

**IOWA STATE BOARD
OF EDUCATION**
(Cite as 17 D.o.E. App. Dec. 1)

In re Susan Beary, et al.	:	
Susan Beary, et al., Appellants,	:	
v.	:	DECISION
Albia Community School District, Appellee.	:	

[Admin. Doc. #4065]

The above-captioned matter was heard on January 25, 1999, before a hearing panel in the State Board Room of the Grimes Building. The matter was continued for a second day of hearing which was held on February 4, 1999. The hearing was held before the same panel, but the location was changed to the Monroe County Court House in Albia, Iowa. The hearing panel was comprised of Mr. Jim Tyson, consultant, Bureau of Administration and School Improvement Services; Ms. Marcia Sandvold, consultant, Budgeting and Finance Team; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. The Appellants, Susan Beary, et al., were present and represented by Ms. Becky Knutsen and Dan Waters of the Davis Law Firm, Des Moines, Iowa. The Appellee, Albia Community School District [hereinafter, “the District”], was represented by Mr. Brian L. Gruhn and Bret Nitschke of the Gruhn Law Firm, Cedar Rapids, 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(1999).

Appellants filed an affidavit which seeks reversal of a December 4, 1998, decision of the Board of Directors [hereinafter, “the Board”] of the District which temporarily moved all students out of the Lovilia Elementary School Building and permanently denied the expenditure of any future money for maintenance, repairs, or improvements of the elementary school. In addition, Appellants seek reversal of the District Board’s decision of December 14, 1998, which denied Appellants’ open enrollment applications for the remainder of the 1998-99 school year.

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.

I. FINDINGS OF FACT

The District provides educational services for the children of Albia and the surrounding Monroe County area. The District is headquartered in Albia, the county seat of Monroe County in south central Iowa, and Lovilia is located 9 miles north of Albia on Highway 5. The District is organized into elementary attendance centers in Lovilia, Melrose, and Albia, Iowa. Approximately 100 K-4 students attend the Lovilia elementary school. Between 11 and 25 students are Albia residents who are bused to Lovilia to balance the population among the elementary attendance centers. These children are selected through a lottery system. (Testimony, Superintendent David Sextro.) The middle school (5-8) and the high school (9-12) are located in Albia, Iowa.

This is an appeal of the decision of the District Board to close the elementary attendance center located in Lovilia. The appeal involves the following two issues:

- 1) Whether the Board's action in passing its December 4, 1998, motion to "temporarily" move the Lovilia elementary students into a wing at the high school and cancel all present and future expenditures at the Lovilia Elementary School Building" constituted a permanent closure of the Lovilia Elementary School Building in violation of the State Board's *Barker Guidelines*; and
- 2) Whether the open enrollment requests filed by the Appellants after the Board's December 4, 1998, action seeking immediate open enrollment for the remainder of the 1998-99 school year, should have been granted.

Background:

The building in Lovilia was built in 1912. The boiler that is currently in the Lovilia building was installed in 1955. The boiler passed its last annual inspection on July 31, 1998, and at that time, "no adverse conditions were noted". (Exh. 17.)

The Lovilia building has classrooms for kindergarten through fourth grades, a library, a kitchen and a converted gymnasium that serves as a lunchroom, music room, and physical education facility. The Lovilia building is not handicapped accessible. The fire marshal has placed occupancy restrictions on all of the classrooms in the Lovilia building. Individual restrictions are posted above each classroom entrance. The restrictions might range from 22 to 25 for a particular classroom. (Testimony, Supt. David Sextro.) The District has spent a substantial amount of money on the building within the last four years. In addition to general maintenance, the District has installed

several fire doors, fire walls, a new fire alarm system, and concrete pads around some of the building's entrances. Significant modifications to the building were based upon the requirements of the State Fire Marshal. (Testimony, Sam Kirby.)

On November 11, 1998, the boiler in the Lovilia building began to fail. After the failure, the District's Director of Buildings and Grounds, Sam Kirby, notified the District's superintendent, David Sextro, of the problem. Superintendent Sextro and Mr. Kirby determined that McGuinness, a Des Moines based company, should inspect and repair the boiler. The inspection and repair was scheduled for Friday, November 13, 1998. Since the boiler could be inspected and repaired in a single day, the District cancelled school in the Lovilia building on that day. The November 13th inspection revealed that the boiler was damaged and leaking water. The boiler company added approximately 6 quarts of a stop-leak solution as a temporary fix. According to Sam Kirby, McGuinness could not guarantee that the boiler would last for the remainder of the school year.

