

IOWA STATE BOARD
OF EDUCATION
(Cite as 14 D.o.E. App. Dec. 101)

<i>In re Concerned Citizens for Education</i>	:	
	:	
Judith Holmes, Appellant,	:	
	:	
v.	:	DECISION
Lawton-Bronson Community School District, Appellee.	:	[Adm. Doc. #3827]

The above-captioned matter was heard on January 29, 1997, before a hearing panel comprising Dr. Jeananne Hagen, bureau chief, Bureau of Special Education; Dr. Deb Van Gorp, bureau chief, Bureau of Administration, Instruction and School Improvement; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. Appellant, Concerned Citizens for Education was represented by Ms. Judith Holmes, its chairperson, who resides in Lawton, Iowa. Appellant was not represented by council. The Appellee, Lawton-Bronson Community School District [hereinafter, "the District"], was represented by attorney Beth Groe of the Ahlers Law Firm, Des Moines, Iowa. Superintendent Robert Raymer, requested and was granted permission to attend the hearing telephonically. Appellant Concerned Citizens attended in person. Counsel for the District also appeared in person at the time of the hearing.

A hearing was held pursuant to Departmental Rules found at 281 -- Iowa Administrative Code 6. Authority and jurisdiction for this appeal are at found Iowa Code section 290.1(1997).

Appellant seeks a declaration from the State Board of Education that the actions of the Board of Directors [hereinafter, "the Board"] of the District surrounding its regular Board meeting on November 11, 1996, were contrary to the Board's own policies as well as the Laws of the State of Iowa.

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**

This is the third appeal arising out of the District's decision to build a new high school in Lawton. In the first case,

Concerned Citizens for Education appealed to the State Board to stop the District from pursuing the construction of a new high school building as approved by the voters of the District on May 14, 1996. See, In re Concerned Citizens for Education, 13 D.o.E. App. Dec. 373 (1996). The State Board affirmed the District's decision. Id. The second appeal was brought by Wallace and Dorothy Sorensen, seeking a reversal of the District Board's decision to fix the location of the new high school building within 30 rods of their rural residence. The State Board affirmed the District's location of the school site. In re Wallace and Dorothy Sorensen, 14 D.o.E. App. Dec. 1 (1996). The Sorensens have appealed the State Board's decision and that case is pending in the Woodbury County District Court, (Sorensen v. State Bd. of Educ., LAVC115738).

In the present appeal, Concerned Citizens object to the application of Board policies which, Appellant contends, denied them meaningful participation in the regular Board meeting held on November 11, 1996.¹

On November 7, 1996, the Concerned Citizens wrote Superintendent Robert Raymer and enclosed two pages of "the Concerned Citizens' 'concerns'." Ms. Holmes requested "time to read the items into the minutes of the [November 11th] meeting and to speak to them **briefly**." (Exh. A. Emphasis in original.) Ms. Holmes made her request on behalf of the Concerned Citizens pursuant to Board Policy No. 204.10, which states, in pertinent part, as follows:

Individuals or groups who wish to place an item on the agenda should do so by contacting the superintendent. Requests should include name, address, phone number, organization represented, purpose of the presentation, and pertinent background information. To be included on the regular meeting agenda, requests must be received by the superintendent not later than twenty-four (24) hours prior to the meeting.

(Exh. B.)

On November 8, 1996, Superintendent Raymer called Ms. Holmes to advise her that her concerns would not be placed

¹ In all, Appellant filed 11 objections in its affidavit and amended affidavit of appeal. Some objections allege violations of the Open Records Law, but the State Board lacks jurisdiction over complaints brought under Iowa Code chapters 21 or 22 (Open Records and Open Meetings, respectively). In re Janiene Nusbaum and Jay Jay Krutsinger, 12 D.o.E. App. Dec. 378 (1995). The gist of Appellant's concerns and complaints can be aptly summarized as the frustrations of a minority viewpoint when they feel they are not being heard.

on the agenda as a separate item, but that "some" time would be allocated to her during the open forum section of the agenda. (Exh. H.) Ms. Holmes was allowed to read her two pages of "concerns" publicly during the open forum. She stated that she wanted her concerns to be incorporated into the minutes of the November 11, 1996, meeting.

The minutes were duly published in the *Moville Record* on November 21, 1996. The text of Appellant's concerns were reprinted verbatim in the newspaper. (Exh. F.) Ms. Holmes, however, was not happy about a paragraph appearing before the "open letter" in which her concerns were categorized by the Board Secretary as concerns regarding the adequacy of the site for the new school building. (See, Exh. F.) Consequently, at the next regular Board meeting held December 11, 1996, Ms. Holmes appeared during the open forum and requested the Board President to correct the "unapproved minutes" of the November 11th meeting to reflect that the Concerned Citizens "concerns" were broader than concerns about the adequacy of the school site. (Exh. J.) In preparation for the December 11, 1996, meeting, Ms. Holmes had requested the tapes of the public forum during the November 11th meeting from the school board secretary. She was advised by the board secretary that these tapes had been erased after the minutes had been transcribed. When Ms. Holmes could not get satisfaction from the Board on her "corrected minutes," relations deteriorated further and this appeal was filed.

