

**IOWA DEPARTMENT
OF EDUCATION
(Cite as 22 D.o.E. App. Dec. 56)**

In re Grade Realignment

	:	
Mike Syndergaard, Alan Vogel, and	:	
Dennis Litka,	:	
Appellants,	:	DECISION
vs.	:	
	:	[Admin. Doc. 4529]
South O'Brien Community School District,	:	
Appellee.	:	

The above-captioned matter was heard in person on May 29, 2003, before designated administrative law judge Carol J. Greta, J.D. Appellants Mike Syndergaard and Alan Vogel were present, and were not represented by legal counsel. Appellee, the South O'Brien Community School District, was represented by legal counsel, James C. Hanks of the Des Moines law office of Ahlers & Cooney, P.C. Also appearing on behalf of the Appellee were Superintendent Jerry Nichols and Board President Gene McDaniel.

An evidentiary 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 § 290.1 (2003). 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.

The Appellants challenge the procedural validity of the April 2, 2003 decision of the local board of directors of the South O'Brien District to locate the junior high (grades 7 – 8) at the same attendance center in Paullina attended by the high school students, commencing with the 2003-2004 school year.

[Before reciting the findings of fact, we first address the matter of the standing of the Appellants to bring this appeal. Standing is a jurisdictional issue. *Bronner v. Exchange State Bank*, 455 N.W.2d 289, 290 (Iowa App. 1990). Therefore, although not raised by the Appellee, we must ensure that this appeal is properly before our Board.

Iowa Code section 290.1 (2003) states that an appeal from a local board decision may be brought before the State Board of Education by “[a]n affected pupil, or the parent or guardian of an affected pupil who is a minor.” Neither Mr. Vogel nor Mr. Litka has a child presently enrolled in the District, let alone a child in either junior or senior high. Neither of them has standing to appeal. On the other hand, Mr. Syndergaard has a daughter who will attend 9th grade during the 2003-2004 school year at the Paullina facility. Although this will be his daughter’s first year of enrollment with the District (she attended a nonpublic school through the 8th grade), Mr. Syndergaard argued that she will be affected by the realignment decision because the Paullina attendance center will

be more crowded than it would have been but for the relocation of the junior high students to that center. This is sufficient to convey standing upon Mr. Syndergaard.]

I. FINDINGS OF FACT

According to the educational directory maintained by this agency, during the 2002-2003 school year, the Board of the South O'Brien Community School District operated four attendance centers:

- Some Kindergarten students attended a center in Paullina;
- Other Kindergarten students through 3rd graders and 7th –8th graders attended one attendance center at Primghar;
- 4th – 6th grades were housed at Sutherland; and
- The senior high school (grades 9 – 12) students attended school in Paullina (an attendance center different from that attended by Kindergarten students).

The 2002-03 school year was Jerry Nichols' first year as superintendent at South O'Brien and his 36th year overall as a district superintendent. He testified that he immediately set about studying the financial condition and enrollment history of the District. According to Mr. Nichols, he discovered that the District had lost a total of \$400,000 over the fiscal years 2001 and 2002 while enrollment was steadily declining. Mr. Nichols' budget prepared for fiscal year 2003 showed a deficit of \$358,000.

Although the Board may have had an initial discussion at a September 16, 2002 work session about moving grades 7 and 8 to Paullina, there is no evidence that the public knew of this issue at that time. However, there is no doubt that District administrators openly recommended to the Board in a public document prepared for a December 9, 2002 work session that the Board study the issue. Specifically, there were seven pages within the District's "Planning Guide" dated December 2002 devoted to the issue. *Appellee's Exhibit E-10/Appellant's Exhibit C.*

The next step taken by the District was to appoint an eight-member committee to study the issue more closely. None of the committee members were from the general public. The three administrators and five teachers were appointed in January of 2003. The committee completed its report in February, but its written findings and conclusions were not presented to the Board until a March 12, 2003 work session. According to Board President McDaniel, the March 12 work session was open to the public with a posted agenda that included an item entitled "present Junior High Study Committee draft." *Appellee's Exhibit A-14.* He went on to state that the Board members asked many

questions at that public meeting regarding the study committee's report, including the logistics of where to put students, which doors would each grade level use for ingress and egress, interaction of junior high and senior high students, and questions about staffing and curricula. As this was a work session, the Board waited until its next regular meeting, March 17, also open to the public, to vote to move forward with discussions of relocating the junior high to Paullina. At the March 17 meeting, the Board also voted to have an informational meeting with the public on March 26 in Primghar.

