

IOWA DEPARTMENT OF EDUCATION
(Cite as 29 D.o.E. App. Dec. 331)

<i>In re: Open Enrollment of G.F.</i>)	
)	
J.F.,)	DE Admin Doc. 5119
)	DIA No. 21DOE0002
Appellant,)	
)	
v.)	
)	
RED OAK COMMUNITY)	
SCHOOL DISTRICT,)	
)	DECISION
Appellee.)	

Appellant J.F. seeks reversal of a July 28, 2020 decision by the Red Oak Community School District (district) denying a late-filed open enrollment request on behalf of her minor child, G.F.¹ The State Board of Education has jurisdiction over the parties and subject matter of the appeal, pursuant to Iowa Code sections 282.18(5) and 290.1.

A telephone hearing in this matter was held on August 20, 2020 before Administrative Law Judge Laura Lockard, pursuant to agency rules at 281 Iowa Administrative Code chapter 6. Appellant J.F. appeared and testified. Appellee Red Oak Community School District (district) was represented by attorney Miriam Van Heukelem. Superintendent Ron Lorenz testified for the district. The record includes the affidavit of appeal, the agenda from the July 27, 2020 meeting of the Red Oak Community School District board of directors, the July 28, 2020 denial letter to J.F. from the district, and the open enrollment application for G.F. received July 20, 2020. In addition, the district submitted Exhibits 1 through 8, which were admitted as evidence.

FINDINGS OF FACT

J.F. and her husband, B.F., reside within the boundaries of the Red Oak Community School District with their children, G.F. and L.F. G.F. will be in eighth grade during the

¹ The affidavit of appeal filed by J.F. also references a late-filed open enrollment application regarding another child, L.F., that was also denied. In the affidavit, J.F. noted, in relevant part, “[L.F.] does not have a serious medical condition, but I am appealing her too in hopes that [G.F.]’s appeal is approved.” Appeal to the State Board of Education regarding late-filed open enrollment decisions is permitted only where the denial decision involves repeated acts of harassment of the student or a serious health condition of the student that the resident district cannot adequately address. J.F. affirmed at the start of the hearing that L.F.’s open enrollment application is not based upon a serious health condition that the resident district cannot adequately address. Accordingly, the State Board of Education has no jurisdiction to address the denial of the decision regarding L.F. This decision relates only to the district’s denial of open enrollment for G.F.

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2020-21 school year. J.F. has a stepson, who is a sibling of G.F. and L.F., who is enrolled in the Stanton Community School District.

G.F. has sensorineural hearing loss characterized by a moderate low frequency sloping to moderately severe mid frequency hearing loss. G.F. wears hearing aids that improve his hearing sensitivity. Even with the hearing aids, he does not have full audibility of sounds in each ear. G.F. is not currently receiving special education services. He has performed well in school without any accommodations related to his hearing loss. (J.F. testimony; Exh. 4, 6, 7).

On June 1, 2020, J.F. and B.F. filed open enrollment applications for G.F. and L.F., requesting that they attend school in the Stanton Community School District. In response to the question regarding whether the application was being filed due to pervasive harassment or severe health, the parents answered no for both children. The parents filed these applications because of their desire to have all of their children, J.F.'s stepson, along with G.F. and L.F., attend school in the same district. The applications were denied by the Red Oak Community School District on June 8, 2020 because they were filed late with no good cause. The standard filing deadline for open enrollment applications in the state of Iowa is March 1 of the school year prior to when enrollment is sought. After the denial, the parents enrolled G.F. and L.F. in the Red Oak Community School District for the 2020-21 school year.

On July 19, 2020, G.F.'s parents became aware that the district had decided to implement a requirement that teachers and school staff wear masks for the upcoming school year in order to address the spread of COVID-19. On July 20, 2020, the parents contacted the Red Oak Community School District and the Stanton Community School District. The parents learned that the Stanton Community School District did not intend to require teachers to wear masks in the classroom. On the same date, the parents filed new open enrollment applications for both G.F. and L.F. to attend the Stanton Community School District. In support of the applications, the parents submitted an e-mail outlining their reasons for requesting open enrollment and two additional documents: 1) a July 23, 2020 letter from G.F.'s primary care doctor; and 2) a July 27, 2020 letter from Ashley Kaufman, an audiologist who treats G.F. (J.F. testimony; Exh. 5-7).

In the July 23, 2020 letter, G.F.'s primary care doctor wrote, in full:

[G.F.] is a patient in this clinic. He has sensorineural hearing loss and requires accommodation for adequate communication. Please consider this as decisions are made for masking requirements with the upcoming school year. [G.F.] will be unable to lip read if educator is masked.

(Exh. 6).

In the July 27, 2020 letter, Kaufman noted that G.F.'s speech intelligibility index (SII) with hearing aids is 83 for both ears, on a scale of 0 (no audibility of sounds) to 100 (full audibility of sounds). This measures the amount of speech that is audible in a quiet

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listening environment with a speaker approximately one meter, or slightly over three feet, away. The letter further states:

The level of audibility will be reduced when the speaker is at a greater distance and when in a noisy and/or reverberant environment and when the speaker is not facing the individual. This does not assess other measures that may affect [G.F.], such as fatigue. Research has noted that children who are deaf or hard of hearing often experience fatigue as a result of the increased listening effort required to process and comprehend speech information.

While important for public safety, the use of face masks can increase communication difficulties for adults and children who are deaf and hard of hearing. Not only can masks reduce the volume of speech, they can make it more difficult for individuals to use facial cues or expressions and lip read which can enhance speech understanding when words may not have been heard clearly.

(Exh. 7).

The parents' e-mail stated that face coverings put G.F. at an extreme disadvantage for communication and that G.F. was fearful about the extra challenges that teachers wearing masks might place on him. The parents indicated that G.F. would experience additional mental strain if he was required to resort to lip reading to aid in communication.

While we know there are things that could make it easier for him such as: face shields (his mother wears one at work and has found it to be no help because it fogs over and any overhead lighting reflects off it right over the mouth. It also blocks sound that is why you can hear an echo inside it because sounds bounce off that barrier). Microphones (Gavin use [sic] to use the FM system and that made things worse at times and distorted the sound so we are not confident that it would help to have any radio type device). Ultimately no face covering whatsoever would be the most ideal situation for him. We have recommendations from his Audiologist and our family doctor stating that his best interest would be no face coverings at all. We are not asking for Red Oak to remove their mandate for teachers. We would like to go where the mandate does not stand to give [G.F.] the best situation he can be in.

...

While we understand that Stanton may have teachers who will wear face coverings, they are not mandated and they would be free to remove them for [G.F.] if he needs. We are going to Stanton regardless of your decision. Red Oak effectively forced us when the face covering mandate was implemented without the consideration of the hearing impaired. We cannot take the chance that Red Oak would figure things out before he fell

behind. We don't believe there are options that would allow the school to accommodate him and the policy short of taking him out of regular class with his peers.

(Exh. 5).

After learning about the parents' second open enrollment applications, superintendent Ron Lorenz spoke to B.F. B.F. expressed that the family was not interested in G.F. receiving special education services or accommodations; B.F. stated that G.F. was doing well in school and they wanted to make sure that he continued to do well. B.F. stated that the mask requirement for teachers and staff posed a problem for G.F. Lorenz expressed to B.F. the district's commitment to serving G.F. and his confidence that the district could provide accommodations to meet G.F.'s need. The parents made it clear to Lorenz that they did not believe there was any accommodation that would be sufficient and expressed that, regardless of the outcome of the open enrollment application, G.F. and L.F. would not be returning to the district. (Lorenz testimony).

Lorenz specifically proposed to the parents that the district would order face shields for teachers with whom G.F. would interact and would purchase an FM system that could be worn beneath the face shield to amplify sound to G.F.² Additionally, the district proposed that G.F. be given preferential seating at the front of the room in order for him to be closer to the teacher. Lorenz reviewed the letters that the parents submitted in support of the open enrollment applications and spoke with Kaufman on the phone regarding G.F.'s needs. Lorenz asked Kaufman whether the accommodation of a face shield, to allow for lip reading, combined with an FM system to amplify sound would be reasonable given G.F.'s needs. Kaufman expressed to Lorenz that she believed it would. Kaufman also suggested that Lorenz reach out to the area education agency (AEA) to do a functional assessment to determine whether any additional accommodations would be useful. Lorenz was prepared to facilitate this assessment, but the parents made clear to him that they would not come back to the district under any circumstances so he did not ultimately pursue the assessment. (Lorenz testimony).

At hearing, Lorenz testified that he believed, after consultation with G.F.'s audiologist, that a teacher wearing a face shield instead of a mask, coupled with an FM system for amplification, would address G.F.'s needs. The district was prepared, however, to make other accommodations or modifications depending upon the success of those measures once they were in place. While the district was in the process of making plans during the summer, it was determined that the unique nature of the current situation would require a case by case evaluation of what accommodations or modifications would need to be made to meet a specific student's needs. It was Lorenz's hope that the district could work closely with G.F.'s parents in order to implement the necessary accommodations. (Lorenz testimony).

The school board considered G.F.'s open enrollment application at a meeting on July 27, 2020. The board denied the application and the parents were notified of that denial by

² At the time of the school board's consideration of G.F.'s application, the district had already purchased face shields for teacher use. (Lorenz testimony).

letter dated July 28, 2020. J.F. filed a timely affidavit of appeal to the state board of education. (Exh. 8).

