

Iowa State Board
of Education
(Cite as 5 D.o.E. App. Dec. 164)

In re Richard Lee Hughes, et al. :

Richard Lee Hughes, Joe Doyle :
Stufflebeam, Rose Marie Jaynes, :
Karen Kay Zoutte, Timothy Reid :
Orris, Judith Ann Wessling, :
Donald Jacob Cunningham, :
Appellants, :

v. :

DECISION

Board of Directors of Washington :
Community School District, :
Appellee. :

----- [Admin. Doc. #890] -----

The above-captioned matter was heard on December 16, 1986, before a hearing panel consisting of Dr. Robert D. Benton, director, Department of Education and presiding officer; Dwight R. Carlson, assistant chief, bureau of school administration and accreditation; and A. John Martin, chief, bureau of instruction and curriculum. Appellants, except for Mr. Orris and Mr. Cunningham, were present in person and were represented by Mr. John Cruise of Barker, Cruise & Kennedy, Iowa City. Appellee [hereafter Board] of Washington Community School District [hereafter the District] was present in the persons of Board President Dr. John Thorne and Superintendent Thomas Engler, and was represented by Mr. Terry Loeschen of Cray, Loeschen, Goddard & Warren, Burlington. An evidentiary hearing was held pursuant to Iowa Code chapter 290 and departmental rules found at 670 Iowa Administrative Code 51.

Mr. Hughes et al. timely appealed a decision of the District Board made on August 13, 1986, to close the elementary attendance center located at Brighton, Iowa, and to restructure the two remaining elementary attendance centers located in Washington, Iowa to a K-3 enrollment in one building and a 4-6 enrollment in the other, beginning with school year 1987-88.

I.

Findings of Fact

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

In July, 1984, Thomas Engler was hired as superintendent for the District. Dr. Engler spent the first months of his superintendency reviewing the status of the District. Seven months after he took the position he received a report from the department of public safety, division of fire prevention, indicating serious deficiencies in the Brighton elementary attendance center and, as Dr. Engler described the fire marshall's letter, chastising the District for ignoring previous

warnings and concerns about the building. Appellee's Exhibit 13. The deficiencies related to the roof, support beams, walls, lack of fire doors and access for the handicapped. Dr. Engler asked each Board member to appoint two persons from his or her director district for the purpose of evaluating all the buildings in the District. The formation of a Buildings and Grounds Committee was recommended in June 1985, and formed in October 1985. After four months of touring the facilities and discussing priorities, the Committee reported to the Board in March 1986. In addition to fourteen community members from the director districts, Dr. Engler, three board members, and the director of transportation, buildings, and grounds for the District served on the Committee.

The Committee's report was written as a Resolution. The report stated the following:

It is the consensus of the committee that the following recommendations be presented to the Board of Education, the intent being the safety, well-being, and conducive educational environment for the students of the WCSD:

- (1) It is recommended that the Board of Education of the WCSD complete the minimum fire-marshall recommendations for the Brighton Elementary school at the earliest. Specifically, the recommendation to install fire-retardent dry-wall over the existing paneling as well as the installation of fire-doors on all hallway openings. The estimation of costs being in the \$11,000 to \$13,000 range.
- (2) It is also recommended that the Board of Education, at the next general election, approach the public to re-establish the schoolhouse tax levy in the amount of 30¢ [sic] per \$1,000 of assessed valuation for a period of 10 years. The purpose of this levy would be to enable the district to continue its maintenance and safety program, enacted in the fall of 1984, for the buildings and sites of the school district. The importance of regular maintenance and general upkeep of buildings and sites cannot be overlooked when it concerns the safety of our students and the economy of regular maintenance concerns.

It is the feeling of the committee that these recommendations take into consideration the state of our economy as well as the concerns for our children and employees.

Appellee's Exhibit 5. Notably, the recommendation was not to close the Brighton building but to repair it. The recommendation to impose the schoolhouse tax bolsters that conclusion. No other buildings were specifically mentioned. Testimony at the hearing before this panel indicated that despite the written recommendation, discussion at the March 12 meeting included the prospect of closing rather than repairing the Brighton building. Spokesperson for the Committee, Mr. Larry Bartlett, stated that he felt the closing issue was better resolved by the Board than a committee. Even if this issue was not the heart of the matter

studied, it was evident that it beat steadily below the surface. Mr. Bartlett spoke of his and the Committee's reluctance to address frontally the closing of the Brighton building, knowing it would be a very unpopular position to be in and better left to the Board.

Dr. Engler subsequently prepared a proposal, with the assistance of other administrators in the District, which recommended closing the Brighton attendance center. The Superintendent provided the Board with financial data on the Brighton building and staff prior to a work session meeting on May 31, 1986. Appellee's Exhibit 6. The meeting was open to the public, but visitors, questions, and input were discouraged. The document Dr. Engler presented to the Board for that work session clearly evidenced encouragement to close the school.

On June 11 at a regular Board meeting, Superintendent Engler made his proposal official: he recommended closing Brighton and housing all elementary students in the two Washington area attendance centers, Lincoln and Stewart elementary schools. He also proposed a K-3 and K-4-5-6-enrollment pattern.¹ The proposal called for public hearings and a decision in August. A few days prior to his formal presentation to the Board, Dr. Engler spoke before the newly-formed Brighton Business Boosters organization and broke the news of his upcoming recommendation.

Following the announcement on June 11, the Board set up two public hearings for the purpose of obtaining input on the proposal. The first was held in Brighton on July 15; the second on the following evening in Washington. Those wishing to speak were required to register and to limit their remarks to three minutes. Written comments were also solicited. Five of the seven named Appellants spoke at one or both of the public hearings; a total of 24 persons spoke between the two.

A regular Board meeting was held the next week, on July 23. At that time, Appellant Rose Jaynes sought and was granted permission to address the Board again on the issue of closing Brighton. She asked that a community task force be formed and volunteered to serve in a membership role. After discussion, her request was denied by Board President Thorne, on an informal polling of the directors rather than on a vote.

The next board meeting was a special meeting held on August 4 for the purpose of allowing Superintendent Engler to respond to questions about his proposal posed by the Board and given to him at the July meeting. The Board would also discuss the proposal. Citizens were given an opportunity at that meeting to ask new questions. At the conclusion of the special meeting, the Board decided an additional work session would be unnecessary and the members agreed to follow through with the original timeline and vote on the proposal at the August 13 meeting. That action came to pass; the motion to close the Brighton building and restructure the remaining attendance centers passed on a six to one vote following discussion. This appeal followed.

¹ The Board modified the administration's proposal on August 13, voting to keep all kindergarten students in one building for a K-3, 4-6 pattern.

Appellants contend that the decision-making process was flawed, the community was given inadequate notice of the closing possibility, and little opportunity was provided for input. They challenge the research and statistics on which the decision was based and the absence of study and consideration of possible alternatives. They seek reversal of the Board decision with remand orders to the Board to appoint a special task force to deal solely with the school closing issue.

II. Conclusions of Law

A local school board is statutorily authorized to determine the number and location of attendance centers in the district and determine which children will attend each center. Iowa Code § 279.11 (1985). The State Board's scope of review of local board decisions arising under chapter 290 appeals is de novo. Arbore v. Cedar Rapids Community School District, 1 D.P.I. App. Dec. 74. Accord Atkinson v. Hutchins, 68 Iowa 161, 26 N.W. 54, 55 (1885); 1912 O.A.G. 642; 1930 O.A.G. 132. De novo means "anew." Black's Law Dictionary, 4th Ed., p. 483.

Despite our authority to take a brand new look at the evidence considered in making the decision below, we are limited in our review by our prior precedent and holdings. First, we will not reverse a legally authorized local board decision unless it was made arbitrarily or capriciously, or against the weight of the evidence. In re Janis Anderson and Ottumwa Transit Lines, Inc., 4 D.P.I. App. Dec. 87, 93. Second, in school closing cases we follow guidelines announced in In re Norman Barker, 1 D.P.I. App. Dec. 145. The guidelines were cited with approval in Keeler v. Iowa State Board of Public Instruction, 331 N.W.2d 110 (Iowa 1983). Those seven procedural steps against which we review school closing decisions 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 149-150.

Appellants in this case focus their challenge on numbers two, three, and four of the guidelines. We therefore compare the facts of this case to the recommendations we made in 1977 in deciding Barker.

In June of 1985, the Board set down its goals for the next year. See Appellee's Exhibit 1. Superintendent Engler's suggestions for goal setting, Appellee's Exhibit 2, included asking the directors to take a hard look at district facilities. One option was to "replace the elementary school at Brighton" and house all elementary students at Lincoln and Stewart elementary buildings. Id. at I.A. 1. Another item stated the possibility more bluntly: "Close Brighton." Id. at I.C. 1. The Board couched its stated goals regarding buildings and grounds more cautiously.

The Washington Community School District Board of Directors shall establish a task force for the purpose of recommending future district needs by assessing present transportation organization, physical plants and curricular coordinates. This task force shall be comprised of representative [sic] from the administration, professional staff and parents of present and future students in this district.

Appellee's Exhibit 1.

Appellants contend that studying all district buildings is not tantamount to studying whether or not to close one building. Witnesses for both sides included members of the Buildings and Grounds Committee who disagreed about whether or not the task force (Committee) was implicitly if not explicitly directed to consider closing Brighton as an option in their facilities study and recommendation. All agreed that closing was mentioned at various times over the four-month period of the Committee's existence. Mr. Bartlett, the spokesperson for the Committee, perhaps shed the most light on the Committee's position when he agreed that the Committee did not recommend in writing the closing of the Brighton building because they didn't want to bite the bullet and come down that clearly on one side of a hot issue.

One thing is certain: The Committee members were in disagreement about the wisdom or necessity of closing the school, but there were concerns about spending excessive amounts of money to repair the Brighton building beyond fire code standards because of the feeling that that attendance center would have to be closed someday. The condition of the building was no secret to the members of the Brighton community, and the closing possibility had been raised on previous occasions over at least a twenty-year period. The Board, under the proposal created by Dr. Engler and the administration, decided to take the controversial action effective

at the end of this school year. They clearly knew that there would be an overcrowding situation in the remaining buildings necessitating the purchase of additional temporary buildings and restructuring of the grade levels. They concluded on the basis of Dr. Engler's figures that District funds would be saved immediately, and the savings would increase over time, plus the fact that the safety of the students would not be a concern for an extended period due to the dangers inherent in the old building.

In applying the facts of this case to the Barker guidelines, we conclude that the District met the spirit of the recommendations. A timeline was established in advance of the decision. Dr. Engler, in making his formal proposal in June, suggested that a target date be set in August for decision-making. The Board agreed. Appellee's Exhibit 7 at p. 3.

The second guideline is that the community be informed that the decision is being contemplated. Dr. Engler "previewed" his upcoming recommendation to the Brighton Business Boosters on June 5, and the press picked up the story. The agenda for the June 11 meeting, publicly posted as required by law, indicated that the Board would be receiving the administrative proposal to hold hearings in July regarding housing all elementary students in Washington, "specifically Lincoln and Stewart" and to "close Brighton School at the end of the 1986-87 school year." Appellee's Exhibit 20 at p. 5. The next day, June 12, the Washington Evening Journal carried the story under the headline "Forums set on school shuffling plan -- Brighton center would be closed." Appellee's Exhibit 21 at p. 1. The Clarion Plainmen also carried the story. Letters to both editors abounded. Unquestionably the proposal was literally "the talk of the town" of Brighton. The community was informed.

The third Barker guideline suggests public involvement "in providing sufficient input into the study and planning involved in important decision making." Appellants raise their collective eyebrows at this one, arguing that if public involvement as to the study and planning was indeed undertaken, it was disguised as the Building and Grounds Committee who were never told directly to evaluate the closing of the Brighton building and who did not make that recommendation to the Board. We might tend to agree but for the fact that all Committee witnesses admitted that the possibility of closing Brighton was discussed and contemplated; while the report/resolution to the Board did not recommend the closing, verbal exchange was held on the subject at the March meeting at which the Committee reported. The "input" recommendation was certainly fulfilled when the Board entertained comment by community residents from June through August, including the two public hearings in July. No special task force needs to be appointed solely for the purpose of countering or attacking an administrative proposal to close a building. In re Wayne Newton, et al., 2 D.P.I. App. Dec. 346; In re Robert Dunn, 5 D.o.E. App. Dec. 31, 37.

The fourth step in the Barker procedural guidelines is designed to assure adequate study by the Board of the impact of a closing decision on program offerings and staff assignment in addition to fiscal, facilities, and transportation ramifications. Although the Building and Grounds Committee addressed only some of these issues, the guideline asks that the local board examine the factors. The three-way dialogue between the

community and the Board, asking questions of the Superintendent, and Dr. Engler's statistical and data-oriented responses adequately covered all recommended factors.

The last three steps are not at issue, but we conclude that they, too, were met through public hearings and open board meetings, and the decision and steps leading thereto were recorded properly in the minutes.

In sum, we heard on appeal from a group of citizens concerned about the future of their community and the education of their children, who felt shut out of a decision that affected them more strongly than other members of the District. The Brighton community stood ready to assist the Board and Dr. Engler to save the school; they volunteered personal time, labor, and even materials to make the necessary repairs to the building to keep it open. When their generosity was rebuffed, they felt betrayed. Moreover, they believed their children's learning environment to be nearly ideal: a neighborhood school with a relatively low pupil-teacher ratio. But even they realized the dangers inherent in the old building and knew its other shortcomings such as the lack of heat to the student gymnasium. They recognized that the closing was somehow inevitable, but sought to buy time. The Board decided time was not for sale.


We find the facts of this case basically indistinguishable from In re Richard Dunn, supra, In re Dorothy Keeler, et al., 2 D.P.I. App. Dec. 296, and In re C. Donald MacCormack III, 5 D.o.E. App. Dec. 1. All motions or objections not previously ruled upon are hereby denied and overruled.

III.
Decision

Having found that the Board's August 13, 1986, decision met the criteria laid down in the Barker guidelines as discussed above, we hereby affirm. Costs of this appeal, if any, under chapter 290 of the Iowa Code are assigned to Appellants.

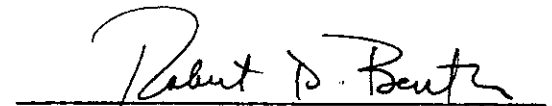
January 9, 1987

DATE


LUCAS J. DEKOSTER, PRESIDENT
STATE BOARD OF EDUCATION

December 30, 1986

DATE


ROBERT D. BENTON, Ed.D.
DIRECTOR, DEPARTMENT OF EDUCATION
AND PRESIDING OFFICER