2013 IL App (2d) 121422
No. 2-12-1422
Order filed September 4, 2013

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

The BOARD OF EDUCATION OF COMMUNITY HIGH SCHOOL DISTRICT NO. 99, Du Page County, Illinois, and the BOARD OF EDUCATION OF DOWNERS GROVE GRADE SCHOOL DISTRICT NO. 58, Cook County, Illinois, Plaintiffs-Appellants, v. The REGIONAL BOARD OF SCHOOL TRUSTEES OF DU PAGE COUNTY, Illinois; DARLENE J. RUSCITTI, Superintendent of the Regional Board of School Trustees of Du Page County, Illinois, and *ex-officio* Member; MARTHA ROGERS, President; GENE CAMPBELL, Member; MARY ELLEN YOUNG, Member; LAURA POLLASTRINI, Member; JAMES SHEHEE, Member; TIMOTHY WHELAN, Member; JOSEPH WOZNIAK, Member; the COMMITTEE OF TEN FOR PETITION TO DETACH TERRITORY FROM DOWNERS GROVE GRADE SCHOOL DISTRICT 58, DU PAGE COUNTY, ILLINOIS, AND COMMUNITY HIGH SCHOOL DISTRICT 99, DU PAGE COUNTY, ILLINOIS, AND ANNEX SAID TERRITORY TO BUTLER ELEMENTARY SCHOOL DISTRICT 53, DU PAGE COUNTY	)	Appeal from the Circuit Court of Du Page County. No. 12-MR-223

ILLINOIS, AND HINSDALE TOWNSHIP HIGH SCHOOL DISTRICT 86, DU PAGE AND COOK COUNTIES, ILLINOIS: PATRICIA SPADONI, KEITH CAMPBELL, MICHAEL TRILLA, TRACY TRILLA, MICHAEL WENCEL, ANNA WENCEL, TIMOTHY WESELAK, ELIZABETH WESELAK, MICHAEL JERICH, and KIMBERLY JERICH; the BOARD OF EDUCATION OF BUTLER ELEMENTARY SCHOOL DISTRICT NO. 53, Du Page County, Illinois; and the BOARD OF EDUCATION OF HINSDALE TOWNSHIP HIGH SCHOOL DISTRICT NO. 86, Du Page and Cook Counties, Illinois,	)	Honorable
	)	Bonnie M. Wheaton,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices McLaren and Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The Regional Board of School Trustees of Du Page County did not err in denying the motion to dismiss by Districts 58 and 99, because petitioners either complied with or demonstrated substantial compliance with statutory requirements. Further, the Board's decision to grant the petition to detach the territory at issue from Districts 58 and 99 and annex it into Districts 53 and 86 was not against the manifest weight of the evidence. Therefore, we affirmed.

¶ 2 Downers Grove Grade School District 58 (District 58) and Community High School District 99 (District 99) appeal the trial court's order affirming the administrative decision of the Regional Board of School Trustees of Du Page County (Board). The Board granted a petition to allow 16 parcels within an Oak Brook subdivision to be detached from the boundaries of Districts 58 and 99 and annexed into the boundaries of Butler Elementary School District 53 (District 53) and Hinsdale Township High School District 86 (District 86). On appeal, Districts 58 and 99 argue that: (1) the

Board's decision to grant the petition was against the manifest weight of the evidence, and (2) the Board erred in denying their motion to dismiss the petition. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Petitioners, Patricia Spadoni, Keith Campbell, Michael Trilla, Tracy Trilla, Michael Wencel, Anna Wencel, Timothy Weselak, Elizabeth Weselak, Michael Jerich, and Kimberly Jerich live in the Ginger Creek subdivision in Oak Brook, in Du Page County. Petitioners formed a committee of ten pursuant to sections 7-1 and 7-6 of the School Code (105 ILCS 5/7-1, 7-6 (West 2010)), and on May 4, 2011, they filed a petition with the Board seeking to detach 16 parcels within their subdivision (Territory) from the boundaries of Districts 58 and 99 and annex the Territory into the boundaries of Districts 53 and 86. Nineteen of the twenty-seven registered voters within the Territory signed the petition.

¶ 5 On July 11, 2011, the Board heard arguments on a motion to dismiss filed by Districts 58 and 99. The Board considered the motion in closed session and then voted to deny the motion in open session. The Board issued a written decision denying the motion on September 22, 2011.

¶ 6 A public hearing on the petition took place over eight evenings between July and October 2011. The parties stipulated to eight joint exhibits and 23 factual statements. We summarize the relevant factual stipulations. The 16 parcels of land were all located in Oak Brook and within the boundaries of the Oak Brook Park District; the Oak Brook Library District; the Oak Brook Fire Department; and the College of Du Page. The parcels would remain within such boundaries if the petition were granted. The remaining portion of the Ginger Creek subdivision that was currently within the boundaries of Districts 58 and 99 would remain there if the petition were granted, and the

section of the subdivision currently within the boundaries of Districts 53 and 86 would remain there if the petition were granted.

¶ 7 Fourteen of the lots contained single family residences; one lot was an undeveloped home site; and the remaining lot was an undeveloped, irregular "out-lot." One of the developed lots was partially within the boundaries of all of the school districts at issue. That particular parcel paid taxes to Districts 53 and 86, and the owners' children attended school there. All four of the school districts were "high quality school districts which [were] staffed by competent professionals who work hard to deliver the best education possible for the children in their care."

¶ 8 The approximate driving distances from the Territory's center to the affected schools were as follows. District 58: (1) 5.8 miles to Henry Puffer School (for preschool only); (2) 6.8 miles to Indian Trail School (for preschool only); (3) 4.68 miles to Belle Aire School (grades K-6); and (4) 4.34 miles to Herrick Middle School (grades 7-8). District 53: (1) 1.3 miles to Brook Forest Elementary (PK-5); and (2) 3.57 miles to Butler Junior High (grades 6-8). It was 3.95 miles to Downer's Grove North High in District 99, and 6.48 miles to Hinsdale Central High School in District 86.

¶ 9 At the hearing, 34 of petitioners' exhibits were accepted into evidence, and they presented the testimony of 11 witnesses. Districts 58 and 99 had all 11 of their exhibits accepted into evidence, and they presented the testimony of 12 witnesses. We summarize the relevant portions of the testimony later in the disposition, in conjunction with the legal argument pertaining to the particular evidence presented.

¶ 10 A. Board's Findings

¶ 11 On December 7, 2011, the Board voted to grant the petition by a vote of six yeas and one nay. On January 6, 2012, the Board issued its written decision, in which it made the following factual findings. In considering the " 'benefit-detriment' " test, the evidence showed that the facilities of the affected districts and their school curriculums were substantially similar, "although there was evidence of the slightly higher performing standards of the Oak Brook Districts, and particularly in the higher average ACT scores of the students at District 86." If the petition were granted, it would have little impact on the ability of Districts 58 and 99 to meet State recognition standards. Also, the loss of tax revenue to these districts was minimal compared to the schools' overall budgets and would have negligible impact. That is, the "evidence showed that there was no substantial detriment to the financial health of the detaching school districts or their ability to meet state standards ***." The financial impact testimony presented by Districts 58 and 99 was "flawed" and presented a "skewed calculation of the possible financial loss to the districts." A majority of the Board did not find the testimony of District 99 comptroller Mark Staehlin credible because his testimony on his district's financial condition contradicted earlier reports he prepared for the District 99 school board. Further, the documents he prepared for the hearing inaccurately portrayed the district's fund balances as lower than the Regional Superintendent's impact report, and they were artificially skewed to show greater purported losses.

¶ 12 Petitioners' evidence overwhelmingly showed the families' community connections were to the City of Oak Brook, the Oak Brook Park District, and the Oak Brook schools. Several of the petitioners' school-age children participated in activities of the Oak Brook Park District, Oak Brook library, and Oak Brook Bath and Tennis Club, such as swimming and tennis lessons, with children who attend the Oak Brook schools. However, petitioners' children were unable to continue these

relationships into the classroom because the current boundary line divided their neighborhood street. Petitioners all testified that they and their children strongly identify with the Oak Brook community and not the Downers Grove community and that their children would be much more likely to participate in public school and extracurricular activities if the annexation was granted.

¶ 13 Granting the petition would significantly decrease the distance that the children would have to travel to the Oak Brook elementary school, compared to the approximately 60 minutes of round-trip bus time they would face if they attended Downers Grove schools. Granting the petition did result in a slightly longer bus ride for high school-aged children, but case law recognized that such an arrangement was an acceptable compromise if it resulted in the elementary school children traveling a shorter distance.

