

649 N.W.2d 617
Supreme Court of South Dakota.

Jennifer JOHNSON et al., Petitioners and
Residents of Candlelight Acres, Appellees,
v.
LENNOX SCHOOL DISTRICT NO. 41-4,
Appellant.

No. 22194.

Considered on Briefs May 28, 2002.

Decided July 24, 2002.

Residents of neighborhood in area annexed by city sought judicial review of rural school district's denial of petition for boundary change that would place neighborhood in city school district. The Circuit Court, Second Judicial Circuit, Minnehaha County, Judith K. Meierhenry, J., reversed denial. Rural school district appealed. The Supreme Court held that: (1) neighborhood was more closely aligned with city school district, which supported boundary change; (2) availability of bus service supported boundary change; (3) time and development rendered boundaries arbitrary and unreasonable, which supported change; (4) rural school district's failure to provide for special needs of preschool age child until after petition supported boundary change; (5) shorter distance between neighborhood and city schools than between neighborhood and rural schools supported boundary change; (6) relevant factors and evidence supported change in boundary; and (7) rural school district could not rely on open enrollment as cure-all for every concern raised by residents of neighborhood.

Affirmed.

West Headnotes (13)

^[1] **Education**
🔑 Orders and resolutions

School boards enjoy broad discretion in decisionmaking and need only make sure their decisions are not arbitrary, capricious, or unreasonable.

1 Cases that cite this headnote

^[2] **Education**
🔑 Scope of review

Appellate court reviews a school board decision on a boundary change petition unfettered by any presumption that the circuit court correctly decided the matter in its review, and rather, the appellate court seeks to ascertain whether there is substantial evidence to support the board's decision.

1 Cases that cite this headnote

^[3] **Administrative Law and Procedure**
🔑 Arbitrary, unreasonable or capricious action; illegality

Decision is "arbitrary and capricious" when the decision-making agency: (1) relies on factors not intended to be considered, (2) fails to consider an important aspect of the problem, (3) offers an explanation for its decision that runs counter to the evidence before it, or (4) renders a decision so implausible that it cannot be ascribed to a difference in view or the product of agency expertise.

1 Cases that cite this headnote

^[4] **Education**
🔑 Change of boundaries

Following factors must be considered in reviewing a school district boundary change petition: (1) whether the petitioners are more closely aligned to the economic, social, and religious life of the community into which they are being transferred; (2) whether there is bus service to the residence; (3) whether the district line which places their property in the current

district was drawn in an arbitrary fashion; (4) whether petitioner's child has special needs best met in the district petitioners are attempting to join; and (5) whether the petitioners live closer to the school district they are joining as opposed to the district they are leaving.

2 Cases that cite this headnote

^{15]} **Education**
🔑 Change of boundaries

Residents of city neighborhood, who sought judicial review of rural school district's denial of boundary change, were more closely aligned with city school district to which they sought to be added than rural school district, which supported boundary change, even though neighborhood was part of rural school district for 32 years and was only recently annexed, where residents conducted business and recreated in city, most children attended city schools, telephone calls from neighborhood to rural district were long distance, and rural school district left neighborhood out of surveys, printed materials, and long term planning committee.

Cases that cite this headnote

^{16]} **Education**
🔑 Change of boundaries

Availability of bus service supported change in school district boundaries to put neighborhood in city school district rather than rural school district, even though rural school district also provided bus service to neighborhood, given that neighborhood children had longer rides to rural schools, which were generally further away than city schools, rural bus routes ran through rural areas, open enrollment students were responsible for own transportation, bus routes to city schools ran through residential areas, and city bus service and cab service were available to provide transportation options in city.

Cases that cite this headnote

^{17]} **Education**
🔑 Change of boundaries

Time and development rendered boundaries between city and rural school districts arbitrary and unreasonable, which would support change of boundaries to put neighborhood in city school district rather than rural school district, even though neighborhood was part of rural school district for 32 years, where city grew into area, city schools that were generally closer to neighborhood, majority of neighborhood students attended city schools, and boundaries should have bore some reasonable proximity to residents that district was intended to serve.

