

NOTICE
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2021 IL App (5th) 200277

NO. 5-20-0277

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE BOARD OF EDUCATION OF ROXANA)	Appeal from the
COMMUNITY UNIT SCHOOL DISTRICT NO. 1,)	Circuit Court of
MADISON COUNTY, ILLINOIS,)	Madison County.
)	
Plaintiff-Appellant,)	
)	
v.)	No. 19-MR-1074
)	
THE REGIONAL BOARD OF SCHOOL TRUSTEES OF)	
MADISON COUNTY, ILLINOIS; ROBERT W.)	
WERDEN, in His Official Capacity as <i>ex officio</i>)	
Secretary of Regional Board of School Trustees of)	
Madison County, Illinois; ROBERT A. DAIBER,)	
in His Official Capacity as the Former <i>ex officio</i>)	
Secretary of Regional Board of School Trustees of)	
Madison County, Illinois; JAY HESSE; SHARON)	
HESSE; and THE BOARD OF EDUCATION OF)	
EDWARDSVILLE COMMUNITY UNIT SCHOOL)	
DISTRICT NO. 7, MADISON COUNTY, ILLINOIS,)	Honorable
)	Christopher P. Threlkeld,
Defendants-Appellees.)	Judge, presiding.

JUSTICE BARBERIS delivered the judgment of the court, with opinion.
Justices Welch and Wharton concurred in the judgment and opinion.

OPINION

¶ 1 Sharon and Jay Hesse (the Hesses), appellees, petitioned the Regional Board of School Trustees of Madison County (the Board), co-appellee (hereinafter collectively referred to as the appellees), to detach their property from the boundaries of the Roxana Community Unit School District No. 1 (the Roxana District), appellant, and annex it into the boundaries of the Edwardsville

Community Unit School District No. 7 (the Edwardsville District) with the intention of sending their only son, Holden, to school in the Edwardsville District. After a hearing, the Board granted the Hesses' petition. On administrative review, the circuit court of Madison County affirmed the Board's decision. The Roxana District appeals from that order. We reverse and remand for further proceedings.

¶ 2

I. Background

¶ 3 On April 29, 2019, the Hesses filed a petition with the Board, seeking to detach their property from the Roxana District and annex it to the Edwardsville District. On June 24, 2019, the Board held a public hearing on the Hesses' petition. Prior to the hearing, both the Roxana and Edwardsville Districts objected to the Hesses' petition. We have limited the background summary to the testimony and evidence adduced at the hearing that is pertinent to this appeal.

¶ 4 At the hearing, the Hesses, Dr. Lynda Andre, Mr. Steve Oertle, and Ms. Debra Kreuztrager, among others, testified. Prior to testimony, the Board introduced into evidence several exhibits without objection. Pertinent to this appeal, the Board asked the parties if there was an objection to admitting the school report cards of the Roxana and Edwardsville Districts (Trustees' Exhibit 7). Trustees' Exhibit 7 highlighted the Roxana and Edwardsville Districts separately by illustrating the following information: student characteristics, proficiency rates in English Language Arts and Mathematics; graduate rates;¹ academic success in English Language Arts and Mathematics on the SAT within the district, state, and by student group (*i.e.*, white, black, Hispanic, low income, and student with disabilities); college readiness; district finance; achievement gap; student attendance and mobility; and educator measures focusing on principal

¹The school report card data demonstrated that the Edwardsville District had a 92% graduation rate, 51% proficiency rate in English Language Arts, and 43% proficiency rate in Math on state standardized tests. In comparison, the Roxana District had an 87% graduation rate, a 24% proficiency rate in English Language Arts, and a 17% proficiency rate in Math on state standardized tests.

and teacher retention. Additionally, Trustees' Exhibit 7 provided information related to three categories of student populations, including minority, low-income, and English learners. In the minority category, the Edwardsville District had a 9% higher student population than the Roxana District (21% versus 11%).² In the low-income category, the Roxana District had a 29% higher student population than the Edwardsville District (47% versus 18%), and in the English learners category, the Edwardsville District had a 1% higher student population than the Roxana District (1% versus 0%).

¶ 5 Counsel for the Roxana District timely objected on the grounds that school report cards, under “the new statute, effective January 1, 2016,” were not admissible in detachment-annexation hearings when there was more than a 3% difference in any one of the student populations. Following this objection, the following conversation took place:

“MR. JACKSTADT [(COUNSEL FOR THE ROXANA DISTRICT)]: For the Board members, if you look at the agenda, and we discussed this in the orientation, the statute was amended a few years ago to indicate that we could not use School Report Cards, if there was more than a three percent difference in low income and minority. And there was one other—Hispanic.

