IOWA STATE BOARD
OF EDUCATION
(Cite as 8 D.o.E. App. Dec. 1)

In re Dawn McCoy :

Dawn McCoy, :
Appellant,

v. DECISION

Highland Community :
School District,
Appellee. [Admin. Doc. #3014]

The above-captioned matter was heard on April 2, 1990, before a hearing panel composed of David H. Bechtel, special assistant to the director, and presiding officer; Mr. Dick Boyer, assistant chief, Bureau of School Administration and Accreditation; and Ms. June Harris, consultant, Bureau of Instruction and Curriculum. Appellant Dawn McCoy was present in person and was represented by Mr. Richard Zimmerman of Mears, Zimmerman & Mears, Iowa City. Appellee Highland Community School District [hereafter the District] was present in the person of Mr. Terry Bowton, high school principal and [then] interim superintendent, and was represented by Mr. Joseph Holland of Hayek, Hayek, Hayek & Holland, Iowa City.

Appellant filed an affidavit of appeal on February 16, 1990, from a decision of the board of directors [hereafter the Board] of the District made on January 22, 1990. An evidentiary hearing was held following the procedures found at 281 IAC 6; authority for the appeal is found at Iowa Code §290.1.

Appellant seeks reversal of the Board's decision to designate the Ainsworth attendance center as a kindergarten, first, second, and third grade building for the District, and the Riverside attendance center as a kindergarten, fourth, fifth, and sixth grade building, which necessitates busing certain children from each end of the district to the other.

## 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 the case before them.

The district lies in the east central part of the state and is long and narrow in shape. At one end sits the Ainsworth elementary building, constructed in approximately 1973. It is a single story, open classroom building. Through the 1989-90 school year, 100 or so children in kindergarten and grades one through six attended there. Around the center of the District in the town of Highland sits the secondary (7-12) building. The Riverside elementary school is found at the far end of the

District. Through this year approximately two hundred children in kindergarten and grades one through six attended there. It is an older (circa 1916) three-story structure that is not handicapped accessible and has been conditionally approved by the fire marshal for use on a year-to-year basis. The District used a double portable classroom outside the Riverside building for fifth and sixth grades. Acting Superintendent Bowton testified that the distance between the Riverside and Ainsworth buildings is 15.2 miles.

The Riverside building was overcrowded; the Ainsworth building was underutilized. In 1988-89, the Board and administration began considering options toward more effective and efficient use of the three facilities, although it does not appear from the record that District officials began earnestly examining the situation until fall of the 1989-90 school year.[1] At that point a feasibility committee was created from volunteers and appointees selected by the individual directors. (Earlier in the first semester, several parents approached the Board to obtain information about bond issues out of concern for the overcrowding situation at Riverside.)

The feasibility committee was composed of three directors and some twenty-four others who either volunteered or agreed to serve upon being asked by various directors. Fifteen of the twenty-seven committee members were from Riverside; nine were from Ainsworth, and three were directors. Appellant's Exhibit E-2.[2]

The first meeting of the feasibility committee took place on October 17, 1989. The members of the committee toured the District's two elementary buildings, then "brainstormed" for an hour. A second meeting scheduled for November 1 was postponed. The committee as a whole then met on November 21, December 13, and December 20. Five subcommittees were established early: "Standards/Regulations," "Data (Research)," "Enrollment Projections," "Sharing/Open Enrollment/Bond Issue," and "Short Range Physical." The latter committee included two directors and two other committee members.

The "Short-Range Physical" subcommittee generated some seven options to deal with the overcrowding and imbalance situation. Those alternatives included

1. Keep K-3 or K-4 at both elementaries, bring 4-8 or 5-8 in separate unit at high school.

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[1] Appellee's Exhibit 1 contains the minutes of a January, 1988 Board meeting where overcrowding and imbalance between elementary attendance centers was discussed and even where some solutions were proposed, one of which was "to have K-3 students at one center and 4-6 students at the other." No action was taken until January, 1990, however.

