KATHERINE HART ZIMMERMAN,  
Petitioner,  
v.  
BOARD OF EDUCATION OF THE  
TOWNSHIP OF DENVILLE, MORRIS COUNTY,  
Respondent.  

Decided February 9, 1982  

Initial Decision  

SYNOPSIS  

Petitioner alleged that the Denville Board of Education had illegally acted to close an elementary school without adequate citizen involvement and sought an order keeping the school open for at least two years.

The administrative law judge assigned to the case concluded that although the Board had not formed a citizen advisory committee to study the closing, the Board had made a good faith effort to keep the public informed of all its actions concerning the school closing. According, the petition of appeal was dismissed.

Jack L. Wolff, Esq., for petitioner (Scherbo, Koblin, Wolff, attorneys)  
Thomas R. Curtin, Esq., for respondent (McKeon, Curtin, Huber, McKeon, attorneys)  

YOUNG, ALJ:  

Petitioner alleges that the Board of Education of the Township of Denville illegally acted to close the Main Street School in violation of N.J.S.A. 18A:7A-2(5) and (6) by excluding interested citizens from its committees to study and provide input to the Board for its consideration of the issue. She prays for a stay of the Board's decision pending a review of all data by a committee appointed by the Board which includes interested citizens; a subsequent review by the Board and redetermination based on input from the committee; and lastly, if and when the Main Street School is closed, the Board be directed not to divest itself of that property for at least two years.
The Board denies any improprieties and avers its determination was made in good faith with a rational basis and adequate citizen involvement.

The matter was transmitted by the Commissioner of Education to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. on September 24, 1981. A prehearing conference was held October 14, 1981, and the agreed upon issues incorporated in the Prehearing Order are as follows:

1. Did the Board act illegally, in violation of N.J.S.A 18A:7A-2(5) and (6), when it allegedly excluded parents and interested non-parent taxpayers, other than Board members, from its special committee to study the closing of the Main Street School?

2. Was the action of the Board to close the Main Street School at the end of the 1981-82 school year arbitrary, capricious or unreasonable?

3. In the event of closing of the Main Street School, shall the Board be directed not to divest itself of that property for at least a two-year period?

The issue of the possible closing of the Main Street School was first brought to the public's attention at the November 17, 1980 Board meeting. The Board entertained questions from the public. The questions dealt with class size, where the sixth graders would go to school, the cost of operating the Main Street School, whether there is room in the other schools to accommodate the children, and whether the public could participate in making this determination. After dealing with the questions the Board assured everyone there had not been any meeting in closed session regarding the matter.

At the Board's agenda session on December 8, 1980, discussion was conducted relating to what steps needed to be taken regarding the subject of closing Main Street School. The minutes of the Board's regular meeting on December 15, 1980 state: "A preliminary report of Main Street School was discussed. It is nothing conclusive. Mr. Gilson will address this subject. In regard to a Parent's Committee for this purpose, the Board members are parents as well as Board members. The Board accepts the responsibility". Board member Gilson presented a logistical report at that meeting which included total available classrooms, those currently being utilized, functional capacity, and enrollment data from 1967-68 to date with high-low projections in 1988-89. A suggested distribution of pupils from Main Street School, if closed, was reported. After review with the public, a discussion followed with the public on possible alternatives.
The minutes of the Board’s regular meeting on January 19, 1981 incorporate a resolution unanimously passed by the full Board that reads as follows:

Resolve that the Main Street School is to remain open for the 1981-82 school year. The Sixth Grades are to remain at the respective schools where they are currently located. The Finance Committee is to undertake a comprehensive study, on the closing of Main Street School, and submit a report to the Board of Education within a three month period of time. A public review of the study will be made at the April regular Board of Education meeting in order to solicit public input on the subject.

At that same meeting a resolution “to appoint an ad hoc or advisory or task force committee to work with the Finance Committee” was rejected unanimously by a roll call vote of the full Board.

The minutes of the Board’s agenda meeting on February 9, 1981 state that “A discussion was held regarding the study on Main Street School”. The minutes of the Board’s regular meeting on February 16, 1981, indicate a response by President Pitman that no more statistics were available on the school closing at that time.

At the March 9, 1981 Board agenda meeting and public hearing on the budget, the Board agreed to distribute some materials prepared by Mrs. Harte (a Board member) regarding Main Street School, to interested parties. There was considerable discussion of the school closing issue at the Board’s March 15, 1981 regular meeting.

