IOWA STATE BOARD
OF EDUCATION
(Cite as 11 D.o.E. App. Dec. 5)

In re Linda Gordon	:	
Linda Gordon, Appellant,	:	
v.	:	DECISION
Glenwood Community School District, Appellee.	:	[Admin. Doc. # 3205]

The above-captioned matter was heard on September 16, 1992, before a hearing panel comprising Joan Clary, consultant, Bureau of Special Education; Coleen McClanahan, consultant, Office of Educational Services for Children, Families and Communities; and Kathy Lee Collins, legal consultant and designated administrative law judge, presiding. Appellant Linda Gordon and others were present in person, unrepresented by counsel. Appellee Glenwood Community School District [hereafter "the District"] was present in the persons of Superintendent Tom Rubel, school board President Donna Bishop and other board members, middle school Principal Russell Finken, and others, and was represented by Sue L. Seitz of Belin Harris Lamson McCormick, P.C., Des Moines.

An evidentiary hearing was held pursuant to department procedures found at 281 Iowa Administrative Code 6. Appellants seek reversal of a decision made by the board of directors [hereafter, "the Board"] of the District on May 11, 1992, to enter into a five-year lease for the use of the Meyer school building, on the campus of the Glenwood State Hospital, as a seventh and eighth grade middle school facility. Authority for the appeal is found at Iowa Code chapter 290.

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 of the appeal before them.

The District educates approximately 1900 students in kindergarten and twelve grades. In recent years it has struggled with overcrowding of facilities. In 1991-92, the District operated two elementary attendance centers, Northeast and West. Northeast

housed the prekindergarten, all kindergarteners and first graders, plus half of the second, third, and fourth graders. The West building housed the other half of the second, third, and fourth graders and all of the fifth through eighth graders. High school students attended in a separate building. One facility designed for a capacity of 300 students was populated by approximately 450 students.

The overcrowding also caused a significant problem related to food service. The number of students (over 800) at the West Elementary (also middle school) building, coupled with the size of the cafeteria, resulted in lunch service beginning at 11:00 and ending at 1:45. The eighth grade students ate exceptionally late.

In addition, the facilities lacked adequate testing space ("closets" were used); band and "shop" courses and the talented and gifted program were held in a converted bus garage. The library/media center was "extremely condensed," and a computer room also served as an overflow room for boxed library books. Modular classrooms were purchased and put into use. During this time, District officials learned that Iowa had been cited by the United States Department of Education for violating federal laws related to educating children with disabilities in the least restrictive environment by providing segregated education of all state hospital resident children with mental disabilities in the state hospital school rather than the public school. As of July 1, 1992, the District would likely be absorbing over thirty more children of school age who had previously received their education exclusively or almost exclusively at the Meyer building on the state hospital grounds.

A bond issue for $3,109,000 for building additions failed in 1979; another for just under $5 million failed in 1990. A third attempt, made in October 1991 for $4.8 million, also failed to pass. Given the facilities' status in the District, the administration moved immediately toward a solution to the overcrowding and lack of space. At the October 14, 1991, meeting, armed with the knowledge that the most recent election had again failed to gain 60% voter approval, the Board discussed several options:

1. Live with the existing conditions.
2. Have another bond election in the near future.
3. Have another bond election after two years.
4. Adjust bond issue (building-cost).
5. Consider other buildings/facilities available in the district.
6. Move in more modulars.

Appellee's Exhibit 30, Board minutes of 10/14/91 at p. 1. Apparently 1990 discussions between the District and neighboring Malvern Community Schools did not lead to any agreement to share students.

In the opinion of the administration, the first four options listed above were not viable. The problems were pressing,

requiring immediate attention. New modular classrooms would cost between $27,000 and $32,000, providing a maximum of 1,000 square feet each, and would not be appropriate for special education students. The fifth listed option of looking at other facilities in the District seemed the most prudent.

The Iowa Department of Human Services ("DHS") agreed to meet with school officials to discuss the possibility of the District's use of the Meyer building on the state hospital grounds.[1] It had been the educational attendance center for hospital residents of school age until the finding of a federal law violation resulted in the school district's taking over the responsibility of educating the resident children from the state hospital, a facility for children and adults whose primary diagnosis is mental retardation. The Meyer building would, therefore, not be utilized further by the DHS. In the fall of 1991, Superintendent Rubel proposed that DHS lease the building to the District, and DHS officials indicated a willingness to do so. Board discussion of this option, among others, took place over several months prior to the voted decision on May 11, 1992. See Appellee's Exhibits 40-93.

Research was conducted by District officials into the condition of the Meyer building and what repairs or changes might need to be made if it were to be used for District students. Appellee's Exhibit 73, 82, 85. A Department of Education consultant, Morris Smith, also reported to the District and Board of his observation and concern about overcrowding at the elementary and middle schools and the impact that situation had caused on the media facility standards for schools as well as the food service standards. Appellee's Exhibit 84.

