

**IOWA STATE BOARD
OF EDUCATION
(Cite as 21 D.o.E. App. Dec. 1)**

In re Johnson & Grant Elementary Buildings :

Alan Guard, *et al.*,
Appellants, :

v. : DECISION

Davenport Community School
District,
Appellee. :

[Admin. Doc. #4424]

The above-captioned matter was heard on March 5 and May 8, 2002, before Susan E. Anderson, J.D., designated administrative law judge, presiding. Appellants were present on March 5, 2002, with Alan Guard as spokesperson, and were unrepresented by counsel. Appellee, Davenport Community School District [hereinafter, “the District”], was present in the person of Superintendent James Blanche and was represented by Attorneys Carol Anderson and William Davidson of Lane & Waterman of Davenport, Iowa. On that date, Appellants and Appellee jointly requested that the hearing be continued to a later date to give the District time to reconsider its decision. A continuance was granted until May 8, 2002. On that date, Appellants were represented by Attorney G. Brian Weiler, of Bettendorf, 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.

Appellants seek reversal of the January 28, 2002, and April 22, 2002, decisions of the Board of Directors [hereinafter, “the Board”] of the District to close its Johnson and Grant Elementary Buildings located in Davenport, Iowa. The appeals from decisions on both dates were consolidated pursuant to 281 Iowa Administrative Code 6.10(1).

**I.
FINDINGS OF FACT**

Appellants reside in the District with their children, who are students in the District. In the 2001-2002 academic year, the children attended elementary school (grades

K through 5). During the 2001-2002 school year, the District operated three high schools (grades 9 through 12), 6 intermediate schools (grades 6 through 8) and 21 elementary schools (grades kindergarten through 5 or prekindergarten through 5). The District also maintains an alternative high school and a special education school in another attendance center. During the 2001-2002 school year, the District provided educational services for approximately 16,409 kindergarten through 12th grade children in Davenport. The District is a large, primarily urban District, which has experienced falling enrollment and faced increasing budget problems. (Blanche testimony on 5/8/02; Steven Imming deposition pp.4-8.) Student enrollment has shown a gradual decline resulting in the loss of approximately 600 students in the last three years, including 200 students in the 2001-2002 school year.

By September 2000, the District faced a serious budget deficit. (Appellee's Exhibit 2; Blanche testimony on 5/8/02.) As Director Steve Imming testified, "State funding is on a per-pupil basis, and allowable growth is expressed as a percentage and increases the per-pupil funding. So while that's going up, if you have fewer pupils, and therefore, the amount that you get is not necessarily that same percentage increase over what it's been in the past." (Imming Dep., p. 6.)

The facts presented at the hearing established that a "District Master Planning" report had been prepared by RDG Bussard Dikas and presented to the District on October 30, 2000. [Appellant's Exhibit A.] During the Fall of 2000, the District's Administration presented numerous alternatives for addressing the budget deficit, two of which were the proposed closings of Johnson and Grant Elementary Buildings. (Appellee's Exhibits 5 and 8; Imming Dep., p.8.) The Johnson and Grant buildings were built in 1912 and are the District's oldest buildings. They are also the two buildings with the smallest enrollments in the District (Grant, 196 students; Johnson, 250 students.) (Appellee's Exhibit 25C-3.) The Board's minutes made it clear to the public what alternatives were under discussion for trimming the budget. (Appellee's Exhibits 4-11.) None of the Board's published agendas, however, mentioned building closings.

In the fall of 2000, Johnson and Grant parents and parents of other programs that would be impacted by budget cuts, wrote letters to Board members, called Board members, and spoke at the Board meetings during open forum on November 13, 2000; November 27, 2000; and December 18, 2000. (Appellee's Exhibit 7, pp. 5, 18-19; Exhibit 9, pp. 2-4; Exhibit 11, p. 3; Lee Dep., pp. 24-26.) Appellants testified that they voiced their concerns over the possible school closings during the fall of 2000. (Alan Guard, Brenda Jordahl-Buckles, and Kim McKnight testimony on 5/8/02.)

