2024 IL App (3d) 230389

Opinion filed November 15, 2024

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IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2024

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| THE BOARD OF EDUCATION OF CRETE-MONEE COMMUNITY UNIT SCHOOL DISTRICT 201-U and CRETE-MONEE COMMUNITY UNIT SCHOOL DISTRICT 201-U,<br><br>Plaintiffs-Appellants,<br><br>v.<br><br>LISA CAPARELLI-RUFF, in Her Official Capacity; NANCY BARTELS, in Her Official Capacity; DEBRA SAVAGE, in Her Official Capacity; RICHARD DAVIS, in His Official Capacity; RICHARD DOMBROWSKI, in His Official Capacity; HOWARD BUTTERS, in His Official Capacity; ERIC BERNACKI, in His Official Capacity; SHAWN WALSH, in His Official Capacity; THE REGIONAL BOARD OF SCHOOL TRUSTEES; WILL COUNTY, ILLINOIS; SHIRLEY GLOWACKI, MARY LOCKTON, KATHY DAVIS, JOHN HUBER, FRANK JACKSON, GENE LISULA, LARRY LOZIUK, MARILYN SANDERS, CHRIS THOMSEN, and JOHN WELCH, Collectively Known as the Committee of Ten; THE BOARD OF EDUCATION OF PEOTONE COMMUNITY UNIT SCHOOL DISTRICT 207-U; and PEOTONE COMMUNITY UNIT SCHOOL DISTRICT 207-U, | Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,<br><br>Appeal No. 3-23-0389<br>Circuit No. 21-MR-3015<br><br>Honorable<br>John C. Anderson,<br>Judge, Presiding. |

Defendants-Appellees )
(Shirley Glowacki, Mary Lockton, )
Kathy Davis, John Huber, Frank )
Jackson, Gene Lisula, Larry Loziuk, )
Marilyn Sanders, Chris Thomsen, and )
John Welch, collectively known as the )
Committee of Ten, )
)
Defendants-Appellees). )

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JUSTICE ALBRECHT delivered the judgment of the court, with opinion.
Presiding Justice McDade and Justice Holdridge concurred in the judgment and opinion.

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**OPINION**

¶ 1 Crete-Monee Community Unit School District 201-U (District or District 201-U) filed a complaint for administrative review of the decision of the Regional Board of School Trustees of Will County (Regional Board), which granted the petition of the Meadow Creek Committee of Ten (petitioners) requesting to detach their properties from the District and attach to Peotone Community Unit School District 207-U. (District 207-U). The Will County circuit court upheld the Regional Board's decision. The District appeals.

¶ 2 I. BACKGROUND

¶ 3 On April 30, 2021, petitioners filed a petition to detach the Meadow Creek subdivision from District 201-U and to annex it to District 207-U. The District initially filed a motion to dismiss, arguing that there were insufficient signatures associated with the petition. The Regional Board denied the motion on October 28, 2021, in its final order.

¶ 4 An evidentiary hearing was held before the Regional Board on July 12 and September 13, 2021, and the closing arguments were both submitted in writing and presented orally on September 28, 2021.

¶ 5 Petitioners called four witnesses to testify at the evidentiary hearing. First, Dr. Christine Rossell testified as an expert witness. She offered her opinion regarding the effect detachment would have on each school district. Her opinion was that there would be no harm to the District if detachment occurred and great benefit to the community if the petitioners were allowed to annex to District 207-U. She prepared a report explaining her findings and opinion. When drafting her report, she reviewed the petition, data from the Illinois State Board of Education report cards, enrollment and suspension records, maps of the school districts and the Meadow Creek community, and ratings assigned to each district set by educational rating services. The District objected to her testimony due to her use of school report cards to formulate her opinion. It argued that the school report cards were not permitted in this case under the statute, thus Rossell should not be permitted to testify as to the data collected in them. The Regional Board overruled the objection, stating that an expert may rely on information that may not be admissible.

¶ 6 Rossell testified that the pupil-teacher ratio was 21 to 1 for District 201-U and 19 to 1 for District 207-U. She found this data from the state report cards and the GreatSchools website. She also noted the disparity in suspension rates between the districts, which she obtained from reviewing the state report cards. Further, there were higher disciplinary rates in the District, which Rossell opined could result in a less conducive learning environment.

