

**BEFORE THE STATE BOARD OF THE  
IOWA DEPARTMENT OF EDUCATION**  
(Cite as 29 D.o.E. App. Dec. 294)

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*In re: Athletic Eligibility*

██████████,  
Appellant,

Case No. 20DOE0003  
DE File No. 5113

vs.

**DECISION**

██████████ School District,  
Appellee.

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The Appellant, ██████████, seeks reversal of a decision by the ██████████ School District (District) Board (Board) denying a late filed open enrollment request on behalf of her minor children, J.W. and L.W. The affidavit of appeal filed on February 10, 2020, attached supporting documents, and the District's supporting documents are included in the record. As discussed below, 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.

A telephone hearing was held in this matter on March 6, 2020, before the undersigned administrative law judge, Rachel D. Morgan, pursuant to agency rules found at Iowa Administrative Code section 281, chapter 6. The Appellant, ██████████, was self-represented and ██████████, superintendent of the District, appeared on behalf of the District, which was represented by attorney Danielle Haindfield.

██████████ testified in support of the appeal. ██████████ also presented a written argument and Exhibits A-F. Exhibits A-E were submitted to the Board during its hearing and were admitted into the record. Exhibit F was not admitted since it was not available to the Board during its hearing. The District submitted Exhibits 1-15 which were admitted without objection, an amended pre-hearing brief, and a post-hearing brief. ██████████ Superintendent, ██████████ Elementary Counselor/Investigator, and ██████████ School Board President testified for the District.

**FINDINGS OF FACT**

██████████, her husband, and their two children, J.W. and L.W. are residents of the ██████████ School District. J.W. and L.W. are homeschooled but are enrolled in the District for athletic and other activities. J.W. is in the tenth grade

and L.W. is in the ninth grade. (██████████ Testimony; ██████████ Testimony; Ex. 1).

During the 2019-2020 school year, both J.W. and L.W. were members of the District's wrestling team. J.W. was the first female member of the wrestling team. Being the only female on the team led to J.W. having a different experience from her male teammates. For example, when visiting schools for wrestling competitions, J.W. was regularly left alone to find the women's locker room to prepare while the male coaches took the male students to the men's locker room. J.W. was also left out of team discussions that were held in the men's locker room. In regards to resources, J.W. was provided with a female cut uniform, but the uniform was not customized with the name of the school unlike her male teammate's uniforms. Further, there was at least one instance when a coach could not attend a female-only competition and the school would not provide lodging for a female-only event. (Ex. A; Ex. 17).

In addition, J.W. experienced one incident of name-calling and a few derogatory comments from her teammates. One teammate said in a group chat that J.W. only wanted to be on the wrestling team to "touch the guys and to have the guys touch her." After J.W. became injured she was told she was no longer part of the team and was called a derogatory name. (Ex. A; Ex. 17).

L.W. experienced unpleasant comments for standing up for his sister, J.W. L.W. was part of a group chat with wrestling teammates and a teammate said that L.W. should be careful about defending his sister because it will do him more harm than good to stick up for her. L.W. also believes that he received less attention from the wrestling coaching staff after he requested open enrollment to another school. (Ex. A; Ex. 17).

The wrestling season for the 2019-2020 school year began in the fall of 2019. On January 7, 2020, ██████████ emailed the athletic director regarding her concerns about the treatment that J.W. received during the wrestling season. In her email, ██████████ raised her concerns that J.W. was not receiving the same treatment as her male teammates. ██████████ also stated that she did not raise her concerns earlier because her other child, L.W., was not "having any issues." (Ex. 6). In response, the athletic director informed ██████████ that he would discuss her concerns with the wrestling coaches. After ██████████ conversation with the athletic director, there were no further allegations of J.W. being left alone at tournaments until after the open enrollment applications were filed. (Ex. A).

On January 9, 2020, ██████████ notified the wrestling coaches about a student calling J.W. a name for being injured. The wrestling coaches then spoke to the student. After the coaches' conversation with the student, the student did not call J.W. a derogatory name again and the matter appeared resolved. (Ex. A; ██████████ Testimony).

On January 15, 2020, ██████ submitted late filed open enrollment applications for both J.W. and L.W. ██████ stated that her good cause basis was “pervasive harassment.” (Ex. 1). On that same day, ██████ met with ██████ regarding her concerns. It is undisputed that the January 15, 2020 conversation with ██████ was the first time ██████ raised her concerns regarding J.W. and L.W. with District administration. (Ex. 4). During the meeting, ██████ informed ██████ that her claims of pervasive harassment would be investigated before ██████ made a decision regarding the open enrollment applications. (██████ Testimony; Ex. 4).

