

Iowa State Board of Education

Executive Summary

August 5, 2021



Agenda Item: Appeal # 5143 – Ames Community School District (open enrollment – harassment)

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

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

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

Attachment(s): One

Recommendation: It is recommended that the State Board reverse the decision of the Ames Community School District and remand this matter for further consideration.

Background: This matter concerns a request for open enrollment from Ames Community School District, filed after the March 1 deadline, which claimed harassment as the reason. A school administrator investigated the allegations; however, when the superintendent informed the mother that the application was denied, she did not acknowledge the claim of harassment; rather, the former superintendent indicated the request was denied because it was filed late.

IOWA DEPARTMENT OF EDUCATION
(cite as _____ D.o.E. App. Dec. _____)

In re Open Enrollment of C.H.,)
)
C.W.,)
)
 Appellant,)
)
vs.)
)
Ames Community School District,)
)
 Appellee.)

Admin. Docket No.: 5143

PROPOSED DECISION

This contested case concerns an open enrollment application filed by C.W., the mother of Ames High School student C.H. After considering the evidence and argument, the undersigned recommends that this matter be REVERSED AND REMANDED for further consideration by the District.

The undersigned, acting in the capacity of administrative law judge, heard this matter in an in-person evidentiary hearing at the Grimes State Office Building on July 27, 2021. C.W. was personally present and unrepresented by counsel. She and her father testified under oath. The District and Board was represented by Attorney Miriam Van Heukelem. Present on behalf of the District was Dr. Jeff Hawkins, who was the District’s Executive Director of Education at the time relevant to this appeal. Dr. Hawkins testified under oath. C.W. offered exhibits A through I, which were admitted.¹ The District’s Exhibit 4 was admitted without objection. The undersigned took official notice (Iowa Code § 17A.14) of the minutes of the District’s June 7, 2021, school board meeting, which were subsequently provided and is identified as Exhibit ALJ-1.

C.W., the mother of Ames High School student C.H., applied for open enrollment from the Ames Community School District to the Roland-Story Community School District on June 1, 2021. C.H. and C.W. are residents of the Nevada Community School District and C.W. is currently open enrolled into Ames. He can enroll in Nevada at any time without question, and without needing Ames’s permission. Iowa Admin. Code r. 281-17.8(4). C.W. requests Roland-Story as an alternate receiving district for C.H. and, as such, must meet a March 1 deadline. *Id.* Her application (Exhibit C) clearly stated she was filing after the March 1 deadline due to “pervasive harassment or severe

¹Exhibits B, F, and G were admitted over timely objections made by District’s counsel. In ruling on the three objections, the undersigned considered his duty to assist an unrepresented party in developing the record (*Baker v. Employment Appeal Bd.*, 551 N.W. 2d 646 (Iowa Ct. App. 1996)), the language of Iowa Code section 17A.14, and the fact that the objections went to weight, not admissibility.

health.” Iowa Code § 282.18(5) (providing an exception to the March 1 deadline for “repeated acts of harassment of the student or serious health condition of the student that the resident district cannot adequately address”). C.W.’s application also contained a letter detailing the harassment purportedly directed at C.H. due to his gender and race. While the alleged harassment began before March 1, C.W. pointed to another student of C.H.’s same race and gender who was physically assaulted after the March 1 deadline. C.W.’s application also contained the name of an Ames High School teacher who would “support” her application.

On June 2, the next day Dr. Hawkins investigated this claim (Exhibit 4). In light of the four-part standard set forth in *In re Hannah T.*, 25 D.o.E. App. Dec. 26 (2007). Dr. Hawkins recommended to the District’s board that this application be denied. At the school board meeting on June 7, the Board discussed other open enrollment applications involving late-filed requests because the District had discontinued a virtual-remote option for elementary school students (Exhibit ALJ-1). C.W.’s application was not specifically discussed, but the Board appeared to adopt all recommendations.

