

**IOWA STATE BOARD  
OF EDUCATION  
(Cite as 21 D.o.E. App. Dec. 99)**

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**In re Grade Realignment in** :  
**Nodaway Valley**

Susan Jacobson, :  
Appellant,

v. : DECISION

Nodaway Valley Community School :  
District,  
Appellee. :

[Admin. Doc. #4424]

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The above-captioned matter was heard on June 20, 2002, before Susan E. Anderson, J.D., designated administrative law judge, presiding. Appellant was present and was unrepresented by counsel. Appellee, Nodaway Valley Community School District [hereinafter, “the District”], was present in the persons of Superintendent Steven McDermott; Terry Buckner, Board President; and Judy Wambold, Board Secretary and Business Manager. The District was represented by Attorney Rick Engel of Des Moines, Iowa.

An evidentiary hearing was held pursuant to departmental rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for this appeal are found at Iowa Code section 290.1(2001). 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.

Appellant seeks reversal of the March 20, 2002, decision of the Board of Directors [hereinafter, “the Board”] of the District to realign grades at its elementary attendance centers, located in Greenfield and Bridgewater, Iowa.

**I.  
FINDINGS OF FACT**

Appellant resides in the District with her children, who are students in the District. During the 2001-2002 academic year, her children attended elementary school at the District’s West Elementary attendance center, located in Bridgewater. The District serves three communities: Bridgewater is the western most; Fontanelle is approximately six miles to the east; and Greenfield is approximately six miles more to the east. During the 2001-2002 school year, the District operated one high school (grades 9 through 12) in Greenfield; one middle school (grades 6 through 8) in Fontanelle, and two elementary schools (grades kindergarten through 5) in Greenfield (East Elementary) and in Bridgewater (West Elementary).

During the 2001-2002 school year, the District provided educational services for approximately 850 kindergarten through twelfth-grade children. In 2001-2002, the East Elementary building had an enrollment of 234 students; the West Elementary building had an enrollment of 103 students. (Exh. 4.) The projected enrollment for 2002-2003 at East Elementary is 213 students; for West Elementary, 92 students. (Exh. 4.) The District is a small, primarily rural District, which has experienced falling enrollment and which is facing increased budget problems.

The Nodaway Valley District is a recently reorganized district resulting from the consolidation of the Bridgewater-Fontanelle and the Greenfield Districts, effective July 1, 2000. Before the consolidation, the Greenfield District had had a recent experience with a negative unspent balance and the new Nodaway Valley District seeks to avoid a similar experience. The new District carried an unspent balance into its first year of operation (2000-2001) of \$188,901. At the end of year two (2001-2002) of its existence, it projected a decline in unspent balance to approximately \$46,000.

The record at the appeal hearing presented the following financial picture: the District's fall 2001 enrollment figure to be used in the 2002-2003 budget was down 32 students from the prior year and the District projects continued enrollment decline. The District will receive no new money and will rely upon a budget guarantee of \$84,762 to be raised through property tax. The District and local taxpayers are concerned about the level of local property taxes; therefore, the District seeks to maintain the property tax rate at approximately \$14 per \$1,000.

The District is subject to a collective bargaining agreement with its teaching unit and settled its contract for the 2002-2003 school year at 2.99% or \$78,423, assuming all staff return for next year. Classified staff salary and benefits increased \$39,000 as well. The District passed an instructional support program resolution but received a petition and the matter went to public vote. The instructional support program to begin in fiscal year 2003 narrowly passed. Only the revenue from the local property tax will be available in the first year. The levy was not available to be spent on employee salaries and benefits. There were specific needs in the District that had to be addressed. Revenues from the levy were targeted for bus replacement, textbooks and other instructional materials, and technology to substitute for eliminated state funding of technology.

The District lost \$133,754 during the 2001-2002 school year, as a result of the 4.3% across-the-board state aid cut. The lack of new money for next year and the declining enrollment trend called for the need to reduce expenditures and/or increase revenues. Beginning in October 2001, the District's Administration presented numerous alternatives for addressing the budget deficit. One alternative specifically discussed on November 18, 2001, was the possibility of a grade realignment for the two elementary buildings.