Community suggestions were discussed at the Board's Committee of the Whole meeting on November 20, 2000. (Appellee's Exhibit 8, pp. 3-31.) The Administration's preliminary study on the closings of Johnson and Grant schools was presented to the Board on December 1, 2000; the study outlined boundary changes and addressed transportation concerns regarding the potential closings. (Appellee's Exhibit 19.) Since the Board did not want to close Johnson and Grant Elementary Buildings if it could reasonably be avoided, no votes to close Johnson and Grant were taken in 2000. Instead, the Board explained to parents that they would continue to search for other alternatives and hope that the financial situation would improve. The Board further explained to parents that the proposed school closings were not a closed subject because unless the District's financial situation improved, it would still have to consider closing the schools. (Appellee's Exhibit 10, pp. 2-4.)

A. The January 28, 2002 Decision:

During the period of time beginning in November 2000 through the appeal hearing dates, there were parents from Johnson and Grant present at every regular Board meeting and every Committee of the Whole meeting. (Testimony of B. Jordahl-Buckles.) At each of these meetings, the District's financial situation and the measures being taken to address it were discussed. At the Board meetings, these discussions included closing or reducing the teenage pregnancy program, outsourcing drivers' education, closing the Eastern Avenue school program, closing the Truman School pool, subsidizing a college credit course at high schools, and outsourcing adult education. (Testimony of Dr. James Blanche on 5/8/02; Exhibit 5-11, 13-17.)

However, the District continued to incur significant increases in wage and benefit costs. (Deposition of Steven Imming at 22-23; Appellee's Exhibit 12, p. 7.) In September 2001, the District incurred a higher deficit and enrollment was down once again. (Blanche testimony on 5/8/02; Appellee's Exhibit 12, pp. 6-13.) On October 1, 2001, the State announced a 4.3% across-the-board budget cut, which amounted to 2.7 million dollars for the District. (Appellee's Exhibit 13; Imming Dep., p. 9.)

A focus group was formed and met on October 22, 2001, to discuss and formulate alternatives for a response to the deficit and the State budget cut. (Appellee's Exhibit 13.) Marsha Tangen, the District's Chief Financial Officer, outlined alternatives and money-saving opportunities in a memorandum to the Board on November 2, 2001. (Appellee's Exhibit 14.) The Board laid off custodians and maintenance workers, and also initiated an early retirement program. (Imming, Dep., p. 9.) At a Committee of the Whole meeting on December 3, 2001, Board members discussed what it felt to be an emergency situation. That meeting was attended by Johnson and Grant parents. (Appellee's Exhibit 14 "a".) At a regular Board meeting on December 10, 2001, at least one parent, PTA President Brenda Jordahl-Buckles, addressed the Board in open forum on her dissatisfaction of cuts to other areas and the possibility of closing schools. (Appellee's Exhibit 14, p. 6.)

In early January 2002, the District learned that allowable growth would at best be 1%. In response, the District's Administration concluded that it must close Johnson and Grant Elementary Schools. The January 14, 2002, agenda was the earliest agenda to list the closing of Grant and Johnson as a discussion item, under "Budget Recommendations." (Appellee's Exhibit 15A.) As Director Imming testified, "Well, we needed to do something, and both to reduce our costs, not only now but looking forward with the uncertainty of funding, and also projected census and enrollment information that indicates continued declines. We needed to reduce our expenses and I believe, bring our building capacity more in line with our student enrollment." (Imming Dep., p. 11.)

The Administration told all elementary building principals in a meeting on January 10, 2002 that the District planned to close the Johnson and Grant Elementary Schools. The principals and the media informally shared this information with staff and parents. (Blanche testimony 5/8/02.) On January 11, 2002, the Board's agenda for the January 14, 2002, meeting was posted on its web site, released to the media, and was widely disseminated. The proposed closings were the primary topic addressed by the public during the open forum portion of the January 14, 2002 meeting. (Appellee's Exhibit 15, pp.11-17.) Studies and memoranda regarding the proposed closings were presented to the Board on both January 14 and January 28, 2002. (Appellee's Exhibits 20-21.) The published agenda for the January 28 meeting listed "Grant and Johnson School closings and Related Boundary Changes" as an item requiring action. (Appellee's Exhibit 17.)

