

IOWA STATE BOARD OF EDUCATION

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**In re Closing of Roosevelt  
and Northwood Elementary  
Buildings** )  
)  
) Docket No. 4610  
) DIA No. 05DOE002  
Brian Agnitsch, John Beghin, )  
and Steve Hustedt, )  
)  
Appellants, )  
)  
v. )  
)  
Ames Community School Dist., ) **DECISION**  
)  
Respondent. )

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**INTRODUCTION**

This matter came on for a contested case hearing on July 14, 2005. John Powell represented appellants Brian Agnitsch, John Beghin, and Steve Hustedt. Appellants called Rick Hansen, Roy Cakerice, Mary Ann Dilla, and Brian Agnitsch as witnesses. Appellant's exhibit A was admitted into the record.

Ron Peeler represented respondent Ames Community School District. Respondent called Gloria Symons, Kurt Subra, Kevin Fangman, and Ray Richardson as witnesses. Respondent's exhibits 1-84 were admitted.

**FINDINGS OF FACT**

The Ames Community School District (the district) has been struggling with declining enrollment since at least 1996. The total school enrollment in the Ames district was 4,758 during the 1996-97 school year. The enrollment had dropped to 4,425 during the 2000-01 school year. Most of the decline was at the elementary school level. (Exhibit 1, pp. 2-7).

The decline in school enrollment had a consequent impact on the district's budget because state funding is based on the number of students in the district. During the 2000-01 school year, the district considered closing one or more elementary school

buildings. On January 29, 2001, the district presented a 120 page Preliminary Elementary Boundary Study Report to the Ames School Board (the board). The report expressly considered the closure of schools, along with changing boundary lines to track demographic changes in Ames neighborhoods. (Exhibit 1; Richardson testimony).

The elementary boundary study report set forth an express timeline to consider the issues of school closure and boundary changes. The timeline was (all dates are 2001):

1/29	Study presented to the board
1/30 to 2/15	Series of eight public forums
2/19	Public input presented to the board
3/5	School board discussion
3/26	School board action

The report contained a specific list of the locations, dates, and times for the public forums. A public forum was scheduled at each of the eight elementary schools. The district collected input at the forums and presented it to the board. The board ultimately decided to close Crawford Elementary School. (Exhibits 1, 2; Richardson testimony).

The closure of Crawford Elementary did not resolve the district's continuing budget problems. The district's enrollment continued to decline, and the district was forced to deal with budget shortfalls each year. The problem was exacerbated by other factors, including an unanticipated mid-year cut in public school funding in 2001 by the similarly budget-strapped State of Iowa. (Subra, Richardson testimony).

The record contains some loose discussion of further elementary school closings in 2003. However, there is no indication that the board seriously considered school closings at the time. (See e.g. exhibit 3).

In September of 2004, the district's enrollment was certified for the 2004-05 school year. The district's enrollment declined by 151 students from September of 2003.<sup>1</sup> Superintendent Ray Richardson

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1 The enrollment figures in exhibit 15 do not match the figures

determined, based largely on the enrollment figures, that the district would need to cut \$1.3 million from the 2004-05 budget to present a balanced budget for 2005-06. He did not recommend any school closures at that time. In fact, Mr. Richardson stated during an October of 2004 school board meeting that the district was not considering school closings. (Richardson, Dilla testimony; Exhibit 15, Ames CSD 2004-05 Budget, p. 8).

During this same time period, the district began a change to a program-driven budget process. The program-driven budget process was designed to focus budget spending on programs that are most valued by people in the district. The district created four committees that represented separate portions of the school budget: elementary education, secondary education, instructional support, and district operations. Each committee was made up of school administrators and employees, parents, and members of the general public. (Symonds, Richardson testimony; Exhibits 13, 15-16).

Each committee was asked to make recommendations for spending on programs within its assigned area. The district informed committee members that the superintendent would use the recommendations to develop a balanced budget that he would recommend to the board. None of the committees were expressly directed to consider the idea of school closings as a means to save money. The district set forth the following timeline:

1/25	Orientation meeting
1/25 to 3/11	Committee meetings
3/11	Committee reports due
3/28	Verbal reports to the board

This schedule was made available to the media on January 7, 2005. It was also published on the district's website. (Exhibit 13).

The elementary education committee consisted of two elementary principals, seven teachers (one from each elementary building), four parents, 1 educational assistant, one secretary, and two

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in exhibit 1 for reasons that are not immediately apparent. However, there is no dispute that enrollment was steadily declining over the time period.

community members. The board solicited individuals via a media release to serve on the committee. (Exhibit 13).