On March 18 and 19, public notices of the March 26 informational meeting were posted in all of the District's attendance centers and in the U.S. Post Offices in the towns of Paullina, Primghar, and Sutherland. Both Messers Nichols and McDaniel testified that notices and agenda for all Board meetings were habitually posted at these places, so the patrons of the District would know where to look for such information. The official newspaper of the District, pursuant to Iowa Code § 618.3 (2003), is the *Paullina Times*, which published notice of the meeting on March 20.¹ Finally, notice of the meeting was directly mailed on March 21 to the families of all 6th and 7th grade students.

The parties agree that at the March 26 informational meeting, approximately 160 citizens filled the bleachers of the Primghar gymnasium. The Appellants did not dispute the testimony of Mr. Nichols that, following a formal presentation of information, there was a 75-minute period of input from the public at which time no one stated unequivocal opposition to the proposal. Mr. McDaniel explained that no time limits were placed on questions from the public, which was told that the school board members would all stay at that March 26 meeting until all questions had been answered.

The information presented to the public at the March 26 informational meeting (primarily via overhead projector) was as follows:

1. Shared vs. segregated 7 – 12 programs/facilities. *Appellee's Exhibit D-1.*
2. Concerns of the study committee regarding storage, lockers, and library space. *Appellee's Exhibit D-1.*
3. Potential benefits of the realignment. *Appellee's Exhibit E-3.*
4. Comparison of exploratory course offerings at Primghar vs. at Paullina, showing a net gain of one such course at Paullina. *Appellee's Exhibit E-4.*

¹ It is immaterial that other newspapers serving the South O'Brien region carried news of the meeting in a less timely manner.

5. Potential financial savings regarding staff reductions by moving junior high students to Paullina. *Appellee's Exhibit E-6*. The District explained that some of this total amount of \$218,000+ would be saved even if the realignment were not to occur, by reducing the number of sections of junior high from three to two. *Appellee's Exhibits E-7 and E-8* detail the savings that would be realized by maintaining the junior high at Primghar with a reduction of one section. Mr. Nichols testified that the net annual savings of moving the junior high to Paullina, without including transportation savings, would be \$90,000. He stated that the transportation savings would range from \$11,000 to \$20,000 per year.
6. Projected class sizes for two sections of incoming 7th and 8th graders, compared with section sizes of other junior high schools in the area. *Appellee's Exhibit E-9*.
7. Financial history; current budget; cost savings to be realized through moves unrelated to the grade realignment (program adjustments, special education pooling, early retirement incentives, increase of PPEL levy); transportation information. *Appellee's Exhibit F-1*.
8. Enrollment trends showing a senior class count of 80 students in the fall of 2002 but only 45 projected enrollees for the fall of 2003 kindergarten class.² The trends also showed a total enrollment decline of between the 2002-03 and 2003-04 school years of 50 students, which Mr. Nichols characterized as "conservatively" estimated. This 50-student enrollment decline would translate to \$239,750 less revenue to the District. *Appellee's Exhibit G-3*.
9. Past six years' enrollment figures for the District, demonstrating a hefty decline each year, averaging over 35 fewer students enrolled per year. *Appellee's Exhibit G-4*.

The formal vote to realign by moving the junior high to the Paullina facility was accomplished at an April 2, 2003 meeting of the Board. Notice of and the agenda for this meeting was published in the *Paullina Times* on March 27, as well as posted at all District attendance centers and the three aforementioned post offices. The agenda item read, "consider moving junior high to Paullina for fall of 2003." Fewer than ten members of the public attended this meeting, and none of them spoke in opposition to the grade

² At this hearing, Mr. Nichols testified that his estimate of 45 incoming kindergarten students was done in December 2002, and that the current figure was only 37 students projected to enter the District in 2003 as kindergarten students.

realignment. After approximately 40 minutes of Board discussion, the relocation was moved, seconded, and passed by a 5–1 vote, with one abstention.

