

IOWA DEPARTMENT OF PUBLIC INSTRUCTION

(Cite as 1 D.P.I. App. Dec. 145)

In re Norman Barker, et al.

Norman Barker, et al. Appellant

v.

Van Buren Community School District: Appellee

DECISION

[Admin. Doc. 394]

The above entitled matter came for hearing in Ottumwa, Iowa, on June 6, 1977, before a hearing panel consisting of Dr. Robert Benton, state superintendent and presiding officer; Dr. Donald Cox, associate state superintendent; and Carl Miles, director, supervision division. The Appellants were represented by Attorney J. W. McGrath, and the Van Buren Community School District (hereinafter District) was represented by Attorney James A. Dorothy. The hearing was held pursuant to Chapter 290, The Code 1977, and Departmental Rules, Chapter 670--51, Iowa Administrative Code. This matter was joined for hearing with an appeal under Section 285.12 which arose out of the same decision of the District Board of Directors. The result of that appeal may be found at, In re Mrs. Kenneth Cronk, Sr., 1 D.P.I. App. Dec. 143.

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.

In November, 1975, the District received a letter from Norman Ash, regional consultant with the Department of Public Instruction, in which he made several suggestions and observations regarding the education program in the District's schools. One of the suggestions was that, in light of declining enrollments and financial restrictions, the District should take a hard look at the operation of all of the present elementary attendance centers.

In a letter to District Board members dated April 26, 1976, Superintendent Jack Sapp discussed, along with other matters, the possibility of saving approximately \$70,000.00 annually by closing the Keosauqua Elementary Attendance Center. This possibility was explored along with several other economy measures at the regular Board meeting held in December, 1976. The estimated savings to the District of the closing of the Keosauqua Elementary Attendance Center at that time was raised to \$75,000.00. As a result of a later decision regarding class size, however, this estimate of savings was

reduced to \$15,000.00. The record is devoid of other Board participation in deliberations regarding the closing of the Keosauqua Center until the Board meeting of February 21, 1977. Many persons were present at that meeting to hear the Board deliberations on the subject. After a period of discussion, Board Member James Greenfield made a motion to table the decision on the closing of an elementary center until a further study could be made. It is doubtful that anyone present really knows what took place during the next twenty minutes, and if they do, they cannot likely prove it. The recollections of persons present vary considerably. While the Hearing Panel cannot say exactly what happened, it is important to show the confusion of the moment by attempting to reconstruct the circumstances as best we can. Apparently the Greenfield motion brought an outburst from some patrons in attendance at the meeting. There was a rather confused discussion with considerable uproar for about twenty minutes with some patrons in the audience demanding that a specific time be set for reconsidering the closing. Board President Dan Donald suggested that the matter could be brought up at the March 14 meeting in conjunction with the public hearing on the District's budget. Mr. Greenfield acquiesced to the suggestion. Some Board members sitting at the same table, however, did not hear, or were not cognizant of the change of the form of the motion. The motion was then seconded by Jerry Humble who testified that he thought the motion was to table the decision pending further study. Without repeating the motion, the Board voted and approved it on a vote of five to zero. The simple act of reading the motion prior to the vote may have prevented a great deal of confusion and hard feelings. At least two Board members and several patrons present testified that they thought the motion was to table indefinitely. The School Board Secretary's recollection and longhand notes were recorded in the official minutes as a motion to table the decision until a further study could be made. Superintendent Sapp testified that the matter was not placed on the agenda of the March 14 meeting because he had misunderstood the motion. Several Board members, including the one who seconded the motion, testified that they went to the March 14 meeting not knowing whether the matter would be discussed that evening.

At the beginning of the March 14 meeting, a correction was made in the minutes of the previous meeting concerning the motion in question to read: "to table the decision on the closing of the Keosauqua Elementary Center until the next regular Board meeting." The minutes were then approved. Later in the meeting, a motion was made and passed to adopt "Plan No. 2" which included the closing of the Keosauqua Elementary Attendance Center except for one portable building which would house a kindergarten class. The elementary students in grades one through six would be assigned to two other elementary attendance centers in the northern part of the school district.