The elementary education committee first met at the orientation meeting on January 25, 2005. District staff reminded committee members of the time schedule. Committee members were also told that the board would sponsor a series of public forums in April. The committees were told that the superintendent would make a budget recommendation to the board after the public forums. The committees were told that the board would hold two public hearings before voting on the superintendent's budget recommendation. The dates of the public forums and board meetings were not disclosed at that time. (Exhibits 15-16).

The elementary education committee met six times between February 1 and March 3. The committee prepared minutes that were provided to the district and published on the district's website. The committee allowed other individuals to attend meetings, but did not permit input unless requested. (Exhibits 19, 21, 23, 24, 28, 29; Hansen, Symons, Subra, Fangman testimony).

The elementary education committee was directed to recommend budget cuts between \$400,000 and \$600,000. The committee was not expressly directed to consider school closings. Rick Hansen, a parent-member of the committee, testified that he felt very constricted on what cuts the committee could make. The district's chief financial officer, Kurt Subra, told the committee that they could not cut "core" areas. Mr. Subra testified that "core" areas include requirements the district must meet to remain in compliance with state code and standards for accreditation. (Hansen, Subra testimony).

The elementary education committee minutes reflect that the committee quickly began to focus on school closure as the principle means to meet its level of budget cuts. The committee began discussing school closures by its second meeting on February 8, 2005. School closures were discussed at each meeting thereafter. One teacher-member, Jill Tracy, pointed out in an email to fellow staff members that school closings were the only means by which the committee could meet its charge to find \$400,000 to \$600,000 in budget reductions. (Exhibits 21, 23, 24, 25, 28, 29).

The elementary education committee filed its report on March 11, 2005. The committee recommended that two elementary schools be closed. The committee recommended that the district's three three-section schools (Fellows, Meeker, and Sawyer) remain open.<sup>2</sup> The committee recommended closure of two of the two-section schools (Edwards, Mitchell, Northwood, and Roosevelt). The committee did not designate which of the two buildings should be closed. The members felt the board should make that decision. (Exhibit 33; Fangman testimony).

On March 25, 2005, Mr. Richardson provided the committee reports to the school board. Mr. Richardson also provided a timeline with specific dates, times, and locations for the April public forums, and proposed board meetings in May. The stated purpose of the forums and board meetings was to discuss the budget. The dates and times of the public forums were provided to the media prior to and at the board's March 28 meeting. (Exhibits 34, 35, 37).

The elementary education committee made a report to the school board at the March 28, 2005 meeting. Mr. Hansen, who objected to closing two schools, gave an oral "minority" report to the board. Mr. Hansen told the board that he recommended noncontract pay freezes over closing two schools. (Exhibit 38; Hansen testimony).

The elementary education committee's recommendation to close two schools was reported in the media following the March 28, 2005 school board meeting. Thereafter, a group of parents from the Roosevelt school met to discuss the possibility that their neighborhood school might close. They prepared a report that listed alternative budget cuts. The report also proposed criteria should be considered before closing a school. The Roosevelt parents acknowledged that one school should be closed, but felt that the other school could be saved with other cuts. The report was delivered to the district on April 18, 2005. (Exhibits 40, 41, 51; Agnitsch testimony).

On April 11, 2005, at a regular school board meeting, the board

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<sup>2</sup> A three-section school refers to one with three classrooms per grade level.

discussed the possibility of school closures. Mr. Richardson referenced the elementary education committee's recommendation that the district close up to two elementary schools. He stated that the community would have an opportunity to discuss the recommendations. He stated that he would provide his proposed budget to the board on May 2, and that he scheduled board meetings to discuss the budget (including the school closings) on May 5 and 7. (Exhibit 43; Richardson testimony).

The public forums took place on April 12, 16, 18, and 26. The forums were facilitated by Jim Verlengia of the Heartland Area Education Agency. The district invited comments to all proposed budget cuts; the forums were not limited to a discussion of school closures. Each forum was scheduled for two hours. Any individual could speak at a forum, but each individual was limited to speaking for five minutes at only one of the four forums. (Exhibit 35; Agnitsch testimony).

Board members Roy Cakerice and Mary Ann Dilla testified that the board chair and the superintendent encouraged other board members not to attend the public forums. Mr. Richardson testified that he thought the public may be influenced or deterred from freely making comments at the forums if board members were present. Nonetheless, Ms. Dilla attended the first public forum; Mr. Cakerice attended all four. (Cakerice, Dilla testimony).