At the April 20, 1981 regular meeting, the Board indicated, regarding the forthcoming public hearing on the school closing issue, “notices would be sent home with students, radio stations would be notified, additional newspapers utilized and Denville Cable TV would carry the message.” The Board also agreed that any further information published by the Board concerning Main Street School be shared with persons prior to the hearing. There was considerable discussion concerning the procedural aspects of the school closing issue at that meeting.

The Board authorized the Superintendent of Schools to make the Finance Committee’s report concerning Main Street School available for public inspection at the agenda meeting on May 11, 1981.

The minutes of the Board’s regular meeting on May 18, 1981 memorialized extensive discussion of the school closing issue. The chairman of the Board’s Finance Committee presented the Board’s report from 7:55 p.m. to 8:20 p.m. Representatives of a group known
as Citizens Investigating Denville’s Education Resources (CIDER) presented their findings from 8:20 p.m. to 9:15 p.m. Resident citizens participated in dialogue with the Board until 12:00 p.m. A nonresident also participated to the extent of indicating the process of study utilized in another school district to arrive at a school closing determination. The chairman of the Finance Committee indicated that the Board had no time to review the CIDER report, but the President indicated that all views would be taken into consideration. The Board then passed a resolution by unanimous vote (one member was absent) to table action on the closing of the Main Street School until the June 15, 1981 meeting.

At the June 15, 1981 regular meeting, there was further discussion of the school closing issue. The President gave a background summary of the Board’s report and CIDER’s response and expressed displeasure that the CIDER report simply criticized the Board’s report, but offered little information of an independent nature. There was extensive participation and dialogue between citizens and the Board. The public portion of the meeting was closed at 12:25 a.m., after which the Board unanimously passed a resolution “to direct the administration to prepare for the closing of Main Street School at the end of the 1981-82 school year”.

RELEVANT TESTIMONY OF WITNESSES

The petitioner testified extensively on her role and activities relating to the school closing issue. She attended many Board meetings; wrote letters of concern to the Board; studied available materials related to the issue; conferred with the County Superintendent; inspected the four schools in the district; conferred with individual Board members, principals and secretaries; secured and reviewed 1975-1980 birth data at St. Clare’s Hospital; generally disagreed with Board findings in its accumulated data and centered concerns on the allegation that neither the Gilson report nor the Board followed the recommendations incorporated in the Master Plan of 1978.

On cross-examination, petitioner testified she was not active in the closing issue and that was concerned about process. She testified that she had provided no input other than her May 13, 1981 letter to the Board did not see the Superintendent’s monthly reports from September 1980 through June 1981 nor was not aware of media announcements related to the issue.

Petitioner also testified she was not a CIDER member and did not
participate or provide input into their endeavors, but did co-author an accountability ad in the local newspaper.

The thrust of her major concern was the negative response of the Board to a request for citizen participation and input on Board committees gathering data.

A non-district resident testified that she attended a Denville Board meeting and expressed a concern over a split between certain citizens and the Board on the school closing issue. Her testimony on the process utilized by the Board in her district to arrive at a determination of a similar issue was curtailed on the basis of irrelevancy.

One principal testified that he was not requested to serve on any committees relating to school reorganization or the impact of a closing of the Main Street School.

Citizen Wills testified that the Board rejected a request for citizen participation made by citizen Weber, who cited the "T and E law" at a Board meeting. Wills made similar requests on two other occasions. She belonged to the CIDER group, which prepared and presented its report to the Board. She testified, on direct examination, that the Board did not react to questions raised by CIDER, but did indicate its disappointment in the CIDER report by characterizing it as nothing more than a critique of the Board's report. She also verified a luncheon meeting with Board member Gilson, at which there was considerable dialogue on the data gathered by the Board.

As a rebuttal witness for petitioner, Wills testified that the Board did respond to questions raised by citizens at Board meetings, but CIDER members did not believe these responses were satisfactory.

Citizen Weber testified that she had read N.J.S.A. 18A:7A-2(5) and (6) to the Board, and that Gilson considered public participation at Board meetings to be in compliance with statutory requirements. She testified as a rebuttal witness, contrary to the Wills testimony, that the Board did not respond to questions from the public at Board meetings.

Peter Walling, an employee of the State Department of Education, testified for the petitioner after qualifying as an expert witness. He testified that the Board's "straight line with modifications" method of preparing enrollment projections was less reliable than the "Cohort" method and that he was unaware of undeveloped lots in the school district, something which was not incorporated in the Gilson report. He testified that he did not go into the school district in preparation for testifying in the matter.

As petitioner's witness, the Superintendent of Schools testified that
he had gathered statistics as requested by the Board (which were then
in the Gilson report), and submitted there statistics to the Board. He
had noticed the public of the school closing issue and had made the
Gilson report available to the public and forwarded it to certain
citizens on request. The superintendent opined that the Main Street
School should be closed due to declining enrollment and the direction
from the County Superintendent to remedy the substandard facilities
at the school. He also testified that the estimated cost of remedial
work at the school was prohibitive, but said costs were not pro-
essionally determined; no "mothballing" cost was determined; and
no alternative uses of the building were explored.

On cross-examination, the Superintendent testified he met with the
editor of the local newspaper, the Denville Citizen, to provide current
data related to the closing issue.

Ronald F. Pitman, a Board member since 1973 and its President
since 1974, testified that the possibility of closing the Main Street
School was first discussed in 1977, and annually at budget preparation
sessions to determine whether an in-depth study should be made. This
study determination was made in the Fall of 1980 and the Super-
intendent was directed to submit a facilities impact statistical study
related to the possible closing of the school. He further testified that
he responded at Board meetings to public inquires by stating no
conclusions had been made that the study was in process and that
the public was invited to join the Board in a joint venture. He also
testified there were discussions at each Board meeting on the issue
and that the financial impact portion of the study was referred to the
finance committe composed of Gilson, himself, the Superintendent
and the Board secretary. He assured the public that hearings on the
issue would be held at the public portions of Board meetings and that
information was released to the public as it was developed. He further
testified that the Board responded to public requests for the appoint-
ment of a citizen's advisory committee by determining that it would
act as a whole in denying the requests. He also testified that said
determination was based on the fact that Board members are members
of the public and qualify as interested citizens. He stated that Board
members have better access to data; had no intent to "shut-out" the
public and could avoid emotionalism. He also emphasized that the
Board's encouragement for public input and its vow to provide op-
portunities for full public review.

Pitman also testified that the CIDER report was presented at the
May meeting at the Board and that the public hearing on the issue
was extended from the May to June meeting to allow citizens and
the Board to review the CIDER report; and the Board in fact reviewed
said report between the May and June hearings.

Relative to the joint venture request Pitman testified that he asked
for a cooperative effort but wished to avoid an adversarial situation.
He also stated his disappointment with the CIDER report because
it was almost exclusively a critique of the Gilson report rather than
an independent study objective. He further testified that
public input was helpful and the Board's determination to delay the
closing until after the 1981-82 school year was largely due to that
input. He also testified that his vote to close the school was based
on his conclusion there would be significant economic savings with
no detrimental effect on the education of children in the district.

On cross-examination, Pitman testified that the Board and adminis-
tration had worked on developing and considering the data incor-
porated in the Gilson report for at least five months.

On examination by the court, Pitman testified that the Master Plan
was considered as advisory in nature and had been was studied and
updated by the Board. On cross-examination he testified that he did
not accept all recommendations in the Plan; and that the Board
rejected the Plan recommendation to close Main Street School in 1984
by inference when it determined to close the facility in 1982.

Board member Harte testified that classroom data was her contribu-
tion to the Gilson report. In addition she testified that she had con-
sidered the CIDER report and other citizen input as well as the data
in the Gilson report in arriving at her conclusion and that economic
savings were an important consideration in the closing decision. She
also testified that she expressed an opinion during her campaign to
be seated on the Board that the Main Street School would probably
close but it was conjecture as to when.

The final testimony came from Board member Gilson. He testified
that he has been a Board member for over three years. He has received
B.S. and M.A. degrees in Business Administration; and has been
employed with Warner-Lambert for 16 years with responsibilities in
data processing, data analysis, accounts receivable and feasibility studi-
es. He testified that he summarized finance committee input as well
as input from other Board members and the administration in prepar-
ing the document known as the Gilson report.

Gilson further testified that he attended a luncheon conference with
citizens Weber and Wills, at which he clearly stated he was not
committed to close the Main Street School but would make his de-
termination after a review of all data, even though he stated in January that the closing was an 80 to 90 percent probability. He also testified that he considered the Master Plan as recommendations by which he was not bound. The Plan was prepared by Gruzen Associates which had contracted with the Morris Hills Regional Board for the project and not the Denville Board. The Board updated the data accumulated in the Plan.

FINDINGS OF FACT

1. In 1977, the Board considered conducting an in-depth study related to the possible closing of the Main Street School, and reconsidered it annually thereafter at budget preparation.

2. The possibility of the closing of the school was brought to the public's attention at the Board's November 17, 1980 meeting, after the Board declared its intent to study the issue at its November 10, 1980 agenda meeting.

3. The Superintendent of Schools submitted an educational impact study on the school closing question on February 12, 1981, which incorporated relevant data, and submitted supplementary data on April 30, 1981.

4. There was continuous dialogue on the issue at the public portion of each Board meeting from November 1980 to June 1981.

5. The Board's committee to study the issue was restricted to Board members and administrators. The study became known as the Gilson report.

6. Pupil enrollment had declined from approximately 2,212 in 1976 to about 1,619 in 1981.

7. Public input for the Board's consideration was voluntary and consisted of oral public participation at Board meetings and the CIDER report.

8. The CIDER report was basically a critique of the Gilson report, and was designed to examine the motivation for closing the school and evaluate the expressed evidence and data used to support the Board's conclusions.

9. The Board rejected public requests for citizen representatives to participate on the Board's study committee.

10. The Board made all data accumulated in its study available for public review.

11. The Board gave consideration to all input from the public as well as its self-generated information in the process of arriving at its conclusion to close the Main Street School.
12. A review of the entire record in the matter reveals a rational basis for the Board’s action to close the Main Street School at the end of the 1981-82 school year.

13. The Board’s determination to exclude public participants on its study committee was arbitrary.

ARGUMENTS OF COUNSEL

The gravamen of this dispute is the process utilized by the Board in arriving at its determination to close the Main Street School.

The petitioner alleges that the Board was in violation of N.J.S.A. 18A:7A-2(5) and (6) due to its refusal to permit public participation on its study committee. Petitioner also posits that the Board’s action should be set aside because it was arbitrary and capricious, even if found not to be in violation of statute.

The Board argues its encouragement of public participation and input at monthly meetings plus any documents submitted by the public for its consideration meets the statutory requirement. It also argues its action was not arbitrary or capricious as it gave long and careful consideration to all accumulated data in its deliberation before arriving at its determination to close the school.

Petitioner argues there were many facets of a school closing issue that were not studied by the Board.

Petitioner relies on the legislative intent in the enactment of the Public School Education Act of 1975, L. 1975, c. 212, now codified as N.J.S.A. 18A:7A-1 et seq. She submits that that law, also know as the “Thorough and Efficient Law” requires maximum citizen involvement in education with anything less resulting in a sham. She properly distinguishes public reaction to a report prepared by the Board from active participation in the process prior to the preparation of such a report. She alleges that the Board at no time sought to consider the input of the public nor did it seek to ascertain and evaluate the needs and desires of the public, and relies on Grogan v. De Sapi, 15 N.J. Super 604, 611 (Law Div. 1951) in suggesting that public participation at monthly Board meetings should be dealt with “as if they had never occurred.”

The petitioner suggests that the following minimum steps should have been taken by the Board to ensure maximum citizen involvement in compliance with the law:

1. Formation of Citizens Advisory Committee.
3. Long range study of school needs.
4. Town meeting for dialogue on the issue.
5. Create a Declining Enrollment Committee.
6. Solicit community organizations’ participation.
7. Distribute information through newsletters.

Petitioner further argues the applicability of the philosophy underlying the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., and relies on Polillo v. Deane, 74 N.J. 562, 569 (1970) as being analogous to the “T and E” law. Since no claim of Board violation of this act was made in the pleadings or framed as an issue in the Prehearing Order, this argument will not be addressed.

Petitioner cites many school law decisions of school closing disputes, all upholding Board actions, and found none where the Board had not appointed a citizens’ advisory committee, and none in which the issue of maximum citizen involvement under the “T and E” law was considered.

The Board argues its decision “was made in good faith, with a rational basis, and was not arbitrary, capricious or unreasonable” and contends it “made a good faith effort to keep the public informed, respond to public questions, suggestion and criticisms, and otherwise involve the community in the democratic process envisioned by the statutory goals.”

**DISCUSSION OF LAW**


a. The Legislature finds and declares that:

(4) Because the sufficiency of education is a growing and evolving concept, the definition of a thorough and efficient system of education and the delineation of all the factors necessary to be included therein, depend upon the economic, historical, social and cultural context in which that education is delivered. The Legislature must, nevertheless, make explicit provision of the design of State and local systems by which such education is delivered, and should, therefore, explicitly provide after 4 years from the effective date of this act for a major and comprehensive evaluation of both the State and local systems, and the sufficiency of education provided thereby;

(5) In order to encourage citizen involvement in educational matters, New Jersey should provide for free public schools in a manner which guarantees and encourage local par-
ticipation consistent with the goal of a thorough and efficient system serving all of the children of the State . . . [emphasis added]

Somewhere on the continuum of a Board appointment of citizens advisory committees and the failure of a Board to appoint any committees or discuss in public important community issues, a line must be located to represent the minimum standard of public participation intended by the Legislature. Petitioner tried eloquently to persuade the court that the actions of the Board in the instant matter fall below that minimum standard and should be set aside.


In Branchburg Tp. Bd. of Ed. v. Somerville Bd. of Ed., 173 N.J. Super. 268 (App. Div. 1980), Branchburg appealed a final decision of the State Board of Education which affirmed the denial by the Commissioner of Education of Branchburg's request to terminate the sending-receiving relationship with Somerville. The majority of the Legal Committee of the State Board recommended that the Commissioner's decision be reversed by invoking "the philosophy of the Public School Education Act that there should be 'citizen involvement in educational matters'" Id. at 273. The court stated: "However we do not construe the legislative declaration in N.J.S.A. 18A:7A-2 to be a mandate that controls to the exclusion of all other factors" Id. at 276.

The attempt to locate the minimum standard of public participation intended is frustrated by the language employed by the Legislature in N.J.S.A. 18A:7A-2(6):

A thorough and efficient system of education includes local school districts in which decisions pertaining to the hiring and dismissal of personnel, the curriculum of the schools, the establishment of district budgets, and other essentially local questions are made democratically with a maximum of citizen involvement and self-determination and are consistent with Statewide goals, guidelines and standards; and [emphasis added]

It is noted here that the Legislature authorizes a public body to exclude the public from discussions on the hiring and dismissal of personnel. N.J.S. 10:4-12(B)(8).

The general mandatory powers and duties of a Board of Education are undisputed. N.J.S.A. 18A:11-1 reads:

The board shall—
a. Adopt an official seal;
b. Enforce the rules of the state board;
c. Make, amend and repeal rules, not inconsistent with this title or with the rules of the state board, for its own government and the transaction of its business and for the government and management of the public schools and public school property of the district and for the employment, regulation of conduct and discharge of its employees, subject, where applicable, to the provisions of Title 11, Civil Service, of the Revised Statutes; and
d. Perform all acts and do all things, consistent with law and the rules of the state board, necessary for the lawful and proper conduct, equipment and maintenance of the public schools of the district.

Encouragement of public participation does not limit the exercise of discretionary authority vested in the Board alone by the Legislature. In *Jenkins, v. Tp. of Morris School Dist.* 58 N.J. 483 (1971), the Township Board conducted a nonbinding referendum to determine public sentiment before authorizing the expenditure of funds for architectural fees to draw preliminary plans for its own high school. Although no authorization to spend public funds for the construction of a high school facility was incorporated in the referendum, the Board agreed before the referendum to pursue a direction determined by the public vote. The court quoted from the Commissioner's decision, at 492:

In his decision the Commissioner was highly critical of that referendum and the Board’s conduct in connection therewith. Citing *Hackensack Bd. of Ed. v. Hackensack*, 63 N.J. Super. 560 (App. Div. 1960), and *Botkin v. Westwood*, 52 N.J. Super. 416 (App. Div.), *appeal dismissed*, 28 N.J. 218 (1958), he described the non-binding referendum as ‘illegal and an improper abdication of the Township Board’s responsibility to perform its function.’ And he flatly condemned the pre-vote ‘pledge of all but one’ of the Board members to abide by the results of the non-binding referendum, noting that it ‘improperly delegates the responsibility for ultimate decision’ (at 492).

The court then said at 507-508:

Apart from whether Board members had the right to seek a non-binding referendum at all . . . they clearly had no right to pledge themselves in advance to abandon the individual affirmative views in favor of the majority negative vote.
It is suggested here the minimum standard of public participation intended by the Legislature is met when sufficient credible evidence necessitates a finding that:

1. A Board disseminated to the public all relevant data accumulated on an issue; and

2. A Board provided reasonable opportunities for the public to be heard on the issue; and

3. There is no bad faith.

There is no conclusion here as to the rationale for the Board’s reluctance to entertain suggestions from the public for participation on its study committees. The Board’s rejection of public participation on its committees is an undisputed fact. One might understand such reluctance in light of the Board’s possibly pre-conceived bias from such participants who may appear to be in opposition to the closing of a school, and when such participation may be viewed by the Board to create confusion, undue delay, disruption and generally not add measurably and constructively to the Board’s obligation to deal with the issue.

However, it is not inconceivable that the negative public relations resulting from the Board’s attitude may indeed outweigh the inconvenience the Board may have endured by including public participation on its study committees.

Petitioner also argues that the Board’s action in closing the school was arbitrary and capricious, if not illegal, due to its failure to study aspects of the school closing issue petitioner believes sufficiently important to have been included in the Board’s efforts.

The Commissioner addressed this argument Green Village Road School Assoc. v. Madison Borough Bd. of Ed., 1976 S.L.D. 700, stating at 713-714:

While it would have been desirable for the Board to have completed, prior to its decision, all of its subsequent inspections, studies and consultations relating to redistricting, pupil walkways, costs of minor renovations at Central Avenue, class sizes and racial balances, the Board’s action may not be voided because of the absence of some particular information.

**ADDITIONAL FINDINGS AND CONCLUSIONS OF LAW**

I FIND the Board made a good faith effort to keep the public informed on the school closing issue and provided reasonable opportunities for the public to be heard on the issue, and at least met
the minimum standard of public participation in the democratic process envisioned by statutory goals.

I further FIND the Board's arbitrariness in rejecting public participation on the study committees is not applicable to its school-closing action and therefore does not vitiate it; and that sufficient relevant data had been accumulated and studied by the Board to enable it to reach an intelligent determination to close the Main Street School.

I CONCLUDE, therefore, that the Petition of Appeal shall be and is hereby DISMISSED.

I DECLINE to order the Board not to divest itself of the Main Street School property for at least a two-year period as requested by petitioner. I leave the Board to exercise its discretionary authority pursuant to N.J.S.A. 18A:11-1.

After reviewing this Initial Decision, the Commissioner of Education on June 24, 1982 issued the following Final Decision:

The Commissioner has reviewed the entire record of the matter controverted herein including the initial decision rendered by the Office of Administrative Law.

The Commissioner observes that exceptions were filed by petitioner pursuant to the provisions of N.J.A.C. 1:1-16.4a, b and c.

Petitioner excepts to the determination by the Honorable Ward R. Young, ALJ that the Board properly determined to close the Main Street School. Petitioner contends that the Board failed to sufficiently inform and involve its citizenry in that determination. Petitioner avers that the Commissioner should establish guidelines to measure the degree of citizen involvement for school closings. The Commissioner finds no merit in these exceptions.

A consideration of the facts herein convinces the Commissioner that the Board's process in resolving to close the Main Street School, while improvable, had a rational basis. Nor does the Commissioner agree that a laundry list of check-off points be established as a necessary prerequisite to school closings. However, petitioner's contention that the Board should minimally have formed a citizen advisory committee to assist it in its consideration to close the Main Street School has merit. In the present case the Board did not form such a committee even though the formation of such committees could be deemed advisable. However, such omission does not rise to the level of reversible error; the Commissioner so holds. Information was shared
with the public and lengthy discussion was encouraged at public meetings.

The Commissioner has long been sensitive to the need for public participation in preparing for school closings. In the Committeer to Save Bayard School, 1978 S.L.D. 454, 461, the Commissioner said:

... The Commissioner is constrained, in spite of the very real fiscal and time constraints with which the Board was faced, to caution this Board and all boards of education that in so sensitive a matter as the proposed closing of a neighborhood elementary school the members of the public, as well as school employees, should be given ample opportunity to react to that proposal before final action is taken...” (Emphasis in text.)

Further, in Ronald Polak et al. v. Board of Education of the Township of Woodbridge, Middlesex County, decided July 28, 1981, the following concern was expressed:

The Commissioner recognizes the strong and deep emotions commingled in a district faced with the marked decline in enrollment as evidence herin. The task of a board of education faced with possible school closings is a heavy one. However, the responsibility of a board to take proper action to recognize and best resolve its resultant enrollment problems while ensuring a thorough and efficient education for its pupils outweighs all other considerations... .

(slip opinion, at p. 21).

In the matter presently controverted, the Commissioner finds no evidence of collusion, calumny or criminal intent. The decision reached by the Board was not made as the result of illegality or in violation of law; consequently, it must be upheld. It is so determined.

The Commissioner affirms the findings and determination as rendered in the initial decision in this matter and adopts them as his own.

Accordingly, the petition of Appeal is hereby dismissed.