IOWA STATE BOARD
OF EDUCATION
(Cite as 7 D.o.E. App. Dec. 1)

In re John and Cynthia Wilson	:	
John and Cynthia Wilson, Appellants,	:	
v.	:	DECISION
Dysart-Geneseo Community School District, Appellee.	:	[Admin. Doc. #1074, 1081]

The above-captioned matter was heard on August 5, 1988, before a hearing panel composed of David H. Bechtel, special assistant to the director and presiding officer; Phyllis Herriage, chief, Bureau of Career Education; and Gail Sullivan, administrative consultant for policy and legislation. Appellants John and Cynthia Wilson were present in person and represented by Mr. Ed Skinner of Skinner, Beatty & Wilson, Altoona, Iowa. Appellee Dysart-Geneseo Community School District [hereafter the District] was present in the person of Superintendent Robert Crouse and Mr. Richard Delfs, president of the District board of directors [hereafter the Board] and was represented by Mr. Brian Gruhn of Mollman, Gruhn & Wertz, Cedar Rapids, Iowa. An evidentiary hearing was held according to departmental rules then found at Iowa Administrative Code 670--51.

Appellants timely appealed the decision of the District Board made on February 1, 1988, to enter into a whole-grade sharing agreement with La Porte City Community School District for school years 1988-89, 1989-90, and 1990-91. This appeal was filed under chapter 290 of the Iowa Code. Appellants also sought exclusion from the sharing agreement to allow their three children to attend in the North Tama district at the expense of their resident District. This appeal was filed under section 282.11 of the Iowa Code. The State Board dismissed the appeal with respect to Appellants' youngest son in July, 1988, finding that he was not an "affected pupil" as contemplated by statute. This hearing was to address the alleged hardship to Appellants on behalf of their two oldest children. The 290 and 282.11 hearings were consolidated pursuant to stipulation of the parties.

A preliminary decision was issued by the presiding office on August 25, 1988.

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 two consolidated cases before them.

The Dysart and Geneseo school districts merged in 1966, and since that time, as with most other school districts in Iowa, experienced a decline in enrollment. The District in 1987-88 had a student population of approximately 475 in kindergarten and twelve grades. The District shared some programs and courses with the North Tama County Community School District [hereafter North Tama], but that had not developed into extensive cooperative sharing.

In early 1987 the District looked into whole-grade sharing with North Tama. Joint board meetings were held between the two districts. The Board then appointed an Advisory Committee to examine the option in depth. The Advisory Committee worked over the summer of 1987 and reported to the Board in September. Their recommendation was to continue to study other alternatives to whole-grade sharing with North Tama, including a majority recommendation to look at the La Porte City Community School District (hereafter La Porte City) as a sharing partner. La Porte City had a 1987-88 enrollment of over 700 students.

The Board, in the fall of 1987, commissioned a study to be done by consultants at the University of Northern Iowa regarding whole-grade sharing with La Porte City. The consultants were asked to look at all issues except transportation. The examined issues included programs, facilities, activities, curriculum, and the "middle school concept." The three consultants were positive and encouraging about the potential of a sharing agreement between the District and La Porte City.

Thereafter joint meetings were held between the District and La Porte City boards. The District Board was impressed that La Porte City desired to enter a sharing agreement and were eager to negotiate. A rough agreement was drafted that called for each district to maintain its own K-5 elementary students and combine enrollments in grades 6-12. The middle school (grades 6-8) would be held in Dysart and all students would attend high school in La Porte City. The Board met alone or jointly with La Porte City seven times in December.[1]

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[1] At hearing Appellants raised two peripheral issues regarding December Board meetings. First, the special board meeting on December 23 was "illegal" because notice had not been properly posted; confusion existed in the weekly newspaper (The Dysart Reporter) as to when the public hearing would be held (December 23 or December 29) because of a late change in plans by the administration. Appellants also allege that the special meeting on December 23 violated Iowa Code chapter 21, the Open Meetings Law, in that the closed sessions held on that date had not been properly tape recorded as required by Iowa Code section 21.5(4). The minutes of that meeting reflect the fact that the Board went back and forth from open to closed session. The closed sessions were entered into for [contractual] negotiations. The open sessions concerned the sharing agreement. Previous Record, Board minutes of December 23, 1987, at p. 271.

The Iowa General Assembly in the 1987 session adopted legislation giving procedural direction to school boards in their decisions to whole-grade share. One of the statutes requires a public hearing prior to the signing of an agreement to share. The District held its public hearing on December 29, 1987, and some 150 persons were in attendance and could be heard. A resolution was passed to share with La Porte City, with the understanding that this was not final action by the Board but only a preliminary step in the statutory process. Public comment was received. Many citizens urged the Board to continue to consider North Tama as an option.

Several of those District patrons hired a research firm to conduct a telephone survey of the community to see whether the majority of the community favored one district over another. The survey was conducted between January 4 and 8, 1988. The results were given to the Board at its January 11 meeting. Of 300 persons contacted in the "sample," 131 favored North Tama, 103 expressed a preference for La Porte City, and 66 either were undecided or refused to answer. Seventy-one percent of those contacted were not parents of school-aged children. Among the 29% who had children in school, 39% favored La Porte City over 32% who favored North Tama.[2]

The original draft of the (Iowa Code chapter) 28E agreement between the District and La Porte City left many details of the agreement to be resolved. Following the public hearing (where residents' comments ranged from discussing the similarity of curricula among the three districts, to comments about facilities, to questions about transportation, to concerns about being swallowed up in a few years by La Porte City, the larger district, and losing the middle school in Dysart), modifications and revisions to the proposed agreement were made. The final draft retained clauses regarding continued work between the two potential sharing partners to unify curricula and the creation of a Sharing Advisory Committee comprised of representatives from both boards and administrations to resolve questions and work out details. There would also be a joint Dispute Resolution Committee in the event that disagreements arose.

The District lies in Tama County approximately nine miles from the North Tama schools. La Porte City is in Blackhawk County and its high school is about 16-17 miles from the District. The Board had, in late 1987, asked a Department of Education (DE) team to evaluate the transportation aspects of a sharing arrangement with La Porte City. The DE team recommended that a reduction from seven to six routes would be possible.[3] The riding time, in any event, should be significantly less

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[2] Apparently the balance were undecided or failed to respond.

[3] The Board rejected this recommendation, choosing to keep seven bus routes, which should reduce the time that District students are on the bus from the time it would take if only six bus routes were run. Clearly the bus routes were not and probably could not be finalized in December and January; most districts, if not all, establish their transportation schedules in late summer.

than the sixty minutes per trip maximum set for secondary students. See Iowa Admin. Code 281—43.1(3).

A special meeting was held by the Board on January 25, 1988. At that meeting Dr. Forsyth of the University of Iowa was asked to address the Board and citizens present regarding the significance of the Iowa Tests of Educational Development (ITEDs), given to most secondary students in Iowa and around the nation. Concern was evident that La Porte City's scores were low, and Dr. Forsyth was asked to explain the variables regarding test scores. Following that discussion, citizens asked questions of the Board members, who responded with their thoughts.

The Board then met one week later, on February 1, 1988, to make a final decision regarding whole-grade sharing with La Porte City. Over two hundred District patrons were present, and two hours were reserved (only one was needed) for more public comment at the beginning of the meeting. Board secretary Kathy Krug took extensive and excellent notes and later transcribed them into the official minutes of the meeting. The minutes reveal a complete and relevant discussion among the directors of the issues raised by citizens over the past several months. Each director spoke as to why he or she favored the proposed sharing agreement. Their reasoning, individually and as a group, was clear. A vote was taken, and the Board unanimously approved sharing with La Porte City for school years 1988-89, 1989-90, and 1990-91.

On January 29, Appellants herein filed an affidavit with the Director of the Department of Education seeking release from the whole-grade sharing agreement on behalf of their three children Micole Renee (age 14), Kelly Suzanne (age 13), and James Edward (age 10).[4] On February 29, 1988, Appellants John T. and Cynthia Wilson filed an appeal under chapter 290 of the Iowa Code, seeking reversal of the sharing decision itself.