Dr. Verlengia compiled information received from the public forums into a written report that was provided to the board on April 28, 2005. The report reflected verbal input from the public on all areas of the school budget, including school closings. The report also included written comments from the public. There were 98 written comments directly relating to the school closing issue. Approximately 300 individuals participated during the public forums. (Exhibit 57; Subra testimony).

The district and individual school board members received considerable contact directly from the public during this same time period. For example, Mr. Cakerice testified that he received approximately 700 emails, 250 postcards, and numerous telephone calls regarding the school closing issue. Mr. Richardson estimated receiving thousands of emails, postcards, and letters. (Cakerice,

Richardson testimony; Exhibit 47).

Mr. Richardson presented his proposed budget to the board on May 2, 2005, during a public board meeting. He specifically proposed closing Roosevelt and Northwood elementary schools. Mr. Richardson stated that Roosevelt, which had just celebrated its 80<sup>th</sup> year in existence, had building code and accessibility problems. He stated that Northwood has inadequate enrollment to sustain the school without making boundary changes. Both are two-section schools that were less flexible for expansion, if needed in the future. Both were previously identified by the elementary education committee as candidates for closure. (Exhibits 59-61).

The board held its budget hearings as scheduled on May 5 and 7, 2005. At the May 5 session, at least 26 members of the public spoke on the school closings issue. At the May 7 session, at least 23 members of the public spoke on the school closings issue. (Exhibits 66, 68).

The board also met at a regular session on May 16 to discuss budget issues, including the school closings. Several board members either made statements or asked questions regarding the school closure proposal. The board took public comment at the May 16 meeting as well. At least 19 members of the public made statements relating to the proposed school closures. Several individuals asked the board to take additional time to consider other options over school closures. (Exhibit 74).

On May 19, 2005, the board met to consider the proposed budget. Again, several board members either made statements or asked questions about the school closure issue. The chair asked each board member to state their individual position regarding the then-revised budget proposal. The board then voted 6-1 to approve Mr. Richardson's budget, and thus close Roosevelt and Northwood schools. (Exhibit 78).

#### **CONCLUSIONS OF LAW**

**Introduction:** The legislature has given school boards the authority to determine the number of school buildings in their

district.<sup>3</sup> The statute provides no standards or criteria that school boards must use when deciding to open or close a school. However, the legislature has provided a process for aggrieved students or their parents to appeal school board decisions to the Iowa Department of Education (the department).<sup>4</sup> The department has reviewed many school closing decisions pursuant to this appeal process.

The department developed through case law a series of criteria that it used to review a school board's action to close a school. The criteria are commonly referred to as the *Barker* guidelines.<sup>5</sup> The *Barker* guidelines do not focus on the substantive correctness of the school board's decision. The standards instead focus on due process considerations, in particular, whether the public was given notice and an opportunity to provide input before the final decision was made.

In 2003, the department adopted the *Barker* guidelines as part of its administrative regulations.<sup>6</sup> The regulation states:

When making a decision regarding whether to close an attendance center within its district, the board of directors of a school district shall substantially comply with all of the following steps.

19.2(1) The board shall establish a timeline in advance for carrying out the procedures involved in making the decision on the matter, focusing all aspects of the timeline upon the anticipated date that the board will make its final decision.

19.2(2) The board shall inform segments of the community within its district that the matter is under consideration by the board. This shall be done in a manner reasonably calculated to apprise the public of that information.

19.2(3) The board shall seek public input in all study

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3 Iowa Code section 279.11.

4 Iowa Code section 290.1.

5 *In re Norman Barker*, 1 DPI App. Dec. 145 (1977).

6 281 IAC 19.2.



and planning steps involved in making the decision.

19.2(4) The board and groups and individuals selected by the board shall carry out sufficient research, study and planning. The research, study and planning shall include consideration of, at a minimum, student enrollment statistics, transportation costs, financial gains and losses, program offerings, plant facilities, and staff assignment.

19.2(5) The board shall promote open and frank public discussion of the facts and issues involved.

19.2(6) The board shall make a proper record of all steps taken in the making of the decision.

19.2(7) The board shall make its final decision in a open meeting with a record made thereof.

The regulations maintain that each school district has the discretion to determine the number of schools in the district.<sup>7</sup> The department's regulations are specifically designed to ensure full opportunity for public participation before the decision is made.

**Discussion:** The guidelines are relatively straightforward and typically would be the starting point to analyze a case of this nature. In this instance, however, I think it helpful to initially discuss what I see to be the major weakness of each party's case. I think this approach may better frame the analysis surrounding the seven guidelines.