A special meeting was called by the Board on November 16, 1998, at 7:00 p.m. The agenda for the meeting stated: "Emergency Decision on Boiler at Lovilia School". The agenda also stated that the District Board would go into closed session under the provisions of Iowa Code section 21.5(1)(j) "to discuss the purchase of particular real estate only where premature disclosure would be reasonably expected to increase the price the governmental body could have to pay for that property. The minutes and the tape recording of a session closed under this paragraph shall be available for public examination when the transaction discussed is completed." (Exh. 1.¹)

In open session, Superintendent Sextro informed the Board that the boiler was in need of extensive repair or replacement. Mr. Kirby also notified the Board that the boiler had been temporarily fixed and that a replacement boiler could be found for approximately \$15,000 to \$20,000. Mr. Kirby informed the Board that if the boiler was repaired instead of replaced, he estimated the cost of repairs to run about \$6,000.

The District had previously hired Dennis Della Vedova as a project manager for some construction projects under consideration. Based upon his expertise in construction matters, Superintendent Sextro asked Mr. Della Vedova to attend the November 16th meeting to discuss the boiler situation with the Board. Mr. Della Vedova recommended that the Board consider obtaining a second opinion on the situation and price new boilers from several sources. A motion was made by the Board to put Mr. Della Vedova in charge of exploring the options to repair or replace the boiler and the Board voted

¹ Between the November 16th closed session and the appeal hearing in this matter, the real estate the District was considering purchasing was sold to another party. Therefore, the closed session tapes and minutes were presented to the State Board along with the written transcript of the closed session as evidence in this matter. The transcript of the closed session discussion was admitted as Exh. 2.

unanimously to authorize him to proceed with the project as necessary without returning to the Board for additional instructions. (Exh. 2.) Mr. Della Vedova asked the Board to consider a contingency plan if the boiler were to go down before the repairs or replacement was completed. (*Id.*) Superintendent Sextro informed the Board that they could probably use the same arrangements that had been utilized when the life safety repairs were being completed at the school. The Catholic Hall had been used to house the students at that time. At the conclusion of the November 16th open session and after a review of the minutes of the open session, the evidence available to the public showed that the Board had decided to replace or repair the boiler and, in the case of an emergency, house the children in the Catholic Hall in Lovilia on a temporary basis. (Exh. 2.)

At the completion of its public business at the November 16th meeting, the Board went into a closed session from which members of the public were excluded.² During the 69 pages of the closed session transcript, less than one-half page was devoted to the discussion of “a particular piece of property”. During the closed session, Mr. Della Vedova made several statements and expressed several strong opinions about the safety of the Lovilia Building and its usefulness as a facility in the District. The following statements are examples of his opinions that were expressed only in closed session:

But I will tell you as a contractor, I have worked on the Lovilia school. It is absolutely not fit to put kids in.

...

Safety-wise, it is not fit. A match will turn that thing into a bonfire in 30 seconds. There is dust that if you have a flash in that building, will blow that building up. It’s not a good scenario. And I don’t know who wants to hear that or who doesn’t want to hear it. It’s the truth. What we did over there for safety, we didn’t do anything, people.

...

It didn’t do anything. We did fifty-some thousand dollars to appease somebody’s ego at the State Department for safety. (Exh. 2 at 15.)

² A board may hold a closed session to discuss the purchase of real estate where premature disclosure could reasonably be expected to increase the price of property being considered for purchase. Iowa Code section 21.5(1)(j). However, discussion during the closed session may not extend beyond the authorized purpose of the closed session. Example, the decision whether or not to buy property for a new school building would be the subject of an open session. In contrast, the discussion to make an offer on a specific or identified piece of property could be in closed session.

I'm going to make a recommendation on this table as your project manager: Put those kids in temporary classrooms versus putting them in that building. And I'm begging you people to pay attention, because somebody is going to get killed out there. (Exh. 2 at 19.)

I would put them in a temporary [classroom] before I would put them in that building there, honest to God.

I think the building is in serious shape. I don't want to fix the boiler out there. I don't even want to go out there and work on anything there. That's my personal opinion.

I will do as the Board has directed me to do. But at – from a standpoint of me putting my child, one of my kids in there, I absolutely would not put one of my kids in that school.

I don't think there's anybody in this room, if you walk out there and tour the facility, would put any of your kids in that facility. And I feel that strongly about it after having worked there.

...

Okay. I'm telling you people, somebody is going to get killed out there. It's not fit to be in it. Now, that's my personal recommendation. (Exh. 2 at 20.)