¶ 7 In Rossell's opinion, detachment would not harm the District because there would be a minimal loss of students and the loss would not impact the District's socioeconomic makeup.

Further, the community would benefit if it were annexed to District 207-U because the students would experience smaller class sizes and fewer disciplinary incidents. However, Rossell testified that she did not review the impact of loss of funding on the District if the petition was granted.

¶ 8 On cross-examination, Rossell admitted that, while she initially testified that the rating websites she reviewed rated District 207-U's high school higher, the websites actually indicated that the overall ratings of the high schools in each district were the same and that U.S. News and World Report rated District 201-U's high school higher than District 207-U. She also did not compare the curricular or extracurricular offerings of the school districts but believed that a school's advanced placement offerings and extracurriculars provide educational benefits to the students in that district. The school report cards Rossell used to create her report were not admitted into the record.

¶ 9 Next, petitioners called John Huber to testify. Huber stated that he had two children that attended Monee Elementary School in District 201-U. He supported the petition because he believed that District 207-U offered better educational, social, and extracurricular opportunities than District 201-U. He based his opinion on conversations with neighbors and parents of students in the school districts. If the detachment occurred, Huber stated that he would likely enroll his children in District 207-U schools due to the educational opportunities offered and because logistically it would be faster to travel to the school.

¶ 10 Christian Thomsen testified that he lived in Meadow Creek and that his children attended private school. His children were in private school because he knew parents who had a bad opinion of District 201-U schools. If the detachment petition were granted, he stated his children would attend District 207-U schools for logistical reasons—the children could take a bus to school instead of having to be driven 30 minutes away to private school. On cross-examination,

Thomsen stated that District 207-U schools had more extracurricular opportunities than the private school his children attended, though he admitted that he was unaware of the options at District 201-U schools. Despite being 30 minutes away, Thomsen stated that the children still participated in extracurricular activities at their current school.

¶ 11 John Welch testified that his children had been homeschooled since the COVID-19 pandemic and had previously been enrolled in private school. His children were not enrolled in District 201-U schools because Welch had heard people did not have a favorable opinion of the District's high school. If the petition were granted, Welch stated he would "most likely" enroll his children in District 207-U schools. He testified that his family would possibly enroll their children in private school until they got to high school. He also had not reviewed the curricular offerings at either high school.

¶ 12 The District called several witnesses to testify. First, Ghantel Perkins, the assistant superintendent of teaching and learning at the District, testified. She testified regarding the high schools' curricular guides, and she stated that, while generally similar, Crete-Monee offered more electives, advanced placement classes, honors level courses, dual-credit college courses, and courses geared toward technical careers than the high school in District 207-U. She went into detail regarding how many elective classes were offered, how the school creates new classes to meet the students' interests, the number of advanced placement classes offered and how many students took them, and the remedial and special education courses offered. Perkins testified that she believed the students would not receive any educational benefit from changing school districts.

¶ 13 Harrison Lyle Neal, the assistant superintendent of personnel and culture for the District, testified regarding the disciplinary incidents in the high school and middle school. He stated that

there was currently a downward trend in disciplinary consequences such as suspensions. The high school had implemented a system to address disciplinary issues more proactively which resulted in fewer suspensions. Neal believed the program was successful and that disciplinary incidents would continue to decrease. Neal also testified regarding sporting opportunities at the middle school and high school. He stated that upon review of the offerings at each district, District 201-U offered more extracurricular clubs and sporting opportunities than District 207-U.

¶ 14 Kenneth Surma, the assistant superintendent for business and operations in District 201-U, testified regarding the financial impact the detachment would have on the District. He stated that the District could lose what Surma believed would be a substantial amount if detachment occurred—approximately $854,000 a year. This loss would then negatively affect the District's financial standing and future borrowing power. Surma also testified that five schools in the District did not have air conditioning, which required those schools to implement an excessive heat plan for students to learn remotely if the weather conditions warranted it.

¶ 15 The parties were permitted to submit briefs and present oral closing arguments before the Regional Board deliberated in open session. Prior to deliberations, the hearing officer for the Board advised its members that "we're not going on the internet and looking at anything. We're confining our decision to what's in the record, what's been argued by the parties, and submitted by the parties."