At hearing, J.F. asserted that she believes the best setting for G.F. is one where he will not need any accommodations. J.F. wants G.F. in a setting where teachers are not wearing masks or face shields. J.F. believes that the level of disruptiveness and noise in classrooms in the Red Oak Community School district will hinder any possible accommodations the district could offer to G.F. G.F. and L.F. have begun the school year in the Stanton Community School District and J.F. testified that regardless of the decision in this case they will continue attending school in Stanton. J.F. believes that the district's decision to deny G.F.'s open enrollment application is driven by economic considerations and not the best interests of G.F. (J.F. testimony).

CONCLUSIONS OF LAW

Iowa Code section 282.18 governs the open enrollment process. The standard filing deadline for an application to open enroll a student for the upcoming school year is March 1.³ After March 1, a parent or guardian must notify the district of residence and the receiving district that good cause, which is defined in the statute, exists for failure to meet the March 1 deadline.⁴ None of the statutory good cause provisions are applicable to G.F.'s application.

An open enrollment application filed after March 1 that does not qualify under the statutory good cause provisions is subject to the approval of the board of the resident district and the receiving district. A decision by either board to deny a late-filed application that involves a serious health condition of the student that the resident district cannot adequately address is subject to appeal to the State Board of Education, which "shall exercise broad discretion to achieve just and equitable results that are in the best interest of the affected child or children."⁵

The State Board applies established criteria when reviewing an open enrollment decision involving a claim of a serious health condition of the student that the resident district cannot adequately address. An appellant seeking to overturn the local board's decision involving a serious medical condition must meet all of the following criteria in order for the State Board to reverse the decision and grant the 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 Iowa Code § 282.18(2)(a).

⁴ Iowa Code § 282.18(4).

⁵ Iowa Code §282.18(5).

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.⁶

The district does not dispute in this case that criteria one through three have been met. The district asserts, however, that upon notification of how G.F.'s serious health condition would impact his learning under the mask requirement, school officials took appropriate steps to meet G.F.'s needs in a manner that was designed to be successful.

The evidence reflects that between the time that G.F.'s parents submitted the open enrollment application on July 20 and the time that the board acted upon the application on July 27, the district had taken steps to put in place a plan that G.F.'s treating audiologist believed would meet his health needs. The plan provided for G.F.'s teachers to use face shields, which would allow him to see facial expressions and lip read where needed, in combination with the use of an FM amplification system. The district provided credible evidence that it was prepared to arrange a functional assessment through the AEA to determine whether additional accommodations might be useful to G.F. The district was committed to engaging in a collaborative process with G.F.'s parents to meet his needs.

While G.F.'s parents argue that the measures proposed by the district would not have been suitable to meet G.F.'s needs, the evidence does not support this conclusion. There is nothing in either the letter from G.F.'s primary care provider or his audiologist that indicates that the district's plan would be unsuccessful at meeting G.F.'s needs. While G.F.'s parents prefer a setting where teachers are entirely unmasked, the district's plan for face shields, which would allow for lip reading, coupled with an FM system for amplification, is designed to meet G.F.'s needs. J.F. alluded to previous difficulties that G.F. had with an FM system, however J.F. provided no documentation or other credible evidence from any health care provider or other professional to suggest that an FM system is not suitable for G.F.

This case is distinguishable from *In re Anna C.*, where the State Board reversed the denial of an open enrollment request based on a district's failure to implement steps to address a student's serious health condition. In that case, the parents requested

⁶ *In re Anna C.*, 24 D.o.E. App. Dec. 5, 8 (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, 376 (2013).

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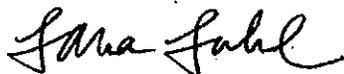
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accommodations for the student's health needs at the beginning of the school year, but the district did not take action to discuss putting accommodations in place until after the parents filed an open enrollment application in November. The district's delay in implementing steps that had worked in the student's previous school was a large part of the rationale for reversal in that case.⁷ In contrast to the district's delay in *Anna C.*, the district here took immediate and prompt steps, which included consulting with G.F.'s treating audiologist, to address G.F.'s health needs. While the fact that the plan was developed during the summer necessarily meant that its effectiveness would not be evident until the start of the year, the district's prompt actions meet the requirements under criteria four.

As the Appellant cannot meet criterion four, the Red Oak Community School District did not err in denying G.F.'s open enrollment application.

ORDER

For the foregoing reasons, the decision of the Red Oak Community School District Board of Directors made on July 28, 2020 denying the open enrollment request filed by J.F. and B.F. on behalf of their minor child G.F. is affirmed.



Laura E. Lockard
Administrative Law Judge

August 25, 2020

Date



Brooke Miller Axiotis, President
State Board of Education

September 17, 2020

Date

⁷ *In re Anna C.*, 24 D.o.E. App. Dec. at 9.