I, as somebody who understands construction, who understands wiring, the gas lines, the rust out there, the faulty wiring, the dust and dirt, and a combination of things can put that thing in a torch in five minutes. Now, as a Board, I don't think you people want to take that responsibility. I wouldn't want it. So I want to go on record right now and say that facility isn't worth having. That's my personal opinion. Okay? But I value my opinion, because I've been in a lot of schools.

(Exh. 2 at 20-21)

To her credit, secretary Ver Ploeg said at this point, "We're not really talking about purchasing land", and President Wynn responded, "Yes, we do need to get back to purchasing land." (Exh. 2 at 22.)

A significant portion of the closed session was spent discussing the purchase of portable classrooms to house all the Lovilia students; buying enough land in Albia to build a five-section elementary school; the prospects of the passage of a bond issue for any of these proposals; whether the School Budget Review Committee would approve the purchase of portable classrooms which would eliminate the necessity of a bond issue; and various other long-range plans. (*See*, Exh. 2.)

At one point during the closed session, Dennis Della Vedova stated that he wanted to visit with the State Fire Marshal regarding the building. “[w]ould you be opposed of me getting a second opinion on my opinion? Because I would feel very good about it if we did. And then if he concurs with me, then at least I’m on record and I’m saying my piece now.” (Exh. 2 at 49.) The Board agreed that Mr. Della Vedova should visit Lovilia and get a second opinion from the State Fire Marshal as soon as possible. (*Id.*) Just before the Board came out of closed session, Superintendent Sextro stated: “This is your last closed session to purchase lands. And, I heard this Board saying, ‘You’re not ready to purchase land.’” (Exh. 2 at 66.) The Board came out of closed session and took no action. (*Id.*)

On November 24, 1998, a fire inspector from the Office of the State Fire Marshal inspected the Lovilia elementary building. The fire inspector indicated to Board member Beary and the project manager [Della Vedova] that the building was safe for children, and told them that the boiler should be repaired or replaced. The fire inspector also indicated that the District should consider an electrical upgrade of the Lovilia building for educational – not safety – reasons, and replace doors that are not fire-rated with fire-rated doors as the doors need replacement. He further informed Board member Beary and the project manager of a Life Safety grant program available from the State to fund the needed and suggested repairs. The fire inspector’s comments and orders were later set forth in a letter to the District superintendent, dated December 7, 1998. (Appellants’ Exh. 6.)

On December 1, 1998, the Board held another special meeting. The agenda for this meeting stated: “Lovilia Boiler – Action”. In addition, it was noted that there would be a closed session under Iowa Code, section 21.5(1)(j) “to discuss the purchase of particular real estate...” (Exh. 3.) Unlike the closed session held on November 16, however, no transcript of this closed session was provided to the State Board. No evidence was presented regarding what transpired during this closed session.³ However, the minutes are very detailed regarding the discussion about the Lovilia boiler that was held in open session during the December 1st meeting. (*See*, Exh. 4.)

³ In light of Superintendent Sextro’s comments at the end of the November 16th closed session, it is curious why this closed session would be called.

In public session, Della Vedova addressed the Board regarding his change of opinion from a “previous meeting”. [The date or time of the previous meeting is not referenced.] He explained by telling the Board his meeting with the fire marshal inspector revealed that fire codes for school buildings in the State of Iowa were adopted in 1959, and have not been updated to the same codes in place for new buildings. In public session, Board member Haselhuhn asked Mr. Della Vedova if he had stated previously that he would not put additional funds into the Lovilia building. Mr. Della Vedova responded, “No,” but stated *that he had said* he felt the building was unsafe, and he would not put his kids in the building the way it is.

According to Mr. Della Vedova’s testimony, he changed his opinion after talking to the state fire inspector. (Testimony, Dennis Della Vedova.) At this meeting, Mr. Della Vedova also informed the Board that he had obtained two bids for boiler replacement: one for \$27,900 and one for \$23,779. The boiler he recommended would be 85% fuel-efficient and would save enough fuel expenses to pay back the cost in 10 years. He also informed the Board that the boiler he was recommending could be converted from steam to hot water, so it could be used as a secondary boiler for a different building at a later date. (Exh. 4.) After this discussion, Superintendent Sextro recommended that the Board proceed with the boiler repairs and talk to the Department of Education regarding available grant monies before proceeding with any other repairs. The Board agreed that Mr. Della Vedova was to proceed with the purchase of a new boiler for the price of \$23,779. (Exh. 4.) This occurred in public session on December 1, 1998.

After the December 1, 1998, Board meeting, President Wynn had private telephone conversations with Board members Haselhuhn, Sawatzky, and Brock regarding the Lovilia building. Following these conversations, President Wynn called the superintendent and asked that he schedule a special board meeting for December 4th. (Testimony, Mary Wynn.) She wanted to stop the purchase of a new boiler. The superintendent telephoned the project manager and indicated that his presence at the December 4th meeting was not required, as the superintendent “had the votes to close the Lovilia building”. (Testimony, Dennis Della Vedova and David Sextro.)

The Board subsequently met on December 4, 1998, in special session to discuss, among other things, an item listed on the meeting agenda as “Lovilia Building & Boiler”. (Exh. 5.) At the meeting, by a 4-3 vote, the Board reversed its decision made three days earlier to replace the boiler, and approved a motion to “move the Lovilia elementary students temporarily into a wing at the high school, and cancel all present and future expenditures at the Lovilia Elementary School Building.” (Exh. 8 at 5.) Board President Wynn, and the three board members with whom she had discussed the Lovilia Building by telephone after the December 1st meeting constituted the voting block that approved the motion. (Exh. 8.) Board member Beary stated that he understood the motion as essentially closing the building and reminded the Board that the Iowa Code requires a

public hearing before closing a building. At that time, Board President Wynn disagreed with Board member Beary and pointed out to the Board that the motion stated that the students would be moved “temporarily” into a wing at the high school. Superintendent Sextro and Board President Mary Wynn testified that they were generally familiar with the *Barker Guidelines*. Both testified, however, that since this was only a temporary closing, the *Barker Guidelines* would not be applicable. (Testimony, David Sextro and Mary Wynn.) The entire meeting lasted 57 minutes. (Exh. 8.)

The elementary principal learned of the closing of her school on Sunday, December 6, 1998, when Superintendent Sextro called her at home (Testimony, Nancy Faust.) The Principal of the high school heard about the Board’s vote after the fact on the night of December 4th from fans attending a basketball game where she was working. (Testimony, Marlene Spouse.)

Three days after this meeting on December 7, 1998, the state fire inspector wrote Superintendent Sextro and confirmed his evaluation of the Lovilia school building. He stated in part:

Recently, I was asked to walk through the Lovilia elementary school building to give an opinion on the condition of the school. The consultant that I met was under the opinion that the building was unsafe and that the students were in “immediate danger”. I do not share his opinion.

(Exh. 6.)

He then issued three state fire marshal orders for the following items:

- 1) Repair or replace the main boiler;
- 2) Consider an electrical upgrade. This is not to say that the electrical services are unsafe, just inadequate for the needs of the classrooms;
- 3) Replace doors that are not fire-rated with fire-rated doors. As doors need replaced, install fire-rated doors.

(Exh. 6.)

Most importantly, the letter goes on to state, “[i]f the school board and the school district are evacuating the [Lovilia] elementary building based on these orders, that is certainty unwarranted. If facts verified substantial problems based on school inspections or contact from parents from within the District, we would act swiftly to have students relocated. Please be aware, if the District is relocating students, it is not based on Fire Marshal Action. ...” (Exh. 6.)

A number of Lovilia parents attended the next regular board meeting, held on December 14, 1998, to voice their concerns about both (a) the closing of the Lovilia building, and (b) the placement of their K-4 elementary-aged children in the 9-12 grade high school building located in Albia. Some parents also filed open enrollment applications, requesting to open enroll their children in the elementary school of an adjoining school district for the remainder of the 1998-1999 school year and the following year. The Board allowed just one hour for the public to address the Board. President Wynn testified that these limitations are provided for in the Board's policy on "Public Participation in Board Meetings," No. 215. Board members would not answer any questions at the meeting, but President Wynn informed the audience that their questions would be answered by the Administration within two days and the answers would be published in the local newspaper. Questions and answers also were read over the radio and mailed to parents of all of the students attending the Lovilia building. (Testimony, David Sextro.)

At the same meeting [December 14, 1998], a motion to cease preparations to move the Lovilia elementary students to the high school building and to replace the boiler at the Lovilia building failed to carry, with the same 4-person block voting "no". The Board approved, upon Superintendent Sextro's recommendation, that the 1999-2000 open enrollment applications be approved. However, Superintendent Sextro stated that the 1998-1999 requests were not timely filed and recommended that the Board deny those applications pursuant to the Board's past practice of not approving applications that were filed after the deadline. At this meeting, the Board for the first time directed the superintendent to generate a list of proposals regarding the District's grade structures and facilities. The Board directed the Administration to brainstorm future alternatives and options for the District and its facilities and to present them to the Board at the next regularly scheduled Board meeting on January 18, 1999.

On December 18, 1998, the Principal of the Lovilia Elementary School sent a letter to parents and students notifying them that winter break would begin one day early for Lovilia students, on December 23rd, rather than December 24th. This was so that District employees could begin moving books and desks from the building on December 23, 1998. This letter also notified the parents of the location of the children's new classrooms, and that those classes would resume on January 4, 1999, at the Albia High School Building. The letter further indicated that a subsequent notice would be sent regarding the schedule for busing students from Lovilia to Albia, when the schedule was prepared. (Exh. 15.)

Superintendent Sextro later mailed a memo dated December 29, 1998, to parents of Lovilia elementary students, informing them of the bus route and schedule. (Exh. 16.) Personnel in the superintendent's office were not available to answer telephone calls and did not return calls during the period between the day the busing memo was sent and the day classes began for Lovilia elementary students at the high school building. (Testimony, David Sextro.)

After the Lovilia elementary students had been moved to the high school building, the Superintendent conducted several meetings with selected Albia, Lovilia, and Melrose community members and District personnel. These meetings were not open to the public, no public notices of the meetings were posted, and no minutes, audiotapes or videotapes were made of the meetings. The purpose of the meetings was to generate ideas for the District's grade structures and facilities. However, the Superintendent steered conversations away from the Board's decision on December 4, 1998, to close the Lovilia Elementary School. (Testimony, Pam Kurimski, Reverend Gordon Vickery, and David Sextro.)

According to the testimony of witnesses present at those meetings, participants were asked to comment on proposals listed on posters hung around the room. All participants in these meetings were told they were not there to discuss the Lovilia closing. They were told that the presentation was for long-range planning only. (Testimony, Debbie Conner, Reverend Gordon Vickery, and Pam Kurimski.) Out of these meetings, Superintendent Sextro and the Administration developed 32 options for the future of the District's facilities.

At a regular Board meeting held on January 18, 1999, the Superintendent presented the Board with the 32 proposals. Five of the proposals contemplated reopening the Lovilia building, 7 required construction of a new building in Lovilia and 20 involved totally eliminating the Lovilia attendance center. The Board then scheduled a public hearing for January 25, 1999, to allow public input with respect to the proposals presented by the Superintendent. This was the same date as the scheduled State Board of Education appeal hearing.⁴ It was also the date of an Albia High School varsity basketball game. (Exh. 12; testimony of David Sextro.) Appellants complained that the Superintendent and the 4-member "voting block" did not listen to their concerns. When asked how he knew this, Reverend Gordon Vickery stated that after 40 years of preaching, he knew! "When folks turn their backs to you or act like they're sleeping, they're not listening." (Testimony, Reverend Vickery.)

⁴ The Appellants filed their affidavits of appeal on December 19, 1998, with the State Board of Education. By notice dated January 4, 1999, the parties were notified that the hearing would be held on January 21, 1999. On January 7, 1999, counsel for the District moved for a continuance because of a conflict and requested the hearing be moved to January 25, 1999.

Superintendent Sextro recommended that the Board reduce the number of options to 2 or 3 after the January 25th meeting and hold another public hearing on the 2 or 3 proposals chosen. Superintendent Sextro requested that the Board set a goal of March 1, 1999, to narrow the options down to one and present that option to the Administration so that preparations for the chosen option could begin. (Exh. 11.)

At the January 18, 1999, meeting the Board discussed the Iowa Demonstration Construction Grant Program and a grant for fire [Life] and safety funds [Infrastructure Grants]. This was a competitive grant program recommended by the state fire inspector to Dennis Della Vedova as a way to fund repairs for the Lovilia building. (Testimony, Dennis Della Vedova.) Superintendent Sextro asked the Board for direction in making application for these grants and notified the Board that the deadline for submitting the grant applications was February 15, 1999. The Board directed the superintendent “to work on the preparations for the grant funds, with the Board giving final directions to the Superintendent prior to the February 15th submission date.” (Exh. 12 at 10.)

At the appeal hearing on February 4, 1999, Board President Wynn and Superintendent Sextro would not answer questions regarding their intent to apply for the grant funds that were due February 15, 1999. The Board’s decision whether to apply for the Life and Safety grant funds was made four days after the close of this appeal hearing at its February 8, 1999, meeting. Consequently, the Board’s final decision is outside of the record of this appeal.

However, on February 4, 1999, both Superintendent Sextro and Board President Wynn did testify that no plans had been made to reopen the Lovilia Elementary Building or to replace or repair the boiler. At that time, the boiler had been drained and shut down. The water meters had been removed and the building was being used for storage. (Testimony, Sam Kirby.)

