IOWA STATE DEPARTMENT
OF PUBLIC INSTRUCTION

(Cite as 2 D.P.I. App. Dec. 108)

In re North Central Community Organization :

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North Central Community Organization, et al., Appellants :

DECISION

:

v.

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Des Moines Independent Community School District, Appellee :

: [Admin. Doc. 509]

The above entitled matter was heard on January 14, 1980, before a hearing panel consisting of Dr. Robert Benton, state superintendent and presiding officer; Dr. LeRoy Jensen, associate superintendent, school administration; and Mr. Gayle Obrecht, director, administration and finance division. The Des Moines Independent Community School District (hereinafter District) was represented by Attorney Edgar Bittle, and Dr. Francis Keith served as the chief spokesperson for the members of the North Central Community Organization (hereinafter NCCO). The hearing was held pursuant to Chapter 290, The Code 1979, and Departmental Rules Chapter 670--51, Iowa Administrative Code.

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.

On July 17, 1979, the District Board of Directors, at its regular meeting, considered a recommendation of Superintendent Dwight Davis regarding a "Tentative Plan For Use Of School Facilities." A document presented to the District Board with the above stated title included the following relevant language:

> The Superintendent recommends that the following elements be included in the District's tentative plan for school facility use and that it be reviewed and extended annually.
>
> 1. Locate the District's vocational technical high school at the North High site at the end of the 1983-84 school year.

Following the first recommendation were eleven others related to the closing of elementary and junior high attendance centers between the 1979-80 school year and the 1984-85 school year. Ten persons in attendance at the meeting, who had requested an opportunity to speak on the recommendations, were given an opportunity to present their views to the District Board. After the presentations and after an informal discussion, a Board member moved

that the "Board accept the administration's tentative plan for school facility use as outlined with the following modifications: . . ." The only modification related to recommendation number one, quoted above, was that the District Administration was directed to "provide to the community the cost details and reasoning which led it to suggest the Tech to North move," including an analysis of alternative high school closing plans. The original motion, as later amended, carried by a vote of six to one. The discussion of the motion in the District Board minutes clearly reflect the understanding of the Board members that the decision was tentative and subject to change as "the facts and figures change."

The tentative decision to locate the District's technical high school at the North High School site and effectively close the existing Technical High School was not a hasty one. It was, in reality, the culmination of considerable work and study by the District's Administration, Board, teaching staff and citizens over at least a four year period. At least as early as June, 1975, District officials had begun to look at the dual problems of declining enrollment and tightening budget constraints. While it is not necessary to enumerate all the District's activities over the past few years which are related to its July 17 decision, a few selected ones listed chronologically are sufficient to show the degree of endeavor of District officials on the issue:

June 2, 1975. A memorandum was sent from the Executive Director, Plant and Transportation to the District Superintendent regarding a preliminary study of space and engineering data for a possible move of Technical High School. Services of an architectual firm familiar with both Technical High School and North High School were utilized.

November 16, 1976. The final report of the District's Citizens' Committee on School Building Utilization recommended that Technical High School be moved to the North High School building and the then current North High boundaries be assigned to three other District high schools. The Advisory Committee was comprised of about 15 patrons of the District and met numerous times during the summer and fall of 1976. They conducted public meetings and obtained written comments from District patrons.

December 14, 1977. Board members and administrators discussed curriculum space feasibility problems regarding a "proposed move of Tech to North" at a Board work session.

October, 1978. A "Summary Report of Space Requirements to Move Tech to North" combined the results of previously made studies regarding the merging of curricular offerings at Tech and North at the North High facility and projected space needs to accommodate such a move.

January 23, 1979. A major topic of discussion at a Board-Administration Workshop on declining enrollment was a proposed combining of Tech and North high schools. The District Administration advised that a decision on whether or not to move Tech to the North site be made prior to the 1980-81 school year so that if the decision was negative that an alternate high school closing could be determined prior to the 1981-82 school year.

February 20, 1979. A Board work session included further discussions of the feasibility of moving Tech to the North High building.

June 19, 1979. The Feasibility Report, a 20 page report prepared by the Superintendent at the request of the Board regarding a proposed move of the program to the North High building, was issued.

July 2, 1979. A Board work session discussed questions raised by Board members after the distribution of the June 19 feasibility report.

July 3, 1979. Members of the Board and three persons representing community organizations met and discussed perceived problems with moving the Tech program to the North High site.

July 7, 1979. A public meeting was held at North High. Comments, concerns and recommendations were voiced by members of the general public present.

July 10, 1979. Written responses to questions not previously answered orally at the July 7 meeting were released.

July 17, 1979. Decision under appeal was made at a Board meeting.

