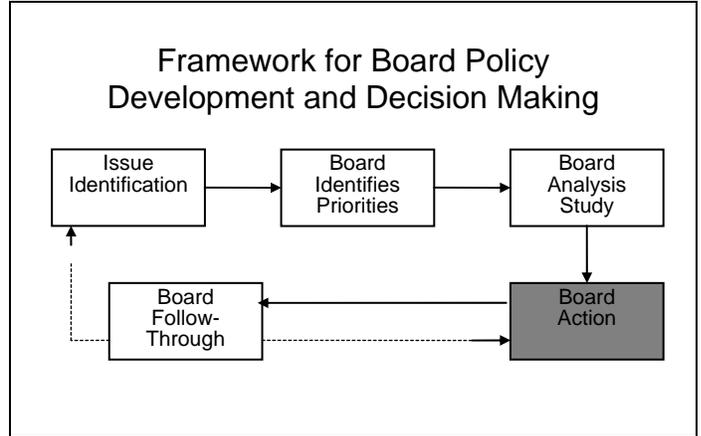


Iowa State Board of Education

Executive Summary

July 26, 2007



Agenda Item: *In re Grade Realignment, 24 D.o.E. App. Dec. 284*
(Mueggenberg v. Clay Central-Everyly Community School District)

Iowa Goal: 2. All K-12 students will achieve at high levels, prepared for success beyond high school.

Equity Impact Statement: All districts receive guidance from the legal questions answered in this decision.

Presenter: Carol Greta

Attachments: 1

Recommendation: It is recommended that the State Board reverse the decision of the local school board to relocate grades 3 – 5 from one attendance center to another attendance center.

Background: The procedure used by local boards of school districts in grade realignment decisions are governed by rule 19.3. Those procedural steps demand only that the public, especially families of affected students, are given notice of proposed realignments and opportunity for input to the board.

In this case, the local board made no attempt to reach out to the public. It sent no information home with students, posted no information specific to moving grades 3 – 5 from the school in Everyly to the school in Royal, and held no informational meetings. It is not enough that the District posted tentative agenda of the March and April regular board meetings on which this issue was obliquely referenced, nor it is sufficient that the superintendent agreed to cooperate with the parent-organized informational meeting. The board failed to meet its obligations to separately post specific information about the grade realignment in both attendance centers and to affirmatively promote open and frank public discussion of the facts and issues involved.

In the event of an appeal of a final decision, the State Board is represented in district court by the Iowa Attorney General's office. Therefore, if any State Board member has one or more questions for the Attorney General's office, let us know several days in advance of the July 26 meeting so we can arrange for an assistant Attorney General to be present either in person or via telephone.

RECOMMENDATION: It is recommended that the State Board approve the Administrative Law Judge's decision to reverse the Clay Central-Everyly Community School District's Board of Director's decision to relocate grades 3 – 5 from Everyly to Royal.

**IOWA DEPARTMENT
OF EDUCATION
(Cite as 24 D.o.E. App. Dec. 284)**

In re Grade Realignment

Charity Mueggenberg,

Appellant,

vs.

Clay Central-Every Community

School District,

Appellee.

:

:

:

:

:

PROPOSED
DECISION

[Admin. Doc. 4650]

The above-captioned matter was heard telephonically on June 7, 2007, before designated administrative law judge Carol J. Greta. The Appellant, Charity Mueggenberg, was present and represented herself. The Appellee, the Clay Central-Every Community School District [herein "CC-E" or "the District"], was represented by Superintendent Monte Montgomery. Those called as witnesses included local board secretary Donna Ott, board president Sue Brugman, board vice president Gary Klett, and CC-E parents Bobbi Schmidt, Fran LeClair, Regina Nelson, Cathy Adkins, and Steve Rank.

An evidentiary hearing was held pursuant to agency rules found at 281—Iowa Administrative Code chapter 6. Authority and jurisdiction for the appeal are found in Iowa Code § 290.1. The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter of the appeal before them.

Ms. Mueggenberg, who is the parent of a child who will be in first grade at CC-E during the 2007-08 school year, challenges the procedural validity of the April 16, 2007 decision of the local board of directors of the District to move grades 3 – 5 from the Everyly attendance center to the Royal attendance center.¹ The adopted realignment is to take effect commencing with the 2007-2008 school year.

¹ Although Ms. Mueggenberg's child is not a third, fourth, or fifth grade student, pursuant to our decision in *Syndergaard, et al. v. South O'Brien Community School District*, 22 D.o.E. App. Dec. 56 (2003), the jurisdictional requirement that her child be an "affected child" is met here because her child's attendance center is affected.

I. FINDINGS OF FACT

According to the educational directory maintained by this agency, during the 2006-2007 school year, the CC-E board operated two attendance centers, as follows:

- The center located at Royal, Iowa, attended by all students in grades PK – 2, plus all students in grades 6 – 8; and
- The center located at Everly, Iowa, attended by all students in grades 3 – 5, plus all students in grades 9 – 12.

At its regular meeting in February of 2007, the local board was informed by Supt. Montgomery that it would hear options for possible grade realignment at its March 19 regular meeting. This bit of information does not appear in the minutes of the February meeting. It was apparently mentioned as part of Supt. Montgomery's routine report to the board that month, and marked the first time that the board was made aware of the issue.

The District's school improvement advisory committee ["SIAC"], a group of 20 persons, was provided pertinent information regarding enrollment, finances, staff assignments, and transportation. The committee was asked in January or February by Supt. Montgomery to prepare options for presentation to the local board. The SIAC met either two or three times in early 2007 before determining that there were but two viable options, (1) no realigning of grades, but reducing staff "as needed" or (2) moving grades 3 – 5 to Royal, leaving only grades 9 – 12 at Everly. None of the SIAC meetings were noticed to or open to the public. A SIAC member testified that she drafted an informational letter to be sent to parents but was told that the District was not planning to send any notification letter to parents.

The minutes of the local board's regular meeting of March 19 state as follows:

Discussion opened on the classroom realignment for the 2007-08 school year. Questions and discussion included: the options available; the need and reasons for the realignment; the savings, if elementary staff is reduced to a single section at each level; the middle school concept; and, the future.

These minutes were published in the Everly Royal News, a weekly newspaper of general circulation within the District.

A parent of children in CC-E organized a public informational meeting, which was held March 28 at the Everly Community Center. Supt. Montgomery was asked by the organizer to attend and to be prepared to lead the meeting, which he did. All local board members also attended the meeting, as did approximately 100 other persons.

Between March 28 and April 16, an editorial written by Supt. Montgomery was published in two local newspapers, the Everly Royal News and the Spencer Daily Reporter. The editorial contained the following excerpts:

...The [CC-E] board met in regular session on March 19th and began a conversation on available options. They will continue the discussion in April with possible action occurring at the regular meeting on April 16th. Three of the options being considered are: keep current grade assignments (PreK-2 and 6-8 in Royal, 3-5 and 9-12 in Everly); have PreK-8 in Royal and 9-12 in Everly; have PreK-6 in Royal, and 7-12 in Everly. Each of these options has positives and negatives associated with them. Unfortunately, with all three of these options, staff cuts will be necessary.

On April 16 the local board conducted its regular meeting. The action item “classroom realignment” appeared on the agenda for that meeting. The minutes of April 16 state as follows:

Discussion opened on the classroom realignment for the 2007-08 school year. Questions and discussion included: the SIC² recommendations; the need for the realignment; the declining enrollment; the pros and cons for each scenario; the SIC appointment; economics; and, the future. Motion by Batschelet to go to a single section elementary with PK-8 at the Royal building and 9-12 at Everly. Roll call vote: Batschelet, aye; Brugman, aye; Klett, nay; Phelps, nay; and Saboe, aye. Motion carried.

The above facts are not disputed by the parties. In a “Timeline of District and Board Actions” prepared by CC-E for this hearing, the District agrees that all actions taken publicly occurred in the four week period book-ended by March 19 and April 16.

II. CONCLUSIONS OF LAW

Iowa Code § 279.11 gives local school boards the authority to “determine the number of schools to be taught” and “determine the particular school which each child shall attend.” Ms. Mueggenberg does not challenge the right of the CC-E board to relocate grades 3 – 5 to the Royal facility, nor does she base her appeal on the wisdom of that decision. Rather, she argues that the board violated the procedural guidelines in 281—Iowa Administrative Code 19.3.

Rule 19.3 states that, when making a decision regarding a realignment of the grades to be taught in an attendance center, a local board must substantially comply with all of the following steps:

- (1) 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.

² During the hearing, CC-E personnel clarified that what the District means by “SIC,” school improvement committee, is identical to the “SIAC,” school improvement advisory committee, required of each school district and nonpublic accredited school by Iowa Code section 280.12.

(2) 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.

(3) The board shall promote open and frank public discussion of the facts and issues involved.

(4) The board shall make its final decision in an open meeting with a record made thereof.

There is no basis for this Board to hold districts to strict adherence to the above rules. Substantial compliance is all that is required, and substantial compliance is the yardstick we use when addressing Ms. Mueggenberg's arguments. Ms. Mueggenberg concedes that the final step is not at issue here, but argues that CC-E did not meet the other three steps. On the other hand, the District argues that its compliance with the Open Meetings law (Iowa Code chapter 21) for the two regular board meetings (March 19's discussion item and April 16's action item) substantially complied with rule 19.3.

Before examining the three procedural steps in question, we remind all districts and patrons of the purpose of rule 19.3 and of our review. We do not review whether the grade realignment decision "was the best course for the District." *Jacobson v. Nodaway Valley Community School District*, 21 D.o.E. App. Dec. 99, 104 (2002). The focus of our review is the process followed by the local board.

1. *Sufficiency of research, study, and planning.* There is no requirement regarding the composition of the group(s) selected to study the realignment issue. Asking the SIAC, a diverse group of parents, staff, students, and patrons of the District, to take on this issue makes abundant good sense. The SIAC is charged with the statutory duties of studying and making recommendations regarding major educational needs, student learning goals, long-range and annual improvement goals, desired levels of student performance, and progress toward meeting the goals. We applaud CC-E's choice of its SIAC to study a possible realignment.

There is no evidence of any insufficiency of pertinent information in this case. No member of either the SIAC or the local board asked for additional information. One of the board members who voted against the grade realignment stated that he simply favored a different option. In testifying on behalf of Ms. Mueggenberg, the board member said that his vote did not indicate a need for additional time, additional information, or additional study. There can hardly be a more accurate indicator of the sufficiency of the research, study, and planning herein. We conclude that the local board substantially complied with this step.

2. *Adequacy of notice of proposal.* The District argues that it complied with Iowa's Open Meetings law regarding the CC-E board meetings of March 19 and April 16, and that this compliance is sufficient for purposes of meeting the steps in rule 19.3. The

District did comply with the Open Meetings law, but meeting the requirements in Iowa Code section 21.4³ does not equate to meeting the requirements in subrule 19.3(2).

When a local school board is considering a grade realignment, that issue is not a "business as usual" agenda item. This board ruled in an earlier grade realignment case that we require that notices of proposed grade realignments be worded and made public "in a manner reasonably calculated to apprise the public of that information." See *Syndergaard, et al. v. South O'Brien Community School District*, 22 D.o.E. App. Dec. 56 (2003), incorporating by reference Iowa Code § 21.4.⁴

The facts herein are distinguishable from those in *Syndergaard*. The CC-E board failed to comply, substantially or otherwise, with the requirement in subrule 19.3(2) that it post the grade realignment proposal in a prominent place at the affected attendance center(s) and publish the same in the agenda of an upcoming board meeting. To be in substantial compliance with this step, the District needed to post an explanation in both attendance centers that the local board was considering moving grades 3 – 5 from Everly to Royal. It wholly failed to comply with this step.

3. *Promotion of open and frank public discussion.* The District argued that it held three public meetings regarding grade realignment, those being the board meetings of March 19 and April 16, and the informational meeting of March 28. We disagree with both the District's arithmetic and with its contention that the meetings were adequate to promote open and frank public discussion.

The agenda item for the March 19 meeting, which was properly posted by the District, listed as a discussion item "Classroom Realignment." The District made no effort to notify the public of this item other than its usual and customary posting of the tentative agenda. Although a SIAC member had drafted an informational letter that she suggested be sent to parents, CC-E neither mailed any such letter nor sent a copy home with students. At no point were the details of any of the options, let alone the one adopted by the local board, posted in the CC-E attendance centers. Therefore, there was no context into which CC-E parents and other patrons might place the cryptic agenda item "Classroom Realignment."

³ Section 21.4 requires a governmental body, such as a public school board, to "give notice of the time, date, and place of each [board] meeting, and its tentative agenda, in a manner reasonably calculated to apprise the public of that information...at least twenty-four hours prior to" the meeting.

⁴ In *Syndergaard*, we discussed the sufficiency of the detail of an agenda item regarding a grade realignment, noting with favor that the issue is not whether the wording "could have been improved, but whether the notice sufficiently apprised the public and gave full opportunity for public knowledge and participation. In determining whether the public was sufficiently apprised, we may consider the public's knowledge of an issue and actual participation in events in light of the history and background of that issue." *Id.* at 63, quoting *KCOB/KLVN, Inc. v. Jasper County Bd. of Sup'rs*, 473 N.W.2d 171, 173 (Iowa 1991). Our decision in *Syndergaard* was that, "[w]hen read in the context of the history of public meetings from December 9, 2002 through March 26, 2003, it is clear that no one in the [South O'Brien] District could reasonably be said to be confused about the fact that the Board was going to vote on April 2 on the realignment issue." *Id.*

We must note also at this point that all SIAC meetings are subject to Iowa's open meetings law, Iowa Code chapter 21. Because the SIAC is created by statute (Iowa Code § 280.12, notices of all SIAC meetings and tentative agenda must be published (i.e., posted) and the meetings open to the public. The District admitted in this case that it did not comply with chapter 21. While neither the State Board of Education nor the Department of Education has authority over violations of chapter 21, we note that the failure to make public the SIAC meetings at which realignment was discussed adds to the fact that the CC-E parents and other patrons had no context for the "Classroom Realignment" agenda item.

To be clear, there is no requirement in rule 19.3 that a district mail letters to families of affected students or send information home with those students. The fact that CC-E did not mail letters or send home notes to families is not a violation of rule 19.3. However, the lack of such communications is partially determinative of whether the District promoted frank and open public discussion. Secondarily, such communications would have given the public a context for the March 19 agenda item. The facts here stand in stark contrast to those in *Syndergaard*, where the board conducted three public hearings, posted a detailed explanation of what the realignment would look like in the affected attendance centers, and directly mailed notice of a fourth informational meeting to the families of all affected students, thus establishing a history for that district's parents and patrons. Here, no one among the CC-E public knew to look for this item on a board meeting agenda, and no one among the public could be reasonably expected to know what it meant when it appeared on the agenda for the March 19 meeting.

The District admits that a parent of children in CC-E organized the one and only informational meeting that was held. None of the witnesses on behalf of the District stated that it intended to hold such a meeting. Indeed, because CC-E failed to send a note home with students in the affected grades and failed to mail any informational letter to parents, we must conclude that there would have been no informational meeting if the parents had not initiated the same. We do believe that by the April 16 regular board meeting, nearly all of the CC-E parents were aware that *some* action *might* be taken at that meeting to relocated grades. However, we believe that it would be an erroneous precedent and poor public policy for us to give "credit" to a district for an informational meeting initiated and planned solely by parents. The whole point of the steps required in rule 19.3 – none of which can be said to impose much of a burden upon a district – is that the district is reaching out to parents to make them aware of potential grade realignments.

Summary

We remind all districts that the chapter 19 rules do not obligate the board to acquiesce to the wishes of parents. However, *the rules do require that the board take additional affirmative steps reasonably designed to give its patrons an opportunity to know what the issue is and to have meaningful input about the issue.*

Therefore, it is not enough that the District posted a tentative agenda of the March and April regular board meetings in the manner in which it posts agenda of all regular board meetings; the District had an obligation to post separately (not just in a tentative board agenda) the grade realignment proposal in a prominent place at the

affected attendance centers. Likewise, it is not enough that the District agreed to cooperate with the parent-organized informational meeting; the District had an obligation to affirmatively promote open and frank public discussion of the facts and issues involved.

**III.
DECISION**

For the foregoing reasons, it is recommended that the decision of the Board of Directors of the Clay Central Community School District made on April 16, 2007, to relocate grades 3 – 5 from Everly to Royal be REVERSED. There are no costs of this appeal to be assigned.

 /s/ 6/20/07
Date

Carol J. Greta, J.D.
Administrative Law Judge

It is so ordered.

Date

Gene E. Vincent, President
State Board of Education