Throughout the seven-month period following the failed bond issue election and prior to the decision in this case, the local newspapers frequently included reports on the options the District was studying, editorials, and letters to the editor from residents. A public hearing on the options, including the use of the Meyer building, took place on February 3, 1992. The battle lines were quickly drawn: those opposing the use of the Meyer building as a District attendance site wrote of fears for the well being and even safety of the students who would attend school there on the hospital grounds. See, e.g., Appellee's Exhibits 38, 51, 67, 74, 76. Proponents urged those fearing the proposal to give themselves a thorough self-evaluation for prejudice against persons with mental disabilities. Opponents of the plan cited personal experience with state hospital residents, referring to incidents of violence and sexually inappropriate behavior by hospital residents. The Board and administration were acutely aware of these concerns.

---

[1]Superintendent Rubel testified that at one time it was believed the National Guard Armory would be available for lease, but he later discovered it was not.

One of their responses was to address potential security provisions. Appellee's Exhibit 66 illustrates five precautions that were planned if the facility were opened for use by public school students. Those precautions are as follows:

PROPOSED SECURITY POLICY FOR MEYER BUILDING/GMS[2]

1. All doors would be equipped with "panic bars" so that they could be locked at any time without taking away emergency exiting.

2. As students arrive each morning for the beginning of each school day, only the east door and the west door would be opened. Staff would be posted at each of these entrances at a designated time (7:45 a.m.).

3. Once the school day had begun, (approximately 8:15 a.m.) only one entrance would be kept unlocked. An aide would be stationed at this entrance during the school day to monitor people coming and going. This would remain in effect at least for the first semester. Administration and staff would periodically review the policy and make any needed changes. After the first semester a decision would be made by staff and administration on the continuation of the procedure.

4. GSHS canteen would be "off-limits" to middle school students for the first semester of the first year depending on a joint decision made by GSHS and GMS staff and administration.

5. All other buildings and facilities on the GSHS grounds would be off limits to middle school students unless specifically authorized by staff and/or parents of individual students. (Many parents of GMS students may want their child to meet at a certain building or pre-arranged spot.)

This policy will be very stringently adhered to and will be outlined in the discipline code and student handbook. These precautionary measures will be reviewed and revised upon the recommendations of the Administration and staff.

Appellee's Exhibit 66.

The perceived need for such precautions is apparently due to the fact that the adult residents ("clients") of the state hospital are often on the hospital school grounds as they move to and from work sites or their cottages and other buildings on the

---

[2]As used in the exhibit, "GMS" refers to Glenwood Middle School; "GSHS" refers to Glenwood State Hospital School, or the Meyer building.

grounds. Some District residents and staff are afraid that some of the clients who are allowed to travel without supervision may behave inappropriately toward or in front of the impressionable middle school students and that clients who are required to be under direct supervision may nevertheless venture onto the school grounds or into the building without supervision and cause disruption or even harm one or more students.

Appellant Linda Gordon is among those parents and District residents holding these concerns and others. She has worked at the state hospital for over eight years and she has been injured at the hands of resident clients. Ms. Gordon testified that in her opinion, people with mental retardation display inappropriate behaviors include sexual aggression, violent physical actions such as kicking, biting, head-butting, pulling hair and throwing things. She also testified of her knowledge of non-violent but equally inappropriate actions such as rumination (chewing on one's own regurgitation), smearing of fecal material, and public masturbation. She expressed concern for the safety of the students if a client who had hepatitis or was HIV positive were to bite or attack a student and blood were drawn. She testified that resident clients have been known to have contagious parasites such as scabies and head lice which could be transferred to students if contact were close enough. Although she has no objection to the integration of children with disabilities into the regular school environment, she is still disturbed about the potential for adult resident clients to enter the Meyer building or otherwise confront the middle school students during the school day.

Eva Hester and Judy Curtis testified of similar concerns, and that they either had removed or would remove their children from the District if the voted decision to use the Meyer building were to be implemented. Ms. Curtis testified that her duty as a state hospital worker supervising a resident client is to the client; workers supervising the residents are always to protect them from harm. Thus, her argument goes, if a worker supervising a client were faced with an assaultive situation between a client and a student, his or her job as an employee of the state hospital would be to protect the client; no one would be there to protect the student.

The District presented several witnesses as well, three of whom are employed in positions of authority at Glenwood State Hospital. Tom Hoogestraat, hospital administrator, provided background of the facility. He testified that it is the residence of 505 clients, thirty-eight of whom were school-aged at the time of our hearing. The facility employs 995 persons. The campus includes between thirty and forty buildings.

