IOWA STATE BOARD
OF EDUCATION
(Cite as 8 D.o.E. App. Dec. 12)

In re Kelly Gonder	:	
Kelly Gonder, Appellant,	:	
v.	:	DECISION
Fort Dodge Community School District, Appellee.	:	[Admin. Doc. #3026]

The above-captioned matter was heard on May 30, 31 and June 21, 1990, before a hearing panel composed of David H. Bechtel, special assistant to the director and presiding officer; Sherie Surbaugh, consultant, Bureau of School Administration and Accreditation; and Tim Taylor, consultant, Bureau of Practitioner Preparation and Licensure. Appellant Kelly Gonder was present in person and represented by Douglas F. Staskal of Brick, Seckington, Bowers, Swartz & Gentry, P.C., Des Moines. Appellee Fort Dodge Community School District [hereafter the District] was present in the persons of Superintendent David Haggard and directors of the school board and was represented by Rick Engel of the Engel Law Office, West Des Moines.

An evidentiary hearing was held pursuant to procedures found at 281 IAC 6. Authority for the hearing is Iowa Code section 290.1. Prior to the hearing the parties engaged in discovery.

Appellant seeks reversal of a decision made by the board of directors [hereafter the Board] on February 27, 1990, to close several District facilities, including Badger Elementary School, beginning in the fall of 1990.

I.
Findings of Fact

The presiding officer finds that he and the State Board of Education have jurisdiction over the parties and subject matter of this appeal.

The town of Badger, Iowa (pop. 693) lies approximately ten miles to the northeast of Fort Dodge and has been part of the District since 1966-67. The Badger school building was built in 1955 and has been utilized by the District exclusively as an elementary attendance center (K-6 until 1982-83 when it became K-5). It is a single section,[1] one-story building with a 1989-90 enrollment of 111 students, or approximately 5 percent of the K-5 District population. It is handicapped accessible and has a limited amount of asbestos materials that were used in its construction.

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[1] A "single-section" building is one that is designed for one classroom for each of the grades. Thus, Badger Elementary has seven classrooms (one each for kindergarten and six grades). The three next smallest buildings in the District have 13 classrooms each.

The District, in 1989-90, operated nine elementary attendance centers, two middle schools, one senior high school, and an Alternative Education Center. Badger Elementary and Otho Elementary were the only two buildings outside the Fort Dodge city limits.

On January 12, 1989, the District's Finance Subcommittee of the Citizens Advisory Committee[2] submitted a report to the Board. Appellee's Exhibit 9c. This report noted that "there was very little cash balance on hand at the beginning of this current school year [1988-89] and . . . the . . . district has been in a borrowing position at the bank for several weeks this fall." Id. at p. 2. The Subcommittee also recommended to the Board, inter alia, that transportation costs were considerably higher than districts of similar size (id. at p. 3 and "Exhibit B" [attachment to Finance Subcommittee's Report]) and that salary costs and yearly increases were also high, "jeopardizing the whole financial structure of the district." Id. at p. 4 and "Exhibit A" [attachment to Finance Subcommittee's Report].

Superintendent Haggard testified at this hearing that at the beginning of the 1989-90 school year, the District's unspent balance [3] was approximately $650,000, and his projection for the upcoming school year was a negligible or zero unspent balance. It was his desire to break the District's pattern of relying on the use of the unspent balance to pay for recurring expenses with the tendency toward developing a negative balance.

Toward that end, Superintendent Haggard determined that closing some elementary buildings as well as other District facilities and converting the use of some buildings would lead to a significant savings in the District budget. Over the summer of 1989 the Board reviewed and adopted policy FL related to "retirement of facilities" (building closings). The policy is procedurally oriented and, in part, mirrors the State Board of Education's 1977 recommendations for procedures to be followed in school closings and other important issues. See Appellant's Exhibit 22; Appellee's Exhibits 28, 29. The Board also invited consultants from the Department of Education [DE] to conduct a facilities study of the District and make recommendations.

