IOWA STATE BOARD
OF EDUCATION
(Cite as 13 D.o.E. App. Dec. 303)

In re Debra Miller, et al.	:	
Debra Miller, *et al.*, Appellants,	:	
v.	:	DECISION
Waterloo Community School District, Appellee.	:	[Admin. Doc. #s 3728-3753 3759-3762]

The above-captioned matter was consolidated and heard on April 17, 1996, before a hearing panel comprising Dr. Ray Morley, consultant, Office of Educational Services for Children, Families, and Communities; Mr. Lee Crawford, consultant, Bureau of Technical and Vocational Education; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. The Appellants were present, represented by counsel, Gary N. Jones of Cedar Falls, Iowa. Appellee, Waterloo Community School District [hereinafter "the District"], was also present in the persons of Superintendent Arlis Swartzendruber and Norman Felland, executive director of instructional services. Appellee was represented by Edgar H. Bittle and Ronald L. Peeler of Ahlers Law Firm, Des Moines, Iowa.

An evidentiary hearing was held pursuant to Departmental Rules found at 281--Iowa Administrative Code 6. Authority and jurisdiction for the appeal are found in Iowa Code chapter 290 (1995). Appellants filed affidavits seeking review of a March 1, 1996, decision of the Board of Directors [hereinafter "the Board"] of the District to close the Bunger School of Technology and relocate the program to either East High School or West High School, or both.

I.
FINDINGS OF FACT

The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter before them.

The Bunger School of Technology [BST] was created in the midst of one of the gravest financial crises faced by any Iowa school district. (Exh. 11, p. 5-7.) The program was spawned by concerns over low achievement scores[1], a high student attrition rate and a shrinking enrollment. (Id. at p. 5.) In the Fall of the 1995-96 school year, the District opened BST in the former Bunger Junior High School in Evansdale. The school opened its doors to 214 ninth and tenth grade students who were accepted on a first-come, first-serve basis. The student body had a minority ratio of 9.3%, about half of the District's overall minority average.

BST was conceived as a technologically-oriented high school which would include grades 11 and 12 within two years. (Exh. 31.) It was intended to operate as a high school in addition to the District's three other high schools: East High School, West High School and EXPO-EDC. (Exh. 11, p.5.) The total cost to operate Bunger was estimated to be $1,067,868.00 plus costs for transportation and costs associated with the courses Bunger students took at East and West High Schools (Exh. 11, p. 11.) These costs do not include Bunger students' participation in extracurricular and co-curricular activities. Those costs are additional because Bunger was not yet a full, four-year high school with a complete athletic program. Id.

About the same time the Bunger staff was preparing to open the new school, Dr. Arlis Swartzendruber was preparing to assume his position as superintendent of the District. On July 19, 1995, Dr. Swartzendruber met with certain finance personnel from the Iowa Department of Education. A review of the District's expenditure and debt trends revealed a disturbing financial condition. (Exh. 12, p. 2.) This financial trouble had developed over the previous six years. The District had been spending more on in-District operations than it had revenue, and at the same time, had been delaying payments to AEA 7 for the special education services it had received. The combination of

[1] When districts were compared as entities, 89-94% of all other districts in the state performed better on the ITED's than Waterloo students. The Iowa Tests of Basic Skills indicated that 81-91% of all other districts in the state performed better on this test than Waterloo students. (Exh. 11, p. 21.)

rising salaries and declining enrollment further exascerbated the problem. (Exh. 11.) By August, the Superintendent became aware that "[t]he District was on the threshold of insolvency and could have encountered a court-ordered debt service that would have required a 15-year work-out plan." (Exh. 11, p. 17.)

The Superintendent responded by appointing a "blue ribbon" panel, consisting of community financial expertise, a Department of Education advisor, several members of the administration team[2] and labor association members. "The committee was not intended to be representative, rather it was intended to reflect expertise and to enable networking to others necessary to correct the District's financial condition." (Exh. 11, p.1.)