As the Board was considering the relocation of its junior high to Paullina, it also had hired an architectural firm to conduct an audit of the District's facilities. The architects' final report was presented to the Board on May 19, 2003. To make full use of the audit, the Board appointed a Community Involvement Committee (each Board member appointing two patrons of the District) to be facilitated by Les Douma, Chief Administrator of Area Education Agency (AEA) 4. The Committee, scheduled to meet initially on June 2, 2003, is to review the facilities audit to make recommendations for repair of existing buildings, possible new construction of buildings, and general utilization of the District's physical plant. Both Mr. Nichols and Mr. McDaniel explained that "utilization" in this context means whether any students should use particular facilities, not which grades to assign in which facility.

Noting that the architects reported that all attendance centers were structurally sound, Appellants harshly criticize the fact that this comprehensive facilities audit was not available to the Board before it voted to relocate the junior high grades. The District counters that the facilities audit, and specifically the physical condition of the Primghar attendance center, had nothing to do with grade realignment. The primary reason for the grade realignment was saving money; the primary purpose of the facilities audit was assisting the Board in prioritizing long-term physical plant needs, given the condition of the various facilities.

Although not an issue, Appellants refer in their written argument several times to the possible future closure of the attendance center at Sutherland, to-wit:

...Therefore, the Sutherland facility would be the one closing. Yet, the Sutherland facility is in the best condition.

...[T]hus, beginning the process of moving grades 4 – 6 to Primghar and closing the Sutherland facility.

...[T]he South O'Brien School District has advanced down a timeline toward building closure. The Board of Education has not informed the public that building closure is under consideration. Efforts to keep the public informed in a manner reasonably calculated to apprise them, have not occurred. The establishment of a "Community Involvement Committee" was not done in a timely manner, in which to study and plan building utilization, prior to grade realignment, which was step one of building closure. The connection between grade realignment of the Jr. High from Primghar to Paullina and the closure of the Sutherland facility has never been publicly discussed by the Board of Education.

We do not address the Sutherland facility issue. The only board decision before us is the grade realignment affecting junior and senior high students. Clearly, the local Board has not voted on the closure of any of its attendance centers.

II. CONCLUSIONS OF LAW

Iowa Code § 279.11 (2003) gives local school boards the authority to “determine the number of schools to be taught” and “determine the particular school which each child shall attend.” Appellants do not challenge the right of the South O’Brien Board to relocate the junior high to the Paullina facility, nor do they base their appeal on the wisdom of that decision. Rather, they argue that the Board violated the *Jacobson* procedural guidelines. These guidelines have now been adopted by this State board formally into rule as 281—Iowa Administrative Code 19.3; however, the rule is not effective until July 2, 2003. Therefore, we necessarily must speak of measuring the local Board’s actions against the *Jacobson* guidelines and not 281—IAC 19.3. This has no effect on the outcome, as the guidelines were adopted without any change into rule, but for the sake of accuracy we acknowledge that the rule cannot be further referenced herein.

The guidelines come from the case of *In re Grade Realignment in Nodaway Valley (Susan Jacobson, Appellant)*, 21 D.o.E. App. Dec. 99 (2002). The guidelines state that a local board must substantially comply with the following steps:

- Sufficient research, study and planning should be carried out by the board and groups and individuals selected by the board. Such things as student enrollment statistics, transportation costs, financial gains and losses, program offerings, plant facilities, and staff assignment[s] need to be considered.
- The grade realignment proposal should be posted in a prominent place at the affected attendance centers and published in the agenda of an upcoming board meeting open to the public.
- There should be an open and frank public discussion of the facts and issues involved.
- The final decision must be made in an open, public meeting and a record be made thereof.