MR. SCHOOLEY [(BOARD MEMBER)]: Hispanic, is that it?

MR. CURRY [(BOARD MEMBER)]: English learners.

MR. SCHOOLEY: Yeah, English learners, difference between the two districts. In other words, between Edwardsville and Roxana. We can't use, therefore, the School Report

²A review of Trustees' Exhibit 7 demonstrates that 21%, not 20%, of the student population at the Edwardsville District consisted of minorities (8% black, 4% Hispanic, 3% Asian, 6% with two or more races). Thus, the Edwardsville District had a 10%, not 9%, higher student population than the Roxana District in this category.

Cards in so much as they show the differences in the two. But on the face of them, it does establish that *** the difference between the two districts is more than three percent.”

The Board further stated that the school report cards were marked as an “Exhibit so that the record is clear, that we *** will not be considering those because of that three percent difference, which is shown on the Report Cards.” Subsequently, the Board admitted Trustees’ Exhibit 7 “for the limited purpose of showing that there is a more than three percent difference in the low[-]income students.” Following this discussion, the following testimony was adduced.

¶ 6 Jay testified to the following. Jay and Sharon had lived at their current residence, 10 Hesse Lane in Edwardsville, Illinois, for 17 years. The Hesses’ home was located in the Roxana District. The Hesses had one child, Holden, born on February 10, 2010, who had attended St. Boniface Catholic School in Edwardsville, Illinois, since prekindergarten. However, the Hesses wished to send Holden to Woodland Elementary in Edwardsville as a result of the family’s connection with the Edwardsville community. According to Jay, Holden had developed his social circle in Edwardsville through his participation in baseball, basketball, soccer, martial arts, and Cub Scouts. In addition, Jay and Sharon supervised Holden’s Cub Scouts den and had also coached his soccer and baseball teams in the past. Specific to school, the Hesses wanted Holden to attend a larger school with bigger class sizes, given his class at St. Boniface had only 30 children (5 boys and 22 girls) in attendance. Jay indicated that the Hesses did not have friends in Roxana because they did not spend much time there.

¶ 7 Dr. Andre, superintendent of the Edwardsville District, testified to the following. The Edwardsville District objected to the Hesses’ petition for a number of reasons, including the existence of strict residency rules, contractual class size limits, and the financial impact on enrollment costs on the Edwardsville District for accepting additional students, especially students not within the boundaries of the district. Specifically, Dr. Andre testified that “growing the

[Edwardsville] [D]istrict at another district's expense is not something that we would do [to] any of the nine districts that surround our boundaries.”

¶ 8 Sharon testified to the following. Aside from the fact that the majority of Holden's friends lived in Edwardsville, the Edwardsville District also offered ample opportunity for Holden to engage in activities, such as baseball, karate, soccer, music, and robotics. Sharon indicated that the Edwardsville District “is just good at pretty much everything. And *** whatever he decided to get into, they'll [Edwardsville District] have a lot to offer for him.” Sharon admitted that, at the time of the hearing, she had not talked with Mr. Steve Oertle, assistant superintendent of the Roxana District, about the programs and curriculum offered at the Roxana District.

¶ 9 Mr. Oertle, assistant superintendent of the Roxana District, testified to the following. As a father, Mr. Oertle's children attended the Edwardsville District. With that said, he testified that he was very familiar with the programs and curriculum offered by both districts. Mr. Oertle expressed his disappointment with the technology offered to students in the classroom at the Edwardsville District. In contrast, the Roxana District offered students a digital curriculum with the use of school laptops that accompanied classroom textbooks. According to Mr. Oertle, the Roxana District offered its students a robust education with a new STEM room that would open in the junior high, a robotics program, computer programming for students interested in engineering, and numerous sports. Mr. Oertle confirmed that he had never met or given the Hesses a tour of the Roxana District. In his opinion, there was no significant, direct educational benefit to Holden if the change in boundaries was allowed.

¶ 10 Following Mr. Oertle's testimony, the Board discussed the use of the school report cards in comparing the Roxana and Edwardsville Districts and in considering the Hesses' petition. The following discussion ensued:

“MR. SCHOOLEY: The statute says, and let me say, ‘Only if there is no more than a three percent difference in minority, low income, and English learner student population.’

It does not use the word or. So, the question is—

MR. BRASE [(BOARD MEMBER)]: So we use—

MR. SCHOOLEY:—does all three of them have to be present to buy their cards, or only one. Mr. Jackstadt’s [counsel for the Roxana District] position is going to be only one, and that’s the low income. The other two, if you look at them, minority and English, there is no difference essentially between the two districts. And, in fact, Edwardsville may have a higher minority and English learner student population. So—

MR. BRASE: So, here’s my question: You know, can we talk about them? And the answer is: We don’t know?

MR. SCHOOLEY: We don’t know.

MR. SCHOOLEY: *** I have to be honest with you. There is no guidance for us on this. There is a rule of statutory construction that says that if they use the word and, it’s conjunctive. And that means what? It’s got to be all three. If it was only *** one, they would have used the word or. ***

* * *

MR. SCHOOLEY: And then if it says and, then it’s got to be what?

MR. CURRY [(BOARD MEMBER)]: Collective.

MR. SCHOOLEY: Collective. *** That’s where we’re going to be if we want to use the School Report Cards. I’m going to leave it up to you guys. ***

* * *

MR. SCHOOLEY: *** When we go into executive session, I'll leave it up to you folks whether you want to consider the Report Cards, frankly. And if the majority say we want to consider them, we'll interpret it then.

* * *

MR. SCHOOLEY: All right. Anything else, Mr. Jackstadt?

MR. JACKSTADT: No, thank you.”

The Board continued the hearing with further witness testimony.

¶ 11 Ms. Kreuztrager, superintendent of the Roxana District, testified to the following. Similar to Mr. Oertle, Ms. Kreuztrager had never spoken with the Hesses about Holden attending the Roxana District, although she believed that “for a school of our size, we have all the extracurriculars.” In her opinion, the Roxana District “offer[ed] him [Holden] a connection and opportunities that he may not get in a larger school” like the Edwardsville District. According to Ms. Kreuztrager, there was no significant, direct educational benefit to Holden if the change in boundaries was allowed.

¶ 12 Following the hearing, the Board entered an order on June 28, 2019, granting the Hesses’ detachment and annexation petition. The Board, voting four to two with one abstention, granted the Hesses’ petition for the following reasons:

“1. The Madison County Regional Board of School Trustees finds the overall benefit to Edwardsville Community Unit School District #7 and the Hesse property clearly outweighs the resulting detriment to Roxana Community Unit School District #1 and the surrounding community considering differences between school facilities and curricula, the school needs, conditions of the territory in the area within and adjacent thereto, the ability of districts affected to meet standards of recognition as prescribed by Illinois State Board of Education, the division of funds and assets which will result from change of

boundaries including bonded indebtedness, whether it is to the best interest of the schools in the area, and whether it is to the best interest of the educational welfare of the pupils that such change in boundaries be granted.

2. The Madison County Regional Board of School Trustees finds that there would be a significant direct educational benefit to the Hesse child if the change in boundaries were allowed, and the community of interest of the Petitioners and their children and the effect the detachment will have on the whole child clearly outweighs the detriment to Roxana Community Unit School District #1 and the surrounding area.”

In addition, if no appeal was taken, the detachment and annexation would become effective July 1, 2019, pursuant to section 7-9 of the School Code (105 ILCS 5/7-9 (West 2018)).

¶ 13 On August 1, 2019, the Roxana District filed a complaint in the circuit court of Madison County for judicial review of the Board’s final administrative decision. The Roxana District argued that the Board’s decision was improper, thus, requiring reversal, or in the alternative, a rehearing on the Hesses’ petition was necessary, for the following reasons: (1) the Board’s order considered the school report card data (Trustees’ Exhibit 7), even though the Board was prohibited, pursuant to section 7-6(i)(1) of the School Code (*id.* § 7-6(i)(1)), from considering it in its entirety; (2) the Board’s order failed to consider the substantive changes set forth in law by *Shephard v. Regional Board of School Trustees of De Kalb County*, 2018 IL App (2d) 170407; (3) the Board’s order incorrectly stated that the effective date of the detachment and annexation was July 1, 2019, which ran contrary to section 7-9 of the School Code (105 ILCS 5/7-9 (West 2018)); (4) the Board failed to timely provide a written report five days or more before the hearing of the financial and educational conditions of the two districts involved and the probable effect of the proposed changes; (5) a duly elected member of the Board was excluded from deliberations following the evidentiary hearing on June 24, 2019; (6) the Board’s order lacked a reasoned explanation with

the findings it relied on in forming its decision; and (7) the Board's decision was against the manifest weight of the evidence.

¶ 14 On August 28, 2020, the circuit court held a hearing on the Roxana District's complaint for administrative review. On the record, the court noted that the issue presented a matter of interpreting section 7-6 of the School Code, which would require the court to decide "whether or not the conjunctive *and* requires all three elements be met or only one of the three." (Emphasis added.) The court stated that the report of proceedings demonstrated that the Board had questions at the hearing about "the interpretation of the statute and that it was initially admitted over the objection of Roxana for the limited purpose of showing the percentages of minority, low income, and English learner student populations." However, in executive session, the Board decided to "take up the report cards for all purposes and not just for the limited purpose in which it was initially admitted." Subsequently, the court found that the use of the conjunctive "and," and not "or," in the statute "require[d] all three elements to be met in order for the School Report Card to not be considered."

¶ 15 In rationalizing its decision, the circuit court stated the following:

"So it seems to the Court that the legislature determined that the report cards shall be considered *unless* *** there is no more than a 3 percent difference in the minority, low income, and English learner student populations of the enrolling schools of the district. In this case, there is a less than 3 percent difference in the English learner populations, and therefore the Board was correct in considering the School Report Card." (Emphasis added.)

At the conclusion of the hearing, the court denied the Roxana District any relief. In affirming the Board's decision, the court determined that the Board's review of the school report cards did not suggest that one district had a greater advantage or disadvantage over the other in terms of the student populations. After reviewing the metrics contained on school report cards, the court

determined that there would be a significant, direct educational benefit to Holden if the change in boundaries was allowed. Lastly, with reliance on the Hesses' testimony, the court determined that the Hesses had established that their family had a much closer connection to the Edwardsville District than the Roxana District; thus, the "whole child" and "community interest" factors had been satisfied. The Roxana District filed a timely notice of appeal.

¶ 16

II. Analysis

¶ 17 On appeal, the Roxana District argues that the Board erred in granting the Hesses' petition for detachment and annexation. The Roxana District insists that the Board erred in comparing the student report cards of the Roxana and Edwardsville Districts. In addition, the Roxana District argues that the Board's finding that there would be a significant, direct educational benefit to the Hesses' child if the petition were granted was against the weight of the evidence, and the Board's consideration of evidence regarding the "whole child" and "community interest" factors was improper.

¶ 18 A regional board's decision to grant or deny a petition to detach and annex pursuant to section 7-6 of the School Code (*id.* § 7-6) is an administrative decision for purposes of the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2018)). See 105 ILCS 5/7-7 (West 2018). Thus, this court reviews the ruling of the Board, " 'not the judgment of the circuit court.' " *Shepard*, 2018 IL App (2d) 170407, ¶ 16 (quoting *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368, 386 (2010)). The scope of the judicial review by the appellate court extends to all questions of law and fact presented by the record before the court. See 735 ILCS 5/3-110 (West 2018). The applicable standard of review depends on whether the issue presented is a question of law, fact, or a mixed question of law and fact. *Board of Education of the City of Chicago v. Illinois Educational Labor Relations Board*, 2015 IL 118043, ¶ 14 (citing *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 390 (2001)).

Reversal of an agency’s factual findings is warranted only when they are against the manifest weight of the evidence. *Shephard*, 2018 IL App (2d) 170407, ¶ 16 (citing *Board of Education of Marquardt School District No. 15 v. Regional Board of School Trustees*, 2012 IL App (2d) 110360, ¶ 20). Where administrative orders involve mixed questions of law and fact, we apply the “ ‘clearly erroneous’ ” standard of review. *Id.* (quoting *Board of Education of Marquardt School District No. 15*, 2012 IL App (2d) 110360, ¶ 20). We review *de novo* an agency’s decision on questions of law. *Id.*

¶ 19 We first address the Roxana District’s contention that the Board is allowed, under Illinois law, to compare school report cards of the detaching and annexing districts only if there is no more than a 3% difference in all three categories of student populations. In contrast, appellees argue, with reliance on the use of the word “and,” that unless all three categories have no more than a 3% difference, the Board is allowed to consider the school report cards. Accordingly, appellees insist the Board did not err in considering a comparison of the school report cards where the statute was inapplicable. We disagree with appellees.

¶ 20 The parties’ first issue raises a question of statutory interpretation. In construing a statute, the fundamental rule of statutory construction is to ascertain and give effect to legislative intent, which is the most reliable indicator of the language of the statute itself, given its plain and ordinary meaning. *Land v. Board of Education of the City of Chicago*, 202 Ill. 2d 414, 421 (2002). In determining the plain meaning of statutory terms, a court must consider the statute in its entirety, “keeping in mind the subject it addresses and the apparent intent of the legislature in enacting it.” *People v. Perry*, 224 Ill. 2d 312, 323 (2007). If possible, a “court must give effect to every word, clause, and sentence; it must not read a statute so as to render any part inoperative, superfluous, or insignificant; and it must not depart from the statute’s plain language by reading into it exceptions, limitations, or conditions the legislature did not express.” *People v. Ellis*, 199 Ill. 2d 28, 39 (2002)

(citing *Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189 (1990)). Where the statute’s language is clear and unambiguous, a court must apply it as written, without resort to further aids of statutory construction. *Perry*, 224 Ill. 2d at 323. This issue of statutory construction is reviewed *de novo*. *Land*, 202 Ill. 2d at 421.