No one involved in the hearing before this Panel disputed at any time the Keosauqua Board of Directors' authority to make decisions involving the closing of attendance centers. The Appellants have based the bulk of their appeal upon the premise that the District Board did not adequately study the situation and properly plan when making the very important decision to close one attendance center and designate two others as attendance centers for the displaced elementary students. The record tends to bear out the allegations of the Appellants. Here follows a listing of some of the matters in the record which tend to indicate that the District Board did not adequately study the situation or properly plan the closing of the Keosauqua Attendance Center prior to their decision of March 14:

1. Members of the administrative staff in the District appear to disagree to some extent with the Board. Superintendent Sapp testified that he had not intended that the Board take immediate action upon his recommendation to close the Keosauqua Center, but that he had expected a year's delay prior to the closing. The High School Principal, in a letter in the record, acknowledged a future need for economic belt tightening due to declining enrollment, but suggested more time for study of the matter.
2. The District budget the Superintendent and the Board had been preparing for public hearing on March 14 provided for all three elementary attendance centers to remain in operation.
3. The Van Buren Education Association position was that the closing should be postponed and a comprehensive study be made before a final decision was made.
4. One of the schools to which some of the students were to be reassigned was subsequently found to be dumping raw sewage into a river. Plans have since been drawn up to end the practice.
5. The other center to which the students were to be reassigned was switching over from an uncertain community water supply to school wells. The school planned to disinfect the wells by a method utilizing iodine until it was recently learned that the Iowa Department of Health recommends such treatment for no longer than two to three weeks of continuous use.
6. The Board had not formally discussed alternatives to closing the center, such as a building program.
7. That portion of the February 21 motion calling for additional study was lost or ignored. The record indicates that the time between the February and March meetings was not utilized for further study by Board members and that the administration did not prepare or present additional information to the Board at the March meeting.
8. The Board did not consider the availability of medical facilities, or the lack of uniform telephone service to the proposed elementary attendance centers.
9. The Board did not consider fully the transportation ramifications of the planned closure. The Board did not sufficiently consider the bus routes or whether the riding time conformed with the requirement of Departmental Rule 670--22.1(3), that elementary students not be required to ride the bus more than sixty minutes. Subsequent to the decision to close the attendance center, the Superintendent and some of the Appellants independently rode the longest bus route to determine whether the sixty-minute rule could be met. The Superintendent found the elapsed travel time to be about 62 minutes and the Appellants found it to be about 75 minutes. Neither did the Board consider adequately the costs of the additional transportation.

10. On the whole, much of the testimony of the Board members regarding the reasons for the closing of the Attendance Center had the appearance of justification after the fact rather than forethought and study. The District's attorney as much as admitted so in his closing statement.

While the matters listed above are not meant to be a comprehensive list or even a recommended list of matters which must be considered by Boards before closing attendance centers, it does show a lack of study and planning regarding the closing of the center. The Hearing Panel finds that the Board acted in this matter without due and sufficient consideration of the factors involved.

II. Conclusions of Law

The Appellants, before this Hearing Panel, did not dispute the authority of the Board of Directors to close an attendance center and reassign pupils to other attendance centers. It is well that they did not, because such authority is clearly expressed in Section 279.11, The Code 1977. That Section reads as follows:

279.11 Number of schools--attendance--terms. The Board of directors shall determine the number of schools to be taught, divide the corporation into such wards or other divisions for school purposes as may be proper, determine the particular school which each child shall attend, and designate the period each school shall be held beyond the time required by law.

Rather, the Appellants, fully recognizing the strong likelihood of further budget belt tightening for the District and the likelihood that one or more elementary attendance centers will have to be closed at some future time, are asking that decisions as important as this be made only after due and sufficient consideration and deliberation. In this respect, the Hearing Panel agrees with the Appellants.