21 D.o.E. App. Dec. at 108.

In final argument, the Appellants ask this Board to require that school districts “strictly adhere to” the above guidelines when realigning grades. In addition, the Appellants specifically raise the following objections:

1. That there was inadequate open and frank public discussion of the realignment.
2. That because the study committee was comprised only of District staff, it was neither independent nor unbiased.
3. That on April 2, the date the Board voted to relocate the junior high to Paullina, the Board did not have all necessary facts before it (referring to the facility audit), and therefore, did not explore all options.
4. That the agenda for the April 2 meeting does not indicate that a final decision would be made by the Board on that date.

There is no basis for this Board to hold districts to strict adherence to the *Jacobson* guidelines, either as case law precedent or by rule. Substantial compliance is all that is required; that is the yardstick we use when addressing the Appellants’ arguments.

1. *Open and frank public discussion.* The junior high enrollment for the 2003-04 school year is projected to be 106 students. *Appellee’s Exhibit G-6*. 160 persons attended the informational meeting, an indication that most of the junior high families were represented. There is no evidence of inadequacy of an open and frank discussion of the realignment. Patrons of the District packed the Primghar gymnasium on March 26, they had their questions answered, and they left, apparently satisfied, as shown by the fact that only six to eight persons attended the April 2 Board meeting, none of whom objected to the realignment.

2. *Independence of study committee.* There is no requirement regarding the composition of the committee selected to study the realignment issue. It is clear from the variety of information presented to the public on March 26 that the committee and Board considered enrollment, transportation, curricular offerings, staffing, finances, and facilities, meeting what is required in the first guideline.

3. *Availability of facilities audit.* The District has adequately explained that the facilities audit is a separate study, whose purpose is unrelated to grade realignment. The Board had adequate information before it when it voted to move the junior high to Paullina.

4. *Adequacy of notice of Board meeting.* Board agendas, even board policies, are not required to be written with the precision of a criminal or civil law code. *In re Justin Anderson, et al.*, 14 D.o.E. App. Dec. 294, 299 (1997), quoting favorably *Fowler v. Bd. of Educ.*, 819 F.2d 657, 664 (6th Cir. 1987). In the context of the open meetings law, an agenda must list items “in a manner reasonably calculated to apprise the public of that information.” Iowa Code § 21.4 (2003). We shall not require more in a grade realignment context.

The issue of sufficiency of detail of an agenda item is not whether the wording “could have been improved, but whether the notice sufficiently apprised the public and gave full opportunity for public knowledge and participation. In determining whether the public was sufficiently apprised, we may consider the public’s knowledge of an issue and actual participation in events in light of the history and background of that issue.” *KCOB/KLVN, Inc. v. Jasper County Bd. of Sup’rs*, 473 N.W.2d 171, 173 (Iowa 1991). When read in the context of the history of public meetings from December 9, 2002 through March 26, 2003, it is clear that no one in the District could reasonably be said to be confused about the fact that the Board was going to vote on April 2 on the realignment issue.

In summary, the South O’Brien Board did a commendable job of making certain that the District patrons were aware of the issue and had opportunity to give the Board input. The Board substantially complied with the *Jacobson* guidelines.

Finally, as it appears that the primary concern of the Appellants is the possible future closure of the Sutherland attendance center, an issue not before us, we remind all readers that only the parent or guardian of “an affected pupil” may appeal a board’s decision to close an attendance center. Iowa Code § 290.1 (2003). In the context of an attendance center closure, we have concluded that affected pupils are pupils who would have attended the facility the year of closure had it remained opened. *See, e.g., In re Closing Montour Elementary Building*, 21 D.o.E. App. Dec. 120 (2002); *In re Closing of Lockridge Elementary Building*, 21 D.o.E. App. Dec. 72 (2002); *In re Closing of Johnson and Grant Elementary Buildings*, 21 D.o.E. App. Dec. 1 (2002); *In re Teresa Duffy, et al.*, 19 D.o.E. App. Dec. 194 (2001).

III. DECISION

For the foregoing reasons, it is recommended that the decision of the Board of Directors of the South O’Brien Community School District made on April 2, 2003, to move its junior high students to the Paullina building be AFFIRMED. There are no costs of this appeal to be assigned.

Date

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

It is so ordered.

Date

Gene E. Vincent, President
State Board of Education