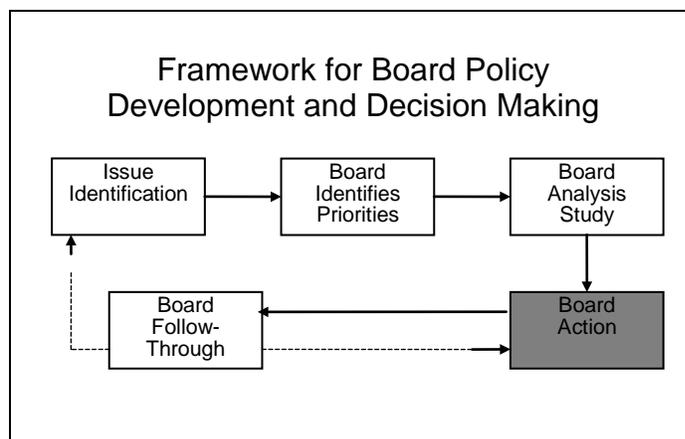


Iowa State Board of Education

Executive Summary

September 26, 2013



Agenda Item: *In Re Open Enrollment of Samantha H. (Dallas Center-Grimes Community School District)*

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

State Board Role/ Authority: Under Iowa Code sections 282.18(5) and 290.1, the State Board of Education has authority to hear appeals from local school board decisions denying applications that seek open enrollment due to a “serious health condition of the student that the resident district cannot adequately address.”

Presenter: Nicole Proesch, Legal Counsel
Office of the Director

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 Dallas Center-Grimes Community School District denying the open enrollment application filed on behalf of Samantha H.

Background: Samantha and her family reside in the Johnston Community School District (JCSD). Samantha transferred from the Dallas Center-Grimes Community School District (DCG) to JCSD for the 2012-2013 school years. During the first few months, Samantha was picked on while riding the bus. Samantha communicated these incidents to administration in October of 2012 and the incidents stopped. Samantha was still not happy at JCSD and in late April of 2013 Samantha was diagnosed with depression. Samantha’s mother communicated the diagnosis to Samantha’s school counselors but admits she never provided the district with the specifics of Samantha’s health needs that were caused by the depression. Rather than provide the district with the opportunity to meet Samantha’s needs, she filed a late application for open

enrollment alleging that Samantha had a serious health condition that the resident district could not adequately address.

The local school board denied the late filed open enrollment application believing that DCG would not be a good fit for Samantha given her previous enrollment experience. The evidence at the hearing before the administrative law judge showed that JCSD was never given an opportunity to try to meet Samantha's needs prior to the open enrollment application being filed. A parent cannot claim that a serious health condition exists that may only be addressed by granting a late-filed open enrollment request.

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. 373)

<i>In re Samantha H.</i>	:	
Shannon Kay Berkley,	:	
Appellant,	:	PROPOSED
	:	DECISION
vs.	:	
	:	[Admin. Doc. 4768]
Dallas Center-Grimes Community School	:	
District,	:	
Appellee.	:	

The above-captioned matter was heard in person on June 25, 2013, before designated administrative law judge Nicole M. Proesch, J.D. The Appellant was present on behalf of her minor daughter, Samantha. Superintendent Scott Grimes appeared on behalf of the Dallas Center-Grimes Community School District (“DCG”). Also present throughout the hearing were Lorie Phillips, the sixth through eighth grade principal for DCG, Cary Justmann, the high school principal for DCG, and Angela Hunt, who is a family outreach counselor for the Johnston Community School District (“JCS D”).

Ms. Berkley seeks reversal of the May 20, 2013 decision of the local board of directors of DCG to deny the open enrollment request filed on behalf of Samantha.

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 (2013). 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

Samantha was enrolled at DCG during the 2010-2011 and 2011-2012 school years. After Samantha got pregnant by a senior at DCG, her family moved and she transferred to JCS D for the 2012-2013 school year. The Berkley family currently resides in JCS D. During fall of 2012, Samantha was teased and picked on by other students who rode the bus to school at JCS D. The first instance occurred only three weeks into the school year when a girl poked her. A few weeks’ later students were throwing grapes at her. At one point, a student balled up a sandwich, threw it on her lap, and walked away. Samantha reported these incidents to the bus driver and her mother. The next day a counselor from JCS D came to talk to her about the incidents.

Samantha had several incidents she reported to the principal and vice principal at JCS D in October of 2012. After she reported these incidents things got better and no other incidents occurred. She was no longer riding the bus. However, Samantha testified

she had no friends at Johnston, often felt left out, and had a desire to return to DCG so she could be with her friends. Samantha was sad and depressed. Samantha recalled two instances when her teachers noticed she was sad or upset and took her out of the classroom so she could talk with administration. Samantha admitted that these incidents were not limited to JCSD. She did have one prior incident while at DCG when several students were calling her names and she reported it to the principal.

In late April of 2013, Samantha went to Broadlawns medical center to meet with a psychologist and was diagnosed with depression. Approximately a week later on May 2, 2013, Dr. D. Bosen wrote a note recommending that Samantha return to DCG for mental health reasons on a prescription pad. For reasons stated in our Conclusions of Law, we give little weight to Dr. Bosen's recommendation. Four days after receiving this recommendation, Ms. Berkley filed an open enrollment application on behalf of Samantha with DCG. Ms. Berkley checked in the application that Samantha had a severe health issue. She indicated on the application she had a doctor's note with recommendation that she transfer to DCG due to mental health, social issues, and ongoing problems with Ms. Renee Mentz. Although, Ms. Berkley testified that she advised JCSD counselor, Ms. Mentz, that Samantha was diagnosed with depression she admits she did not ask the school for any help after the diagnosis.

Ms. Angela Hunt testified that she had been working with Samantha for the past year to assist Samantha with her needs as a teenage mom. She found Samantha to be a good student with good attendance. She seemed to connect at lunch with some of her peers. She was not aware of any issues with teasing or bullying however, she noted that Samantha missed 35 days of school during the 2012-2013 school year and they were monitoring her attendance. Ms. Hunt indicated she had discussions with Samantha about considering an alternative school in JCSD which would allow her to graduate early or get more assistance with her baby. Ms. Hunt testified that Samantha complained about not having friends and not connecting with her peers. Ms. Hunt testified she was aware of the diagnosis of depression late in the year but that neither Ms. Berkley nor Samantha discussed with the district what it could do to assist with her health needs. Ms. Hunt testified that JCSD would do what they could to support Samantha including approving an application for open enrollment.

Mr. Cary Justmann testified that Scott Grimes communicated with him about the request for open enrollment for Samantha who had been a student at DCG. At the time, Mr. Justmann was not aware of any health issues and was only advised that Samantha was looking for a fresh start. Mr. Justmann made inquiry to the middle school principal, Lori Phillips, to get some more background information on Samantha. Ms. Phillips testified that Samantha's friends were engaged in risky behaviors and she did not believe DCG would be a good place for Samantha. Mr. Justmann recommended the application be denied.

Mr. Grimes testified that he was aware of the health issues in the application but he wanted an unbiased opinion regarding Samantha's fit to come back to DCG. After receiving the recommendation to deny the open enrollment application from Mr. Justmann, Mr. Grimes called Ms. Berkley to let her know they would be denying the

application. At the board meeting on May 20, 2013, the board voted 7-0 to deny the late-filed open enrollment request.

CONCLUSIONS OF LAW

The controlling statute for this appeal is the open enrollment law, Iowa Code section 282.18 (2013), 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 three prior appeals from a parent seeking open enrollment because the resident district cannot adequately address the student’s serious health condition.¹ In the first case, we gave relief to the student 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.² Under that case, the appellant here 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.³

This case is decided primarily on the third criterion. Although, Ms. Berkley testified that the school counselors at JCSD were made aware of Samantha’s diagnosis,

¹ See *In re Anna C.*, 24 D.o.E. App. Dec. 5 (2006); *In re Jordan B.*, 26 D.o.E. App. Dec 189 (2012); *In re Kathryn K.*, 26 D.o.E. App. Dec. 197 (2012).

² *Anna C.*, 24 D.o.E. App. Dec at 10.

³ *Id.* at 8.

she admits the district was never provided with specifics of Samantha's health needs that were caused by the depression. Thus, JCSD had no means to know "what specific steps its staff can take to meet" Samantha's health needs.⁴ Rather than provide the district with the opportunity to meet Samantha's needs, Ms. Berkley immediately filed an application for open enrollment on the basis of a doctor's note written on prescription pad paper recommending that Samantha attend DCG. There was no evidence that Dr. Bosen made observations of Samantha while she was at school, nor did he talk to either district.

When a healthcare provider makes a specific non-medical recommendation that directly impacts a student's educational setting without talking to education officials, such recommendation is to be taken solely at face value and is not to be given additional weight merely because it comes from a medical expert.⁵

Since the third criterion is not met, the appeal also falls short of the fourth, and fifth criterion. Furthermore, the Board is not convinced under the sixth criterion that a change in Samantha's school district would improve the situation given her previous enrollment experience at DCG.

The Board does not question that Samantha is suffering from depression and was not happy at JCSD where, Samantha testified she had no friends and often felt left out. Ms. Berkley has the right to decide that transferring Samantha to another high school is in Samantha's best interests. Under prior Board decisions, a parent must give the attending school district notice of how it may address the student's health condition. A parent cannot claim a serious health condition exists that may only be addressed by granting a late-filed open enrollment request.

DECISION

For the foregoing reasons, the decision of the Board of Directors of the Dallas Center Grimes Community School District made on May 30, 2013, denying the open enrollment request filed on behalf of Samantha H. is AFFIRMED. There are no costs of this appeal to be assigned.

Date

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

It is so ordered.

Date

Rosie Hussey, President
State Board of Education

⁴ Cf. *Jordan B.*, 26 D.o.E. App. Dec. at 191 (parent withheld information from district).

⁵ *Anna C.*, 24 D.o.E. App. at 10.