STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0799

In the Matter of the
Proposed Closing of Rollingstone Community School.

Filed April 15, 2019
Affirmed; motion denied
Jesson, Judge

Independent School District No. 861

Gregory L. Richard, Winona, Minnesota; and

Lucas J. Thompson, Thompson Horst, PLLC, Edina, Minnesota (for relator Save Our Schools Committee)

Christian R. Shafer, Nathan B. Shepherd, Ratwik, Roszak & Maloney, P.A., Minneapolis, Minnesota (for respondent Independent School District No. 861)

Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Jesson, Judge.

U N P U B L I S H E D O P I N I O N

JESSON, Judge

By writ of certiorari, relator Save Our Schools Committee challenges the decision by the school board of respondent Independent School District No. 861 to close two elementary schools. Because substantial evidence supports the school board's decision to

close the elementary schools, the role of the superintendent did not violate due process, and the decision was not arbitrary or capricious, we affirm.

FACTS

Respondent Independent School District No. 861 (the district) encompasses the Winona Area Public Schools, which, prior to the school closings at issue, consisted of five elementary schools, one middle school, one high school, and one former school building used by the district for offices and community education. Until recently, Madison Elementary School, built in 1940, housed 196 students from kindergarten through fourth grade. Rollingstone Community School, constructed in 1996, housed 74 students from pre-kindergarten through fourth grade. Facing declining enrollment, looming maintenance needs for several facilities, and a budget shortfall, the district began exploring options to reduce its budget.

In late 2016, the district established a task force on facilities to help the district determine the best course of action regarding the maintenance and upgrade needs of its properties. The task force reviewed a facilities analysis report prepared by an outside firm that identified and prioritized maintenance needs. The report recognized $7,385,708 in costs for Madison, and $1,597,630 for those same costs at Rollingstone. Based on this analysis and concerns about the district's facilities, approximately two-thirds of the task force members expressed support for a plan that involved closing Madison and Rollingstone elementary schools.

In early 2017, the district established a Budget Reduction Committee tasked with considering options to reduce the district's budget by $1,500,000 for the 2017-2018 school

year. That committee considered 238 suggestions for achieving the budget reduction, including closing Madison and/or Rollingstone. Members of that committee indicated support for closing both schools.

In February 2018, the district convened another Budget Reduction Committee charged with providing the school board with prioritized rankings of options for reducing the district's budget. This committee again considered the option to close the two schools. Of the 31 committee members, 19 supported closing both schools, 21 supported closing Rollingstone, and 25 supported closing Madison.

Based on input from these committees, the school board scheduled a public hearing regarding closing the schools, and the district provided notice of the meeting.[1] At the public hearing, the superintendent presented information about the district's plan to reduce its budget, and several members of the community voiced their opinions regarding the proposed closing of the two schools. The next day, the school board held a listening session and also heard public comments, but nearly all of the public feedback focused on preventing cuts to art and music programs. The school board also heard public comments at its March 22 and March 29 meetings.

At the March 29 board meeting, the school board adopted the findings and conclusions proposed by the district. The adopted factual findings included that both schools were operating under enrollment capacity and that K-12 enrollment in the district had declined. Further, the school board adopted findings that closing Madison and

[1] The public hearing was originally scheduled for February 20, 2018, but was rescheduled to March 19, 2018, after the original hearing was cancelled due to a snow storm.

Rollingstone would result in $189,854.23 in savings for building operating costs, $22,050 in annual savings as a result of streamlined transportation, and $541,852.26 savings in costs related to staffing. After noting that it considered the comments from the public, the school board determined that it was necessary and practicable to close both schools. Relator Save Our Schools Committee[2] (Save Our Schools) appealed, seeking reversal of the school board's decision and reopening of the schools, but has subsequently dismissed its appeal as to Rollingstone.[3]

D E C I S I O N

Minnesota law governs the required process for closing a school. By statute, a school board may "establish and organize and alter and discontinue such grades or schools as it may deem advisable." Minn. Stat. § 123B.02, subd. 2 (2018). But because the closure of a school is a significant event in a community, school boards are required to hold a public hearing about the necessity and practicability of a proposed school closing before making the decision to close a school. Minn. Stat. § 123B.51, subd. 5 (2018); *W. Area Bus.*

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[2] Save Our Schools Committee is an unincorporated organization of individuals who reside in Independent School District No. 861.