¶ 16 During the discussion, member Nancy Bartels stated that she wondered why the District did not refinance its bonds. Member Debra Savage also commented on the failure to refinance the bonds, suggesting that the District "figure out the finance situation, not on the backs of the parents that want to move their children to a safer school." Member Lisa Caparelli-Ruff wondered whether the District could find a grant to make up for the financial loss.

¶ 17 Bartels also commented that families appeared to prefer the idea of attending private schools rather than District 201-U. Caparelli-Ruff stated that she judges schools on whether she would send her own children to it and that she would not feel safe sending them to District 201-U. Member Richard Davis compared the sporting and academic offerings between the schools, commenting that District 201-U offered classes and extracurricular activities that are not necessarily being run at the moment. Specifically, he noted that the District offers a girls' swim team but did not have one that year.

¶ 18 The Regional Board granted the detachment petition in a 4 to 3 vote. Members Savage, Bartels, Davis, and Caparelli-Ruff voted in favor of the detachment. The final order cited a statistical difference in suspension rates between the high schools and the student-teacher ratios as reasons for allowing detachment. It also cited the testimony from Rossell where she stated she learned of these statistics from the school report cards. The order also found that the lower suspension rate and lower student-teacher ratio outweighed any lost opportunities by changing districts. The petition was then approved by the Regional Board on October 13, 2021.

¶ 19 District 201-U filed a complaint for administrative review in circuit court on November 23, 2021. The petitioners filed a motion to dismiss for failing to seek rehearing in front of the Regional Board prior to filing in the circuit court. The court denied petitioners' motion. The court first found that the petition was supported by a sufficient number of signatures and that the *de facto* officer doctrine made the Regional Board's decision valid. The court then found that the Regional Board's decision was not clearly erroneous and found in the petitioners' favor. The court denied the District's motion to reconsider. This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 A regional board's decision to grant or deny a detachment petition is an administrative decision under the Administrative Review Law (735 ILCS 5/3-101 to 3-113 (West 2020)). Accordingly, this court will review the Regional Board's ruling, " 'not the judgment of the circuit court.' " *Shephard v. Regional Board of School Trustees of De Kalb County*, 2018 IL App (2d) 170407, ¶ 16 (quoting *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368, 386 (2010)). The standard of review on appeal depends on whether the issues presented are questions of law, fact, or mixed. *Board of Education of Chicago v. Illinois Educational Labor Relations Board*, 2015 IL 118043, ¶ 14.

¶ 22 The District raises several arguments on appeal. We will address each argument in turn.

¶ 23 A. Jurisdiction

¶ 24 i. *Signatures*

¶ 25 As a preliminary matter, we must address the District's argument that the Regional Board lacked jurisdiction to review the petition because petitioners did not obtain a sufficient number of signatures, in violation of section 7-1(a) of the School Code (Code) (105 ILCS 5/7-1(a) (West 2020)). The District contends that the petitioners obtained signatures from individuals who were not registered to vote in the annexed community, were not living in the community at the time petitioners obtained the signatures, and were used in a manner contrary to the Code. *Id.* Further, the Regional Board allowed the petitioners to file affidavits to cure the invalid signatures, which the District argues constituted impermissible hearsay and was untimely.

¶ 26 The number of signatures of registered voters called for by statute in a detachment petition is a jurisdictional requirement. See *Board of Education of Avoca School District. No. 37 v. Regional Board of School Trustees of Cook County*, 82 Ill. App. 3d 1067, 1070-71 (1980). A decision rendered by an administrative agency that lacks jurisdiction or that lacks the authority to

make or enter such decision is void and may be attacked at any time. *City of Chicago v. Fair Employment Practices Comm'n*, 65 Ill. 2d 108, 112 (1976).

¶ 27 Section 7-1(a) of the Code provides that petitioners must present signatures of "two-thirds of a combination of the legal resident voters and the owners of record of any real estate with no legal resident voters in any territory proposed to be detached." 105 ILCS 5/7-1(a) (West 2020). The Regional Board's decision regarding the validity of the signatures was not based on any live testimony but instead based on the evidence in the record. Thus, it is proper for this court to employ a *de novo* standard of review. See *Addison Insurance Co. v. Fay*, 232 Ill. 2d 446, 453 (2009); see also *Ambrose v. Thornton Township School Trustees*, 274 Ill. App. 3d 676, 681 (1995) (a reviewing court may evaluate *de novo* documentary evidence presented in an administrative proceeding).

