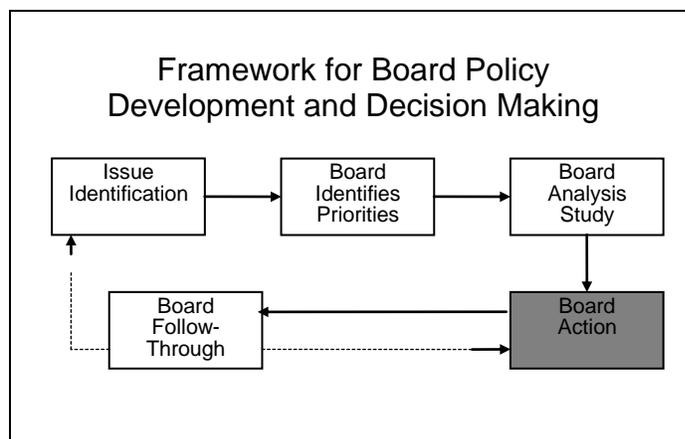


Iowa State Board of Education

Executive Summary

March 29, 2012



Agenda Item:

In re Good Conduct Discipline, Stephanie Vickroy v. Knoxville Community School District

Iowa Goal:

All PK-12 students will achieve at a high level.

Equity Impact Statement:

All districts receive guidance from the legal questions answered in this decision.

Presenter:

Carol Greta, Administrative Law Judge

Attachments:

1

Recommendation:

It is recommended that the State Board approve the proposed decision affirming the decision of the local board of directors of the Knoxville Community School District finding that Colton S. violated the district's good conduct policy.

Background:

Colton S., the son of Stephanie Vickroy, is a junior at Knoxville High School. On November 21, one of his teachers suspected that Colton had chewing tobacco in his mouth, a violation of the school's good conduct policy.

The standard of proof in cases involving alleged violations of a good conduct policy is "some evidence." The evidence herein easily meets this standard. Thus, it is recommended that the State Board affirm the decision of the local school board.

IOWA DEPARTMENT OF EDUCATION
(Cite as 26 D.o.E. App. Dec. 170)

In re Good Conduct Discipline

Stephanie Vickroy, Appellant,	:	
	:	PROPOSED DECISION
vs.	:	
	:	[Admin. Doc. 4743]
Knoxville Community School District, Appellee.	:	

The above-captioned matter was heard telephonically on January 25, 2012, before designated administrative law judge Carol J. Greta, J.D. Stephanie Vickroy and her minor son, Colton, were present. The Knoxville Community School District was represented by Superintendent Randy Flack and Assistant Secondary Principal Joe Ferguson. Colton's stepfather was also present, but did not testify.

Ms. Vickroy seeks reversal of the December 12, 2011 decision of the local board of directors of the Knoxville School District to uphold the administrative finding that Colton violated the District's good conduct policy. Ms. Vickroy filed a timely appeal to the State Board of Education on January 11, 2012.

Hearing was held pursuant to agency rules found at 281 Iowa Administrative Code chapter 6. Authority and jurisdiction for the appeal is found in Iowa Code chapter 290 (2011). The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter of the appeal before them.

FINDINGS OF FACT

Colton S. is the minor son of Ms. Vickroy. He is a junior at Knoxville High School. Colton has participated in four interscholastic sports on behalf of Knoxville High School: football, wrestling, track and field, and baseball.

On Monday, November 21, 2011, Colton was in seventh period chemistry class, taught by Mike Moats. Colton asked to go to the restroom during class. When he returned, Mr. Moats noticed a bulge in Colton's lower lip. When Mr. Moats asked Colton to show what was in his mouth, Colton "quickly lifted his water bottle to his mouth and poured a mouthful of water. He then swooshed the water around and swallowed. When he opened his mouth and lowered his lip, there was a significant amount of a brown residue between his teeth." Believing that Colton had been using chewing tobacco, Mr. Moats escorted Colton to the office of the High School's Associate Principal, Joe Ferguson.

Colton disputes that the substance in his mouth was chewing tobacco. He states that he ate chocolate birthday cake immediately before going to class, and that accounts for what Mr. Moats saw.

Dr. Flack admits, for the sake of argument, that Colton had a piece of the cake. However, Dr. Flack agreed with the conclusions of district administrators Joe Ferguson, Activities Director Randy Wilson, and Principal Kevin Crawford that it was more likely than not that Colton had been using chewing tobacco on the afternoon of November 21.

Mr. Ferguson testified that he relied on the observations of Mr. Moats, who formerly used chewing tobacco and who told Mr. Ferguson that he knew what tobacco residue looked like and was sure that tobacco residue is what he saw in Colton's mouth. The administrators admit that no search of Colton's person or belongings was conducted, nor was law enforcement called.

Like most schools, Knoxville has a good conduct policy, proscribing certain behaviors for its secondary students who participate in extracurricular activities, including interscholastic sports. Among the prohibited conduct is possession and use of any tobacco product.

While she disputes that Colton was using tobacco, Ms. Vickroy also argues that Colton did not receive all the process due to him because he was not searched and because he was sanctioned under the good conduct policy in the absence of any citation from law enforcement.

CONCLUSIONS OF LAW

The local school board's authority to enforce a good conduct policy derives from Iowa Code section 279.8, which states that "the board shall make rules for its own government and that of the ... pupils, and for the care of the schoolhouse, grounds, and property of the school corporation" The Iowa Supreme Court has also ruled that schools and school districts may govern out-of-school conduct of its students who participate in extracurricular activities. *Bunger v. Iowa High School Athletic Association*, 197 N.W.2d 555, 564 (Iowa 1972).

In *Bunger, supra*, the Iowa Supreme Court addressed the reasonableness of a good conduct rule. The Court reasoned as follows:

It was plainly intended, therefore, that the management of school affairs should be left to the discretion of the board of directors, and not to the courts, and we ought not to interfere with the exercise of discretion on the part of a school board as to what is a reasonable and necessary rule, except in a plain case of exceeding the power conferred.

Id. at 563, quoting *Kinzer v. Directors of Independent School Dist. of Marion*, 129 Iowa 441, 444-445, 105 N.W. 686, 687.

With that brief general legal background, we address whether Colton's due process rights were violated.

The polestar case on this issue remains *Brands v. Sheldon Community School*, 671 F.Supp. 627, 630-631 (N.D. Iowa 1987). That case clearly establishes the following principles, which are followed in the vast majority of states:

- A secondary student has no “right” to participate in interscholastic athletics or other extracurricular activities.
- Accordingly, very little process is due to the student. Such due process consists of two elements:
 - The student must be told what he is accused of and
 - The student must be given an opportunity to tell his side of the story.
- It is only required that there be “some evidence” that a student violated the school’s good conduct policy for a student to be disciplined under such policy.

Ms. Vickroy argues that there was not a preponderance of evidence that Colton was using tobacco. As the *Brands* case establishes, the standard of proof is not the preponderance standard. Rather, it is the much lower standard of “some evidence.” The observations of Mr. Moats, along with his statement to Mr. Ferguson that as a former user of chewing tobacco, Mr. Moats was very familiar with the look of chewing tobacco residue, easily meets the requirement that there be “some evidence” of a violation.

Finally, Ms. Vickroy argues that the district violated Colton’s rights by punishing him in the absence of a citation issued (for possession of tobacco) by law enforcement. There is simply no requirement limiting a school’s ability to discipline students when no criminal charge is involved. In fact, schools may punish students for misbehavior that does not violate the criminal code. See, e.g., *In re Heather Kramme*, 13 D.o.E. App. Dec. 89 (1996) (student was of age where her use of tobacco was not a crime, but school still could impose punishment against her under good conduct policy for the use of tobacco), *In re Scott Martin*, 16 D.o.E. App. Dec. 252 (1999) (school could impose punishment against student whose drinking beer in Germany did not violate the law in Germany) and *In re Travis Childs*, 24 D.o.E. App. Dec. 186 (2007) (student who drank beer at home with parental permission could be disciplined under district’s good conduct policy).