[3] Save Our Schools previously asked this court to stay the sale of the school buildings, but this court denied that motion because Save Our Schools failed to first seek a stay of the sale of the schools from the district. The district subsequently sold both school buildings and filed a motion seeking dismissal of this appeal as moot, which we deny because we reach the merits of the case. *See Dean v. City of Winona*, 868 N.W.2d 1, 4 (Minn. 2015) (describing mootness not as "a mechanical rule" but as a "flexible discretionary doctrine"). After oral arguments, Save Our Schools filed a notice stating that it "no longer [sought] a reversal of the sale of the real property upon which Rollingstone Community School was operated." And this court issued an order partially dismissing this appeal as it relates to Rollingstone. Although the remainder of this opinion focuses on Madison, we note that the overall analysis and conclusion applies to Rollingstone as well.

& Civic Club v. Duluth Sch. Bd. Indep. Dist. No. 709, 324 N.W.2d 361, 364 (Minn. 1982). School boards must publish notice of the public hearing for two weeks in the official newspaper of the district describing the time, place, and purpose of the meeting, and members of the public must be allowed to provide comments for and against the proposal. Minn. Stat. § 123B.51, subd. 5.

Once a school board has made the decision to close a school, that decision is entitled to judicial deference and this court does not substitute its judgment for that of the school board. *834 VOICE v. Indep. Sch. Dist. No. 834*, 893 N.W.2d 649, 652 (Minn. App. 2017). We only review a school board's decision to determine whether it was "fraudulent, arbitrary, unreasonable or not supported by substantial evidence on the record; not within its jurisdiction; or based on an erroneous theory of law." *Foesch v. Indep. Sch. Dist. No. 646*, 223 N.W.2d 371, 375 (Minn. 1974).

Save Our Schools challenges the closure of Madison on three grounds. First, Save Our Schools argues that the decision to close Madison was not supported by substantial evidence. Second, Save Our Schools contends that the role of the superintendent during the school-closing process violated due process. Finally, Save Our Schools asserts that the school-closing decision was arbitrary, capricious, and not in good faith. We address each argument in turn.

I. Substantial evidence supported the school board's decision to close the school.

Save Our Schools contends that the school board's decision was not supported by substantial evidence in the record. In the context of school-closing cases, substantial evidence requires "relevant evidence . . . a reasonable mind might accept as adequate to

support a conclusion," which must be more than a scintilla, some, or any evidence, and that evidence is "considered in its entirety." *Kelly v. Indep. Sch. Dist. No. 623*, 380 N.W.2d 833, 836 (Minn. App. 1986). We consider whether the record supports closing a particular school, and "[g]eneral data that only supports closing *a* school will be considered insufficient." *834 VOICE*, 893 N.W.2d at 655. And we will affirm a school board's decision when data provides a basis for the board's action, particularly in cases where a question "requires board members to exercise their administrative judgment." *Id.* (quotation omitted).

Here, the school board considered a plethora of data, including: K-12 enrollment data, data from the Budget Reduction Committee, a prioritized list of ways to reduce the budget, a financial savings summary, and data about deferred maintenance costs from an analysis completed by an outside architecture firm. Further, the school board considered enrollment statistics and boundary-line information for scenarios where either school was closed or if both schools were closed. Based on this data, the school board concluded that K-12 enrollment had declined in the district and that Madison was operating under capacity. Additionally, the school board found that closing Madison would save the district $106,799.54 in operating costs and $397,320.98 in costs related to staffing. The school board found that additional benefits of closing the school included a reduction in travel time for support staff who were travelling between schools, and that all programming currently available to families would be available to them at their new schools. Based on this information, the school board determined that it was necessary and practicable to close Madison. That decision is supported by substantial evidence in the record. *See W. Area*

Bus., 324 N.W.2d at 365 (concluding that a school board's decision was supported by substantial evidence where the record reflected that the board considered budgetary data, long-range planning information, demographic studies, building evaluations, and public input).