The clients are identified by one of four categories, depending upon the severity of their disability and behaviors, and there is a concomitant system of supervision for the clients depending upon what category they are in. At the time of the hearing there were three clients identified as having seriously inappropriate sexual behavior, and those persons are required to be supervised at all times.

Mr. Hoogestraat also detailed the degree of public activity on the state hospital grounds in the past by citing the following:

1. The general public and the District have used the soccer fields on the grounds of the hospital for over five years without incident.
2. The Loess Hills Area Education Agency has a lease of campus space for its infants and toddlers programs, again without reported incidents.
3. Job Service of Iowa leases office space. There have likewise been no known incidents involving hospital clients and Job Service clients or their children whom they sometimes being with them.
4. DHS leases space, and its clients, who might bring their children and who might be children themselves, have never reported it if any problems occurred.
5. In previous years, a group home operated and owned by the hospital was directly across the street from the middle school facility, yet no cases of inappropriate behavior by clients toward the students occurred.

Furthermore, he testified that "the majority" of clients routinely go into town without supervision. Community trips are made twice each month so that *every* client resident leaves campus with the appropriate degree of supervision. In addition, psychology and health classes take field trips to the state hospital and often share a sack lunch with clients . . . without incident. Some staff members live on campus with their families and there have been no known incidents of physical attacks on those children by clients.

Mr. Hoogestraat also testified in regard to a study of the "traffic patterns" of clients traveling across campus. He stated that the middle school students congregate outside the Meyer building generally between 7:50 and 8:10 a.m. before they enter for classes. The clients' program day begins at 9:00, so in general there would seldom be a time in the morning when their respective paths would cross. The possibility increases at the end of the school day because the clients are dismissed from 2:45-4:00 p.m., returning to their cottages or campus and the students would be released at 3:20 p.m. Supervision by both school and hospital officials is stepped up during this period.

Dr. Barbara Slama and Dr. John Thomas, supervisors of the professional medial staff at the state hospital, testified that with respect to infectious diseases since 1988 there have been two identified cases of active Hepatitis B (one in 1988 and one in 1989; none since); no reported cases of active tuberculosis, one case of pinkeye; two cases of chicken pox; an average of 1-2 cases of scabies per year (although none was reported in 1992); five or six cases of head lice between 1982 and 1991 (0 in 1992); no known cases of AIDS or HIV positive tests;[3] and six to twelve

[3]On the advice of the Iowa Department of Health, routine testing of clients for HIV status is not conducted.

reports of pin worms (a digestive tract parasite) in 1992 which have led hospital officials to test for this condition routinely. The medical staff also tests for Hepatitis B regularly and vaccinate clients against Hepatitis B on the basis of physical recommendation and recommend the staff be vaccinated for HBV.

Both professionals testified that there is literally "no greater chance of transmission of communicable diseases at the state hospital than in the population at large."

A number of tasks were undertaken by the District following the Board's decision in May to lease the Meyer building's 50,000 square feet for $1.00. Staff and students were provided with an orientation; all middle school staff were to be training in sensitivity toward persons with disabilities; students were advised to avoid certain areas of campus and to seek out the assistance of an adult in the middle school building or hospital administration building nearby in any difficult situation that might arise involving a hospital client. Asbestos removal from the Meyer building was undertaken and completed and expenses shared by the District and the hospital. The building was thoroughly cleaned, carpet was laid, and adaptations were made for the middle school environment. Funds from the physical plant and equipment levy ("PPEL") as well as the voter-approved school house fund were used to pay for the repairs, improvements and adaptations. A direct-line telephone was installed between the hospital administration building and the Meyer building. In all, both the school officials and the hospital officials did as much as possible to address the concerns expressed by those in the community opposed to the use of this building. The 1992-93 school year opened without incident and had been underway smoothly for approximately three weeks by the time our hearing was held.

II.
CONCLUSIONS OF LAW

Appellant has raised four issues in opposition to the action taken by the Board. First, she claims that no other options (aside from another bond election) were studied by the administration and Board. Second and third, she and others were unsatisfied about the adequacy of precautions and of the study of safety and health issues. Finally, she asserts that the public (voters) had not approved the lease contract nor the money spent to renovate the Meyer building.

The hearing panel members were satisfied that the Board and administration adequately looked into all viable options available to alleviate the intolerable overcrowding that existed in the District's elementary and middle schools. The only option on which there was little testimony was the possibility of entering into a one-way whole-grade sharing agreement with one or more

neighboring school districts[4] whereby the District would send at least its middle school students to another district. There would be some drawbacks to this idea, however. The time factor would be one (whole-grade sharing negotiations must be completed prior to February 1); the expense factor would be another (the law requires that the lower of the sharing schools' per pupil costs is the cost attached to each student who is sent from one district to another); and third would be transportation (busing students into another school district requires additional expense, possibly including the purchase of additional buses); a fourth would be the presence or absence of any interested neighboring districts.

