IOWA STATE BOARD
OF EDUCATION
(Cite as 10 D.o.E. App. Dec. 342)

In re James and Barbara Covill	:	
James and Barbara Covill, Appellants,	:	
v.	:	DECISION
United Community School District Board of Directors, Appellee.	:	[Admin. Doc. # 3179]

The above-captioned matter was heard June 8, 9, and 17, and July 15, 1992, before a hearing panel comprising Mary Jo Bruett, referral specialist, Bureau of Planning, Research and Evaluation; Su McCurdy, consultant, Office of School Administration and Accreditation; and Kathy L. Collins, legal consultant and designated administrative law judge, presiding. Appellants were present in person and were represented by Joseph Isenberg of Ames. Appellee United Community School District [hereafter "the District"] board of directors [hereafter "the Board"] was present in the person of Superintendent Doug Williams, Board Secretary Judy Hand, President Shawna Kilstrom and various directors. The Board was represented by Ronald Peeler of Ahlers, Cooney, Dorweiler, Haynie, Smith & Allbee, Des Moines.

An evidentiary hearing was held pursuant to departmental rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for the appeal lie in Iowa Code section 290. Appellants sought reversal of a decision of the District Board made on January 23, 1992, to engage in a two-way whole grade sharing with Boone Community School District for grades six through twelve and a one-way agreement with Gilbert Community School District for grades 7-12 beginning in the 1992-93 school year.

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 this appeal.

Appellants are residents of the District and are parents of a son, Elric, who was in sixth grade in the 1992-93 school year.

The District, in 1991-92 when the decision at issue was made, had a K-12 population of 360 students.[1] It is a rural district covering 133 square miles in central Iowa. It is surrounded by the Boone, Ames, Gilbert, Ballard, and Madrid school districts. In response to a request from the Board, the Department of Education conducted a reorganization study in 1987. The study included a discussion of whole-grade sharing, the process by which two or more school districts agree to combine their student bodies for one or more grades. Sharing is typically a temporary arrangement that is designed to test the potential of a more permanent relationship (merger) between the school districts and their communities. Certainly not all whole-grade sharing agreements lead to permanent reorganization, but sharing is somewhat akin to an "engagement period" prior to a marriage of the school districts. Decisions regarding whole-grade sharing are in the exclusive province of the boards of directors; decisions regarding reorganization rest with a majority of the electorate of the affected districts voting in favor of the merger.

The Department's consultants recommended that District constituents be polled prior to a Board decision on the possibility of whole-grade sharing. The results indicated that 62% of those responding favored continuing as an independent school district "until we are forced to close." Appellee's Exhibit 1. The survey also showed that if the survey respondent had a choice of school districts to join, 4% would choose Madrid, 27% would choose Boone, 20% would select Ames, 27% would prefer Gilbert, and just under 7% would choose Ballard. (14% did not respond or picked a district that was not an option.)

Just prior to the 1991-92 school year, a portion of the Department of Education feasibility study was sent to all patrons of the District. A public meeting was held on September 4, 1991, to address the study and questions arising from it. Several persons addressed the Board and asked questions; the minutes reflect a good deal of dialogue between patrons and directors. This meeting kicked off a discussion in earnest of whole-grade sharing. The Board meetings from that point on were well attended by persons with significant feelings about the possibility of sharing. See minutes of Board meetings of September 4, September 12, October 10, October 25, November 14, December 4, December 5, January 9, and January 22. Appellee's Exhibit 1.

That fall a school board election resulted in two new Board members: Steve Erb and Larry Stolte. The potential whole-grade sharing agreement was a topic of concern and interest and an issue in the campaign. Whole-grading sharing negotiations with Ames, Boone, and Gilbert began; research on combining classes internally was also ordered by the Board. (Bd. mins. of 10/10/91 at p. 6.) An announcement was made at the Board meeting of

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[1]Of those 360 students, 111 were in grades 7-12, 215 were in elementary (K-6), and the rest did not attend in the District due to open enrollment or being tuitioned out. Appellee's Exhibit 1, Bd. mins. of Sept. 12, 1991, at p. 5.

October 25 that a public hearing on possible whole-grade sharing would take place on December 4. Directors Shawna Kilstrom (Board president) and Steve Weigel were designated ambassadors to meet with the boards of Gilbert, Boone and Ames to discuss those districts' amenability to sharing with the District.