Cases that cite this headnote

^{18]} **Education**
🔑 Change of boundaries

Rural school district's failure to provide for special needs of preschool age child until after residents of neighborhood petitioned for change in boundaries that would allow neighborhood to be part of city school district supported grant of petition, given that child could have obtained additional assistance in city school district.

Cases that cite this headnote

^{19]} **Education**
🔑 Change of boundaries

Shorter distance between neighborhood and city schools than between neighborhood and rural schools supported boundary change to put neighborhood in city school district, rather than rural school district, even though rural school board explored issue of additional school sites and had policy to approve building where students were, given that rural school board

made no mention of current building plans, and neighborhood was within city limits and was closer to schools in city.

2 Cases that cite this headnote

Cases that cite this headnote

1101 Education
Change of boundaries

School districts do not have a vested right to retain their existing status or territory, but rather, as creatures of the legislature they are subject to periodic change, alteration, or abolishment.

Cases that cite this headnote

1111 Education
Change of boundaries

Evidence supported change in school district boundaries to put neighborhood in city school district rather than rural school district, even though change would negatively impact economic condition of rural school district, given that assessed valuation of neighborhood was only 1.97 percent of total assessed valuation of rural school district, area was growing, populations and property values were projected to rise, and other factors, including alignment with community, bus service, arbitrariness of boundary, children's special needs, and distance to district, supported change. SDCL 13-6-85.

1 Cases that cite this headnote

1121 Education
Change of boundaries

Economic factors, in conjunction with the other relevant factors, are a valid consideration for a school board in ruling on a petition for a minor boundary change.

1131 Education
Change of boundaries

Boundary change statutes could not be read in manner that rendered them useless or meaningless, and thus rural school district's could not rely on open enrollment as cure-all for every concern raised by residents of neighborhood who sought to have boundary changed to put them into city school district, given that legislature could have repealed boundary change statutes when it passed open enrollment law, and open enrollment could not guarantee assignment to closest neighborhood school or particular school in successive year, or assignment of family members in same school.

Cases that cite this headnote

Attorneys and Law Firms

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Rodney Freeman, Jr. of Churchill, Manolis, Freeman, Kludt, Shelton & Burns, Huron, for appellant.

Opinion

PER CURIAM.

[¶ 1.] The Lennox School District appeals a circuit court judgment reversing its denial of a petition for a minor school district boundary change. We affirm.

FACTS

[¶ 2.] The Petitioners are residents of the Candlelight Acres residential development in southwest Sioux Falls, Lincoln County, South Dakota. Although the City of Sioux Falls has annexed Candlelight Acres so that it now

lies within city limits, the area remains in the Lennox School District. The Lennox District was organized some thirty-two years ago, before the residential development in Candlelight Acres. It covers portions of Minnehaha, Lincoln and Turner counties and includes the communities of Lennox, Tea, Chancellor, Worthing and, currently, that part of southwest Sioux Falls encompassing Candlelight Acres.

[¶ 3.] At the time the boundary change petition was filed, approximately twenty-five school-aged children lived in Candlelight Acres. Of those twenty-five, approximately fifteen were attending school in the Sioux Falls School District through the open enrollment policy provided for by SDCL 13-28-40 *et seq.*¹ The remainder of the children were attending school at private schools in Sioux Falls or in the Lennox School District.

[¶ 4.] The Petitioners filed their boundary change petition on August 14, 2000 to transfer Candlelight Acres from the Lennox School District to the Sioux Falls School District. The petition was filed with both the Lennox and Sioux Falls School Districts and with the Lincoln and Minnehaha County Commissions. Several of the Petitioners appeared with their counsel and addressed the Lennox School Board at its regular meeting on August 14, but the Board continued the petition to its next regular meeting so that it could consult with its counsel.

