IOWA STATE BOARD OF
PUBLIC INSTRUCTION

(Cite as 4 D.P.I. App. Dec. 109)

In re Thomas Miller	:	
	:	
Thomas Miller, Appellant		DECISION
	:	
v.		
	:	
Grand Community School District, Appellee	:	[Admin. Doc. 814]

The above-captioned matter was heard on July 18, 1985 before a hearing panel comprised of three members: Dr. Robert D. Benton, state commissioner of public instruction and presiding officer; Mr. David H. Bechtel, administrative assistant; and Giles J. Smith, chief of guidance services. The hearing was held pursuant to Iowa Code Chapter 290 (1985), and departmental rules 670--51, Iowa Administrative Code. Appellant was present and represented by counsel, Ms. Jean Schutsek of Shinkle and Shinkle, Des Moines. Appellee Grand Community School District (hereinafter District) was represented by Mr. Rick Engel of Hamilton and Engel, Fort Dodge.

Appellant appealed the District Board of Directors' decision to tuition Grand students in grades 7-12 to the Ogden Community School District for the school years 1985-86, 1986-87, and 1987-88.

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.

Appellant Thomas Miller is a resident of the Grand District, living with his wife and three children aged 5, 7, and 11 in Pilot Mound, Iowa. The two older children were enrolled in the District in 1984-85 and all three are enrolled there for 1985-86.

The District has experienced, as have many Iowa districts, declining enrollment and financial difficulties over the past several years. One potential answer to resolving a situation such as Grand's is that found in Iowa Code Chapter 275 (1985) entitled "Reorganization of School Districts." Such a proposal, for the Grand District to reorganize with the Ogden Community School District, was properly placed before the voters of the district in November, 1984. The electorate failed to pass the proposal, although they apparently did pass an enrichment tax at the same time. The voters rejected reorganization, despite the recommendation by representatives of the Department of Public Instruction after a study that such a merger would be beneficial to the District. In 1985-86, the school continued to operate under the status quo,

During this period of time, a Board seat became vacant and two members of the Grand Community ran for the position. The election was held on May 14, 1985. Campaign literature illustrated that the financial status of the district and a remedy for that problem were issues in the campaign. See Appellee's Exhibit #34. Although candidate Barbara Crandall's position on these issues was not clear from the Exhibit, candidate Tom Good clearly ran on a platform favoring the tuitioning of Grand students to neighboring districts. Id. Mr. Good won a close election, defeating Ms. Crandall by a vote of 236 to 213. He was sworn in on May 22, 1985 at the Board's regular meeting. His motion at that meeting, to "table employees' salaries and teaching assignments until May 29 to get figures on tuitioning or sharing with schools north and south" carried. Appellee's Exhibit #24, page 2.

On May 28, 1985, a joint meeting was held between the Ogden Community School District Board of Directors and the Grand Board. The Board's minutes state that the purpose of the meeting was to discuss "the posibility [sic] of tuitioning or sharing." Appellee's Exhibit #25. At this meeting, Ogden Superintendent Lars Garton outlined a proposal whereby Grand students in grades 7-12 could be tuitioned to Ogden under Iowa Code section 257.28 with an agreement drawn between the two boards as authorized by Iowa Code Chapter 28E. Such a plan would enable Grand students to participate in Ogden's extracurricular activities programs without penalty, and would have (following the Ghan letter's summary of options) the effect of saving the District money over a period of three years. Ogden's offer asked $2,000 per student in tuition, contingent upon Grand's agreement to provide transportation services for those pupils sent to Ogden. (Ogden's 1985 per pupil cost is $2,410 with approximately $400 being designated as transportation costs, thereby justifying the $2,000 figure.) The three-year plan was proposed because a one-year plan was deemed disruptive to the educational programs of the Grand students, and because Ogden would incur additional expenses for instruction and materials which would be minimized over three years. Superintendent Garton stressed the need for expedited action to enable Ogden to prepare for the arrival of the Grand students.

A special meeting of the Grand Board was called for May 29, 1985. At that meeting, Superintendent Clifford Cameron of Dayton appeared and suggested a tuitioning program between Grand and Dayton at a cost of $1,000 per pupil, with the Grand district responsible for transportation costs. He even suggested a combination proposal; Grand could tuition some students to Ogden and some to Dayton. His offer was for a one-year only agreement as Dayton is considering some form of merger with the Central Webster District beginning with the 1986-87 school year. This was not the first time the Dayton schools were examined as a possible tuition solution. See Appellee's Exhibit #5 (referencing meetings on 12/19/83 and 2/13/85, and a Board visit to Dayton on 4/11/85).

Although Board President Lundvall suggested tabling the tuitioning decision until after consultation with an attorney well-versed in school law, and board member Troutwine raised a similar motion, each died for lack of a second. A subsequent motion to tuition grades 7-12 to Ogden (presumably for three years) passed 3-2. In the period of time following that meeting, a contract was drafted to facilitate all aspects of the agreement. It was agreed to by the District Board and signed by the Grand Board president on July 12, 1985. The

First, as alluded to above, Appellant viewed the Board's action in voting on the tuitioning at a "special" rather than "regular" meeting as violative of board policy. The policy in question reads as follows:

> [4]c. All board meetings are open to the public. The board may go into executive session when discussing matters involving personnel or when requested by a majority of the members present; but voting must be done in all regular meetings.

Appellee's Exhibit #1, page 3. This section of the policy manual was apparently adopted to mirror Iowa Code Chapter 21 ("Official Meetings Open to Public") wherein it is stated that although the Board may vote to and go into closed session, "[f]inal action by any governmental body on any matter shall be taken in open session unless some other provision of the Code expressly permits such actions to be taken in closed session." Iowa Code § 21.5 (3) (1985). It is clear to this Panel's satisfaction that the basis for Mr. Miller's objection is a misinterpretation of the language of the Board's policy. The last phrase of the policy misuses the term "regular." The policy should state that voting is prohibited in "executive" or "closed" session, or that it may only take place in "open" session. The distinction related to voting is between open and closed sessions, not between regular and special meetings. Nothing in the Code of Iowa prohibits voting in open session at special board meetings. We find no violation of the Open Meetings Law, and we specifically find no violation of Board policy in this regard, having heard testimony on the issue of the intent behind this policy. Undoubtedly the language could have been clearer. (We assume further that the Board realizes the strict limitations on closed session as outlined in section 21.5 (1) (a)-(j) rather than as loosely stated in their policy. For example, a mere request by a majority of the Board is insufficient to authorize a closed session, contrary to what is stated in the policy, if the subject matter of the discussion is not one of the (a) through (j) subsections.)

Appellant's second objection also alleges a violation of law. From his affidavit of appeal, it is apparent that Mr. Miller presumed that the tuitioning action taken at the May 29 board meeting was based upon Iowa Code section 282.7, rather than section 257.28. Although the two Code sections are similar, distinctions do exist. Section 257.28 appears in Section I of this decision in full; section 282.7 reads in pertinent part:

> 282.7 Attending in another corporation - payment.
> 1. The board of directors of a school district by record action may discontinue any or all of grades seven through twelve and negotiate an agreement for attendance of the pupils enrolled in those grades in the schools of one or more contiguous school districts having approved school systems. If the board designates more than one contiguous school district for attendance of its pupils, the board shall draw boundary lines within the school district for determining the school districts of attendance of the pupils. The portion of a district so designated shall be contiguous to the approved school district designated for attendance. Only entire grades may be discontinued under this subsection and if a grade is discontinued, all higher grades in that district shall also be discontinued. A school district that has discontinued one or more grades under this subsection has

Groff and others illustrated that in every instance board meetings were noticed in compliance with the provisions of Iowa Code Chapter 21. Copies of the agendas for upcoming meetings are available in the administration office, and the meetings are announced in the Ogden Reporter, the Dayton Review, the Boone News-Republican, and on radio station KWBJ in Boone. Appellant and his witnesses testified that they knew of board meetings either through the newspaper, radio, or by word of mouth.

The minutes of several board meetings were entered into evidence. These clearly reflect the fact that over a five month period discussions had taken place pertaining to tuitioning students as an alternative to the failed reorganization proposal. Testimony by Appellee's administration and board members corroborated the minutes. The inherent problem appears to lie partially in the nebulous quality of the agenda items. For example, Appellee's Exhibit #7 is a news release admittedly typical of the language used in the agendas, announcing an upcoming joint meeting of the Ogden and Grand boards. Where the purpose of the meeting was to discuss tuitioning or sharing, the news release stated, "It is the intent of the two boards to review the potential of mutual assistance in planning for the young people of the two districts." Appellee's Exhibit #7. It is not difficult to see how persons reading an agenda worded thusly might be surprised to discover that tuitioning was discussed, or that they might claim ignorance of any discussion of tuitioning or sharing. The purpose behind the notice requirements of the Open Meetings law is to inform the public and encourage interested persons to attend and participate. See Iowa Code section 21.1 (1985). Agendas that repeatedly "hide the ball" do not facilitate the intent of the law.

Along this same line is the unwritten practice of the Board regarding public input at board meetings. When unannounced citizens began to unduly lengthen board meetings by raising questions or directing comments to the Board, a practice began whereby any person wishing to speak at a board meeting was required to request permission to do so at least one-half hour prior to the meeting. According to Appellant's testimony, corroborated by Appellee, no citizen is allowed to speak or even ask a question of the Board unless his or her name appears on the published agenda or the list composed prior to the meeting. This fact, in combination with a murky or vague agenda, undoubtedly contributes to the feelings of frustration by local residents; if they do not know the actual subject matter of scheduled discussions, they may not anticipate having any questions or input. If board members discuss and then vote on an issue at that same meeting, it is conceivable that no public input would be "allowed" under those circumstances. Obviously a clearly written agenda would cure this problem. The Hearing Panel views the poor communication channels as the main cause for Appellant's contention that the Board's action was taken without the knowledge, consideration, and cooperation of the District constituency. It is beyond question that some form of sharing or tuitioning was discussed at at least five board meetings. We find no reversible error here, nor any violation of law or policy.

Appellant's remaining issues on appeal relate to alleged inadequate investigation of alternatives to tuitioning the Grand secondary students to Ogden. Specifically, he raises the failure to study the ISCAP funding alternative, the possibility of splitting the District, dissolving the District or accepting Dayton's less expensive tuitioning offer. Evidence in the form of

recommendations. Although utilization of a state agency is not required for these types of decisions, the existence of a DPI Study, with recommendations on several alternatives, belies the charge of insufficient investigation of potential solutions. In the instant appeal, substantial evidence was presented supporting the Board's decision, which we see as the compelling issue in this case.

All other motions and objections of the parties not previously ruled upon are hereby denied and overruled.

III.
Decision

The decision of the Grand Community School District Board of Directors in this matter, made on May 29, 1985, is hereby affirmed. Appropriate costs of this appeal, if any, under Chapter 290 are assigned to the Appellant.

August 9, 1985
DATE

LUCAS J. DEKOSTER, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION

July 29, 1985
DATE

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