

IOWA STATE BOARD  
OF EDUCATION  
(Cite as 16 D.o.E. App. Dec. 39)

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<i>In re Philip Moberg</i>	:	
Richard & Vanita Moberg, Appellants,	:	
v.	:	<b>ORDER</b>
Creston Community School District,	:	
Appellee	:	[Adm. Doc. #3936]

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Both parties have requested that no further hearing occur, and that this case be decided on testimony given at the hearing on March 5, 1998, and written documents submitted by the parties. Therefore, it is hereby ORDERED that the decision in this case will be made as requested by the parties.

The record in the case so far includes the following:

1. Two tapes of the hearing held on March 5, 1998. These tapes include an opening statement by Mr. Sayre, formerly the attorney for the Mobergs, testimony of Mr. Morris Smith, and testimony of Mrs. Moberg.
2. Appellants' Exhibits 1-17 and Appellee's Exhibits 1-15.
3. The Affidavit of Appeal filed on December 12, 1997, with attachments.
4. Letter dated December 15, 1997, from the Department of Education to the District, enclosing the Affidavit of Appeal and requesting a transcript.
5. Notice of Hearing dated December 16, 1997.
6. Continuance Order dated February 5, 1998.
7. Minutes of Board meetings held on November 13, 1997, and November 17, 1997.
8. Letter dated March 3, 1998, from Peter Pashler to the Department of Education.
9. Subpoena No. 563.

10. Letter dated April 3, 1998, from the Mobergs to the Department of Education.
11. Letter dated April 8, 1997, from the Department of Education to the Mobergs.
12. Letter dated April 20, 1998, from the Department of Education to the parties.
13. Letter dated April 30, 1998, from Mr. Pashler to Mrs. Moberg with enclosed Motion.
14. Undated letter from the Mobergs to the Department of Education with attached Exhibits A, B, and C.
15. Order dated May 7, 1998.

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16. Letter dated May 8, 1998, from Mr. Pashler to the Department of Education.
  17. Undated letter from the Mobergs to the Department of Education.

Mr. and Mrs. Moberg have until May 22, 1998, to submit any additional evidence they would like the panel to consider. Please answer the following questions:

1. What has happened this year between Chad and Philip?
2. What actions could the District take to keep Philip safe that you would find acceptable, and why?
3. Who wrote Exhibit B, attached to the Affidavit of Appeal?
4. What actions to resolve this case have been taken by you and the District since the hearing on March 5, 1998?

The District will then have until June 1, 1998, to submit any additional evidence it would like the panel to consider and to respond to the Mobergs' information. Please answer the following questions:

1. What actions to investigate and resolve this case have been taken by the District and the Mobergs since the hearing on March 5, 1998?
2. What supervision of the gym and locker rooms was in place prior to March 5, 1998? After March 5, 1998?
3. Why didn't the Board act on Mrs. Moberg's grievance?
4. When was the Motion passed that is attached to the April 30, 1998, letter from Mr. Pashler to Mrs. Moberg?

The Mobergs will then have until June 8, 1998, to respond to the District's information.

Dated this 14<sup>th</sup> day of May, 1998.

*Amy Christensen / by jmc*  
AMY CHRISTENSEN, J.D.  
ADMINISTRATIVE LAW JUDGE

**IOWA STATE BOARD  
OF EDUCATION**  
(Cite as 16 D.o.E. App. Dec. 42)

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<b>In re Saydel Play &amp; Learn Daycare</b>	:	
Eula Burton, Appellant,	:	
	:	DECISION
v.	:	
Saydel Community	:	
School District, Appellee.	:	[Adm. Doc. #3988]

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This case was heard on May 13, 1998, before a hearing panel comprising Mr. Jim Tyson and Mr. Milt Wilson, Bureau of Administration/School Improvement; and Amy Christensen, J.D., designated administrative law judge, presiding. The Appellant, Ms. Eula Burton, was present, and was unrepresented by counsel. The Appellee, Saydel Community School District [hereinafter, "the District"], was present in the persons of Dr. David Arnold, Superintendent; Ms. Jeannie Sandin, Board Member; Mr. Joel Godwin, Vice-President of the Board; Ms. Dell Skelton, Business Manager; Ms. Susan Moon, Board Member; and Mr. Bruce Vanderpool, Board President. The District was represented by Mr. Ron Peeler.