But Save Our Schools argues that the school board's enrollment and capacity determinations are incorrect and that the school board's findings did not include information about why the district was operating at a deficit. With respect to enrollment, Save Our Schools contends that the findings adopted by the school board referenced K-12 enrollment, rather than K-4 elementary enrollment, thereby presenting misleading statistics about whether elementary enrollment was declining. But although the findings reference K-12 enrollment, evidence in the record specifically demonstrated that K-4 enrollment declined from 2006 to 2016 and that K-4 enrollment was expected to show a 12% decline by the 2021-2022 school year. In terms of capacity, the record contains information regarding available classroom space and enrollment numbers at the remaining elementary schools in the event that both schools were closed. Finally, with respect to the argument that the findings did not include information about why the school district was operating at a deficit, there is no legal requirement that the school board include that information in its determination. What the school board did consider—significant data regarding enrollment, capacity, maintenance needs, and other options for reducing the budget—led to the determination that closing Madison was necessary and practicable.

Additionally, Save Our Schools analogizes this case to *Kelly*, arguing that while data may have supported closing a school, it did not specifically support closing Madison.

But *Kelly* is distinguishable. In *Kelly*, a case involving the decision to close one of two high schools in a school district, this court noted that the data did not present any obvious reason for closing one school rather than the other and that the school board recognized the equality of physical factors between facilities. 380 N.W.2d at 837. Further, this court noted that the record in that case was "practically devoid of any articulated standards or reflective findings." *Id.* That is not the case here. The record contains substantial evidence—including enrollment and capacity statistics, rankings from the Budget Reduction Committee, a financial savings summary and a deferred maintenance report—that supports the school board's decision to close Madison. Accordingly, based on the record, substantial evidence supported the school board's decision to close Madison. *See 834 VOICE*, 893 N.W.2d at 656-58 (determining that school board's decision based on declining enrollment, schools operating below capacity, inequitable learning experiences, and budgetary constraints was supported by substantial evidence).

II. The superintendent's role in the school-closing process did not violate due process.

Save Our Schools contends that its members' due-process rights were violated by the superintendent serving as an advocate, witness, and advisor during the school-closing process.

The requirements of due process are measured based on the government function involved and whether private interests are directly affected. *In re N. Metro Harness, Inc.*, 711 N.W.2d 129, 136 (Minn. App. 2006), *review denied* (Minn. June 20, 2006). In quasi-judicial proceedings, like a school board's decision to close a school, "the full

panoply of procedures required in regular judicial proceedings" are not required. *Id.* Rather, the due-process rights required in a quasi-judicial proceeding are "reasonable notice of a hearing and a reasonable opportunity to be heard." *Id.* (citing *Barton Contracting Co., Inc. v. City of Afton*, 268 N.W.2d 712, 716 (Minn. 1978)). Both happened here. And this court has previously declined to impose additional due-process requirements on school-closing hearings. *See Bena Parent Ass'n v. Indep. Sch. Dist. No. 115*, 381 N.W.2d 517, 521 (Minn. App. 1986) (declining to impose a requirement that a hearing officer must conduct school-closing cases).