II. CONCLUSIONS OF LAW

The primary issue in this case is whether the Board’s decision on December 4, 1998, constituted the “closing” of the Lovilia Elementary School Building. Review of the Albia 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 on 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 IAC 6.11(2). Essentially, the test is one of reasonableness. *In re Jesse Bachman*, 13 D.o.E. App. Dec. 363 (1996). The question becomes, was the decision of the Albia Board to “move the Lovilia elementary

students temporarily into a wing at the high school, and cancel all present and future expenditures at the Lovilia elementary school building” a reasonable exercise of the Board’s authority under Iowa Code section 279.11(1999)?

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. at 149. Appellants contend that the *Barker Guidelines* were not met in this case. The District Board denies *Barker’s* applicability because the District Board’s action on December 4, 1998, was a “temporary” closing, not a permanent one.

We believe the evidence supports Appellants’ position. Although the students may have been “temporarily” moved to the high school, the overwhelming weight of the evidence shows that the Lovilia building was permanently closed. The Board’s action of December 4th clearly approved the motion to “cancel all present and future expenditures at the Lovilia elementary school building”. (Exh. 8 at 5.) In fact, the motion appeared to be a studied attempt to circumvent the requirements of the *Barker Guidelines*. When Board member Beary stated that the law requires a public hearing before closing a building, Board President Wynn disagreed. She pointed out that the motion stated “temporarily”. Superintendent Sextro then told the Board that he could provide the seven steps for closing a building if they wanted the information. (*Id.*)

The December 4, 1998, meeting was called at the request of Board President Mary Wynn only three days after the Board had directed Mr. Della Vedova to proceed with the purchase of a new boiler for the Lovilia school. The December 4th meeting occurred after President Wynn had private telephone conversations with Board members Haselhuhn, Sawatzsky, and Brock, as well as the Superintendent. The December 4th meeting occurred after the Superintendent telephoned Dennis Della Vedova and stated his presence at the meeting would not be required as the Superintendent “had the votes to close the Lovilia building”. (Testimony, Dennis Della Vedova.)

The conscious use of the word “temporarily” in the Board’s motion appears to be an effort to avoid the operation of the *Barker Guidelines*. The result of the Board’s action has been to generate the kind of intense resistance to and mistrust of the Board and Administration that the *Barker Guidelines* are designed to prevent.

The District argues that the facts in the present case are similar to circumstances addressed by the State Board in *In re Eileen Cadarr*, 9 D.o.E. App. Dec. 11 (1991). In the *Cadarr* case, the State Board was faced with the issue of whether the Board’s action in transferring students from one attendance center to another constituted a closing of an attendance center and whether the *Barker Guidelines* should have been followed. In finding no closing had occurred, the State Board wrote:

The typical school closing case in Iowa involves a permanent building closure, often in a town that once was its own school district, with a corresponding transporting of many more pupils to a site usually in another town over a highway for a ride of between 40 minutes and an hour. *See, e.g., Keller v. Marshalltown Comm. School Dist.*, 2 D.P.I. App. Dec. 296 (1981); *In re C. Donald MacCormack, III*, 5 D.o.E. App. Dec. 1(1986); *In re Kelly Gonder*, 8 D.o.E. App. Dec. 12(1990).

(*Cadarr* at 15.)

We believe the *Cadarr* case is more supportive of Appellants' position than of the District's. The present case involves a permanent building closure. At least until the majority on the Board and the Superintendent reverse their positions, the building will remain without heat or water. Like the typical closing case described in *Cadarr*, the Lovilia building is located in a town that would lose its only school. The Lovilia students will be transported nine miles down the highway to another town. As noted in the *Cadarr* decision, "Most of the parents and community members opposed to the school closings in those cases [cited above] would undoubtedly gladly change places with Appellant [*Cadarr*]. To them, a school closing meant the loss of the hub of the community and the town's identity and independence in addition to the trauma of placing youngsters on a bus for a daily ride over (invariably) 'dangerous roads.'" (*Id.*)

The *Cadarr* case lends additional support to Appellants', rather than Appellee's position in this matter. In *Cadarr*, the Board's decision noted that no one was denied an opportunity to present his or her views on the change in attendance centers. The principal held informational meetings for interested parents; there were no less than four board meetings at which Appellant and other residents spoke to the Board. (*Id.*)