An evidentiary hearing was held pursuant to departmental rules found at 281--Iowa Administrative Code 6. Authority and jurisdiction for this appeal are found at Iowa Code section 290.1(1997).

Ms. Burton seeks reversal of the decision by the Board of Directors [hereinafter, "the Board"] of the District to close the daycare portion of the Saydel Play & Learn program at Norwoodville school. The decision was made at the Board meeting held on March 16, 1998.

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.

**I.  
FINDINGS OF FACT**

Ms. Eula Burton is the legal guardian for two children: Chelsea, age 5, and Courtney, age 6. The family lives in the Saydel District. Courtney is in the first grade, and previously attended the Saydel Play & Learn (PAL) daycare in the Norwoodville Elementary School building. Chelsea currently attends PAL. Chelsea and Courtney have lived with Ms. Burton for over three years. Since Ms. Burton works, the children started

attending Saydel PAL in 1995. Ms. Burton and the children have been very happy at Saydel PAL. Ms. Burton testified that the children's readiness for kindergarten is due to their attendance at PAL.

All witnesses agreed that Saydel PAL is an excellent program, and serves the needs of the children who attend and their parents very well. The program was started on September 2, 1986, after a community survey showed there was interest within the District for a program to provide convenient, quality daycare for ages 2 - 12. The program was designed and established as a joint effort by school board members, administrators, teachers, parents, volunteers, and a program director. The program was originally designed solely for children who lived in the District. It was designed to be financially independent from the District. The District provided start-up funding. It also did not charge the program for space, utilities, maintenance, surplus equipment and furniture, and janitorial and other services. The program director was supposed to seek federal and state grants to repay the District for the start-up funds. It is unclear whether all this money was repaid. The Iowa Department of Economic Development provided a \$10,000 grant for start-up expenses. Parent fees were supposed to cover all operational expenses.

Saydel PAL has two parts: daycare, which also includes preschool-type instruction, and a before-and-after school care program. The daycare is broken into sections based on the child's age. 12 children attend the Cubs section, which is for two and three-year-olds. 50 percent of these children live in the Saydel District. There are 12 children in the Starbursts group, which is for three and four-year-olds. 67% of these children live in the District. 22 children are in the Rainbow group, which is for four and five-year-olds. 59% of these children live in the District. The program is coordinated with the Headstart Program at the Norwoodville school building, with many children attending both Headstart and PAL daycare. Ms. Burton testified there are many at-risk children who attend PAL. Children may attend PAL beginning at age two. The daycare part of the program is in three schoolrooms in the Norwoodville Elementary Building. There are before and after school programs at both Norwoodville and Cornell Elementary Buildings. Ms. Karen Vander Horst is the Director of the PAL program. Superintendent Arnold is her supervisor.

Parents pay \$85 per week for two-to-five year olds for full time care. They pay \$30 per week for before- or after-school care, or \$45 per week for both before-and-after school care. Although the program was originally set up for students of the Saydel District, the daycare part was expanded to allow children who live in other districts to attend as well. This was done in an effort to make the program pay for itself, which it could not do with the number of students who attended from the District. All parents pay the same fee, regardless of where they live. The District does not charge the program for space, utilities, and janitorial services.

The before-and-after school care part of the program pays for itself with parent fees, and is financially solvent. The daycare program does not. Ms. Burton questions the District's statements that the daycare part of PAL does not pay for itself. However, the preponderance of the evidence at the hearing showed that parent fees and other income do not generate enough income to cover the expenses of the program, even with the District providing rent-free space, utilities, and janitorial services. Superintendent Arnold reviewed audit reports for the program from 1988 through 1998, and prepared a summary of audit beginning and ending balances with explanations. The preschool part of the program has not been able to generate enough fees to pay the program's expenses. In 1992, the District transferred \$47,110 from the general fund to PAL. By the end of 1996, PAL had only \$218, and by the end of 1997 had a \$52,245 deficit. A memo dated May 6, 1992 from the District's business manager to the superintendent stated the transfer was to eliminate the program deficit, and that the program would try to be self-supporting from then on. District documents from 1995 and 1996 indicate the program was having financial difficulty, and that the District intended that the program be self-funding. Unfortunately, this did not happen.

At the October 1997 Board meeting, Director Vander Horst was asked to present an overview of the PAL program, which she did. Her overview included information regarding the purpose and activities of the PAL programs and the number of children served. Superintendent Arnold testified Board members began expressing concerns regarding the financial aspects of the program to him on an individual basis.

In December 1997, several parents formed the Saydel PAL Parent Advisory Committee. Ms. Burton is President of the Committee. The purpose of the Committee was to try to obtain funds for the program to buy equipment needed for the children. Ms. Burton testified the PAL Director, Ms. Karen Vander Horst, told the parents she had submitted a funding request to the District for the equipment, but had been turned down. Ms. Burton testified that in December, none of the parents had any indication the District intended to close the program.

In January 1998, Superintendent Arnold and the Board received the District audit report. The report showed the daycare part of the PAL program had a deficit of \$52,245.

At the February 16, 1998 School Board Meeting, Director Vander Horst presented information regarding PAL to the Board. The Board began discussion of whether to close the daycare part of PAL. Members of the public attended the meeting, and Ms. Burton spoke in favor of continuing the program. The Board scheduled a work session for March 9, 1998 to discuss the PAL program.

The Board met on March 9<sup>th</sup> to review information and discuss the PAL program. Members of the public were in attendance, but did not participate in the discussion. However, Ms. Burton and others spoke individually to Board members immediately following the meeting regarding their concerns.

Sometime prior to March 10<sup>th</sup>, Ms. Burton contacted Senator Harkin's office to request information regarding possible grants available to the PAL program. Senator Harkin sent Ms. Burton a letter on March 10<sup>th</sup> with information regarding five such grants, and offered to write a letter on her behalf if she decided to apply for any of them. The PAL Parent Committee began collecting signatures on a petition, which urged the Saydel Board to allow PAL to remain open while they applied for grants.

On March 16, 1998, the Board met for a regular Board meeting. Ms. Burton spoke in favor of keeping PAL open. She provided information to the Board regarding available grants. She told the Board she had contacted three businesses, which had agreed to donate supplies until grants could be obtained. She discussed the issue of space available for the daycare, and urged the Board to keep the daycare open. She discussed the Parent Committee petition, although did not give it to the Board at the meeting. Another parent at the meeting gave a petition to the Board expressing support for closing the daycare. The Board discussed PAL, and reviewed financial information. The Board voted to continue the before and after school care program, and to terminate the daycare program. There were two reasons for the Board's decision. The first was financial. The Board did not want to continue a program that was not self-supporting, particularly when it serves children who are not residents of the District. Secondly, the Board was concerned with space available at Norwoodville Elementary. The Board wants to decrease class sizes in the lower elementary grades. Therefore, they will need more classrooms next year. The District will be adding one first grade class next year, and may be adding another kindergarten class. A current kindergarten class meets in a room with no windows, and which is smaller than one of the rooms allocated to PAL daycare. The District wants to move that kindergarten class to one of the rooms used by PAL next year. At some point in the future, the District wants to add another second grade class. It was for these reasons that the Board voted to discontinue the daycare part of PAL.

Ms. Burton disputes that the District needs the space PAL uses for elementary classrooms. She testified there are rooms used for storage that could be used rather than closing the daycare.

On March 26, 1998, the Parents Advisory Committee met with Superintendent Arnold to discuss PAL's closing. The parents asked Superintendent Arnold a number of questions. However, the meeting did not go well, and Superintendent Arnold left after being threatened and making an inappropriate remark in response. Board Member Susan Moon remained at the meeting, and the parents gave her a number of questions to give to Dr. Arnold. Dr. Arnold drafted written responses and provided them to Ms. Burton and Director Vander Horst. He also apologized for the inappropriate remark made.

Ms. Burton expressed concern regarding the lack of quality daycare in the District, and what would happen to those children who could no longer attend Saydel PAL. She testified there are many at-risk children in the District who need the kind of

program PAL provides in order to be ready for kindergarten. Superintendent Arnold testified he would like the District to establish a half-day pre-school program for four and five-year-olds in the District next year. He testified that for children in Headstart, this would effectively provide an all-day program. Children not in Headstart would no longer have this opportunity, because parents would have to transport their children to and from half-day preschool. He also testified the District has brought Department of Human Services employees to the District for a meeting with parents who might want to become licensed daycare providers.

Ms. Burton also testified that the District's bond issue passed because the PAL program was a part of the bond issue. She testified she spoke with approximately 150 people who agreed with her on this. The District disputed that the daycare part of PAL was a part of the bond issue passed in May of 1995.