By November 8, Ames had all but bowed out; because of overcrowding, receiving District students was not viewed as feasible. Boone was interested in a two-way sharing agreement with only sixth graders going from Boone to the District. Gilbert was interested in a one-way sharing agreement whereby Gilbert would receive 7-12 District students. On November 8, the Board agreed (by consensus rather than vote) to pursue sharing with both Boone and Gilbert. During this period there continued to be a public forum at each Board meeting, and District residents spoke freely for and against the sharing concept. A second survey was taken, with 75 responders favoring sharing grades 9-12, 27 favoring it for grades 7-12, and 12 favoring sharing in grades 6-12. The clear majority of responders (87 of 121) favored sharing with Boone and Gilbert. Bd. mins. of 11/14/91 at p. 8.[2] Several District residents put in hours of research and report writing which was, ultimately, ineffective in influencing the outcome of the decision.

On January 9, 1992, the Board voted 3-2 against approval of the negotiated whole-grade sharing agreements. Apellee's Exhibit 1, Bd. mins. of 1/9/92 at p. 5. Kilstrom, Stolte, and Erb were in the majority. Curiously, immediately prior to that action the Board approved the requests of ten parents to be released from the operation of the whole-grade sharing agreements. Id. Appellants were among the ten parents making these requests, as was Board President Shawna Kilstrom.

At the next meeting on January 22, the Board set a special meeting for the next evening to reconsider its January 9 decision. At the January 23 special meeting, a vote to reconsider passed 4-1 (Erb nay). An ensuing vote to approve the negotiated contracts between Boone, Gilbert, and the District then passed 4-1 (Erb nay). Ultimately the agreement involved the District's receipt of Boone sixth graders, with attendance in the Boone 7-12 program an option for District secondary pupils. The other option for District seventh through twelfth graders was to attend in Gilbert.[3] The Boone sharing arrangement brought Boone sixth graders to the District and sent District 7-12 grade students who selected Boone to Boone for secondary attendance. The Gilbert

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[2]But see Bd. Mins. of 12/13/91 where Intellisell (a private public relations firm) reported the results of another survey conducted by telephone.

[3]Parents who desired yet a different district of attendance from Boone or Gilbert would have the options of opting out of the sharing agreements with Board approval or using open enrollment. See Iowa Code §282.18 subsections (2) and (18), allowing late applications under these circumstances.

agreement was one-way to Gilbert for District students in grades 7-12 who desired Gilbert. Presumably the January 9 approvals of parental requests to "opt out" of the sharing agreement continued in force and effect.

II.
CONCLUSIONS OF LAW

The issue in this case is whether the District Board's decision to enter into whole-grading sharing agreements with Boone and Gilbert school districts was made arbitrarily or capriciously, upon error of law, beyond the power or jurisdiction of the board, or not (factually) supported by substantial evidence. In re Janis Anderson and Ottumwa Transit Lines, Inc., 4 D.P.I. App. Dec. 87, 93 (1985); In re Jerry Eaton, 7 D.o.E. App. Dec. 137, 143 (1989). This is our standard of review of local school board decisions. The administrative law judge is not inclined to address each of Appellants' seventy-four separate allegations of fact and law.[4] Those issues would have been more appropriately shared with the Board prior to its decision-making action. Of those issues, and of the testimony of some twenty-five witnesses subpoenaed by Appellants, the administrative law judge concludes that the only relevant ones are as follows:

a. The agreement "contravenes the laws of Iowa and prudent public policy."

b. The whole-grade sharing agreement is a contract; as such, it is void for lack of consideration or impossibility of performance.

c. The sharing agreement will result in transportation of students in excess of the time limits established by Department rule.

d. The agreement will not be beneficial to the students, residents, and taxpayers of the District. (Presumably this argument goes to the question of whether the decision to enter into the agreement was supported by substantial evidence.)

Iowa law sets out in various statutes the authority for school boards to enter into agreements with other governmental entities, including other school boards. See e.g., Iowa Code sections 28E.4, 28E.12, 256.13, 280.13A, 282.15, 282.7, and the specific statutory whole-grade sharing process in sections 282.10, .11, and .12. Clearly, there can be no question as to the Board's authority to enter into these agreements. Appellants

[4]To the great distress of the panel members, Appellants' affidavit contained a multitude of brutal, negative character attacks on the superintendent (particularly) and Board members. Such a vindictive approach is totally uncalled for and wholly irrelevant to the primary issue of the case.

allege that the agreements were in violation of the law, yet provided no specific evidence as to what provisions, if any, were contravened.

The funding dictates of section 282.12 were followed. Costs were negotiated with Boone under a two-way sharing agreement as authorized by subsection 3 of 282.12; the agreement with Gilbert provided that 80% of the District cost per pupil would be sent to Gilbert for each student who chose to attend there. Appellee's Exhibit 2. These provisions comply with the law.

Perhaps it is the procedure that Appellants object to on the theory that once the Board complied with the notice and hearing provisions of section 282.11, then voted on January 9 *not* to share, that somehow they should be required to wait a year and repeat the notice and public hearing process before changing the decision. Appellants have cited no authority for this proposition. In effect, they are asking the State Board of Education to rule that a school board cannot rescind such an action, even when that rescission also occurs within the statutory timeframe[5] required for decision making. This we are not prepared to recommend to the State Board.

Nevertheless, it is obvious to the hearing panel that the rescinded January 9 "no" vote and the remarks of one or two directors indicating a begrudging "yes" on January 23 precipitated this appeal. The Board's changing its collective mind undoubtedly gave the impression that there was something inherently wrong with the agreements or the decision to engage in whole-grade sharing. If there is, four days of hearing before this agency failed to identify it.

The Appellants have focused much or all of their dissatisfaction with the Board's decision on Superintendent Williams, alleging he lied to the directors and used some sort of overweening power to convince them to share with Gilbert, presumably because he was also the Gilbert superintendent by way of a sharing agreement authorized by Iowa Code section 280.15. However, it should be remembered that Gilbert held the contract for Superintendent Williams' services; the District Board's subjectivity to William's alleged overpowering influence was quite limited. They were in a contractual agreement with the Gilbert board to share the services of a superintendent, an agreement that they could cancel if they wished and they did, some two months after the decision at issue in this case. We find it hard to believe that Mr. Williams' influence was inordinate. It is far more likely that the directors were caught between a vote of no, keeping the District alive and intact for at least one more year, or voting yes, which usually -- but not always -- means the District will never return to full K-12 status again.

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[5]Iowa Code section 282.10 requires the signing of a whole-grade sharing agreement by "not later than February 1" of the preceding school year.

Such a decision is understandably difficult to make. A director has to take the heat and even abuse from one or more factions of the public regardless of his or her vote. The fact remains that the legislature has entrusted to the elected officials the making of decisions regarding whole-grade sharing. But even if they were left to the electorate, hard feelings would abound in many districts. Some will always believe that the benefits of continuing to operate a school of 360 students is desirable under any and all circumstances. Those are the people who hear and repeat the phrase, "Small schools are superior" without regard to how the term "small" is defined. Is Gilbert a "large" school district? Is Boone? Frankly, Iowa has almost exclusively "small" schools as the definition is used in most national studies. Given our position of excellence in education in the United States, we exemplify the "Small schools are superior" adage, even in our "larger" urban schools.

In sum, Appellants cannot prevail in their allegation that the Board's decision was in contravention of the law. As we can only assume that our state law enabling and even encouraging school districts to share pupils is the best statement of "prudent public policy," we must also decline to hold that the Gilbert and Boone sharing agreements violate public policy as well.

Appellants persisted at some length in their position that as contracts, the agreements with Boone and Gilbert were "void for lack of consideration or impossibility of performance." We are somewhat at a loss to know how either agreement lacks consideration, one of the legal elements of a contract.

> Technically, 'consideration' is defined as some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other. . . . Consideration is, in effect, the price bargained and paid for a promise -- that is, something given in exchange for the promise.

17 Am. Jur. 2d, Contracts, §85 (citations and footnotes omitted).

From the District's perspective, the agreement with Boone involved Boone's promise to send its sixth grade pupils to the District to be educated (a "responsibility given" to the District) in exchange for the District's promise to send some of its seventh through twelfth grade students to Boone for the same purpose and with the same result. Both parties accrued the benefits and both accrued a responsibility, all in accordance with law on whole-grade sharing. The contract with Gilbert is a one-way (sending) agreement; the District would pay Gilbert for undertaking the responsibility of educating those students.

Where lies the lack of consideration?

As to the argument that the contract was impossible of being performed, or was potentially impossible, we can only assume Appellants mean that at the time the agreement was signed it was not known how many District students would opt to attend in either Boone or Gilbert.[6] This may be true. However, the risk as imagined was assumed by Gilbert and Boone, not by the District. And a mere risk that no students would select one or the other district would not be enough to defeat or invalidate the contract. We find this argument unconvincing, particularly in light of surveys conducted indicating some responder's preferences for Boone and Gilbert.

The third issue involved the potential violation of a standard of the Department of Education regarding maximum transportation times for students. That provision states as follows:

> The riding time, under normal conditions, from the designated stop to the attendance center, or on the return trip, shall not exceed 75 minutes for high school pupils or 60 minutes for elementary pupils. (These limits may be waived upon request of the parents.)

281 IAC 43.1(3). No evidence was offered on this point; Appellants and their witnesses engaged in speculation about the bus routes and times, for those would not even be set until more than one month following the hearing. Regardless of distances, a school district has an obligation under the rules to see that transportation times do not exceed those stated in the rule. If such a violation would occur, the District would be obligated to correct it at once. Anticipation of the mere possibility of a violation cannot render a whole-grade sharing agreement invalid.

Finally, Appellants argue that the decision will not be of benefit to the students, residents, and taxpayers. The closest Appellants came to offering actual evidence (other than lay opinion of those opposed to the decision) was in the testimony of

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[6]There was some testimony that District residents would need to pass a bond issue in order to be able to perform the contract, but this, too, amounted to speculation as opposed to evidence. It certainly was not a condition in the agreement.

In their closing brief, Appellants also challenge the contract as being invalid as fraudulently induced (again, a slap against Superintendent Williams' veracity and integrity) and based upon material misrepresentations by Williams. We wholly reject these assertions as well. In all material respects, the figures supplied to both boards by administration were best estimates as to costs and savings. A comparison now, a year later, might prove the accuracy or lack of accuracy of those estimates, but at the time of the discussions, the facts presented by Superintendent Williams as to costs and savings were best-guess estimates. He could do no more.

Mr. Kim Christiansen, a real estate agent, who testified regarding the likelihood that the District would grow and what impact the absence of a secondary school located in the District would have on real estate values. However, the District also presented evidence of the savings that would accrue through the sharing process. While some costs, such as transportation, could be expected to increase, others such as salaries for the secondary staff would disappear. Salaries make up approximately 80% of most school districts' budgets. Clearly, savings would be realized. Maintenance of real estate values is not part of the charge entrusted to a local school board.

As to the benefit or detriment of combining student bodies with the Boone sixth grade and either Boone or Gilbert seventh through twelfth grades, the choice factor for students and parents should not be undervalued. It took many, many years for the concepts of whole-grade sharing and open enrollment to come about legislatively, offering school choice to parents and students. The broader range of course offerings for District students is another benefit. The detriment, of course, is the loss of a secondary student population in the District. Those, such as Appellants, who moved to the District for its school have lost the opportunity to attend middle and high school there. But this fact alone is not conclusive on the detriment-benefit scale. Appellants and their supporters stubbornly refuse to recognize the up side of the agreements: greater educational opportunities for their children.

This is not the first whole-grade sharing appeal we have heard, nor will it likely be the last. See In re Thomas Miller, 4 D.P.I. App. Dec. 109 (1985); In re James Darst, 4 D.P.I. App. Dec. 250 (1986); In re Paul Kruse, et al., 5 D.o.E. App. Dec. 211 (1987); In re Eugene Naberhaus et al., 5 D.o.E. App. Dec. 283 (1987). In the Miller and Darst cases, the State Board of Education held initially and then affirmed its decision that the so-called "Barker" guidelines (from In re Norman Barker, 1 D.P.I. App. Dec. 145 (1977)) were not mandatory steps in decisions by school boards regarding whole-grade sharing agreements; the Barker guidelines were limited to school closings. The reason for the distinction was the absence of any statutory guidance for school board directors in school closing decisions compared to the existence of statutory directives in whole-grade sharing decision making. In re Thomas Miller, 4 D.P.I. App. Dec. at 116. The statutory scheme of Iowa Code section 282.10-.12 was even clearer when the District Board took action in this case than when the school board made the whole grade sharing decision in 1985 in the Miller case. Thus, there is even less reason today to hold, as Appellants asked in their post-hearing brief, that the alleged failure of the District Board to follow the seven-steps of Barker is grounds for overturning this decision.

Any motions or objections not previously ruled upon are hereby denied and overruled. All other issues raised, including the ownership of "famous flugelhorn," are deemed irrelevant to the question of the legality of the whole-grade sharing agreement and accordingly merit no further discussion or resolution.

III.
DECISION

For the foregoing reasons, the decision of the board of directors of United Community School District to enter into whole-grade sharing agreements with Boone and Gilbert school districts is hereby recommended to be affirmed. Costs of the appeal are to be certified as required by Iowa Code section 290.4, and are hereby assigned to Appellants.

September 27, 1993
DATE

Kathy L. Collins
KATHY L. COLLINS, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered. Appeal dismissed.

10/8/93
DATE

Ron McGauvran
RON MCGAUVRAN, PRESIDENT
STATE BOARD OF EDUCATION