Many other residents of the Dysart-Geneseo District also filed appeals seeking release from the agreement. After determinations were made as to who had children "affected" by the whole-grade sharing agreement (see Iowa Code §282.11 (Interim Supp. 1987)) several appeals were dismissed. Eight Appellants, including the Wilsons, still had active appeals. All cases were consolidated for hearing. However, immediately prior to the hearing, seven of those appellants indicated verbally over the telephone that they would not be in attendance and requested a dismissal of their hearing requests.

Appellants are the parents of Micole and Kelly, who are in grades nine and eight, respectively, this academic year (1988-89). Appellants request to be released from the sharing agreement (if it is not overturned as a

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[4] Appellants' 282.11 request for release was dismissed by the State Board of Education as to James in a decision dated July 12, 1988. See In re John and Cynthia Wilson, 6 D.o.E. App. Dec. 172. The decision was reached after a finding was made that James would be in grades five, six, and seven during the three-year term of the agreement and would not be "sent to attend school in another district" so he was not an "affected child" under the statutory language.

result of their chapter 290 appeal) to have their children attend school in North Tama. Their appeal is based on geographic grounds.[5]

Appellants' farm is located five miles southwest of the town of Dysart and seven miles southeast of Traer, the town where North Tama schools are situated. From the farm to the high school in La Porte City is a distance of twenty-one miles.

Throughout the period of Appellant John Wilson's participation in the public comment and public hearing process, he raised questions and concerns about transportation, questions which he claims were never adequately addressed by the Board. At hearing before this panel, he testified that his children currently ride the bus for fifty minutes to and from school in the District, and believes they will be on the bus considerably longer for the trip to La Porte City.[6] Superintendent Crouse projected an increase of approximately ten minutes of riding time for the Wilson children as a result of the sharing agreement.

Aside from the distance factor (Appellants live closer to North Tama schools than to La Porte City schools), no evidence was offered on geographical factors. Superintendent Crouse testified that "miles and minutes" were examined as one factor in consideration of whole-grade sharing. See Appellee's Exhibit M. He also stated that if geographic considerations had been the only factors examined, the decision probably would have gone the other way.

II.
Conclusions of Law

The concept of whole-grade sharing, although indirectly alluded to in statutory form for several years, became an articulated legal possibility when the legislature acted in 1987 to establish a guideline and procedure for boards to follow in reaching a decision to combine enrollments between districts. Compare Iowa Code §282.7 (1987) and 1987 Iowa Acts chapter 224 §27 (establishing section 282.10-.12 of the Iowa Code). At the time the District made its decision to share with La Porte City on February 1, 1988, the statute read, in pertinent part, as follows:

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[5] Although in their affidavit of appeal Appellants raised both "educational program" and "geographic considerations" grounds for appeal, at hearing they presented evidence on the latter basis for appeal only, voluntarily waiving any issues of educational programming for their two affected children.

[6] Micole will attend in La Porte City in school year 1988-89 as a ninth grade student at the high school. Kelly is to attend in the middle school in Dysart this academic year, going to the high school next year. Thus Kelly is not an "affected" pupil until the 1989-90 school year when she will be in classes with students from the La Porte City District and "sent to attend" school there. Rather than continue the hearing until she becomes an "affected pupil," we agreed to hear the case as to Kelly at the same time as the case as to Micole.

> Not less than thirty days prior to signing a whole grade sharing agreement whereby all or a substantial portion of the pupils in a grade in the district will attend school in another district, the board of directors of each school district that is a party to a proposed sharing agreement shall hold a public hearing at which the proposed agreement is described, and at which the parent or guardian of an affected pupil shall have an opportunity to comment on the proposed agreement. Within the thirty-day period prior to the signing of the agreement, the parent or guardian of an affected pupil may appeal the sending of that pupil to the school district specified in the agreement, to the state board of education. A parent or guardian may appeal on the basis that sending the pupil to school in the district specified in the agreement will not meet the educational program needs of the pupil, or the school in the school district to which the pupil will be sent is not appropriate because consideration was not given to geographical factors. An appeal shall specify a contiguous school district to which the parent or guardian wishes to send the affected pupil. If the parent or guardian appeals, the standard of review of the appeal is clear and convincing evidence that the parent or guardian's hardship outweighs the benefits and integrity of the sharing agreement. The state board may require the district of residence to pay tuition to the contiguous school district specified by the parent or guardian, or may deny the appeal by the parent or guardian. If the state board requires the district of residence to pay tuition to the contiguous school district specified by the parent or guardian, the tuition shall be equal to the tuition established in the sharing agreement. The decision of the state board is binding on the boards of directors of the school districts affected, except that the decision of the state board may be appealed by either party to the district court.

Iowa Code §282.11 (Interim Supp. 1987).

Since the statute's adoption, the State Board of Education has had several opportunities, through appeal decisions, to interpret and apply the statute. In the first case decided under the appeal provision of section 282.11, the State Board admitted that the language chosen by the legislature for one ground for appealing out of one's resident district ("A parent or guardian may appeal on the basis that . . . the school in the school district to which the pupil will be sent is not appropriate because consideration was not given to geographical factors.") is less than crystal clear.

> The language of the statute with respect to the geographical considerations issue is not terribly helpful in our responsibility to interpret the law and give its intent full application. At first blush it appears that Appellants, in order to be released on this basis, must prove that "consideration was not given to geographical factors" when the sharing agreement was reached. Iowa Code §282.11 (Interim Supp. 1987). We think it is highly unlikely if not totally impossible that a board would fail to at least consider geographic factors in such a decision. Such data as where the majority of the affected student population lives, increased or decreased costs of transportation based upon new routes, distance, the quality of the roads traveled, and time expended in transit are all factors affected by geography and are all basic factors in reaching a decision about sharing partners. Therefore, as the legislature is not presumed to have included a worthless ground for appeal, we must assume that what was meant is more than the absence of consideration of geographic factors by the Board.
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> In support of this interpretation is the language that "the parent or guardian's hardship" is to be a factor in the standard of review of these appeals by the State Board and consequently the hearing panel. We read this to mean that there are circumstances, as contemplated by the General Assembly, where geographic conditions could cause a "hardship" to the parent(s) or pupil(s). This seems much more plausible than whether or not geographical factors were considered at all.
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> Thus, we interpret the geography ground for appeal to mean that there may be instances of true hardship on the parent, guardian, or pupils due to the location of their residence vis a vis the site of the designated attendance center.

In re Randy and Lori Mulford (I), 6 D.o.E. App. Dec. 9, 13-14 (1988).

In this case, we have evidence of distance only. Specifically, Appellants' farm is some 13 or 14 miles farther from the high school in La Porte City than it is from the high school in North Tama. This distance will, of course, result in a longer bus ride to La Porte City. However, Appellants provided no evidence as to themselves or their children that would hint at, let alone prove, a resulting hardship. Distance alone does not a hardship make. In every sharing agreement in the state someone is going to be affected who lives on the opposite side of the school district from the direction the children will be sent. "The intent of the General Assembly in creating the exclusionary appeal process in section 282.11 was, we think, for the exceptional case rather than the typical case." In re Randy and Lori Mulford (II), 6 D.o.E. App. Dec. 188 at p. 192 (1988).

Appellants' request for release on geographic grounds must be denied for a failure of proof.

There remains the issue of whether the sharing decision itself should be overturned, which is the relief sought by Appellants in their chapter 290 appeal. This is not the first time we have been asked to review a decision regarding whole-grade sharing. A one-way sharing agreement was the subject of a 1985 case. See In re Thomas Miller, 4 D.P.I. App. Dec. 109 (1985). The issue arose again in the State Board's decision in In re James Darst, et al., 4 D.P.I. App. Dec. 250 (1986).

In Darst, Appellants asked the State Board to reconsider the application of the guidelines for school closing decisions (announced in In re Norman Barker, 1 D.P.I. App. Dec. 145 (1977)) to decisions for whole-grade sharing. While agreeing that "the decision to turn over a significant portion of the student population to another district for education and activities is an important one worthy of study," the State Board declined to establish firm guidelines or to apply the seven steps in Barker to sharing decisions. Darst, 4 D.P.I. App. Dec. 250, 256.

Appellants in this case have argued, with varying degrees of emphasis, that the February 2 decision of the Board was fatally flawed due to an earlier violation (December 23) of the Open Meetings Law and that the decision to share with La Porte City was educationally inappropriate because of the exceptionally low ITED test scores of La Porte City students. Moreover, the allegation ran through the hearing that more formalized study had been done regarding sharing with North Tama (because of the appointment of and charge to the Advisory Committee) than with La Porte City.

Our scope of review of local school board decisions on 290 appeals is similar to the scope of review of state agency action used by district courts. Specifically, we look to see if the Board decision was arbitrary, capricious, an abuse of discretion made without authority in law, or based on an erroneous theory of law. In re Marlene McCandless, 5 D.o.E. App. Dec. 45, 54 (1986).

The study of the issues, the number of joint meetings between the two boards and other meetings of the District Board alone, and the reasoning stated by the directors themselves on February 1, 1988, belie any arbitrariness — which means a decision based on no evidence or reasoning whatsoever. That leaves the possibility, as raised by Appellants herein, that the decision made was flawed legally.

Clearly the authority exists for the Board to have made this decision. See Iowa Code §282.10 (Interim Supp. 1987). The only avenue of attack on the Board's action comes in a roundabout way. Appellant argues that the failure of the Board to have tape recorded the closed sessions of the meeting on December 23 renders the meeting "illegal," and presumably makes void, or at least voidable, the action taken at that meeting (the resolution to share with La Porte City). The logic of the argument is that if there was an error of law at that meeting, then the action taken in adopting the resolution to share didn't occur legally and therefore didn't occur at all (creating a "legal fiction"); if the resolution didn't' occur, then the process leading up to the decision was flawed.

Appellants subtly suggest an analogy to the criminal exclusionary rule doctrine of "the fruit of the poisonous tree."[7]

If there were no violation of law that occurred at the December 23 meeting, the whole argument crumbles.

We do not believe a violation of the Open Meetings Law occurred on December 23, 1987, when the Board failed to record the closed sessions portions of the meeting. It is true that under normal circumstances, a public body meets and conducts business in the open. However, there are several statutory exceptions to that principle, codified at Iowa Code section 21.5(1)(a)-(j), allowing a governmental body to go behind closed doors to discuss its business. Under those conditions, a tape recording is to be made and "sealed." Iowa Code §21.5(4)(1987).

However, Iowa Code section 21.9 negates those requirements when a governmental body goes into closed session to discuss contractual negotiations. This eliminates the need for taping the closed session. ("A meeting of a governmental body to discuss strategy in matters relating to employment conditions . . . is exempt from this chapter.") The Board minutes of the December 23 meeting and testimony received at this hearing indicate that the Board went into closed session on several occasions to discuss contractual negotiations, a not uncommon occurrence in school districts in the winter months. We have no evidence which casts any doubt on the truth of the testimony or documents. We thus conclude no violation of the Open Meetings Law occurred.

There being no remaining issues of merit to resolve, the 290 appeal must be dismissed as well.

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

III.
Decision

For the reasons cited above, the decision made by the Dysart-Geneseo Community School District board of directors on February 1, 1988, to whole-grade share with La Porte City Community School District is hereby affirmed. The appeal is dismissed.

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[7] Summarily speaking, the "fruit of the poisonous tree" doctrine results in the legal exclusion of any evidence obtained as a result of information provided by an accused person in violation of his or her constitutional rights. Thus, if a confession is given by a suspect in a case, but the officers failed to advise the suspect of his or her rights prior to obtaining the confession, the confession is inadmissible in court and any other evidence found (except that discovered independently of the confession) as a result of the information provided in the confession is "fruit of the poisonous tree" and likewise inadmissible.

Also for the reasons cited in Section II of this opinion, Appellants' request to be released from the terms of the sharing agreement to enroll their children in North Tama at the expense of the Dysart-Geneseo district is denied.

Costs of this appeal, if any, under Iowa Code chapter 290, are hereby assigned to Appellants.

February 10, 1989
DATE

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

Feb. 3, 1989
DATE

David H. Bechtel
DAVID H. BECHTEL, SPECIAL ASSISTANT
— POLICY AND BUDGET
AND PRESIDING OFFICER