On January 28, 2002, the Board held a public hearing on the proposed closings. Enrollment, class sizes, buildings, transportation, busing, staffing programs, financial gains and losses, and other details were addressed and considered. (Appellee's Exhibit 17, pp. 2-5, 10-16.) Appellants' witnesses at the appeal hearing testified that they repeatedly informed the Board of their concerns, both verbally during the meetings and in handouts. (Guard, Jordahl-Buckles, and McKnight testimony, 5/08/02.) Forty-seven people spoke in open forum on January 28, 2002. On that date, the Board was presented for the first time with a retroactive timeline for making the building closing decisions. (Appellee's Exhibit K.) The Board then voted 6 to 1 in open session on January 28, 2002, to close Johnson and Grant schools effective for the 2002-2003 school year (Appellee's Exhibit 17, p. 13.)

On January 28, 2002, the Board also voted unanimously to start all-day kindergarten classes at the beginning of the 2002-2003 school year. *Id.* The Superintendent and the Board were not familiar with the Barker guidelines before the parents brought them to their attention in their appeal of the January 28 decision. (Superintendent Blanche and Board Member Zamora testimony.) The parents appealed the Board's decision to close Grant and Johnson Elementary buildings to the State Board of Education. During the March 5, 2002, hearing on the pending appeal, the parties jointly requested, and were granted, a continuance to allow the District Board to

reconsider the January 28, 2002, decision. The hearing was later continued until May 8, 2002.

5

B. The 1980 Document:

During the March 5, 2002, portion of the appeal hearing, Appellants introduced a Long Range Facility Plan for the Davenport Community dated October 1982. Section D of the Long Range Facility Plan stated:

This is a procedure adopted by the Board of Education on March 10, 1980, with a specific timetable, factors for consideration and an example for closing of an attendance facility. School closings can have much affect on residents of a community, and this report attempts to minimize this problem as much as possible, through an orderly approach. (See Appendix L)

Id.

The Long Range Facility Plan had attached to it an Appendix L. Appendix L was entitled, "Future Closing of Attendance Facilities and Disposal of Unused Buildings." (Appellant's Exhibit C. The 1980 document established timelines, factors for consideration and procedures for closing school buildings. (Appellants' Exhibit C.) Appellants testified that they did not find the 1980 document in current Board policy manuals, but rather found it in the public library archives. (D. Mumm testimony, 3/5/02.)

The 1980 document is contained in neither the Board's current policy manual nor its current administrative procedure manual. (Appellee's Exhibit 18; Blanche testimony, 5/8/02; Imming Dep., pp. 48-49.) Prior to receiving Appellants' exhibits for the March 5, 2002, appeal hearing, Dr. James Blanche had never seen Appendix L of the Long Range Facility Plan. (Blanche testimony, 3/5/02.)

The Board has a policy committee that is responsible for regularly reviewing all policies in the policy manual on a three-year (now changing to a five-year) schedule to recommend proposed rescissions, revisions, or updates to Board policies. (Blanche testimony, 5/8/02.) No evidence was presented that the 1980 document was ever made a Board policy. Even though neither he nor the Board believed the 1980 document was a binding policy or procedure, Dr. Blanche asked the Board to rescind the 1980 document at its March 11, 2002, meeting for clarity purposes so the public would understand that the document was not a policy and would not bind the Board. (Blanche testimony, 5/8/02; Imming Dep., pp. 45-55.)

The parents argue that the Board violated their rights when it failed to follow one of its own procedures in making the decision to close school buildings. They assert that Appendix L bound the Board to meet certain dates for decision making, to consider specific factors, and to follow a date-specific procedure for closing school facilities.