¶ 21 Section 7-6(i)(1) of the School Code (105 ILCS 5/7-6(i)(1) (West 2018)) states in pertinent part as follows:

“When considering the effect the detachment will have on the direct educational welfare to the pupils, the regional board of school trustees shall consider a comparison of the school report cards for the schools of the detaching and annexing districts and the school district report cards for the detaching and annexing districts only if there is no more than a 3% difference in the minority, low-income, and English learner student populations of the relevant schools of the districts.”

¶ 22 Preliminarily, we address the use of “and” in section 7-6(i)(1) of the School Code. This court recognizes, as the appellees have emphasized in their briefs, that the use of the word “and” in the statute is used in a conjunctive sense. Additionally, this court is aware that “ ‘[a]s a general rule, the use of the conjunctive, as in the word “and,” indicates that the legislature intended for *all* of the listed requirements to be met.’ ” (Emphasis in original.) *Soh v. Target Marketing Systems, Inc.*, 353 Ill. App. 3d 126, 131 (2004) (quoting *Gilchrist v. Human Rights Comm’n*, 312 Ill. App. 3d 597, 602 (2000), citing 1A Norman J. Singer, *Sutherland on Statutory Construction* § 21.14, at 129 (5th ed. 1993)). Accordingly, taking the conjunctive nature of the word “and” into consideration as it is written in the statute, we agree that the plain and ordinary meaning of the statute necessitates that all of the listed requirements be met; thus, that there is no more than a 3% difference in each category of student populations between the relevant school districts. Our analysis, however, does not end here.

¶ 23 Next, because a court must consider a statute in its entirety and give effect to every word, clause, and sentence (*Perry*, 224 Ill. 2d at 323; *Ellis*, 199 Ill. 2d at 39), this court cannot abandon the legislature’s usage of the words, “only if,” simply because the legislature also included the use of a conjunctive later in the same sentence. To do so, would render the words “only if” “inoperative, superfluous, or insignificant,” which a court must refrain from doing when reading a statute. See *Ellis*, 199 Ill. 2d at 39.

¶ 24 Pursuant to the statute, a regional board shall consider student report cards of the detaching and annexing districts “*only if* there is no more than a 3% difference in the minority, low-income, and English learner student populations.” (Emphasis added.) 105 ILCS 5/7-6(i)(1) (West 2018). That is, a regional board may consider student report cards only if all three categories of student populations have no more than a 3% difference between the comparing school districts. Based on the plain language of the statute, we find the legislature did not intend to allow the regional board to compare student report cards when there is a difference of more than 3% in any one of the three categories of student populations. Consequently, here, the statute *excludes* the Board from considering the school report cards. Because the language is clear and unambiguous, this court will neither resort to statutory construction aids (*Perry*, 224 Ill. 2d at 323) nor depart from the plain language of the statute by reading into it exceptions, limitations, or conditions not expressed by the legislature (*Schultz v. Illinois Farmers Insurance Co.*, 237 Ill. 2d 391, 408 (2010)). Accordingly, we conclude that the Board erred in considering the school report cards when two of the categories did not meet this threshold as provided for in the statute. Given our resolution of this issue, we need not address appellant’s other contentions on appeal.

¶ 25 III. Conclusion

¶ 26 The Board erred in considering the school report cards when comparing two relevant school districts in its detachment-annexation determination where the statute allows for

consideration only if there is no more than a 3% difference in all three categories of student populations. Provided there was more than a 3% difference in two of the three categories of student populations, the Board erred in considering this evidence. Accordingly, we reverse the Board's decision and remand the cause for furthering proceedings consistent with this opinion.

¶ 27 Reversed and remanded.

No. 5-20-0277

Cite as: *Board of Education of Roxana Community Unit School District No. 1 v. Regional Board of School Trustees of Madison County, 2021 IL App (5th) 200277*

Decision Under Review: Appeal from the Circuit Court of Madison County, No. 19-MR-1074; the Hon. Christopher P. Threlkeld, Judge, presiding.

Attorneys for Appellant: Robert L. Jackstadt, of Tueth, Keeney, Cooper, Mohan & Jackstadt, P.C., of Edwardsville, for appellant.

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Katherine M. Smith, of Alton, for appellees Jay Hesse and Sharon Hesse.

No brief filed for other appellee.