The biggest concern I have with the district's case is that it could have done a much better job setting a timeline and providing notice that specifically related to the school closing issue. The first evidence that the district might close schools arose from the elementary education committee, which was filed on March 11, 2005. The district could have easily informed the public at that point that it was going to consider closing two schools. The district could have simply issued a public announcement to that extent, and made clear that April public forums and May school board meetings would provide an opportunity to speak to the school closing

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7 281 IAC 19.1.

proposal. If the district had done this, the parent's claims in this case would likely be completely extinguished.

Instead, the district allowed the issue to arise at the March 28 school board meeting as part of a discussion of the budget. Even then, the district could have announced that the April public forums and May school board meetings would have a dual purpose: to discuss the budget, and to discuss school closings. The district did not do this. The failure to separate the school closing issue from the general budget discussion held through to the very end. In fact, the board did not even hold a separate vote on the decision to close the Roosevelt and Northwood elementary schools. Rather, it closed the two schools as part of a vote to approve the annual budget.

The district's budget certainly was the predominant factor in the decision to close the schools. However, the district's failure to separate the school closing issue from the budget-approval process ran the risk of confusing the public as to whether and when the school closing issue would be considered, and thus had the potential of curtailing public participation. The district may meet the "substantial compliance" standard set forth in the regulations, but it could have easily done much better.

The major problem with the parent's case is that, to some extent, the district's budget process allowed the public considerably greater input into the school closing decision than required by law. The district adopted the program-driven budget process to get better input on school priorities from teachers, parents, and members of the community. The elementary education committee included four parents and two members of the general public. By including parents and members of the community to serve on the committees, the district not only allowed the public to have input after the school closing recommendation was made - it allowed the public a role in developing the recommendation itself.

The district was not required to involve the public in its budget process to the extent it did. The administration could have developed a budget proposal completely on his own without assistance from the community. Instead, the district allowed the public to get involved in the root decision-making process of

prioritizing areas of the budget that are most critical for students in the district.

The district's decision to involve the public in the program-driven budget process does not, standing alone, prove compliance with the department's regulations. However, it does show the district's effort to involve the public in weighing the value of educational programs and resources during a period that budget cuts must be made.

**Regulatory factors:** The parents claimed in their initial appeal that the district did not comply with regulatory factors 1, 3, 4, 5, and 6. In their post-hearing brief, they argued that the district failed to comply with factors 1, 2, 5, and 7. While these contrasting claims create some notice issues of their own, I will discuss each factor.

**1. Timeline.** As discussed above, the district did not establish a timeline that was specifically designated for a decision on school closings. The district did establish a clear timeline regarding its decision on budget cuts. The district argues that the budget timeline meets the substantial compliance standard, because the school closings were clearly part of budget considerations.

For reasons discussed at greater length with regard to factor 2, the district substantially complied with the timeline requirement. The district discussed during the board's March 28 public meeting that the elementary education committee recommended closing two of the four two-section schools. While the district could have created a timeline that was specific to the school closing issue, its timeline on the budget process provided notice of dates for public discussion, board hearings, board discussion, and a final decision. The board's timeline meets the first criteria.

**2. Notice.** The district's argument regarding the second factor is similar its argument on the first factor. The district claims that it notified the public that it would be considering school closures as part of the budget process that had been previously established. The district argues this was made clear to the public at the March 28 school board meeting. The parents claim that

notice was not provided until May 2, when Mr. Richardson presented his budget recommendation to the board. The parents note that May 2 was the first time that Roosevelt and Northwood schools were specifically identified as the two schools to be closed.

The elementary education committee's recommendation to close two two-section created headlines in the local newspapers after the March 28 school board meeting. Those same newspaper articles contained a schedule of the four public forums at which people could provide feedback to the district. The public was reasonably apprised at that point that school closings were going to be considered.

The level of public input to the district after the March 28 school board meeting demonstrates that the public was fairly apprised. The school closing issue was discussed by numerous individuals at the public forums and school board meetings. The district received voluminous numbers of emails and letters from the public. The school board members individually received hundreds of contacts from the public. Parents from the Roosevelt school created an alternate budget proposal that was presented to the district.

The fact that the district did not identify which two schools could be closed on March 28 is not determinative. The district, through the committee report, identified four schools that could be closed. This gave fair notice to the public that they should provide input to the district if they were concerned about the closure of any one of the named schools.

**3. Public input.** The board sought public input through the April public forums, acceptance of letters and emails, and public forum portions of the May board meetings. This factor is satisfied.