On October 18, 1995, the blue ribbon panel rendered its report. The first sentence of that report states:

> The Waterloo Community School District faces a grave financial crisis which threatens its solvency.

(Exh. 11, p. 85.) The panel made several recommendations to the Superintendent. The most pressing one was to "[r]educe costs in fiscal year 1996-97 by $4,500,000. Be prepared to reduce them even farther if the School Budget Review Committee [SBRC] does not allow sufficient spending authority."[3] (Exh. 11, p. 86.) In addition to the recommended reductions in expenses, the Panel commented:

> All of these things need to happen right away. The cost of past reluctance to do what was necessary is now upon us.

[2] Although there were administrators from East and West High Schools, no one from Bunger was present on the Committee.

[3] The Panel recommended that the Superintendent request $7.5 million in special allowable growth from the SBRC at its December 11, 1995, meeting.

> The District's regulators and creditors remember previous promises by the District to improve its financial and operating practices, which have not born fruit. ... There must be no hesitation in setting the District squarely and securely on a new road towards fiscal integrity.
>
> We expect the Community will need some time to come to terms with the reality of the District's condition and the need to change it for the better. Our sense is that it is better to get the whole picture out in the open all at once so that the people affected can begin to make plans for the future, and the Community as a whole can turn its attention to providing educational excellence for its school children.

(Exh. 11, p. 87-88.)

The recommendations of the Blue Ribbon Panel did not specifically address how cost reductions were to be made, but rather, included general recommendations such as Recommendation Five, which simply stated "reduce costs in fiscal year 1996-97 by $4,500,000." (Exh. 11, p. 86.)

The proposed schedule of operating fund reductions was developed by the Superintendent and other administrators and was delivered to school board members for the first time on Sunday, November 12, 1995. The reductions included down-sizing administration, reducing teaching staff, the privatization of certain services, and the reduction of programs. (Exh. 11, p. 98-101.) In addition to these cuts, there was a choice among three options. Approval of the suggested sixteen reductions, plus one of the options would achieve the necessary goal of reducing expenditures by approximately $4.8 million for 1996-97.

Option A:

Elementary - reduce art/music and PE. Convert time gained to early dismissal once per week for planning. Would go to specials once/week instead of twice/wk. Reduce teachers by 21. $840,000

Total = $4,980,000*

Option B:

Relocate Bunger program to East or East & West HS

utilities	$ 20,000
busing	51,500
admin.	60,000
media	40,000
clerical	20,000
custodial	40,000
teachers	312,000
	$543,500

Total = $4,691,000*

Option C:

1/2 Day K	$150,000
Coaches Int.	25,600
Sports Fee	72,000
Combination Principals	150,000
Music Sectionals	350,000
	$747,600

Total = $4,887,600*

*This total is the sum of sixteen recommended reductions plus the savings realized by adoption of the particular option.

On November 13, 1995, the school board held a work session to review and discuss the operating fund reductions proposed by the Superintendent. At that work session, there was never any discussion of either development or implementation of any time line for making decisions, especially the decision to close

Bunger. However, there was a shared sense of urgency that the Board would have to show a reduction in the 1996-97 budget by adoption of these recommended "cuts" before the December 11, 1995 SBRC meeting. (Exh. 11, p. 94)(Tr. 27.). On that same evening, after the work session, the Board conducted the regularly scheduled board meeting during which the decision was made to close Bunger School of Technology. Again, at no time, was there any discussion that the decision to close Bunger was a preliminary decision or that a certain time line must be followed before a final decision could be made. In fact, the minutes of the November 13, 1995, meeting reflect an intent to make a final decision. The minutes show that the Board moved to "approve reductions within a selected set of options as outlined within the total list of reductions, and that the administration proceed to implement the reductions accordingly, including Option B, to relocate the Bunger program." (Emphasis added.) Exhibit 4 reflects that the Board considered its decision final enough to direct the administration to begin the process of relocating the program. Indeed, Dr. Swartzendruber admitted upon cross-examination at the appeal hearing that as of November 13, 1995, he did not know that a secondary vote on the closing of Bunger would be necessary. (Tr. 32.)

