IOWA STATE BOARD OF
PUBLIC INSTRUCTION

(Cite as 4 D.P.I. App. Dec. 250)

In re James Darst, et al.	:	
James Darst, Linda Bell, Patricia Parrish, and Dale Bickel, Appellants	:	
		DECISION
v.	:	
Clearfield Community School District, Appellee	:	[Admin. Doc. 839]

The above-captioned matter was heard on March 12, 1986, before a hearing panel consisting of Dr. Robert D. Benton, commissioner of Public Instruction and presiding officer; Dr. Lee Wolf, consultant, Instruction and Curriculum Division; and Mr. Gayle Obrecht, director, Administration and Finance Division. Appellants Darst, Parrish, and Bell were present and represented by Gregory S. Crespi of Davis, Hockenberg, Wine, Brown, and Koehn, Des Moines. Appellee Clearfield Community School District (hereinafter the District) was present in the persons of Otto Faaborg, superintendent and principal, and Board Members Lewis Larson and Craig Baker. Appellee was represented by Sue Luettjohann Seitz of Belin, Harris, Helmick, Tesdell, Lamson, Blackledge and McCormick, Des Moines. An evidentiary hearing was held pursuant to Chapter 290 of the Iowa Code, contested case proceedings of Iowa Code chapter 17A and Departmental Rules, Iowa Administrative Code chapter 670—51.

Appellants appealed a decision made by the board of directors of the District (hereinafter the Board) on December 12, 1985 to send all District high school students to Lenox High School for the 1986-87 school year under a sharing arrangement. They sought, as relief, the overruling of the decision and an order directing the Board to reconsider its decision following the guidelines announced by the State Board of Public Instruction in a 1977 case, In re Norman Barker.

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 of this appeal.

The District currently operates one attendance center serving approximately 144 students. For the past two years (1984-85, 1985-86) the District has been operating under sharing agreements with the Diagonal Community School District. These agreements were created under Iowa Code section 28E.12 and based upon sharing authorized by Iowa Code sections 257.28 and 280.15.

Under the 1984-85 agreement, Diagonal sent its regular students in grades nine through twelve to the District, with certain course exceptions, and the District sent its students in grades five through eight to Diagonal. Pursuant to the 1985-86 agreement, the sites were reversed; District sophomores, juniors, and seniors were sent to Diagonal and sixth through ninth graders from Diagonal were bused to the District to attend in combination with Clearfield students of the same age and grade level. Although the arrangement worked well the first year, concerns arose regarding equal financial responsibility, discipline, and course offerings. Consequently, Superintendent Faaborg and the Board decided to reexamine their options for upcoming years.

Although Diagonal remained an option, the parties agree that the District's focus was upon sharing with Mt. Ayr or Lenox, two districts contiguous to Clearfield. Diagonal is a smaller district due east of Clearfield; Mount Ayr, the county seat, lies southeast of Clearfield, and Lenox is situated northwest of Clearfield. (Bedford School District, also contiguous to Clearfield, was not considered.)

In December of 1982, a reorganization petition to merge Clearfield and Lenox failed on a combined vote of 311 (in favor of reorganization) to 599 (against reorganization). Lenox citizens voted 50.5% in favor, but only 21% of Clearfield voters favored the action. Reorganization with Diagonal currently would not be possible because the combined districts do not exceed the 300-student level mandated by Iowa Code section 275.3.

The Board, recognizing the lack of a "future" with Diagonal, discussed the fact that a new arrangement should be investigated. There is some dispute as to whether the discussion began in September or October. Following the swearing in of three new Board members on September 16, some discussion of the issue took place. Board minutes reflect as the final discussion item, "The board needs to start planning for 1986-87 sharing agreement." A subsequent special meeting was held on October 3, following a September 24 joint meeting with the Diagonal board, and the minutes of that meeting state as follows:

> The board needs to get some ideas on the 1986-87 school year. [Board member] Craig [Baker] asked if we could get someone down from the DPI [Department of Public Instruction] to explain the athletic sharing agreement that was signed for two years. The Boards are going to look at the area schools and asked about sharing and tuition [sic] out our students to them.