Financial gains and losses were the primary focus and driving force in much of the planning, including the elementary restructuring proposal. This data was made available to the Board. The ability to save approximately \$120,000 of ongoing staff and benefit costs by eliminating 3.8 full time employees was a very important consideration in

deciding about whether to look at the elementary grade restructuring option. The two buildings both currently utilized to house kindergarten through fifth-grade children would continue to be utilized. Superintendent McDermott testified at the appeal hearing that the academic programming offered to the students would not change. The difference would be that all fourth and fifth-grade students would be in the West Elementary and all kindergarten through third-grade students would be in the East Elementary building. East Elementary is the larger of the two elementary buildings. Both buildings were built in 1962. The District believed that combining all students in a particular grade into one building would be a more efficient utilization of staff and facilities.

Superintendent McDermott testified that he was aware that the *Barker* guidelines had previously been discussed in grade-realignment cases and that he attempted to follow the letter and spirit of the guidelines in full. The District's process included two public hearings and a survey, among other information gathering tools. Public hearings were held in two locations, west and east. On January 7 and January 14, a timeline was presented to the public stating that a decision would be made in February or March. (Exh. 4.) The public hearings were each attended by over 100 patrons. Parents were allowed to speak at the public hearing held in Bridgewater on January 7, 2002. A public hearing was also held in Greenfield on January 14, 2002. Appellant and her witnesses never spoke at a board meeting nor did they speak to the principal at West Elementary about their concerns for the realignment.

A survey was done on February 11. (Exh. C.) The survey came about after a general discussion of the possibility of surveying and then a request from the patrons of the District to survey, regarding whether parents would voluntarily send their students to a different elementary attendance center to provide the District with the opportunity to balance the sections and reduce the number of sections without realigning. The survey results did not support volunteerism as a viable option.

Both sides to the appeal hearing introduced numerous articles from local newspapers showing that the decision-making process was well reported in the community over an approximate six-month period of time. The materials, public hearings, surveys, and letters to the editor all indicate a high degree of public input and participation. In the spring of 2002, concerned taxpayers wrote letters to the local newspapers and read articles published by those newspapers. Appellant testified that she and others relied on the newspaper to communicate with the District, rather than attending meetings in person or communicating directly with administrators or board members.

The administrative team's proposal for the grade realignment was presented to the Board on March 11, 2002. (Exh. D.) The administrative team consisted of Superintendent McDermott and all the building principals. The administrative team made the following recommendation:

This plan includes the movement from two separate K-5<sup>th</sup> grade elementaries to a K-3 facility at East Elementary in Greenfield and

a 4<sup>th</sup>-5<sup>th</sup> grade building at West Elementary in Bridgewater. The plan

for next year includes two sections of kindergartners, two sections of 1<sup>st</sup> graders, three sections of 2<sup>nd</sup> graders, and three sections of 3<sup>rd</sup> grades at East Elementary. West Elementary will house two sections of 4<sup>th</sup> graders and three sections of 5<sup>th</sup> graders. Other programs such as Special Education, Title I, Art, Music, Guidance, Technology, Library, Physical Education, etc. will still be offered to students in this plan.

(Exh. D, p. 1.)

The Board was presented with study output and data chiefly collected by the administration and presented by Superintendent McDermott on March 11, 2002. The resulting power point presentation included some of that data. (Exh. 4.) Student enrollment statistics were available. Transportation planning had occurred prior to the Board's decision and continues as an ongoing concern. Increased transportation costs are not expected.

The Board voted on March 20, 2002, to approve the elementary grade realignment effective at the beginning of the 2002-2003 school year. Appellant filed this appeal on April 18, 2002.

