

**Iowa State Department
of Education**

(Cite as 12 D.o.E. App. Dec. 378)

***In re Janiene Nusbaum and
Jay Jay Krutsinger*** :

Janiene Nusbaum and Jay Jay :
Krutsinger, Appellants, :

v. :
: DECISION

Chariton Community School :
District, :
Appellee. : [Adm. Doc. # 3650]

The above-captioned matter was heard on September 21, 1995, before a hearing panel comprising Diana Billhorn, Bureau of Special Education; Vic Lundy, 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, Roberta A. Chambers of Corydon, Iowa. Appellee, Chariton Community School District [hereinafter "the District"], was also present in the persons of Dr. Dan Janssen, superintendent; Dave Tyree and Nick Hunter, board members. Appellee was also represented by counsel, Paul M. Goldsmith of Chariton.

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 an affidavit seeking review of an April 10, 1995, decision of the board of directors [hereinafter "the Board"] of the District to restructure the Chariton Elementary Schools.

**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.

Appellants are parents of the District adversely affected by the Chariton Community School Board's decision to restructure the District's two elementary schools as K-2 and 3-5 attendance centers. Their contentions can be distilled into two issues.

The first is whether the local board action should be invalidated because of an alleged Open Meetings Law violation. The second is whether proper criteria were employed in reaching the decision to restructure the elementary program.

Appellants were advised that the State Board could not reach the merits of the Open Meetings Law violation because the State Board does not have jurisdiction to decide that question. "The exclusive mechanism for enforcement of the Open Meetings Law is an original action in the district court for the county in which the governmental body has its principal place of business." Keeler v. Iowa State Bd. of Public Inst., 331 NW2d 110, 111 (Iowa 1983).¹

The second issue is one which is not new to the State Board of Education. However, unlike the previous "restructuring" decisions that have been reviewed by the State Board, the chronology of events cumulating in this appeal is relatively brief. It began with a consideration of two school closings: one in Lucas and one in Williamson. The public hearing was held by the Chariton School Board with community members in Lucas on February 21, 1995, to discuss options regarding the future of the school district. These options involved raising taxes; closing both the Williamson and Lucas attendance centers and busing the students into Chariton; or closing only one attendance center in either Lucas or Williamson. On February 28, 1995, the Chariton Board met with community members in Williamson to discuss the same issues and options and to answer questions there. The Board did not take action at either meeting so there are no minutes concerning the details of the discussions.

Although no Board minutes exist, both meetings were covered in great detail by the Chariton Herald-Patriot. Details of the public meetings are contained in articles published by the paper on February 23, 1995, and March 2, 1995, respectively. Neither article mentioned the possibility of the K-2, 3-5 restructuring of the two Chariton elementary schools -- Van Allen and Columbus. However, the February 23rd newspaper article did note that "[o]ne of the first questions to come up was whether or not the Board was speaking to Chariton community members, not just those from Lucas and Williamson. [Superintendent] Janssen said that no meeting has been scheduled in Chariton, but they were talking to those in Lucas and Williamson, because closing one or both of those buildings was under consideration." Chariton Herald-Patriot, Thursday, February 23, 1995.

¹Appellants have brought a lawsuit alleging violation of the Open Meetings Law against the Appellee in Lucas County District Court, which is still pending.

In fact, the K-2, 3-5 restructuring was not publicly discussed before the Board meeting held on March 13, 1995. The agenda of that Board meeting lists

"VIII. New Business (H) "Financial Condition Report, Options, and Decisions."²

A more detailed agenda was presented to the Board members on the Saturday before Monday's Board meeting. In the Superintendent's Agenda, under "Financial Condition Report, Options, and Decisions," he states "We need to reach some decisions on how we are going to resolve our current financial situation. I would recommend that we consider one of the outlying buildings. [Lucas or Williamson]. I would also suggest that we move to a K-2, 3-5 organizational structure. This will require that the buildings be designated. The remaining outlying building will be in a K-5 structure. . . ." (Appellee's Exhibit A.) The minutes of the March 13, 1995, Board meeting reflect a lengthy discussion regarding the building closing issue. A motion was made and seconded to close the Williamson building for 1995-96 and keep the Lucas building open one more year. This passed 4 to 1. Interestingly, there was no discussion of the next item in the minutes. The minutes simply state:

A motion was made by Nick Hunter to form an organizational structure of K-2, 3-5 in the two Chariton buildings. The motion was seconded by Linda Masters. The cost to revamp the kindergarten rooms was established to be approximately \$2,000.00. Ayes - Nick Hunter, Linda Masters and Mike McNaughton. Nays - Dave Tyree and Calvin Dyer. Motion carried.

The next day, March 14, 1995, the Van Allen Elementary School sent home a newsletter which stated

Chariton Elementary Schools Will Be Restructured.

There will be a building for the students in grades K-2 and another building for the 3-5 grades. This was a decision made by the Board last night by a 3 to 2 vote. It has not been decided yet as to which building will be used for the particular grades."

Appellants' Exhibit 1.

²Appellants contend this agenda item did not sufficiently apprise the public that a vote would be taken on the K-2, 3-5 restructuring. We leave that issue to be resolved by the Lucas County District Court.

There was a general "outcry" in the community. If the Chariton Herald-Patriot is an accurate barometer of the community, everyone seemed to be surprised by the Board's action. "As an editorial staff, even we were caught by surprise when the decision was reached. ..." Chariton Herald-Patriot, Thursday, March 30, 1995. As a result of this reaction, the main agenda item for the April 10, 1995, Board meeting was a reconsideration of the K-2, 3-5 elementary reorganization.

At that Board meeting, interested parties were given approximately two minutes each to speak for and against the K-2, 3-5 restructuring. According to Appellants, it was not clear from the March 13th motion whether the restructuring was to take place beginning in the 1995-96 school year. Superintendent Janssen testified that it was apparent that the restructuring would begin in the Fall of 1995. In any event, this was clarified at the March 13, 1995, Board meeting. After Superintendent Janssen explained the reasons for the restructuring and the goals to be obtained, Board member Dave Tyree moved to postpone the decision to implement the restructuring until 1996. This motion was defeated by the same individuals who originally proposed the restructuring. This appeal followed on May 2, 1995.

II. CONCLUSIONS OF LAW

The State Board has, on previous occasions, had numerous opportunities to review local board decisions involving the closing of attendance centers. See, In re Norman Barker, 1 D.P.I. App. Dec. 145 (1977); In re Carolyn Page, 1 D.P.I. App. Dec. 266 (1978); In re Dorothy I. Keeler, 2 D.P.I. App. Dec. 296 (1981); In re Daniel Menke, et al., 4 D.P.I. App. Dec. 40 (1984); and In re Elizabeth Cott, 4 D.P.I. App. Dec. 231 (1986). Four of these appeals involved closing attendance centers; In re Carolyn Page involved a reorganization of the elementary schools much like the present case. In three of the appeals, the local board's action was affirmed by the State Board of Education; in Barker and Menke, the State Board overruled the actions of the local board.

The first time it addressed a school closing issue, the State Board laid down seven principles to guide local boards during the reorganization process. In re Norman Barker, et al., 1 D.P.I. App. Dec. 145 (1977). These guidelines were reviewed and approved by the Iowa Supreme Court in Keeler v. Iowa Bd. of Public Inst., 331 NW2d 110, 112 (Iowa 1983).

The following is a comparison of the Barker guidelines with the evidence adduced at the appeal hearing:

Barker guideline 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.

Testimony: Superintendent Janssen testified on cross examination that there had been no timeline established by the Board to carry out the K-2, 3-5 restructuring. In fact, the day after the decision had been made to restructure the two Chariton schools, the Van Allen newsletter dated March 14, 1995, showed that a decision had not yet been made "as to which building will be used for the particular grades." (Appellants' Exhibit 1.)

