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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1093**

Save Indus Group, et al.,
Relators,

vs.

Ind. School District No. 363,
Respondent.

**Filed August 5, 2024
Affirmed
Johnson, Judge**

Independent School District No. 363

Marshall H. Tanick, David Robbins, Meyer Njus Tanick, P.A., Minneapolis, Minnesota
(for relators)

William L. Davidson, Mark A. Fredrickson, John A. Knapp, Lind, Jensen, Sullivan &
Peterson, P.A., Minneapolis, Minnesota (for respondent)

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

NONPRECEDENTIAL OPINION

JOHNSON, Judge

Independent School District No. 363 operated two schools until 2023, when its school board decided to close one school and consolidate operations at the other school. A group of concerned citizens challenges the school district's closure decision. We conclude that the school district complied with the statutory requirements for giving notice of a

public hearing on the proposed closure and that substantial evidence supports the school district's closure decision. Therefore, we affirm.

FACTS

Independent School District No. 363 is a large school district in terms of geographic area. It covers 1,532 square miles of Koochiching County, including the western part of the county from the Canadian border to the southern county line. But the school district is relatively small in terms of the size of its student body. Total enrollment in the school district during the 2022-2023 academic year, in grades kindergarten through 12, was 270 students. Most of the students did not reside in the district but, rather, attended a school in the district through open enrollment.

Until 2023, the school district operated two kindergarten-through-grade-12 schools: the Indus School, which was located in the northern part of the district and of Koochiching County, just south of the Canadian border, and the Northome School, which is located in the southwestern corner of the district and the county. The driving distance between the two schools is 82 miles.

During the 2022-2023 academic year, approximately two-thirds (178) of the school district's students attended the Northome School, and approximately one-third (92) attended the Indus School. Approximately half of the students at the Northome School were residents of the district (as opposed to non-residents attending by open enrollment), while less than one quarter of the students at the Indus School were district residents.

Although total enrollment in the school district fluctuates from year to year, student enrollment generally has declined in recent years. Between the 2018-2019 academic year

and the 2022-2023 academic year, total student enrollment decreased by 5.5 percent, from 286 to 270. During that period, enrollment at the Indus School decreased by approximately 12 percent, from 105 to 92. Comparatively, enrollment at the Northome School decreased by 1.6 percent, from 181 to 178.

The school district's declining enrollment corresponds to a declining population in the area. Census data shows that the population of Koochiching County decreased by approximately 17 percent (from 14,355 to 11,941) in the 21-year period between 2000 and 2021. Census data also shows that the population of school-aged children in Koochiching County decreased by approximately 24 percent (from 2,470 to 1,887) in the 11-year period between 2010 and 2021.

The school district's declining enrollment has coincided with its worsening financial condition. In the five fiscal years between 2013 and 2018, the school district had annual spending deficits of between \$76,713 and \$231,458. In the spring of 2023, the school district projected a spending deficit in that fiscal year of \$354,934, which was approximately 5 percent of projected expenditures of \$7,070,785. In the 2021 fiscal year, the school district spent, on average, \$20,111 per student, which is approximately 50 percent more than the statewide average of \$13,266 per student. The school district's spending per student at the Indus school was approximately \$6,000 higher than its spending per student at the Northome school.

The school district maintains an "unassigned fund," which has been used to cover its deficit spending. Between 2014 and 2022, that fund decreased by approximately 33 percent, from \$4,853,413 to \$3,261,717.

Meanwhile, facilities at both schools are in need of significant repairs, maintenance, and upgrades. The Indus School requires approximately \$3,000,000 in air-handling and sewer improvements, and the Northome School requires approximately \$2,700,000 in air-handling, elevator, and gymnasium improvements.

At a school board meeting in March 2023, the school district's superintendent presented four options to address the issues described above. The first two options would have eliminated various staff positions, courses, and extra-curricular programs. The third and fourth options were to close the Northome School or the Indus School, respectively. The school board decided, by a vote of four to two, to pursue the closure of the Indus School.

In April 2023, a hearing officer appointed by the school board presided over a public hearing on the proposed closure of the Indus School. The superintendent testified and submitted exhibits that reflect the above-stated facts about enrollment and the school district's financial condition. The superintendent also testified that the Northome facilities were larger than the Indus facilities and had the capacity to serve all students presently attending both schools.

Numerous members of the community spoke in opposition to the proposed closure of the Indus school. Many expressed concerns about the long bus ride—approximately 90 minutes each way—that would be required for Indus students if they were to attend the Northome school. The superintendent acknowledged those concerns but stated that 18 Northome students presently have a bus ride of a similar length and that closing the

Northome school instead of closing the Indus School would subject a greater number of students to longer bus rides.

In May 2023, the hearing officer submitted to the school board a 30-page report with findings of fact, conclusions of law, and a recommendation. The hearing officer determined that it was necessary and practicable to close the Indus School. In support of this recommendation, the hearing officer reasoned that the school district would not have sufficient revenue to operate both schools, that declining student enrollment was concentrated in the Indus attendance area, that spending per student was higher at the Indus school, that more capital improvements were needed at the Indus school, and that the school district would spend less to transport students from the Indus attendance area to the Northome attendance area than vice versa.

At a meeting in June 2023, the school board decided, by a vote of four to two, to adopt the hearing officer's findings of fact, conclusions, and recommendation and to close the Indus school, effective July 1, 2023. An association of concerned citizens known as Save Indus Group and a parent of an Indus student (collectively Save Indus Group) appeal from the school district's decision by way of a writ of certiorari.

DECISION

In Minnesota, school districts have a duty "to furnish school facilities to every child of school age residing in any part of the district." Minn. Stat. § 123B.02, subd. 2 (2022). To fulfill this duty, a school district is authorized to "establish and organize and alter and discontinue such grades or schools as it may deem advisable." *Id.* A school district's decision to close a public school is regulated by the following statute:

The board may close a schoolhouse only after a public hearing on the question of the necessity and practicability of the proposed closing. Published notice of the hearing shall be given for two weeks in the official newspaper of the district. The time and place of the meeting, the description and location of the schoolhouse, and a statement of the reasons for the closing must be specified in the notice. Parties requesting to give testimony for and against the proposal shall be heard by the board before it makes a final decision to close or not to close the schoolhouse.

Minn. Stat. § 123B.51, subd. 5 (2022). A school board's decision to close a school pursuant to this statute is subject to judicial review by writ of certiorari. *Western Area Bus. & Civic Club v. Duluth Sch. Bd. Indep. Dist. No. 709*, 324 N.W.2d 361, 365 (Minn. 1982); *Concerned Citizens for the Preservation of Indep. Sch. Dist. No. 712 v. Mountain Iron-Buhl Indep. Sch. Dist. No. 712*, 431 N.W.2d 601, 603 (Minn. App. 1988), *rev. denied* (Minn. Jan. 25, 1989).

A. Procedural Requirements

Save Indus Group first argues that the school board's decision is invalid due to two alleged procedural errors.

First, Save Indus Group argues that the school district did not provide adequate notice of the public hearing. Before conducting a public hearing on the necessity and practicability of a proposed school closure, a school board must publish notice of the hearing "for two weeks in the official newspaper of the district." Minn. Stat. § 123B.51, subd. 5. The notice must contain the "time and place of the meeting, the description and location of the schoolhouse, and a statement of the reasons for the closing must be specified in the notice." *Id.* "[T]he announcement of the proposed closing of a particular school is

a required procedure that starts the hearing process.” *Kelly v. Independent Sch. Dist. No. 623*, 380 N.W.2d 833, 836 (Minn. App. 1986).

In this case, the school district published notice of the April 2023 public hearing in the *Rainy Lake Gazette*, the official newspaper of the school district, on March 17 and 24, 2023. The first notice stated that the public hearing would be held at the “Indus School commons, located at 8560 Highway 11 SE, Baudette, MN, *in Lake of the Woods County*.” (Emphasis added.) The second notice stated that the public hearing would be held at the “Indus School commons, located at 8560 Highway 11 SE, Baudette, MN, *in Koochiching County*.” (Emphasis added.) It is undisputed that both notices stated the correct street address; that the Indus school’s *mailing* address is associated with the city of Baudette, which is in Lake of the Woods County; and that the physical location of the Indus school is in Koochiching County.

