

SCHOOL CLOSING AND GRADE REALIGNMENT PROCEDURES

Where we have been, where we are at and where we are going . . .

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IASBO Fall Conference
October 30, 2009

I. Authority

- A. School districts have “exclusive jurisdiction in all school matters.” Iowa Code Section 274.1.

There are numerous statutory examples in the Code granting school districts the clear authority to determine the number and location of its school attendance centers.

1. School districts have the power to “fix the site for each schoolhouse.” Section 297.1.
2. School districts have the discretion to “determine the number of schools to be taught . . . [and] the particular school each child shall attend.” Section 279.11.
3. School districts have the authority to “establish and maintain attendance centers based upon the needs of the school age pupils enrolled in the school district.” Section 280.3.

II. Iowa Code Chapter 290

- A. Iowa Code chapter 290 states that any “affected pupil, or the parent or guardian of a pupil, aggrieved by a decision” of a local school board may appeal to the Iowa State Board of Education if they do so within 30 days of the local board’s decision.
- B. A school board’s decision to close or realign a school building is subject to appeal under Iowa Code chapter 290.

- C. If a timely appeal is filed, under Iowa Code chapter 290 it will be the responsibility of the board secretary to forward to the Iowa State Board of Education all the relevant minutes, tape recordings, etc., which document the board's decision and the basis and rationale behind the board's decision.
- D. On appeal, the Iowa State Board of Education may affirm, modify or reverse the local board's decision or direct a rehearing of the case. Iowa Code §256.7(6).
- E. In order to determine which action to take, the administrative law judge in a 290 appeal will conduct a hearing to determine: 1) whether the board had the authority (express or implied) to do what it did, and 2) if authority is established, whether the action taken by the board was "reasonable" or, in the alternative, whether such action was an abuse of the Board's statutory authority and/or discretion.

III. Barker Guidelines

- A. In 1977, in *In re Norman Barker*, 1 D.P.I. App. Dec. 145, the Iowa Department of Public Instruction (what is now the Iowa Department of Education) suggested certain criteria which, if utilized in the process of deciding to close a school, indicate that the decision was reasonably made after due consideration.
- B. These recommended procedures or criteria for school closings became known as the "Barker Guidelines" based on the name of the case in which they were created.
- C. The Barker Guidelines specifically recommended the following: 1) the establishment of a time-line for the various steps present in the making of an important decision to close a school; 2) an informed public and public discussion of the school closing issue; 3) sufficient research, study and planning be carried out by the board and administration prior to making a decision; 4) the discussion surrounding the school closing decision was to be open and frank; 5) a proper record was to be made of all steps taken in the making of the decision; and 6) the final decision whether to close a school was to be made in an open public meeting.
- D. The Department discussed the scope of these guidelines in *In re Bryson Hendricks*, 3 D.P.I. App. Dec. 379 and noted that: "It must be remembered that the Barker Guidelines are merely that. They are not enforceable statutes or rules. They were devised not for the purpose of governing local decision-making, but for aiding an open and informed decision-making."
- E. Despite this guidance regarding the scope of the Barker Guidelines, the Department's case law in the 80s and 90s clearly showed that any school

district who failed to follow, at least in most part, the Barker Guidelines, when conducting a school closing was most likely going to have that decision challenged successfully on appeal.

IV. Department of Education Rules on School Closings and Grade Realignment

- A. In 2003, the Iowa State Board of Education decided to make the Barker Guidelines more easily and uniformly enforceable and, therefore, adopted formal administrative rules incorporating the essence of the former Barker Guidelines.
- B. These rules were originally adopted and found at 281 I.A.C. 19.1, 19.2.
- C. These rules specifically stated as follows:

- 1. 281 I.A.C. 19.1 Policy

The board of directors of a school district has discretion as to the number of attendance centers it shall operate within the district. The process for determining whether to close an attendance center must involve public notice, public consideration and public involvement. The policies set forth in rule 281 I.A.C. 19.2 are meant to ensure full opportunity for public participation in the relevant events. It is intended that the policies shall be implemented by local boards in such a way as will most reasonably accommodate the specific facts and circumstances surrounding the decision with which the local board is faced.

- 2. 281 I.A.C. 19.2 Attendance Center Closing Procedure

When making a decision regarding whether to close an attendance center within its district, the board of directors of a school district shall substantially comply with all of the following steps:

- a. The board shall establish a time line in advance for carrying out the procedures involved in making the decision on the matter, focusing all aspects of the time line upon the anticipated date that the board will make its final decision on the matter.
 - b. The board shall inform segments of the community within its district that the matter is under consideration by the board. This shall be done in a manner reasonably calculated to apprise the public of that information.
 - c. The board shall seek public input in all study and planning steps involved in making the decision.

- d. The board and groups and individuals selected by the board shall carry out sufficient research, study and planning. The research, study and planning shall include consideration of, at a minimum, student enrollment statistics, transportation costs, financial gains and losses, program offerings, plant facilities, and staff assignment.
 - e. The board shall promote open and frank public discussion of the facts and issues involved.
 - f. The board shall make a proper record of all steps taken in the making of the decision.
 - g. The board shall make its final decision in an open meeting with a record made thereof.
- D. The State Board also expanded the essence of the Barker Guidelines to cover not only school building closures, but also the realignment of attendance centers. The guidelines or steps that were to be substantially followed when realigning a school building were:
- 1. 281 I.A.C. 19.3 Grade Realignment Procedures
 - a. The board and groups and individuals selected by the board shall carry out sufficient research, study and planning. The research, study and planning shall include consideration of, at a minimum, student enrollment statistics, transportation costs, financial gains and losses, program offerings, plant facilities, and staff assignment.
 - b. The board shall post or cause to be posted the grade realignment proposal in a prominent place at the affected attendance center(s). The board shall also publish the grade realignment proposal in the agenda of an upcoming board meeting open to the public.
 - c. The board shall promote open and frank public discussion of the facts and issues involved.
 - d. The board shall make its final decision in an open meeting with a record made thereof.
- E. These rules for both the closure and realignment of school buildings remained in full force and effect until this year and the Iowa Supreme Court's decision in *Wallace et al. v. Iowa State Board of Education and the*

Des Moines Independent Community School District Board of Directors.
No. 07-0943 (July 31, 2009).

- V. *Wallace, et al v. Iowa State Board of Education and the Des Moines Independent Community School District Board of Directors*
- A. Factually, *Wallace* involved the appeal of the Des Moines School District’s July 2005 decision to close five of its schools, as a result of projected revenue shortfall and increased costs associated with its Schools First program funded by the then local option sales tax for school infrastructure.
- B. The Iowa State Board of Education affirmed the Des Moines School District’s decision to close the five schools. The appellants then sought judicial review of the State Board’s decision in district court. The district court then affirmed the decision of the State Board (which also acted to affirm the decision of the Des Moines School District). The appellants then appealed the district court’s decision to the Iowa Supreme Court.
- C. At the Iowa Supreme Court, the State Board of Education had to defend its decision to affirm the Des Moines School District’s decision to close the five schools. The State Board focused its case on why it was reasonable for the State Board to conclude, based on the record presented, that the Des Moines School District had substantially complied with the State Board’s rules on school closures in deciding to close the five schools.
- D. The Des Moines School District chose to intervene in the *Wallace* case not only to argue that it had substantially complied with the State Board’s rules on school closures, but more importantly, that even if it hadn’t substantially complied with the State Board’s rules, it did not matter because the rules were void. The District argued that the State Board had not been given the statutory authority from the legislature to adopt the rules in the first place.
- E. In throwing out the State Board of Education’s administrative rules on school closures, (which essentially codified the previous Barker Guidelines), the Court held that:

“Given the broad express powers granted by the Legislature to local school districts in such matters, and the notable absence of a legislative grant to the ISBE of authority to adopt rules regulating school closure decisions, we conclude a rationale agency could not conclude it had authority to propound rules 281 I.A.C 19.1, 19.2. The rules were based on ISBE’s erroneous interpretation of the statutes prescribing the scope of the agency’s rulemaking authority, and thus were ‘based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vetted by a provision of law in the discretion of the [ISBE]’ . . . Accordingly, the rules are void.”

- F. Even though the State Board’s rules on Grade Realignment (at 281 I.A.C. 19.3) were not specifically addressed in the Court’s opinion, based on the similarity between the school closure and grade realignment rules, it is probably safe to assume the grade realignment rules are also void.

VI. No Administrative Rules, no Barker Guidelines. . . Now What?

- A. The Court in *Wallace* ruled that a school district’s decision to close a school entails broad discretion.
- B. The Standard of Review by the State Board of Education on chapter 290 school closing appeals WILL NO LONGER BE: Whether the school district substantially complied with the State Board’s administrative rules on school closings, but rather, WILL BE: Whether the school district’s decision to close the school was an abuse of discretion.
 - 1. *Sioux City Comm. Sch. Dist. v. Iowa Dept. of Educ.*, 659 N.W.2d, 563, 568 (Iowa 2003) noted that, “where a statute provides for a review of a school district's discretionary action, the review, by necessarily implication, is limited to determining whether the school district abused its discretion.”
- C. Question -- How will the State Board of Education now decide whether a school district abused its discretion in deciding to close a school building?
 - 1. Utilizing some or all of the old Barker Guidelines found in prior State Board caselaw?
 - 2. Utilizing old State Board of Education and other caselaw to determine what constitutes an abuse of a [school district’s] discretion?
 - 3. Create new “guidelines” it would like to see used in school closing and grade realignment cases, but not implement them into administrative rule?
 - 4. We won’t know for sure until the first school closing case is appealed and ruled upon after the *Wallace* case.
- D. In the meantime, what should school districts do who want to close or realign school buildings in the near future?
 - 1. Start the process as soon as possible – don’t wait and have to rush through the process.
 - 2. Stop . . .think . . . use common sense.

3. The Barker Guidelines and prior State Board rules on school closures make sense in most situations.
4. When you decide to close a school the decision is almost always controversial. So doesn't it make sense to do most, if not all of the following:
 - a. Have the Board do some study and research into whether the closure of the building makes sense and is in, what it believes, the best interest of the District (whether that be for financial reasons, declining enrollment, new construction, maintenance or upkeep costs, safety issues, etc.).
 - b. Give notice to the public that the Board is considering action to close a school building and make a timeline for when it is intending to make that decision.
 - c. Seek public input into the decision.
 - d. Maintain a record of what the Board is doing and the process it is going through in order to make a decision on the closure. A record can be made through minutes, website, newsletters, etc. Remember, even though the State Board's rules are no longer valid, the decision to close a building is still appealable to the State Board under chapter 290 and the Board will need to have a good record – basis and rationale – for why it decided to close the school building.
 - e. Make a final decision on the school closure at a public board meeting in open session. A public hearing before final action may be wise if it is a highly controversial closing and there has been little public input up to that point.
5. Every school closing is different and every school has its own set of facts and circumstances. The exact process that may work for one district may not work for another. Think about YOUR district, YOUR tax payers, YOUR staff and YOUR students when making YOUR decision on closing a school building.