[2] A discrepancy exists between Appellant's' Exhibit E-1 showing 27 members on the feasibility committee and Appellee's Exhibit 2 (page 4) showing 30 members. The latter exhibit adds Pat Thomann, Dennis Stout, and Mike Krantz, and substituted "Maggie Burns" for "Robert Burns." No explanation was offered by either party to this appeal of the discrepancy.

2. Move sixth grade from both schools to high school portables.

3. Bus all K-3 or Ainsworth and 4-6 to Riverside.

4. Bus sixth grade to Ainsworth.

5. Use St. Mary's for space.

6. Change elementary boundaries.

7. Move high school portable to Riverside.

Appellee's Exhibit 2 at page 12. These options were apparently discussed at the December 13 feasibility committee meeting. Also on the agenda for that evening was a report by directors Colleen Sojka and Lois Hawkins on the "Board plan under consideration." Id. at page 14. Testimony at hearing evinced the fact that this plan was to house K, 1, 2, 3 (elementary) at Ainsworth and K, 4, 5, 6 ("middle school") at Riverside -- the option ultimately approved by the Board on January 22, 1990.

In its final meeting (December 20) prior to the decision in January, the feasibility committee took a straw vote on five options. Twenty-three ballots were cast; four were thrown out due to changes in the options or irregularities in the ballots. The result of the 20 votes cast was that the favorite option, for lack of a better word, of most of the committee members was to move fourth through sixth grade to the secondary building. This would leave both the Riverside and Ainsworth attendance centers holding kindergarten through third grade. There was a three-way tie for second favorite option; one of those three options was the later adopted decision at issue in this case. When the ballot results were tallied applying a point system (5 points for first choice, 4 points for second choice, etc.), the highest ranking option was still expanding the secondary building down to grade four. The "K, 1, 2, 3 Ainsworth/K, 4, 5, 6 Riverside" alternative came in fourth out of five options in the balloting. The results were given to the Board. The directors discussed the options at a special meeting on January 3.

By December 11 the "word was out" among district patrons and a large crowd appeared at a regular Board meeting. Although the only agenda item dealing with the feasibility committee was the necessity for the Board to address the guidelines or expectations for the committee's work, a number of people (particularly from Riverside and including Appellant) were permitted to speak. Appellant presented a petition (Appellant's Exhibit B) signed by a number of district residents, and gave the Board a list of concerns [3] related to the proposal for busing elementary school children

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[3] Appellant's concerns were itemized as "Separation" (from family, friends and older peers) and the anticipated psychological effects on the children; "Busing" (time, safety, excess cost to the District); "Telephones" (increased costs to parents and District for long distance); "Inconvenience to parents"; "Supplemental Education" scheduling difficulties (extracurricular activities and child care); and general "Financial" concerns related to parents and the District.

between the two attendance centers. Some nine or ten other Riverside area residents spoke to the Board as well.

On January 8, 1990, the Board held a "public forum" in the high school gymnasium for one hour to discuss "options to alleviate the crowding at Riverside for the 1990-91 school year." First, Director Colleen Sojka presented the bases for the Board's need for a short-term solution to the overcrowding problem at Riverside. Ms. Sojka reported on the feasibility committee's straw vote results. The Board eliminated two of the five options considered by the committee. Board Minutes of January 8, 1990 at page 2. The three remaining options were (1) moving all sixth graders to the 7-12 building in Highland, (2) moving all fourth through sixth graders to the Highland building, and (3) keeping a kindergarten class in both elementary attendance centers but creating a lower elementary (1, 2, 3) at Ainsworth and an upper elementary or middle school (4, 5, 6) at Riverside.

Prior to the presentation of statements by the public, officers and directors gave information. The Board secretary presented budget information. One of the feasibility committee members (also a member of the "Short Range Physical" subcommittee) presented the option of moving grades four through six to the high school. Director Jean Hospodarsky presented the second option(s) of moving the sixth grade to the high school in Highland or the Riverside sixth grade to the Ainsworth building. Director Colleen Sojka presented the K, 1, 2, 3 Ainsworth/K, 4, 5, 6 Riverside proposal. Each presenter discussed advantages or benefits to the proposal. Thirteen citizens then spoke raising questions and concerns.