A school can – purposefully or inadvertently – create additional rights not otherwise imposed by the law if the school’s own policies include additional protections for a student. That is not the case here. Nothing in the school’s policy prohibits school officials from imposing discipline in the absence of a citation from law enforcement. To the contrary, the policy puts a student and his parents on notice that the school may act on “credible information to support a determination that it is more likely than not the student violated the Good Conduct rule.”

Colton received all the process that was due him. He had no confusion about what violation he allegedly committed and he was given several opportunities before several administrators and, eventually, the local school board, to tell his story. The evidence was credible and sufficient for the local school board to uphold the finding that Colton violated the good conduct policy by using chewing tobacco at school on November 21.

DECISION

For the foregoing reasons, the decision of the Board of Directors of the Knoxville Community School District made on December 12, 2011, finding that Colton S.

committed his third violation of the District's good conduct rule, is AFFIRMED. There are no costs of this appeal to be assigned.

01/30/12
Date

Carol J. Greta, J.D.
Administrative Law Judge

It is so ordered.

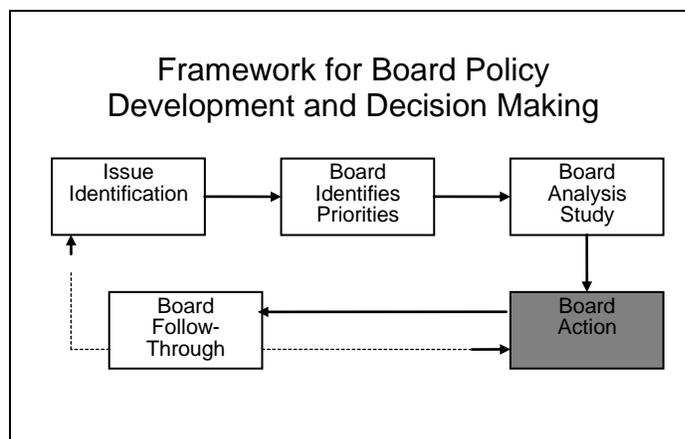
Date

Rosie Hussey, President
State Board of Education

Iowa State Board of Education

Executive Summary

March 29, 2012



Agenda Item: *In re Good Conduct Discipline, Anne Michehl v. Eagle Grove Community School District*

Iowa Goal: All PK-12 students will achieve at a high level.

Equity Impact Statement: All districts receive guidance from the legal questions answered in this decision.

Presenter: Carol Greta, Administrative Law Judge

Attachments: 1

Recommendation: It is recommended that the State Board approve the proposed decision affirming the decision of the local board of directors of the Eagle Grove Community School District finding that Brandon M. violated the district's good conduct policy.

Background: Brandon M., the son of Anne Michehl, is a junior at Eagle Grove High School. On November 19, one of the local school board members suspected that Brandon had chewing tobacco in his mouth, a violation of the school's good conduct policy.

Brandon and his mother met at school on November 21 with four school officials. At the meeting, school administrators said that they did not believe they could prove the allegation, but wanted to give Brandon a breathalyzer test. At that point, Brandon unexpectedly admitted to using chewing tobacco at a time other than November 19 when he had encountered the board member. There was nothing coercive about the admission.

Thus, it is recommended that the State Board affirm the decision of the local school board.

IOWA DEPARTMENT OF EDUCATION
(Cite as 26 D.o.E. App. Dec. 192)

In re Good Conduct Discipline of Brandon M.

Anne Michehl,	:	
Appellant,	:	
vs.	:	PROPOSED DECISION
	:	[Admin. Doc. 4742]
Eagle Grove Community School District,	:	
Appellee.	:	

The above-captioned matter was heard in person on February 7, 2012, before designated administrative law judge Carol J. Greta, J.D. Anne Michehl and her minor son, Brandon M., were present with their attorney, Dani Eisentrager. The Eagle Grove Community School District was represented by its attorney, Rick Engel.

Ms. Michehl seeks reversal of the December 12, 2011 decision of the local board of directors of the Eagle Grove School District to uphold the administrative finding that Brandon violated the District's good conduct policy. Ms. Michehl filed a timely appeal to the State Board of Education on January 11, 2012.

Hearing was held pursuant to agency rules found at 281 Iowa Administrative Code chapter 6. Authority and jurisdiction for the appeal is found in Iowa Code chapter 290 (2011). The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter of the appeal before them.

FINDINGS OF FACT

Like most schools, Eagle Grove has a good conduct policy proscribing certain behaviors for its students who participate in extracurricular activities, including interscholastic sports. Among the prohibited conduct is possession and use of any tobacco product.

The Eagle Grove good conduct policy includes the following steps to be followed when a student disputes an allegation that the student is in violation of the policy's prohibitions (these are reproduced verbatim from Appellant's Exhibit 1):

Step 1: **The Principal** will conduct a preliminary investigation and meet with the student in order to provide the opportunity for the student to explain, admit, or deny the allegation. This is done in order to determine whether there is enough evidence to call a meeting for the Activities Counsel [sic], which should take place within 2 school days.

Step 2: **Activity Council** meets to determine guilt or innocence. If the Activity Council is satisfied that a violation has taken place, they will initiate the appropriate action. The student and parents/guardians will be notified in writing by the Principal specifying the consequences and ineligibility period. The student will remain ineligible until the suspension time is completed or until an appeal reserves the decision. A copy will be sent to the activities office, school principal, and parents/guardians.

Step 3: If the student is dissatisfied with the action taken in step 2, he or she may appeal to the **Appeals Committee**. The hearing shall take place within two school days of receipt of the appeal request. After the hearing before this group, the penalty may be eliminated or affirmed.

Step 4: If a student is dissatisfied with action taken in Step 3, he or she may appeal the decision to the **superintendent** of schools. The superintendent's review shall take place within two school days of the receipt of the request.

Step 5: If a student is dissatisfied with the result of step 4, they may appeal the decision to the **Board of Education** in session through arrangement by the superintendent of schools.

Brandon M. is a junior at Eagle Grove High School; he participated this school year in cross country and wrestling.

On the evening of Saturday, November 19, Brandon was seen at a local Ampride™ gas and convenience store by a member of the local school board, Erin Halverson, who believed that Brandon had chewing tobacco in his mouth. Later that evening Ms. Halverson contacted Principal Jeske first via text message and then, upon Mr. Jeske's request, via email to report her suspicion that Brandon was using chewing tobacco.

The following Monday morning at school Mr. Jeske talked to Brandon, who denied that it was chewing tobacco in his mouth. Brandon told his principal that he had been chewing sunflower seeds. Mr. Jeske responded that a "conduct council" would be convened for later in the day to determine whether Brandon had violated the good conduct policy; he then had Brandon call his mother to invite her to the council.

Before convening the activity council, Mr. Jeske called the legal services director of School Administrators of Iowa ("SAI") to get more information about the necessary level of proof. Mr. Jeske explained that he had no physical evidence; he had a reliable adult witness who saw a bulge in the student's lower lip, but he also had a firm denial from the student that the bulge was tobacco. Mr. Jeske reported to Superintendent Toliver that the SAI legal services director expressed reservations about whether a finding of guilt could be legally justified in the absence of the witness actually seeing tobacco.

Superintendent Toliver stated that he did not believe he could find Brandon guilty of the good conduct violation, based on the evidence. He testified herein that he accordingly decided to attend the meeting that day, which he said was no longer an activity council meeting because there would not be a determination of guilt or innocence. He stated that his reasons for attending the meeting, which he characterized as now being a "parent meeting," were to make sure that Ms. Michehl was aware of the allegation against Brandon, to make mother and son aware that the school officials believed the allegation but were not going to pursue it, and to ask Ms. Michehl if she would consent to have Brandon take a drug test.

When Brandon and his mother met with Mr. Jeske after classes on the afternoon of Monday, November 21, the other school officials present were Superintendent Toliver, Activities Director Kelly Williamson and Head Wrestling Coach Aaron Schafer. Neither Brandon nor his mother was told that this meeting was not the activity council meeting

(Step 2 of the good conduct policy). However, all witnesses who attended the meeting agreed that Superintendent Toliver stated at the outset of the meeting that the District could not “prove [the allegation against Brandon] one way or the other.”