[¶ 5.] On August 28, some of the Petitioners and their counsel appeared before the Sioux Falls School Board relative to the boundary change. The Sioux Falls Board voted to approve the change subject to the Petitioners' compliance with all legal requirements and subject to the approval of the change by the Lennox School Board.

[¶ 6.] The Petitioners and their counsel next appeared before the Lennox School Board on September 11. In order to obtain some updated valuation figures for the property affected by the boundary change, the petition was again continued until a special meeting held on December 4. After presentation of the case for the Petitioners and the District's response, the Board voted to deny the petition. The Board subsequently entered findings of fact and conclusions of law in accord with its decision and the Petitioners appealed to the circuit court. A hearing was held on *621 June 27, 2001 and the court later entered findings of fact, conclusions of law and a judgment reversing the Board's denial of the petition. The District now appeals to this Court.

[¶ 7.] Was the Board's denial of the boundary change petition arbitrary, capricious or an abuse of discretion?

[¹] [¶ 8.] This Court's standards of review in a school district boundary dispute are outlined in *Smith v. Canton School Dist. No. 41-1*, 1999 SD 111, ¶ 9, 599 N.W.2d 637, 639-40 (1999):

School boards enjoy broad discretion in [decision making] and need only make sure their decisions are not arbitrary, capricious or unreasonable. *Kellogg v. Hoven Sch. Dist. No. 53-2*, 479 N.W.2d 147, 149 (S.D.1991). A decision is arbitrary and capricious when it is "not governed by any fixed rules or standard." Black's Law Dictionary 104 (6th ed. 1990).

[²] [¶ 9.] This Court reviews a school board decision on a boundary change petition unfettered by any presumption that the circuit court correctly decided the matter in its review. See *Smith*, 1999 SD 111 at ¶ 7, 599 N.W.2d at 639. Rather, this Court seeks to ascertain whether there is substantial evidence to support the board's decision. See *Colman-Egan School Dist. No. 50-5 v. Jones*, 520 N.W.2d 890, 892 (S.D.1994)(quoting *Oldham-Ramona School Dist. v. Ust*, 502 N.W.2d 574, 580-81 (S.D.1993)).

[³] [¶ 10.] In *Smith, supra*, this Court determined a school board was arbitrary and capricious and abused its discretion in denying a boundary change petition where the record indicated the board rewrote or ignored the factors applicable to consideration of such petitions.² A similar case exists here.

[⁴] [¶ 11.] Under settled law, the following factors must be considered in reviewing a boundary change petition:³

*622 1. Whether the petitioners are more closely aligned to the economic, social and religious life of the community into which they are being transferred.

2. Whether there is bus service to the residence.

3. Whether the district line which places their property in the current district was drawn in an arbitrary fashion.

4. Whether petitioner's child has special needs best met in the District petitioners are attempting to join.

5. Whether the petitioners live closer to the school district they are joining as opposed to the

district they are leaving.

Smith, 1999 SD 111 at ¶ 9, 599 N.W.2d at 640 (citing *Oelrichs School Dist. v. Sides*, 1997 SD 55, ¶ 11, 562 N.W.2d 907, 911). Each of these factors along with the Board's findings on the issue and the other applicable evidence will be reviewed in the order set forth above.

Alignment with the Community to Which Transfer is Being Sought

[¶ 12.] The Board found that the Candlelight Acres area has been part of the Lennox School District for thirty-two years and that the area was not annexed by Sioux Falls until 1997. In addition, the Board found that a significant number of Lennox School District patrons commute to Sioux Falls for work and outside activities and that patrons of Sioux Falls also travel to communities in the Lennox School District for such activities. In a finding of questionable relevance, the Board also set forth that "no suburban school district stands alone in this issue" and that the Lennox School District has boundaries reaching the Canton District, the West Central and Parker Districts, the Harrisburg Districts and the Sioux Falls District.

