IOWA STATE BOARD
OF EDUCATION
(Cite as 7 D.o.E. App. Dec. 94)

In re Jerry Tschetter	:	
Jerry Tschetter, Appellant,	:	
v.	:	DECISION
Fremont Community School District, Appellee.	:	[Admin. Doc. 1079]

The above-captioned matter was heard on October 11, 1988, before a hearing panel consisting of David H. Bechtel, special assistant to the director, and presiding officer; Ted Stilwill, administrator, Division of Administrative Services; and Robert Yeager, acting chief, Bureau of Area Schools. Appellant was present in person and represented by counsel, Mr. Robert Clements of Clements, Pothoven, Pabst & Stravers, Oskaloosa. Appellee Fremont Community School District (hereafter the District) was present in the person of Superintendent Randy McCaulley and represented by counsel, Mr. Brian Gruhn of Mollman, Gruhn & Wertz, Cedar Rapids.

A mixed evidentiary and on-the-record hearing was held according to department rules found at Iowa Administrative Code 281-6. Appellants timely appealed, on February 23, a decision made by the District board of directors (hereafter the Board) on January 25, 1988, to enter into a one-way whole-grade sharing agreement with Eddyville Community School District (Eddyville). The appeal was filed under Iowa Code section 290.1.[1]

Appellee District moved for Summary Judgment in a Motion filed on July 1. Said Motion was denied. A motion for summary judgment is a motion for judgment, as a matter of law, for one party over another on the face of the pleadings. It is granted, under the judicial system, when there is no genuine issue of material fact involved in the case and a party is entitled to judgment as a matter of law.

The State Board of Education has not, by rule, incorporated the whole of civil procedure, including motion practice, into its administrative hearing process. Heretofore we have granted dismissals solely on the

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[1] Appellant and his wife also filed a request for release from the sharing agreement under the authority of Iowa Code section 282.11. Six other individual families from the District also filed such requests which were scheduled to be heard at the time of this hearing. When Appellants appeared for the 290 hearing, they voluntarily dismissed their 282.11 request. Five of the six other families either failed to appear or called in advance of the hearing to indicate their wish to withdraw their requests for hearing. Those five cases were subsequently dismissed. We hereby dismiss appellant's 282.11 request as well.

basis of lack of subject matter or personal jurisdiction, or untimely filing. (Iowa Code section 290.1 establishes a thirty-day statute of limitations from local board decisions. That period runs from the first day following the board action at issue to the thirtieth day, by which the department of education must have received the affidavit of appeal.) We have broadly interpreted the term "aggrieved" in the statute to enable a school district parent, patron, or resident to have his or her "day in court" or review by an unbiased decision maker. We are not inclined to adopt the whole of motion practice from the civil court system which could disadvantage or deter Appellants who are unrepresented by counsel from filing an appeal. For these reasons the presiding officer also denied Appellee's Motion to Strike and Motion for a More Specific Statement. We proceeded to a hearing on the merits.

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.

Appellant is the father of three children, aged eight, thirteen and sixteen. At the time of appeal, the family resided in Fremont but were seeking to move to Hedrick. In anticipation of the move, Appellant enrolled his children in the Hedrick school district in the fall of 1988.[2]

Appellant challenges the sharing agreement that was signed between the boards of the District and Eddyville. That agreement provides that each district will maintain its own program for pupils in kindergarten through eighth grade. All ninth through twelfth grade pupils will attend high school in Eddyville. It is, accordingly, a one-way sharing agreement; Eddyville is not sending any pupils to Fremont. The agreement is for three school years beginning July 1, 1988, and terminating on June 30, 1991, by operation of its own language. The agreement can be modified, extended, or terminated earlier by mutual agreement of the two boards and compliance with Iowa Code section 282.10. Transportation would be provided by the District, although Eddyville agreed to provide an activity bus for District students. The contract was signed on January 25, 1988, by the Eddyville board president and on January 26 by the District Board president. A public hearing as required by Iowa Code section 282.11 was held in Fremont on December 21, 1987.

Prior to entering into the agreement, the Board actively reviewed various options for academic sharing[3], going back as far as January of

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[2] Appellant admitted that he was not paying tuition to Hedrick at the time of the hearing. This fact, in consideration of Iowa Code section 282.1, was called to the attention of the Hedrick superintendent for rectification. As non-residents, Appellant's children should be charged the maximum tuition rate until such time as they become actual residents of the Hedrick district. Accordingly, they cannot be counted for purposes of state aid until their bona fide residency established.

[3] The District was already in an extracurricular sharing agreement with Hedrick for all athletics after sharing only football the previous two years.

1987 when the District Board met with the directors of the Eddyville School Board. Appellee's Exhibit 1. That spring there were also joint board meetings with Hedrick and Oskaloosa, and the District superintendent, Mr. McCauley, met with the superintendents from Eddyville, Blakesburg and Hedrick, presumably at the Board's direction.

In September, 1987, consultants from the Department of Education made a visit to the District at the request of the Board. A report was issued, see Appellee's Exhibit 3, which indicates the purpose of the site visit was to assess the respective merits of a sharing plan between Fremont, Hedrick, Eddyville, or "some other contiguous district." The consultants recommended against an agreement with Hedrick citing the combined size of the shared student body (approximately 400) as militating against long-term stability and citing the below-average physical condition of the schools in both districts. Also a factor was the likelihood that a significant number of students might request to attend Eddyville or Pekin instead of Hedrick, using the 282.11 request process. If those people were successful, it would mean significantly fewer than 400 students in the Fremont-Hedrick proposal. The reporters recommended Eddyville over Hedrick as a sharing partner for the District.

In October, 1987, the Board held a public hearing on sharing with Hedrick, and in December the Board voted 4-1 not to share with that District, although the proposal passed in Hedrick. In essence, the Board was left looking at Oskaloosa, Eddyville, or a multidistrict sharing agreement between several of the small neighboring districts. After the Hedrick proposal was rejected by the Board, it appears their focus turned to Eddyville more than Oskaloosa.

From December 7, when the Hedrick sharing proposal failed to pass, until January 25, when the Eddyville sharing proposal did pass, the Board met seven times. These occasions included joint board meetings with Eddyville, two public hearings (one at each site) on the sharing proposal, and small group meetings between directors.

Superintendent Tim Dose of Eddyville submitted a document to boards and administrators of both districts on December 18 that outlined and listed educational and financial considerations, existing and proposed curriculum and graduation requirements. Appellee's Exhibit 5. Superintendent McCaulley created a similar document dated December 21 that he delivered to both boards. Appellee's Exhibit 6.

Following the public hearing at which a draft document was presented and discussed (Appellee's Exhibit 7), one change was made to the proposed contract language prior to its signing. In paragraph 17, governing the term of the contract, a sentence was added to reflect that the law, specifically Iowa Code section 282.11, would be followed, presumably with respect to public hearings and modifications to a whole-grade sharing agreement. But for this one clarification, the document signed on January 25, was identical to the document made available at both districts' public hearings.

II.
Conclusions of Law

Appellants have challenged the Board's decision on several grounds:

1. That the Board was required by law to consider fully all potential sharing partners;

2. That changing the final document from the language proposed and discussed at the public hearing was a violation of Iowa Code section 282.11;

3. That the transportation routes had not been approved by the area education agency board at the time the agreement was signed;

4. That transportation of the District's high school students to Eddyville will cause danger and hardship due to extended travel over allegedly more hazardous roads;

5. That the Board failed to obtain adequate public input regarding other alternatives, "contrary to law";

6. That the decision to share with Eddyville does not provide "the best available alternatives" to District pupils; and

7. That the contract "fails to set forth the method for cost determination under the sharing arrangement" as required by amended section 282.12(1) of the Code.

