

IOWA STATE DEPARTMENT
OF PUBLIC INSTRUCTION

(Cite as 1 D.P.I. App. Dec. 243)

In re Jan L. Novy

Jan L. Novy, Appellant

v.

Highland Community School District
Appellee

DECISION

[Admin. Doc. 438]

The above entitled matter was heard on June 27, 1978, by a hearing panel consisting of Dr. Robert Benton, state superintendent and presiding officer; Dr. Donald Cox, associate superintendent, instruction and professional education branch; and Mr. Carl Miles, director, supervision division. Attorney Dennis Clark represented the Highland Community School District (hereinafter District), and Attorney William Bartley represented the Appellant. The Appellant's Affidavit of Appeal purported to be on behalf of herself and 19 other patrons of the District. The hearing was held pursuant to Chapter 290, The Code 1977, and Departmental Rules, Chapter 670--51, Iowa Administrative Code.

On March 14, the District Board of Directors voted four to three to not enter into a lease for the continued rental of an attendance center and to move all elementary students attending in the community of Riverside to the Upper Elementary Attendance Center. On April 10, the District Board voted five to two to reaffirm its earlier decision made on March 13. The Appellant made a timely appeal of that decision to the State Board of Public Instruction.

In addition to the hearing, on June 30, 1978, with the attorneys for the parties present, the Presiding Officer and two members of the Department of Public Instruction staff, Milton Wilson and Virgil Kellogg, made an on-site visit to the two structures.

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 in this appeal.

About nine years ago, the nonpublic elementary school in Riverside closed. In order to house the additional influx of students, the District Board entered into a year-to-year lease for the building that had previously housed the nonpublic school. Under the terms of the lease, the District paid \$1 per year and agreed to pay utilities and maintain the building. This agreement has been continued on a year-to-year basis to the present. The District housed its lower elementary grade students in the rented facility and the upper elementary grade students in a facility owned by the District. They came to be known as Lower Elementary and Upper Elementary buildings, respectively.

On or about February 8, 1978, District Superintendent Dennis Bishop was contacted by the local parish priest and told that the Parish Council had decided to increase its rent on the leased facility. On February 15, three members of the St. Mary's Church Council appeared at the regular District Board meeting and informed the District Board that the Council had voted to increase the amount of the rent to the net amount of \$6,000. Under the proposed agreement, the District would pay all taxes, utilities, insurance and maintenance. No action was taken at that meeting. During the time between the February and March meetings, alternatives, including the housing of all Riverside elementary grades in Upper Elementary, were explored.

Several patrons of the District appeared at the March 13 District Board meeting and voiced concerns they had about the possibility of moving the lower elementary grade students to the Upper Elementary Building. A motion was made to rent the Lower Elementary Building for \$6,000 a year for a two-year period. The District was to pay the taxes, utilities, insurance and maintenance, not to exceed \$2,000. The motion was defeated on a vote of four to three. A second motion was then approved by a four to three vote to not enter into a lease for the Lower Elementary Building and to move the lower elementary grades to the Upper Elementary Building.

On March 17, the District Board met with the St. Mary's Parish Council concerning the lease of the Lower Elementary Building. About thirty patrons were present for the meeting. All persons were given the opportunity to present their views, and the meeting adjourned without official action being taken.

At about this time, a second offer was tendered by St. Mary's. The District could continue to use the building for two years, for \$1 a year rent, but it would also have to maintain the building, pay taxes, utilities, and insurance and black top the parking lot. The cost of asphaltting the parking lot was estimated at about \$10,000.

At the April 10 District Board meeting, the District Board secretary read letters from teachers in the Upper and Lower Elementary buildings and from the Highland Education Association regarding the housing of the lower and upper elementary grades in the Upper Elementary Building. The teachers generally opposed moving the lower elementary students to the Upper Elementary Building but promised their best efforts if such a result occurred. The Superintendent presented cost estimates and other information to the District Board regarding the housing of all elementary grades in the Upper Elementary Building. Several patrons of the District expressed their views on the subject, and petitions were presented to the Board. A motion to reaffirm the District Board's March 13 decision carried five votes to two.

Both the Lower and Upper Elementary buildings were built approximately 60 years ago. The Upper Elementary Building originally housed a kindergarten through twelfth grade structure and contained as many as 302 students in the early 1970s before reorganization. There was testimony that several auxiliary facilities were in use during that period. However, a letter in the record shows that the Fire Marshal's guidelines approve the housing of over 360 students in the Upper Elementary Building. The District currently plans to house about 225 students in the building. During the current school year, about 110 students were housed in the structure. The Upper Elementary Building appears to be in no worse condition than many other school buildings of the same vintage still in use across Iowa. Much of the opinion testimony of nonexpert witnesses for the Appellant regarding the physical condition of the facilities was not verified through a physical inspection of the facilities by the Presiding Officer.

249

The Upper building contains two restrooms for boys and two for girls. The rest-room facilities meet minimal recommendations of the Department of Public Instruction for such facilities. They are not ideal, and the locations are not the most convenient, but they are adequate. Neither site has very good playground facilities.

On March 22, 1978, the State Fire Marshal's office issued reports on the two buildings showing that both needed attention. Neither school was condemned or placed under the threat of condemnation, however.

II.
Conclusions of Law

The scope of our review of this appeal, as established by the Appellant's Affidavit of Appeal, is a narrow one. That document can be summarized as complaining of the District Board's action in this matter due to safety and health reasons, and to the general quality of education which can be expected to be provided in the Upper Elementary Building. After full opportunity to give evidence, lasting about seven hours, an on-site visit by the Presiding Officer and due and deliberate consideration, we have concluded that the Appellant has not carried the burden of proof of showing us that the District Board acted improperly in this matter in relation to considerations of health, safety, and quality of education.

The total educational situation at Upper Elementary next year will not be ideal; however, the facility appears to be adequate under the circumstances. In light of the absence of expert testimony to the contrary, we are very reluctant to overrule the District Board in this matter.

At the outset of the hearing, the attorney for the Appellant raised a question as to the legality of the rules and proceedings under which the Hearing Panel was designated and the hearing was conducted. We reject those arguments and overrule his objection. Section 290.5 specifically authorizes the State Board of Public Instruction to adopt rules of procedure for hearing appeals and such rules "shall" include the power to delegate the actual hearing of such appeals to the State Superintendent and members of his staff. That delegation is found in the duly enacted rules of the State Board found in Chapter 670--51, Iowa Administrative Code. Those rules were filed with the Code Editor and the Secretary of State on July 1, 1975. Under Section 17A.4, subsection 3, rules which have not been invalidated on grounds of noncompliance with the Administrative Procedures Act within two years after its effective date shall be conclusively presumed to have been made in compliance with the Act. Prior to the specific legislative authority of Section 290.5, the procedure utilized in this hearing was upheld by the Iowa Supreme Court in In re Durant Community School District v. Iowa State Board of Public Instruction, 106 N.W.2d 670 (Ia. 1960).


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

III.
Decision

The decision of the Highland Community School District Board of Directors in this matter is hereby affirmed. Appropriate costs under Chapter 290, if any, are hereby assigned to the Appellant.

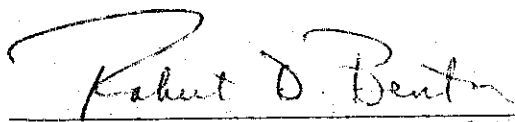
July 13, 1978

DATE


JOLLY ANN DAVIDSON, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION

July 6, 1978

DATE


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