Barker guideline 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.

Testimony: The evidence at hearing showed that not only did the Board's action surprise most of the community, but it even surprised one of the board members as well. Dave Tyree testified that he has been a school board member for 9 years over the past 11 year span. The first time he realized that the March 13, 1995, Board meeting was going to deal with the restructuring issue was when he read the details of the Superintendent's Note pertaining to the agenda which he received on March 11th. (Appellee's Exhibit A.) He also testified that the cost of restructuring kindergarten restrooms to convert one of the schools into a 3-5 attendance center was discussed for the first time on March 13, 1995. It was not until June that a decision was made regarding which school would house the K-2 program.³

Nick Hunter is another board member who was present at the appeal hearing. Mr. Hunter is the board member who moved to approve the K-2, 3-5 restructuring on March 13, 1995. He stated that he has been studying the issue and discussing it casually with certain folks in the community since 1994. Mr. Hunter testified that he has had several discussions with the superintendent about the issue, but he did not recall any specific discussions with his fellow board member, Dave Tyree prior to the March 13th Board meeting.

Appellant Janiene Nusbaum testified that she "accidentally" learned of the restructuring plan right before the March Board meeting. She had called Mr. Janssen's secretary to inquire about kindergarten roundup and had mentioned during that conversation

³The Superintendent testified that no remodeling was done in preparation for the 1995-96 school year.

that her child would be attending Van Allen School in the Fall. The secretary responded that "maybe not -- they're going to be talking about restructuring at the March Board meeting, and the K-2 classes may be at Columbus instead of Van Allen." Ms. Nusbaum attempted to address the Board at the March meeting, but Mr. McNaughton (the Board President) did not call on her. The other Appellant, Jay Jay Krutsinger, was not present at the March 13th meeting because she was not aware that "restructuring" would be considered. Her neighbor called her the next day and advised her that there had been a restructuring of the elementary schools and that her daughter might not be attending the school closest to her home in 1995-96.

Barker Guideline 3: The public should be involved in providing sufficient input into the study and planning involved in important decision making.

Testimony: Superintendent Janssen testified that he did have an advisory committee constituted under Iowa Code §280.12. The referenced Code section states in part that the board of directors "shall appoint an advisory committee to make recommendations to the board ... the advisory committee shall consist of members representing students, parents, teachers, administrators, and representatives from the community." Iowa Code §280.12(2) (1995). Evidence showed that the composition of this committee was devoid of parents who would be affected by the restructuring decision; and that this committee was appointed to study the effects of school closings in Lucas and Williamson -- not the restructuring option.

Barker Guideline 4: Sufficient research, study and planning should be carried out by the board and groups and individuals selected by the board. Such things as student enrollment statistics, transportation costs, financial gains and losses, program offerings, plant facilities, and staff assignment need to be considered carefully.

Testimony: The evidence clearly showed that these things were not done regarding the K-2, 3-5 restructuring decision. The minutes from the Board meetings from October 1994 through March 13, 1995, show that there has been no public discussion of any of these factors as they pertain to the restructuring decision. It appeared that the Superintendent and board member Nick Hunter had done a great deal of research on their own regarding the "academic benefits" of restructuring. There was no evidence whatsoever that either the Superintendent or Mr. Hunter had discussed these findings with the full Board or the community in public meetings. There is no evidence that the decision to restructure the elementary grades was motivated by cost factors. There is no evidence that the restructuring would save the District any

money. As Appellants pointed out, the only evidence on "cost factors" showed that the decision to restructure would cost an additional \$2,000.00.

Most of the research that had been conducted regarding the impact of the restructuring decision was research done by the parent group after the Board decision made on March 13. Appellants testified that they attempted to share this information with the Board at the April 10, 1995, meeting but it became clear that the Board's decision was not going to be changed regardless of what information was received from the community. In fact, board member Dave Tyree testified that Board President Mike McNaughton had stated earlier in the day that "he didn't care how many petitions were presented to the Board -- the Board decision was not going to change."

Barker Guideline 5: There should be an open and frank public discussion of the facts and issues involved.

Testimony: There is no evidence that this took place before the Board's decision was made on March 13, 1995. In addition, there is no evidence that the Board entertained the public discussion at the April Board meeting with an open mind. In fact, much of the testimony of Superintendent Janssen and Board Member Hunter at the appeal hearing regarding the reasons for restructuring had the appearance of justification after the fact, rather than the results of a public discussion with input from the community.

Barker Guideline 6: A proper record should be made of all the steps taken in the making of the decision.

Testimony: There is no testimony which satisfies this requirement. Indeed, the lack of a proper record regarding how the Board arrived at its March 13th decision is the subject of a lawsuit in Lucas County District Court brought under the Open Meetings Law (Iowa Code chapter 21).

Barker Guideline 7: The final decision must be made in an open, public meeting and a record be made thereof.

Testimony: The evidence shows that the final decision was made publicly on March 13, 1995, and the motion to postpone the implementation of that decision was made publicly and defeated on April 10, 1995. This is the only one of the Barker guidelines that was properly satisfied by the Chariton Board.

Unfortunately, there is little in the record regarding what the Board *did* consider in making its decision to restructure the Chariton elementary schools. We know there are many things it did not consider. While it is not likely that the lack of

consideration of any one of these factors in itself would be sufficient to overrule the Board's decision, we find that the actions of the District Board on March 13, 1995, and April 10, 1995, are in accordance with only one of the seven Barker guidelines. As in Barker and Menke, we find the District Board's action substantially deficient in appropriate research, planning, and public involvement in the important decision at issue here. On the record as a whole, we find that the District Board acted with unnecessary haste and with insufficient research, study, planning, and meaningful public involvement when it made the restructuring decision for the 1995-96 school year. Because the District has been facing a deficit trend in its general fund over the last few years, the Board may soon be called upon to make other decisions regarding the future of the District. As Superintendent Janssen testified, these decisions might involve staff reductions or the need for additional bond issues. In any event, future decisions should be made with appropriate input from the community so that they can be implemented with the kind of support the Board received in its decision to close the Williamson school.

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). Students and teachers have been reassigned between the Van Allen and Columbus attendance centers since the beginning of school in the Fall of 1995. By the time the State Board reviews this decision in October, 1995 and the time for further appeal has past, school will have been in session for a little over three months. Appellants are not seeking a mid-year return to the status-quo. However, they would appreciate a return to the K-5 structure for the Fall of 1996 if they prevail in this appeal. We do have guidance for this type of remedy from the Menke case.

In reversing the actions of the District Board in closing an attendance center, the hearing panel in Menke had to construct a remedy that would serve the needs of all concerned. Like the Menke panel, we realize that to do otherwise would constitute a greater disruption to the Chariton Community than may have been created by the Board's March 13th decision to restructure.

Therefore, we recommend that the State Board retain jurisdiction over this matter until the Chariton School Board has had an opportunity to take action on its decision to restructure its elementary schools as K-2 and 3-5 for the 1996-97 school year under the Barker guidelines. This means that the Chariton Board's first priority should be to establish a time table which will allow it to undertake meaningful study and planning activity, involving optimum citizen involvement, before a decision for 1996-97 is made. We would strongly suggest that the Chariton

Board schedule its activities to culminate in a decision at or before the time of its April school board meeting. This will provide Appellants or others sufficient time to challenge the Board's decision, should they wish to do so, before it is too late to reverse the restructuring for the 1996-97 school year.

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 Chariton Community School District to restructure the Chariton School as K-2, 3-5 commencing during the 1996-97 school year, is hereby overruled subject to the conditions stated above. There are no costs of this appeal under Iowa Code §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