## II. CONCLUSIONS OF LAW

The issue in this case is whether the Board's decision on March 20, 2002, to realign the elementary grades at the East and West attendance centers, should be affirmed. Review of the Nodaway Valley Board's decision in this case by the Iowa State Board of Education is *de novo*. *In re Debra Miller*, 13 D.o.E. App. Dec. 303(1996). The decision must be based upon the laws of the United States and Iowa, the regulations and policies of the Department of Education, and "shall be in the best interest of education." 281 Iowa Administrative Code 6.11(2). Essentially, the test is one of reasonableness. *In re Jesse Bachman*, 13 D.o.E. App. Dec. 363(1996).

The Nodaway Valley Board of Directors has the authority to determine the number of attendance centers it shall have and where each child shall attend. The Iowa Code clearly states:

The board of directors 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, determine the particular school which each child shall attend, and designate the period each school shall be held beyond the time required by law.

Iowa Code section 279.11(2001).

Whether the District Board exercised its authority in a reasonable manner is the question raised by this appeal. The reasonableness of a local board's grade realignment action has in the past been measured by the seven-step procedure recommended for school

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closings by the State Board of Education. *In re Norman Barker*, 1 D.P.I. App. Dec. 145(1977). These seven steps constitute procedural due process for the public when "making decisions as important as the closing of an attendance center." 1 D.P.I. App. Dec. 145, 149. The Barker guidelines are as follows:

1. A timeline should be established in advance for the carrying out of procedures involved in making an important decision. All aspects of such a timeline would naturally focus upon the anticipated date that the Board of Directors would make its final decision in the matter.
2. All segments of the community in the school district should be informed that a particular important decision is under consideration by the Board of Directors.
3. The public should be involved in providing sufficient input into the study and planning involved in important decision making.
4. 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 need to be considered carefully.
5. There should be an open and frank public discussion of the facts and issues involved.
6. A proper record should be made of all the steps taken in the making of the decision.
7. The final decision must be made in an open, public meeting and a record be made thereof.

*Barker* at 149, 150.

This seven-step process is needed "to acclimate the public and implement [a school closing] decision." *Meredith v. Council Bluffs Comm. Sch. Dist.*, 5 D.o.E. App. Dec. 25, 30 (1986). The purpose of going through the process is to avoid springing such an action on an unwilling, resisting public. *Id.* By involving parents and citizens, a district board may not win approval of their plan, but it may avoid a schism in the community. The fact

that in the appeal now before us, a majority of the Nodaway Valley Board can control the outcome of every debate is not a matter that can be changed by the State Board.

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The real issue for the State Board of Education to consider is not whether both sides actually agreed with each other's position. The real issue is whether they were given the *opportunity* to listen to each other's position. That is what the Barker guidelines stand for. The guidelines do not mandate that the District Board acquiesce to the wishes of those who are most vocal at the public hearings. *In re Susan Beary, et al.*, 15 D.o.E. App. Dec. 208, 217 (1999). As the State Board of Education said in a school closing appeal:

Appellant and her silent counterparts in the district believe the board owed them a greater "duty" to consider their views than it exhibited in this case. Translation: We (300+persons signed a petition opposing the change of attendance centers) are many. We told you we didn't want you to do this and you did it anyway. Therefore, you failed to give adequate consideration to public opinion.

On the contrary, no one was denied an opportunity to present his or her views on the subject. There was an information meeting ... there were no less than four Board meetings at which Appellant and other residents spoke to the Board on this issue, and the meeting at which the decision was made lasted over three hours due to public comment. Appellant misconstrues the weight put on the right of public input. It does not imply that the Board must agree....

*In re Ilene Cadarr*, 9 D.o.E. App. Dec. 11, 15(1991).

A school district board is comprised of "representatives" from the district it serves. At the time of its vote, the majority of those representatives on the Nodaway Valley Board believed that realigning the elementary grades at the East and West buildings was the best course for the District as a whole. Whether or not it is the District's best course is not the subject of the State Board of Education's review. The State Board's review focuses on the *process* employed by the District, rather than on the substance or merits of the decision. *Dunn v. Villisca Comm. Sch. Dist.*, 5 D.o.E. App. Dec. 31, 36(1982). *Beary* at 218.

The focus of this appeal, then, is an examination of the process followed by the Nodaway Valley Board in making its decision to realign the East and West elementary attendance centers. The District contends that it substantially complied with the *Barker*

guidelines in making its March 20, 2002 decision. In contrast, Appellant argues that the District Board's March 20, 2002, decision should be reversed because the Board did not follow the *Barker* guidelines.

Appellant argues that six months is an unreasonably short period of time in which to make a grade realignment decision. A concentrated six-month period of time for a decision-making process is the longest that the State Board has had the opportunity to review in a grade realignment decision.

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Nodaway Valley Board meeting agendas are consistent with the minutes showing that the public had the opportunity to be advised of the proposed board action and had the opportunity to participate in the decision-making process regarding the elementary grade realignment. The decision was made in an open public Board meeting after Superintendent McDermott's presentation and Board discussion. A proper record of all the steps taken exists through the Board minutes of each relevant meeting. We conclude that the District substantially complied with the *Barker* guidelines.

The numerous exhibits offered at the time of the hearing, when combined with the testimony, established that the Nodaway Valley Community School District did follow the *Barker* guidelines in making its March 20, 2002 decision, as follows:

- 1) On January 7, 2002, the Board established a timeline for the procedure for public input, and established March 20, 2002, as the date for the Board to make a final decision on whether to close the schools;
- 2) All segments of the community were informed of all aspects of the decision-making process;
- 3) Two public hearings and a parent survey ensured that all segments of the community, including citizens, parents, an elected Board member, school administrators, faculty and staff could be involved in the process and in formulating alternatives to grade realignment. Information was presented to the Board and the public to discuss in open session.
- 4) The District, through its administrative team, undertook sufficient study and research regarding student enrollment, transportation costs, financial considerations, program offerings, facilities and staff.
- 5) The school closings and proposed alternatives were topics of public discussion at the public meetings held at each elementary attendance center in January 2002.
- 6) Regular Board minutes were maintained.
- 7) On March 20, 2002, at an open meeting, the Board of Education of the Nodaway Valley Community School District voted to realign the elementary grades at East and West attendance centers starting at the beginning of the 2002-2003 school year.

We believe the evidence shows that the District Board substantially complied with the *Barker* guidelines. Because the process used was reasonable under the *Barker* guidelines, the March 20, 2002, decision should be affirmed.

Unless time weighs heavily as a factor, school boards should allow a reasonable amount of time to pass between initial formal input and the final decision. *In re Susan Beary et al.*, 15 D.o.E. App. Dec. 1, 15 (1999). The State Board recently affirmed a board's decision to close a building after the Wapsie Valley District went through the

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*Barker* guidelines process in a seven-week period. *In re Teresa Duffy, et al.*, 19 D.o.E. App. Dec. 194(2001). We similarly conclude that the Nodaway Valley District's financial situation warranted speedy action and that the timeline it used was reasonable under the circumstances.

The fact that there were other decisions the District Board could have made is not fatal to the decision that it did make.

Any district board of directors faced with the possibility of closing an attendance center must take into account what it considers to be the best interest of the entire district. Only that locally elected board of directors can best determine whether the best interest of the entire district dictates that the desires of a segment of the school community must yield to the interest of the whole. ... It is the established policy of the State Board, in the absence of unusual circumstances, such as those involved in *In re Norman Barker*, to leave undisturbed those decisions involving the closing of attendance centers made by the duly-elected representatives of the citizens of the school district.

*In re Debra Miller, et al.*, 13 D.o.E. App. Dec. 303, pp. 323-24 (1996)(citing *In re Edward J. Comiskey*, 2 D.P.I. App. Dec. 306, 309-10 (1981)).

In summary, Appellants have not shown any legal reason to reverse the District Board's March 20, 2002, decision. We conclude that the District followed the *Barker* guidelines in considering whether to realign the elementary grades. The District's decision should, therefore, be affirmed.

The State Board established the *Barker* guidelines in 1977 for building closing decisions. These guidelines were reviewed by the Iowa Supreme Court in 1983 and affirmed as policy for building-closing decisions. *Keeler v. Iowa State Bd. of Public Instruction*, 231 N.W.2d 110(1993). The State Board has decided only four grade-realignment (as opposed to building closing) appeals. These appeals are discussed below.