In the present case, neither the published agenda nor the detailed minutes of the November 16, 1998, and December 1, 1998, Board meetings gave any indication that the Board was considering the closing of Lovilia. It appears that the discussion initiated by Dennis Della Vedova in the closed session of the November 16th meeting was the impetus for the Board's December 4th action. If those discussions had been held in open session, the community of Lovilia could have been given the opportunity to consider and respond to Della Vedova's safety concerns. Ironically, after Mr. Della Vedova spoke to the fire inspector, he reversed his position. He stated that publicly. Since the majority of the Board relied so heavily on the opinion he expressed during the closed session of November 16, 1998, it defies logic that they would disregard his opinion after he met with the state fire inspector. Yet, three days later the Board called a special meeting. The Board President admits that she had private conversations with the three other Board members in favor of closing Lovilia Elementary. The evidence shows that she did not

want Mr. Della Vedova to attend the December 4th meeting, and that she and the Superintendent felt they had the necessary votes to close the school. It is also undisputed that the Board President and the Superintendent were familiar with the *Barker Guidelines* before they met on December 4, 1998. It can only be assumed that the purpose of calling the special meeting on December 4th was to cancel the order for the new boiler and to move the students out of the Lovilia Elementary. However, the agenda item for the December 4th meeting merely states “Lovilia Building & Boiler”. (Exh. 5.) This was insufficient notice of the intended action. The agenda for a Board meeting must be provided in a manner reasonably calculated to apprise the public of the nature of the meeting or the items being discussed. 1980 Op’n. Atty. Gen., 269.⁵

The community in general, and the Board members in particular, knew or should have known that the Lovilia Elementary Building was not in great shape. However, the boiler **was** operational on December 4, 1998, when the Board decided to close the building mid-year. The Board refused to reverse its decision on December 14, 1998, even after the state fire inspector had said that the building was safe and that the boiler should be repaired or replaced. What was lacking was any actual sense of urgency. This action was not called for in the absence of a bona fide emergency. Neglecting to provide a timely and open review and consideration of all viable alternatives was, at best, ill-advised.

In the *Barker* decision, the State Board established recommended guidelines for school boards to consider when making decisions with important consequences for its patrons. These guidelines were reviewed as part of an Iowa Supreme Court decision entitled, *Keeler v. Iowa State Department of Public Inst.*, 331 N.W.2d 110(Iowa 1983).

The guidelines recommended in the *Barker* decision read 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.

⁵ The State Board does not have jurisdiction to reach the merits of any open meetings law violation because the State Board does not have jurisdiction to decide those issues. “The exclusive mechanism for enforcement of the open meetings law is an original action in a district court for the county in which the governmental body has its principle place of business. *Keeler v. Iowa State Board of Public Instruction*, 331 N.W.2d 110, 111 (Iowa 1983).

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.
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.

It is against the *Barker Guidelines* that we are asked to measure the facts of this appeal. As in *Barker*, we find the District Board's action on December 4, 1998, substantially deficient in appropriate research, planning and public involvement in the important decision at issue here.

The District argued that it was not required to comply with the *Barker Guidelines* because this was merely a "temporary" closing. We do not agree. We find it difficult to comprehend how District Board members familiar with the contents of the *Barker* decision would have thought it more expedient to ignore them. At the very least, it is short sighted. It may be very difficult for these communities to pull together in the future for the passage of a bond issue desperately needed to benefit the entire District.

In the absence of a showing of the need for hasty decision-making, the District Board was ill-advised to have its first public hearing to consider the District's facilities' needs 52 days after the vote to close the Lovilia building and 3 weeks after the displaced Lovilia elementary students began attending classes at the Albia High School. 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. There is no justification for allowing formal input only after the final decision is made.

To hold otherwise would be to repeal the *Barker Guidelines* and their procedural due process protections for the public. If a school district, like Albia, can close an attendance center, terminate all present and future expenditures to that attendance center, move the students out of that attendance center with no plan of when they will be returned, then why would any district vote to permanently close an attendance center? The vote would be to “temporarily close” the center. Then, if parents appealed the “temporary” closure, the District could hold perfunctory public hearings and cure any reversible error created by the *Barker Guidelines* without changing the outcome of the decision.

We want to take this opportunity to reaffirm the *Barker Guidelines* and to emphasize that adequate consideration and public input must occur *prior to* the time the school closing decision is made. *Dunn v. Villisca Community School District*, 5 D.o.E. App. Dec. 31, 36(1982). For these reasons, we find that the District Board acted with unnecessary haste and with insufficient research, study, planning and meaningful public involvement in the December 4, 1998, decision. We find that the District Board’s decision to “cancel all present and future expenditures at the Lovilia Elementary School Building” constituted a permanent closure of that attendance center. The decision must be reversed.