C. The April 22, 2002 Decision:

On March 11, 2002, the Board rescinded the 1980 document. That same night, the Board voted to re-examine its January 28, 2002, decision to close Johnson and Grant Elementary School buildings and make the related boundary changes, using a timeline and a process to ensure maximum parent and public participation in its reconsidered decision. (Appellee's Exhibit 24(B)"1," p. 3; Exhibit 24(B)"2," pp. 3-5.) On March 11, 2002, the Board established a timeline as follows:

As soon as possible the Board will appoint a task force to study whether to close Johnson and Grant elementary schools and to make the related boundary changes. Representatives of administration, the board, parents at Johnson, Grant, Adams, Wilson, and parents of children attending other district schools, and interested members of the public will be invited to serve on this task force. Task force meetings will be open to the public. The task force will meet weekly beginning on or before March 18, 2002. The task force will consider input from other segments of the community as appropriate for it to study, plan, and report to the Board on all of the following:

- Alternatives to closing Johnson and Grant;
- Feasibility of alternatives to closing Johnson and Grant;
- Anticipated financial gains and losses;
- Program offerings;
- Plant facilities;
- Student enrollment statistics and impact;
- Staffing requirements and assignment;
- Transportation costs and busing; [and]
- Boundary changes.

The task force will report its final report to the Board on or before April 15, 2002. The task force may also make progress reports to the Board before its final report.

On or before March 18, 2002: By letter, the District will notify parents of students at Johnson and Grant that closing of those schools at the end of the current school year is going to be studied and re-examined. The letter shall inform parents of community meetings to be held on this subject and invite their participation. Parents of children in elementary schools whose boundaries could or would be changed in the event of the closing of Johnson and

Grant will also receive notice that the closings are going to be studied and re-examined.

7

Before March 25, 2002: Community meetings shall be held at Johnson and Grant elementary schools to request and receive public input on the possibility of closing the two schools.

On April 15, 2002: A public hearing before the Board will be conducted at a Special Call Board meeting on April 15, 2002, on the question of whether Johnson and Grant elementary schools should be closed at the end of the current school year and whether to make the related boundary changes.

On April 22, 2002: The Board will vote on whether to close Johnson and Grant elementary schools effective with the 2002-2003 school year and whether to make the related boundary changes.

(Appellee's Exhibit 24(B)"2," pp. 4-5.)

Thirteen people voiced their opinions regarding the school closings at the open forum portion of the March 11, 2002, meeting and numerous people offered opinions and suggestions at subsequent Board meetings, community meetings, task force meetings and at the public hearing. (Appellee's Exhibit 24(B)"2," pp.6-8; Guard, Jordahl-Buckles, and McKnight testimony, 5/8/02.) The Administration sent a letter to parents of Johnson and Grant students on March 13, 2002, informing them of the timelines and procedures for re-examination of the January 28, 2002, decision and informing them of the formation of the task force, its duties, the fact that all of its meetings would be public, the dates and location of community meetings and of the public hearing, and the date when the Board would make the final decision. (Appellee's Exhibit 25(C).)

The Task Force appointed by the Board consisted of nineteen people, and was facilitated by staff from the Mississippi Bend AEA. The Task Force included eight parents from the affected schools, one teacher, three administrators, four members of the District's Local School Improvement Advisory Committee, a representative from the Davenport Schools Foundation, a representative from the AEA, and Board Member Steve Imming, who reported to the rest of the Board on the Task Force meetings. All Task Force materials, including handouts and notes, were provided to Board members. (Appellee's Exhibit 25C(2) through (8).)

The Task Force met on March 14, March 21, March 26, April 4, and April 11, 2002. The Task Force presented its report and alternatives at a public hearing on April 15, 2002. Community meetings were held at Johnson Elementary School on March 19 and April 3, 2002, and at Grant Elementary School on March 20, 2002. (Appellee's

Exhibit 25(C)6; Imming Dep., pp.14-16.) At the public hearing on April 15, 2002, Dr. Ed Gronlund of the Mississippi Bend Area Education Agency presented the report of the

8

Task Force to the Board. The report did not offer a unified opinion, but listed ideas and 13 alternatives with estimated savings that were suggested by individual members of the Task Force. (Appellee's Exhibit 26D.) In summary, the Task Force's 13 alternatives were:

Alternative A: Increasing class size by 2 students per class, per grade, without closing schools and with all-day kindergarten;

Alternative B: Building a new school to replace Grant and Johnson;

Alternative C: Eliminating the three high school Assistant Principal Student Activities positions;

Alternative D: Eliminating curriculum and instruction coordinators and facilitators;

Alternative E: Combining two elementary schools with one principal;

Alternative F: Moving 6th graders back to the elementary schools and consolidate intermediate schools to serve grades 7th and 8th;

Alternative G: Eliminating 6th grade teacher team planning time by changing the structure of the sixth grade program;

Alternative H: Having 4-6 teachers replace a high school Associate Principal for discipline tasks;

Alternative I: Closing one elementary school rather than two elementary schools;

Alternative J: Reducing the number of para-educators;

Alternative K: Cutting district expenditures across-the-board;

Alternative L: Having, full-time, non-bargaining personnel pay for a portion of their family health insurance; and

Alternative M: Having annuities fixed at 4% [corrected to \$4,000] annually.

(Appellee Exhibit 26D.) The Task Force's report noted: "All day kindergarten offered by the district was retained in all alternative estimates." *Id.*

9

Individual board members discussed and asked questions about the school closings and the Task Force alternatives, with the administration prior to the April 22, 2002, Board meeting. (Imming Dep., pp. 124-125; Lee Dep., pp. 38-39; Hester Dep., pp. 19-21; Zamora testimony, 5/8/02.) At the Board meeting of April 22, 2002, twelve people spoke in open forum about the building closings. Board members discussed the school closings and then voted 6 to 1 that effective with the 2002-2003 school year, the District close Johnson and Grant Elementary schools and make the related boundary changes. (Appellee's Exhibit 27.) The parents then appealed the April 22 decision to the State Board of Education. The administrative law judge consolidated the two appeals for the continued hearing, which took place on May 8, 2002. The parties filed written briefs on May 17, 2002.

D. The District's Financial Situation:

The parents argue that the District has inaccurately cited the "budget crisis" to justify its decision to close the buildings. Appellants recognize that statewide budget cuts in 2001 have placed many school districts in a financial bind. They argue, however, that the Davenport Community School District now finds itself in the best financial situation it has seen in years. Meanwhile, the District has chosen to close Johnson and Grant Elementary schools for a combined savings of approximately \$1.1 million. Furthermore, on the same day that the Board first voted to close these two elementary schools, January 28, 2002, the District also voted to adopt all-day kindergarten district-wide, at a cost of approximately \$1 million.

The District argues, on the other hand, that the District faces the worst financial crisis in its history. It argues that Board members considered the public's ideas and input through board meetings, community meetings, task force meetings, and public hearings. The District argues that the Board then made the decisions it felt necessary to respond to its financial crisis, including closing the Grant and Johnson buildings, in an expedient manner.

Department of Education records show that the District ended fiscal year 1996-1997 with an unspent balance of \$2.6 million. The following year the unspent balance declined to \$2.4 million, and the following year to \$1.3 million. In fiscal year 1999-2000 its unspent balance improved slightly to \$1.6 million, but then dropped by 71.4 percent to \$463,043 last year. The statewide average of unspent balance generally stays around twelve percent of expenditures. If Davenport continues to spend as it has in the past several years, it will have a negative unspent balance at the end of the current fiscal year. Having a negative unspent balance is an illegal act. The District must cut expenditures (or greatly increase revenues) in the current fiscal year and in subsequent fiscal years to return the district to financial health.

The financial picture in Davenport in terms of unreserved fund balance is bleak. Unreserved fund balance means the amount of cash and other current assets the district has that are not currently obligated or limited by law or grant agreement to be used only for a specific purpose (such as gifted and talented funding). Its unreserved fund balance has declined every year for the past five years. In fiscal year 1996-97, the unreserved fund balance was only \$8,974. The following year it was negative by \$592,787, and then declined to -\$1.5 million, then -\$3 million, to -\$3.3 million last fiscal year.

The cuts in state aid this year and next are particularly difficult for this district. Using statewide comparative information from the Condition of Education (COE), Davenport is more dependent on state foundation aid funding of its General Fund (54.6%) than other districts in its same size category (52.8%). In fact, Davenport has a higher percentage from state foundation aid than the average in any other size category or even the statewide average (52.3%). This generally indicates a district with a lower taxable valuation.

Davenport also shows higher percentages of its expenditures in the general fund going to salaries and going to instruction compared to other districts in its same size category, any other size category average, or the statewide average. Also supporting the decision of the district is a decline in certified enrollment from the fall of 2000 to the fall of 2001 of 213.3 students. The number of served students (includes nonresidents in district) declined by 272.4 in that same time period. Those same Condition of Education numbers show that Davenport spends less of its general fund dollars on day-to-day operation and maintenance of its buildings (7.4%) than other districts in its size category (9.5%) or any other size category or the statewide average (9.2%). Although the District levied a property tax in April 2002, the increase in cash does not come with any new spending authority and can only take care of the District's negative balance.

II. CONCLUSIONS OF LAW

The primary issues in this case are whether the Board's decisions on January 28, 2002, and April 22, 2002, which closed the Johnson and Grant Elementary attendance centers, should be affirmed. Review of the Davenport 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 Davenport 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:

11

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 the Board's action is measured by the seven-step procedure recommended for school 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 this case, a majority of the Board can control the outcome of every debate is not a matter that can be changed by the State Board.

The real issue for the State Board of Education to consider is not whether both sides actually listened to each other’s position. The real issue is whether they were given the *opportunity* to do so. 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 another 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 Davenport Board

believed that closing the Grant and Johnson 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

13

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 Davenport Board in making its decisions to close the Johnson and Grant attendance centers, which occurred on January 28, 2002, and April 22, 2002. The District contends that it substantially complied with the Barker guidelines in making its January 28, 2002 decision, even though the Superintendent and the Board were not familiar with the Barker guidelines until after January 28. The District also contends that the decision made on April 22, 2002, to close the Johnson and Grant attendance centers should be affirmed because it was the product of a process that followed the Barker guidelines.

In contrast, Appellants argue that the District Board's January 28, 2002, and April 22, 2002, decisions should be reversed because the Board did not follow the Barker guidelines nor did it follow the procedure in the 1980 document.

Appellants argue that timelines in the 1980 document bound the Board in its building closing decisions. A parent found this document in the Davenport Public Library by searching through extensive old records and presented no evidence that it is presently a Board policy or procedure that could bind the Board. None of the current Board members had ever seen the 1980 document that was found by the parents and presented in its appeal. Superintendent James Blanche had never seen this document prior to the March 5, 2002, hearing. Pursuant to "General Accreditation Standards," 281 Iowa Administrative Code 12.3(2), the Board has a policy committee that reviews its policy manual on a regular basis to make proposed recommendations for revisions or updates to the policy manual. We conclude that the 1980 document is not in a current policy or procedure manual of the Board, and is, therefore, not a document that could bind the Board.

The administrative law judge heard extensive testimony from parents, members of the public, Board members, district administrators, and members of the Task Force. We conclude that the Board did not substantially comply with the Barker guidelines in making its January 28 decision, as follows:

1. The Board did not establish a timeline in advance of its January 28 decision. Instead, it included a retroactive timeline in the board packet at the January 28 meeting.

2. The Board's agendas for board meetings and Committee of the Whole meetings did not refer to building closings until the January 14 meeting, just two weeks before the January 28 decision.

14

3. Because the agendas did not inform the public that building closings were being discussed until two weeks before the decision, the public could not provide sufficient input into the decision.
4. Although research, study and planning were carried out by the District's administrators, the Board did not select groups and individuals to carry out research, study and planning.
5. On January 14 and January 28, there were open and frank discussions in the open forum portions of the meetings. It would be difficult to conclude, however, that the discussions could have included all the facts and issues without guidelines 1-4 being met.
6. The District made a proper record of the steps taken before making the January 28 decision.
7. The District made the final decision in an open meeting with a record.

Because the above analysis shows that because the District did not comply with guidelines 1 through 5, it did not substantially comply with the Barker guidelines in making the January 28, 2002 decision. The January 28th decision should, therefore, be reversed.

However, the numerous and expansive exhibits offered at the time of the hearing, when combined with the testimony, established that the Davenport Community School District did follow the Barker guidelines in making its April 22, 2002 decision, as follows:

- 1) On March 11, 2002, the Board established a clear and concise timeline for the procedure for reconsideration with substantial public input, and established April 22, 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 and a letter was sent out to inform parents of the re-examination of the issue, the task force and the public meeting;
- 3) A task force 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 closure. The Task Force presented its final report to the Board at a public hearing conducted on April 15, 2002, which included an opportunity for the public to discuss it in open session.

15

- 4) The District undertook sufficient study and research regarding student enrollment, transportation costs, financial considerations, curriculum, facilities and staff, and developed options for the Board including pros and cons.
- 5) The school closings and proposed alternatives were topics of open and frank public discussion amongst the committee members and also as a part of the public hearings held on March 11; March 18; April 1; April 18; and April 22, 2002. The closings were the subjects of community meetings held on March 19; March 20; and April 3, 2002. The Board discussed the closings at six meetings; there were three community meetings; the task force met five times and then presented its report at a public hearing. In addition, persons opposing the closing of the Johnson and Grant attendance centers were included in the Task Force process and presented information to the Board opposing the closings.
- 6) Regular Board minutes were maintained and supplemented by the Task Force meeting minutes kept by Ms. Jordahl-Buckles and other members of the Task Force. (Exhibits 24A, 25C, and 26D.)
- 7) On April 22, 2002, at an open meeting attended by parents and media, the Board of Education of the Davenport Community School District voted to close the Johnson and Grant attendance centers at the beginning of the 2002-2003 school year.

We believe the evidence shows that after March 11, 2002, the District Board fulfilled all seven steps of the Barker Guidelines. Because the process used was reasonable under the Barker Guidelines, the April 22, 2002, decision must 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 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 Davenport District's financial situation warranted speedy action and that the timeline it used was reasonable under the circumstances.

Appellants have offered some ideas for cost savings. Those savings, however, are not enough in a district the size of Davenport. With an authorized budget in excess of \$120 million, minor cost savings will not make enough impact. In addition, the appeal process to the State Board of Education is not the appropriate vehicle through which to challenge a district's budget.

16

The financial analysis supports the District's arguments that saving costs of the magnitude of consolidating schools is necessary and time is of the essence. Davenport has both a long-term (general infrastructure conditions) and a short-term (cash and unspent balance) crisis. If the District were going to realize any savings on operation and maintenance costs (all of which are required to be paid from the General Fund), it had to move quickly. We conclude, therefore, that the District had substantial fiscal concerns, which justified fast action in going through the seven-step process in the Barker guidelines.

The fact that there were other decisions the District Board could have made (such as not instituting all-day kindergarten) 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 April 22, 2002, decision. Even though the State Board of Education concludes that the process leading to the January 28, 2002 decision did not substantially comply with the Barker Guidelines, we believe that the remedy of reversing that decision would mean instructing the District's Board to do what it has already done in making its April 22, 2002 decision. From March 11, 2002, to April 22, 2002, the District followed the Barker guidelines in reconsidering and revoting on whether to close the schools. Since the District has already done what it could have been ordered to do, no more can be required. The District's decision to close Johnson and Grant Elementary Schools should, therefore, be affirmed.

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

17

**III.
DECISION**

For the foregoing reasons, the decision of the Board of Directors of the Davenport Community School District made on January 28, 2002, is recommended for reversal. However, the decision of the Board of Directors of the Davenport Community School District made on April 22, 2002, to close the Johnson Elementary and Grant Elementary Buildings, is hereby recommended for affirmance. There are no costs to be assigned under Iowa Code chapter 290.

DATE

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

It is so ordered.

DATE

GENE VINCENT, PRESIDENT
STATE BOARD OF EDUCATION