

STATE BOARD OF
PUBLIC INSTRUCTION

(Cite as 2 D.P.I. App. Dec. 346)

In re Wayne Newton, et al.	:	
	:	
Wayne Newton, et al., Appellants	:	DECISION
v.	:	
	:	
Benton Community School District, Appellee	:	[Admin. Doc. 595]

The above entitled matter was heard on August 19 and September 1, 1981, before a hearing panel consisting of Dr. James Mitchell, deputy state superintendent and presiding officer; Mr. Carl Miles, director, field services and supervision division; and Mrs. Edith Munro, chief, basic instructional programs section. Dr. Mitchell served as presiding officer pursuant to Section 257.22, The Code 1981. The hearing was held pursuant to Chapter 290, The Code 1981, and Departmental Rules, Chapter 670--51, Iowa Administrative Code. The Appellants were represented by Attorney Jerry Alt, and the Benton Community School District (hereinafter District) was represented by Attorney Brian Gruhn.

The Appellants appealed a decision of the District Board of Directors regarding the closing of an elementary attendance center located at Blairstown, 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.

The District is primarily rural in nature and covers over 260 square miles. The communities of Elberon, Keystone, VanHorne, Newhall, Atkins and Blairstown are included within its boundaries.

Declining student enrollment and corresponding tightening budget constraints are not new to the District. In 1976, the elementary attendance center at Newhall was closed and the students were assigned to the attendance center at Atkins. The District then had elementary attendance centers remaining in Keystone, Blairstown and Atkins.

In April, 1978, a 38 member multi-disciplinary team of educators visited the District for three days, at the request of the District Board, for the purpose of conducting an evaluation of the total school program and facilities and making commendations and recommendations for improvement. At the conclusion of the "School Plant Facilities" portion of the team's written report, a recommendation was made to close one of the District's three remaining elementary attendance centers with one remaining open in the eastern part of the District and one remaining open in the western part of the District. While the report did not

specifically name the elementary attendance centers involved, following the recommendation would leave the Keystone and Atkins centers open in the western and eastern part of the District respectively, and close the Blairstown Elementary Center in the southern part of the District.

A second part of the recommendation in the "School Plant Facilities" portion of the team report was to consider constructing a new building near the center of the District to house grades 7-12. The latter recommendation was realized by the successful passage of a bond issued in 1979 approving the construction of a new grade 7-12 facility at VanHorne.

In making preparations for the 1980-81 school budget, it became obvious to the District's Administration that declining enrollment and skyrocketing costs were going to soon present greater problems to the District than previously experienced. At a regular meeting of the Board on November 14, 1979, Superintendent Phillip England presented the Board with his concerns on budgeting for the 1980-81 school year and recommended substantial reductions in expenditures to enable the District to balance the 1980-81 budget. Budget considerations were discussed frequently at subsequent Board meetings. At the request of the Board at the November 14 meeting, Superintendent England prepared several recommendations for budget cuts for the Board's consideration. Included in the Superintendent's recommendations were three alternative plans of changing attendance centers, including one to close the Blairstown facility. The recommendations were presented at the December 12, 1979 Board meeting. The Board requested that data be gathered and presented regarding two additional alternatives.

At the January 9, 1980 regular District Board meeting, a Board discussion was held regarding the 1980-81 school year budget generally and the five alternatives presented by Superintendent England specifically. A large delegation of District patrons, largely from the Blairstown area, were present and raised issue with the potential closing of the attendance center in that community. The meeting ended with no action being taken.

At the January 23, 1980 regular meeting of the District Board, a motion to formulate a task force of District patrons to study the issue of the maintenance of three elementary attendance centers in the District triggered a discussion regarding the closing of an attendance center. Many questions were raised by District patrons in attendance. The motion did not carry. A motion to survey the community to determine citizen interest in serving on a task force to study the maintenance of three elementary attendance centers carried unanimously. At the February 13, 1980 regular District Board meeting, another motion to establish a task force with representation from all attendance centers did not carry. The Board did vote, however, to continue operation of three elementary centers in the District for the 1980-81 school year and to study the problem and make a long-range decision by October 1, 1980.

While the matter of closing an elementary attendance center remained in many persons minds, it was apparently not formally discussed at another Board meeting until August 27, 1980. No action was taken except to place the matter of discussion of the operation of three elementary attendance centers on the September 10 Board agenda.

The Tentative Board Agenda for September 10 included "Discussion of deadline for determining number of attendance centers for the 1981-82 school year." At that meeting, the Board voted to extend the deadline on a final decision from October 1, 1980 to January 14, 1981. A number of patrons from the Blairstown

area were present and represented by legal counsel. Superintendent England agreed to send agendas of future Board meetings to the patrons' attorney.

The Tentative Board Agenda for the September 24 meeting included "Elementary attendance center study." Included with Superintendent England's presentation concerning the study of elementary attendance centers were 17 mimeographed hand-outs. His oral presentation and written documentation covered the subject in considerable detail.

The October 22, 1980 District Board Agenda included four items under the topic "Elementary Attendance Center Study." The Board viewed and heard slide/tape presentations and received District enrollment and funding data. The Board agenda for its November 12 meeting included more information on the "Elementary Attendance Center Study." At that meeting the elementary principals explained the District's elementary program to the Board.

The Board agenda for December 10, 1980, indicated discussion of an energy audit and additional information regarding the ongoing elementary attendance center study. At the December 10 meeting, the Board voted to contract for an energy audit of the three elementary centers, excluding two of the older portions of the Keystone and Blairstown buildings. The Board also heard a report on "facility utilization" regarding the three attendance centers.

The December 18, 1980 Board agenda showed, and the minutes reflect the presentation of, additional information regarding the ongoing elementary center study, including budget projections for the next several years.

The Board agenda for the January 14, 1981 meeting showed under the heading "Elementary Attendance Center Study," the "Determination of number of elementary attendance centers." Patrons from the Blairstown area were present with legal counsel and made presentations to the Board. Other persons in the audience were given the opportunity to express their thoughts and feelings on the subject of elementary attendance centers. A motion was made and seconded, subject to reconsideration in the event of a reduction in state aid, to operate two elementary centers beginning in the fall of 1982. After discussion on the motion, it carried by a vote of four to one. The Board did not, at that time, determine which of the elementary attendance centers was to be closed.

The Board then began to give more specific consideration to the decision of which specific attendance center to close. At the District Board meeting of January 28, the Board received additional data regarding building utilization. At its February 18 meeting, the Board received the previously contracted "Energy Audit Report" and information regarding developing legislative trends in state funding. At that meeting, the Board adopted a timetable for consideration of its decision to close a specific elementary attendance center. The timetable established May 13 as the date for the Board's decision.

At the February 23 meeting, the Board received data regarding the location of elementary students within the District and potential transportation routes. At the March 11 meeting, Superintendent England presented a report to the Board on the budget and proposed staff reductions. The Board also established April 8 as the date for a public hearing on the question of closing an elementary attendance center.

On March 25 the Board, at its regular meeting, considered alternatives regarding the disposal of the District's unused facilities. It also received additional information regarding potential school bus routes for the 1982-83 school year.

The public hearing on April 8 was scheduled as part of the District's regular Board meeting and was included as such in the Board agenda. Notice of the hearing was printed in newspapers distributed in the District, and all persons in attendance at the Board meeting wishing to address the Board were given the opportunity to do so. The Board also received written comments.

Discussion of which elementary attendance center to close was continued by the Board at its April 22 meeting. At that meeting Board members specifically discussed and reviewed transportation, geographical, facility usage and energy considerations. A consultant with the firm contracted to conduct the energy audit of the three elementary attendance centers was present and discussed his firm's report with Board members.

Board discussion of closing a specific elementary attendance center continued at the May 13, 1981 meeting. The agenda clearly showed a continuation of consideration of the elementary attendance center closing and specifically included a "Determination of Elementary Centers for the 1982-83 school year." The Board presented with financial estimates showing that the District's anticipated budget growth would be less than previously expected. The State legislature had passed House File 414 (1981) which reduced allowable budget growth for the 1981-82 and 1982-83 school years. Projected budget information for the 1982-83 school year prepared by the District's Administration showed that the District would have a \$142,980.00 budget revenue deficit if three elementary attendance centers were maintained. However, if only two centers were maintained, the District would have an estimated surplus budget revenue of \$10,004.00. Following a review of the data gathered in the elementary attendance center study, during which persons in attendance were given the opportunity to speak, a motion was made to continue the Blairstown Center as one of the District's two elementary centers. The motion died for lack of a second. A motion was then made and seconded to close the Blairstown Center and operate only the Atkins and Keystone elementary centers. After discussion by the Board and the opportunity for patrons to speak on the subject of the motion, the Board approved the motion by a vote of four to one.

On May 13, 1981, State Fire Marshal Wilbur R. Johnson, at the request of patrons from the Blairstown area, inspected the Blairstown and Keystone elementary attendance centers. In a letter dated May 14, Mr. Johnson stated that due to the difference in types of construction, the Blairstown building was relatively safer than the Keystone building. In testimony before the Haring Panel, Mr. Johnson indicated that the Keystone building would not be unsafe for use as a school after necessary corrections were made to an older portion of the building as a result of his findings on a subsequent inspection and contained in a letter to Superintendent England dated July 20, 1981. Superintendent England testified that the repairs to the Keystone building necessitated by the Fire Marshal's letter of July 20 would not be prohibitive and would cost the District an estimated \$5,000.00. The buildings had most recently been inspected by the Fire Marshal's office on January 29 and 30, 1981, and District officials felt they had no need for concern regarding the fire safety of the District's elementary attendance centers in their planning to close an elementary attendance center. The reports resulting from the January inspections revealed no undue hazards.

Much of the foregoing information was carried in the local and area news media, and contained in the District's newsletter to parents. Most of the controversy involved in this hearing before the State Board centered around the question of which elementary attendance center in the District should be closed. There was little dispute as to the need to close one of the centers. No one was denied materials, information or access to the Board.

II. Conclusions of Law

The Appellants have stated in their "Affidavit" of appeal that the District Board erred in its decision to close the Blairstown Attendance Center because it disregarded specific enumerated factors in making its decision. We find on the record before us that those factors were adequately considered by the District Board before it made its May 13 decision to close the Blairstown Center. The Board considered in detail the relative energy costs of operating the elementary attendance centers, transportation costs, and establishment of a task force to study the issues. While it may be true that the Board did not give great attention to the relative fire safety of the Blairstown and Keystone buildings, it did not necessarily have cause to do so. The buildings had been inspected by an inspector from the State Fire Marshal's office less than five months prior to its May 13 meeting, and the inspector's reports had not disclosed any undue hazards. Wilbur Johnson made it clear that with alterations and repairs discussed in his written July report, the Keystone Attendance Center would be in compliance with the state's fire safety code. If the District Board desires to reconsider its decision based on the information received from the Fire Marshal's office, it is free to do so. However, we do not feel, on the basis of the record, that it would be appropriate for us to require such reconsideration.

The Appellants' "Affidavit" also alleged that the District Board Members were influenced in their May 13 vote by the location of their respective residences. We are somewhat puzzled by this argument. It is true that the lone dissenting vote to the closing of the Blairstown Center was cast by the Board member elected from the Blairstown area, but we do not see any impropriety in such a vote. One of the underlying purposes of having designated director districts is to help assure that various portions of a school district are assured a voice and a vote on those issues of concern to them.

The Appellant's brief attempted to favorably compare the factual situation presented here to that involved in the State Board decision in In re Norman Barker, 1 D.P.I. App. Dec. 145. The brief goes so far as to state that the two situations are so similar that if the District Board decision at issue here is not overturned, the Barker decision should be reversed. We do not agree. In Barker, the State Board determined that a school district made a hasty decision to close an attendance center and did not allow the patrons of the district sufficient opportunity to present their views before the decision was made. The State Board overturned the school board in Barker and established several guidelines that can be utilized by local schools when faced with important long-term decisions such as closing attendance centers. The State Board stressed that those items were merely guidelines and not requirements. A school board's decisions should not be overturned on the basis of whether or not it strictly adhered to those guidelines. Certainly, the spirit of the Barker guidelines was met through the District Board's scheduled study and decision making over a period of several months in the spring of 1981.

The Appellants' brief also complained of alleged violations of the state's open meeting laws. The State Board has previously ruled that the relevancy of compliance with the state's open meeting laws goes only to the issue of opportunity for public knowledge and input regarding important issues before a district board. In *re* Dorothy I. Keeler, et al., 2 D.P.I. App. Dec. 296, 300. Chapter 28A contains its own specific enforcement remedies.

Much argument was had at the hearing and in the briefs on the point that the District Board should have appointed a "task force" of citizens to study the circumstances of declining enrollment and budget constraints and make recommendations to the Board. While such a procedure is common practice, and generally appropriate, we do not feel that it is so independently vital to a board's important decision making that we are willing to overturn the District Board's decision at issue here. Several developments have occurred subsequent to the Board's May 13 decision, including a viable proposed alternative solution presented for the first time by the Appellants at the hearing, that it may be desirable as an aid to District unity to communicate to citizens a review of all that has taken place. However, we are not inclined to require such a review by overturning the District Board's decision at issue here.

The Appellants allege that various actions and omissions of District officials show a "pattern of lack of public notice and lack of public study and input." While the efforts of District officials in dealing with the problems of declining enrollment and corresponding budget constraints may not be one of "textbook" caliber, such efforts by hard working school boards seldom are. The efforts of the District Board at issue here remain far within the boundaries of acceptability as evidenced by previous State Board decisions regarding the closing of attendance centers. See *In re* Concerned Citizens, 2 D.P.I. App. Dec. 279, 282. In the decision *In re* Dorothy I. Keeler, et al., 2 D.P.I. App. Dec. 296, the State Board said at page 299:

The State Board of Public Instruction in exercising its appeal jurisdiction over decisions of this nature has taken upon itself the responsibility to diligently review the facts surrounding appeals of decisions to close elementary attendance centers, but in the absence of unusual circumstances, such as hastily made decisions without adequate consideration or public input, it will not disturb the local board's decision. The State Board has and will continue to support the legislative policy of local control in the determination of attendance centers.

While the Appellants complained about what they perceived as the lack of meaningful opportunity for input into the decision, what they really meant was that they did not feel good about the opportunities they were afforded for input. The issue of degree of meaningfulness of the input is one of perception and the Hearing Panel takes no issue here with the nature of input which was granted the District's patrons.

In conclusion, the Hearing Panel finds insufficient evidence to sustain the allegations of law or fact of the Appellants. As the State Board stated in its Barker decision, appellants in appeals regarding the closing of attendance centers have a "very heavy burden of proof." The Appellants have not met that burden on the issues presented here.

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

III.
Decision

The decision of the Benton Community School District Board of Directors in this matter is hereby affirmed.

November 18, 1981

DATE

Susan M. Wilson

SUSAN M. WILSON, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION

October 26, 1981

DATE

James E. Mitchell

JAMES E. MITCHELL
DEPUTY STATE SUPERINTENDENT
AND
PRESIDING OFFICER