**4. Research and planning.** The elementary education committee initially considered many factors before recommending school closures, including student enrollment figures, transportation costs, financial gains and losses, program offerings, plant facilities, and staff assignment. Mr. Richardson also covered these areas when he made his recommendations. Mr. Subra also touched on these areas during discussions with committee and board members. The board had this information available to it when it

made its decision. This factor was met.

**5. Open and frank public discussion.** This is another area in which the district might have improved its process in at least one respect. District administration encouraged board members not to attend budget-driven committee meetings or the April public forums. Mr. Richardson testified that he felt public participants might be discouraged from offering their full and true feelings during the meetings if board members were present. In fairness to Mr. Richardson, there may be some truth to this theory. However, the recommendation gave an impression that the board and/or the district did not want to hear what the public was going to say. Board members would have had a greater opportunity to hear and interact with members of the public if they had been encouraged to attend the forums.

Notwithstanding the district's recommendations, board members did attend committee meetings and public forums. Ms. Symonds attended the elementary education committee meetings. Mr. Cakerice attended all four April public forums, and Ms. Dilla attended one. The board heard the committee reports on March 28, and Mr. Richardson's report and recommendations on May 2. The board took extensive public comment during meetings on May 5, 7, and 16. The board was provided considerable written material from the program-driven budget committees, Dr. Verlengia, Mr. Richardson, the Roosevelt parents' alternative budget, and other sources. The evidence shows an open public discussion of the facts and issues involved with closing the two schools.

The parents also contend that this factor is not met because the administration did not outline the seven *Barker* guidelines to the board members at the beginning of the process. The parents put on evidence showing that some board members did not learn about the *Barker* guidelines until mid-way through the process, and only then from the parents. However, this evidence does not prove a violation of the criteria. The board could comply with the law without knowing the specific criteria. The determinative issue is whether the district provided a full opportunity for public participation, as reflected through the criteria. It would certainly be helpful for the board members to know the specific criteria at the beginning of the process. But, as long as the

district complied with all seven factors, it is irrelevant whether individual board members knew about their existence.

**6. Record.** There is no evidence that the board failed to make a proper record of the steps made in its decision-making process.

**7. Final decision.** As previously mentioned, the board voted on the school closings as part of its vote to approve the budget. As I have suggested, it would have been a better practice to separate the vote on school closings from the remainder of the budget vote. However, the district substantially complied with the regulation. The board members and the public fully understood that a decision to approve the budget would result in the closure of the Roosevelt and Northwood schools. The seventh factor is satisfied.

**Summary:** The record is abundantly clear that the school closure decision was difficult for everyone involved. However, the district has been dealing with significant budget cuts on an annual basis. It is not surprising that the district ultimately had to face a difficult choice between closing buildings and cutting programs. Further, because the budgetary crisis was largely caused by declining enrollment, it is not surprising that the district ultimately focused on the number of buildings that were needed to educate children.<sup>8</sup>

The parents and children who attended Roosevelt and Northwood are understandably upset with the decision. The schools are a central part of a child's life. Parents develop strong relationships with administrators, teachers, and other staff, particularly so when they send more than one child to the school. The district's decision to close schools will force children to attend a school outside their immediate neighborhood. The district's decision may cause some neighborhoods to lose a central part of their identity. It is very unfortunate that the economic realities associated with the district's declining enrollment force this type of decision to be made.

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<sup>8</sup> Mr. Subra testified that the district would be operating at approximately 62 percent capacity if it retained seven elementary buildings. The decision to close two schools was expected to raise the capacity to a more efficient 85 percent.

Docket No. 4610  
DIA No 05DOE002  
Page No. 15

The department's review is very circumscribed. It can only review the process provided by the district; it cannot reconsider the substantive decision itself. The board ultimately has the authority to determine the number of schools in the district. The board provided sufficient process as required by the seven regulatory factors set forth in the department's regulations. The board's decision to close Roosevelt and Northwood Elementary Schools must be affirmed.

**ORDER**

The Ames Community School District's decision to close Roosevelt and Northwood Elementary Buildings is affirmed.

Docket No. 4610  
DIA No 05DOE002  
Page No. 16

Signed this 4<sup>th</sup> day of August, 2005.

A handwritten signature in black ink, appearing to read "Jeffrey D. Farrell". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jeffrey D. Farrell  
Administrative Law Judge

cc: Attorney - Ron Peeler  
Attorney - John Powell  
AGO - Chris Scase  
DOE - Jeannie Ramirez

**Notice**

Any adversely affected party may file an appeal per the requirements of 281 IAC 6.17. Any appeal must be filed within 20 days after the issuance of this decision.