

IOWA STATE BOARD
OF EDUCATION
(Cite as 7 D.o.E. App. Dec. 286)

In re Diane Rolston :
Diane Rolston, :
Appellant, :
v. : DECISION
Beaman-Conrad-Liscomb, and :
Union-Whitten Community :
School Districts, :
Appellees. : [Admin. Doc. #2064]

The above-captioned matter was heard on November 28, 1989, before a hearing panel comprised of Mr. David H. Bechtel, special assistant to the director and presiding officer; Mr. Dwight Carlson, chief, Bureau of School Administration and Accreditation; and Ms. Edith Eckles, consultant, Bureau of School Administration and Accreditation. Appellant Diane Rolston was present in person and represented herself. Appellees Beaman-Conrad-Liscomb and Union-Whitten Community School Districts [hereafter B-C-L-U-W or the Districts] were present in the person of Mr. Jack Arnett, superintendent of U-W, and were represented by Mr. Rick Engel of the Engel Law Office, West Des Moines, Iowa.

An evidentiary hearing was held under the provisions of Iowa Code chapter 290 and hearing procedures found at Iowa Administrative Code 281--6. Appellant timely sought review of a decision made by the joint boards ["Boards"] of the B-C-L-U-W Districts made on October 9, 1989, not to modify the schedule for fifth grade pupils to include a recess or period of unstructured exercise or play time.

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 Districts are involved in a whole-grade sharing agreement that began in school year 1986-87. Each district operates its own kindergarten program. Grades 1-4 from both Districts attend in Conrad; grades 5-8 attend the middle school in Union; all students in grades 9-12 attend high school in Conrad. The sharing program was begun to offer more course opportunities for students in both districts, to offer better classes to the students in both districts, and to generate funds for each district through statutory financial incentives for whole-grade sharing.

As a result of the sharing program, some additional class offerings

were created for fifth and sixth graders. These include study skills, social skills, computer, and library classes (on a rotating basis). Band is also available to fifth grade pupils. The result is an eight-period class day with no time set aside for recess for any of the middle school students. Classes are approximately 43 minutes long. Teachers are encouraged to have activities for the children and to let them go outside to run and play at the teachers' discretion. Physical education classes meet twice in six days; obviously on some days there will be no opportunity taken for the students to exercise or play.

The middle school in Union is a large building but it cannot contain all middle school students. The fifth grade is housed in the "Blue Building" west of the main school building and about 100 feet from it. Fifth graders move from the Blue Building to the main building daily for lunch and certain classes. Because the main building was once a high school, there is no playground equipment on the grounds. There is a great deal of open space, however.

Normal passing periods are three minutes long, but the fifth graders are given 5-8 minutes to pass when they go back and forth to the main building. They are allowed to run outside to and from the main building.

Prior to the Boards' action on October 9, the lunch period was under 30 minutes. In nice weather, the children can go outside for part of the lunch period. In inclement weather, they are allowed to be in the lunchroom, hallway, or gymnasium when they have finished eating.

In September, 1989, Appellant, the mother of three young school children, discovered that no structured or unstructured play time was in the schedule for middle school students. Her fifth grade son complained to her about the lack of time to run, play, and exercise. She began doing some research on the issue of recess in middle schools, contacting consultants at the Department of Education and teachers or administrators in Iowa schools. She also read articles on child development. As a result of her study, she determined that youngsters in middle school, particularly fifth and sixth graders, need the release of aggression that play or recess brings, and that B-C-L-U-W's decision to forego recess in lieu of additional academic options was "out of the mainstream."

She spoke to the joint Boards at their September 18 meeting, but no action was taken at that time. She was promoting a plan to shorten certain class periods to add approximately 15 minutes to lunch time (for a 45-minute lunch break) for fifth and sixth grades, and one 15-minute recess, either morning or afternoon, for the fifth grade. Tabled in September, the issue came up for a vote in October. The superintendent at Union-Whitten, Mr. Jack Arnett, proposed shortening class periods one or two minutes to add to the lunch break, and no recess, but proposed that the Boards encourage the two fifth-grade teachers to continue to exercise their discretion to give their classes occasional play time outside.¹

The Boards passed the superintendent's recommendation unanimously, adding a provision to "let the administration use discretion as to choice...

¹ Mrs. Pieper, one of two fifth grade teachers, stated at hearing that she exercises this discretion for a break or recess for her classes at least once per week.

of lunch period change." (This apparently referred to intermingling the fifth and sixth graders' lunch period together.) As a result of the Board's action, lunch time is now 36 minutes.

Union-Whitten Board member Ray Willits testified that "there is no right or wrong" on this issue, but that Appellant did not have much, if any, community support for her cause. He also expressed some resentment to being called to Des Moines for a hearing on this issue, which he likened to being "held hostage to every parent who wants something" that the Boards decide not to grant.

The Boards' discussion of the issue at the October meeting evidenced the fact that they denied Appellant's request for recess time due to inadequate facilities (especially playground equipment) and particularly a stress on varied academic options, combined with the fact that the fifth grade teachers can and do let their classes out to run and play from time to time.²

II.

Conclusions of Law

This appears to be a case of first impression before the State Board of Education; our research turned up no prior cases on the issue of recess for younger pupils. As a general principle, however, local school boards have broad authority to run their districts as they see fit, subject to meeting state accreditation standards. See Iowa Code §§274.1, 279.1, 280.3, and 280.14. The Department of Education has no school accreditation standard regarding recess or otherwise structured free time.

The burden of proof is on Appellant in these appeals to show that the Board's action was taken in violation of law, beyond their authority, was made arbitrarily or constitutes an abuse of discretion. In re Marilene McCandless, 5 D.o.E. App. Dec. 45, 54 (1986). This is a heavy burden, particularly when the challenged decision or action is within a board's power to make, as in this case.

Appellant was moderately successful in her plea to the Boards; the lunch period was increased, albeit not as much as she had hoped. In the face of the facts here, we do not believe Appellant has carried her burden. We are not convinced that the absence of a recess period structured into the daily schedule totally denies students opportunities to exercise and move about daily.

We do agree with Appellant that children at this age need more activity time than older children, and that the Boards could have altered the schedule to accommodate one 15-minute recess period per day for fifth

² Consultant Don Helvick of the Department of Education testified at the hearing as to the results of an informal, random poll he took at the request of the Boards on the issue of fifth-grade recess in middle schools in the area. Of the 20 schools he contacted, 15 had no provision for recess for fifth graders; 4 districts had one 15-minute recess per day; and 1 district had 2 15-minute recess periods.

grade pupils.³ The bare fact that they could have taken the action but chose another option is not generally regarded as sufficient to overturn a decision that is within a local board's power to make. See Deats v. Mar-Mac Community School Dist., 3 D.P.I. App. Dec. 78 (1982); In re Michael Cooper, 2 D.P.I. App. Dec. 358 (1982).

There was a great deal of discussion among the hearing panelists on the ideal middle school structure. We found ourselves in agreement with Director Willits that "there is no right or wrong" on this issue; it's a close case. Arguments can be made convincingly for the additional academic options available to the middle school students, just as an argument can be made regarding the needs of 10- and 11-year old children to have an opportunity to run, yell, play, and in general "burn off steam." There is a point, however, at which a class period can be shortened so much as to render it virtually useless or ineffective. Not all of a 43-minute class period -- in any school -- can be devoted to on-task pursuit of learning. Research is still being conducted nationally on the middle school concept. Thus, while we commend the Boards for their attention to academics, we caution them to avoid rigid thinking; the jury is still out, so to speak, on many factors related to preadolescent academic, physical, and emotional needs.

We also commend Appellant for being an active advocate for her children, and for the courage to face the "powers that be" with her request. She presented much more than an emotional appeal and took it upon herself to become educated and informed. Unquestionably, her points were valid.

In this same vein, the Panel wishes to express its disappointment in the attitude of Director Willits; we hope he spoke only for himself in expressing his displeasure at being haled into a forum to defend the Board's decision. First, those elected have the power to make the decisions. The rest of us, as citizens, have been given constitutional or statutory means to challenge those decisions as a way to prevent abuses in government in this state and this country. A republican form of government with the right to "petition to government for redress of grievances" and the right to freedom of speech does not create a totalitarian or dictatorial form of governance. Those who resent the fact that concerned citizens have the opportunity to appeal decisions of their elected officials to a higher forum and to speak their mind on issues of public concern would be wise to remember the basic premises of our founding fathers.

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

III. Decision

For the foregoing reasons, the decision of the joint boards of directors of Beaman-Conrad-Liscomb and Union-Whitten Community School

³ The daily 20-minute homeroom period, which includes only "spelling," is one source of extra time that the Hearing Panel saw as a possibility.

Districts made on October 9, 1989, to deny Appellants' request to shorten class periods and add a daily recess period for the fifth grade is hereby affirmed. Costs of this appeal under Iowa Code chapter 290, if any, are assigned to Appellant.

Feb. 9, 1990
DATE

Jan. 31, 1990
DATE

Karen K. Goodenow
KAREN K. GOODENOW, PRESIDENT
STATE BOARD OF EDUCATION

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