We lack enough evidence to say whether or not a whole-grade sharing agreement was even a possibility. Furthermore, we suspect that had the District chosen to send its middle school students to another district when a 50,000 square foot school building was available for $1.00 in the District, we would have had an appeal from those who opposed paying a significant sum of money out of the District when the students easily could have remained.

Moreover, our job and that of the State Board is not to sit back and think up options that the District Board may have had open to it but failed to address or select. The role of the State Board of Education is to determine whether the decision at issue was made arbitrarily, capriciously, upon error of fact, without authority in law, or constituted an abuse of discretion by the Board. In re Jerry Eaton, 7 D.o.E. App. Dec. 137, 141 (1989). Appellant's primary concerns, of course, are health and safety of the students. Appellant's Exhibit A illustrates vividly the potential problems of an assaultive client. (This exhibit is two pictures of Appellant taken after a hospital client broke Appellant's nose and blackened both of her eyes in an incident that occurred in July, 1988.) Exhibits B, C, and D are letters written by three current and former employees of the state hospital, detailing negative personal experiences with assaultive clients during their employment. These are testimonials to the reality of the risks in *working with* persons who may be unable to express their needs or desires appropriately, or who may be unwilling to obey a certain directive from the supervisory employee at a given time. This does not, in our minds, translate into a likelihood -- let alone a significant likelihood -- that a student will be assaulted or subjected to unprovoked attacks in the brief moments when his or her path may cross that of a resident client who has either "escaped" from supervision or who was mistakenly categorized and requires more supervision (or less freedom of movement) than thought by the diagnosing and identifying professionals.

---

[4]It is possible that a two-way agreement could have been negotiated if the District's high school building could accommodate sufficiently more students than it held with only District 9-12 grade students.

It appears to us that Appellant and others who share her fear have envisioned the same type and degree of contact between students and clients as exists between hospital employees and clients. Clearly, the two situations are more dissimilar than similar. It is equally clear that Superintendent Rubel, Principal Finken and the Board have taken a good many precautions to reduce the possibility of injury to students or to their exposure to inappropriate behavior. We are most inclined to give credence and weight to the testimony of Dr. Slama and Dr. Thomas regarding the number and types of communicable disease reports on hospital residents and the degrees of transmission under the circumstances that now exist with middle school students on campus. We, too, think that the chances that a student would be exposed to inappropriate behaviors (violent and non-violent) by attendance at the Meyer building is probably no greater than the chance of its occurring in the population at large.

No one can guarantee any student's safety going to, coming from, or attending school. The question is, rather, whether District officials have taken adequate and reasonable precautions to guard against reasonably foreseeable (not merely "imaginable") harm.

With respect to Appellant's contention that the Board was without authority to enter into a lease for the Meyer building absent voter approval, it is without merit. Iowa Code section 279.26 reads as follows:

> The board of directors of a local school district for which a voter-approved physical plant and equipment levy has been voted pursuant to 298.2, may enter into a rental or lease arrangement, consistent with the purposes for which the voter-approved physical plant and equipment levy has been voted, for a period not exceeding ten years and not exceeding the period for which the voter-approved physical plant and equipment levy has been authorized by the voters.

The district met the condition stated in the Code by having obtained voter approval of the use of its school house fund, the precursor of the physical plant and equipment levy, for lease purposes. Once that approval was given, the expenditure of funds (in this case, approximately $38,000) to renovate the facility was appropriate.

School boards have the statutory authority to determine the number of schools, attendance boundaries and sites in their districts. Iowa Code § 279.11(1991). This was not a decision made in excess of the Board's authority or in violation of law. It was also not made arbitrarily or capriciously. We have already reiterated the Board's thoughtful examination and exploration of concerns and potential concerns held and expressed by some members of the Glenwood community. What remains of this appeal is a difference of opinion. The mere fact that "reasonable minds can differ" on the wisdom of a given decision does not

dictate that such a decision is improvident or unwise and must be reversed. Four of the five Board members felt that the use of the Meyer building as the middle school attendance center was the best decision at the time. We will not recommend that the State Board reverse that decision.

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

III.
DECISION

For the above-stated reasons, the decision of the board of directors of the Glenwood Community School District made on May 11, 1992, to enter into a lease with the Iowa Department of Human Services for the use of the Meyer school building as the District's middle school is hereby recommended for affirmance. Costs of this appeal, if any, shall be borne by Appellant under Iowa Code section 290.4.

November 5, 1993
DATE

Kathy Lee Collins
KATHY LEE COLLINS, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

11/17/93
DATE

Ron McGauvran
RON MCGAUVRAN, PRESIDENT
STATE BOARD OF EDUCATION