The Board's action at the November 13, 1995, meeting received considerable attention in the media. Following the meeting, the Waterloo Courier reported: "The school board voted to uproot Bunger this summer and transplant the program to one or both high schools." (Exh. 32.) By letter dated November 15, 1995, the principal of Bunger sent notification to the parents of prospective Bunger students in the eighth grade that the Bunger program would be relocated to East or West. (Exh. 11, p. 54.)

It was about this same time that the Superintendent retained legal counsel. As he testified at the appeal hearing:

> **Dr. Swartzendruber:** I ... as soon as the Board took its action on November 13th, I obtained legal counsel for all reductions because we knew that every single reduction would require processes beyond November 13th, including termination of staff. And, so I sought legal counsel immediately. ...

> **Attorney:** But I would just like to know in the process, [when] was it ... determined that there would be a hearing?
>
> **Dr. Swartzendruber:** I would say that within a week after the November 13th action.
>
> **Attorney:** So this was not unknown in the District ... that there would be further action after the November 13th vote?
>
> **Dr. Swartzendruber:** Absolutely.

(Tr. 19.)

The media publicized the fact that there would be another hearing on February 26. The newspaper characterized the process as follows: "Although the school board has voted to close Bunger, a final and official vote has not been taken. State law requires a public hearing first." (Waterloo Courier, Exh. 32.) In the meantime, a group of Bunger supporters formed the "Save Our School" Committee [SOS] which labored diligently to get the Board to reconsider its November 13th decision. (Exh. 31.)

Bunger supporters spoke at every Board meeting held between November 13, 1995, and March 1, 1996. Some times they spoke as part of the agenda; most times they spoke during the portion of the meeting set aside for public comment. They invited Board members to attend additional meetings sponsored by SOS where voluminous facts and figures were presented in an attempt to refute the cost savings analysis of Option B. The SOS group even appeared and spoke before the SBRC's December 11, 1995, meeting. They were continually frustrated by the Board's lack of interest in their proffered solutions and alternatives to the closing of Bunger. A December 27, 1995, newsletter published by SOS states:

> The issue is not final yet ... our superintendent has said he doesn't want to hear about Bunger any more, it's a done deal. But he and the Board are going to hear about it until they change their minds.
>
> ...

> Were laws broken when the decision was made to close Bunger? Probably, since now they have decided to have an open meeting to discuss it on February 26th. Then they will vote again, even though they made the decision in November.

(SOS Newsletter, December 27, 1995, Exh. 31.)

At board meetings held on January 22, 1996, as well as February 12, 1996, the public was urged to attend the February 26th "Bunger hearing." (Exhs. 8, 9.) The February 26th hearing/meeting attracted 400 people and lasted five hours. Twenty-five individuals spoke before the Board. The Waterloo Courier quoted Board member Dave Juon saying at 12:20 a.m., "I don't want to prolong this any more than we have to, but I for one, need to go back one last time to make sure we're making the right decision." (Exh. 32.) The minutes of the meeting reflect a motion by Mr. Juon

> seconded by Mr. Wells that the Board of Directors meet in Special Session on Friday, March 1, at noon to act on the Bunger relocation issue ... Mr. Wells thanked all of the presenters at the public hearing and said the Board will need to pick the option that will hurt the fewest number of students.

(Exh. 10, p. 5.)

The March 1 meeting was a Special Session devoted exclusively to consideration of the relocation of the Bunger program. The Board voted unanimously to close Bunger at the end of the 1995-96 school year and "that the students and curriculum at Bunger be transferred to one or both high schools for the 1996-97 school year." (Exh. 3.) Option B was chosen because it affected approximately 200 students. In contrast, Option A would impact all elementary students in the district, and Option C would impact both elementary and intermediate. (Tr. 11.)