The DE's study took place in the fall of 1989. Its final report included a stated "concern" (category) as to the "location and number of elementary attendance facilities." Appellee's Exhibit 10 at p. 4. Two other "concerns" related directly to that issue: equalization of class sizes for elementary students within the District, and reduction of transportation services [and therefore costs] through reduction of the number of elementary buildings operated by the District. Id.

Those concerns resulted in a recommendation by DE consultants Milt Wilson and Dr. Barbara Wickless to consider closing three or four attendance centers and changing the organizational structure of the

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[2] See Iowa Code §280.12 (1989).

[3] "Unspent balance" refers to the difference between the authorized budget (maximum legal spending authority) amount for the previous year and the actual expenditures for that year. See 289 Iowa Administrative Code 1.1.

District to a K-4, 5-8, 9-12 configuration.[4] Id. at p. 13. It was clear that the DE consultants believed that the District operated too many elementary buildings for a district its size (4,649 students in K-12). Id. In their October 24 oral exit report, covered by the local media, the DE consultants suggested that from one to three elementary attendance centers could be closed to help equalize class sizes among schools in the District. Appellee's Exhibit 31 at p. 2. The consultants also recommended looking at the location of the buildings and consequently the transportation issues within the district stating, "How long can you continue to transport to a facility . . . nearly half of the student population at that facility in order to keep it open?" Id. at p. 3. . . . "One section schools are really no longer that feasible or economical to run because of duplication of efforts, transporting students, . . . the hot lunch program, [etc.] . . ." Id. at p. 4. The consultant's reference was to Badger Elementary School.

Shortly after the DE report was submitted, the District's own K-8 Facilities Committee[5] submitted its report and recommendations. Appellee's Exhibit 9. It, too, unanimously recommended a K-4, 5-8 (split 5-6, 7-8), organizational structure based upon their study and research. Id. The committee also recommended that class sizes be equalized: ideally, K-2 should have a maximum pupil-teacher ratio of 20:1; grades 3 and 4 should be limited to a 25:1 ratio. Id. at p. 3. The committee assessed the number of classrooms necessary for regular education, special education, and selected other programs such as talented and gifted ("TAG") for elementary students. Id. at Appendix C. This committee, too, contemplated the possibility of closing buildings. Id. at Appendix E, p. 3.

Appellant's Exhibit 33 shows the projected savings if a building were closed, or, stated conversely, the costs associated with each elementary school, excluding teacher salaries. A Badger closing would save the District only $70,839, or the least amount of any of the elementary buildings. Appellant's Exhibit 33. (This figure was revised at some point in time to an agreed-upon figure of approximately $65,000. See Appellee's Exhibit 22 at p. 11.) Adding in teachers salaries, however, raises the figure closer to $200,000, approximately one-third of the District's goal of $600,000 in reductions. Because all other buildings are larger with more staff and greater operational costs, closing any one of the other buildings in operation would clearly save more money than closing Badger.

A structural engineer, retained by the District upon the advice of DE consultant Milt Wilson, examined six of the District's elementary buildings and issued a report in December, 1989, with a follow-up letter in January, 1990. Appellant's Exhibits 23, 24; Appellee's Exhibit 9D (Brooks Borg and Skiles Architects-Engineers). Mr. J.E. Borg included in his data the energy audit reports of the District done by Frank Pulley Associates. Id. Mr. Borg assessed each examined building individually in

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[4] DE consultants recommended all fifth and sixth graders attend one middle school (Fair Oaks) and all seventh and eighth graders attend the other (Phillips) to keep like grade and maturity levels together.

[5] The K-8 Committee on Facilities was composed of twelve District residents, plus a facilitator and two District employees as resource persons.

his report. He expressed concern, with respect to Badger, only about the roof construction, particularly the material ("Tectum"). Although he found no structural defects with the building, he stated his belief that the building would not have "another 20 years of useful life" because of the "marginal" quality of the roofing. Id. Of the other buildings, he was most concerned about Butler Elementary's structural future. Id.