Although Save Our Schools does not challenge the fact that the district provided notice of the public hearing and allowed individuals the opportunity to be heard—which is all that due process requires in the school-closing context—Save Our Schools contends that the superintendent violated due process by serving both as an advisor and advocate during the proceedings. Save Our Schools asserts that *Schmidt v. Indep. Sch. Dist. No. 1*, 349 N.W.2d 563 (Minn. App. 1984), a case involving the termination of a teacher, supports the claim that combining the roles of advisor and advocate violates due process. But this court later explicitly stated that a school board's role and range of discretion differs in teacher-termination cases and school-closing cases. *Bena*, 381 N.W.2d at 521. In concluding that there is not the same potential for arbitrary action against an individual in school-closing cases, this court declined to impose any additional due-process requirements in school-closing cases.[4] *Id.* Here, the district satisfied the required due

[4] Additionally, Save Our Schools cites *Richview Nursing Home v. Minn. Dep't of Pub. Welfare*, 354 N.W.2d 445 (Minn. App. 1984), *review denied* (Minn. Oct. 30, 1984), a case

process for a school closing by providing notice of a public hearing and an opportunity for individuals to be heard. Accordingly, we conclude that the school-closing process did not violate due process.

III. The school board's decision to close Madison was not arbitrary or capricious.

Finally, Save Our Schools maintains that the decision to close Madison was arbitrary and capricious. In support of this argument, Save Our Schools points to two commentaries written by two school board members expressing their beliefs that school closures were necessary for the financial well-being of the district and their intent to vote for the school closures.

In the context of administrative decisions, this court has determined that "an agency's decision is arbitrary or capricious if the agency (a) relied on factors the legislature never intended it to consider, (b) entirely failed to consider an important aspect of the problem, (c) offered an explanation for the decision that runs counter to the evidence, or (d) rendered a decision so implausible that it could not be ascribed to a difference in view or the result of agency expertise." *Watab Twp. Citizen All. v. Benton Cty. Bd. of Comm'rs*, 728 N.W.2d 82, 89 (Minn. App. 2007), *review denied* (Minn. May 15, 2007).

Here, Save Our Schools does not appear to contend that any of the above factors are applicable. Nor do we discern any evidence to suggest that the school board considered

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where this court concluded that, although a prosecuting attorney general reviewed a draft order for form, due process was not offended because the decision-maker remained unbiased. But that proceeding, better characterized as a contested administrative hearing, is different in function from the school-closing proceeding here.

inappropriate factors when deciding to close the school or that it ignored an important aspect of the school-closing decision. Further, the school board's decision is not contrary to the evidence and the ultimate result was not implausible.

Still, Save Our Schools contends that because two school board members wrote opinion pieces, they "pre-judged" the issue, rendering the process arbitrary and capricious and denying Save Our Schools a fair tribunal.[5] Examination of the record demonstrates otherwise. One school board member who authored a commentary recused himself and did not vote on the school closing. And the other school board member's opinion piece did not express how she intended to vote on the school-closing matter. Accordingly, the record suggests that the school board properly considered the data and differing options before it ultimately chose to close the school.

In closing, we acknowledge the significance of a school closure on a close-knit community. *834 VOICE*, 893 N.W.2d at 652. By nature, the decision to close a school is difficult—and an inherently political decision. *Id.* As such, these local decisions are

[5] In support of its position, Save Our Schools cites to an unpublished case where this court determined that a city council member's participation in an advocacy group opposing a project, before voting against that project in her capacity as a city council member, led to a determination that the city council's decision was arbitrary and capricious. *See Cont'l Prop. Grp., Inc. v. City of Minneapolis*, No. A10-1072, 2011 WL 1642510, at *6 (Minn. App. May 3, 2011). But in reaching that decision, this court determined that the record in that case established that the city council relied on factors it was not permitted to consider, at least in part as a result of the council member's advocacy activities. *Id.* Here, there is nothing in the record suggesting that the school board relied on the editorials written by the board members or considered any inappropriate factors when reaching its decision. Further, unpublished cases from this court are not precedential. Minn. Stat. § 480A.08, subd. 3(c) (2018).

entitled to our deference. We "decline to substitute [our] judgment for the judgment of locally elected officials, who are both most familiar with the community's issues and most directly accountable to the voters." *Id.* Accordingly, we conclude that sufficient evidence supported the closing of Madison, that the school-closing procedures did not violate due process, and that the decision was not arbitrary or capricious.

Affirmed; motion denied.