¶ 28 The District argues that it presented evidence that the petitioners obtained only 139 signatures when they were required to obtain 140 signatures. It also contends that the affidavits provided to cure the defective signatures constituted hearsay. However, in administrative proceedings, affidavits may be used to cure similar defects. See, *e.g.*, *Bergman v. Vachata*, 347 Ill. App. 3d 339, 348 (2004) (finding that it was not improper for the electoral board to find signatures valid based in part on the affidavits submitted attesting to those signatures' validity). The cases the District cites did not involve any attempt to cure defective signatures, and no affidavits or other evidence was presented to cure any defects. See, *e.g.*, *Board of Education of Du Page High School District 88 v. Pollastrini*, 2013 IL App (2d) 120460, ¶¶ 16-17, 89. Because this is not the case here, where affidavits were provided to cure defects, these cases are distinguishable. Thus, we find that the affidavits presented by the Regional Board were sufficient to cure any defect in the original set of signatures.

¶ 29 ii. *Member Caparelli-Ruff*

¶ 30 The District next argues the Regional Board did not have jurisdiction because Caparelli-Ruff was on the Board impermissibly, thereby invalidating the Regional Board's authority to hear the matter.

¶ 31 Section 6-3 of the Code provides that "[n]o person shall be eligible to the office of member of the regional board of school trustees *** who is a school board employee ***." 105 ILCS 5/6-3 (West 2020). Caparelli-Ruff was a school board employee at the time of the hearing and decision; therefore, the District argues she was ineligible to sit on the board and any decision with her on the Regional Board is invalid. See *Taylor v. Dart*, 2017 IL App (1st) 143684-B, ¶ 46.

¶ 32 The District admits that it did not raise this issue until it filed its complaint for administrative review in the circuit court but argues that it may still raise the issue under the "first challenger" exception to the *de facto* officer rule. See *Malacina v. Cook County Sheriff's Merit Board*, 2021 IL App (1st) 191893, ¶ 23. The *de facto* officer rule is a common-law equitable rule that confers validity on acts performed by an official acting under the color of title, even if it is later determined that the official's appointment to that position was legally deficient. *Goral v. Dart*, 2020 IL 125085, ¶ 71. The doctrine's intention is to avoid potential complications that could result from countless lawsuits challenging prior actions of that official once it is determined the appointment was invalid. *Id.* It is not intended to preclude a timely challenge to an official's authority; instead, it acts as a defense to a collateral challenge brought after the official's action has been completed. *Id.* ¶ 73. Thus, if a litigant challenges the official's authority to act within the administrative proceeding—before a final decision has been rendered—the *de facto* officer doctrine has no application. See *id.*

¶ 33 Petitioners argue, and are indeed correct, that the first challenger exception to the *de facto* officer doctrine has only been applied in the First District. The first challenger exception finds that "the first individual to raise a challenge to an official's authority to act is entitled to relief—a reward for exposing the defective appointment." *Malacina*, 2021 IL App (1st) 191893, ¶ 23. However, "once that first party secures the court ruling invalidating the Board's composition (and gets relief for having done so), any previous final decisions from that illegally constituted board are insulated from challenge." *Goral v. Dart*, 2019 IL App (1st) 181646, ¶ 91. The First District has also "taken a narrow view of the 'first challenger' exception." *Malacina*, 2021 IL App (1st) 191893, ¶ 25 (recognizing that in *Cruz v. Dart*, 2019 IL App (1st) 170915, ¶ 38, the court held that "a post-decision challenge to the composition of the Board was barred by the *de facto* officer rule, even though Cruz identified different invalidly appointed officials" than the one identified in another challenge).

¶ 34 Our supreme court has not made any decisions regarding the applicability of the first challenger exception. We find the dissent in *Goral*, which suggests that this exception would not be favored, persuasive:

> " In sum, the exception violates the principle that identically situated litigants be treated alike [citation] and requires this court to breach its 'fundamental duty to ensure that the law is administered fairly and equally' [citation]. Moreover, determining who is a 'first challenger' is fraught with difficulty [citation], and the 'incentives' rationale *** is problematic because most litigants who attempt to bring illegal appointments to light will not get relief [citation]. Finally, '[l]itigation is not a raffle, and appellate relief should not be a door prize.' [Citation]. For all these reasons, this court should not endorse a first

challenger exception." *Goral*, 2020 IL 125085, ¶ 120 (Burke, J., dissenting, joined by Garman and Theis, JJ.).