The matter was then investigated by ██████ the District elementary counselor. ██████ was instructed to investigate all the claims set forth in a document from ██████ that listed all the incidents that ██████ alleged constituted harassment. ██████ informed ██████ that she had already spoken with ██████ and J.W. about the allegations listed in the document. (Ex. 1; ██████ Testimony; ██████ Testimony).

On January 16, 2020, ██████ conducted his investigation and ultimately concluded that the allegation of harassment was not founded. During his investigation ██████ interviewed “multiple members of the wrestling team” regarding the allegations. (Ex. 5). The wrestling teammates all stated that they have no recollection of any wrestling group chat formed specifically to bully J.W., have never heard anyone spreading rumors about J.W., and have not heard anyone using verbally abusive language regarding J.W. while at school or team practice. Further, the wrestling teammates stated that they did not believe J.W. was excluded from any official team activities. They recall that the only time she was not involved in team activities was when she was injured. In regards to the derogatory comment made by one wrestler when J.W. was injured, the investigator found that it was not a reoccurring incident and that wrestling coaches had addressed the concern with the alleged student. (Ex. 5).

In addition, ██████ reviewed text messages between ██████ and one of the wrestling coaches. In the text messages, the coach discussed the well-being of J.W. and L.W., discussed tournaments for J.W., coaching staff decisions, and how to get resources for J.W. (Ex. 7). ██████ found that the text messages demonstrated support for J.W. from the wrestling coaches, contrary to ██████ complaints. (Ex. 5). Finally, ██████ found that lodging was not provided to J.W. for the female-only tournament due to District policy, not harassment. In light of the above, ██████ found the allegation of harassment unfounded. (Ex. 5, ██████ Testimony).

On January 17, 2020, ██████ informed ██████ that she would not be recommending to the Board that the open enrollment applications be approved based on good cause – pervasive harassment. On January 20, 2020, ██████ the high school principal, the athletic director, and the wrestling coaches met to put together a plan to help resolve the concerns outlined by

██████████ An action plan was established and immediately put into effect. (Ex. 11; ██████████ Testimony).

On January 27, 2020, the Board held a hearing and reviewed ██████████ application for open enrollment. ██████████ presented her recommendation to deny the open enrollment application based on a finding of no good cause. (Ex. 17). ██████████ then presented her case to the Board and provided information in support of the open-enrollment applications. The Board asked questions of ██████████ and J.W. L.W. did not attend the hearing. (Ex. 17).

After consideration, the Board voted unanimously to approve the open enrollment application, but with no good cause based on the Board's finding that there was no showing of pervasive harassment. (Ex. 17). The Board voted to allow the open enrollment because they were concerned about J.W.'s "mental anguish" but it did not find that pervasive harassment was the cause of the mental anguish. (██████████ Testimony).

██████████ filed a timely notice of appeal to the State Board. At the hearing, ██████████ argued that she was not provided with procedural due process and that the open-enrollment applications should have been granted with good cause, which would allow J.W. and L.W. to be immediately eligible to play varsity sports, because J.W. and L.W. experienced pervasive harassment. The District argues first that the State Board does not have jurisdiction to hear this matter, and, alternatively, ██████████ complaints do not constitute harassment under Iowa law.

## CONCLUSIONS OF LAW

### A. *Subject Matter Jurisdiction*

Prior to the hearing, the District raised the issue of whether the State Board has subject matter jurisdiction to hear this matter. The District argues that Iowa Code 282.15(5) only provides jurisdiction to the State Board to hear *denials* of open enrollment appeals. The District asserts that because ██████████ request for open enrollment was granted, ██████████ and her children are not "aggrieved" parties entitled to a review by the State Board. The District cites a prior Board decision, *In re: Open Enrollment of D.K. v. Independent Community School District*, Admin. Doc. #1500 (May 9, 2019) in support of its argument. While the State Board is aware of the prior case, it finds that it does have subject matter jurisdiction to review findings of "no good cause due to pervasive harassment" by local school boards for the reasons discussed below.

Under Iowa Code 290.1, the State Board has general jurisdiction to hear appeals from individuals "aggrieved" by a decision of a local school board. Specifically, Iowa Code 290.1 states as follows:

An affected pupil, or the parent or guardian of an affected pupil who is a minor, who is aggrieved by a decision or order of the board of directors of a school corporation in a matter of law or fact, or a decision or order of a board of directors under section 282.18(5), may, within thirty days after the rendition of the decision or the making of the order, appeal the decision or order to the state board of education.

Section 282.18(5) provides that “[a] decision of [a local school board] to *deny* an [open enrollment application] involving repeated acts of harassment of the student” is subject to appeal under Iowa Code 290.1. (Emphasis added). Importantly, Section 282.18(5) does not prohibit appeals from a decision by a local school board granting an open enrollment request, but finding no pervasive harassment.

When a local school board denies an open enrollment application due to harassment, the local school board must make two decisions: (1) there was no repeated acts of harassment; and (2) the requested open enrollment is not in the best interest of the affected child or children. See Iowa Administrative Code 282.19(5). Both decisions may aggrieve a student and/or parent and are appealable to the State Board under the express language found in Iowa Code 290.1. Specifically, a decision by the local school board that there are no repeated acts of harassment aggrieves a parent or child who is requesting such a finding, particularly when the child wishes to play varsity sports since such finding imposes a 90-day waiting period. See Iowa Code 282.18(11)(a)(7). Although Iowa Code 282.19(5) specifically grants appeal rights to the State Board when a local school board denies an open enrollment application involving harassment, there is nothing in the statutory framework that prohibits appeals of a finding of “no good cause due to pervasive harassment” to the State Board when the parent and/or student is aggrieved by such decision.

The District argues that Iowa Code 282.18(5) should be narrowly construed to prohibit appeals of local school boards’ decisions which *grant* the open enrollment but also find no pervasive harassment, since Section 282.18(5) only discusses appeals of the *denial* of open enrollment applications. However, if this were the correct interpretation of the statutory framework, it is unclear what body or institution would have subject matter jurisdiction to hear appeals from the decisions of local school boards granting the open enrollment but finding no pervasive harassment. The District argues that the applicable interscholastic athletic board has jurisdiction to hear such appeals. However, Iowa Administrative Code 281-36.16 provides that a parent or student contesting a ruling of a student’s eligibility may appeal that decision to the interscholastic athletic board, *except* eligibility determination based on a founded incident of harassment. See Iowa Administrative Code 281-36.16, 281-36.15(4)(j). Therefore, a finding of no good cause due to pervasive harassment by the local school board cannot be appealed to the applicable interscholastic athletic board.

In this case, the Board made two decisions. The first was finding that there was no good cause for the open enrollment applications because there were no repeated acts of harassment. However, the Board then determined that granting the open enrollment applications were in the best interest of J.W. and L.W. (Ex. 17). The Board's decision to grant the open enrollment application did not aggrieve ██████████ and therefore such decision is not appealable to the State Board under Section 282.19(5) or Section 290.1. However, the Board's decision to find no repeated acts of harassment aggrieved ██████████ and her children since its decision prevents J.W. and L.W. from participating in varsity athletic sports for 90 consecutive days. Because the Board's decision of no good cause aggrieves ██████████ and her children, such decision falls under the subject matter jurisdiction provided under Iowa Code 290.1. Consequently, under Section 290.1, the State Board has subject matter jurisdiction to hear this appeal.

### B. *Due Process*

██████████ argues that she was not afforded due process because she was not provided with a summary of the District's investigation and was unaware that she needed to present additional evidence at the Board's meeting to rebut the findings of the investigation. In addition, ██████████ argues that the Board violated its procedures when the investigator did not interview her, or her children, J.W. or L.W. (██████████ Testimony). As discussed below, both of ██████████ arguments are without merit.

In regards to the procedures provided to ██████████ we find that the local school Board followed its procedures and ██████████ had an opportunity to be heard. There are several types of administrative proceedings – rulemaking, contested case proceedings, and other agency action. There is a significant difference between the procedural requirements for a “contested case” and “other agency action.” A “contested case” requires a formal evidentiary adversarial hearing before the agency. “Other agency action” entitles the person affected to no more than an informal hearing. *See Lunde v. Iowa Bd. of Regents*, 487 N.W.2d 357, 359 (Iowa 1992).

Iowa Code 17A.2(2) defines “contested case” as follows:

“*Contested case*” means a proceeding including but not restricted to ratemaking, price fixing, and licensing in which the legal rights, duties or privileges of a party are required by Constitution or statute to be determined by an agency after an opportunity for an evidentiary hearing.