There is little in the record regarding what the Board did consider in making its decision, and there are many things it did not consider. It is not likely that the lack of consideration of any one of those things in itself would be sufficient to overrule the Board's decision, but viewed collectively they tend to show to the Hearing Panel a general lack of due and sufficient consideration which bordered on arbitrary and capricious action.

A decision as important as the closing of an attendance center should be made only after thoughtful, knowledgeable, open deliberation and consideration. Reasonable persons do not make important decisions governing their personal lives without sufficient study and planning. Neither should reasonable school boards of directors.

The confusion caused by the February 21 motion to table the matter may have resulted in less input in the decision by school patrons and maybe even Board members. Public discussion is a very important aspect of decisions as important as this. It must be made absolutely clear that the Hearing Panel makes no decision here as to whether there is a need in the District to close

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an elementary attendance center or which one should be closed, if such a need is determined. We find only that the residents of the District are entitled to a full and sufficient consideration of the matter and that the decision made on March 14 to close the Keosauqua Attendance Center was made without such due and sufficient consideration and planning.

Several other allegations of the Appellants need to be mentioned briefly. To the allegation that the District Board met in closed session to discuss improper matters, the Hearing Panel finds that while closed sessions may not have been properly convened as provided in Section 28A.3, the matters discussed therein were proper for such meetings. To the allegation that the closing of the Middle School shop program was done improperly, the Hearing Panel finds that the decision was made at the Board meeting on January 17, 1977, and was not timely appealed. To the allegation that the bussing of elementary and high school students on the same bus is a violation of established Board policy, the Hearing Panel finds insufficient evidence of the existence of such a policy. To the allegation that the curriculum study being prepared by the Van Buren Education Association and others was ignored by the District Board, the Hearing Panel finds the issue not relevant to the March 14 decision.

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

With future prospects of continued declining enrollment and fiscal belt tightening being very great, the prospect of closing attendance centers will have to be considered in nearly every school district in the state. In rendering its decision here, the Hearing Panel wishes to express its confidence that the decision will not open the flood gates to appeals of this nature. The State Board of Public Instruction will require, as it did here, a very heavy burden of proof on the part of the appellants in appeals regarding the closing of attendance centers.

The Hearing Panel feels that it is incumbent upon it to outline generally what it feels is a reasonable and prudent procedure to follow in making decisions as important as the closing of an attendance center. It is to be understood that such an outline must be flexible enough to be used as the particular circumstances of each decision dictate. It should not be understood that the procedures described here are ones which are to be required in all future decisions of local boards of directors on important matters. They are only recommendations.

1. A timeline should be established in advance for the carrying out of procedures involved in making an important decision. All aspects of such timelines would naturally focus upon the anticipated date that the board of directors would make its final decision in the matter.
2. All segments of the community in the school district should be informed that a particular important decision is under consideration by the board of directors.
3. The public should be involved in providing sufficient input into the study and planning involved in important decision making.

4. Sufficient research, study and planning should be carried out by the board and groups and individuals selected by the board. Such things as student enrollment statistics, transportation costs, financial gains and losses, program offerings, plant facilities, and staff assignment need to be considered carefully.
5. There should be an open and frank public discussion of the facts and issues involved.
6. A proper record should be made of all the steps taken in the making of the decision.
7. The final decision must be made in an open public meeting and a record be made thereof.

III.
Decision

The decision of the Van Buren Community School District Board of Directors in this matter on March 14, 1977, is hereby overruled. Appropriate costs of this appeal under Chapter 290 are assigned to the Van Buren Community School District.

July 22, 1977
DATE

July 14, 1977
DATE

Georgia A. Sievers

GEORGIA A. SIEVERS, VICE-PRESIDENT
STATE BOARD OF
PUBLIC INSTRUCTION

Robert D. Benton

ROBERT D. BENTON, Ed.D.
STATE SUPERINTENDENT AND
PRESIDING OFFICER