[¶ 13.] None of the Board's findings adequately assess the factor of alignment with the community to which transfer is being sought. An important fact distinguishing this case from many boundary change cases is that the Petitioners *actually live* in the community to which they are seeking a transfer. Thus, contrary to the findings of the Board, these Petitioners are not mere commuters to Sioux Falls, but are actually Sioux Falls residents. Not only do they actually live in Sioux Falls, the record demonstrates that they are more closely related to Sioux Falls. They work, shop, conduct business, seek medical and dental care and utilize day care and babysitters in Sioux Falls. They attend church, socialize with friends and family and participate in entertainment and leisure time activities in Sioux Falls. Most of their children currently attend school in Sioux Falls at private schools or through open enrollment at the public schools. The record further shows that the Petitioners conduct little or no economic, social or religious activities in the other communities in the Lennox School District. All telephone calls in the Candlelight Acres area are local calls while calls *623 to other communities in the Lennox District are long distance.

[¶ 14.] The record also reflects that the Lennox District has done little to make the Petitioners feel a part of that district. The Petitioners asserted before the Board that they were left out of various surveys concerning District

issues. Sioux Falls is not listed as one of the communities in the Lennox School District in its materials or on District letterhead. A long term planning committee appointed by the Lennox School Board includes representatives from Lennox, Tea, Worthing and Chancellor, but none from Candlelight Acres.

[¶ 15.] Based upon the foregoing, the factor of alignment with the community to which transfer is being sought clearly supports the Petitioners in this case.

Bus Service

[¶ 16.] The Board's only finding as to bus service provides that, "while Petitioners have expressed concern that transportation may not be provided by the Sioux Falls School District through Open Enrollment, the slight inconvenience to the parents of the children cannot outweigh the financial detriment to the district which would be caused by granting the Petition." This reflects inadequate consideration of the factor of bus service.

[¶ 17.] The record shows that the Lennox School District provides bus service to Candlelight Acres, but that children in the development who ride the bus are the first ones on in the morning and the last ones off at night. The only high school in the Lennox District is eighteen miles from the development while Sioux Falls Roosevelt High School is only four miles from the development. Other schools in the Lennox District are generally further away from Candlelight Acres than their counterparts in the Sioux Falls District. Thus, bus rides would usually be longer for students in Candlelight Acres attending school in the Lennox District. Moreover, bus routes in the Lennox School District run through rural areas. The Petitioners raised concerns over the length of bus rides and winter road conditions as support for their petition.

[¶ 18.] The Sioux Falls School District provides bus service for its own students only. Open enrollment students are responsible for their own transportation. If the Petitioners' petition was granted, busing in the Sioux Falls District would be available to their children and the length of the bus rides would be considerably shorter than in the Lennox District. Moreover, the bus routes would run through residential areas.

[¶ 19.] As in the Lennox District, no bus service is available for extracurricular activities in Sioux Falls. However, city bus service and cab service are available in Sioux Falls and provide transportation options unavailable to the other communities in the Lennox District.

[¶ 20.] Based upon the foregoing, the factor of bus service clearly supports the Petitioners in this case.

Arbitrariness of School District Boundaries

[¶ 21.] The only finding entered by the Board concerning the arbitrariness of the school district boundaries is that the Lennox School District, with Candlelight Acres as a part, has been organized for thirty-two years. Based upon this finding and the evidence supporting it, the circuit court determined that the Lennox School District boundaries were not arbitrarily drawn.

[¶ 22.] While the circuit court's determination is accurate in a historical context, it ignores the current reality that Sioux Falls has grown into the Lennox School District and has constructed schools that are generally closer to Candlelight Acres *624 than those in the Lennox District. If school district boundaries should bear some reasonable proximity to the patrons the district is intended to serve, then a question arises as to whether time and development have rendered the boundaries between the Sioux Falls District and the Lennox District arbitrary and unreasonable. Clearly that is the indication where the majority of the students in the area in question attend schools in Sioux Falls rather than in the Lennox District. Thus, however reasonable the Lennox School District boundaries might have been thirty-two years ago when they were drawn, it would seem to be of little import in evaluating the Petitioners' current boundary change petition in light of present circumstances.

Special Needs of the Children

[¶ 23.] The Board's findings fail to reflect any specific consideration of the special needs of the children. Yet, the record shows and the circuit court found that, at the time of the filing of the petition, one of the Petitioners had a preschool age child with special needs who could have obtained additional assistance in the Sioux Falls School District. Although the Lennox District ultimately provided for the child's needs, it was not until after the filing of the petition. Thus, this factor also weighs in favor of granting the Petitioners' petition.

Distance to the Sioux Falls School District

[¶ 24.] The Board's only finding related to this factor indicates the Board has "explored the issue" of additional school sites and that its policy is to approve building "where the students are." However, the finding fails to mention any current building plans.

[¶ 25.] The record reflects that the Lennox School District operates schools in Lennox, Chancellor, Worthing and Tea. Distances from Candlelight Acres to these locations are as follows: Lennox, eighteen miles; Chancellor, twenty-three miles; Worthing, thirteen miles; and, Tea, five miles. Distances from Candlelight Acres to the closest schools in the Sioux Falls District are as follows: John F. Kennedy Elementary School, two miles; Memorial Middle School, five miles; Roosevelt High School, four miles. Thus, as found by the circuit court, the Petitioners are located within the city limits of Sioux Falls and are closer to the schools in the Sioux Falls School District than to those in the Lennox District. This factor also favors the Petitioner's petition.

Other Factors

[¶ 26.] While the Board's findings and conclusions fail to reflect adequate consideration of the foregoing factors, they also show preoccupation with economic considerations and open enrollment policies. At least six of the Board's key findings denying the Petitioners' petition make direct or indirect references to the negative economic effects on the Lennox District of granting the requested boundary change. Prior to this Court's decision in *Oldham-Ramona, supra*, this Court consistently, "criticized a school board's excessive reliance on economic factors as a basis for denial of a boundary change petition." *Oldham-Ramona*, 502 N.W.2d at 582. In that regard, this Court repeatedly recognized that, "[s]chool districts do not have a vested right to retain their existing status or territory. As creatures of the legislature they are subject to periodic change, alteration, or abolishment." *Nelson v. Deuel County Bd. of Education*, 80 S.D. 559, 563, 128 N.W.2d 554, 556 (1964) (citations omitted). *Accord McLaughlin School Dist. 15-2 v. Kosters*, 441 N.W.2d 682, 685 (S.D.1989); *Oldham-Ramona*, 502 N.W.2d at 582. This Court did hold in *Oldham-Ramona*, that, "economic factors, in conjunction with the other relevant factors, are a valid consideration *625 for a school board in ruling on a petition for a minor boundary change." *Oldham-Ramona*, 502 N.W.2d at 582. However, the economic factors were not the only factors considered in *Oldham-Ramona* and the other relevant factors also weighed against the petitioners in that case. See

Oldham-Ramona, 502 N.W.2d at 582. That is not the situation here where the record fails to reflect adequate consideration of *all* relevant factors and the evidence presented on those factors overwhelmingly supports the petition.

[¶ 27.] In addition, as observed by the circuit court, the economic effects of a minor school district boundary change are largely taken into account by the statutory limitations on such a change. SDCL 13-6-85 limits a “minor” boundary change to property affecting not more than two percent of the assessed valuation of a district. Here, the Board’s own findings concede that the assessed valuation of Candlelight Acres is only 1.97 percent of the total assessed valuation of the Lennox School District. Thus, however dire the Board’s findings as to the economic impact of the requested boundary change, it must be remembered that over ninety-eight percent of the assessed valuation of the District remains intact after the change. Moreover, as observed by the circuit court, this is in an area of growth in the State where populations are projected to continue increasing and property values will necessarily continue to rise. Thus, the Board was clearly over-reliant on economic factors as a basis for denying the boundary change.