APPELLANT'S POSITION:

On appeal, Concerned Citizens tried to demonstrate that they had followed the Board's printed or published guidelines in an effort to have their concerns placed on the Board's agenda and discussed at the November 11th regular Board meeting. Ms. Holmes believed that the District's administration falsely characterized their concerns as dealing "only with the adequacy of the site of the new school building." In that way, the administration felt justified in denying them placement on the Board agenda since that issue had already been discussed and decided previously. In addition, by failing to correct the minutes of the November 11th meeting to reflect concerns broader than the adequacy of the school site, as Ms. Holmes requested, Appellant contends that the District Board produced a fraudulent historical record of the meeting of the Lawton-Bronson Community School Board. When asked what Appellant wanted from the State Board of Education, Ms. Holmes requested the following:

1. The State Board require the Lawton-Bronson Community School District Board of Education to correct the November 11, 1996, meeting minutes, stating that Judith Holmes, spokes

person for the Concerned Citizens for Education, read a letter addressed to Betty Sieger, President, Lawton-Bronson Community School District Board of Education, expressing great concern about the Board's failure to grant the Concerned Citizens the same rights or privileges as other District patrons in placing items on the Board's agenda for dialogue and possible action.

2. That the State Board require the Lawton-Bronson Board of Education to publish the corrected minutes of the November 11, 1996, regular Board meeting to reflect this change.
3. That the State Board require the Board President of the Lawton-Bronson Board of Education to prepare and send a letter to Judith Holmes, chairperson of Concerned Citizens for Education, in which she apologizes for the Board's failure to place her concerns on the agenda of the November 11, 1996, Board meeting.
4. That the State Board of Education require the Lawton-Bronson Board of Education to direct their Board Secretary to carefully and accurately report in the minutes the actions and proceedings that occur at regular and special Board meetings as required by Iowa Code section 290.6.

APPELLEE'S POSITION:

Appellee argues that there are no legal requirements which state that a school board is required to place an item on the agenda simply because a person makes such a request. Furthermore, Board Policy No. 204.10 upon which Ms. Holmes relied, does not state or imply that just because a person requests to place an item on the agenda, the Board is required to place that item on the agenda. Ms. Holmes was allowed to address the Board with her concerns during the open forum meeting of November 11, 1996. She did have a fair opportunity to address her concerns to the local district board.

**II.
CONCLUSIONS OF LAW**

Iowa Code section 279.8 authorizes a board to make rules for its own governance and that of its directors. To insure that the district is run in an organized fashion, Iowa Code section 21.7 encourages a board to make and enforce reasonable rules for the conduct of its meetings to assure that those meetings are orderly and free from interference or interruption by spectators. One of the ways the board has accomplished this is by enacting Policy

No. 204.10, which governs the "agenda for board meetings." (Exh. B.) Although that policy states the procedure to be followed

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when requesting placement of an item on a board agenda, there is no guarantee that the item submitted in compliance with the procedure will be placed on the agenda for board discussion. There's no evidence that the Board denied Concerned Citizens a fair and meaningful opportunity to present its concerns publicly. In fact, the Board was extremely accommodating to Appellant by agreeing to reprint the verbatim "concerns" read during the public forum on November 11th as part of the minutes of that meeting. The fact that the board secretary may have categorized Ms. Holmes' concerns more narrowly than they were intended to be, does not constitute evidence of a conspiracy to use that reason to deny consideration of the concerns on the November 11th agenda. We can see no legal basis upon which to disturb the actions of the Lawton-Bronson District Board in this regard or to require them to remediate the minutes of that meeting.

Appellant made several objections which alleged violation of the Open Records Law and even though both parties understood that the State Board of Education has no jurisdiction to resolve these issues, we were asked by both parties to comment on the allegations made. We would decline to do that except to note that under the Iowa Code, a board secretary is not required to tape the regular board meeting held in open session. In addition, there is no requirement that the secretary keep a tape recording if one is made, for a certain or definite period of time. In fact, the Iowa Code is very specific about when a board secretary must record a board meeting and for how long the tape must be kept. That is only when the board is in closed session. See, Iowa Code section 21.5(1997). In this case, the board secretary is free to tape the meeting as an aid to her memory when she is transcribing the proposed minutes of the meeting. When the minutes of the meeting are approved by the board of directors, their approval attests to the accuracy of the events which occurred at those meetings. No tape recording is necessary to further verify the accuracy of the official minutes.

Whether the Concerned Citizens were attempting to raise issues at the November 11th meeting which had already been discussed and decided (such as site selection for the school), or whether the concerns are broader, such as the ability of district patrons to participate meaningfully in board decisions, the issue is the same. This case concerns the right of a district board of education to control its own agenda. We believe that the district board is a business that must be run in an organized fashion for the benefit of the district's students and patrons. To allow any member of the public to place any item on the agenda simply at that person's request has the potential to render the board powerless to act on other items of necessity. The Dis-

trict's Board of Directors serve with no compensation and there is a limited amount of time in which they can meet to conduct

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business. The solution in this case is not a legal one.² We find no basis to reverse any actions taken by the District Board in its attempts to control its meeting agenda.

All motions or objections not previously ruled upon are hereby denied and overruled.

**III.
DECISION**

For the foregoing reasons, the decision of the Board of Directors of the Lawton-Bronson Community School District limiting the concerned Citizens for Education to the open forum of the November 11, 1996, Board meeting is hereby recommended for affirmation. Any costs to be assessed this appeal are to be assigned to the Appellant, Concerned Citizens for Education.

DATE

ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

DATE

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION

² We have been amazed at the amount of preparation that Concerned Citizens for Education has put into its appeals to the State Board. It would be a tremendous asset if this energy could be channeled in pursuit of the District Board's goals for the District. Perhaps some type of mediation service would be worth serious consideration by both sides.