The facts do show that on November 13, 1995, a decision was made to close the Bunger School of Technology at Evansdale and *relocate the program* to either East High School or West High School or both. The facts also show that at the time of the Board's vote, they thought their decision was a final one. (See, Exh. 4.) After that, two things occurred that are factually significant:

1) The Superintendent and Board became aware that they could not "legally" finalize the decision without entertaining community input;

(2) The parents realized that BST was not a "curriculum or program" that could be relocated to East or West High Schools. Although the Board conceived Bunger as a "career pathway program" (See, Appellee's Brief) and thought that the Bunger program could be transplanted via course offerings to another high school in the District, the SOS committee disagreed. This distinction becomes apparent in a question and answer format entitled *"Hard Questions and Straight Answers,"* prepared by the Bunger supporters:

> **Q. 5 I'm confused. Isn't the District proposing to relocate the Bunger Program rather than eliminate it?**
>
> *A. 5 The District is using to [sic] term "relocate" rather loosely. It appears that the District is planning to simply reassign classrooms and believes the program will exist in other locations. This simplistic plan illustrates how little understanding there is about why Bunger is so successful. There are many essential elements that will be lost if the Bunger program is integrated into East and/or West; including (a) a small school environment, (b) a zero-tolerance discipline contract, (c) classes where teachers can spend 100% of their time teaching, (d) classes where all students*

complete homework, (e) electrical wiring to network all computers, and so forth.

(Exh. 31, 2/6/96.)(Emphasis in original.

Between November 13, 1995, and March 1, 1996, there were a number of meetings between the administrative staff and interested parent groups concerning the future of BST. Those meetings and conversations are documented in Appellee's Exhibit 29. In addition, Superintendent Swartzendruber testified at the appeal hearing that he was personally involved in 12 or 13 meetings with Bunger representatives between the November and February board decisions. (Tr. 13.). Exhibit 31 prepared by Appellee is a compilation of 80 to 100 pages of publications and claims made by the Bunger supporters and received by the District. Id. The District administration put together Exhibit 11 in preparation for the February 26th public hearing. It consisted of 103 pages of data and responses to the concerns raised by the Bunger supporters as documented in Exhibit 31.

The parents were not satisfied with the District's responses to their concerns. They felt misled by the Superintendent's initial assurances that "Bunger was safe." (Tr. 10.) When Ms. McBride, one of the Bunger parents, first heard about the appointment of the Blue Ribbon panel, she asked the Superintendent for a list of the members. She wanted to give them information about Bunger so they would gain an appreciation for the program. (Tr. 9.) The Superintendent refused to disclose the members' names "because every special interest group across the District would be calling them up trying to promote their school or program ... ." (Tr. 9.) He told her again not to worry about Bunger. (Tr. 10.)

The first Ms. McBride knew that Bunger could be closed was on November 11, 1995, when she saw the Board agenda. Even Keith Bock, Bunger's principal, testified that he was given no opportunity for input in the decision to close Bunger before the November 13th vote. (Tr. at 95.)

After the November board meeting, Appellants contend that "the board attempted to cover their tracks and give the appearance of public discussion by allowing Bunger supporters to

speak during the ...[open mike] portion of the board meetings." (Tr. 25.) Even then the Board members seemed disinterested in Appellants' research. They never asked questions at these meetings. (Tr. 25.) As Appellent McBride described it

> When I'm interested in someone and they're doing this [rolled eyes and looked away] ... I indicate a level of disinterest to me personally. Or are tapping their pencil down here, not looking at you, things like that, that went on quite a bit when we presented things to Board members. We got a condescending attitude from the Board members.

(Tr. at 25.)

The parents and other Bunger supporters did a lot of research seeking better alternatives to the closure of Bunger. (See, Appellants' Exh. C.) With the help of former Waterloo Board member, Lyle Schmidt, Bunger supporters presented Options E through K as suggested solutions to ease the Board's financial crisis. According to Superintendent Swartzendruber, the information presented contained "no new ideas." (Tr. 43.) The information presented by the Bunger supporters had already been considered by the administration and Board. "[T]he only thing I was hearing consistently was a list of items that should have been cut instead of what was cut." (Tr. 43.) Consequently, the "final" decision was made on March 1, 1996, to close Bunger.

During the thirty-day period following the Board's March 1 vote, twenty-eight (28) separate appeals were filed with the State Board of Education. These appeals requested that the decision to close Bunger be invalidated because of the Board's failure to follow the guidelines established for school closings in the case of In re Norman Barker, 1 D.P.I. App. Dec. 145 (1977).

II.
CONCLUSIONS OF LAW

The threshold issue before us is whether or not the Board's closure of the Bunger School of Technology was done in violation of the guidelines recommended by the State Board of Education in the case of In re Norman Barker, 1 D.P.I. App. Dec. 145 (1977). Appellants' argument is two-fold; (1) the Board's decision to close Bunger was actually made on November 13, 1995 in complete disregard of the Barker guidelines; and (2) the Board's decision to have another vote on February 26, 1996,[4] following a public hearing was done only to avoid any adverse legal consequences for failing to follow the Barker guidelines prior to the November 13th vote. As a corollary to this, Appellants argue that even if the Board's final vote to close Bunger was actually taken on March 1, 1996, the decision should be invalidated because of the Board's failure to make a "good faith" effort to follow the Barker guidelines during the period from November 13, 1995, to the final vote on March 1, 1996.

The District Board response is that it has the exclusive authority under Iowa Law to

> 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(1995). (See, also, sections 274.1, 280.3.)

[4] The February 26th meeting was adjourned at 12:20 a.m. before a vote was taken on Bunger. At the suggestion of Board member Juon, a special meeting was scheduled for noon on March 1, 1996, to reconsider the Bunger vote. He wanted more time to process information that had been received from the public hearing.

The District Board further argues that its exercise of discretion under this broad grant of authority cannot be disturbed by the State Board under the latter's limited scope of review. In support of this proposition, the District Board relies on language from the Iowa Supreme Court which states courts should refrain from interfering with decisions of school boards made pursuant to statutory authority.

> It is so well-settled by our statutes and decisions as to be almost axiomatic that the courts may not review the actions of school officers which are based upon the exercise of discretion and are within their powers.

Templer v. School Township of Ellsworth, 141 N.W. 1054, 1055 (Iowa 1913). Appellee contends that the proper scope of review of this hearing panel and the State Board is whether the District Board's decision was "made arbitrarily or capriciously, or against the weight of the evidence." (Brief at 11.) We disagree with the narrow standard of review that has evolved over the past few years in State Board decisions, and take this opportunity to lay this issue to rest.

The District cites from Board of Directors of Independent School District of Waterloo v. Green, 147 N.W.2d 854 (Iowa 1965), where the court refused to interfere with the policy-making function of a local school board, recognizing that operation of local schools is a function of the school board rather than the court. The issue in that case was not, however, analogous to the issue presented here. In Green, the court was asked to directly review a locally adopted school rule barring married pupils from participation in extracurricular activities. Id. at 857. The court declined to interfere with the local board's adoption of this policy, recognizing that the judiciary had no role in determination of educational policy. This does not say that the State Board has no right to oversee the development of school policies. Id. at 858.

In the context of reviewing local school board decisions, the State Board of Education does not stand in the same position as the court outside of the educational system. Rather, the

underlying function of the State Board of Education is to "act in a policy-making and advisory capacity and to exercise general supervision over the state system of education including all ... public elementary and secondary schools." Iowa Code section 256.1(1)(1995). This function is effectuated, in part, through State Board review of local school board decisions pursuant to Code chapter 290. As stated in the appeal of In re Eric Plough, 9 D.o.E. App. Dec. 234 (1992), the State Board has consistently refused to act as a "super school board," substituting its judgment for the wisdom of the local school. Id. at 241. However, the State Board has not, and is not required to, completely abandon its own educational oversight function when conducting a chapter 290 appeal. The State Board has consistently utilized the chapter 290 review process to ensure that state-wide educational policy is uniformly and fairly implemented by local school boards. This is not only appropriate, it is a mandatory part of the State Board's effort to fulfill its Code section 256.1(1) duty to supervise the operation of local schools.

While chapter 290 review is appellate, nothing within Code chapter 290 indicates that the scope of review to be exercised by the State Board when reviewing local board decisions is the same as judicial review of agency action. The court, in reviewing agency action, is limited to review of the agency's actions for errors of law and is bound by the agency's findings of fact that are supported by evidence in the agency record. The State Board's chapter 290 review is not so limited.

There are two distinct types of appellate review, *de novo* and *at law*. Appellate courts exercise de novo review, re-examining the entire record and making factual determinations in all cases of equity. See, Iowa R. App. P. 4. As the State Board decisions held early on, its review authority under chapter 290 is de novo, rather than at law. This scope of review was originally enunciated in one of the first cases decided by the State Board (then the Board of Public Instruction). In re: Affidavit of Grievance by Edna S. Kennett, 1 D.P.I. App. Dec. 52 (1974). Relying on the Court's analysis of the State Superintendent's scope of review enunciated in Albrecht v. Independent School Dist., 216 Iowa 968, 250 N.W. 129 (1933), the State Board said:

> The Board of Directors v. Green, 147 N.W.2d 854 (Iowa 1967), establishes the **court** standard for review of a school regulation and has no application to administrative appeals under chapter 290.
>
> We feel that the proper scope of review of appeals under chapter 290 is found in section 290.3 where the Code says that after hearing testimony, the county superintendent ... shall make such decision as may be just and equitable, ... This can have no other logical meaning than to allow a county superintendent, on appeal, a full review of the decisions of local boards. A determination otherwise would cause this action to be a nullity.

Id. at 57. (Emphasis in original.)

The State Board relied on the language from Edna S. Kennett, supra, when it set the appropriate standard of review in the appeal decision of In re Andrea Talley, 1 D.P.I. App. Dec. 174 (1978).

> Attorneys for the parties disagreed regarding the proper scope of review of the State Board of Public Instruction in matters appealed under chapter 290. We feel that the issue was properly laid to rest in In re: Affidavit of Grievance by Edna S. Kennett, 1 D.P.I. App. Dec. 52, where the State Board determined that the proper scope was not limited to arbitrary and capricious actions or abuse of authority, but also included actions which were ill-advised, unwise and inexpedient. The result is a scope of appeal similar to that commonly referred to in courts of law as *de novo*.

Id. at 176. Accord, In re Kenneth Hoksbergen, 1 D.P.I. App. Dec. 86, 88 (1975).

We take this time to clarify the proper standard of review for appeals brought to the State Board under Iowa Code section 290.1 because, as Appellee District Board has brought to our attention, a series of cases has evolved over several years which suggest that the State Board will not reverse a local board decision unless it "was made arbitrarily, capriciously, without basis in fact, upon error of law, without legal authority, or constitutes an abuse of discretion. This is our standard of review of local board decisions." In re Jerry Eaton, et al., 7 D.o.E. App. Dec. 137, 141 (1989). That language is inconsistent with the *de novo* standard of review which is appropriate under chapter 290, and is hereby overruled. Such a conclusion is inevitable given the mandate of Code section 290.3 that the Board conduct an evidentiary hearing before rendering a review decision. There would be no point in such a hearing if the Board were confined to examining the record developed before the local board and reviewing only the rationale advanced by the local board in its decision.[5]

In applying the appropriate standard of review to the facts of this case, we must ask whether the District Board's action in closing Bunger, in light of the Barker guidelines, was arbitrary, capricious, an abuse of authority, or ill-advised, unwise, and inexpedient? Since this review is *de novo*, all relevant facts must be considered in making the determination. The legal principles guiding the outcome suggest that the correct result lies somewhere between the two extremes suggested by the opposing parties; the State Board's scope of review is not as narrow and strict as that suggested by the District; but neither is strict adherence to the Barker guidelines required by the State Board as suggested by Appellants.

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[5] Besides being an abdication of the State Board's role, it would impose a tremendous burden on local boards to have a complete written transcript of every hearing subject to appeal under chapter 290. At the present time, boards, as well as the aggrieved parties, can have their appeal heard and decided very cheaply. Requiring a full transcript and record for an appellate review by the State Board would impose excessive costs on both parties and have a "chilling effect" on their right of appeal.

The policies of the Department with regard to school closings are clearly set forth in the appeal decision entitled In re Norman Barker, 1 D.P.I. App. Dec. 145 (1977). At the conclusion of the Barker decision, the State Board (formerly the Iowa Department of Public Instruction Board) sets forth recommended guidelines for all school districts to follow with regard to school closings. These seven guidelines were suggested as "a reasonable and prudent procedure to follow in making decisions as important as the closing of an attendance center. **It is to be understood that such an outline must be flexible enough to be used as the particular circumstances of each decision dictate. It should not be understood that the procedures described here are ones which are to be required in all future decisions of local boards of directors on important matters. They are only recommendations.**" In re Norman Barker, 1 D.P.I. App. Dec. 145, 149 (1977). These are the steps suggested as "a reasonable and prudent procedure to follow in making decisions as important as the closing of an attendance center." Id.

BARKER GUIDELINES

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.
>
> 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.

Although these guidelines were reviewed and approved by the Iowa Supreme Court in Keeler v. Iowa Bd. of Public Inst., 331 N.W.2d 110, 112 (Iowa 1983), the Court also noted that these recommendations "were not an agency 'rule' within the meaning of section 17A.2(7)(d)." Id. That means that before the State Board can require strict adherence to each of the seven guidelines, they must first be promulgated as administrative rules through the rulemaking process outlined in Iowa Code section 17A. That has never been done. Even though the State Board has reviewed local board decisions involving the closing of attendance centers on numerous occasions, there have only been three cases where the local board's action was reversed by the State Board of Education. In re Janine Nusbaum & J.J. Krutsinger, 12 D.o.E. App. Dec. 378 (1995); In re Daniel Menke, et al., 4 D.P.I. App. Dec. 40 (1984); and In re Norman Barker, I D.P.I. App. Dec. 145 (1977). In all three of those cases, the State Board found the District Board's action "substantially deficient in appropriate research, planning, and public involvement. ... We find that the District Board acted with unnecessary haste and with insufficient research, study, planning, and meaningful public involvement. ..." In re Janine Nusbaum & J.J. Krutsinger, supra at 385. In reversing the local board in the Menke case, the State Board noted that the District had no excuse for disregarding five out of the seven Barker guidelines "[w]hat was lacking was any actual sense of urgency. ... Immediate action was not called for, and in the absence of a

bona fided emergency, neglecting to provide a timely and open review and consideration of all viable alternatives was, at best, ill-advised." Id. at 45. At another point, the State Board decision notes that "[i]n the absence of a showing of need for hasty decision-making, the District Board was ill-advised to hear its first public comment on the important issue of closing an attendance center at the same meeting at which it made the decision. Unless time weighs heavily as a factor, school boards should allow time to pass between initial, formal, public input and a final decision. There are too many facts to register, too many questions unanswered and too much public sentiment to be measured to involve hasty decisions when time is not of the essence." Id. at 46.

