

THE STATE BOARD
OF PUBLIC INSTRUCTION

(Cite as 2 D.P.I. App. Dec. 306)

In re Edward J. Comiskey	:	
	:	
Edward J. Comiskey, Appellant	:	DECISION
	:	
v.	:	
	:	
Des Moines Independent Community School District, Appellee	:	[Admin. Doc. 594]

The above entitled matter was heard before a hearing panel on July 10, 1981. The Hearing Panel consisted of Dr. Robert D. Benton, state superintendent and presiding officer; Ms. Mavis E. Kelley, chief, federal programs section, career education division; and Mr. Gayle Obrecht, director, administration and finance division. The Appellant was represented by Attorney Jeffrey G. Flagg, and the Des Moines Independent Community School District (hereinafter District) was represented by Attorney Edgar Bittle. The hearing was held pursuant to the authority of Chapter 290, The Code 1981 and Chapter 670-51, Iowa Administrative Code.

The Appellant is appealing a decision of the District Board of Directors to close Kurtz Junior High School, an attendance center in the District.

I.
Findings of Fact

The Hearing Panel finds that it and the State Board of Public Instruction have jurisdiction over the parties and the subject matter. Much of the background information involved in this appeal has previously been before the State Board in appeals involving the closing of District attendance centers. Those appeal decisions are entitled In re Shirley A. Brown, 2 D.P.I. App. Dec. 304 and In re North Central Community Organization, 2 D.P.I., App. Dec. 108.

Faced with the realities of a greatly declining student enrollment and corresponding budget constraints, in 1975 the District began a formal study of the problem of declining enrollment. A detailed population study was completed in the fall of 1975, and, in 1976 the District Board appointed a Citizens' Committee to study the effects of enrollment decline and to make recommendations to the Board. In a report to the District Board on November 16, 1976, the Citizens' Committee identified the potential need to close as many as twelve elementary school buildings, six junior high buildings, and one senior high building over the succeeding ten-year period. The three junior high buildings recommended by the Committee to be considered as top priorities for closing were Callanan, Kurtz, and Wilson.

Subsequent to the issuance of the Committee report, the District Board voted in June 1977 to close two elementary attendance centers; in June 1979, to close two junior high and two elementary attendance centers; and in June 1981 to close one junior high and three elementary attendance centers. The Board also voted to merge two high schools, but the merger was later abandoned.

The District's Administration prepared long range plans for closing school buildings for District Board consideration in both 1978 and 1979. The plan presented to the Board in January 1979 included the closing of nine elementary centers, three junior high centers, and one high school attendance center over a six-year period. Under that plan, the Kurtz attendance center was scheduled to be closed in June 1983. On July 17, 1979, the District Board considered and accepted a tentative plan to close 12 attendance centers over the next six years. In that plan, Kurtz Junior High was scheduled to be closed at the end of the 1982-83 school year. At the July 17 meeting, members of the public were given the opportunity to present their views, and District Board members held considerable discussion on the merits of the tentative plan before taking action.

In the early spring of 1981, the District's Administrators and Board members recognized a need to accelerate the plan for closing attendance centers. Due to depleted state revenues, Governor Robert Ray was forced to cut the state budget, including state aid to schools, by 4.6 percent. That cut meant over \$1,500,000 in reduced revenues to the District in the 1980-81 school year. It also became evident as District officials were completing work on the 1981-82 budget that the state legislature intended to reduce previously anticipated school districts' budget growth. As a result of the subsequent passage of House File 414 (1981), the District's 1981-82 budget growth was approximately \$2,000,000 less than anticipated. This was particularly difficult for the District to contend with because much of the salary negotiation with employees for the 1981-82 school year had been completed based upon the premise of receipt of earlier anticipated revenues, and it was not possible to reopen those negotiations.

The District's Administration originally planned to recommend the closing of two elementary buildings at the close of the 1980-81 school year, but in anticipation of severe budget constraints for the 1981-82 school year, the Administration felt it necessary to increase the number of buildings recommended for closing to four elementary and one junior high attendance center. At the March 17, 1981, Board meeting, Superintendent William Anderson recommended that further reductions be made in school attendance centers and specifically recommended that Kurtz Junior High School be closed at the end of the 1980-81 school year. He recommended that Kurtz pupils be assigned to Brody, McCombs, and Weeks junior high schools. Considerable Board discussion was held regarding the recommendation and possible alternative ways of coping with budget problems. Several Board members raised questions about the closing of Kurtz and asked the Administration to consider the closing of alternative junior high attendance centers in the area.

Between the March 17 and April 7 Board meetings, the District's Administration worked out the details of a proposed closing of the Kurtz attendance center. At the April 7 meeting, the District Board voted unanimously to close a junior high attendance center, without specifying which center would be involved. That action was to enable the Administration to proceed with its planning. Discussion of the merits and procedure for closing a specific attendance center followed. Dr. Anderson stated at that meeting he felt a primary factor to be considered in choosing the specific attendance center for closing was the amount of area of the District which would be contained within two miles

of the remaining attendance centers. He stated that the closing of Kurtz rather than one of the other southside junior high attendance centers would result in three to four times as much District area being located within two miles of the remaining attendance centers. Data and maps comparing the effect of closing of the alternative attendance centers were prepared. Communication was maintained with the public during this time. The District Administration's Department of Planning concluded in a document dated April 20, 1981, that Kurtz should be closed and the building retained by the District until future District needs are determined.

On April 21, the District Board held a work session, which was open to the public, to discuss the recommended closing of Kurtz. The Board scheduled a special meeting and a public hearing for April 28 for the purpose of receiving additional information and public opinion on the subject of closing a junior high school. The public was requested to address the pros and cons of closing either Brody, Kurtz, or McCombs junior high schools. A fourteen page document containing data relative to the closing of a southside junior high was prepared and circulated to Board members for its April 28 public hearing on the subject. Approximately 450 persons and representatives of the news media were present at the hearing. Prior to opening the meeting to public comment, the District Administration explained alternative proposals, and Board members briefly discussed the matter. The Board then heard statements from 18 persons on behalf of residents of the Brody, Kurtz, and McCombs junior high attendance areas. Written materials were also received by the Board.

At the May 5, 1981, meeting of the District Board, Superintendent Anderson renewed his recommendation to close the Kurtz building. After considerable discussion, the Board voted 4 to 3 to close the Kurtz attendance center at the end of the 1980-81 school year and assign its pupils to the Brody, McCombs, and Weeks junior high schools.

It was largely uncontested at this hearing that one of the southside Des Moines junior high attendance centers should be closed. The dispute clearly arises over the issue of which specific junior high attendance center should be closed. That question on the facts was not an easy one to decide, but it was given considerable consideration by the District Board. Documentation presented by the District administration, Board member discussion at meetings, and a 4 to 3 vote all attest to the closeness of the competing issues before the District Board when it made the decision to close Kurtz. For that reason, we feel it useful to list a few of the competing issues before the Board when it chose to close Kurtz over Brody and McCombs, the other two most likely candidates for a southside junior high attendance center closing:

- a. At the time the decision to close Kurtz was made, the Board was told that the closing of Kurtz would result in the District providing transportation for an additional 383 students (subsequently changed to 418), as compared to 115 and 189 if Brody or McCombs were closed. The large number of students transported as a result of closing Kurtz is apparently offset by the distance and efficiency of transporting the former Kurtz students. The closing of Kurtz will mean that the longest distance for transporting students will be 3.5 miles while the closing of Brody or McCombs would require a maximum transportation distance of 6 and 6.3 miles respectively. The shorter distance for the transportation of the Kurtz students and greater relative density of student population in the Kurtz area will apparently allow the District to transport the Kurtz students more efficiently than it could students from Brody and McCombs areas.

- b. The utility cost for Kurtz for the preceding year was about \$41,000 and for Brody and McCombs about \$69,000 each. The substantial difference is likely due in part to the fact that Kurtz is the only building of three which is not air conditioned. Air conditioning will likely contribute to more efficient year-round utilization of the Brody and McCombs buildings.
- c. While the current population density favors Kurtz over Brody and McCombs, large areas of the Brody and McCombs areas are undeveloped and contain a large portion of the land in the District remaining to be developed.
- d. The closing of Brody or McCombs rather than Kurtz would result in a number of students being transported to attendance centers which are not the ones nearest to their homes.
- e. While Kurtz with 598 students has the largest enrollment of these schools and had the best enrollment-capacity ratio, about 130 of these students had transferred into the building from Brody, McCombs, and Weeks junior high schools.
- f. The District administration was concerned that the closing of Brody and the corresponding transfer of some Brody students to Callanan Junior High might result in an undesirable minority concentration at Callanan.
- g. Anticipated five-year maintenance costs clearly favor the retention of Kurtz as an attendance center over Brody and McCombs, but the District Board was apparently satisfied with the District administration's argument that over a long period of time roughly the same amount of maintenance is spent on every building.
- h. Board concerns about the uncertainty of long range needs for another junior high attendance center on the southside in the event the area would experience unexpected residential developed were allayed when Dr. Anderson commented that the Kurtz building would be continued to be maintained and possibly used for other public purposes.

II.

Conclusions of Law

The Appellant requests that the State Board of Public Instruction overturn the District Board decision in this matter on the basis of four allegations contained in his affidavit of appeal. While we find that these allegations are generally based in fact, we do not feel they are of sufficient concern that we are inclined to overrule the District Board in its decision. The Appellant has established that the closing of the Kurtz building as a junior high attendance center will necessitate the busing of over 400 additional students, will end service to the immediate Kurtz area by a neighborhood junior high facility, that specific future plans for the Kurtz facility were largely unknown at the time of the Board's vote, and some specific elements of cost savings favor the closing of a junior high attendance center other than Kurtz. However, we do not consider these elements individually or in total to be sufficient reason for overturning the Board decision at issue here. These concerns were made known to the Board, discussed by the Board, and considered by the individual Board members when the made its decision on May 5, 1981. Any district board of directors faced with the possibility of closing an attendance center must take into account what it considers

to be the best interests of the entire district. Only that locally elected board of directors can best determine whether the best interest of the entire district dictates that the desires of a segment of the school community must yield to the interests of the whole. We feel in this specific circumstance that the District Board best knew the overall situation in the District at the time of the decision and was most familiar with the District's goals and objectives for the future. Certainly, the Board acted deliberately and cannot be said to have acted in an arbitrary and capricious manner. It is the established policy of the State Board, in the absence of unusual circumstances, such as those involved In re Norman Barker, 1 D.P.I. App. Dec. 145, to leave undisturbed those decisions involving the closing of attendance centers made by the duly elected representatives of the citizens of a school district. We have not been shown any good reason in this appeal to do otherwise.

III.
Decision

The decision of the District Board of Directors on May 5, 1981, to close the Kurtz Junior High attendance center is hereby affirmed. Appropriate costs under Chapter 290, if any, are hereby assigned to the Appellant.

July 23, 1981

DATE

Susan M. Wilson

SUSAN M. WILSON, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION

July 16, 1981

DATE

Robert D. Benton

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