## II. CONCLUSIONS OF LAW

This appeal is brought under Iowa Code §290.1(1997), which states that any person aggrieved by a decision of a school board in a matter of law or fact may appeal the decision to the state board of education. Review of the decision is *de novo*. In re J. Michael Pringle, 14 D.o.E. App. Dec. 365(1997). The decision of the state board is to be "just and equitable." Iowa Code §290.3(1997). The decision must be based on the laws of the United States, those of the State of Iowa, regulations and policies of the Department of Education, and must be in the best interest of education. 281 Iowa Administrative Code (IAC) 6.11(2). Essentially, the test is one of reasonableness. Pringle, supra, at 376.

When we are determining what decision in this case is reasonable, just and equitable, and in the best interest of education, we must look to the laws which govern school boards in Iowa. We must make the decision which is just and equitable and in the best interest of education for all the children of the District, not just which might be best for the children served by the daycare part of the PAL program.

There are no laws or rules that require the District to maintain a daycare or any other type of prekindergarten program. The laws and rules which refer to daycare and prekindergarten programs state that districts may operate programs, and none require them to do so. Iowa Code §§256.11(1) and 279.49(1997); 281 IAC 12.1(1) and 12.5(1). Although the State offers grants and assistance to districts for early childhood education, there is nothing which requires a district to participate. Iowa Code Ch. 256A; 281 IAC Chs. 64 and 67.



The Board of Directors of the District has the authority to make rules "for its own government and that of the directors, officers, employees, teachers and pupils, and for the care of the schoolhouse, grounds, and property of the school corporation... ." Iowa Code 279.8(1997). This clearly includes a decision whether or not to operate a daycare in school buildings, under the supervision of the District, and which requires some financial support from the District. The Board clearly had the authority to decide it wanted to focus on reducing class sizes in the early elementary grades, and use the available space for that purpose, rather than for the daycare, even when the daycare was an excellent program that served its children and their parents very well. Iowa Code §279.8(1997). The Board clearly had the authority to decide it no longer wished to provide financial support, both by providing rent-free space and related services, and by providing direct financial contributions to the PAL budget. Iowa Code §279.8(1997). Furthermore, a Board may change the focus of a District. The fact that a comprehensive daycare program was a priority of a previous board does not bind this Board to continue the program, if it believes it is no longer in the best interest of the District to continue it.

~~The State Board of Education has been directed by the legislature to render a~~ decision that is "just and equitable" and "in the best interest of education". Iowa Code §290.3(1997); 281 Iowa Administrative Code 6.11(2). The test is *reasonableness*. Pringle, supra. Based upon this mandate, a more precise description of the State Board's standard of review is, "a local school board decision will not be overturned unless it is 'unreasonable and contrary to the best interest of education'." In re Jesse Bachman, 13 D.o.E. App. Dec. 363, 369(1996). In this case, the Board had two articulated reasons for its decision to close the daycare part of PAL: financial and space. Although disputed by Ms. Burton, there is evidence to support the Board's decision, which showed the daycare is not financially self-supporting, and that space is needed for the Board's priority of reducing class sizes in the lower elementary grades. The Board made its decision after several meetings, reviewing information, and providing opportunities for public input. There was public input both in favor of the Board's decision, and opposed to it. The fact that the Board did not agree with Ms. Burton's comments does not mandate reversal. Pringle, supra, at 379. The Board made the decision it felt was in the best interest of all the children of the District. This means that Ms. Burton and the other parents whose children will be affected by the closing disagree with the decision. However, this does not mean the decision made was unreasonable.

Therefore, we hold that the Board's decision to close the daycare was within its discretion.

All motions or objections not previously ruled upon are hereby denied and overruled.

**III.  
DECISION**

For the foregoing reasons, the decision of the Board of Directors of the Saydel Community School District made on March 16, 1998, to close the daycare portion of the PAL program, is hereby recommended for affirmance. There are no costs of this appeal to be assigned.

*June 16, 1998*

DATE

*Amy Christensen*

AMY CHRISTENSEN, J.D.  
ADMINISTRATIVE LAW JUDGE

It is so ordered.

*8-7-98*

DATE

*Corine Hadley*

CORINE HADLEY, PRESIDENT  
STATE BOARD OF EDUCATION