¹³¹ [¶ 28.] The Board’s findings also reflect over-reliance on open enrollment in the Sioux Falls School District as a cure-all for all of the concerns raised by the Petitioners. As was also observed by the circuit court, if open enrollment were a panacea for all such concerns, the legislature would have repealed the boundary change statutes when it passed the open enrollment law. It did not do so. Therefore, the boundary change statutes must not be read in a manner that renders them useless or meaningless. *See Yankton Ethanol, Inc. v. Vironment, Inc.*, 1999 SD 42, ¶ 15, 592 N.W.2d 596, 599 (there is a presumption against a construction which renders a statute ineffective or meaningless).

Footnotes

1. SDCL 13-28-40 provides in pertinent part:
An enrollment options program is established to enable any South Dakota kindergarten through twelfth grade student to attend any public school that serves the student’s grade level in any South Dakota school district, subject to the provisions in §§ 13-28-40 to 13-28-47, inclusive.
2. The conclusion was premised on authority holding that a decision is arbitrary and capricious when the decision-making agency: 1) relies on factors not intended to be considered; 2) fails to consider an important aspect of the problem; 3) offers an explanation for its decision that runs counter to the evidence before it; 4) renders a decision so implausible that it cannot be ascribed to a difference in view or the product of agency expertise. *See Smith*, 1999 SD 111 at ¶ 9, n. 2, 599 N.W.2d at 640 (citing *Motor Vehicle Manufacturers Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, 103 S.Ct. 2856, 2867, 77 L.Ed.2d 443 (1983)).
3. Several statutory conditions must also be met to obtain a minor school district boundary change. In that regard, SDCL 13-6-84.1 provides in pertinent part:

[¶ 29.] The Petitioners presented a persuasive case as to why open enrollment in the Sioux Falls School District would not resolve their concerns. In addition to the lack of bus service for open enrollment students, the Petitioners established that open enrollment would not guarantee assignment to the closest neighborhood school or to a particular school in successive years and would not guarantee that children from the same family would be assigned to the same school. As determined by the circuit court, these conditions defeat the very certainty the Petitioners were hoping to achieve with their boundary change petition.

[¶ 30.] Based upon the foregoing, it is clear that the Board’s decision relies on factors not intended to be considered, fails to consider important aspects of the problem, is counter to the evidence and is so implausible that it cannot be ascribed to a difference in view or to the product of Board expertise. This renders the decision arbitrary and capricious, warranting reversal. *See Smith*, 1999 SD 111, ¶ 9, n2, 599 N.W.2d at 640. Accordingly, the circuit court committed no err in reversing it.

[¶ 31.] Affirmed.

[¶ 32.] GILBERTSON, Chief Justice, and AMUNDSON, KONENKAMP and ZINTER, Justices, participating.

[¶ 33.] SABERS, Justice, disqualified.

All Citations

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(1) The boundary of the area proposed to be transferred shall be coterminous at some point with the common boundary of the two school districts....

(2) Children must reside within the boundary of the area to be transferred, unless it is an area change initiated by a school board as provided in § 13-6-84.2.

SDCL 13-6-85 provides in part:

A boundary change, affecting not more than two percent of the assessed valuation and not more than two percent of the tax-exempt acreage or other tax-exempt property to be determined at the discretion of the school district from which the area is to be taken, may be made upon an application for a boundary change to the school board of the school district from which the area is to be taken and to the school board of the school district to which the area is to be annexed, in the form of a petition signed by over fifty percent of the voters residing in the area to be transferred by the boundary change. Copies of the petitions shall also be delivered by the petitioners to the board of county commissioners having jurisdiction over the school districts affected.

There is no dispute that these statutory conditions are met in this case. Candlelight Acres constitutes 1.97% of the assessed value of the entire Lennox School District. Candlelight Acres is coterminous with the Sioux Falls School District with borders running adjacent to 57th Street and Sundowner Avenue. At the time of the petition, 25 school aged children resided in Candlelight Acres. The Lincoln County Auditor estimated that in August of 2000, fifty voters registered in Lincoln County lived in Candlelight Acres. Forty-seven voters registered in Lincoln County signed the petition. Other residents who had not yet registered to vote in Lincoln County also signed to show support for the petition.