny the application.

CONCLUSIONS OF LAW

The Iowa Legislature has given the State Board wide latitude in reviewing appeals under Iowa Code section 290.1 to make decisions that are "just and equitable." Iowa Code § 290.3 (2013). The standard of review in these cases requires that the State Board affirm the decision of the local board unless the local board decision is "unreasonable and contrary to the best interest of education." *In re Jesse Bachman*, 13 D.o.E. App. Dec. 363 (1996).

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 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 *either* board denying a late-filed open enrollment application that is based on an allegation of pervasive harassment or a serious health condition of the student that the resident district cannot adequately address is subject to appeal to the State Board under Code section 290.1. *Id.* § 282.18(5) (emphasis added). The State Board "shall exercise broad discretion to achieve just and equitable results that are in the best interest of the affected child or children." *Id.*

⁸ Lisa argues that the board did not give her a chance to speak or offer additional evidence. The district argues that Lisa was hostile at the hearing, interrupted the board members, and failed to offer additional evidence. Superintendent Cox testified that the entire hearing lasted only eleven minutes.

1. Conclusions Specific to Charles City

In this case Lisa has asserted that C.N. has both been a victim of pervasive harassment and has a serious health condition. For the reasons explained herein we will focus our analysis on the latter issue.

When construing the Board's authority for granting open enrollment requests due to allegations of repeated harassment, the Board has set criteria for review that include all of the following:

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. at p. 31 (2007).

The allegations raised in this case do not fit the criteria outlined here. Although the alleged harassment occurred after March 1st, the incidents of harassment are not objectively hostile as required under the statute. First, the incident on the school bus with Student B was a minor, isolated event and there were no further issues reported with this student. Second, being annoyed with Student A without more would not fit the definition of harassment either. C.N. did not fear harm to herself or her property as a result of her

interactions with either Student A or Student B. Finally, under the third criterion given that there have been no further incidents reported with either student and Student A is no longer a student at CHS, one cannot say that the alleged harassment is likely to continue. Thus, the record presented does not support a finding for open enrollment on that ground.

However, the allegations that C.N. has a serious health condition that was not adequately addressed by the district are an entirely different matter. It is well settled that an appellant seeking to overturn a local board's decision involving a claim of a serious medical condition must meet all of the following criteria for this Board to reverse the decision and grant such a request:

1. The serious health condition of the child is one that has been diagnosed as such by a licensed physician, osteopathic physician, doctor of chiropractic, licensed physician assistant, or advanced registered nurse practitioner, and this diagnosis has been provided to the school district.
2. The child's serious health condition is not of a short-term or temporary nature.
3. The district has been provided with the specifics of the child's health needs caused by the serious health condition. From this, the district knows or should know what specific steps its staff can take to meet the health needs of the child.
4. School officials, upon notification of the serious health condition and the steps it could take to meet the child's needs, must have failed to implement the steps or, despite the district's best efforts, its implementation of the steps was unsuccessful.
5. A reasonable person could not have known before March 1 that the district could not or would not adequately address the child's health needs.
6. It can be reasonably anticipated that a change in the child's school district will improve the situation.

In re Anna C., 24 D.o.E. App. Dec. 5 (2006); *see also In re Kathryn K.*, 26 D.o.E. App. Dec. 197, 199-200 (2012) and *In re Samantha H.*, 26 D.o.E. App. Dec. 373 (2013).

We believe C.N. has met this standard in this case. C.N. has been diagnosed with both depression and PCOS. The State Board has found that depression is a serious medical condition in at least one prior case. *In re Samantha H.*, 26 D.o.E. App. Dec. at 376. The record does not reflect that C.N.'s health conditions are temporary in any way. Thus, criterion one and two are met.

At the outset of enrolling with the district in August 2013, Lisa made the district aware of C.N.'s diagnosis. In fact, the record is clear that Charles City observed behaviors consistent with depression and attempted to respond. C.N. had a history of non-attendance with the district due to her medical issues and depression. As a result the district made several attempts to get C.N. to attend school which included home visits and on one occasion sending law enforcement to her

house. The district's attempts to get C.N. to attend school were unsuccessful. Furthermore, rather than look at the root of her attendance issues so they could take specific steps to meet C.N.'s health needs, the district referred C.N. to the Floyd County Attorney's Office for criminal truancy prosecution.⁹ We note that the school nurse was a participant in the truancy mediation process and this informs our conclusion that the district's response of offering open enrollment to an online school was a concession that open enrollment was necessary for C.N. Never once during this time did the district offer online classes with the district to C.N. as an alternative option given her circumstances.¹⁰

From May 22, 2014, until the time of her filing of her application for open enrollment C.N. was involved in several truancy mediation proceedings. At one of the mediations in July both Principal Johnson and AP Wolfe encouraged Lisa to apply to ICA. AP Wolfe went so far as to print off enrollment papers to ICA and drop them off at Lisa's house. He further made calls to ICA to check on C.N.'s enrollment status. Based on their urging Lisa filed an application for open enrollment of C.N. from Charles City; however, the application was to Clayton Ridge's IAVA online program instead. The district conceded it could not meet C.N.'s needs when it facilitated her open enrollment application. Thus, the third and fourth criterion are satisfied.

Lisa could not have reasonably known before March 1st that the district would not adequately address C.N.'s health needs. Indeed, she could not foresee that C.N.'s attendance issues were forthcoming to begin with. Nor could she foresee that the district would be unsuccessful in its attempts to attend to that issue. It is clear from the record that Lisa, C.N., and the district all believe that a change in C.N.'s school district would improve the situation. Therefore, we find that the fifth and sixth criterion are also satisfied.