Here, neither the open enrollment statute, Iowa Code 282.18, nor the implementing rules, Iowa Administrative Code 281-17.5, require a formal evidentiary adversarial hearing for the student or parent requesting open enrollment. In addition, the determination of whether a student may attend another school district does not involve the “legal rights, duties, or privileges” of

the affected student. Therefore, the issue of whether open enrollment should be granted constitutes “other agency action,” which only requires an informal hearing. *See e.g., Lunde*, 487 N.W. 2d at 360 (finding that a student dismissed from medical school is not entitled to a hearing in front of the medical school board); *see also In re E.M.*, 27 D.o.E. App. Dec. 960 (2016) (finding that where a student alleges pervasive harassment “due process requires the Appellants to have notice and an opportunity to be heard by the [local] school board.”)

Here, ██████████ was afforded proper due process because she was provided with a full opportunity to present her case in front of the Board. She presented evidence prior to the hearing to the Board members via email. (Exs. 12-13). In addition, ██████████ was allowed as much time as she needed to present her case to the Board at the Board’s January 27, 2020 meeting. Indeed, at the close of the Board’s meeting ██████████ stated that she didn’t “know what else to say.” (Ex. 11 at 9). There is nothing in this record that indicates that ██████████ was not afforded a full and complete opportunity to present her case to the Board.

Similarly, the fact that ██████████ was not provided with a copy of the investigative summary prepared by the District does not raise any due process or procedural concerns. ██████████ had an opportunity to request the investigative summary prior to the Board hearing. On January 17, 2020, ██████████ met with ██████████ and discussed with her the findings of the investigation and that ██████████ open enrollment request would not be founded. On January 20, 2020, ██████████ again met with ██████████ to discuss the issue and to formulate an action plan on how to move forward. At neither meeting did ██████████ request a copy of the investigation. (██████████ Testimony; ██████████ Testimony). Further, there is evidence in the record that ██████████ was aware of the findings of the investigative summary even though she was not provided with a copy of the document itself because ██████████ discussed the findings with her. (██████████ Testimony). Based on this record and given that this matter constitutes “other agency action,” we find no procedural violation. *See Alfredo v. Iowa Racing & Gaming Comm’n*, 555 N.W.2d 827, 833–34 (Iowa 1996) (holding that there were no due process concerns when appellant did not have access to information relied on by the commission when the appellant failed to request such information prior to the hearing).

Finally, with regard to ██████████ argument that the Board’s policies were violated when the investigator, ██████████ did not interview her, J.W. and L.W., such argument also fails. While it would have been prudent to interview ██████████ J.W. and L.W., this is not a situation where the concerns raised by the non-interviewed party were unknown. ██████████ testified that ██████████ the decision-maker of whether to grant the open enrollment request, had already interviewed ██████████ and J.W. ██████████ provided ██████████ a copy of ██████████ detailed list of incidents of alleged harassment. ██████████ used that list to guide his investigation. (██████████ Testimony). Further, the Board policies cited by ██████████ that require an investigator to speak to the

complainant do not relate to open enrollment decisions and/or the school's harassment, bullying policy and are therefore irrelevant. Accordingly, [REDACTED] due process and procedural arguments are rejected.

### C. Open Enrollment - No Good Cause

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 must 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 student who open enrolls in grades 9-12 in a school district other than the district of residence is ineligible to participate in varsity athletic competitions during the pupil's first ninety school days of enrollment unless, among other things, the district of residence determines that the student was subject to harassment or bullying. Iowa Code 282.18(11)(a)(7).

The State Board 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 the State 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).

The issue for review in this case is whether or not the Board made an error of law in not finding “good cause due to pervasive harassment” for the late filed open enrollment request.

*1) March 1 Deadline*

Under the first criterion, the harassment must have occurred after March 1 or that the extent of the harassment could not have been known until after the deadline. Here, the alleged harassment occurred during wrestling season which started with a camp in July 2019 and regular practices in October 2019, well after the March 1, 2019 deadline. Therefore, the first criterion is met. (Ex. A; [REDACTED] Testimony).

*2) Pervasive Harassment*

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 J.W.’s and L.W.’s position. This requirement means the State Board must determine if the behavior that occurred created an objectively hostile school environment that meets one or more of the above criteria listed above. The Board has only granted relief in a handful of other cases. In each of those cases, the harassment involved serious physical assaults, degradation, and destruction of property directed toward the student that continued after school involvement. *See In re: Melissa J. Van Bommel*, 14 D.o.E. App. Dec. 281 (1997) (finding harassment when a vehicle the student was riding in was forced off the road twice by vehicles driven by other students); *See also In re: Jeremy Brickhouse*, 21 D.o.E. App. Dec. 35 (2002) (finding harassment when the student was physically assaulted on numerous occasions, including a “hair bare” initiation ritual, and teachers at the school knew about the “hair bare” ritual and allowed it to continue); *In re: John Meyers*, 22 D.o.E. App. Dec. 271 (2004) (finding harassment when the student was subject to regular teasing, taunting, and laughter at his expense, having his books and school materials hidden, physical assault, ultimately leading to the student believing that fellow students would “kill him”).

