1100-F20282-7/86

IOWA STATE BOARD
OF EDUCATION
(5 D.o.E. App. Dec. 1)

In re C. Donald MacCormack III	:	
	:	
C. Donald MacCormack III, Appellant	:	DECISION
v.	:	
Burlington Community School District,	:	
Appellee.	:	[Admin. Doc. 846]

The above-captioned matter was heard on May 14, 1986, before a hearing panel consisting of Dr. Robert D. Benton, [then] commissioner of public instruction and presiding officer; Mavis Kelley, chief, Federal Programs Section; and A. John Martin, director, Instruction and Curriculum Division. Appellant was present and represented himself. Appellee Burlington Community School District [hereinafter District] was present in the persons of Dr. James Smith, superintendent, and Mrs. Ellen Fuller, board president, and by counsel, Mr. Terry Loeschen, attorney, Burlington, Iowa. 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 chapter 670--51.

Mr. MacCormack timely appealed a decision of the District board of directors [hereinafter Board] made on February 20, 1986, to close the Middletown Elementary School at the close of the 1985-86 school year.

I.
Findings of Fact

The hearing panel finds that it and the [then] State Board of Public Instruction have jurisdiction over the parties and the subject matter of this appeal.

Appellant, C. Donald MacCormack, resides in Middletown, an unincorporated town six miles north and west of the city of Burlington. He is the chair of "Parents of Burlington," an independent, ad hoc task force organized to study the school closing issue this spring.

The District is situated in southeastern Iowa, and its student population is approximately 5,760. In the 1985-86 school year, the District Board operated nine elementary attendance centers, three middle schools, and one high school. Several District schools were closed in recent years, and a new middle

Middletown closed and all students were transported to Prospect Hill. In so concluding, he figured <u>increased</u> transportation costs would be $6,000-$7,000. Appellant disputes this. The figures for transportation supplied by the administration indicate per mile estimated cost at $1.87. The route would be approximately 26 miles one way, or 52 miles round trip, including the mileage to and from the point of origin (bus garage). This was multiplied by 186 school days, and the figure showed transportation costs to be approximately $17,840.

Dr. Smith's figure was not a "total costs" figure, so undoubtedly he subtracted the current transportation costs (to bring students into Middletown) from the $17,840 figure to reach a figure he deems represents "increased" costs of transportation. In our computations, this would not be out of line or out of the realm of feasibility. In fact, the inclusion of a NW to SE route may, because it now joins the regular flow of transportation into Burlington, actually result in increased efficiency. The District might be able to do some rerouting, combine with other routes, or set up a shuttle system to a drop-off point in the District, and actually reduce the $6,000-$7,000 figure. The point is, Dr. Smith's figure is in the ballpark, and the projected riding time (45 minutes) is within state requirement of 60 minutes one way for elementary pupils. <u>See</u> 670 I.A.C. 22.1(3).

The hearing brought out the fact that Dr. Smith's figures were subject to question by the Task Force for several reasons: first, a variation in methods of computation; second, his inability to provide exact figures due to the form of the questions and incomplete status of the data at the time of the year the figures were requested; and the Task Force's lack of confidence in the superintendent's information because of previous (perceived or actual) inaccuracies[1]. This distrust was compounded by the Task Force and ad hoc committee's frustration in trying to do a thorough job, in trying to find ways to save their school, and the relatively short time they had to accomplish that task. They saw Dr. Smith's responses to their questions as slow in coming, incomplete, and evasive. In fact, it is commendable that he was even able to pull together general statistics in response to the committees' in-depth inquiries.

Appellants raised the issue of the applicability of Iowa Code section 280.12 (as amended) to a school closing study. That section now mandates the appointment by the school board of an advisory committee composed of educators, parents, and other "community representatives" to make recommendations to the board with respect to evaluating needs, goals, plans, and progress of the local educational program. The District has established such a committee, but it was not specifically utilized or involved in the school closing issue. Clearly, <u>Barker</u> was decided prior to the enactment of this portion of section 280.12. In that case, we recommended in guidelines three and four that the board involve "the public" in the study of student enrollment statistics, transportation costs, financial ramifications, and impact on facilities and staff. While we agree that the advisory committee could be utilized to conduct this study, we do not think it is necessary that the same group be involved.

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[1]Dr. Smith had projected cost savings from the earlier merger of the Grimes and Salter buildings which, for unexplained reasons, were not realized.

Along the same line, Appellant was concerned about the fact that the Task Force was composed of primarily Middletown residents. We fail to see how expanding this group to non-Middletown area residents would have been more equitable. Since the school targeted for closing was located in Middletown, those residents should be highly involved in the study and recommendations to the Board. No doubt Appellant would have been equally dissatisfied, if not more so, had the Task Force been composed of primarily non-Middletown residents. We can find no fault with the appointments, and that finding is further bolstered by the Board's acceptance of and work with the ad hoc committee.

To the allegation that the Middletown school closing represented a demographic political ploy rather than an efficiency cost-saving decision, we disagree. Appellant admitted, as well he must, that neighborhood school closings are emotionally charged issues. We often rebel at the loss of something we took for granted would continue in perpetuity. Faced with the economic facts and the sad reality that Iowa's population is declining, few options remain. Although the loss of a school often signals the death knell of a community, it is not a school that keeps the town alive, but a town that keeps the school alive.

In sum, we conclude that the Barker guidelines were observed and followed by the District Board in this case. A timeline was established and announced on December 5 at the time the Task Force was appointed and given its directives. The community was informed of the upcoming decision by minutes and agendas. The appointment of seven community members to the Task Force (and the recognition of and response to ad hoc committee) satisfied the third guideline of involving the public. The Task Force and the ad hoc committee's reports included the necessary data to be studied as suggested by guideline number four. There were at least four board meetings in the November-February period at which the public had an opportunity to question the Board and make comments. The Board discussed some of the Middletown citizens' concerns in their February 15 work session, so those comments and questions did not fall on deaf ears. Appellant conceded the last two guidelines were met by the Board; its record was very complete and there is no question that the decision was made in open public meeting as required by law.

Nevertheless, we are less than enthusiastic about our holding in this case for two reasons: first, the brief time period between the recommendation and the decision, and second, because of the Board's failure to resolve to the public the perceived inconsistencies in the data to be studied. While it would be impropitious of us to suggest a minimum time period for the seven steps to be fulfilled, sixty days surely tests us. If those guidelines are only superficially followed to assure affirmance at this level, with no intention of actually considering the recommendations a board asks for, we have created a monster. The guidelines were announced to assure community input, which often can bring forth valid, theretofore unimagined alternatives.

The ad hoc and Task Force committee members who testified before the hearing panel are examples of the sterling resources available to a school district. They are bright, well-organized, conscientious men and women who brought a variety of skills and business management experience to their task. We commend both parties on their professional presentations before us.

II.
Conclusions of Law

We have stated consistently since 1977 that the State Board of Public Instruction is reluctant to assume the role of a "super school board" when faced with review of discretionary decisions such as the one before us today. A local school board has the statutory authority to determine its own attendance centers. Iowa Code § 279.11 (1985). Because, in part, the Code does not provide a method for making those determinations, we adopted guidelines for school boards to follow in school closings. See In re Norman Barker, 1 D.P.I. App. Dec. 145. These guidelines and our application of them were approved by the Iowa Supreme Court in Keeler vs. Iowa State Board of Public Instruction, 331 N.W.2d 110 (Iowa 1983). Most districts, and this one is no exception, are aware of the "Barker guidelines" and attempt to follow them in making these difficult decisions.

Those seven steps 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.

Our statutory duty in deciding a chapter 290 appeal is to "make such decision as may be just and equitable. . . ." Iowa Code § 290.3 (1985). We have also stated with regard to our standard of review of local board decisions, "We will not overturn a properly executed and legally authorized decision of a local school board absent proof of arbitrary or capricious action." In re Janis Anderson and Ottumwa Transit Lines, Inc., 4. D.P.I. App. Dec. 87, 93. Reasonable minds may always differ, but the mere fact that they do is not cause to reverse. In re Elizabeth Cott, 4 D.P.I. App. Dec. 231, 238.

The Barker guidelines have been in effect for over ten years. Nevertheless, decisions to close schools continue, as the state is faced with fiscal crises and overall declines in enrollment, and appeals from those closings continue. The arguments by appellants in those cases have become more sophisticated, and we find ourselves faced with attacks on the guidelines themselves. We, too, are growing concerned that districts have taken a valid concept ("a reasonable and prudent procedure to follow in making decisions as important as the closing of an attendance center," Barker, 1 D.P.I. App. Dec. at 149) and stretched it to its limits.

We purposefully did not include in our school closing recommendations the requirement that these seven steps occur over a specified period of time. "It is to be understood that such an outline must be flexible enough to be used as the particular circumstances of each decision dictate." Id. Yet in case after case, it seems that step one precedes step seven by a matter of one, two, or three months. Repeatedly, we hear, either expressly or impliedly, that local boards, aware that their decision may be appealed, are only "going through the motions" of following Barker; that the decision has truly been made the minute that the superintendent makes the school closing recommendation, and the steps followed subsequently are for appearances only. This concerns us.

There is no question but that the intent and trend of the laws adopted with respect to governmental bodies is toward more -- not less -- responsiveness to the public. The Barker holding, while only a recommendation, was our answer to that need for responsiveness. We are displeased when the public perceives that its local board asks for -- because it needs to comply with Barker -- public input and a study of the pertinent information and then appears to ignore that input and sincere effort put forth by the community.

This Board was faced with conflicting information. The numbers varied: "Enrollment at Middletown will increase, not decrease," said the Task Force and ad hoc committees based upon a survey of area residents. "Transportation cost increases will be closer to $30,000 than to $6,000," they said. The Board thus had to make a decision, as a local reporter phrased it, as to whom to believe.

We are not in that position. If there is "substantial evidence" to support a board's decision, and it was not made arbitrarily nor capriciously, and if the Barker guidelines were followed, we will affirm the board's decision. We are constrained to do so in this case because we agree that there is substantial evidence on which the District relied in making its decision to close Middletown.

While a question was raised as to the projected enrollment figures for Middletown for 1986-87 and ensuing years, the overall picture presented was one of past decline and current stabilization well below the capacity of the building. With only forty percent of the students in the building living in the immediate geographic area, it is arguably better to bus out that forty percent than to bus in increasing numbers to fill the building. This is especially true considering the relatively isolated location of Middletown.

The issue of transportation is a bit more clouded. Evidence showed that in 1985-86 only 38 of the school's 104-114 students walked to Middletown Elementary. The remainder were bused in, primarily from the Beaverdale area. The administration determined that one additional bus route would be added if

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

III.
Decision

The decision of the Burlington Community School District Board of Directors made on February 20, 1986, to close Middletown school is hereby affirmed. Costs of this appeal under Chapter 290, if any, are hereby assigned to Appellant.

July 10, 1986
DATE

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

July 3, 1986
DATE

Robert D. Benton
ROBERT D. BENTON, Ed.D.
COMMISSIONER OF PUBLIC INSTRUCTION
AND PRESIDING OFFICER