¶ 35 We agree with this reasoning and choose not to adopt the first challenger exception at this time. We further find that the *de facto* officer doctrine applies. Because the District did not timely object to Caparelli-Ruff's position on the Regional Board, the District's argument is waived.

¶ 36 B. Statutory Factors

¶ 37 The District next argues that the Regional Board improperly considered evidence that is precluded by the Code. Specifically, the District contends that the Regional Board improperly considered school report card data, evidence concerning the "whole child" and "community of interest," and travel time between schools, thus invalidating its decision. These issues raise a question of statutory interpretation, requiring *de novo* review. *Land v. Board of Education of Chicago*, 202 Ill. 2d 414, 421 (2002).

¶ 38 i. *School Report Cards*

¶ 39 First, regarding the school report cards, the District argues that section 7-6(i)(1) of the Code prohibits the Regional Board from considering school report card data when the two districts involved have more than a 3% difference in minority, low-income, or English learning populations. 105 ILCS 5/7-6(i)(1) (West 2020). It directs our attention to the Regional Board's reliance on Rossell's testimony when she admitted she reached her opinion after a review of the districts' school report cards. The Regional Board also noted that the suspension rate and student-teacher ratio are higher in the District. It cites to Rossell's testimony regarding this data in its final order.

¶ 40 The petitioners agree that the Regional Board could not use the school report cards but argue that the final order demonstrates that it did not consider them, because the order specifically noted that the Regional Board could not do so. They argue Rossell could use the school report cards to form her opinion and that the Regional Board's use of her expert opinion does not constitute improper consideration of the school report cards.

¶ 41 Section 7-6(i)(1) of the Code states in pertinent part as follows:

> "When considering the effect the detachment will have on the direct educational welfare of 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." *Id.*

¶ 42 Thus, pursuant to the Code, a regional board may 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." *Id.* There is no dispute here that the difference in minority students between the two districts is far greater than 3%. Consequently, the statute excludes the Regional Board from considering the school report cards.

¶ 43 The Board does state in its order that it may not consider school report card data. However, it then cites Rossell's testimony and opinion as the basis for its findings that detachment would be appropriate. While the Regional Board may consider Rossell's expert opinion, it recites the statistics Rossell found in the school report card data instead of merely referring to it. It is evident that the Regional Board attempted to use Rossell's opinion to

circumvent the statute's prohibition on school report card use, but it then used the impermissible data to reach its decision instead of the expert's opinion. It did not utilize Rossell's opinion to reach a conclusion; it used her testimony to introduce facts it was statutorily prohibited from considering. Accordingly, the Regional Board erred in considering the school report cards, which is specifically prohibited by statute.

¶ 44 ii. *"Whole Child" and "Community of Interest"*

¶ 45 Next, the District argues that the Regional Board improperly considered the "whole child" and "community of interest" factors. Pursuant to the Code, the Board may only consider these factors if it "first determines that there would be a significant direct educational benefit to the petitioners' children if the change in boundaries were allowed." *Id.* § 7-6(i)(2). The District contends that because the Code requires that the Regional Board articulate the bases for any of its findings in the final written order, it was required to expressly find a "significant direct educational benefit" existed and explain that reasoning in its written order before it could use these factors in its analysis. Because this finding, and the basis thereof, did not occur, the District maintains that the Regional Board could not then use the "whole child" and "community of interest" as a reason to detach.

¶ 46 On January 1, 2016, the legislature amended section 7-6(i) of the Code to include, in pertinent part, that the community interest and whole child factors should be considered "only if the regional board of school trustees first determines that there would be a significant direct educational benefit to the petitioners' children if the change in boundaries were allowed." *Id.* Absent this finding, a regional board cannot consider the "community of interest" and "whole child" factors. *Id.*; see *Shephard*, 2018 IL App (2d) 170407, ¶ 23. The Regional Board here did not expressly make the finding that there would be a significant educational benefit to the

children if detachment occurred. In fact, no such determination is apparent in its deliberations or the final order. The order merely makes the finding that there would be a "direct educational benefit" but not a "significant" one.

¶ 47 Petitioners argue that no express finding is required in an administrative proceeding such as this. However, the case law petitioners cite refers only to general findings made by an agency and not to circumstances where the statute requires the agency to make a specific determination. See *Board of Education of Community Unit School District No. 337 v. Board of Education of Community Unit School District No. 338*, 269 Ill. App. 3d 1020, 1026 (1995). The determination of a significant benefit to the children if the boundaries were changed is a prerequisite to considering the whole child and community of interest, and the Regional Board did not make any such determination before relying upon those factors. Therefore, it was inappropriate for the Regional Board to use the whole child or community of interest as a basis for granting the detachment.

¶ 48 iii. *Distance and Travel Time*

¶ 49 Finally, the District contends that the Regional Board incorrectly considered travel time to the schools from the petitioners' community. Section 7-6(i)(3) of the Code allows the Board to consider distance between schools only if the difference to one district is no less than 10 miles shorter to the other district. 105 ILCS 5/7-6(i)(3) (West 2020). The District argues that the petitioners concede that the distance to District 207-U schools is not more than 10 miles closer than District 201-U schools and thus the travel time should not have been considered. However, the Regional Board's order indicated that it considered the distances between petitioners' homes and the schools in each district.

¶ 50 Section 7-6(i)(3) provides that

> "the regional board of school trustees may consider the difference in the distances from the detaching area to the current attendance centers and the cited annexing district attendance centers only if the difference is no less than 10 miles shorter to one of the cited annexing district attendance centers than it is to the corresponding current attendance center." *Id.*

Here, the distances from the detaching area and the annexing district do not allow for consideration of travel time. The petitioners concede this point but contend that the Regional Board's final order stated that it considered travel time only for the purposes of considering the "whole child" and "community of interest" factors. See *Shephard*, 2018 IL App (2d) 170407, ¶ 18. Because we have already determined that it was inappropriate for the Board to use the "whole child" and "community of interest" factors, we find that it was also inappropriate for the Regional Board to consider distance and travel time. *Supra* ¶ 47.

¶ 51 C. Evidence not in the Record

¶ 52 The District next contends that the Regional Board denied it a fair hearing because it considered evidence not in the record and engaged in impermissible speculation. Specifically, the District points to Davis's comments during deliberations where he indicated he conducted independent research regarding whether all extracurricular and honors opportunities the District offered were actually implemented that year. He further noted certain teams and classes were not currently being conducted and speculated as to the reasons why. No witness testified to, nor was any document produced, that a specific class or activity was not held that year even though it was generally offered as a potential option for students. The District argues that Davis's independent research being raised during deliberations, when the District had no opportunity to object or rebut it, deprived the District of its right to a fair hearing.

¶ 53 Additionally, Bartels and Savage engaged in speculation regarding the financial management of the District, which the District argues also deprived it of a fair hearing. No evidence was introduced to illustrate any financial mismanagement, though the Regional Board questioned the District's financial choices and speculated as to solutions that did not involve denying detachment. Any alleged financial irresponsibility should not have been considered, but it was clearly discussed by the Regional Board; therefore, the District argues it was denied the opportunity to respond and the right to a fair hearing.

¶ 54 Finally, the District argues that Caparelli-Ruff's expression of her personal beliefs that she would not want to send her children to the District constituted reversible error. The District asserts that Caparelli-Ruff improperly inserted her own speculations and emotions regarding whether she would feel safe sending her children to the schools in the District, which was not based on any evidence presented during the hearing.

¶ 55 It is well established that an administrative agency may not consider evidence not included in the record when reaching its decision. *Walker v. Dart*, 2015 IL App (1st) 140087, ¶ 37. Davis's comments regarding his own research were therefore improper. Further, it is clear the Regional Board engaged in speculation as to what other financial options the District had available to it that did not include denying the detachment. Such speculation "is not a sound basis *** and each case should be determined on the basis of the facts and record as presented." *Wheeler v. County Board of School Trustees of Whiteside County*, 62 Ill. App. 2d 467, 476 (1965). While the final order is devoid of any reference to either Davis's comments or the financial speculation, it is apparent that these discussions were considered in those members' votes. All four members of the Board who voted in favor of the detachment discussed evidence not presented during the hearing and engaged in speculation regarding their own feelings and

thoughts regarding the District's financial management, all of which was improper. There is no way to separate the improper evidence and speculative discussions from the Board's decision. See *Danko v. Board of Trustees of the City of Harvey Pension Board*, 240 Ill. App. 3d 633, 642 (1992) ("[i]f one decision maker on an administrative body is not completely disinterested, his participation ' "infects the action of the whole body and makes it voidable." ' " (quoting *Board of Education of Niles Township High School District No. 219 v. Regional Board of School Trustees of Cook County*, 127 Ill. App. 3d 210, 213 (1984) (quoting *City of Naperville v. Wehrle*, 340 Ill. App. 3d 579, 581 (1930))).

¶ 56 The Regional Board considered evidence not in the record and engaged in improper speculation. In doing so, it denied the District the opportunity to respond and contest this evidence, thereby denying it a fair hearing.

¶ 57 D. Whether the Benefit Outweighs the Detriment

¶ 58 Finally, the District argues that the petitioners failed to demonstrate that the benefit of detachment clearly outweighs any detriment it would cause the District. It contends that the evidence clearly demonstrates that the District offers a better array of educational and extracurricular opportunities than District 207-U. Further, it contends that the petitioner's expert opinion by Rossell failed to demonstrate that there was sufficient educational benefit in detachment. Additionally, it argues that the financial detriment to the District would be severe, and the petitioners cannot prove it should be ignored in favor of the detachment.

¶ 59 The petitioners are required to show by a preponderance of the evidence that the benefit to the annexing district "clearly outweighed the resulting detriment to the losing district and the surrounding community as a whole." *Burle v. Regional Board of School Trustees of Education No. 35*, 2021 IL App (3d) 200306, ¶ 19. Thus, the Regional Board's task was to determine

whether the petitioners proved by a preponderance of the evidence that the overall benefit to the annexing district and the detachment area clearly outweighed the resulting detriment to the District and the surrounding community as a whole. *Id.* We review this determination under the clearly erroneous standard. *Id.*

¶ 60 Upon review of the record, the quantity of improper evidence considered, and the evidence that the Regional Board could properly review, we find that the Regional Board's decision was clearly erroneous. The evidence clearly shows that more educational and extracurricular opportunities are available to students in District 201-U than District 207-U, and any discussion that the opportunities are not actually offered every year may not be considered, as it was not properly introduced. Moreover, the petitioners' own expert witness, Rossell, admitted that there was a detriment to changing schools and that the District was ranked higher or equal to District 207-U in the ratings she reviewed to garner her opinion. Further, there is a significant financial detriment to the District associated with the detachment, which the Regional Board may not minimize by speculating as to what other avenues the District may take to remedy the loss. See *supra* ¶ 55.

¶ 61 The only evidence in the record that the Regional Board could actually consider that favored granting the detachment was the quality of the school buildings, the preference of the parents wishing to be annexed, and the disciplinary problems at the District which was evidenced to be higher than District 207-U. This evidence does not "clearly outweigh" the detriment to the District when the evidence provided at the hearing demonstrates there are many benefits to attending a District 201-U school. See *Burle*, 2021 IL App (3d) 200306, ¶ 19. Thus, we find that the Regional Board's decision is clearly erroneous and must be reversed.

¶ 62 III. CONCLUSION

¶ 63 The Regional Board erred in considering evidence both statutorily prohibited and not contained in the record and in engaging in speculation. Moreover, without this improper evidence, the petitioners failed to meet their burden to show that the benefits of attaching to District 207-U clearly outweigh the detriment it would cause to District 201-U. Accordingly, the judgment of the circuit court of Will County is reversed.

¶ 64 Reversed.

***Board of Education of Crete-Monee Community Unit School District 201-U v. Caparelli-Ruff*, 2024 IL App (3d) 230389**

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| **Decision Under Review:** | Appeal from the Circuit Court of Will County, No. 21-MR-3015; the Hon. John C. Anderson, Judge, presiding. |
| **Attorneys for Appellant:** | William F. Gleason and Eric B. Bernard, of Petrarca, Gleason, Boyle & Izzo, LLC, of Flossmoor, for appellants. |
| **Attorneys for Appellee:** | Daniel J. Bolin, Keri-Lyn J. Krafthefer, and Katherine A. Nagy, of Ancel Glink, P.C., of Chicago, for appellees. |