Appellant argued at hearing and in his brief that the Board's alleged failure to study an alliance with Oskaloosa or fully to explore a multidistrict sharing option is in violation of the law and departmental recommendations or requirements. Appellee's Exhibit 1 does illustrate the fact that Eddyville was the primary partner being considered after the December 7 Board meeting where the proposal to share with Hedrick was rejected. However, on December 9, a meeting was held between representatives of the boards of Fremont, Eddyville, Blakesburg, and Hedrick and each district's superintendent. See also Appellee's Exhibit 2 (dated December 8, 1987, and comparing the benefits of sharing with Eddyville versus Oskaloosa).

At hearing, testimony of Bob Sterling, a former Board member and the dissenting vote in the final action of the Board to share with Eddyville, evidenced the fact that Oskaloosa had been approached by the District two years earlier. Mr. Sterling had, in fact, visited that district as a Board member in a preliminary investigation into the possibility of whole-grade sharing there. He admitted that the Oskaloosa curriculum had been studied by the Board. But because no discussions were held regarding

a proposal to share, he believes that avenue was insufficiently considered. Mr. Sterling even took it upon himself to conduct a telephone survey of all the "affected" District patrons. He testified that slightly over 54% of the affected community preferred Oskaloosa, some 35% preferred Eddyville, and the remaining 10 or 11% had no preference or wished to go to Ottumwa, an option that apparently was not considered by the Board nor pursued by Mr. Sterling with the Board.

When Mr. Sterling reported the results of his survey to the Board, the only comments about Oskaloosa tended to center on its significantly larger size. Some Board members were concerned that Fremont could be "swallowed up" by the larger Oskaloosa district, and that somehow their bargaining or negotiating power would be reduced or eliminated. Testimony of Mr. Sterling also indicated that in his opinion other directors rejected Oskaloosa as an option because of the low probability that any of the District's teaching staff laid off as a result of the sharing agreement would be hired by the Oskaloosa board. Mr. Sterling believed that the Board felt Oskaloosa could probably absorb the District's students without having more additional staff, whereas in a sharing arrangement with Eddyville, many of the District's laid off staff could or would be hired by Eddyville. He was concerned that this reasoning was not based on study or even conversations with the Oskaloosa board, but constituted pure speculation. He is in agreement with Appellant's position that inadequate study was undertaken by the Board into alternatives to sharing with Eddyville.

At the hearing, the "law" that supposedly requires extensive study into all sharing alternatives was not cited, despite the allegation in paragraph 4 of Appellant's Affidavit of Appeal. Instead the hearing panelists' attention was directed to a Department document, "Sharing Series XVII" which cites recommendations for boards considering whole-grade sharing. Those enumerated recommendations first appeared in a school closing case, In re Norman Barker, 1 D.P.I. App. Dec. 145 (1977). They were and are based upon procedural due process and good boardsmanship. However, in 1985, the State Board held that rigid observance of those seven guidelines in a whole-grade sharing decision is not necessary, primarily because a statutory scheme exists for sharing, but the legislature has laid down no guidelines for school closings. In re Thomas Miller, 4 D.P.I. App. Dec. 109, 116 (1985). Nevertheless, the principles embodied in both the Barker decision and the Department's sharing recommendations are applicable: School boards should not fly into a sharing decision without adequate study or without notifying the public of the contemplated action.

The evidence suggests in this case that the Board did adequately study alternatives, intermittently for two years. If Mr. Sterling felt that he had inadequate information on which to base his vote, he did not say so at the time. (He voted in favor of sharing with Hedrick and in opposition to sharing with Eddyville. The Board minutes are devoid of any reference to his call for further study, a delayed vote, or a motion to pursue multidistrict sharing. See Appellee's Exhibit 10 (Board minutes from July 17, 1987 through February 22, 1988).) Appellant's contention that inadequate study was made of the selected sharing partner or alternative partners is belied by the evidence. Nor do we find any violation of law here.

Appellant's other arguments are equally unmeritorious. One purpose of a public hearing 30 days prior to the signing of a sharing agreement, see Iowa Code §282.11, is for patrons to raise theretofore uncontemplated issues. We find no requirement in the law that any change, especially one as unsubstantial as that which was made in this case (a declaration that the law would be obeyed with regard to amending or extending this agree), would require a new hearing or render the agreement null and void.

The transportation route approval issue is also without foundation. The law does not specify when, only that buses crossing district lines must have AEA approval. Iowa Code 285.__ (1989). We believe the approval that was issued by Southern Prairie AEA on February 16, 1988, was entirely proper. See Appellee's exhibit 8. Approval need only be obtained prior to transporting the pupils. The District arguably had over six more months to see to that detail.

Also, in regard to transportation, Appellent accurately predicts that the student's time on the school bus will be extended now that they are traveling 13 more miles to high school. However, the evidence was insufficient to show hardship or danger to students.

Appellent's fifth assignment of error in the decision below is that the Board "failed to obtain adequate public input" as to alternatives to sharing with Eddyville, and that this is somehow "contrary to law." We are totally at a loss to know how a school board is to extract public opinion from individuals which was not offered at a public hearing. There were two public hearings held, in the fall and winter of 1987, on two separate proposals. The public was certainly free to voice opinions on both of those or to encourage the Board to look at other alternatives. The Board is not responsible to conduct one-on-one surveys; the law rquires a board to give notice of its intended action and receive public comment. The law was clearly followed in this case.

Appellant also suggests that the sharing contract does not comply with the Iowa Code related to funding and payments for sharing. The applicable sections read as follows:

> 1. An agreement for whole-grade sharing shall establish a method for determination of costs, if any, associated with the sharing agreement.
>
> 2. For one-way sharing, the serving district shall pay not less than one-half of the district cost per pupil of the sending district.

Iowa Code §282.12 (1989 Supp.).

The agreement addresses funding in paragraphs 9A, B, and C. Appellee's Exhibit 7 at pages 3, 4. The agreement is that the District will pay 83% of its per pupil cost for those pupils sent to Eddyville. Id. at page 3. Quarterly installments are to be made on dates specified in the agreement. Id. We are at a loss to understand Appellant's

objection to the sharing agreement on this ground, and specifically conclude the terms of the agreement satisfy the quoted sections of the law.

Finally, Appellant argues that the sharing arrangement with Eddyville "does not provide the best available alternatives" to District pupils. This argument appears to be nothing more than an attempt to have the panel and State Board evaluate the relative merits of a sharing agreement with Hedrick, Oskaloosa, or a multidistrict agreement involving the District and several other districts in the area. The State Board has, with relative consistency, declined to substitute its judgment for that of a local school board in a decision of this kind. Instead, our review has been of the process in reaching a decision to assure that adequate study has been made by the elected directors and that the decision is supportable on substantial evidence. See, e.g., In re James Darst et. al., 4 D.P.I. App. Dec. 250 (1986); In re David Whipp et al., 6 D.o.E. App. Dec. 356 (1989). We are not inclinded to break from that position. Moreover, we have literally no evidence on which to find that this decision is not in the best interests of the students of the District.

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

III.
Decision

For the reasons stated above, we conclude that Appellant has failed to establish a basis upon which we should overturn the decision made by the board of directors of the Fremont Community School District on January 25, 1988, to enter into a one-way whole-grade sharing contract with Eddyville Community School District. That decision is therefore affirmed and Appellant's action is dismissed.

Costs of this action under Iowa Code Chapter 290 are hereby assigned to Appellant.

May 12, 1989
DATE

May 5, 1989
DATE

KAREN K. GOODENOW, PRESIDENT
STATE BOARD OF EDUCATION

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