

IOWA STATE BOARD  
OF EDUCATION

(5 D.o.E. App. Dec. 19)

In re Jane Pike, et al.	:	
Jane Pike, Janice Palmer,	:	
Rick Pike, Geraldine Loupee,	:	
Appellants	:	DECISION
v.	:	
Cedar Rapids Community	:	
School District,	:	
Appellee.	:	[Admin. Doc. 852]

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The above-captioned matter was heard on June 3, 1986, and continued to and concluded on July 21, 1986, before a hearing panel consisting of Dr. Robert D. Benton, (then) commissioner of public instruction and presiding officer; Mavis Kelly (then) chief, Federal Programs Section; and Dr. Orrin Nearhoof, (then) director, Teacher Education and Certification Division. Appellants were present in person and by counsel, Ms. Jacqueline Miller of Dolezal and Miller, Cedar Rapids. Appellee [hereinafter the District] appeared in the persons of (then) Superintendent Harold Guthrie and Board President Mary Ann Kucera and was represented by Counsel Ron Wendt of Nezette, Hendrickson, Marnier & Good, Cedar Rapids. An evidentiary hearing was held pursuant to Iowa Code Chapter 290, contested case provisions of Iowa Code Chapter 17A, and departmental rules found at Iowa Administrative Code 670—51.

Appellants timely appealed a March 10, 1986, decision by the District's board of directors [hereinafter the Board] to close four elementary schools and begin implementation of a restructuring of the District into a K-5, 6-8 elementary-middle school program. The closings were slated to take place in June, 1986 (Jackson Elementary School) and June, 1987 (Truman, Arthur Annex, and Polk Elementary School).

I.  
Findings of Fact

The hearing panel finds that it and the State Board of Education have jurisdiction over the parties and subject matter of the instant appeal.

Appellants represent groups known as the United Schools Coalition and Cedar Rapid Citizens for Community Improvement. One of Appellants' witnesses, Rev. Tom Palmer, was chairman of a group calling itself KEEP (Keep Elementary Education at Polk). None of the named appellants was a member of the Administration's appointed "Committee of Forty" (also known as the "School Facilities" committee) which was comprised of citizens from all geographic locations in Cedar Rapids, included men and women, and had representatives from the business and education communities as well as homemakers.

The recommendation to form such a committee was made by (then) Superintendent Harold Guthrie in February, 1985, and approved by the Board at the next meeting. The committee members were selected in mid-May and met on the 30th to be given their tasks and timelines. Each of four ten-person sub-committees was assigned a specific aspect of the overall study of school facilities. The four sub-committees were Grade Organizational Plan, Educational Impact, Physical Plant, and Environmental Safety and Convenience. The sub-committees met frequently over the next few months; for example, the Grade Organizational Plan subcommittee convened nine times between May 30 and August 21 when the members presented a preliminary report with recommendations in response to the area studied. All sub-committees were expected to conclude their studies and research by November 1, 1985. A final report was issued on November 13, 1985.

The next step in the process culminating in the decision at issue here was the Superintendent's recommendation for school facilities usage and organization structure of the district made on January 27, 1986. It is undisputed that this was the first time the general public was clearly and unequivocally made aware of an impending decision to close some buildings in the District. However, at the immediately preceding meeting, the minutes reflect that Tom Palmer, a witness in the case before us, spoke on behalf of KEEP, and Jerry Copeland and Burton Loupee also addressed school closing and grade restructure. Moreover, two years earlier, in May of 1983, the Board had voted to close Grant Elementary School and restructure into a K-5, 6-8 configuration at Wilson Junior High School, to be effectuated "when the district is reorganized to a K-5, 6-8, 9-12 program."

Following the Superintendent's recommendation, the Board scheduled two public hearings, one on February 18 at Washington High School and another on February 27 at Taft Junior High School. The decision was scheduled to be made on March 10 at a regular board meeting, and the Board would entertain comments on the recommendations at that meeting and at the regular February board meeting, in addition to receiving public input at the two hearings.

The Board voted 6-1 to approve Superintendent Guthrie's recommendations and this appeal followed. Testimony and evidence received by this hearing panel indicated that Dr. Guthrie's recommendation was made as a result of steadily declining enrollment, an opinion that buildings should be closed as opposed to programs being cut, the financial savings resulting from closing fiscally inefficient buildings, and a desire to maintain the neighborhood school concept (albeit a larger neighborhood) through the eighth grade.

