1004-C24478-12/75

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IOWA STATE DEPARTMENT
OF PUBLIC INSTRUCTION

In re Reg Deremer Kepner, et al.	:	
	:	
Reg Deremer Kepner, et al. Appellants	:	
	:	DECISION
	:	
Interstate 35 Community School District Appellee	:	[Admin. Doc. 360]
	:	

The above entitled matter came for hearing on October 14, 1975, at 1:00 p.m. in the Lew Ortale Conference Room of the Vocational Rehabilitation Center in Des Moines, Iowa. It was heard by a hearing panel consisting of Dr. Robert Benton, state superintendent and presiding officer; Dr. LeRoy Jensen, associate state superintendent; and Gayle Obrecht, director, administration and finance. The Hearing was held pursuant to Chapter 290, The Code 1975, and Departmental Rules Chapter 670--51, Iowa Administrative Code. The Appellants were represented by William P. Kovacs, and the Appellee was represented by Jerrold B. Oliver.

I.
Statement of the Issue

On August 18, 1975, the Board of Directors of the Interstate 35 Community School District (hereinafter District) denied the request of the Appellants that their respective properties be removed from the District and placed within the boundary of the contiguous Winterset Community School District. On September 17, 1975, the Appellants filed an appeal in the matter with the State Board of Public Instruction. The Appellants allege that the Board of Directors abused its discretion, the decision was arbitrary and capricious, that no factual basis existed for the decision and that the Board applied erroneous legal standards and rules in reaching its decision.

Two parties to the appeal, Mr. and Mrs. Larry E. Maxwell have, on November 26, 1975, requested the withdrawl of their names from the appeal, and the request is hereby granted with the understanding that their withdrawl does not prejudice the remaining Appellants.

II.
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.

Testimony was introduced by the Appellants that the current school boundary location led to inefficient use of school buses. The District's buses and those of the contiguous district both traverse the same road near the Appellant's properties and the duplication of service results in an inefficient use of fuel, money and student's time. The per pupil cost of transportation for the 1973-74 school year as disclosed by the "General Fund Expenditure Computation" compiled by the Department of Public Instruction shows the District expenditure to have been $108.71 and the contiguous school district to have been $76.10.

Further testimony of the Appellants showed that the District offered 53.5 course units to its students of which 16.5 were vocational in nature, and the contiguous district offered its students 63.55 total course units with 28 being offered in the vocational area.

Direct telephone communication within the District is made difficult because the Appellants are on a telephone exchange different than the District. The result is a barrier to direct contact between the schools and the parents because a long distance charge is involved.

Appellants showed that their personal, business and social contacts are primarily with persons in the contiguous district and not within the District. The towns in which the District's schools are located are generally visited only for school affairs by the Appellants and not for business, trade or social reasons.

The testimony of District Superintendent Lyle Kooiker showed that most of the objections of the Appellants to remaining in the District are common to residents of many of the state's school districts who live on or near the district boundaries. He indicated that nearly all school districts have a problem of overlapping transportation service. It is inevitable that an overlap may occur when contiguous districts must transport children who live near district boundaries.

While acknowledging that the District offers less courses than the contiguous district, Mr. Kooiker emphasized that the District continues to meet or exceed all minimums established by the state. He also explained that the District pays for long distance telephone calls initiated by the school to parents. He pointed out that similar communication problems exist in the contiguous district where not all residents are on the same telephone exchange.

Mr. Kooiker said that he felt that school reorganization in opposition to the wishes of the local boards of directors should be accomplished on a statewide or area-wide basis and not on a hit and miss proposition instituted by petitions such as those of the Appellants. He indicated that planning for school districts is currently difficult and would become impossible if residents were able to have school district boundaries changed at will.

The record also includes a detailed report of a study of the District completed in March, 1975, by Dr. Robert L. Whitt from Drake University. The study was requested by the District and presented to the Board of Directors. Also in the record was a report of an April, 1974 study of the contiguous district conducted by an educational survey team from Drake University. Appellee exhibit number one was a letter of January 22, 1975, from Guilford Collison, regional consultant with the Department of Public Instruction, commending the District for recent improvements made in the District's educational program and general administration. The record shows that the Appellants appeared before the District Board of Directors on August 18, 1975, and made an oral presentation requesting the acceptance and approval of their petitions.

The Hearing Panel finds that the District's Board of Director's decision to deny the Appellants' request to withdraw from the District had sufficient basis in fact, was made after due and sufficient consideration and was not based on erroneous legal standards and rules of decision.

III.
Conclusions of Law

The Appellee's Resistance to the Appeal makes several contentions of law with which the Hearing Panel does not agree. However, because the Panel's decision is favorable to the Appellee, the Panel does not feel compelled to discuss those points of law.

The Appellants properly cite to Section 275.1, The Code 1975, for the declared legislative policy regarding reorganization:

> 275.1 Declaration of policy--surveys. It is declared to be the policy of the state to encourage the reorganization of school districts into such units as are necessary, economical and efficient and which will insure an equal educational opportunity to all children of the state.

They are equally accurate in citing Turnis v. Board of Education, 109 N.W.2d 198 (Ia., 1961) for the proposition that Iowa Courts interpret state policy as favoring progressive school reorganization and Davies v. Monona County Board of Education, 135 N.W.2d 663 (Ia., 1967) for the proposition that Section 274.37 provides a viable alternative and simpler method of boundary change than that found in Chapter 275. Where we feel that the Appellants' arguments begin to miss the mark is with the intended purpose of Section 274.37.

Appellants contend that Section 274.37 should be closely read with Chapter 275 to provide an alternative, less formal method of reorganization, even against the will of the district board of directors if need be. We do not totally agree. It is clear that the legislature intended Section 274.37 to be a "simpler" method of boundary change than formal reorganization and such boundary change to be contingent upon the mutual agreement of the boards of directors of the contiguous districts. The statutory requirement of concurrent action appears to have the purpose of protecting districts from giving up territory or having to accept additional territory against the will of the board of directors which consists of elected representatives of the people residing in the district. However, Section 274.37 read in conjunction with Chapter 290, appears to place just such an ability in the State Board of Public Instruction. Such power, in order to carry out the apparent legislative intent of Section 274.37, must be exercised with great care and consideration. School district stability would be greatly impaired and planning would be much more difficult if the State Board overruled in a wholesale fashion, local board refusals to grant petitions under Section 274.37. We agree with Superintendent Kooiker that school district reorganization should be planned and accomplished on an areawide basis and not piecemeal, especially when the piecemeal approach is opposed by either of the districts as it is in this instance.

There are, of course, circumstances which may arise that would be sufficiently compelling for the State Board to rule in favor of property owners in such appeals. As we said in In re Kenneth Hoksbergen, 1 D.P.I. Ap. Dec. 86, at 88:

> This is not to say that there may not exist sufficiently compelling reasons on the part of individual patrons that override the interests of the individual school district. In situations, for instance, where man-made barriers, such as large reservoirs, are created which significantly alter the position of patrons to the rest of the district, it may be more equitable for the State Board to overrule a local board's unreasonable refusal to change its boundary line through the concurrent action provisions of Section 274.37.
>
> However, in the absence of a compelling overriding interest on the part of an individual school district patron, this Hearing Panel feels that the decision of the local board should stand.

The record in this appeal does not disclose any reason sufficient in magnitude for this Hearing Panel to feel compelled to overrule the decision of the District Board of Directors. Many of the problems alluded to by the Appellants are not unique to the District.

In the absence of concurrent board approval under Section 274.37, it appears that the most appropriate solution may be a planned reorganization of the district boundaries under the provisions of Chapter 275.

The Hearing Panel wishes to make clear that its decision in this matter should not be taken as an endorsement of existing circumstances in the District. We feel that the District should, as should all Iowa school districts, continually review its educational system with the thought of improvement and if district reorganization will improve the education it provides, it should proceed with reorganization.

All objections raised by the parties and not previously ruled upon are hereby overruled.

IV.
Decision

The decision of the Interstate 35 Community School District Board of Directors in this matter is hereby affirmed. Appropriate costs are hereby taxed to the Appellants.

January 8, 1976
DATE

T. J. HERONIMUS, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION

December 31, 1975
DATE

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