One of the administrators then stated to Ms. Michehl that this was not the first time that Brandon had been accused of use of chewing tobacco. Superintendent Toliver stated that he believed that Brandon used chewing tobacco, that he had a breathalyzer with him, and that he would like Ms. Michehl’s permission to test Brandon for recent tobacco usage. At that point Brandon surprised everyone at the meeting by stating that he had used chewing tobacco within the past three days, although not on the occasion when Ms. Halverson had seen him at the Ampride™.

Following this admission, the meeting ended fairly quickly. No vote was taken and no formal “determination” was made at the meeting that a violation had been proved. Coach Schafer testified that one of the administrators reminded Brandon before he and his mother left that this was his “third strike.”

The next week, following the District’s Thanksgiving recess, Brandon received written notification that his admission of tobacco use was his third offense under the good conduct policy, the penalty for which is a full year of ineligibility from interscholastic athletics.¹ Brandon exercised his opportunity to appeal to the Appeals Committee. The Appeals Committee affirmed the administrative finding that Brandon was guilty of use of tobacco. He then asked for and received a hearing before the local school board, which unanimously upheld the finding that Brandon violated the good conduct policy.

CONCLUSIONS OF LAW

The local school board’s authority to enforce a good conduct policy derives from Iowa Code section 279.8, which states that “the board shall make rules for its own government and that of the ... pupils, and for the care of the schoolhouse, grounds, and property of the school corporation” The Iowa Supreme Court has also ruled that schools and school districts may govern out-of-school conduct of its students who participate in extracurricular activities. *Bunger v. Iowa High School Athletic Association*, 197 N.W.2d 555, 564 (Iowa 1972).

The polestar case remains *Brands v. Sheldon Community School*, 671 F.Supp. 627, 630-631 (N.D. Iowa 1987). That case clearly establishes the following principles, which are followed in the vast majority of states:

- A secondary student has no “right” to participate in interscholastic athletics or other extracurricular activities.
- Accordingly, very little process is due to the student. Such due process consists of two elements:
 - The student must be told what he is accused of and
 - The student must be given an opportunity to tell his side of the story.

¹ Ms. Michehl does not appeal the sanction itself.

- It is only required that there be “some evidence” that a student violated the school’s good conduct policy for a student to be disciplined under such policy. “Some evidence” falls short of a preponderance of the evidence, and shorter still from the criminal standard of beyond a reasonable doubt.

Ms. Michehl argues that there were multiple violations of Brandon’s due process rights, starting with the holding of an Activities Council. She states that school officials were barred from convening the Activities Council because the school officials did not have sufficient evidence to proceed to Step 2 under the local good conduct policy.

This argument does not take into account that the school officials had no intention of punishing Brandon for the alleged tobacco violation from the evening of November 19. The evidence overwhelmingly demonstrates that the meeting with Brandon and his mother on the afternoon of November 21 was not a convening of the Activities Council. The Eagle Grove school officials proceeded with a meeting with Brandon and Ms. Michehl to impress upon them that just because school officials were not going to attempt to prove that Brandon used chewing tobacco, the officials believed Brandon was making poor choices regarding his behavior. Plainly put, the school officials believed that Brandon had a problem and wanted to get Brandon and his mother’s attention.

Noting that Step 4 of the Eagle Grove good conduct policy provides for the superintendent to hear an appeal from a student, Ms. Michehl argues that it was prejudicial error for Superintendent Toliver to take part in the meeting of November 21. She cites *Nielsen, et al. v. Audubon Community School District*, 13 D.o.E. App. Dec. 284 (1996) for the proposition that school officials must follow written board policy before imposing discipline under a good conduct policy. In *Nielsen*, this Board stated that the local “policy is notice to the parents and students that certain procedures will be followed before disciplinary action is imposed.” *Nielsen* at 296. Again, this argument fails because the meeting on the afternoon of the 21st was not a convening of the Activities Council. The steps of the Eagle Grove policy were meaningless at that point because the school officials had no intention of pursuing a punishment of Brandon for the alleged misconduct on the 19th.

Brandon’s unanticipated admission was a game changer. Up to that point, there was no due process violation because no further process was due to Brandon. He had been told early in the day on November 21 by Mr. Jeske what Ms. Halverson reported to Mr. Jeske, and he had been given the opportunity to dispute Ms. Halverson’s account. And, importantly, *Brandon has not been disciplined for the incident on the evening of November 19*. His third offense under the Eagle Grove good conduct policy is his admission of use of chewing tobacco at another, unspecified time. The question becomes whether the admission was coerced. If the admission was coerced, the finding of a third violation of the good conduct policy against Brandon must be reversed.

An argument of coercion does not stand up to the facts herein. There was no drug test administered here, but any drug testing in Iowa is subject to Iowa Code chapter 808A, the Student Search and Seizure Act. Under section 808A.2, a school official may conduct a search of a student (including a drug test) if the “official has reasonable

grounds² for suspecting that the search will produce evidence that a student has violated or is violating either the law or a school rule or regulation.” Nothing in chapter 808A requires a school official to ask for consent from the parent or guardian of a minor student. Nevertheless, Superintendent Toliver did ask Ms. Michehl for her consent to administer the breathalyzer on Brandon. As soon as the superintendent asked for parental consent, Brandon admitted to having recently used chewing tobacco.

No peace officers were present, so there was no real or perceived involvement of law enforcement. No threats were made; no trickery was used; no pressure was exerted. Ms. Michehl stated that Mr. Jeske was “verbally aggressive,” but gave no examples. She testified that Brandon was intimidated, but Brandon did not testify herein. This Board understands that Brandon was sitting around a table with his mother and with persons in positions of authority from the school district, but none of the school officials were abusing their authority. It is quite possible that Brandon felt uncomfortable during the meeting because he knew he had recently violated the Eagle Grove good conduct policy by using chewing tobacco, and had not told his coach about it.³

The local school board concluded that Brandon was neither tricked nor coerced into admitting to a good conduct violation. There was no error in that conclusion.

DECISION

For the foregoing reasons, the decision of the Board of Directors of the Eagle Grove Community School District made on December 12, 2011, finding that Brandon M. committed his third violation of the District’s good conduct rule, is AFFIRMED. There are no costs of this appeal to be assigned.

03/05/12
Date

/s/
Carol J. Greta, J.D.
Administrative Law Judge

It is so ordered.

Date

Rosie Hussey, President
State Board of Education

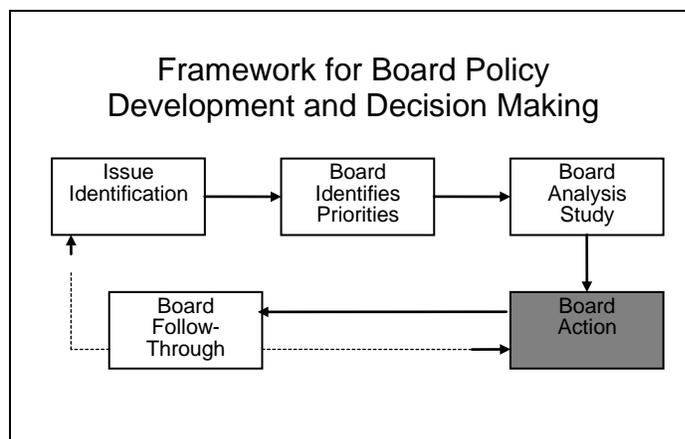
² A school official need only have “reasonable grounds” to invoke chapter 808A, not the “probable cause” that law enforcement must use. Inasmuch as no breath test was administered here, we do not have to decide if reasonable grounds were present.

³Coach Schafer testified that Brandon told him of the allegation that stemmed from being seen at Ampride by a school board member, but he learned of Brandon’s use of chewing tobacco at the same time as all other attendees at the meeting on November 21. The coach stated that Brandon knew that he was unhappy with Brandon’s decisions not to tell him when Brandon was facing earlier allegations of good conduct violations.

Iowa State Board of Education

Executive Summary

March 29, 2012



Agenda Item: *In re Grade Realignment (Spencer Community School District)*

Iowa Goal: All PK-12 students will achieve at a high level.