All of the afore-mentioned reports (K-8 Facilities Committee report; Finance Committee report; Building Utilization Study Committee report; Department of Education facilities study report; and Brooks Borg and Skiles' structural reports) were made available to the directors on the Board. Until January 23, 1990, the Board had not heard from its chief executive officer with regard to his opinion as to which District facilities could or should be closed. At that time Superintendent Haggard gave the Board his "Options and Alternatives" (see Appellee's Exhibit 23). His three options/alternatives exempted two of the District's nine elementary buildings, Cooper and Feelhaver, because of their "age, location, size of site, limited asbestos exposure, total handicapped accessibility [except for Cooper's cafeteria, for which minor adaptations would be necessary], and the potential for . . . additions." Id. at p. 2. The superintendent approached the options from three perspectives: by geography (identifying Badger and Otho, the two schools outside the city limits), by age/structure/maintenance (identifying Badger as a third closing option in addition to Duncombe and Butler), and by District objectives (identifying Badger and Arey and/or Hillcrest and/or Riverside for a two or three building closing option) as achieving many of the District's objectives for classroom space, class size, program equity, efficiency, growth, and impending, costly repairs.

The Board was not certain, by the testimony of several of the directors, of what role -- if any -- the superintendent would be asked to play in the highly political "hot-potato" school closing issue, meaning it was initially undecided on whether or not Dr. Haggard would be asked to go beyond his "options and alternatives" to actually making a recommendation. See Appellee's Exhibit 30, p. 2. In the end, he was asked for a recommendation, and he recommended closing only two schools, Arey and Badger, along with the warehouse and administration building, and then consolidating services, and reducing staff, as other budget saving measures. Appellee's Exhibit 22. This recommendation came ten days before the Board's decision.

Before the Board made its decision there were several opportunities for members of the community to comment and question the superintendent and directors on the Board. Some directors attended each of nine[6] meetings held at the various elementary schools in November, December, and January. Two public hearings were held, one on January 30 and the other on February 9, 1990. Questions posed to the attending directors included an inquiry at one of the public hearings about whether an offer had been made on one of the buildings (Hillcrest) by a local business enterprise. Board President Rhiner responded no, that an offer had not been made. In point of fact, an inquiry had been received but no offer had been made.

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[6] Representatives of the Board met with Badger parents and staff twice, and apparently did not meet with parents at Cooper. Appellee's Exhibit 27.

Following the receipt of Dr. Haggard's recommendations, the Board did not meet again as a complete group until the evening of the 27th at which time the decision was made. However, on Saturday, February 24, three directors and Dr. Haggard met and drafted a motion related to the school closing decision for the full Board's consideration on Tuesday. The three directors, President Rhiner, Mr. Enke, and Mr. Reed, met in their capacity as members of the Board's "Long-Range Planning Committee," (hereafter LRPC) an advisory committee of the Board created along with several other advisory committees of the Board approximately two years ago.[7] The utilization of this committee as a part of the decision-making process was the subject of a great deal of testimony in this hearing. The evidence clearly established that the role of the LRPC was never discussed at an open meeting and did not appear on the timeline established by the administration for events leading up to decision making. Director and LRPC member Patrick Reed testified that he did not know the LRPC would be involved until he received a call from Board President Rhiner on Saturday before Tuesday's Board meeting.

The three directors and the superintendent met to discuss the best method for getting the issue on the table at the upcoming meeting as well as the content of the recommendation. After the discussion, which lasted about an hour and a half and at which time each director is said to have discussed his opinion and rationale, one of the directors and Superintendent Haggard remained to do the drafting of a motion. The Board president contacted the remaining directors over the next two days to inform them that the LRPC would be making a recommendation, and to see if any objections existed to this format and procedure. There were none. Testimony evidenced the fact that Mr. Rhiner did not ask any of the directors how they would vote on the motion.

On Tuesday, February 27, with all directors and most of the District staff among some 400 persons in attendance, President Rhiner read a prepared statement (see Appellee's Exhibit 20) and asked for a motion and a second. Director Enke moved, and director Reed seconded, the following motion:

> [W]ith sincere regret the Badger and Arey Elementary Schools be closed at the end of the 1989-90 school year, and further moved that the Berge Administration Building, Carpenter Warehouse, and Alternative Education Building be closed as soon as practical following the end of this school year, and the functions and services currently being performed at those three buildings be transferred to Arey; and further moved, as it relates to the students who will be enrolled in grades K-4 in the 1990/1991 school year, that each student from the present Arey and Badger attendance centers be permitted to attend the elementary school to which such student may be assigned in 1990/1991 throughout his or her elementary school

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[7] In recent history, the LRPC had been involved in the District's strategic planning process; restructure of the middle school; curriculum and program decision-making; action plans for the 1990-91 school year; and the timeline and procedure for approaching the building closing decision.

> education, provided that the family of the student continues to reside within the boundaries of the attendance center to which each such child may be assigned for the 1990/1991 school year; and further moved that a committee or committees of the Board of Education be established to work with representative committees from the present Arey and Badger schools to deal with any and all concerns that may exist in regard to the school closing and to provide for the best transition possible into the 1990-1991 school year; and further moved that in an effort to realize the necessary budget savings for 1990/1991, the administration be directed to recommend attendance boundary changes as well as staff reductions at all levels and in all employee groups.

Previous Record, Board Minutes of February 27, 1990 at pp. 2-3.

Reed and Director O'Leary read prepared statements.[8] See Appellee's Exhibit 20. Rhiner called for comments from the public.[9] One Badger resident made "several comments", id., and then a vote was taken. The motion passed 7-0. Five District residents then commented on the decision before the meeting was adjourned. Previous Record at p. 3.

At this hearing, Board President Rhiner testified to the panel that it "would be unusual" for individual directors to announce publicly their personal rationale for voting. He also testified that the holding of "mini-meetings" of less than a quorum of the Board is a common practice of the Board in doing business, and that mini-meetings had been held prior to the school closing decision. Clearly, he was not talking about representatives of the Board attending various school functions, such as the individual elementary school sessions held in November through January of this year. He was talking about gatherings of two or three directors who meet to discuss (and perhaps deliberate on but not decide) Board issues.

The newspaper article that appeared in the Fort Dodge Messenger the day following the decision stated that "there was no discussion on the part of the board whatsoever prior to the vote." Appellee's Exhibit 41. The residents of the District, particularly of Badger, were not pleased with either the process (with an accent on the surprise role of the LRPC) or the lack of discussion by the Board. Public pressure put on the directors over the ensuing several days resulted in a statement being read by each board member at the next meeting, on March 13, (see Appellee's Exhibit 21) explaining -- albeit after the fact -- why each director voted as he had on the school closing issue. Also that evening the Board announced that all Badger children would be assigned to Hillcrest Elementary next year.

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[8] Neither of these statements included a rationale for the individual director's vote as to which buildings would be closed.

[9] Earlier in the meeting, in establishing the process, the president announced that comments would be accepted, limited to one minute per person, but no questions would be allowed.

The day after the decision, administrators and directors visited Badger and Arey schools and talked with the children in an attempt to console them about the loss of their school and to reassure them that the children in each school would be kept together to attend a single school next year.

On March 27, Appellant Kelly Gonder, a Badger resident and mother of five, appealed the school closing decision on behalf of herself and many other District residents.

II.
Conclusions of Law

The designating of an attendance center, and thus the closing and reassigning of children, is a decision that rests statutorily with the elected directors. Iowa Code §§279.11, 280.3, and 274.1 (1989). A closing decision is a highly emotional issue for all affected residents and their children, and no less so for the school board members and administrators who must make, implement, and live by the decision once it is made.

In 1977, the State Board of Education decided a landmark case in administrative school law. In re Norman Barker overturned a local school board's decision to close an elementary attendance center on procedural grounds. Barker v. Van Buren Community School Dist., 1 D.P.I. App. Dec. 145 (1977). The State Board, in deciding that case, laid down a seven-step procedural guideline for school districts to follow in reaching important decisions such as school closings. Id. at 149-50. The guidelines are loosely akin to due process of law. Barker signaled the start of more than a decade of school closing decisions challenged by disenchanted patrons, and, fortunately, the procedural steps were observed in the vast majority of school closing cases for the next 12 years.

The "Barker guidelines," as they have become known, consist of the following recommendations:

1. A timeline should be established in advance for the carrying out of procedures involved in making an important decision. All aspects of such timelines 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 carefully.

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.

Id.

Since Barker was decided there have been no fewer than 29 appeals filed with the State Board seeking reversal of school closing decisions. Aside from the original Barker case, the hearing panel and State Board have found only one other instance of board action that merited reversal. See Menke v. Sutherland Community School Dist., 4 D.P.I. App. Dec. 40 (1985). That case primarily turned on the short timeline and lack of evidence of research and study of the issues by the local board prior to decision making. Id. at 46. Normally the relief afforded an appellant who carries the burden of proof in a procedural deficiency case is nullification of the decision and an order to the local board to conduct the procedure again, curing the cited deficiency. However, because the local board's decision in Menke was made and appealed in the summer, and had become effective in the fall prior to the hearing, the State Board merely delayed enforcement of the school closing decision. Id. at 46. The other school closing appeals were dismissed when the State Board concluded that no substantial violation of the Barker guidelines occurred.

The Iowa Supreme Court has had an occasion to consider the Barker guidelines and the State Board's application of them. In Keeler v. Iowa State Bd. of Public Instruction the Supreme Court was asked to review the State Board's decision in Keeler v. Marshalltown Community School Dist., 2 D.P.I. App. Dec. 296 (1981). Keeler v. State Bd. of Public Instruction, 331 N.W.2d 110 (Iowa 1983). At issue were the guidelines themselves, whether or not the State Board needed to adopt the guidelines as rules under the Iowa Administrative Procedures Act (chapter 17A of the Code of Iowa), and the legal appropriateness of the State Board's refusal to rule on alleged open meetings law violations while still considering the allegations as relevant to the issue of public awareness of the local board's deliberative process leading to a school closing decision. Id. The Supreme Court affirmed the district court's decision affirming the State Board's decision -- which affirmed the Marshalltown school board's decision. Id. at 112. Some of those same issues have been raised in this case, albeit clothed in slightly different robes.

Appellant in this case seeks reversal of the Board's February action on the grounds that the decision was not supported by substantial evidence when looking at the record as a whole and that it constituted an abuse of discretion. Ms. Gonder alleges that procedurally and substantively the Board's decision was flawed. Appellee strongly rejects Appellant's reasoning and asks that the Board decision be affirmed.

Procedurally, Appellant raises some six objections to the process leading to the Board's decision: the role of the superintendent was not made known to the public; the role of the LRPC in decision making was not made known to the public; the LRPC actually made the decision in this

case, and the full Board merely affirmed it; the superintendent's recommendation was kept secret; the Board violated its own policies in the school closing process; specifically, the Board violated the Barker guidelines (and Board policy FL) in failing to carry on "an open and frank public discussion" of the issues inherent in the decision and in the alleged lack of evidence that the directors studied the data gathered for them prior to voting. Appellant does not argue that the hearing panel and State Board should find a violation of the open meetings law (Iowa Code chapter 21) but asks us to consider the mini-meetings and unannounced gathering of the LRPC as evidence of the absence of public awareness of the Board's deliberative process.

Substantively, Appellant argues the decision was flawed because on the Superintendent's stated criteria (of age, location, site size, asbestos condition, handicapped accessibility, potential for additions and the ten criteria listed in Policy FL) Badger should not have been selected. With respect to transportation, Appellant suggests that Badger could have remained open if only the Board had changed attendance center boundaries and authorized busing of students from Fort Dodge out to Badger. In addition, Ms. Gonder says that if school closings were motivated by budgetary problems, the District could save more money by closing any other attendance center, and she cites to Board Policy FL. Finally she asserts that to the extent the Badger closing hinged on its status as a single-section building, the District shouldn't be concerned; Badger can accommodate more than the 111 students it held in 1989-90, and the District's enrollment is declining overall anyway.

The District responded in its brief that Appellant should be limited to the issues she raised in her affidavit of appeal.[10] Further,

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[10] During a discovery deposition, Mr. Engel, attorney for the District, asked Appellant to what policies she was referring in her affidavit of appeal where she alleged violation of Board policies. She answered with reference to Policy FL ("Retirement of Facilities"). See Appellee's Exhibit 35 (selected portions of the transcript of Appellant's discovery deposition). Mr. Engel attempted to learn if there were any other policies she felt were violated and even offered Appellant and her attorney time to review all Board policies and get back to him at a later date. Ms. Gonder never augmented her deposition testimony. Consequently, Mr. Engel sought to limit Appellant's evidence of alleged policy violations to Policy FL and consistently objected to the introduction of evidence or testimony as to other Board policies. His objections were taken under advisement.

At this time we overrule the District's objections on the ground that Appellant's allegation that Board policies were violated in her affidavit of appeal gave fair warning to the District to be prepared to defend any policy relevant to its decision-making in this case. The District is in a much better position than Appellant to determine the relevant Board policies in a manual of likely over 100 pages. The District did not object on relevance grounds, and we find that the policies introduced into evidence were relevant. However, we have never held that a board's violation of its own policies alone is grounds for reversing an otherwise legitimate decision. Thus, although we have admitted Board policies BA ("Board Operational Goals"), BBF ("Code of Ethics of Board Members"), and BDDH, KD ("Public Participation at Board Meetings") into evidence, the relevance goes to the board's intent to conduct its business fairly and openly.

Appellee asks us to afford due deference to local school board decisions and points to prior State Board precedent to show that this decision does not merit reversal. The District also argued that any violations of the open meetings law are irrelevant and beyond the authority of the State Board to determine and asserts that Board policy FL was followed in this case.[11]

We can dispose of nearly all of Appellant's arguments in the following discussion.

We do not believe, nor has the State Board ever ruled, that a school superintendent, as chief executive officer of a school board and the head administrator of a school district, should not have any role whatsoever in a decision-making process, or that his or her role as supplier of technical information and, in most cases, the purveyor of recommendations for action is information that needs to be broadcast to district patrons. The fact that the Board initially sought to protect the superintendent from the inevitable political "fallout" inherent in making recommendations to close specific attendance centers, and then changed its collective mind and asked for a recommendation, is of no consequence in terms of procedure. Moreover, the timeline for decision making in this case (dated December 13, 1989) showed that such a recommendation was a possibility, and if called for, when it would come. Appellee's Exhibit 30, p. 2.

Although the hearing panel was collectively troubled by the use of the LRPC, obviously at the last minute, to bring the issue to the Board table, we can find no legal fault with that approach. At the same time, however, we cannot understand why it was necessary for this group to meet and draft a motion in advance of the meeting. Despite the fact that the Board may have used the LRPC in the past, this eleventh-hour strategy served only to fuel the fiery feelings of Badger residents that the decisional process was being made outside the Boardroom. (Frankly, there was plenty of fuel thrown on that particular fire at the last minute anyway.) As a strategy, it appears to have backfired. As a basis for reversing the decision, however, it is not significant, in our opinion.

We therefore conclude that none of the alleged procedural "irregularities" related to the superintendent's and LRPC's roles in the decision justify reversal. We now turn to the alleged violations of Board policies.

Policy FL ("Retirement of Facilities") and the Barker guidelines are similar enough to discuss both as one. The hearing panel was asked to accord deference to the Board's own interpretation of its policies, as urged by its counsel, with respect to item number five: "An open and frank public discussion of the facts and issued involved." The District asserts that item five of Barker and Policy FL meant openly receiving frank public input and carrying on a public dialogue between directors and District patrons. This interpretation is somewhat bolstered by an evidentiary document. Appellee's Exhibit 28 represents a more detailed

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[11] The District did not argue that other policies at issue had been followed. This was consistent with its position outlined in footnote 10, supra, that other policies should not have been admitted into evidence.

explanation of Policy FL and the timeline, Appellee's Exhibit 30. It expands upon the seven steps (of Policy FL and Barker) with procedural items under most of the steps. Item/step three (III) relates directly to public involvement in planning and input and includes receiving data and/or recommendations from four public sources: Community Based Committee Report, Stakeholders' Committee Involvement [the Building Utilization Study Committee], the Facilities Subcommittee of the Stakeholders' Committee, and public hearings. Appellee's Exhibit 28 at p. 4. At step five (V)("Frank, open public discussion"), the document poses four questions: (1) When should the public discussions take place? (2) Where should they be held? (3) How many public discussions should take place? and (4) What format should be used? Id. at p. 6.

Testimony of some of the directors and the arguments of District counsel were made to the effect that the Board interpreted item five, requiring an "open and frank public discussion of the facts and issues involved," to mean more public input. In essence, this interpretation demands that items three (III) and five (V) are to be deemed identical.

Because the steps in Policy FL are based on Barker as decided by the State Board, we feel competent to attest to the intent behind guideline number five. It was not to be considered a redundant reiteration of item number three. Our intent was and is that the school board conduct an open and frank discussion of the issues among themselves at a public board meeting. In this case, with the exception of a few moments at the January 23 meeting when the official minutes state that "discussion followed" the superintendent's presentation of his options and alternatives, there is literally no evidence that the directors ever publicly discussed their thoughts, asked their questions, reviewed the data, or announced their personal rationales for favoring one school over another for closure -- until March 13 when public pressure admittedly forced them to make individual statements. See Appellee's Exhibit 15 at p. 3.

We find the fact that the Board did not afford the public the opportunity to know "the basis and rationale of [this] governmental decision," Iowa Code §21.1, to be highly inappropriate and in conflict with the spirit and stated intent of the open meetings law. In addition, the Board members' practice of airing their individual views in mini-meetings held in person and over the telephone as way of deliberating on the issues outside of public earshot is an assault on the spirit of the law; we concede, along with Appellant, that because fewer than a quorum are involved in the mini-meetings the letter of the law was probably not violated.

The truth is that the Board violated item five of the Barker guidelines. (It may not have violated its own policy (FL) item V because of the interpretation the Board has given to that policy.) The question then is what effect does the failure of the Board to not meet only one of the Barker guidelines have on the decision? We have not been called upon to decide squarely that issue in thirteen years of school closing cases. (Menke, supra, held that five of the seven guidelines were deficiently met: an inadequate timeline, considering the nature of the decision; insufficient notice to the public; insufficient research; insufficient discussion by the board; and absence of significant public involvement. Menke v. Sutherland Community School Dist., 4 D.P.I. App. Dec. 40, 45 (1985).)

The Supreme Court of Iowa recognized that the Barker decision represented guidelines for best practice and not rules. Keeler, supra, at p. 112. The State Board has held that its expectation is substantial compliance with, as opposed to rigid adherence to, the guidelines. See, e.g. McCormack v. Burlington Community School Dist., 5 D.o.E. App. Dec. 1, 6 (1986). Thus, in viewing the Board's actions in this case as a whole, we cannot say that the public was denied due process.

The public had clear notice that this important decision was being undertaken and when it would be decided. They had involvement in both committee representation and at hearings held at the individual elementary schools and the high school District-wide public hearings. The data studied by the Board were generally available to the citizens and covered the suggested topics of enrollment statistics, transportation costs, program offerings, plant facilities, staff assignments, and financial aspects of a school closing. The decision was made at an open meeting. The only element missing, "an open and frank public discussion of the issues involved," did not have an impact upon the decision itself -- only the elected board members' responsibility owed to the public. This can be rectified by the Board in its future boardsmanship or, if not, it can be rectified by the citizens at the polls.

Therefore, as disappointed as we were in the Board's conduct on "Decision Day," we do not find that it rises to the level of mandating a reversal on procedural grounds. As an aside, the directors' statements made on March 13 were tantamount to ratification actions, curing any deficiency of the previous meeting by announcing the reasons for each director's vote. We trust the Board learned its lesson about deliberating in public meetings and will at least include a statement or two of rationale in its future motions related to important decisions.[12]

We turn now to Appellant's challenge to the decision on substantive grounds.

The State Board of Education has consistently maintained its lack of desire to sit as a "super school board" in order to substitute its opinion or wisdom for the opinions and wisdom of a local school board. See e.g., Eaton v. Sioux City Community School Dist. Bd. of Directors, 7 D.o.E. App. Dec. 137, 141 (1989). In seeking to overturn a board decision on substantive grounds, an appellant bears a difficult burden to show that a legally authorized decision was made fraudulently arbitrarily, unreasonably, or without substantial evidence to support it. Schwartzhoff v. Allamakee Community School Dist., 6 D.o.E. App. Dec. 377, 379 (1989). Reasonable minds can, of course, differ, but the role of the State Board (and hearing panel) is to view the evidence with an unbiased eye as much as possible avoiding the emotional trappings that so easily color one's view of others' decisions. In re Elizabeth Cott, 4 D.P.I. App. Dec. 231, 238 (1986).

Appellant asks us to overturn the decision here because Badger school could have remained open and another school, perhaps one with higher operating costs or more asbestos or less handicapped accessibility or more

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[12] Announcing some reasons for voting the way they do will also help school boards withstand subsequent challenges to board decisons on the grounds of arbitrariness. See In re Bishop and Thompson, 5 D.o.E. App. Dec. 242, 245 (1987).

required maintenance, could have been closed. We are not here to decide what other buildings could have been closed; we are here to review whether the decision made is unsupportable as a matter of law or fact. We hold that it is not.

Badger Elementary served the residents of Badger well, but in the scheme of an entire district's operations, its continued maintenance would be an inefficient use of an already limited, indeed strained, budget. Of course the District could have closed a city school and transported a few more students out to Badger, but that would have been inconsistent with established transportation patterns, would have been a temporary solution, and would not have allowed students from a closed school to remain together, in addition to being a less desirable action from other perspectives as well. It also would not have left the necessary number of classrooms available.

The fact that Badger is a one-section building is highly significant, despite Appellant's attempts to downplay that factor. Had the District not needed to reduce its budget by hundreds of thousands of dollars, Badger and Arey both could have remained open. But the financial facts of life in this school district caused this decision and closing a building of one section each of kindergarten and five grades allowed more easy assimilation of those 111 students into the District than closing Butler or Duncombe. Badger, frankly, was a logical candidate for closure on the bases of location and size alone. The other factors (building condition, handicapped accessibility, etc.) are not necessarily deserving of equal weight in the overall assessment.

We regret the turmoil the decision has caused within the District. We truly wish the Badger residents could look at the decision made from an eagle's perspective: viewing the District as a whole. But we understand that the decision affects their children, their town, and their feelings of belonging and loyalty to the District. They feel betrayed and cheated, surely. That is sad and unfortunate, but it does not justify overturning a decision which was based upon substantial evidence.

The balance of Appellant's arguments lack sufficient merit to justify examining them individually.

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

III.
Decision

For the foregoing reasons, the decision made on February 27, 1990, by the Fort Dodge Community School District board of directors to close Badger Elementary School is hereby affirmed. Costs of this appeal under Iowa Code chapter 290, if any, are assigned to Appellant. Appeal dismissed.

August 10, 1990
DATE

RON McGAUVRAN, PRESIDENT
STATE BOARD OF EDUCATION

Aug. 2, 1990
DATE

DAVID H. BECHTEL, SPECIAL ASSISTANT
TO THE DIRECTOR
AND PRESIDING OFFICER