In *Page v. Red Oak Community School District*, 1 D.P.I. App. Dec. 266(1978), the State Board decided, just one year after *Barker*, to affirm a district's grade realignment decision without applying the *Barker* guidelines. *Id.* at 269.



In the second appeal, *McCoy v. Highland Community School District*, 8 D.o.E. App. Dec. 1(1990), the State Board did not discuss the *Barker* guidelines in deciding an elementary realignment case. The required procedure, however, was discussed in the decision. The State Board wrote, “In fact, all it [the local board] is required to do by law is to have the item on the agenda of an upcoming meeting open to the public and make the decision in open session. Reasonableness requires that some degree of thoughtful study precede the decision.” *Id.* at 6. The State Board then concluded that the Highland Board had met the reasonableness standard over a period of some three months. *Id.* at 7.

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In the third appeal, the State Board chose to apply the *Barker* guidelines to an elementary realignment decision. *Nusbaum and Krutsinger v. Chariton Community School District*, 12 D.o.E. App. Dec. 378(1995). Perhaps the reason it did so was because the decision to realign elementary schools in Chariton seemed to arise out of an earlier discussion of whether to close attendance centers. The facts of the Chariton case as to procedure are very different from the facts in the Nodaway Valley appeal. The relevant facts in the Chariton appeal were that a non-descript agenda item (“New Business Financial Condition, Report, Options and Decisions”) appeared on a board meeting agenda, surprising everyone in the community as well as a few board members. The local board voted that same night to realign its elementary grades without any public discussion. *Id.* at 380. The State Board on appeal concluded that the Chariton Board had unreasonably decided to realign its elementary grades. *Id.* at 385.

The fourth grade realignment appeal was *Pringle v. Interstate 35 Community School District*, 14 D.o.E. App. Dec. 365(1997). The *Barker* guidelines were applied in that case as “one way to judge” the board’s reasonableness. The rationale of the decision started with a review of the reasonableness of the decision as the primary issue and then went on to state:

One way to judge whether the local board’s decision was reasonable is to determine whether it complied with the State Board policy with regard to school closings and restructuring of attendance centers set forth in *In re Norman Barker*.

*Id.* at 377. The State Board concluded that the Interstate 35 Board had substantially complied with the *Barker* guidelines.

The State Board reversed only one of the grade realignment decisions discussed above, the decision where the Chariton Community School District’s process was obviously deficient when measured against either the *Barker* or *McCoy* guidelines. The Nodaway Valley District process compares favorably to the process approved in earlier grade realignment decisions reviewed by the State Board.

We now conclude that in the future, when local boards are considering grade realignment, the *Barker* guidelines will not apply. The concerns for loss of identity to a neighborhood and for schisms in the community are not present to the same degree in a grade realignment as in a building closing. The *Barker* guidelines will continue to apply to building closings. Instead, we are re-establishing the procedural standard for

reasonableness from the *McCoy* decision as guidelines for local boards to follow when considering grade realignments, as follows:

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1. 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 need to be considered.
2. 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.
3. There should be an open and frank public discussion of the facts and issues involved.
4. The final decision must be made in an open, public meeting and a record be made thereof.

We have already concluded that the Nodaway Valley Board substantially complied with the *Barker* guidelines in its grade realignment decision. It logically follows that the Nodaway Valley Board also met the less rigorous guidelines we have set forth above for future grade realignment decisions by local boards.

Any motions or objections not previously ruled on are hereby denied or overruled.

### **III. DECISION**

For the foregoing reasons, the decision of the Board of Directors of the Nodaway Valley Community School District made on March 20, 2002, to realign grades at its elementary attendance centers, is recommended for affirmance. There are no costs to be assigned under Iowa Code chapter 290.

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DATE

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SUSAN E. ANDERSON, J.D.  
ADMINISTRATIVE LAW JUDGE

It is so ordered.

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DATE

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GENE VINCENT, PRESIDENT  
STATE BOARD OF EDUCATION