Equity Impact Statement: All districts receive guidance from the legal questions answered in this decision.

Presenter: Carol Greta, Administrative Law Judge

Attachments: 1

Recommendation: It is recommended that the State Board approve the proposed decision affirming the decision of the local board of directors of the Spencer Community School District to restructure its elementary attendance centers.

Background: The district operates three elementary attendance centers, all containing grades kindergarten through six. On November 22, the local board voted to restructure those attendance centers from “neighborhood school” to a “grade-alike” structure whereby ALL students in any given grade, kindergarten through fifth, would attend the same school.

The discretion as to the number of attendance centers to operate and how to structure them lies solely with a local school board. Therefore, legally it is irrelevant that arguments can be made against this decision. The local board did not abuse its discretion.

Thus, it is recommended that the State Board affirm the decision of the local school board.

IOWA DEPARTMENT OF EDUCATION
(Cite as 26 D.o.E. App. Dec. 183)

In re Grade Realignment (Attendance Center Restructuring)

James and Alison Herman, et al., Appellants ¹ ,	:	
	:	PROPOSED DECISION
vs.	:	
	:	[Admin. Doc. 4741]
Spencer Comm. School Dist., Appellee.	:	

The above-captioned matter was heard telephonically on February 9, 2012, before designated administrative law judge Carol J. Greta, J.D. The Appellants, James and Alison Herman, were personally present with their attorney, Sean J. Barry. The Appellee, the Spencer Community School District [“Spencer”], was represented by attorney Stephen F. Avery. Also present for the District were superintendent Terry Hemann, elementary principal Lucas DeWitt, and board members Bob Whittenburg and Dean Mechler.

The Appellants seek reversal of the November 22, 2011 decision of the local board of directors of the Spencer Community School District to realign the elementary grades in the District’s three elementary schools, commencing with the 2012-13 school year.

An evidentiary hearing was held pursuant to agency rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for the appeal is found in Iowa Code chapter 290 (2011). The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter of the appeal before them.

FINDINGS OF FACT

Spencer has operated three elementary attendance centers² for the relevant past several years. Those attendance centers, all of which are located in Spencer, are as follows:

Johnson Elementary School at 724 W. 9th Street, a PK – 6 building,
Fairview Elementary School at 1508 5th Avenue E., a PK – 6 building, and
Lincoln Elementary School at 615 4th Avenue SW, a K – 6 building.

The District also operates a middle school (grades 7 and 8) and a high school (grades 9 – 12).

¹ James and Alison Herman are the spokespersons for all Appellants. The full list of Appellants, in addition to the Hermans, is Michael and Shelley Schoning, Leah Zittritsch, Serena and Jesse Rustad, Karee Muilenburg, Dustin Blume and Jamie Rusk-Blume. Appellants Zittritsch, S. Schoning, and S. Rustad were also present for this hearing.

² The terms “attendance center,” “building,” and “school” are used synonymously throughout this Decision.

The idea of moving to a grade-alike restructuring of the grade schools in Spencer was first raised in 2000 and again in 2006. The task force that studied the issue in 2000 unanimously recommended no change; it is not clear whether the school board at that time took a formal vote on the issue. The local board did vote 3 – 2 to leave the present alignment *status quo*. In both 2000 and 2006, the committees that studied the issue recommended that the issue be studied again in a few years.

Superintendent Hemann has been the superintendent at the District since July 1, 2011. He stated that a majority of the instructional staff at all three elementary schools wrote a letter to the local board in December of 2010, asking the board to actively review the issue. Testifying that he was not sure if the grade-alike restructuring would so much as “make it out of committee,” Superintendent Hemann convened an elementary restructuring committee of parents, teachers, elementary administrators, two school board members, and himself. This committee was formed by invitation only, and met four times during September and October of 2011 to discuss the structure of the elementary schools. One of the parent members of the committee had been a vocal opponent of the grade-alike concept in 2006; the teacher members had all signed the December, 2010 letter to the school board in favor of the restructuring.

In early November, informational meetings were held at each of the three elementary schools in the evening to present information to any members of the public who wished to attend the meetings. These meetings were advertised in the District’s online monthly newsletter for November and in the elementary schools November newsletter sent home with students. In addition, the local daily newspaper covered the meetings extensively.

On November 22, the local school board met. Opponents of the grade-alike restructuring presented the board with petitions signed by approximately 600 patrons (roughly 5%) of the District who were also opposed to the change. Four persons took advantage of the public comment time at the beginning of the meeting to voice their opposition. These speakers cited the loss of neighborhood schools, inconvenience to some families, increased busing for some students, the lack of evidence that grade-alike configurations improve student achievement, removal of older elementary students to act as role models for younger students, and increase in the number of transitions each student must make from one attendance center to the next. By a unanimous vote, the school board ultimately approved the recommendation of the committee to restructure the schools to a grade-alike system.

As discussed in depth below, we must determine whether there was substantial, credible evidence to support the decision to change to the grade-alike structure. Thus, it is instructive to know why the members of the local board voted as they did. Board members discussed their reasons for their vote. The reasons include the following:

- The belief that good teachers are the key to student achievement, and that a grade-alike configuration will enhance collaboration of teachers.
- Equalization of educational opportunities for students.

- Implementation of authentic intellectual work (AIW) and cognitively guided instruction (CGI) in the District will have a better chance of working well in a grade-alike restructuring.
- Elimination of single sections of any one grade level and the isolation of the teacher and students in a building with a single section of a specific grade level.
- Improvement of special education and gifted/talented services due to the reallocation of those resources.

Under the new alignment, 6th graders will be part of the middle school.³ The grades assigned to the elementary school buildings are as follows:

Johnson School, PK – 1st grade
 Fairview School, 2nd and 3rd grades
 Lincoln School, 4th and 5th grades

The Appellants are residents of the Spencer School District, and are the parents of students who will be enrolled in various elementary grades in the District during the 2012-13 school year.

CONCLUSIONS OF LAW

Relying on *Jacobson v. Nodaway Valley Community School District*, 21 D.o.E. App. Dec. 99 (2002), the Appellants first argue that the local board abused its discretion by proceeding with the vote on November 22 because the process used by the local board was defective. In *Jacobson*, this Board first enunciated the four criteria guiding a local school board's process for grade structures that would become codified at 281— Iowa Administrative Code rule 19.3. Those criteria⁴ were as follows:

- (1) The board and groups and individuals selected by the board shall carry out sufficient research, study and planning [to] include consideration of, at a minimum, student enrollment statistics, transportation costs, financial gains and losses, program offerings, plant facilities, and staff assignment.
- (2) The board shall post or cause to be posted the grade realignment proposal in a prominent place at the affected attendance center(s). The board shall also publish the grade realignment proposal in the agenda of an upcoming board meeting open to the public.
- (3) The board shall promote open and frank public discussion of the facts and issues involved.
- (4) The board shall make its final decision in an open meeting with a record made thereof.

³ Realignment of grade 6 as part of the middle school is not part of the appeal herein.

⁴ Because rule 19.3 and its criteria have been rescinded, we stress that the criteria are set forth herein solely for the convenience of the reader. As discussed herein, rule 19.3 no longer exists.

Specifically, the Appellants state that the first three criteria were violated by the Spencer board. They argue that inadequate notice was given to the public that the issue was under consideration, inadequate study of the pertinent factors was undertaken, and that because the process was rushed, there was no promotion of open and frank public discussion.

The analysis in *Jacobson* of a local school board's process for grade structures is no longer applicable. The Appellants' point is well taken that the Iowa Supreme Court in *Wallace v. Iowa State Board of Education*, 770 N.W.2d 344 (Iowa 2009)(affirming the decision of the Des Moines Public School District to close certain attendance centers), only voided the criteria in former chapter 19 by which a school board closes an attendance center. However, after examining the *Wallace* decision, this Board chose in 2009 to rescind all of chapter 19. The Court in *Wallace* stated, "Given ... the notable absence of a legislative grant to the [State Board of Education] of authority to adopt rules regulating school closure decisions, we conclude a rational agency could not conclude it had authority to propound rules 19.1 and 19.2." Inasmuch as the Iowa Supreme Court determined that this Board lacked authority to adopt rule 19.2, the Court would certainly reach the same conclusion regarding rule 19.3. It would have been disingenuous of this Board not to have rescinded all of chapter 19 following the *Wallace* decision.

It would also be erroneous for this Board to continue to apply the criteria that were formerly in rule 19.3. If this Board lacks authority to codify the criteria in rule, this Board has no authority to use the criteria as the yardstick for lawful board action regarding realignment of grade structure or building closings.

Thus, in the absence of the four former criteria, the correct standard of review is for abuse of discretion. In describing the abuse of discretion standard, the Iowa Supreme Court has stated as follows:

[W]e look only to whether a reasonable person could have found sufficient evidence to come to the same conclusion as reached by the school district. [Citation omitted.] In so doing, we will find a decision was unreasonable if it was not based upon substantial evidence or was based upon an erroneous application of the law. [Citation omitted.] Neither we nor the Department [of Education] may substitute our judgment for that of the school district.

Sioux City Cmty Sch. Dist. v. Iowa Dep't of Educ., 659 N.W.2d 563 (Iowa 2003).

The abuse of discretion standard means that we may not substitute our judgment for that of the underlying decision-maker absent a showing that the initial decision was "unreasonable and lacked rationality." 659 N.W.2d at 571. In the *Sioux City* case, the Iowa Supreme Court further explained that, just because rational people can disagree about a decision, there is no authority to override the original decision and replace it with one that is more palatable. Indeed, the fact that rational people could reach differing decisions eliminates authority to reject the decision as an abuse of the decision-maker's discretion. The local board must have either erroneously applied the relevant law or failed to base its decision upon substantial, credible evidence.

Our state laws that give local school boards broad authority in school closing matters are Iowa Code section 279.11 (local boards "shall determine the number of

schools to be taught, divide the corporation into such wards or other divisions for school purposes as may be proper, [and] determine the particular school which each child shall attend”) and section 280.3(5) (“the board of directors of each public school district ... shall establish and maintain attendance centers based upon the needs of the school age pupils enrolled in the school district”).

Therefore, for the Appellants to prevail on their argument that the process was defective requires proof that the Spencer board violated a procedural requirement. There are no procedural requirements regarding mandatory factors to be studied, by whom those factors must be studied, assurance of public input, or prescribed timeline for the process. The process due consists of notice and opportunity to be heard. The Appellants’ argument fails because there was sufficient evidence in this record of notice to families and opportunity to be heard. The committee meetings were not required to be publicly noticed, and there is no evidence that the parent informational meetings were inadequately noticed.

The Appellants next cite the lack of research regarding grade-alike schools as proof that the decision was pre-determined by the local board, thus rendering the board’s decision unreasonable and irrational. The task of the State Board in appeals of this nature is not to second-guess well supported local board decisions. The issue is not whether restructuring the elementary grades and buildings was the best decision. The issue is whether voting to restructure the buildings under a grade-alike concept was contrary to the local board’s statutory authority or was done for irrational reasons.

The abuse of discretion standard of review requires this Board to give deference to a local board’s rational decision because the legislature decided that the local board’s “expertise justifies vesting primary jurisdiction over this matter in the discretion” of the local boards. *Berger v. Iowa Dep’t of Transp.*, 679 N.W.2d 636, 640 (Iowa 2004). *Cf.*, *Christensen v. Snap-On Tools Corp.*, 665 N.W.2d 439 (Iowa App. 2003) (when a rational person could agree with either of two competing arguments, it cannot be said that the underlying decision is so illogical or irrational as to dictate a different outcome).

The record shows that substantial, credible reasons existed to justify rejection of a grade-alike restructuring. But the record also shows that substantial, credible reasons existed to justify the grade-alike restructuring. Under the abuse of discretion standard, it simply is irrelevant whether the superior decision would have been to not restructure the elementary buildings as a grade-alike system. *Even if we view all of the underlying facts in the light most favorable to the Appellants, we must conclude that a reasonable person could reach the same conclusion as was reached by the Spencer board.*

The voters hold the local directors responsible for what voters perceive to be unwise decisions or decisions with which voters disagree by changing the make-up of the local board through the election process. The State Board of Education must uphold a discretionary decision of a local board “in the absence of fraud or abuse” or unless the local board exercised its power “in an arbitrary or capricious manner.” 78 C.J.S. *Schools & School Districts* § 558. *Accord*, 1 Rapp *Education Law* 4.01[3][c].

There is no fraud and no abuse of discretion established by the record presented here. Although its decision may be unpopular with some, the local school board exercised its statutory authority for reasons that were neither arbitrary nor irrational. This issue is understandably of utmost importance to families of elementary-age

students who will be losing their neighborhood schools. We understand that the Appellants vigorously disagree with the decision of the local board. But there are no legal grounds for reversal by this Board.

DECISION

For the foregoing reasons, the decision of the Board of Directors of the Spencer Community School District made on November 22, 2011, restructuring the three elementary schools as described herein is AFFIRMED. There are no costs of this appeal to be assigned.

02/15/12
Date

Carol J. Greta, J.D.
Administrative Law Judge

It is so ordered.

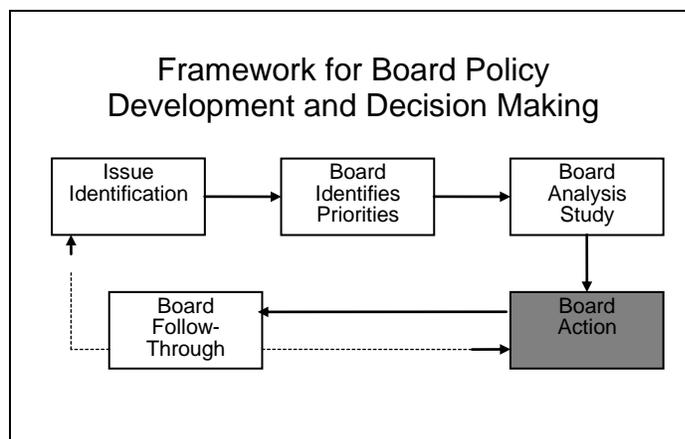
Date

Rosie Hussey, President
State Board of Education

Iowa State Board of Education

Executive Summary

March 29, 2012



Agenda Item: *In re Open Enrollment of Jill F. (Clay Central-Everyly Community School District)*

Iowa Goal: All PK-12 students will achieve at a high level.

Equity Impact Statement: All districts receive guidance from the legal questions answered in this decision.

Presenter: Carol Greta, Administrative Law Judge

Attachments: 1

Recommendation: It is recommended that the State Board approve the proposed decision affirming the decision of the local board of directors of the Clay Central-Everyly Community School District denying the open enrollment application filed on behalf of Jill F.

Background: Jill and her parents reside in the Clay Central-Everyly District (CCE). There were many issues prior to the start of the school year involving the district and other members of Jill's family, but Jill started school this past fall at CCE. After a sole incident during Homecoming Week, not directed at Jill, the family filed a late open enrollment application, alleging pervasive harassment.

The local school board found that the allegations did not constitute pervasive harassment. The evidence at the hearing before the administrative law judge was found to fall short of proving pervasive harassment.

Thus, it is recommended that the State Board affirm the denial of the open enrollment application.

IOWA DEPARTMENT OF EDUCATION

(Cite as 26 D.o.E. App. Dec. 177)

In re Open Enrollment of Jill F.

Kevin and Lisa F., Appellants,	:	
	:	PROPOSED DECISION
vs.	:	
	:	[Admin. Doc. 4744]
Clay Central-Everyly Comm. School Dist., Appellee.	:	

The above-captioned matter was heard telephonically on February 1, 2012, before designated Administrative Law Judge Carol J. Greta. Appellant Kevin F. was present on behalf of his minor daughter, Jill, who was also present. The Appellants were represented by attorney Sean J. Barry. The Appellee, the Clay Central-Everyly Community School District, was represented by Superintendent Robert Raymer. Also present on behalf of the Appellee was secondary principal, Curt Busch.

The Appellants seek reversal of the December 21, 2011 decision of the local board of directors of the Clay Central-Everyly District to deny the open enrollment request filed on behalf of Jill.

An evidentiary hearing was held pursuant to agency rules found at 281—Iowa Administrative Code chapter 6. 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 have jurisdiction over the parties and subject matter of the appeal before them.

FINDINGS OF FACT

The sole issue presented here is whether the incident described herein meets the criteria established by this Board for granting a late-filed open enrollment in which pervasive harassment of the student is alleged.

Jill resides with her parents in the Clay Central-Everyly (“CCE”) Community School District. She attended CCE from kindergarten through the first semester of the 8th grade during the present school year. Her father, Kevin, was the former head varsity football coach at CCE high school. He resigned his coaching contract with CCE in January, 2011.

In February of 2011, the family filed open enrollment applications on behalf of Jill and her older sister. These applications were timely filed for the present school year. Jill, however, decided to remain at CCE, where she started 8th grade this past fall. As of January 4, 2012, she is enrolled at and attends the Sioux Central Community School District.

On November 28, 2011, the family filed another open enrollment application on behalf of Jill, asking that it be granted immediately. The application was based on an incident described in the application as follows:

In early October, a senior in high school was allowed to wear clothing and a sign during Homecoming Week mocking Jill's father. The student continued to wear this the entire day without any teacher or administrator telling him to remove it. Our daughter witnessed this and it upset her greatly.

At this hearing, Kevin related the following events as further background:

- Jill is the middle of five children of the Appellants; the oldest is a CCE graduate, the next child, Taylor, attends Sioux Central, and the two youngest attend the CCE elementary school.
- After coaching the CCE football team since 1991, Kevin resigned his position of head varsity coach in January, 2011. He expressed his willingness to be an assistant coach, but testified that this offer was not conveyed to members of the team.
- In January, 2011, allegations were made against Kevin by CCE staff that he inappropriately altered Taylor's basketball statistics on a Web site maintained by the Iowa Girls High School Athletic Union and on which girls basketball coaches are required to report team and individual player statistics. At a meeting with CCE administrators and the head girls basketball coach, Kevin brought forth an allegation that an assistant coach for girls basketball was not properly credentialed by the Iowa Board of Educational Examiners (BoEE) and thus, could not coach in any capacity.
- In June, 2011, the CCE school board president – acting on behalf of the local board – filed a formal complaint against Kevin with the BoEE. The complaint, which alleges a violation of BoEE rule 282—IAC25.3(6)¹, was raised by Kevin at this hearing. He further stated that the complaint has not been adjudicated yet by the BoEE.
- In June, 2011, the Appellants expressed to the softball coach their belief that the coach was not treating Taylor fairly. The minutes of the local board's meeting of June 20, 2011, include a report that the softball coach "spoke of concerns about bullying /harassment by a couple of softball parents toward" the coach. Kevin testified that the board adopted a policy about fan behavior that was directed at him. He also expressed here his disappointment that neither the CCE administration nor board has acknowledged poor conduct on the part of the softball coach.

¹ This rule prohibits any licensee of the BoEE from "unethical practice toward other members of the profession, parents, students, and the community," and is based on the allegation that Kevin F. "deliberately distort[ed] statistics" of his daughter for her benefit.

Kevin's testimony amply demonstrated that many events had occurred prior to the start of this school year which, in his words, "created animosity." Nevertheless, Jill stated that, prior to Homecoming Week, everything was going well for her at CCE and she was very happy that she had decided not to go to Sioux Central. Jill was clear that, while she was aware of all of the events involving her family, none of those events caused her to have a negative experience at CCE prior to October 3 – 7, Homecoming Week.

Career Day was the first day of Homecoming Week. A young man in the senior class who was a captain of the football team wore a football shirt and a sign on his back on which he had written "I file complaints." This student (Tyler) was not coy about his actions; he fully admitted that he was emulating Kevin, his former coach.

At CCE, students in grades 7 through 12 attend classes under one roof, although 8th graders have no classes with 12th graders. Jill testified that she saw Tyler once that day, mid-morning in a hallway. She stated that seeing him made her "uncomfortable," "angry," and also "disappointed that he would do that." Jill did not see Tyler any more that day, although when she was in the school library that afternoon she was aware that he was in the hallway outside the library. According to Jill, Tyler was refusing to enter the library because he was aware that she was present in the library. Jill stated in this hearing that she understood that Tyler's conduct was not aimed at her, but she was understandably affected by it.

Her parents asked Mr. Busch for a meeting with Mr. Busch and Tyler. This meeting took place on October 14. Prior to the meeting, Mr. Busch had ensured that there would be no pictures of Tyler, dressed as his former coach, used in the local newspapers or the CCE yearbook. At the meeting, Tyler did not apologize to Jill or her father. He explained that he dressed as Kevin "out of anger" toward Kevin for his resignation as football coach. His written statement, submitted herein, states Tyler's perception that Kevin "did not fulfill his commitment" to be the head football coach. Tyler's statement concludes, "As a captain of my football team...I felt the need to rise and be a leader within my team. In all of this my goal was to stand up for what I believe in."

Roughly six weeks after the meeting with Mr. Busch and Tyler, Jill's parents filed the present open enrollment application on her behalf, requesting approval for a mid-year transfer to Sioux Central. The application was based on the incident from Career Day. The family also stated the following on the application:

We had hoped the school would take disciplinary action, but has not, so we would like to remove her to prevent anything else from happening to Jill.

Although Jill testified that she had no fear of retaliation from CCE students, she stated that after the meeting with Mr. Busch, students "were not being nice anymore" to her. Jill testified that one student told her to let it go because it was not that big of a deal. She did not make any CCE staff aware her perception that CCE students were giving her the "cold shoulder" and "frowning" or "glaring" at her. Stating that she did not trust that anything would be done, Jill admitted that she said nothing to CCE staff and did not use the CCE written complaint form to report any harassment. In response to evidence submitted by the District that staff were unaware that Jill believed she was

being harassed, Jill stated that she did not “show any upset on [my] face because I didn’t want people to ask me questions. Jill also testified that she was on the “A” honor roll for the first quarter of the 2011-12 school year, but was on the “B” honor roll for the second quarter.

The Clay Central-Everly school board considered the open enrollment application at its regular meeting of December 21. The local board voted 3 – 2 to deny the open enrollment application. The family chose to transfer Jill to Sioux Central between semesters; Jill stated that she is happy at her new district of enrollment.

CONCLUSIONS OF LAW

The controlling statute for this appeal is the open enrollment law, Iowa Code section 282.18 (2011), and the exception to the statutory filing deadline of March 1 in 282.18(5) regarding applications that seek open enrollment due to “repeated acts of harassment of the student.”

The criteria regarding open enrollment requests based on repeated acts of harassment, all of which must be met for this Board to give the requested relief, are as follows:

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 [emphasis added] 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.

Because the evidence herein fails to meet the second and third criteria, this Board does not analyze the first and fourth criteria as applied to these facts.

The conduct complained of must have been aimed at Jill. Tyler’s action was not “conduct toward the student;” it was conduct toward her father. We take Jill at her word that Tyler’s conduct angered and disappointed her, and made her feel uncomfortable. We cannot change the plain wording of the statute, however.

Nor can we conclude that the post-Homecoming Week conduct Jill testified regarding was conduct that created an objectively hostile school environment for Jill. While this Board does not discount Jill's perceptions of hard stares and cold shoulders, there is no evidence that Jill felt unsafe at CCE. As in our recent decision, *In re Kiley W.*, 26 D.o.E. App. Dec. 164 (2012), we must determine "whether the incidents created an objectively hostile school environment, which requires this Board to go beyond a student's perceptions." Jill's demeanor herein was of a remarkably mature young lady, and to her credit, she testified that she feared no retaliation from her fellow students.

The third criterion requires a showing that the harassment is likely to continue despite school officials' efforts to the contrary. Here, school officials were not notified of any ongoing discomfort experienced by Jill. The District had to have been given a chance to alleviate the situation for Jill; it was not given that chance.

We remind school officials, students, and families that these types of open enrollment appeals are not about a family's right to transfer their children to other school districts. Families are free to make the decisions they deem to be best for their children. This appeal and all others brought under the open enrollment law is about whether the local school board erred legally. We conclude that the Clay Central-Everyly school board applied Iowa Code section 282.18(5) appropriately when it denied the late open enrollment application filed on behalf of Jill.²

DECISION

For the foregoing reasons, the December 21, 2011 decision of the Board of Directors of the Clay Central-Everyly Community School District, denying the open enrollment request filed on behalf of Jill F., is AFFIRMED. There are no costs of this appeal to be assigned.

2/13/12
Date

/s/
Carol J. Greta, J.D.
Administrative Law Judge

It is so ordered.

Date

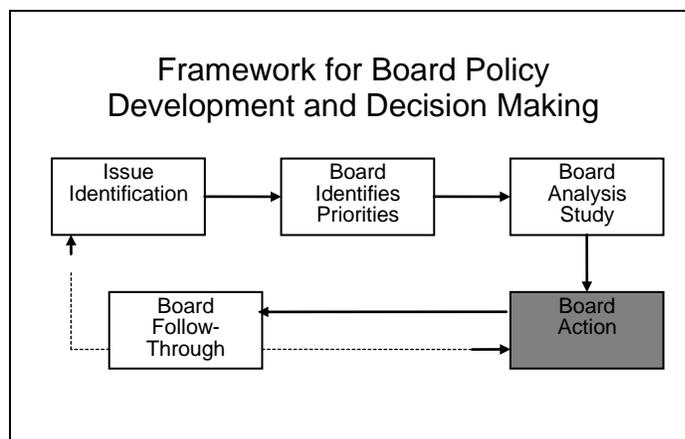
Rosie Hussey, President
State Board of Education

² We have reversed local boards that denied open enrollment applications. See *In re Hannah T.*, 25 D.o.E. App. Dec. 26, 28 (2007) [cites omitted].

Iowa State Board of Education

Executive Summary

March 29, 2012



- Agenda Item:** *In re Open Enrollment of Jordan B. (Hamburg Community School District)*
- Iowa Goal:** All PK-12 students will achieve at a high level.
- Equity Impact Statement:** All districts receive guidance from the legal questions answered in this decision.
- Presenter:** Carol Greta, Administrative Law Judge
- Attachments:** 1
- Recommendation:** It is recommended that the State Board approve the proposed decision affirming the decision of the local board of directors of the Hamburg Community School District denying the open enrollment application filed on behalf of Jordan B.
- Background:** Jordan and her mother, Kelly Peters (who has primary physical custody of Jordan) reside in the Hamburg School District, which sends all of its high school students to Farragut Community School District to attend Nishnabotna High School. Because this is a new whole grade sharing agreement, Hamburg families could have chosen to open enroll their children to any other district (if filing on or before March 1, 2011). The family discussed having Jordan attend Red Oak, the district in which her father resides, but Jordan started school this past fall at Nishnabotna High School. After a contentious "sit-in" by some students, including Jordan, at school to protest the serving time and quantity of school lunch, Ms. Peters filed a late open enrollment application, alleging a severe health condition of her daughter.
- No proof was provided to the local school board about a health concern regarding Jordan. There was no evidence by which either the local board or State Board can proceed under Iowa Code section 282.18(5). Thus, it is recommended that the State Board affirm the denial of the open enrollment application.

IOWA DEPARTMENT OF EDUCATION
(Cite as 26 D.o.E. App. Dec. 189)

In re Jordan B.

Kelly Peters,	:	
Appellant,	:	PROPOSED
	:	DECISION
vs.	:	
	:	[Admin. Doc. 4748]
Hamburg Community School District,	:	
Appellee.	:	

The above-captioned matter was heard telephonically on February 21, 2012, before designated administrative law judge Carol J. Greta, J.D. The Appellant was present on behalf of her minor daughter, Jordan. Superintendent Jay Lutt appeared on behalf of the Hamburg Community School District (“Hamburg”). Also present throughout the hearing were Hamburg board members Hilary Christiansen and Susan Harris.

Ms. Peters seeks reversal of the January 30, 2012 decision of the local board of directors of the Hamburg Community School District to deny the open enrollment request filed on behalf of Jordan.

An evidentiary hearing was held pursuant to agency rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for the appeal are found in Iowa Code §§ 282.18(5) and 290.1 (2011). The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter of the appeal before them.

FINDINGS OF FACT

Following the 2010-11 school year, the Hamburg Community School District discontinued its high school. It entered into a whole grade sharing agreement with the Farragut Community School District whereby all 9 – 12 grade resident students of Hamburg attend high school at Farragut.¹ This high school goes by the name Nishnabotna High School. As Ms. Harris explained, both districts have worked hard to create a climate where there are no “Farragut” kids and no “Hamburg” kids, but that everyone is a Nishnabotna student.

Ms. Peters is a resident of Hamburg; she is Jordan’s primary custodial parent. Jordan’s father is a resident of the Red Oak Community School District. After the whole grade sharing agreement was reached last year by Hamburg and Farragut, Jordan and her

¹ Middle school students (those in grades 5 – 8) from both districts attend school in Hamburg.

family discussed whether to have Jordan enroll elsewhere, but decided that she would become a student at Nishnabotna High School.

On January 25, 2012, roughly one-quarter to one-third of the Nishnabotna students participated in a “sit-in” at lunch. The students were protesting their unhappiness with the administration’s decision to move the lunch period from about 12:15 p.m. to 12:38 p.m. The secondary principal was not amused and used a profanity, for which he later apologized. This incident was said by Ms. Peters to be the tipping point where she decided to remove her daughter from the “negative environment” of Nishnabotna High School.

That same day, January 25, Ms. Peters filed an open enrollment application on behalf of Jordan, alleging a severe health concern. She wrote the following explanation on the application:

Jordan can’t go the day without being upset about something that happened at school. She has been getting headaches and is very stressed out. ...She is miserable with the environment at Nishnabotna High School. We want to send her to Sidney High School ASAP.

Ms. Peters told the local board members at the board meeting on January 30 that Jordan suffered from headaches. She admits that she said nothing before January 30 to any school official about Jordan’s headaches. The local board voted 4 – 1 to deny the late-filed open enrollment request. Jordan is presently a student at Sidney High School.

CONCLUSIONS OF LAW

The controlling statute for this appeal is the open enrollment law, Iowa Code section 282.18 (2011), and the exception to the statutory filing deadline of March 1 in 282.18(5) regarding applications that seek open enrollment due to a “serious health condition of the student that the resident district cannot adequately address.”

This Board has had only one prior appeal from a parent seeking open enrollment because the resident district cannot adequately address the student’s serious health condition.² We gave relief to the student in that case, and introduced the set of guidelines for districts and local boards of education to use when faced with an open enrollment request based on a child’s serious health need that the parent believes is not being adequately addressed by the district. The parents or guardians of the child must show the following:

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 See *In re Anna C.*, 24 D.o.E. App. Dec. 5 (2006).

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.

This case is decided solely on the third criterion. Ms. Peters admits that no one at Nishnabotna High School had notice of Jordan's headaches. Thus, Hamburg had no means to know "what specific steps its staff can take to meet" Jordan's health needs.

Ms. Peters has the right to keep Jordan's health information from school officials, and she has the right to decide that transferring Jordan to another high school is in Jordan's best interests. But a parent cannot withhold information from school officials and then attempt to use that information to justify a late-filed open enrollment application.

DECISION

For the foregoing reasons, the decision of the Board of Directors of the Hamburg Community School District made on January 30, 2012, denying the open enrollment request filed on behalf of Jordan B. is AFFIRMED. There are no costs of this appeal to be assigned.

2/24 /12
Date

Carol J. Greta, J.D.
Administrative Law Judge

It is so ordered.

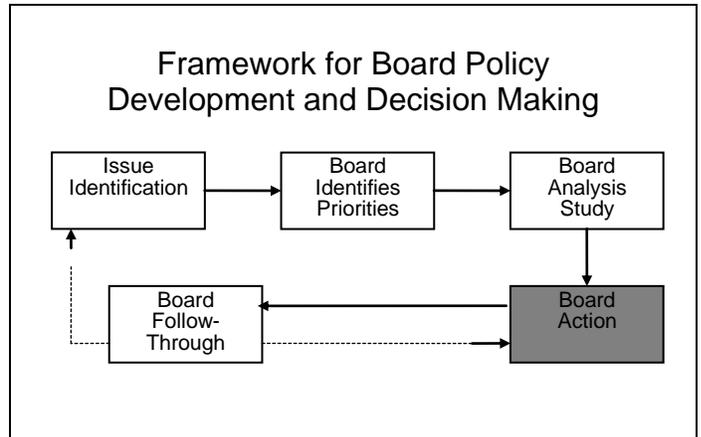
Date

Rosie Hussey, President
State Board of Education

Iowa State Board of Education

Executive Summary

March 29, 2012



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

Iowa Goal: All PK-12 students will achieve at a high level.

Equity Impact Statement: All districts receive guidance from the legal questions answered in this decision.

Presenter: Carol Greta, Administrative Law Judge

Attachments: 1

Recommendation: It is recommended that the State Board approve the proposed decision affirming the decision of the local board of directors of the Hamburg Community School District denying the open enrollment application filed on behalf of Kathryn K.

Background: Kathryn and her parents reside in the Hamburg School District, which sends all of its high school students to Farragut Community School District to attend Nishnabotna High School. Because this is a new whole grade sharing agreement, Hamburg families could have chosen to open enroll their children to any other district (if filing on or before March 1, 2011). Kathryn started school this past fall at Nishnabotna High School. In late January, her family filed a late open enrollment application, alleging a severe health condition or pervasive harassment of their daughter.

There was insufficient evidence by which either the local board or State Board could proceed under Iowa Code section 282.18(5). Thus, it is recommended that the State Board affirm the denial of the open enrollment application.

IOWA DEPARTMENT OF EDUCATION
(Cite as 26 D.o.E. App. Dec. 197)

In re Kathryn K.

Jacqueline and Phillip Kuhr,	:	
Appellants,	:	PROPOSED
	:	DECISION
vs.	:	
	:	[Admin. Doc. 4750]
Hamburg Community School District,	:	
Appellee.	:	

The above-captioned matter was heard telephonically on March 6, 2012, before designated administrative law judge Carol J. Greta, J.D. The Appellants were present on behalf of their minor daughter, Kathryn. Superintendent Jay Lutt appeared on behalf of the Hamburg Community School District (“Hamburg”). Also present throughout the hearing were Hamburg board members Hilary Christiansen and Dave Mincer.

Mr. and Mrs. Kuhr seek reversal of the January 30, 2012 decision of the local board of directors of the Hamburg Community School District to deny the open enrollment request filed on behalf of Kathryn.

An evidentiary hearing was held pursuant to agency rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for the appeal are found in Iowa Code §§ 282.18(5) and 290.1 (2011). The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter of the appeal before them.

FINDINGS OF FACT

Following the 2010-11 school year, the Hamburg Community School District discontinued its high school. It entered into a whole grade sharing agreement with the Farragut Community School District whereby all 9 – 12 grade resident students of Hamburg attend high school at Farragut.¹ This high school goes by the name Nishnabotna High School.

Kathryn started the 2011-12 school year as a sophomore at Nishnabotna High School.² As early as September, her parents noticed that their daughter was sad and

¹ Middle school students (those in grades 5 – 8) from both districts attend school in Hamburg.

² Kathryn now attends Sidney High School.

argumentative, and stayed in her room when she came home from school. She told her parents that the best part of her day was coming home from school. Kathryn related to her parents that teachers were not welcoming to her and others from Hamburg, calling them “Hamburg kids” and saying “you should have been taught that at Hamburg.”

Mr. Kuhr talked to the high school principal in September about the family’s concerns. At that point, the signage for the high school had not yet been changed from “Farragut High School” to “Nishnabotna High School,” and the former mascot of Farragut High School was still on prominent display, adding to the feelings of Kathryn of not being fully welcome at her new school. Mr. Pearson, the principal, said that he would look into the concerns raised.

After Kathryn was chosen to be a school Homecoming attendant that fall, she was not so anxious to leave Nishnabotna High School. Thus, the family waited. Mrs. Kuhr filed the open enrollment application on January 27, 2012, stating in the application that Kathryn “hasn’t been bullied in the usual sense but doesn’t get a word from any of the girls in her class. She feels like an outsider with no voice. This situation hasn’t gotten better as we had thought, and has only gotten worse.” In her affidavit of appeal to this Board, Mrs. Kuhr included the information that Kathryn was experiencing stress-induced cold sores. Mrs. Kuhr testified herein that she included the information about cold sores in her statement to the local board. Board members Christiansen and Mincer had no recollection of cold sores or any health issues being raised on behalf of Kathryn at the school board meeting of January 30. The local board voted 3 – 2 to deny the open enrollment application.

CONCLUSIONS OF LAW

The controlling statute for this appeal is the open enrollment law, Iowa Code section 282.18 (2011), and the exception to the statutory filing deadline of March 1 in 282.18(5) regarding applications that seek open enrollment due to “repeated acts of harassment of the student” or a “serious health condition of the student that the resident district cannot adequately address.”

This Board does not dispute the prerogative of parents to remove their child from a school environment in which the child is comfortable. The Kuhr family has taken action it believes to be in Kathryn’s best interests; that action is not at issue before us. The sole issue is whether the State Board can find that the Hamburg school board erred in denying the late-filed open enrollment application filed on behalf of Kathryn.

A local school board has authority under the open enrollment law to approve late-filed open enrollment applications if the local board believes that the parent has demonstrated either repeated acts of harassment of the student or a serious health condition of the student that the resident district cannot adequately address. This Board has developed criteria to assist local boards in making those complex decisions.

Harassment Criteria

The criteria regarding open enrollment requests based on repeated acts of harassment, all of which must be met for this Board to give the requested relief, are as follows:

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.

Severe Health Need Criteria

Regarding an application that is based on a child's serious health need that the parents believe is not being adequately addressed by the school district, the parents of the child must show all of the following:

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.

Application of Facts Herein to the Criteria

The evidence shows that none of the six criteria regarding severe health need were met. The gist of the criteria is that school officials must have been made aware of a serious health condition and given a chance to address the child's health needs. Even assuming that the local board was informed on January 30 of Kathryn's outbreak of cold sores, Hamburg school officials had no means to know "what specific steps its staff can take to meet" Kathryn's health needs.

This Board does not question that Kathryn was not happy in a high school where, as her parents state on the affidavit of appeal, "there are only 1 or 2 other girls from Hamburg." According to the affidavit of appeal, Kathryn also did not appreciate the skimpy portions served at school lunch or the vigilance during lunchtime of staff "continually walking down the aisles to be sure [students] aren't doing something like texting." Given the rise in incidents of cyber-bullying, this Board is not going to fault any school staff for such vigilance.

The first year of any whole grade sharing agreement presents the challenge of bringing together students and staff previously unknown to each other. Kathryn was already understandably uneasy about attending a new school. Careless remarks by teachers could well have enhanced that unease. However, this Board cannot conclude that anything occurred that intentionally created an objectively hostile school environment for Kathryn at Nishnabotna High School.

This decision does not discount Kathryn's perception of feeling unwelcome at Nishnabotna High School. This decision does not condone any real or perceived insensitivity of school personnel in their efforts to integrate two discrete student bodies into one. This decision is merely that there was no evidence presented to the local school board of an objectively hostile school environment.³ The State Board of Education concludes that the Hamburg school board did not err when it denied the late open enrollment application filed on behalf of Kathryn.

³ Kathryn's brother does not share her perception; he is doing well under the new whole grade sharing environment and has not asked to leave.

DECISION

For the foregoing reasons, the decision of the Board of Directors of the Hamburg Community School District made on January 30, 2012, denying the open enrollment request filed on behalf of Kathryn K. is AFFIRMED. There are no costs of this appeal to be assigned.

3/6/12
Date

Carol J. Greta, J.D.
Administrative Law Judge

It is so ordered.

Date

Rosie Hussey, President
State Board of Education