Appellants made an excellent case for the fact that on November 13, 1995, the District Board decided to close Bunger in complete disregard of the Barker guidelines. If that was the only issue to be decided, it would be decided in favor of the Bunger supporters and the Board's decision would be reversed. Even under the more relaxed adherence to Barker, which the State Board allows when a District faces a financial emergency, there should still be some input from the parents who will be impacted by the Board's decision before that decision is made. Certainly some input from the affected school's teachers and administration should also be sought. Neither of these groups were consulted prior to the Board's November 13, 1995, decision. If the Appellants had appealed to the State Board within thirty (30) days of that decision,[6] the District Board's decision would have been recommended for reversal. However, in reversing the November decision, the State Board would have directed Waterloo to go back through the Bunger decision-making process to give the community an opportunity for input and further study. The District Board would have been advised to reschedule a final decision within a "reasonable" amount of time.

[6] Under Iowa Code section 290.1, aggrieved parties must file their affidavits of appeal within thirty days of the local board's decision. If this is not done, the State Board cannot exercise jurisdiction and the appeal must be dismissed. In re Edward Zaccaro, 13 D.o.E. App. Dec. 126 (1996) aff'd. Edward Zaccaro, *et al.* v. Iowa State Bd. of Education and Dubuque Comm. Sch. Dist., No. LACZ 50680 (Dub. Co. Dist. Ct., June 4, 1996).

> We cannot say that a ... decision requires a number of months of preparation. We can only encourage this and all other boards to make the best decision they can using their best collective judgements. Even the Barker guidelines do not address a specific amount of time. "Reasonableness" is the polestar.

In re James Darst, *et al.*, 4 D.P.I. App. Dec. 250, 257 (1986).

But, there was no appeal of the Board's November 13, 1995, decision. Consequently, we have no authority to reverse the Waterloo Board for what occurred back then. What the facts show is that shortly after making that decision, the Superintendent and Board realized they needed to honor the process recommended by the Barker case. They began to do that. In fact, they did what they would have been required to do had the November 13, 1995, decision been appealed and reversed by the State Board. There is no more that can be required of the District Board as a result of this appeal.

Appellants' complaints about the District Board's decision-making process after November 13th are legally insignificant. The Appellee's March 1, 1996, decision cannot be reversed on the grounds that the Board members did not listen attentively or courteously; did not question the presenters or engage them in dialogue; or did not change their initial decision. Complaints similar to those raised by the Appellants have already been addressed by the State Board in the case of In re Ilene Cadarr, 9 D.o.E. App. Dec. 11 (1991) where the Board responded as follows:

> 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, ...

Id. at 15. (Emphasis added.)

Under the totality of the circumstances, considering the unique financial crisis facing Waterloo, and the need to take action to determine $4.5 million in budget cuts prior to the December 11, 1995, SBRC meeting, we can understand why the District Board acted as it did on November 13, 1995. We do not have jurisdiction to decide the legality of that decision. But we find that after November 13, 1995, the District Board acted to cure its deficiencies under Barker by scheduling the February 26, 1996, Bunger hearing that gave Bunger supporters, as well as those who supported the Board's decision, an opportunity for input and further study. The fact that there were other decisions the District Board could have made is not fatal to the decision that it did make.

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

> attendance centers made by the duly-elected representatives of the citizens of the school district.

In re Edward J. Comiskey, 2 D.P.I. App. Dec. 306, 309-10 (1981). As was true in that case, as in the present one, we have not been shown any legal reason to do anything but affirm the District Board's March 1, 1996, decision.

Any 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 Waterloo Community School District to close the Bunger School of Technology at Evansdale and relocate the program to one or both of the other high schools, is hereby recommended for affirmance. There are no costs of this appeal under Iowa Code section 290 to be assigned.

_____ _____

DATE ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

_____ _____

DATE CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION