

IOWA STATE BOARD
OF EDUCATION

(Cite as 6 D.o.E. App. Dec. 337)

In re Shapiro and Woodin :

Howard Shapiro and :
Jacqueline Woodin, :
Appellants, :

v. : DECISION

Ames Community School District, :
Appellee. - - - - - : [Admin. Doc. #1082] - - - - -

The above-captioned matter was heard on May 18, 1988, before a hearing panel consisting of David H. Bechtel, [then] administrator, Division of Administrative Services and presiding officer; Dr. Maryellen Knowles, assistant chief, Bureau of Instruction and Curriculum; and Gayle Obrecht, chief, Bureau of Administration and Accreditation. Appellant Howard Shapiro was present in person, not represented by counsel. Appellee Ames Community School District [hereafter the District] was present through counsel, Ed Bittle and Ron Peeler of Ahlers, Cooney, Dorweiler, Haynie, Smith & Allbee, Des Moines.

An on-the-record hearing with additional stipulated evidence was held pursuant to departmental rules currently found at Iowa Administrative Code 281-6.7(1). Appellants seek reversal of a decision of the District board of directors [hereafter the Board] made when the Board certified its budget on March 7, 1988, temporarily effecting a restructure of Crawford Elementary School from a kindergarten through sixth grade student body to a kindergarten through fourth grade configuration. A preliminary decision was issued to the parties on August 24, 1988.

I.
Findings of Fact

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

Appellants are or were co-presidents of the Crawford [Elementary School] Parent Teachers Organization (P.T.O.) whose children were enrolled in that school. They appealed the District Board's March 7 restructuring vote arguing that the decision to remove the fifth and sixth grade from Crawford school and consequent busing of those pupils to Edwards school violated their and Crawford students' constitutional guarantees of procedural due process and equal protection of the laws. They also allege that the Board's decision was made arbitrarily and capriciously, a violation of substantive due process.

In late 1987, Assistant Superintendent Kathryn Johnson directed a memorandum to interim Superintendent Luther Kiser summarizing enrollment data and making recommendations for staffing and school organization for school year 1988-89. Data showed that projected enrollments for the fifth and sixth grade at Crawford were thirteen and fourteen students respectively, not considering Iowa State University housing students.¹ Dr. Johnson suggested that the fifth and sixth grade classes be combined under one teacher as one possible method for dealing with the situation.

The evidence showed that changes made in several of the elementary attendance centers could result in approximately a 23:1 pupil-teacher ratio through the district. The goal was to reduce staff without eliminating program components or reducing program effectiveness. Combining the fifth and sixth grades at Crawford would have freed one classroom, reduced one full-time equivalent (F.T.E.) position (a teacher), and created a 27:1 classroom ratio. This action would also have resulted in the remaining teacher teaching to two levels. Later discussion raised the possibility of 1.5 F.T.E. in the combined fifth and sixth grade classroom, thereby reducing only one-half of a position and creating a multi-age grouping rather than a combined class.

On January 11, Assistant Superintendent Johnson made a presentation to the Board regarding projected enrollment figures. "There were questions about some small class sizes. Dr. Kiser indicated that principals have been alerted that there will be some staff reductions recommended." Previous Record, Board minutes of 1/11/88 at p. 10. The groundwork was therefore laid for some action to be taken to address the small classes at Crawford, either by bringing in more University housing students, combining the fifth and sixth grades, or busing out the fifth and sixth grades and relocating the University housing students.

At the next regular Board meeting one week later, in his report on the proposed 1988-89 budget, Dr. Kiser recommended a reduction in elementary teaching staff of four and one-half positions, but no mention was made of which schools or grades were to be affected by those reductions. Id. at Board minutes of 1/18/88. A budget hearing was scheduled for February 9, 1988. Id.

Later that week the parents of affected Crawford students met with the Crawford principal, Mr. Leland Himan, and Assistant Superintendent Johnson. Mr. Himan had apparently advocated the option of sending the Crawford upper classes to Edwards elementary where the newly combined fifth and sixth grades would create 24:1 and 21:1 pupil-teacher ratios. On January 22 the administration looked into transportation costs for this option.

The Crawford parents met on the 26th of January and indicated they favored, of the options on the table at that point, the combining of the fifth and sixth grade classes at Crawford with 1.5 teachers as a solution

¹ Apparently students in University housing do not fall clearly into a designated attendance center but are assigned ad hoc, depending upon classroom sizes.

to the temporary enrollment problem. They announced this preference and their rejection of two other options, including the one finally adopted, in a letter from Appellants to Superintendent Kiser, which also indicated their reasoning. See Appellants' Brief at Attachment B.

The next event in the chronology was a February 1 Board meeting where the three options being considered for Crawford fifth and sixth grades were presented by Mr. Himan accompanied by his assessment of the relative advantages and disadvantages of each. Appellant Shapiro reiterated Mr. Himan's statement to the board that the P.T.O. endorsed the .5 F.T.E. cut with multi-age grouping as the preferred option. Dr. Kiser assured those present that public comments at the upcoming budget hearings would undoubtedly include more input on the subject, and he was not prepared to make a recommendation at that time beyond the 4.5 F.T.E. cut.

Budget hearings were held on February 9 and 13. A number of employees, citizen committee members, and parents, including Appellant Shapiro, spoke to several aspects of the proposed budget. The Board met again on February 16 and 17.

On the 16th the following entry was made in the minutes:

The alternative of busing the fifth and sixth grade students from Crawford to Edwards was discussed at length. Some of the Board favored that option because they felt it would provide a better educational experience for the students in those two grades and would affect fewer schools in the district. Principal Lee Himan stated that the Crawford parents preferred to keep school in tact [sic] and not get involved in busing students to Edwards. Ron Meals said the option had been discussed by the Edwards staff and parents, and they had no problems with it.

Evan Firestone, a Crawford parent, spoke against the busing alternative because it would place the students remaining at Crawford in a less viable situation and affect their socialization by removing the role models provided by older students. The change would negatively affect the viability of the school itself and have an adverse impact on the Crawford neighborhood. This plan would cause Crawford to have to bear an inequitable portion of the solution for a district problem.

Charles Miller understood there would be no dollar difference between the plan that would have 1.5 teachers at the fifth and sixth grades at Crawford and the plan to bus students to Edwards. In fact, he believed the busing would actual [sic] make the second plan more expensive.

Howard Shapiro expressed frustration about the process. He stated that the Crawford parents had been

involved in discussing the options for a month. They left the meeting Saturday thinking there was an understanding.

Previous Record, Board minutes of February 16 and 17 (combined) at p. 5. The Board took no action on the specific concerns of Crawford parents. Id. at p. 6. On the 16th, however, following additional remarks by Crawford Principal Leland Himan, additional comments by Crawford parents, and additional discussion by the directors, the Board unanimously passed the motion to bus fifth and sixth grade pupils from Crawford to Edwards. This appeal was not filed from the February 17 decision, however. It was not until the Board certified the budget on March 7, in effect finalizing the earlier official action, that Appellants filed their affidavit challenging the Board's decision.

II. Conclusions of Law

Appellants allege that the Board's decision to restructure Crawford Elementary School to a K-4 building for school year 1988-89 and to bus the fifth and sixth grades to Edwards Elementary denied Appellants due process of the law, was arbitrary and capricious, and violated the Crawford students' right to equal protection of the laws under the Fourteenth Amendment to the Constitution. We will examine each of those arguments in turn.

Iowa law gives the board of directors of a school corporation exclusive decision-making power to "determine the number of schools to be taught, divide the [school] corporation into such wards or other divisions for school purposes as may be proper, [and] determine the particular school which each child shall attend" Iowa Code §279.11 (1987). See also Iowa Code §280.2 (1987).

It is hornbook law that the burden of proof in a case is on the one challenging the action, absent a statute or other law allocating the burden elsewhere. In this case, the Appellants must prove by a preponderance of the evidence that the decision made by the Board on January 21, 1987, was made "fraudulently, arbitrarily or unreasonably, not supported by substantial evidence not within the board's jurisdiction, or based on an erroneous theory of law." In re James Darst, et al., 4 D.P.I. App. Dec. 250, 258, citing In re Janis Anderson, 4 D.P.I. App. Dec. 87. The assumption is that the decision reached will be factually supportable, but that assumption is a rebuttable one. If an Appellant can prove arbitrariness (the absence of reasoning and factual support) we will overturn a decision on its merits rather than merely evaluating the process. In re Pat Muehl, et al., 5 D.o.E. App. Dec. 258, 267.

Was it arbitrary of the Board to look at Crawford's fifth and sixth grades, clearly both below the desired 23:1 pupil-teacher ratio, and move only those students to another school? We think not. The reasoning was amply expressed by Mr. Himan in his presentations to the interim superintendent and the Board: classroom space was needed to house other programs; two teachers could be reduced at a considerably larger savings

than if only a half a position had been reduced as in the multi-age grouping option; no combining of fifth and sixth grades with the attendant problems of teaching to two levels would occur; and only the students affected by the small class size would be impacted by a move, as opposed to shifting a number of students, University housing students or others, into Crawford's fifth and sixth grades. There was unquestionably a sufficient base of factual support for the decision.

Appellants also challenge the action as discriminatory, denying both the K-4 students remaining at Crawford and the fifth and sixth grade students moved to Edwards "Equal Protection of the laws." The legal analysis followed in an Equal Protection challenge begins by asking whether a class of persons is being singled out for differing treatment. We assume for the sake of argument that Crawford students were targeted for a building structure change to which students at no other school would be subjected. Thus, a class of persons (Crawford students) is singled out and treated differently.

The next step in the analysis is whether the designated class of persons is a "protected" class or whether the "right" at issue is a fundamental one. This inquiry determines what test is applied to a school board's action: if a protected class is identified or fundamental right is at stake, the courts use "strict scrutiny" in assessing the action taken; if not, the test is whether the Board's decision had a "rational basis."

Clearly there is no fundamental right of a child to attend a given attendance center and Appellant provided no support for such a notion. In addition, elementary pupils at Crawford or elsewhere are not in a "protected class" of persons who have historically or traditionally been subject to discrimination. Therefore, the test to be applied is whether the Board's decision to single out Crawford students to bear the brunt of the undercrowding or overstaffing problem bears a rational relationship to the goal sought to be attained. We think it clearly does.

Although the decision to remove the fifth and sixth graders had repercussions on the K-4 students remaining, such as the loss of upper class "role models" for the younger children and the reduction of the age of the "buddies" appointed to children in lower grades, there is simply no basis on which we could conclude that the by-products of the primary decision engendered problems to the degree necessary to cause us to overturn this decision. Many schools function well with K-5 enrollments as the middle school concept is popularized. Some districts even offer K-3 programs only, sending upper elementary students to other districts under statutory sharing agreements.

There is nothing inherently amiss or suspect about a K-4 building. The fifth and sixth grade children removed to Edwards may even benefit in ways unanticipated at the time of the decision. It is certain they will not be subjected to the potential disruption of a combination class, or the teacher and pupils subjected to the fractioned, attention-diverting problems possible in a multi-age grouping situation. The pupils will be exposed to students in another building and expand their social contacts prior to entering middle school or junior high. There are obvious student benefits to the decision in addition to the financial benefits realized by its impact.

Finally, we also reject Appellants' allegation of a due process violation. Due process, simply stated, means that before a governmental entity can deny a person "life, liberty or property," due process of the law shall be observed. We know of no protected liberty or property interest in attending a specific school, especially considering the school board's power under section 279.11 to select sites of attendance for each child in a district. But we do acknowledge that an expectation is certainly held by parents and students that if they don't relocate, their children will continue to attend at the site originally designated for them. Again we assume, for the sake of argument only, that the parents held a legitimate expectation of their children's continued attendance at Crawford. All that due process requires under the circumstances is notice of the proposed change and an opportunity to be heard or to express their views prior to the action being taken.

Between December 7, 1987, and March 7, 1988, the Crawford parents and their representatives were given and accepted various opportunities to express their concerns and preferences. Although Appellants challenge the final decision and characterize it as having emerged "at the eleventh hour," it is clear from a review of the evidence that at all times the option selected was under consideration by Dr. Kiser for recommendation to the Board. Appellants themselves addressed this option in a letter to Dr. Kiser on January 28, 1988, (Appellant's Brief at Attachment B) and to some extent alluded to it in another letter written on February 8. *Id.* at Attachment C. While their conversations with the interim superintendent and their remarks to the Board may have assumed a different option was likely, Appellants knew all along that the decision would rest with the Board. Dr. Kiser's remarks and initial leanings notwithstanding, Appellants were never given assurances of what the recommendation to the Board would finally be. They were given adequate process of law; in fact, through the P.T.O. and Advisory Council systems Appellants had more notice and opportunity to be heard than would be legally required in any similar decision-making process. An "opportunity to be heard" does not carry with it the obligation by the Board to follow blindly the recommendations of an obviously interested and legitimately biased group of people.

In passing, however, we believe a comment on the Board's reluctance to respond to Appellants' questions is in order. Arguably at least, if the directors or the acting superintendent would have prepared or delivered a response to Appellants' questions (see *id.* at Attachment D, letter to the Board president from Appellants) the likelihood of holding this hearing would have been significantly reduced. We do not suggest that a Board be required to respond to concerns about or justify ad infinitum the decisions made by them in their official capacity. What we do suggest is that the Board would be wise to articulate reasons for a particular decision and memorialize them in the official minutes or other correspondence to assure that constituents and patrons are supplied with the basis for a controversial or otherwise significant decision. If valid reasons exist, as here, for selecting a certain option over others, there is no reason why the rationale cannot be expressed in a formal way. See, e.g., In re Bishop and Thompson, 5 D.o.E. App. Dec. 242, 246.

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

III.
Decision

For the foregoing reasons, the decision of the Ames Community School District board of directors made on March 7 (certification of budget and finalizing of the February 16 decision to bus Crawford fifth and sixth grade pupils to Edwards) is hereby affirmed. Appeal dismissed. Costs of this action, if any, are hereby assigned to Appellants under Iowa Code section 290.6.

11/16/88
DATE

11/9/88
DATE

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

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