After the school board meeting, the District’s former superintendent completed the open enrollment form (Exhibit D). Rather than marking the application was denied because it “does not meet the criteria for pervasive harassment,” the former superintendent marked the application was denied because it was “filed late.” The cover letter from the former superintendent (Exhibit D), sent the day after the meeting, did not acknowledge the claim of pervasive harassment, writing that the board denied the application “due to the fact that the application was received after the March 1 deadline set forth by the Iowa Department of Education.”² C.W. pointed this out in her affidavit of appeal, accusing the former superintendent of “completely evading our lawful post-deadline reason.” C.W. repeated this observation in her hearing testimony.

This difference between the recommendation Dr. Hawkins advanced and the rationale the former superintendent provided to C.W. in the District’s final decision is significant and compels a remand. C.W. is entitled to have her claim clearly addressed in the District’s final decision. She should not have to infer whether, when, or how her clearly made claim was addressed by the District’s board.

In re Open Enrollment of S.H., 27 D.o.E. App. 545, 548 (2014), is instructive. There, the State Board reversed and remanded a decision where the district failed to consider the factors for determining whether to grant a late-filed request based on a serious health condition. The district in *S.H.* denied the application solely because it was late-filed. Neither the superintendent nor the board inquired about or applied the relevant factors. Here, the issue was different (health versus harassment) and Dr. Hawkins engaged in the inquiry that the *S.H.* superintendent and board neglected. However, there is no

² For clarification, this deadline and any relevant exceptions are established by Iowa Code section 282.18, not the Iowa Department of Education.

evidence that the Ames board directly addressed C.W.'s claims. Absent that concrete discussion of C.W.'s claims in the minutes and given the former superintendent twice missing an opportunity to answer the question squarely raised by C.W., the undersigned concludes S.H. is persuasive and compels a reversal. Simply put, the end user experience in this case is the same as in S.H., and that is not acceptable.

While Dr. Hawkins followed the *Hannah T.* process, someone other than him dropped the baton before the finish line. The undersigned is unwilling to excuse this as a "paperwork error" or other harmless error for the reasons stated above. Additionally, this error implicates the State Board's jurisdiction to hear this case, as it cannot hear an open enrollment appeal unless the denial was based on either of the grounds set forth in section 282.18(5).

This matter is remanded to the District and its board for a complete consideration of the *Hannah T.* factors. Since this matter is consequently still pending before the District, the District and its board may consider the evidence developed by C.W., including evidence offered at the July 27 hearing. The undersigned expresses no opinion on the proper application of the *Hannah T.* factors to these circumstances, such application being the proper role of the District and its board in the first instance. *Open Enrollment of S.H.*, 27 D.o.E. App. at 548.

Proposed Order

The undersigned has considered all evidence and issues presented, whether or not discussed in this decision. It is recommended that the June 7, 2021, decision of the Board of Directors of the Ames Community School District in this matter be REVERSED AND REMANDED for further consideration in light of this decision. Neither the undersigned nor the State Board retain jurisdiction. There are no costs.

This proposed decision will be presented to the State Board of Education at its regularly scheduled meeting on August 5, 2021. The State Board will review this proposed decision based on the record made. The parties are able to present arguments during the public comment period on the Board's agenda. The Board's presiding officer may also allow oral argument during its deliberations. If either party desires additional proceedings pursuant to the Department's chapter 6, the party or counsel may notify the undersigned and this matter will be rescheduled for later State Board consideration.

Done on July 30, 2021.

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

IOWA DEPARTMENT OF EDUCATION

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Appellee.)	

After due consideration by the State Board of Education, the proposed decision in this matter is

_____ AFFIRMED.

_____ OTHER:

This is final agency action in a contested case proceeding.

Any party that disagrees with the Department’s decision may file a petition for judicial review under section 17A.19 of the Iowa Administrative Procedure Act. That provision gives a party who is “aggrieved or adversely affected by agency action” the right to seek judicial review by filing a petition for judicial review in the Iowa District Court for Polk County (home of state government) or in the district court in which the party lives or has its primary office. Any petition for judicial review must be filed within thirty days of this action, or within thirty days of any petition for rehearing being denied or deemed denied.

Dated: _____

Iowa State Board of Education, by:

Brooke Axiotis, President