This Board finds it troubling that even though the district encouraged Lisa to open enroll C.N. to another district's online program, albeit not the program they referred her to, Superintendent Cox denied the application. The district argues that Lisa's application was past the deadline and that no good cause existed to approve the application. However, the record shows that the district in fact facilitated the open enrollment. A district cannot on the one hand encourage a parent to apply for open enrollment and then on the other hand deny the application. Not only does this defy common sense, but it is unreasonable and contrary to the best interest of education. We will not allow districts to pull the rug out from underneath parents like this, especially in an instance where the district has referred the parents to criminal truancy prosecution. See *In re Justin & Ryan Kuhlman et. al.*, 14 D.o.E. App. Dec. 319 (1997) and *In re Kassie Quick et. al.*, 22 D.o.E. App. Dec. 247 (2004). The State Board has "broad" statutory "discretion to achieve just and equitable" outcomes. Iowa Code § 282.18(5). This case is a perfect example for exercising such discretion. It would not be just or equitable to uphold

⁹ Any person who is convicted for a violation of a truancy mediation agreement or a violation of truancy laws is subject to community service or up to a \$100.00 fine or imprisonment for up to 10 days in jail for a first offense. Iowa Code § 299.6 (2013). A second offense is a serious misdemeanor punishable by community service or up to a \$500.00 fine or imprisonment for up to 20 days in jail. *Id.* A third offense is a serious misdemeanor punishable by community service or up to a \$1000.00 fine or imprisonment for up to 30 days in jail. *Id.* A parent may also be convicted of a violation of this chapter. *Id.*

¹⁰ The record shows these classes were not offered to C.N. until after the district received her application for open enrollment.

Charles City's decision. Justice and equity will not tolerate a district offering open enrollment as a solution in a truancy mediation and then deny the application for open enrollment when it is filed. Rather than see C.N. attend a school that can meet her specific health needs the district appears to be thwarting her efforts and up to this point has succeeded as C.N. is not now in school.

Even if the application was past the March 1st deadline and this Board did not find good cause, open enrollment law allows a late filed application to be granted "at any time with the approval of the resident and receiving districts." Iowa Code § 282.18(16)(2013). So, even in a case where there is no "good cause" for a parent to have missed the statutory deadline, open enrollment may still occur with the approval of both the resident and receiving districts. Although we recognize that the power to approve the open enrollment in these circumstances rests with the board we also recognize that to a parent, the principal, and the assistant principal would be acting on the district's behalf and have to power to act on their behalf. The principal is the head of administration for that building. Lisa's application for open enrollment was the direct result of the district facilitating her open enrollment application because they could not meet the needs of C.N. Lisa did exactly what administration told her to do. She has a right to expect that the district would recommend that the board approve her request, especially when Lisa and C.N. are involved in a criminal truancy prosecution initiated by Charles City.

When considering a student's appeal from a denied open enrollment request relating to a serious health condition, the Legislature has granted this Board "broad discretion to achieve just and equitable results that are in the best interests of the affected child". Iowa Code § 282.18(5) (emphasis added). In light of C.N.'s serious medical condition and Charles City's inability to meet her needs, this Board believes that it is in C.N.'s best interest to be permitted to enroll in the IAVA to attend school online in an environment that may better meet C.N.'s medical needs.

2. Conclusions Specific to Clayton Ridge

The appropriate process that both districts must follow when they receive an application for open enrollment in cases of pervasive harassment or an alleged serious medical condition is outlined in 281 IAC 17.5(1). *See also In re: Open Enrollment of S.K.*, 27 D.o.E. App. Dec. 538, 541 (2014). Under these rules the resident district must act first because they are in the best position to make a decision about an open enrollment application since the student is attending their district. If the resident district has not acted on a request for open enrollment the receiving district cannot act. If the resident district acts and denies the application, then the receiving district must deny it.

Here Clayton Ridge cannot act until Charles City acts on the application. At the time Superintendent Nelson received the application he notified Lisa that he would be recommending to the Clayton Ridge Board that they deny the application because it was received after the March 1st deadline. At that point Charles City had not yet denied her application.

Nonetheless, the Charles City Board denied Lisa's application on September 2, 2014, which was prior to the September 11, 2014 hearing before the Clayton Ridge Board. Given Charles City's decision to deny the application, at the time of the hearing before it the Clayton

Ridge Board had no choice but to deny the application.¹¹ Under these circumstances this Board cannot find that the Clayton Ridge Board made an error of law when it denied the open enrollment application because it had no choice but to deny it.

Superintendent Nelson did advise Lisa in his letter to her that if Charles City approved her application Clayton Ridge would reconsidered its decision. In light of this Board's decision above, Clayton Ridge should now reconsider Lisa's application for open enrollment to IAVA.

DECISION

For the foregoing reasons, the decision of the Charles City Community School District's Board made on September 2, 2014, denying the open enrollment request filed on behalf of C.N. is hereby REVERSED.

For the forgoing reasons, the decision of the Clayton Ridge Community School District's Board made on September 11, 2014, denying the open enrollment request filed on behalf of C.N. is hereby VACATED and REMANDED for reconsideration of the application in light of the decision to REVERSE the Charles City Board's decision. There are no costs of this appeal to be assigned.

2/11/2015
Date

/s/
Nicole M. Proesch, J.D.
Administrative Law Judge

2/11/2015
Date

/s/
Charlie C. Edwards Jr., Board President
State Board of Education

¹¹ There was no record as to whether or not the Clayton Ridge Board knew that the Charles City Board had denied Lisa's request.