## II. Conclusions of Law

Nine years ago, in June of 1977, a similarly constituted hearing panel and State Board reversed a local board decision to close an attendance center. See In re Norman Barker, 1 D.P.I. App. Dec. 145. In that case, the Van Buren Community School District voted to close an elementary attendance center on March 14, 1977. Events leading up to the decision

were sketchy and erratic. In late 1975, a Department of Public Instruction regional consultant recommended that in light of declining enrollment, the board should consider closing some attendance centers. Id. at 145. Some five months passed with apparently no discussion on the subject until the district superintendent wrote a memorandum to the Board offering his concerns for the fiscal condition of the district and recommending a list of alternatives to consider. Id. at 146. The Board discussed those alternatives generally the following December. Id.

In February 1977, a motion was made—quite "out of the blue" apparently—to close a certain elementary attendance center. Id. Chaos ensued, and in a complete departure from orderly procedure, a second motion was made to table the issue, either indefinitely or until the next meeting. No one could agree whether the resulting 5-0 vote was a vote on the original motion (to close the school), a vote to table indefinitely, or a vote to study the issue until the next meeting. Id. In any event, no study was undertaken, by the Board or anyone else. Id. Nevertheless, at the next meeting the Board passed "Plan No. 2," which included a school closing. Id.

On those facts, the hearing panel recommended and the State Board of Education approved a reversal of the Van Buren Board's decision. Id. at 150. In doing so, several steps were set out as recommended guidelines to be followed in closing attendance centers. Id. at 149-50. Those guidelines were cited with approval by the Iowa Supreme Court in Keeler v. Iowa State Board of Public Instruction, 331 N.W.2d 110 (Iowa 1983).

The seven steps from Barker are as follows:

1. A timeline should be established in advance for the carrying out of procedures involved in making an important decision. All aspects of such timelines would naturally focus upon the anticipated date that the board of directors would make its final decision in the matter.
2. All segments of the community in the school district should be informed that a particular important decision is under consideration by the board of directors.
3. The public should be involved in providing sufficient input into the study and planning involved in important decision making.
4. Sufficient research, study and planning should be carried out by the board and groups and individuals selected by the board. Such things as student enrollment statistics, transportation costs, financial gains and losses, program offerings, plant facilities, and staff assignment need to be considered carefully.
5. There should be an open and frank public discussion of the facts and issues involved.

6. A proper record should be made of all the steps taken in the making of the decision.
7. The final decision must be made in an open public meeting and a record be made thereof.

In re Norman Barker, 1 D.P.I. App. Dec. at 145, 149-150.

We have said that the Barker guidelines represent the State Board's belief that local boards "make well-studied decisions and involve the public at all stages in those decisions." Certainly, in the final analysis, Barker represents sound management and business practice and sensitivity to the fact that board decisions often profoundly affect the constituency who, therefore, should be both apprised and involved." In re Ron Puhmann, 5 D.o.E. App. Dec. 10, 15.

We have no difficulty concluding in this case that the Barker guidelines were met. The individual steps were achieved over a period of fifteen months, from February, 1985, to March 10, 1986.

The public's involvement in this case came at two different times: the formation of public sub-committees as part of the School Facilities Committee of Forty. They were given tasks to perform and told of the deadline for study. They asked for and received necessary statistics and information from the administration. The sub-committee reports were timely filed and evidenced concentrated and well-considered data leading to rational conclusions and recommendations.

The superintendent studied the reports of the four sub-committees over the next two months and made his recommendation to the Board in late January, 1987. At that meeting, the upcoming public hearings were announced for February and a March decision-date was targeted. Several persons spoke at that meeting, addressing both the school closures and the restructuring proposals. Five of the seven board members were in attendance at the January meeting to hear the concerns expressed. At the next regular meeting, on February 10, thirteen patrons spoke to the school closings and restructure issues, and correspondence received from twelve others was read into the record, including a petition signed by parents and friends of Jackson School, one of the attendance centers considered for closing.

The two public hearings were held at which both the administration and individual board members were present. The March meeting was also utilized by members of the public to voice their opinions and suggestions prior to the motion and vote to implement the superintendent's recommendation.

Mrs. Mary Ann Kucera, Board president, testified that she thought the Board heard the concerns of the District constituency, and agreed with various suggestions made, such as maintaining a K-6 principal in each of the three K-8 buildings, if the proposal passed. Many of the concerns expressed orally at the hearings and meetings were the same concerns as the sub-committees had expressed in their reports. It is clear to this

panel that the Board kept an open mind throughout the proceedings, and the individual directors made their decisions on a combination of the sub-committee reports, the data supplied to and by the sub-committees, the superintendent's recommendations, and the public input received in response thereto.

In sum, a timeline was established as suggested by Barker; in fact, two timelines were set: one for the sub-committees and one for the Board's decision. One naturally followed the other with four months between. Board minutes reflect the comments of district patrons to the effect that the upcoming decision was already a topic of great interest in the community. There is no question of their awareness of the impending vote.

The in-depth, virtually unrestricted study by the sub-committees of the underlying issues inherent in this major decision clearly establishes the recommended public input and "sufficient research, study, and planning" elements of Barker. The Board had access to the same data. Further, on several occasions the Board entertained public comments, and the administration engaged in question and answer sessions at the two public hearings.

The excellent record before this panel is a testimonial to the careful recording of the steps taken leading up to the March 10 decision. In fact, the minutes as written by Board Secretary Yegge are as exhaustively detailed and comprehensive as any we have ever seen. Finally, even Appellants must concede the fact that the decision at issue here was made and recorded at an open public meeting. Those physically unable to attend can view District Board meetings on television. Public access is beyond question.

The hearing panel finds that the Barker guidelines were met and exceeded in this case. We therefore reject Appellants' contentions that the decision was made without sufficient planning, research or study; that there was insufficient involvement of all aspects of the community in the study that formed the basis of the decision; and that the study committees' hands were tied in that they were restricted to considering elementary attendance center closures to the exclusion of junior high facilities. Each sub-committee was free to explore "other" alternatives. See Appellee's Exhibit 1 at p. 206. There is simply no basis on which to overturn the Board's decision. The Barker guidelines having been met, there is no evidence of arbitrary or capricious action on the part of the Board. The closing of attendance centers falls squarely within a local board's power under Iowa Code section 279.11.

While we wholeheartedly espouse the democratic principle of review of local board decisions, we wish to add that over time we have seen an eroding of the understanding of the Barker case and others decided after it. Where that case and its recommendations were originally designed to insure that the public is both informed and involved, it has seemingly grown a new and independent meaning. One look at the facts of Barker compared to the facts of this case, for example, reveals a world of difference in the behavior of the boards of directors. However, if we have correctly heard Appellants herein (and others as well) Barker is somehow deemed to stand for the public's right to control the decision. See In re James Darst, 4 D.P.I. App. Dec. 250, 258. Clearly, they have no

such right. Iowa Code section 278.1 delineates those matters and issues capable of decision by the electorate. The setting of attendance centers is a decision to be made by the board. Iowa Code § 279.11 (1985).

The recognition of public viewpoint does not translate into public control of decision-making. The ability to make recommendations to the administration and board does not mean those recommendations are ultimately binding on the elected officials. Because members of the public may disagree with the proposal or may still have questions at the time the board votes, it does not necessarily follow that the board was ill-informed or acted prematurely.

Perhaps the 1977 Barker panel was shortsighted, for a passage appearing in that decision has not been taken to heart. It bears repeating.

With future prospects of continued declining enrollment and fiscal belt tightening being very great, the prospect of closing attendance centers will have to be considered in nearly every school district in the state. In rendering its decision here, the Hearing Panel wishes to express its confidence that the decision will not open the floodgates to appeals of this nature. The State Board of Public Instruction will require, as it did here, a very heavy burden of proof on the part of the Appellants in appeals regarding the closing of attendance centers.

In re Norman Barker, 1 D.P.I. App. Dec. at 149.

The panel wishes to commend Ms. Miller, Appellants' attorney, on her excellent brief in this case, and to express appreciation to both parties for their organized, professional presentations.

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

III.  
Decision

For the foregoing reasons, the decision of the Cedar Rapids Community School District Board of Directors made on March 10, 1986, is hereby affirmed.

Aug 27, 1986  
DATE

Lucas J. Dekoster  
LUCAS J. DEKOSTER, PRESIDENT  
STATE BOARD OF PUBLIC INSTRUCTION

Aug 28 1986  
DATE

Robert D. Benton  
ROBERT D. BENTON, Ed.D.  
DIRECTOR OF EDUCATION  
AND RESIDING OFFICER