The hearing officer addressed the issue of notice in his recommendation as follows:

The School Board gave proper public notice of the public hearing to consider the closing of the Indus School. Though the initial posting erroneously included a reference to Lake of the Woods County, the correct street address of the Indus School was included in the notice as required. The county was corrected in the second printing of the notice. There was no evidence of any actual confusion by any person with respect to the location of the Indus School.

In its resolution adopting the hearing officer’s recommendation, the school board determined that notice was proper.

Save Indus Group contends that the first notice does not satisfy the statutory notice requirements because it incorrectly states that the Indus School is located in Lake of the

Woods County. In response, the school district contends that the notice is not deficient because the statute does not require that the notice include the county in which the public hearing will be held.

The school-closure statute requires notice of the “place of the meeting.” Minn. Stat. § 123B.51, subd. 5. There is no caselaw interpreting this particular phrase. But the phrase is similar to language in the statute in *Thompson v. Town of Berlin*, 91 N.W. 25 (Minn. 1902), which required notice of the “time and place” of a public meeting concerning the location of a public highway. *Id.* at 25 (citing Minn. Gen. Stat. § 1808 (1894)). In that case, the supreme court considered whether a town had given adequate notice of a public meeting by describing the place as “the northwest corner Sec. ten.” *Id.* at 26. The supreme court stated that that description, by itself, would be “clearly insufficient, for it designates no place, with a sufficient degree of certainty.” *Id.* But the supreme court reasoned that, when read in conjunction with the entire notice, which described a nearby proposed public highway with greater specificity, “no intelligent person could be at all deceived as to the place of meeting” and it was “reasonably apparent that interested parties have not in fact been misled to their prejudice.” *Id.*

In this case, the school district’s published notice provided more specificity about the place of the public hearing than was provided in *Thompson*. The school district’s published notice stated that the public hearing would take place at the “Indus School commons,” stated a particular street address, and identified the city in which the Indus school is located. Given that the subject matter of the public hearing was the Indus School itself, it is “reasonably apparent” that all “interested parties” would know the place of the

meeting. *See id.* Save Indus Group does not challenge the hearing officer’s determination that there was no “actual confusion.” Thus, the school district’s notice of the public hearing complied with the requirements of the statute.

Second, Save Indus Group contends that the school district did not fully respond to requests for information and records in the interval between the school board’s March 2023 decision and the April 2023 public hearing. Save Indus Group also contends that the school district did not respond to a request for a special meeting. But Save Indus Group does not develop the argument or identify any legal authority that might have obligated the school district to respond to the requests. Thus, Save Indus Group has not demonstrated that the school district violated the school-closure statute or any other law by not providing more information. In addition, Save Indus Group does not explain why any failure to provide information would justify appellate relief in a certiorari appeal from a school-closure decision.

B. Substantial Evidence

Save Indus Group also argues that the decision to close the Indus school is not supported by substantial evidence.

As stated above, a school board may decide to close a public school “only after a public hearing on the question of the necessity and practicability of the proposed closing.” Minn. Stat. § 123B.51, subd. 5. This statutory language “implicitly requires a determination by the Board of the necessity and practicability of the closing following notice and hearing.” *Western Area Bus. & Civic Club*, 324 N.W.2d at 365. This court’s review of a school board’s decision to close a school is “narrow” in that we “must

determine, through an examination of the entire record before the Board, only whether the Board had jurisdiction, whether it acted within those jurisdictional bounds and whether the evidence furnished any legal and substantial basis for the action taken.” *Id.* A petitioning party may challenge “the underlying factual basis for the Board’s decision” according to “the substantial evidence standard.” *Moberg v. Independent Sch. Dist. No. 281*, 336 N.W.2d 510, 515 (Minn. 1983) (quotation omitted). This court has stated, “School-closing decisions are by their nature political decisions, entitled to judicial deference and respect.” *834 VOICE v. Independent Sch. Dist. No. 834, Stillwater*, 893 N.W.2d 649, 652 (Minn. App. 2017). Accordingly, “We will affirm a school board’s decision when the data provide a substantial basis for the board’s action, and particularly when the question is debatable and requires board members to exercise their administrative judgment.” *Id.* at 655 (quotation omitted).

In this case, the school district’s superintendent presented ample information at the public hearing to justify the hearing officer’s recommendation and the school board’s decision to close the Indus school. In short, total enrollment was declining, especially in the Indus attendance area. The school district was engaging in deficit spending year after year. The Northome school had the capacity to serve all students from both schools and could do so in a more cost-effective way. The school district considered other alternatives, including staff reductions and restrictions on course offerings and extra-curricular activities, but decided that those solutions would not resolve the financial issues.

The information presented at the public hearing in this case is generally similar to the information provided in *Western Area Business & Civic Club*, in which the supreme

court upheld a school board's closure decision based in part on "budgetary, revenue and long-range planning information; educational and curriculum data; geographic and demographic studies; [and] building evaluations" as well as "the Board's deep concern not only with the subject facility but also with the district as a whole." 324 N.W.2d at 365; *see also* 834 VOICE, 893 N.W.2d at 655-58 (affirming school board's closure decision based on substantial evidence of declining enrollment, school's operating capacity, inequitable learning experiences, and budgetary constraints); *Bena Parent Ass'n v. Independent Sch. Dist. No. 115, Cass Lake*, 381 N.W.2d 517, 519 (Minn. App. 1986) (affirming school board's closure decision based on substantial evidence of cost savings and budgetary constraints).

Save Indus Group challenges the school board's decision on several specific grounds. First, Save Indus Group contends that the hearing officer and the school board should not have relied on the superintendent's testimony and exhibits on the ground that "nothing in the record . . . shows the superintendent was qualified to complete the report." Save Indus Group does not elaborate on how the superintendent may have been unqualified to provide the school board with the necessary information. In the absence of any such reasons, we must presume that the superintendent of a school district, who is responsible for overseeing the day-to-day operations of a school district, is well-positioned and well-equipped to provide information to the school board.

Second, Save Indus Group contends that the school board should not have considered projected enrollment data for the 2023-2024 school year without an explanation of how those projections were calculated. Save Indus Group focuses on information that

enrollment was declining more in the Indus attendance area than in the Northome attendance area. But Save Indus Group does not provide any conflicting data.

Third, Save Indus Group contends that the school board did not fully consider the school district's financial performance and improperly relied on information about deficit spending to conclude that maintaining both schools was not viable. The hearing officer's report clearly demonstrates that multiple sources of financial information were considered in determining that maintaining two schools would not be financially viable. The hearing officer responded to community concerns by performing "a side-by-side review" of the financial data reflected in the superintendent's report, audited financial statements, and reports from the state department of education. The hearing officer included three tables in an appendix, which summarizes the most pertinent financial information. Save Indus Group may disagree with the financial analysis undertaken by the hearing officer and adopted by the school board, but Save Indus Group has not demonstrated that those decisions are not based on substantial evidence.

Fourth, Save Indus Group contends that the capital improvements required at the Indus School do not demonstrate that closure was necessary because the school district had sufficient funds to pay for the improvements at both schools without going into debt. We defer to the school board's judgment in deciding to not spend approximately \$3,000,000 on capital improvements at the Indus school in light of the declining enrollment in that attendance area and other considerations.

Fifth, Save Indus Group contends that the long bus rides created by closing the Indus School make the school board's decision to close the school not practicable. But students

in the school district attending the Northome School already take bus rides of similar length. In addition, closing the Northome School would require more students to take longer bus rides.

Sixth, Save Indus Group contends that the school district should have “engaged a broader sub-committee to investigate the necessity or practicability of a school closure.” There is no such requirement in the applicable statute. *See* Minn. Stat. § 123B.51, subd. 5. We will “not read into [a] statute a requirement that the Legislature has omitted.” *Karl v. Uptown Drink, LLC*, 835 N.W.2d 14, 19 (Minn. 2013). Furthermore, this contention does not challenge the evidence on which the school district relied in making its decision.

In sum, the school board’s decision to close the Indus school is supported by substantial evidence.

Affirmed.