The Open Enrollment Requests for the Remainder of the 1998-99 School Year:

There is no dispute in the record that the open enrollment requests that the Board denied at its December 14, 1998, meeting filed by the Appellants for the remainder of the 1998-99 school year were untimely filed. The question is whether they can be granted under the “good cause” exception to the timelines.

Under the precedent established by the State Board under the Open Enrollment Law, we have no authority for overturning the District Board’s denial of these applications. Appellee is correct that whether or not the closing of the Lovilia building is permanent or temporary, the Board’s action constitutes a change in the students’ attendance center. The provisions of 281 Iowa Administrative Code 17.4(3) specifically provide that designation of attendance centers within a district and assignment of students to those attendance centers is not “good cause”. Similarly, Iowa Code 282.18(16) provides that “the closure of a public school does not constitute good cause”. As Appellee correctly states in its brief, a decision to grant the applications in this case would be inconsistent with previous State Board decisions holding that the transfer of students from one attendance center to another, whether temporary or permanent, is not a case that cries out for an extraordinary exercise of power that is bestowed upon the State Board.” See, *In re Trevor and Madison Jackson*, 14 D.o.E. App. Dec. 307(1997) and *In re Clark Daniel Campos*, 14 D.o.E. App. Dec. 301(1997).

This is especially true since the State Board has clearly stated that the exercise of its authority under Iowa Code section 282.18(18)(1999) should only be reserved for situations the General Assembly was unable to envision, not unwilling to include. *In re Paul Farmer*, 10 D.o.E. App. Dec. 302(1993). In this case, the transfer of students from one attendance center to another is clearly a situation that has already been addressed by both the Legislature and prior State Board decisions. Therefore, the District's denial of Appellants' open enrollment applications at its December 14, 1998, Board meeting where immediate open enrollment out of the District for the remainder of the 1998-99 school year, is affirmed.

Attorney Fees:

Appellants have asked the State Board to order the District Board to pay for attorney fees in the amount set forth in the Attorney Fees Affidavit filed by Appellants' counsel. Generally, attorneys' fees are allowed to a successful party only where authorized by statute. *Jones v. School Board of Liberty Tp.*, 140 Iowa 179, 118 N.W.2d 265(1908). Appeals to the State Board are controlled by Iowa Code chapter 290. Section 290.6 states that "[n]othing in this chapter shall be so construed as to authorize the state board of education to render judgment for money;" *Id.*

Lacking the necessary authority to award attorney fees, Appellants' request must be denied.

Remedy:

As a practical matter we must address the appropriate remedy upon reversal of the Board's action. We are forced to take into account the difficulties our decision creates for the District, its citizens, and especially, the students involved. *In re Daniel Menke, et al.*, 4 D.P.I. App. Dec. 40, 46 (1984). We are mindful of the difficulty our decision creates in reversing the District. It must also be noted that the ultimate responsibility for this unfortunate situation rests with the majority of the District's Board.

The Lovilia students and teachers have been reassigned to the Albia High School for almost three months. It would not appear to be in their best interest to be moved back to Lovilia before the completion of the 1998-99 school year. In a similar situation, the State Board concluded that it would be "a callus disregard for the interests of the District and its students to order the District to reopen the ... attendance center in the middle of the second semester." *In re Daniel Menke, et al.*, 4 D.P.I. App. Dec. 40, 46(1984).

We know Appellants would appreciate returning to the Lovilia Elementary building for the Fall of the 1999-2000 school year. In reversing the action of the District Board taken at its December 4, 1998, meeting, the remedy should be to return the Appellants to their previous *status-quo* as of December 1, 1998. At that time, there was no evidence of any emergency reason to vacate the Lovilia building. There was no evidence of any financial reason that would prevent the District from complying with the state fire inspector's order to replace or repair the main boiler.

We hereby order that the District Board reopen the Lovilia attendance center for the 1999-2000 school year. That would give the District Board ample time to establish a time table which would allow it to undertake meaningful study and planning activity involving all community citizens before a decision for future direction of the District is made.

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 Albia Community School District made on December 4, 1998, to move the Lovilia elementary students temporarily into a wing at the Albia High School, and cancel all present and future expenditures at the Lovilia Elementary School Building, is hereby **reversed**. The decision of the Board of Directors made on December 14, 1998, denying Appellants' open enrollment applications for the remainder of the 1998-1999 school year, be **affirmed**. Costs under Iowa Code chapter 290 are hereby assigned to the District.

DATE

ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

DATE

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION