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

In re Grade Realignments (Attendance Center Restructuring)

James and Alison Herman, et al., Appellants[1],	:	
	:	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 centers[2] 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 criteria[4] 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

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

It is so ordered.

03/29/12
Date

/s/
Rosie Hussey, President
State Board of Education