Previous Record, Board Minutes of October 3, 1985, at page 2.

Significantly, at the next regularly scheduled meeting on October 10, the minutes reflected that a study ("some research") was to be launched exploring sharing with neighboring districts. Superintendent Faaborg had already visited the Mount Ayr district and reported to the Board that he was "very impressed with the system." Id. at minutes of October 10. The Board then appointed Mr. Faaborg and two board members (Butler and Larson) to set up a meeting with Lenox. Id.

The Clearfield and Diagonal boards met jointly on October 22 at which time Diagonal board members pressed the District Board for an answer as to whether or not they contemplated continuing the sharing arrangement into the 1986-87 school year. Unwilling to respond prematurely, the Board agreed to provide an answer by mid-December.

Also in October, Superintendent Faaborg and the two appointed Board members made visits to Mt. Ayr and Lenox. Dates were set for joint meetings with the other boards; the Board would meet with Lenox on November 19 and with Mt. Ayr on November 20. At the November 19 meeting, the Board discussed issues they wished to be addressed by the two districts regarding sharing, and Superintendent Faaborg provided Board members with an example of a sharing contract.

The joint meeting with the Lenox board was held in Lenox so Board members could tour the facilities. The public was not excluded. There was an open and frank discussion of the issues involved in sharing. Lenox indicated an interest in pursuing the options but seemed disinclined to send their students to Clearfield, apparently content to accept Clearfield students on a tuition basis and to share teachers with the District.

The next night, November 20, the Board journeyed to Mt. Ayr where they toured the school and discussed various aspects of sharing with the Mt. Ayr board. No decisions were made. A special meeting of the District Board followed on November 26 and was attended by Appellants Parrish and Darst. The purpose of this meeting was to discuss the relative advantages and disadvantages of sharing with Lenox or Mt. Ayr. The visitors were allowed to ask questions of the Board and were privy to a full discussion comparing the two school districts which lasted until approximately 1:05 a.m. At this point it appears from the minutes that the District would only be tuitioning its high school students (9-12) as "Mr. Faaborg was asked by the board to figure out a cost that we could afford after the needs to have to keep the rest of the program operating here." Previous Record, Board Minutes of November 26 at page 2. It was also realized that staff reduction would have to occur to "cover the tuition costs with the school which the board decides to go with next year." Id.

Superintendent Faaborg quoted figures to both Lenox and Mt. Ayr, and the respective boards accepted the figures: Lenox agreed to charge $1500 per student if Lenox provided their transportation and $1250 per student if the District furnished that service; Mt. Ayr agreed to charge $1500 per student including transportation and $1000 per student if Clearfield transported them. The Superintendent reported this to the Board at the December 5 meeting. No action was taken that night, but a lively discussion ensued between visitors and Board.

Significantly, one issue raised involved the possibility of sending students to more than one other district. Presumably because of the public input at that meeting, the Board directed Superintendent Faaborg to:

> "send out a Survey to the families in the Clearifeld [sic] Community with children pre-school to 11th grade level[,] [a]sking the parents what school they would like to have their children attend at the 7-8 level and

> 9-12 level and if they would like to tour the facilities of the schools. The survey is to be sent out as soon as possible and returned by December 11th."

Previous Record, Board Minutes of December 5, 1985.

Such a survey was mailed out on December 6. The prefatory paragraph read as follows:

> The Clearfield Community School board of Education plans to make a major decision this month regarding plans to provide educational opportunities for secondary students for the 1986-87 school year and beyond.

Appellee's Exhibit 16 (emphasis added). The questionnaire asked for a stated preference and ranking (1 for first choice and 2 for second choice) for seventh and eighth grade years and for ninth through twelfth grade years. The three choices were Mt. Ayr, Lenox, and Diagonal. The survey also asked whether the patron preferred tuitioning all grades seven through twelve to another district ("Lenox or Mt. Ayr" - emphasis added) or just ninth through twelfth. The survey also asked if the patron would attend building tours, if held, at Lenox and Mt. Ayr, and left a space for comments. Id.

Superintendent Faaborg tallied the results and reported to the Board at the December 12 regular meeting. They appear as follows:

1. When your child is in grade 7-8 would you prefer

_____Mt. Ayr _____Lenox _____Diagonal

Results:	Mt. Ayr	Lenox	Diagonal
	#1 votes: 13	#1 votes: 28	#1 votes: 3
	#2 votes: 21	#2 votes: 7	#2 votes: 6
	#3 votes: 15	#3 votes: 14	#3 votes: 40

2. When your child is in grades 9-12 would you prefer

_____Mt. Ayr _____Lenox _____Diagonal

Results:	Mt. Ayr	Lenox	Diagonal
	#1 votes: 20	#1 votes: 27	#1 votes: 6
	#2 votes: 20	#2 votes: 13	#2 votes: 3
	#3 votes: 12	#3 votes: 14	#3 votes: 45

Id. Superintendent Faaborg ultimately recommended to the Board that a sharing agreement be made with Lenox. His considerations were based on the results of the survey and meetings held between the Board and the two potential sharing partner districts. The Lenox recommendation centered on the quality of education at the two schools as he perceived it, transportation distance and time factors, and long-term consolidation factors. Appellants' Brief at "Exhibit D."

Because the Board had agreed to respond to Diagonal by mid-December, a special meeting was set for December 18. This announcement appeared in the Board minutes of the December 12 meeting, notice of the meeting was posted on the Clearfield School door, and a "flyer" was sent home with all District students indicating that the meeting would take place "for the purpose of making a major decision for the education of our secondary students." Appellants' Brief at "Exhibit C." That notice also stated:

> The public is welcome however, the board will not solicit any visitors imput at that meeting. The board does invite anyone who has a concern, to contact members of the board prior to that meeting. [sic]

Id. No media representatives contacted the school requesting agenda or other meeting information, but they were informed nonetheless. The special voting meeting was held at 7:00 p.m.

That meeting lasted 18 minutes. Three Appellants were present. A motion was made by Board member Lewis Larson "to tuition the 9-12 students to the Lenox Community school for the 1986-87 school year with beginning negotiations on a contract." Following a second, a roll call vote was taken. The Board passed the motion 3-2. The District contacted officials at all three schools.

Following the holidays, the Board met in regular session on January 9, 1986. At that meeting some 35-40 residents were in attendance. Appellant Patricia Parrish presented a petition signed by 23 of the 26 parents of affected (9-12) students indicating that their preference was for Mt. Ayr over Lenox. A letter signed by 23 of the 26 affected students was presented to the Board asking for a vote to reconsider. A motion to that effect died for lack of a second. Later in the meeting Board President Maralene Longfellow asked Superintendent Faaborg to inquire into the possibility of sending fewer than all 26 students to Lenox. On January 17, 1986, Appellants timely appealed the September 18 decision of the Board and the instant hearing was held.

Appellants are patrons of the District with children at various stages of education. They have raised three issues in this appeal: whether theBoard's decision at a special meeting on December 12 was made in violation of Chapter 22 of the Iowa Code, the Open Meetings Law; whether the Board violated section 280.3 of the Iowa Code in determining attendance centers; and whether the Board's decision was made hastily and without adequate study or public input. In essence, Appellants are dissatisfied with the Board's choice of schools (Lenox) to share and would prefer that students be allowed to attend the school of their choice between three districts.

II.
Conclusions of Law

The hearing panel has before it a Motion to Dismiss filed by Appellee on the ground that the 3-2 vote on December 18 was only an authorization by the Board to enter into negotiations and was not "final action" by the Board. We deny Appellee's Motion on the basis that Chapter 290

contemplates that any "decision" capable of aggrieving a district patron is appealable. Clearly, a decision has been made when a vote has been taken on an issue over which the governing body has authority. The language of section 290 does not reflect a need for "final action" and, therefore, preliminary action resulting in a voted decision constitutes a "decision" within the meaning of the statute. However, this is not to say that inaction by a board can never be construed as a "decision" within the meaning of Chapter 290. We see no need nor authority for holding on these facts that a district patron must patiently wait until contracts are drawn implementing the decision before an appeal will lie. Appellee's Motion to Dismiss is hereby denied.

A. The Iowa Open Meetings Law

Appellants have alleged a violation by the Board of the notice requirements of Iowa Code section 21.4. That statute reads in pertinent part as follows:

1. A governmental body, except township trustees, shall give notice of the time, date, and place of each meeting, and its tentative agenda, in a manner reasonably calculated to apprise the public of that information. Reasonable notice shall include advising the news media who have filed a request for notice with the governmental body and posting the notice on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting, or if no such office exists, at the building in which the meeting is to be held.

2. Notice conforming with all of the requirements of subsection 1 of this section shall be given at least twenty-four hours prior to the commencement of any meeting of a governmental body unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible shall be given. Each meeting shall be held at a place reasonably convenient to the public, unless for good cause such a place or time isimpossible or impractical. Special access to the meeting may be granted to handicapped or disabled individuals.

Iowa Code § 21.4 (1)(2) (1985).

The basis for Appellant's challenge appears to be the adequacy of notice in light of the previous administration's pattern of notice. Appellants concede that the notice of the December 18 meeting was timely posted on the door of the administration office and at the door of the school where the meeting would be held. Nevertheless, they contend that the District should have given additional notice (beyond the posting and the flyer sent home with the children) by personal mail or media (radio, newspaper) announcement.

We find that the notice given in this case complied with the requirements of Chapter 21 in that the agenda was posted on the schoolhouse door at least 24 hours in advance of the meeting. Merely because the policy of the previous superintendent was to post an

additional notice at the local cafe, it does not follow that this Board violated the law by its failure to post an agenda there. Furthermore, the posting policy under objection here had been followed since July of 1985 when Superintendent Faaborg was hired. Visitors were present at nearly every meeting. We would be hard-pressed to conclude that everyone in Clearfield assumed the Board was not meeting regularly or at all because no notice of upcoming meetings appeared at the local cafe.

In addition, whether or not a radio station or newspaper chooses to announce or print school board information is certainly up to the media, not the school administration. In this case, the meeting information was provided to the media, although not requested, and they apparently chose not to air or print the information. This is hardly the fault of the administration or the Board. We find no violation of the notice requirements of Iowa's Open Meetings Law. See In re Dorothy I. Keeler, et al., 2 D.P.I. App. Dec. 296, 300 (1981).

B. Adequacy of Opportunity for Public Input - Applicability of the Barker Guidelines

The main thrust of Appellant's argument is that the Board made its decision without adequate study and without a sufficient opportunity for public input. It is clear from the minutes and testimony of all parties that the extent of the "research" conducted prior to the vote was a site visit at each of the two schools under consideration and discussions between District officials and the other schools' boards and administrations. Under questioning, Superintendent Faaborg admitted that he did not review hard statistical data from either school, such as ITED (Iowa Tests of Educational Development) scores, percentage of students graduating, and percentage of students attending college.

Class-size was discussed as was the teacher-pupil ratio in the schools. Transportation was a weighted factor, both in terms of miles (10 to Lenox, 20 to Mt. Ayr), and road conditions. School and community libraries were not compared. In essence, Appellants urge us to reverse the Board's decision because it lacked an extensive, documented, well-studied foundation.

While we agree that the decision to turn over a significant portion of the student population to another district for education and activities is an important one worthy of study, we are disinclined to lay down guidelines or factors which must be taken into account prior to decisionmaking. See In re Thomas Miller, 4 D.P.I. App. Dec. 109, 116 (1985). We also recognize that districts often have considerable knowledge about the quality of education in contiguous districts, and that experience and observation can often produce a more accurate assessment than one obtained purely by comparing statistical information.

Although we have previously held the Barker guidelines for school closings inapplicable to sharing decisions, In re Thomas Miller, supra, we nevertheless recognize that a decision with regard to sharing is one worthy of public input and study. However in this case, Appellants seem to ask us to hold that public sentiment should control board decisions. At the December 5 meeting several Appellants were present and made remarks and asked questions. They encouraged the Board to survey the District

school population. This was done. The results indicated a preference for Lenox as a sharing partner and such a recommendation was made to the Board. Subsequently, Appellants and others argued that the survey shouldhave been directed solely to the parents of 9-12 students and only their responses considered. The Board couldn't win.

Testimony of several witnesses evidenced the fact that community opinion was split with regard to which district residents preferred. Had the decision been to send students to Mt. Ayr, the Board would have in essence ignored the results of the community survey and would have angered a large percentage, the other half, of the population. No matter which district was selected, the Board would be under fire. Patrons asked for a survey; the survey indicated a preference for Lenox. Patrons then asked that that survey be discounted and their petition acknowledged instead. On this issue, this Board was rendered incapable of pleasing its constituents.

While we agree somewhat with Appellant's contention that the Board's research was less than exhaustive, we do not find that the decision was made arbitrarily or capriciously; in fact, there were valid reasons and public support for the decision.

We also agree with Appellants that the decision to set a mid-December deadline for official action placed unnecessary pressure on the Board. The fact that Diagonal had asked for a decision by mid-December need not have controlled the final decision timeline in this case. Testimony from Board members confirmed the fact that Diagonal was never really in the running for a 1986-87 agreement. The Board could have responded in thenegative to Diagonal and continued to study the two viable options for another month or so. But they did set a date and they did provide District residents with notice that this decision would be made in December. See Board minutes of October 22; Board minutes of December 5; Appellee's Exhibit 15 (the Survey); Board minutes of December 12; Appellants' Brief at "Exhibit C" (the flyer sent home with students); and the agenda for the December 18 meeting. We cannot say that a sharing decision requires a given number of months of preparation. We can only encourage this and all other boards to make the best decision they can using their best collective judgments. Even the Barker guidelines do not address a specific amount of time. "Reasonableness" is the polestar.

With respect to an opportunity for citizens to have input into the upcoming decision, we recognize two factors. First, under the Open Meetings Law the posted agenda is supposed to be written "in a manner reasonably calculated to apprise the public of that information." Iowa Code § 21.4 (1) (1985). Second, once that has been done, it is up to the public to take their concerns to the Board. In that respect, this case represents a scene all too familiar to us: the board shows by various exhibits that adequate notice of an upcoming decision was given, but the public, by and large not present in the months leading up to the decision, cries "foul" after the decision is made. In fact, in this case, no Appellant testified to having utilized the opportunity for written comments extended by the Board in its flyer sent home with the District pupils. Instead, they chose to criticize the Board for not entertaining public comments at the voting meeting December 18. Carried to the extreme, that logic would foreclose a decision ever being made.

We likewise find Appellant's contention that the Board violated Iowa Code section 280.3 an argument without merit. That statute mandates, in part, that the board "establish and maintain attendance centers based upon the needs of the school age pupils enrolled. . . ." What we hear Appellants saying in this regard is that the Board should have made the decision "based on the desires of the school-age pupils." We decline to recognize that as a legitimate reading of the statute. There is ample support in the record to conclude that sharing with Lenox will be advantageous to the Clearfield students.

On the facts before us, we see no need to determine whether or not section 257.28 of the Iowa Code would authorize a school board to send its students to more than one district upon the student's preference. Because we affirm this Board's decision, we need not address the legal and practical implications of such a sharing arrangement.

Appellants failed to produce sufficient evidence that the decision was not founded on good reasoning, or not based on the needs of the students involved, and thus we decline to follow their argument. A board's decision will be overturned only if 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 Janis Anderson and Ottumwa Transit Lines, Inc., 4 D.P.I. App. Dec. 87, 93 (1985). We find no reversible error here.

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

III.
Decision

The decision of the Clearfield Community School board of directors made on December 18, 1985, is hereby affirmed. Appropriate costs under Chapter 290, if any, are assigned to Appellants.

April 17, 1986
DATE

LUCAS J. DEKOSTER, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION

April 10, 1986
DATE

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