Normally the scope of hearings, such as this one, under Chapter 290, revolve around a particular date, and actions subsequent to that date are not relevant for consideration. Here, however, the parties have determined by stipulation in the record and by oral and written argument that some matters occurring subsequent to the July 17 decision are relevant. Of those, the following appear to be most relevant to the matter before us:

October 2, 1979. The Board voted to hire an architectural firm to prepare preliminary cost estimates necessary for additional planning and tax askings.

October 19, 1979. The Board approved the provision of "academic-college prep courses" at the North High site "should the Tech to North move become a reality." It also confirmed that North "under these circumstances" will serve all students in the District.

December 4, 1979. The Board discussed and approved a federal planning grant request under the Emergency School Aid Projects of the United States Office of Education which included a "Planning Grant for Vocational/ Technical High School."

December 5, 1979. The District Administration apparently met the July 17 Board directive that the District's citizens be advised of the analysis that preceded the District Administration's recommendation to move the Technical High School program to the North High School site.

Throughout most of the entire process, events were covered in detail by the news media.

II.
Conclusions of Law

The Appellants have alleged several deficiencies on the part of the District Board in its decision-making process in making the decision at issue here. More specifically, the Appellants allege in their "Affidavit of Appeal" that "the School Board decision was based on incomplete and improperly prepared studies and data, failed to adequately consider the adverse racial and community factors, and was arbitrary and capricious. . . ." We do not agree.

Even a cursory review of the voluminous record in this matter will quickly dispel the accuracy of any allegation of "arbitrary and capricious" action on the part of the District Board. It is quite clear that many hours of time have been spent by the Dis-

trict's Board of Directors, administrators, teachers and citizens in preparing the data used in making this decision. The District Board clearly did not act in an arbitrary or capricious manner in reaching the decision at issue here.

Neither does the District Board's deliberation violate the spirit of the State Board of Public Instruction decision, In re Norman Barker, et al., 1 D.P.I. App. Dec. 145. In the Barker decision, the State Board of Public Instruction overturned a local school board decision to close an elementary attendance center because the local school board decision was hasty and secretive and because important decisions should be made only after due and sufficient deliberation and consideration. We do not see any problems similar to those found in the Barker situation in the instant case before us. Here the District Board had considered for nearly three years, at one level or another, the specific issue raised by the Appellants. At numerous times during those three years, the public was allowed an opportunity for input, and the District Board considered its options in some detail. This was not a hasty nor secretive decision made without appropriate deliberation.

The Appellant pointed to several specific types of data which they felt the District Board should have considered, but did not. (e.g., independent outside expert consultants, ramifications on the North High community, failure to include a college preparatory program, and marketability of the existing Tech building) We have reviewed the points raised by the Appellants and find generally that based upon the record they fit into one of three categories; 1) not substantiated on the record, 2) not vital to the decision, or 3) considered and handled in action subsequent to the July 17 decision. In regard to the third, we would like to point out that the record clearly shows that the decision to move the Tech program to North is "tentative" and subject to change as subsequent events dictate. It is obvious that the decision of July 17, 1979, to move the Tech Vocational Program to the North site was not intended to be the absolute final word in the matter. It is also obvious that additional planning and preparation remain to be made and that continued planning was contemplated by the District Board on July 17.

We have not been shown any sufficient reason to overturn the District Board of Director's decision in this matter.

The Appellants contend that although they have had access to the District Board for the purpose of giving input into the decision process, their remarks have "fallen on deaf ears." While the record does not show evidence of a factual basis for such an allegation on its face, it is clear that the perception of the Appellants is that they have had little or no input into decisions regarding the future of North High. We strongly urge the District Board and Administration to make efforts to erase the Appellants' perceived impotence during the remaining planning and work on the project.

The Appellee, through its attorney, has raised the issue of jurisdiction of the State Board of Public Instruction in this matter due to the "tentative" nature of the decision. Section 290.1, The Code 1979, vests jurisdiction in the State Board of Public Instruction in appeals of "any decision or order of the board of directors of any school corporation" if the appeal is filed within 30 days of the decision or order. It is obvious that the "tentative" decision at issue here, if not amended or withdrawn by the District Board before its scheduled effective date will, by the mere passage of time, become final and operative. No further Board of Directors' action need be taken for implementation of the transfer of the Tech Vocational Program to the North High School site. Obviously, the July 17, 1979 "tentative" decision was "any decision" which vests appeal jurisdiction in the State Board of Public Instruction. The Appellee's motion to dismiss is hereby overruled.

Any motion or order not previously ruled upon is hereby overruled.

III.
Decision

The decision at issue here rendered by the Des Moines Independent Community School District Board of Directors on July 17, 1979, is hereby affirmed. Appropriate costs under Chapter 290, if any, are hereby assigned to the Appellants.

April 18, 1980
DATE

Susan M. Wilson
SUSAN M. WILSON, PRESIDENT
SIATE BOARD OF PUBLIC INSTRUCTION

April 10, 1980
DATE

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