

LOWA STATE BOARD OF
PUBLIC INSTRUCTION

(Cite as 4 D.P.I. App. Dec. 40)

In re Daniel Menke, et al.	:	
	:	
Daniel Menke, et al., Appellants	:	DECISION
	:	
v.	:	
	:	
Sutherland Community School District, Appellee	:	[Admin. Doc. 755]

The above entitled matter was heard on November 30, 1984, before a hearing panel consisting of Dr. James Mitchell, deputy state superintendent and presiding officer; Mr. Gayle Obrecht, director, Administration and Finance Division; and Mr. A. John Martin, director, Instruction and Curriculum Division. Dr. Mitchell served as presiding officer pursuant to the Iowa Code section 257.22, 1983. The hearing was held pursuant to the Iowa Code chapter 290, 1983, and Departmental Rules chapter 670--51, Iowa Administrative Code. The appellants were represented by Attorney Thomas Whorley, and the Sutherland Community School District (hereinafter District) was represented by Attorney Stephen Avery.

The Appellants are appealing the decision of the District Board of Directors regarding the closing of the attendance center in Calumet, Iowa.

I.
Findings of Fact

The Hearing Panel finds that it and the State Board of Public Instruction have jurisdiction over the parties and subject matter involved in this appeal.

The roots of this appeal, like so many of those involving attendance center closings, go back to the time the District was last reorganized. The District was last reorganized in 1961 and contains the communities of Sutherland, Calumet and Gaza. Three attendance centers have been maintained since that time, two in Sutherland and one in Calumet.

The attendance center in Calumet was originally constructed in the mid-1920s and underwent a substantial change in the mid-1950s with the addition of a gymnasium, shop, stage and music room. At the time of the decision at issue here, the Calumet building housed the District's 6th through 8th grades.

The community of Sutherland contains the District's high school housing grades 9 through 12 and the elementary school containing grades kindergarten through 4. The high school, containing a second gymnasium, was constructed in the late 1950s, and the elementary school was built in the early 1920s.

Like many other Iowa school districts, the District has experienced declining enrollments and accompanying budgetary problems. As a partial response to the changing times, the District established a series of citizen advisory committees to review continuing facility utilization.

The first committee was established during the 1979-80 school year. It reviewed enrollment, projected enrollment and expenditure data over a period of about two months. In March, 1980, the Committee recommended that all three existing facilities remain open for full utilization but that a new committee review the situation during the next year. A minority of committee members recommended the closing of one unspecified attendance center.

During the 1980-81 school year, a second advisory committee was established to review facility utilization. It can be inferred from the September 15, 1980 board minutes that then Superintendent James Rhode felt that the committee would recommend the closing of one of the attendance centers. The State Fire Marshal cited the District for fire regulation deficiencies on several reviews, and the District was under increasing pressure to make required fire and safety hazard improvements. A facility study was conducted by the second advisory committee during the 1980-81 school year and included the utilization of consultants from outside the District and some consideration of alternatives. On February 16, 1981, the District Board met with and received the report of the second committee. The committee recommended several efficiency steps be taken, all three buildings continue to be utilized and a building utilization study continue. The Board studied the recommendations and adopted several of the efficiency recommendations.

During the 1982-83 school year, District Board attention was again directed by a tighter budget to reviewing facility utilization. A third citizen study committee was established to review facility utilization. Enrollment in the District had declined from 670 at the time of reorganization in 1961 to 370 at the beginning of the 1982-83 school year. The third study was completed, and several adjustments were recommended regarding the grades housed in the specific attendance centers. The recommendations were adopted by the Board.

In January and February of 1984, Superintendent Brandt, in his first year as District superintendent, recommended that the Board consider proposing a bond issue to finance the housing of all students at one attendance center at the Sutherland high school site. The Board accepted the recommendation and submitted a \$1.1 million dollar proposition to the voters on April 17, 1984. The old elementary attendance center at Sutherland was to be demolished, and the Calumet Attendance Center was to be closed, except for the gymnasium. Sometime during February or March, the Superintendent obtained a copy of the State Board decision on closing attendance centers entitled In re Norman Barker and shared it with Board members. The bond proposition failed with only 34 per cent voter approval.

In June, 1984, an advisory committee established after the April bond issue failed to receive an affirmative vote reported to the Board. The committee recommended that an addition be built on the high school to enable it to house grades 7 through 12, that the Calumet building be remodeled to house grades kindergarten through 6 and that the Sutherland elementary building be closed and demolished. The funding was to come from a voter-approved schoolhouse tax.

A special election on the issue of the schoolhouse tax was set for July 24, 1984. Superintendent Brandt informed the public that the District was in a difficult financial condition and that the District could no longer afford to operate three buildings. On July 10, in a speech presented in the District, he predicted that in the event of a failure to obtain voter approval for the proposed schoolhouse tax, the District would have to close the Calumet Attendance Center and house grades kindergarten through 8 in the elementary building in Sutherland.

At its regular meeting on July 16, 1984, the Board scheduled a special meeting to be held on July 30, 1984. The stated purpose was to review the results of the scheduled July 24 election in light of "facility usage and projects to be undertaken."

Public meetings, public discussion and media coverage of the upcoming election covered the forthcoming proposal to levy a schoolhouse tax. On July 24, the proposal received only a 42% affirmative vote, eight percent short of the needed simple majority.

In a letter to Board members dated July 27, Superintendent Brandt set the agenda for the scheduled meeting on the next Monday. The letter stated in part:

"I assume that you will be taking action to close the Calumet building at the meeting on Monday at 8:00. It is likely that we could have many people in attendance at the meeting. I doubt that delaying the decision will have any positive effect. If you do take action to close the Calumet facility do you want to accomplish the closing immediately?"

Prior to the July 27 letter, it was not likely that the public in general and at least two of the Board members had any realization that a decision on closing the Calumet building was imminent.

Due to a number of factors, an official notice of the July 30 meeting was inadvertently not prepared or posted. However, a significant number of persons learned of the meeting and Board consideration of the issue to close the Calumet building after three patrons had been shown the letter by a Board member, and an estimated 75 to 100 persons were present at the July 30 meeting.

After considerable discussion of the issues, including participation by members of the audience, the Board voted to close the Calumet attendance center for the 1984-85 school year and house grades kindergarten through 8 in the elementary building in Sutherland. The motion was approved by a vote of three to one with one member abstaining.

At a special Board meeting on August 2, the Board voted to hold another public meeting on August 6 to discuss the closing of the Calumet building. This was apparently an effort to remove the potential legal defect of lack of a posted agenda for the July 30 meeting.

Approximately 100 persons attended the August 6 meeting. Several pages of data were presented by Superintendent Brandt which outlined the estimated financial savings to the District. The public was granted an opportunity for oral input.

A motion was made to delay the closing of the Calumet building for one year and review alternative solutions. Considerable discussion, including members of the public in attendance, took place. The Board rejected the motion by a vote of two to three.

A motion was then made to close the Calumet building, house grades kindergarten through 8 in the elementary attendance center in Sutherland, allow the District's administrators to make the necessary plans to implement the decision and to keep the Calumet gym open until an unspecified later date. Again the motion was discussed by the Board members and with the public present. The Board approved the motion, three to two.

On August 9, 1984, the Appellants filed an appeal with the State Board challenging both the July 30 and August 6 decisions.

At the time of the Board decisions of July 30 and August 6, the Calumet Attendance Center was in a state of preparation for the forthcoming school year which was to begin in a few weeks. The District budget for the forthcoming 1984-85 school year had been certified the previous March 15 and contained data assuming the continued operation of three attendance centers in the District. The record shows that even with limited funds the District would have been financially able to operate three attendance centers during the 1984-85 school year. There is nothing in the record to establish that a financial emergency existed.

II.

Conclusions of Law

The State Board has, on previous occasions, had numerous opportunities to review local board decisions involving the closing of attendance centers. The State Board has generally exercised a policy of restraint in those reviews. The State Board supports the legislative policy of local control in the determination of attendance centers as evidenced in Section 279.11, and in the absence of unusual circumstances, will not disturb decisions to close attendance centers. In re Dorothy I. Keeler, et al., 2 D.P.I. App. Dec. 296.

The only local board decision to close an attendance center which has been previously overturned by the State Board occurred in In re Norman Barker, 1 D.P.I. App. Dec. 145. (According to the record, Superintendent Brandt and the Board members became familiar with its contents sometime during February or March, 1984.) The Barker decision involved a local board decision to close an attendance center in the absence of adequate planning and public input. Planning and public input are essentials to good decision-making.

A decision as important as the closing of an attendance center should be made only after thoughtful, knowledgeable, open deliberation and consideration. Reasonable persons do not make important decisions governing their personal lives without sufficient study and planning. Neither should reasonable school boards of directors.

Barker, 148.

In the Barker decision, the State Board established recommended guidelines for school boards to consider when making decisions with important consequences for its patrons. These guidelines were reviewed as part of an Iowa Supreme Court decision entitled Keeler v. Iowa State Board of Public Instruction, 331 N.W.2d 110 (Ia. 1983).

The guidelines recommended in the Barker decision read as follows:

1. A time line should be established in advance for the carrying out of procedures involved in making an important decision. All aspects of such time lines 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.

Barker, 149-150.

It is against those guidelines that we are asked to measure the facts of this appeal. As in Barker, we find District Board actions substantially deficient in appropriate research, planning and public involvement in the important decision at issue here. We conclude that the District Board's actions on July 30 and August 6 were, under the circumstances, precipitous and unjustified.

The District argued that it was in substantial compliance with the spirit and the letter of the Barker recommendations. We do not agree, and we find it difficult to comprehend how District Board members familiar with the contents of the Barker recommendations could have so completely missed the mark. Even more importantly, the District Board missed the fact that the Barker recommendations represent good management decision-making practice.

In reviewing the facts of this appeal, in light of the Barker guidelines, we find that the actions of the District Board on July 30 and August 6 are in substantial accordance in only the last two areas. The record discloses that a proper record was made of most steps taken in the decision, and the decision was made in an open public meeting, at least once if not twice. Technical violations of the public notice requirement of the open meetings laws do not per se negate local board decisions. *Keeler v. Iowa St. Bd. of Pub. Inst.*, 331 N.W.2d 110 (Ia. 1983).

The other five recommended guidelines to good decision making contained in Barker are wholly or substantially lacking on the facts before us. The first indication of any sort of a time line for decision making on the closing of the Calumet building was the Superintendent's July 27 letter to Board members implying a recommendation to close the Calumet building at its meeting scheduled only three days later. If the general public, and even the Board members, were attuned to the immediacy of an impending decision to close the Calumet building, it is not disclosed in the record.

The community, in general, and the Board members, in particular, knew or should have known that a decision would eventually have to be made regarding improved economic use of District facilities. Student enrollment had dropped nearly 50 per cent since the 1961 reorganization, and several studies by citizen advisory groups highlighted the issue. The various advisory groups had studied facility utilization, but had not recommended the closing of the Calumet building and had not studied the available alternatives in depth. What was lacking was any actual sense of urgency. No time line or process had been established for making a decision on the continued operation of three attendance centers. Immediate action was not called for, and in the absence of a bona fide emergency, neglecting to provide a timely and open review and consideration of all viable alternatives was, at best, ill-advised.

The District made good use of facility study committees to aid in its planning. But, all the planning of those groups was aimed at maintaining three attendance centers. Little, if any, attention was specifically directed at consideration of alternatives to the operation of three attendance centers. The District Board apparently considered only three options, the two involved in the 1984 election proposals and the immediate closing of the Calumet building. That was hardly an exhaustive review and study of the alternatives.

While the citizen advisory committees reviewed data in their studies, there is no indication in the record that thoughtful studies comparing alternatives were completed. The closest thing to a comparative study was that prepared by Superintendent Brandt for the August 6 meeting. But that was too little, too late. The August 6 decision was little more than a reaffirmation of the July 30 decision. The record is devoid of evidence of timely adequate research, study and planning aimed at choosing the best of the viable alternatives available to the District Board.

While open and candid discussion of the facts and issues took place at the July 30 and August 6 meetings of the Board, they can hardly be considered timely when measured against good decision-making practices. In the absence of a showing of need for hasty decision-making, the District Board was ill-advised to hear its first public comments on the important issue of closing an attendance center at the same meeting at which it made the decision. Unless time weighs heavily as a factor, school boards should allow time to pass between initial formal public input and the final decision. There are too many facts to digest, too many questions unanswered and too much public sentiment to be measured to involve hasty decisions when time is not of the essence.

On the record as a whole, we find that the District Board acted with unnecessary haste and with insufficient research, study, planning and meaningful public involvement in the two decisions on appeal before us and find that the District Board's decisions to close the Calumet building should be overruled. This decision makes no judgment as to the appropriateness or correctness of the decisions at issue. It only finds that the decisions made were not made after appropriate and careful consideration.

As a matter of practical consequence, we are forced to take into account the difficulties our decision creates for the District, its citizens and, especially, the students involved. The Calumet building has been closed for about five months, and the District has operated by utilizing its two remaining facilities in Sutherland. By the time the State Board reviews this decision and the time for further appeal has passed, the additional elapsed time will make folly of any immediate enforcement of this decision. We conclude that it would be a callous disregard for the interests of the District and its students to order the District to reopen the Calumet attendance center in the middle of the second semester.

Instead, we recommend that the State Board not seek legal enforcement of this decision prior to July 1, 1985, the first day of the next school year. Section 279.10. We further recommend that in the event the District Board establishes to the satisfaction of the State Board that it in the meantime undertook a meaningful study and planning activity involving optimum citizen involvement and again took action on the various alternatives available to it, that the State Board not seek enforcement at all. Persons wishing to challenge any subsequent decision, if any, may seek to do so at that time.

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

III.
Decision

The decisions of the Sutherland Community School District Board of Directors rendered on July 30, 1984, and August 6, 1984, to close the Calumet attendance center, are hereby overruled. Appropriate costs under Chapter 290, if any, are hereby assigned to the District.

January 17, 1985

DATE

December 31, 1984

DATE

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

James E. Mitchell
JAMES E. MITCHELL
DEPUTY STATE SUPERINTENDENT
OF PUBLIC INSTRUCTION, AND
PRESIDING OFFICER