**IOWA STATE BOARD
OF EDUCATION**
(Cite as 13 D.o.E. App. Dec. 126)

In re Edward Zaccaro, *et al.*	)	
Edward Zaccaro, et al., Appellants,	)	
v.	)	RULING ON APPELLEE'S MOTION TO DISMISS
Dubuque Community School District,	)	
Appellee.	)	[Adm. Doc. #3757]

The above-captioned matter is before the Administrative Law Judge on Appellee District's Motion to Dismiss the appeal for lack of jurisdiction. Specifically, Appellee contends that under Iowa Code § 290.1, the State Board of Education cannot entertain this appeal because it was filed more than thirty (30) days "after the rendition of the decision or the making of the order ..." of the local board of directors.

Appellee insists that the appeal is untimely because the decision at issue here, is the one made by the District on December 11, 1995, to adopt a reorganization plan referred to as "Rezoning Plan C." Appellant parents[1], on the other hand, argue that the District Board's refusal to "rescind the motion to adopt Plan C" constitutes the appealable issue. The more recent action of the Board occurred at its regular meeting on March 11, 1996, after "[i]t was moved by Mr. Linden and seconded by Mr. Warnke to rescind the motion to adopt Plan C that was made and adopted by the Board on December 11, 1995." (March 11, 1996, Board minutes.) The minutes further show that a role call vote was taken on the motion which was defeated 5 to 1 with one board member abstaining.

Appellee's second ground for dismissal of the appeal is that "[n]one of the Appellants is a person 'aggrieved' by the decision of the local board on March 11, 1996, ... none of the Appellants was prejudicially effected [sic] by the defeat of the motion to rescind; no person's rights changed by the defeat of the motion. The Appellants' complaint is with the action of December 11, 1995, not with the decision of March 11, 1996." (Appellee's Motion at 2-3.)

1Over 75 parents have joined the appeal of the March 11, 1996, Board decision.

Background Facts:

The facts giving rise to this appeal and the Motion to Dismiss have been recited by Appellants in their Resistance to the Motion to Dismiss. The following facts will be accepted as true for the purposes of deciding this motion.

The original decision adopting "Plan C" being appealed by the aggrieved parents was passed by the Dubuque Community School District on December 11, 1995. (See, Bd. Min. of regular meeting, December 11, 1995.) After the original decision of the Board of Directors and before the expiration of thirty (30) days thereafter, various parents expressed public opposition at the next regular Board meeting and requested the local board to reconsider and rescind its decision concerning the adoption of Plan C. This occurred at the next regular Board meeting held January 8, 1996, which was twenty-eight (28) days after the "original decision." (See, Bd. Min. of regular meeting, January 8, 1996.) At that January Board meeting, the District Superintendent, Dr. Marvin O'Hare, responded with an apology for the stress caused to the parents and assured them of the District's goal to alleviate the overcrowding conditions in the various schools within the District. According to the Board minutes, "[h]e felt there are solutions to the registered concerns and offered to meet with the transition team as much as necessary to assist in the solution process. He further explained that the Board did not set parameters on the Lincoln School Transition Team as they review options and seek solutions to the existing overcrowding problem. Dr. O'Hare concluded with an assurance that there would be equity and quality educational programs for all students." (Id. at p. 3.) In addition, Board members Heirig and Sheehy further offered to assist the parents in seeking "solutions" to the registered concerns. (Id.)

On February 19, 1996, the local board met again for its regular meeting and there upon more aggrieved parents requested that the Board reconsider and postpone implementation of the Plan C passed by the local board December 11, 1995. (Bd. Min. of regular meeting, February 19, 1996, at p. 1.) At that meeting, Board member Heirig expressed his displeasure and regret over the procedure that was followed by the local board in approving Plan C, and requested that the matter be reconsidered and placed upon the local board's next meeting agenda. The local board agreed to and did place the rezoning matter and Plan C on the regular meeting agenda for March 11, 1996. (See, meeting agenda for March 11, 1996.) After public discussion at the March 11, 1996, meeting, the motion to rescind Plan C was made and voted upon. It failed 5 to 1 with Board member Heirig abstaining.

Conclusions of Law:

Challenges to local board of education decisions are governed by Iowa Code chapter 290. Section 290.1 grants an aggrieved person thirty (30) days from the local board decision or order to contest its legality. The question raised by Appellee's Motion to Dismiss is whether the Appellants can challenge "Rezoning Plan C" adopted on December 11, 1995, by appealing within thirty (30) days of the Board's refusal to rescind the Plan which was made on March 11, 1996?

The answer is no. The Board's refusal to rescind Plan C taken at the March 11, 1996, meeting was a continuation of the original issue: Rezoning Plan C. The Appellants had thirty (30) days from December 11, 1995, in which to challenge that local board decision. Once that time period passed (on or about January 11, 1996), the State Board lost its jurisdiction over the dispute. This is because an administrative agency has only such jurisdiction and authority as expressly conferred by statute. Northwestern Bell Telephone Co. v. Iowa Utilities Bd., 477 N.W.2d 678, 682 (Iowa 1991). Filing the Affidavit of Appeal within thirty (30) days of the original board decision is jurisdictional. Iowa Code § 290.1. The fact that Appellants believed that the District would act favorably toward their concerns at subsequent Board meetings, does not change this fact. Even if Appellants were misled by the District Board's action, "jurisdiction cannot be established by consent, waiver or estoppel." Qualley v. Chrysler Credit Corp., 261 N.W.2d 466, 468 (Iowa 1978). "That rule proceeds on the premise that jurisdiction does not attach, nor is it lost, on equitable principles. It is purely a matter of statute." Cunningham v. Iowa Dept. of Job Svc., 319 N.W.2d 202, 204 (Iowa 1982). See also, Uchtorff v. Dahlin, 363 N.W.2d 264 (Iowa 1985)(the district court may not relieve a party who fails to make the timely appeal, even when the failure is wholly due to the fault of another).

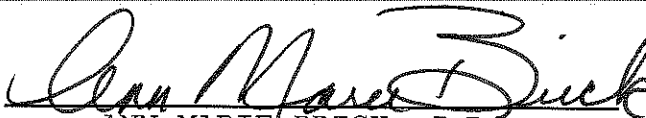
There is no indication in the minutes of the Board meetings held on December 11, 1995; January 8, 1996; or February 19, 1996, that the Superintendent or other Board members led the public to believe the decision to approve Plan C would be rescinded. Even if the law allowed an extension of the appeal time because of the parents reliance on "misrepresentations," there is no evidence that the Board or Superintendent ever made such statements. In their efforts to assure the parents that they would work to find "solutions" to expressed concerns, some parents may have hoped that one available "solution" would be the rescission of Plan C. This, however, was never promised by Superintendent O'Hare or the Board.

Any appeal of Plan C to the State Board of Education was foreclosed to the parents after January 11, 1996. To hold

otherwise would be contrary to statute and would not serve the interests of either the District or the parents. That is because the State Board's decision could then be set aside for lack of subject matter jurisdiction by the District Court on appeal. All of this would cause both the District and its parents unnecessary expense and disruption of the educational program. The remedy for the parents remains in the District, where it was initially.

For these reasons, Appellee's Motion to Dismiss the above-captioned matter for lack of subject matter jurisdiction is hereby granted.

4/16/96
DATE



ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE