REORGANIZATION AND LITIGATION

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Reorganization Series I

School District Reorganization Report

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SCHOOL DISTRICT REORGANIZATION REPORT

This report is part of the series of publications that have been written about reorganization since 1980. Every year one or more reports are produced that summarize and analyze current reorganization activities and address special topics about school consolidation.

Since 1985, 83 school districts have closed their high schools, and all except one made the determination to do so at the local level. In the vast majority of instances the school boards first entered into whole-grade sharing agreements with neighboring schools. Whole-grade sharing is a local board of director approved contract to send all students in one or more grades to another district, and all contracts to this point involve at least the high school. Most partnerships are two-way sharing arrangements where both districts send students to the other. For example, a common form of sharing is for one district to operate the high school and the other run the middle school. In 1994-95, 354 districts will be operating high schools within their boundaries. There were 437 districts running their own high schools in 1984-85.

Since 1985 the number of school districts has declined by 48. In 1984-85 there were 438 districts, and in 1994-95 there are 390. The reduction includes 46 reorganizations, one dissolution, and one failure to meet standards. With a few exceptions the reorganizations first involved several years of whole-grade sharing.

In summary, there were 438 districts in 1984-85, and 437 of them had their own high schools. In 1994-95 there are 390 districts, and 354 are operating high schools. The difference between 390 and 354 is the number of whole-grade sharing districts that are sending high school students elsewhere.

The movement which began in 1985 is still continuing. Two reorganization elections have already passed for July 1, 1995, effective dates, and several more hearings and elections are pending. The 1994-95 school year is beginning with eight more districts operating under new whole-grade sharing agreements.

REORGANIZATION AND LITIGATION

There can be little doubt that the school districts of Iowa are in the midst of a major reorganization era and that this is the third such period since 1900. This phase, which began in 1985, can be characterized in general terms as a government business movement. It is similar to, and a part of, the many economic and business changes we have experienced in our state. However, one feature that distinguishes the merging of school districts from other business transformations is the political element. Reorganization and whole-grade sharing are almost certain to bring out emotional issues.

Considering the often highly charged personal elements, it is surprising that local school boards and citizens have been able to put together the school district combinations with very

little litigation. This is unlike the consolidation that took place during the 1950s and early 1960s. That approximately 10 year period prompted numerous court cases and provided the media with more than an adequate amount of exciting news to report.

The major purpose of this article is to point out the factors that are seemingly keeping the merging activities at a business and professional level and that are allowing the process to take place without the need for resorting to legal measures to resolve disputes. The vast majority of the credit should go to the school boards. There are three common types of actions that seem to be keeping litigious controversy from arising:

- Boards have been making thorough studies before signing whole-grade sharing agreements or starting the reorganization process. The studies usually involve citizens committees, the Department of Education, or other third parties. In almost all cases the boards have been able to take more than enough time to work on the studies.

- The boards' whole-grade sharing processes, from inception of the ideas through signing of the contracts, have been completely open to the public. Boards of directors have involved citizens, sought their input, and kept them informed. The boards have similarly included the public in their reorganization planning. The final determination to reorganize is up to the voters; whereas, whole-grade sharing is within the authority of the school boards.

- Early in the study process, and before the decision making is underway, boards have engaged legal counsel. Since the reorganization era began in 1985 several attorneys have become proficient in the intricacies of whole-grade sharing and reorganization.

School boards and other school officials are strongly urged to completely buy into the three above concepts. This consultant firmly believes that scores of school boards have clearly demonstrated the proper ways to deal with extremely tough topics. They have been able to blend the many elements that come together as democratic institutions balance the needs for change with the strengths of tradition and stability. If more work or time are required to guide the desired actions, both pro and con, that seems to be a small price to pay.

In-spite of the care taken by school officials, some litigation has still taken place. The actions include declaratory rulings, appeals to the State Board of Education, attorney general opinions, Public Employment Relations Board rulings, contest court actions, and district court or supreme court decisions. Although some processes, such as declaratory rulings, may not always arise from controversy, they do clarify points of law.

There is no central repository of information about all of the legal actions that relate to the school merger topic. This consultant has made extra efforts to monitor legal activities, but it is important to note that some actions may have taken place that are not known to Department of Education staff.

The only common form of contention during this nine year period of time has been appeals to the State Board of Education. The other mechanisms have been limited to one or two actions each. For example, this consultant is aware of only one PERB decision directly related to sharing, and that was not even whole-grade sharing.

From an overview examination, the legal problems can be categorized into those related to reorganization, whole-grade sharing and financial incentives:

- For purposes of this report, **financial incentive** altercations were not scrutinized. The financial incentives, as they relate to whole-grade sharing and reorganization, do not directly impinge upon the process of enacting mergers or sharing. They merely provide added funding or tax breaks for a period of time after the sharing or consolidation.

  The requests for declaratory rulings, and even a court case that is now before the Supreme Court, could theoretically be related to any other financial program that provides extra funding. The disagreements were not between the school boards and their citizens, but rather between the local districts and the Department of Education's interpretation of sections of the Code of Iowa--specifically finance portions. Even more specifically, the problems involved parts of the Code that give added funding to districts for either sharing or reorganizing. In none of the situations did the dispute affect the outcome to reorganize or share.

- Very few of the litigious cases involved **reorganization**. The Code is reasonably prescriptive about the process to be followed, and a substantial amount of common law was developed during the 1950s and 1960s. Reorganization involves three distinct sets of actions.

  - The first is the development, circulation, and submission of the petition to reorganize. Those factors have not given rise to contention. The contents of the reorganization petitions are straightforward, and the attorneys working with consolidation are able to handle this with dispatch. The only problem that once-in-a-while crops up is the adequacy of the number of qualified electors signing the petition, and so far this has not been a barrier.

  - The second area of activity revolves around the reorganization hearing and other steps taken by the area education agencies. During this period the Southern Prairie AEA-15 decision to authorize a reorganization election requested by Hedrick citizens went all the way to the Supreme Court, and the court reaffirmed its long-standing position that Chapter 275 (the reorganization chapter) is to be construed liberally. In ordinary terms, this means that reorganization should be brought to an election without "nitpicking" getting in the way. The issue did go to an election as ordered, but it eventually failed at the ballot box.

- Regarding the election portion of the reorganization process, one protest was launched against the election results. Some Clarence-Lowden citizens appealed the results of an election to a contest court. The election resulted in a simple positive majority in both districts, which is required for a reorganization. The contest court upheld those results, and the districts will be reorganized as of July 1, 1995.

According to information derived from monitoring the reorganization process between 1985 and now, and from special research for this article, this consultant did not uncover examples of declaratory rulings, appeals to the state board, attorney general opinions, or PERB rulings that related directly to the reorganization action. One attorney general opinion and a request for a declaratory ruling asked for clarification of the school board election process that follows a reorganization. However, the limited amount of litigation that did take place did not lead toward new common law nor provide for different inroads into application of the Code of Iowa.

- On the other hand, litigation involving **whole-grade sharing** has produced explanations of the Code. During the early years of whole-grade sharing, which began in 1985, there were six appeals to the State Board challenging the local boards' abilities to enter into whole-grade sharing. The first case in 1985, involving the Grand Community School District, upheld the local board's decision to whole-grade share with Ogden. At that time the term "whole-grade sharing" was not yet in general use and had not been codified. Then within a few years six more appeals came to the State Board. Five local board decisions to whole-grade share were upheld and the Irwin board's decision was overturned. That board subsequently corrected its actions and then signed a whole-grade sharing agreement.

In 1987 the Legislature put into law several sections that define whole-grade sharing and establish procedures for boards to follow. Some of the seven cases that were heard between 1985 and 1988 came before that law and some after. Then in 1992 the United Community School District's decision to enter into a multiple form of whole-grade sharing was appealed, and the State board again upheld the district's decision to whole-grade share.

Some of the disputes included the choices of partners. However, choice of partner may or may not have been the true motivational issue. Appellants often throw in a long list of grievances, hoping to score on one of them, and the naming of another district as a better partner just adds to the list.

Another type of challenge was presented regarding New Market's determination to rescind a whole-grade sharing contract before the agreement's term expired. The State Board did not move its decision into the contract law topic, but it did impose the same general standards on deleting contracts that are expected for developing contracts. In

other words there have to be notifications, hearings, etc. The New Market board was not allowed to back out of the contract with Clarinda.

In the earlier stages of whole-grade sharing the choice of a different attendance center was frequently an appeal subject. Parents of students who lived around the periphery of a district that will be entering into sharing often asked to have their children sent to another neighboring district. Some requests were granted and others were denied. Open enrollment has made this a lesser issue.

Attempts to receive assistance for resolving disputes, or for gaining clarification, concerning whole-grade sharing have been almost exclusively limited to the State Board appeal process. The Department of Education, through its rulings, has chosen to leave the decision making process to the local boards of directors. The State Board has not forced, nor has it covertly pushed, districts into whole-grade sharing.

However, the State Board has clearly and consistently given the message to local boards of directors and citizens that it believes local boards owe to their "students and citizens the duty of a well-researched study and the courtesy of receiving public comment prior to reaching a decision." The evidence is clear that boards have been meeting this expectation.