The minutes of the January 8 special meeting indicate that the Board would meet again on January 15 (work session) and January 22 special meeting (when the decision would be made). Ultimately another work session was scheduled for January 20.[4] One of the three substantive agenda items was the facilities issue. Significantly, the Board was also undertaking a search for a new superintendent during this same time period, fall-winter 1989-90.

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[4] Appellants have raised questions as to the Board's compliance with the Open Meetings Law, Iowa Code chapter 21, particularly with respect to the January 20 meeting. However, evidence presented at the hearing satisfied the panel and its legal advisor that the law had not been violated.

Frequently citizens of a school district rely on the broadcast or print media for notice of upcoming board meetings. Under the law, the school board's primary responsibility for notifying the public of the date, time, place, and tentative agenda of a public open meeting is "in addition to notifying the media who have requested the information" to post "notice on a bulletin board or other prominent place which is easily accessible to the public . . . at the "principal office of the body holding the meeting. . . ." Iowa Code §21.4 (1989). It is the citizens' responsibility to check the office for a notice.

Although the panel discerns no violation of chapter 21, this would not be the proper forum to determine legally whether a violation had occurred. See Iowa Code §21 (1989). The State Board can consider open meeting law procedure, however, in looking at a school board's good faith or bad faith in decision making. See Keeler v. Iowa State Bd. of Public Instruction, 331 N.W.2d 110 (Iowa 1983)

The decision that is the subject of this appeal appeared on the agenda for the January 22, 1990 Board meeting as the first item of business after roll call. The Board declined to move the decision at the request of a District patron.

Appellant spoke to the directors asking that a combination solution be considered: moving the sixth grades from both elementary buildings to the 7-12 building, asking for voluntary transfers from Ainsworth to Riverside (in grades 1-5), and either combining classes (grades) at Riverside or moving the elementary boundary for Ainsworth north to draw more Riverside students to Ainsworth. Another Riverside resident proposed a different solution.

Following those statements by the public, Director Colleen Sojka made a short speech thanking the feasibility committee (on which she served) and other community members for their time. At this point, she apparently made a motion to adopt the K, 1, 2, 3 (Ainsworth) and K, 4, 5, 6 (Riverside) solution although the certified Board minutes show her "presenting" a good deal more information to the Board than attendees recall. The information appears in writing as an attachment to the minutes of the January 20, 1990 meeting. In any event, the Board thereafter voted 7-0 to approve the "leveling" plan, moved by director Sojka, presumably for school year 1990-91 at a minimum.

This appeal followed. Subsequent to the filing of the appeal, the Board also arranged for the Department of Education facility consultant to conduct a District (facilities) assessment study, and looked into the hiring of an architect in preparation for a bond issue proposal to District voters for new or improvements to existing facilities. No official reconsideration of the January 22 decision was undertaken.

## II.
## Conclusions of Law

Appellant has raised three issues in her appeal. First, she alleges that the Board's creation of a feasibility committee was a sham attempt to initiate a proposal which essentially came from Board members and was adopted by the Board without public discussion sometime prior to its January 22 vote. This argument is essentially two objections in one: that the feasibility committee was a sham, and that the Board made its decision prior to a vote on January 22.

As to the first issue, the problem we perceive is that Appellant is giving far more weight to the creation and role of the feasibility committee than it had. Creating a committee when none is required by law, is a double-edged sword.[5] On the positive side, it actively involves parents and citizens in education and board matters. On the negative side, it gives a somewhat false sense of empowerment to those people who serve when, at most, they function only in an advisory capacity to the board.

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[5] The same is true for voluntarily holding public hearings on an issue under consideration when the law does not require hearings.

The Board in this case gave no indication of its intent to be bound by the committee's recommendation or, conversely, to reject those options in lesser favor with the committee. The decision to determine and set attendance centers rests by statute with the local school board. See Iowa Code §§274.1, 279.11, and 280.3 (1989). As a matter of law, the Board need not appoint a committee to aid in its decision making on setting attendance centers; it also need not hold public hearings. In fact, all it is required to do by law is to have the item on the agenda of an upcoming meeting open to the public and to make the decision in open session. Reasonableness requires that some degree of thoughtful study precede the decision.

The second part of Appellant's first argument is that the decision was made before it was voted on. There was insufficient evidence to support this allegation. Appellant, by raising this concern, also asks the hearing panel and State Board to hold that individual directors cannot be predisposed to vote one way or another prior to making a decision. This we cannot and should not do; moreover, from a practical standpoint it is impossible to require total open-mindedness by directors until the "moment of truth" arrives.

Appellant's second assertion of error by the Board was that the feasibility committee rejected the option ultimately adopted, deeming it "so fundamentally faulty . . . and lacking credibility" that the Board's decision in the face of the committee's feelings about it amounted to arbitrary decision making. Again, this argument places far too much weight on the committee's collective view. As employees of an agency charged with general oversight of the public schools in Iowa, the hearing panel members can say that the concept of three attendance centers (one elementary, one middle school, and one high school) is a common organizational structure within a school district, particularly where, as here, the solution is a temporary one.

It was clearly not an arbitrary decision. The Board members made this decision an agenda item on at least four occasions leading up to its voted decision on January 22. Certainly reasonable minds can differ as to the effects of the decision and even the wisdom of a particular choice. That fact does not lead to the conclusion that the decision was arbitrary.

Appellant also attacks the fact that the feasibility committee studying the options and reviewing the data for presentation to the Board was not told that budgetary concerns were part of the consideration of the Board in making a short-term decision to alleviate overcrowding at Riverside and under-utilization at Ainsworth Elementary. That this factor somehow negatively impacted on the reasonableness of the Board's decision is without merit as an argument. Any responsible school board would make its decisions in the hope of reducing as many problems as possible. Furthermore, even if the Board had never announced fiscal concerns it would still have been entitled to evaluate a proposed solution and other options on the basis of their effect on the budget. No decision is made in a vacuum.

Finally, Appellant challenges the adequacy of the notice of a work session called by the Board for January 20, two days before the board meeting at which the decision would be made. Appellant complains that this meeting was called "without adequate notice to the feasibility

committee" and without sending notices home with schoolchildren, without announcing it over the intercom, and by its being published in a newspaper with a less broad subscription population.

The feasibility committee's work was completed and had resulted in a final report given to the Board earlier. A public forum had already taken place. We have already addressed and dismissed the alleged violation of the Open Meetings Law. See footnote four, supra. No law or court decision of which we are aware prescribes notification in the manner Appellant suggests. In addition, the meeting was a work session devoted as well to other issues aside from the facilities issue. It is hard to view this argument as meritorious from any perspective.

In short, the appeal of Appellants must fail. The Board has the statutory authority to make the decision in this case. In re Carolyn Page, 1 D.P.I. App. Dec. 266 (1978). It was a logical short-term solution, albeit not a particularly popular one with the residents of the communities of Ainsworth and Riverside.[6] But for purposes of building utilization, efficiency, and organizational structure, the decision was highly reasonable. It is unfortunate that the Board's generous involvement of the public in this decision has backfired in this manner. We sincerely hope that future involvement of the public will not be hampered because of this appeal.

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

III
Decision

For the foregoing reasons, the decision made by the Highland Community School District board of directors on January 22, 1990, is hereby affirmed. Appeal dismissed. Costs, if any, under chapter 290, are assigned to Appellant.

July 17, 1990
DATE

RON McGAUVRAN, PRESIDENT
STATE BOARD OF EDUCATION

July 17, 1990
DATE

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

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[6] Ironically, the State Board has heard appeals from district patrons who vehemently opposed the addition of fifth and sixth grades to the high school building and who asked for the type of solution reached in this case because of the extraordinarily negative effects of putting 11 and 12 year-olds into a building with 16-18 year-olds. See, e.g., Shapiro and Woodin v. Ames Community School Dist., 6 D.o.E. App. Dec. 337 (1988).