Here, none of the alleged conduct rises to the level of pervasive harassment. While there was undoubtedly conduct that could and should have been avoided, the conduct alleged –not receiving support from coaching staff, left alone at tournaments, and not receiving the same resources as the male students – does not involve the physical assaults, degradation, destruction of property found to constitute harassment. *See id.* Specifically, neither J.W. nor L.W. missed any wrestling practices or tournaments due to the alleged harassment. Further, the one incident of name calling was handled swiftly by the District by talking to the student involved. This relieved the situation and no further incidents of harassment occurred with this student. While there is no doubt that J.W. felt excluded from the team and suffered emotionally from that, there is no evidence

that either J.W. or L.W. feared harm to their person or property, were physically injured, or suffered a “substantially detrimental effect” to their mental health. Thus, under these circumstances we find that the second criterion was not met. (Ex. A; ██████████ Testimony; ██████████ Testimony).

### *3) Efforts of the District.*

Under the third criterion, the evidence must show the harassment is likely to continue despite the efforts of school officials to resolve the situation. Here, the objective evidence shows that after the District was notified of ██████████ concerns, the District took action to insure no further incidents occurred.

Specifically, on January 9, 2020, a teammate called J.W. a derogatory name. ██████████ informed the coaches about the incident and a coach discussed the concern with the student. No further incidents occurred with the student. On January 15, 2020, ██████████ met with ██████████ after she had filed the open enrollment applications. This meeting was the first time ██████████ was aware of ██████████ concerns. On January 20, 2020, ██████████ ██████████ the athletic director, and wrestling coaches met and put together an action plan for the remaining weeks in the wrestling season and going forward. (Ex. 5; ██████████ Testimony). ██████████ did not allow the action plan to take effect before the Board considered the open enrollment applications on January 27, 2020. Accordingly, under the third criterion, we find that the appeal fails because the efforts by the District to stop the name calling ended the conduct, the action plan put together by the District did not have time to take effect, and thus there is nothing in the record that supports a finding that the alleged harassment would have continued despite efforts by the District.

### *4) Change of District*

Finally, under the fourth and final criterion, ██████████ must show that changing the school district that J.W. and L.W. attend would alleviate the situation. The crux of this criterion is determining whether putting the student in a different environment will make a difference. *See In Mary Oehler*, 22 D.o.E. App. Dec. 46 (2004). ██████████ believes that J.W. will be more comfortable at ██████████ because the wrestling coaches have come over to see her during tournaments and ██████████ has met with the wrestling coaches at the school. However, ██████████ provided no specific evidence regarding how ██████████ would address ██████████ concerns regarding the scheduling of wrestling tournaments, the application of resources, and teammate behaviors towards J.W. and L.W. There is simply not enough evidence in the record to find that ██████████ would make a difference to J.W.’s and L.W.’s safety and well-being. Thus, the appeal fails to meet the second, third, and fourth criterion.

The State Board understands that ██████████ wants to do what is best for J.W. and L.W. We do not fault her for her desire to enroll her children at

██████████ J.W. and L.W. may attend ██████████ because the Board granted ██████████ request for open enrollment; however, both children may not participate in athletic activities without waiting the 90 day eligibility period.

██████████ and her children are not without options, they are just not the options they would prefer. However, our review focus is not upon the family's choice, but upon the local school board's decision under statutory requirements. The issue in this appeal is limited to whether or not the local school board erred as a matter of law in finding no good cause due to pervasive harassment. We have concluded that the Board correctly applied the law and therefore, we must uphold the local board's decision.

### DECISION

For the foregoing reasons, the decision of the Board made on January 27, 2020, finding that there was no good cause due to pervasive harassment, but granting the open enrollment request filed on behalf of J.W. and L.W. is AFFIRMED. There are no costs of this appeal to be assigned.

March 13, 2020  
Date

\_\_\_\_\_  
Rachel D. Morgan  
Administrative Law Judge

March 26, 2020  
Date

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Brooke Miller Axiotis, Board President  
State Board of Education