¶ 14 The Board took into account that more than petitioners' personal preference was required in order to grant the petition. Although many petitioning parents testified that they did not care for the "open air" design of Belle Aire Elementary School (in District 58), there was overwhelming testimony that proved that petitioners' children would benefit from attending the Oak Brook district schools, which were in their natural community center where they engaged in all of their other activities.

¶ 15 B. Appeal to the Trial Court

¶ 16 Districts 58 and 99 filed a complaint for administrative review in the trial court. On November 30, 2012, the trial court affirmed the Board's decision, stating as follows. The record showed that the area at issue was just 15 lots.[1] The Board found that the evidence in support of detachment clearly outweighed the detriment. The distance to the grade school in Oak Brook was

[1]The Territory also included an additional "out-lot."

substantially closer than it was to the grade school in Downers Grove. Although the Downers Grove high school was closer, the Board felt that the distance traveled by the grade school children was more significant because of their younger age. The education in all of the districts was excellent, and the Board did not find any significant difference in the level of education. The Board was critical of the witness who offered financial testimony for one of the districts. All of the districts were in good financial shape. The amount of money at issue and its impact were *de minimus*. The Board found that evidence for detachment clearly outweighed the detriment to the original district, and its decision was not clearly erroneous or against the manifest weight of the evidence. Accordingly, the trial court affirmed the decision.

¶ 17 Districts 58 and 99 timely appealed.

¶ 18 II. ANALYSIS

¶ 19 A. Standard of Review

¶ 20 We begin by discussing the applicable standard of review. The decision by a regional board of trustees on a petition for detachment and annexation is an administrative decision governed by the Administrative Review Law (735 ILCS 5/art. III (West 2010)). *Board of Education of Marquardt School District No. 15 v. Regional Board of School Trustees of Du Page County*, 2012 IL App (2d) 110360, ¶ 20. In an appeal to the appellate court following the decision by a circuit court on administrative review, we review the decision of the administrative agency rather than the circuit court's judgment. *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368, 386 (2010). When the parties dispute an administrative agency's factual findings, we apply a manifest weight of the evidence standard. *Id.* at 387. Where the dispute is an agency's conclusion on a point of law, we review the agency's decision *de novo*. *Id.* An intermediate standard applies

for mixed questions of law and fact, which occur where the dispute pertains to the legal effects of a set of facts. *Id.* We review mixed questions of law and fact for clear error. *Id.*

¶ 21 B. Motion to Dismiss

¶ 22 We next address the argument by Districts 58 and 99 that the Board erred in denying their motion to dismiss the petition. Districts 58 and 99 argue that the circulated petitions did not include a full prayer for relief on every page, contrary to section 7-1 of the School Code (105 ILCS 5/7-1 (West 2010)) ("Each page of the circulated petition shall include the full prayer of the petition ***.").

¶ 23 The petitions circulated for signature state:

> "We, the undersigned, being registered legal voters in the territory hereinafter described, hereby petition the Regional Board of School Trustees of the Du Page County Regional Office of Education to detach said territory from Downers Grove Grade School District 58, Du Page County, Illinois and Community High School District 99, Du Page County, Illinois, and annex said territory to Butler Elementary School District 53, Du Page County, Illinois and Hinsdale Township High School District 86, Du Page and Cook Counties, Illinois, and said territory being legally described as follows:
>
> <u>See reverse side hereof.</u>
>
> We designate the following committee of 10 petitioners as attorney in fact for all petitioners, any 7 of whom many make binding stipulations on behalf of all petitioners as to any question with respect to the petition: ***
>
> We hereby pray that said detachment/annexation be made effective immediately upon entry of the Regional Board's order."

¶ 24 The petition filed with the Board states:

> "WHEREFORE, the undersigned petitioners pray that the Regional Board of School Trustees of the Du Page County Regional Office of Education schedule the requisite hearing on this Petition, publish notice of said hearing and, upon completion of said hearing, approve detachment of the Territory from Downers Grove Grade School District 58, Du Page County, Illinois and Community High School District 99, Du Page County, Illinois, and the annexation of said Territory to Butler Elementary District 53, Du Page County, Illinois and Hinsdale Township High School District 86, Du Page and Cook Counties, Illinois. The undersigned petitioners further pray that said detachment from District 58 and District 99 and annexation to District 53 and District 86 be made effective immediately upon entry of the Regional Board's order, subject to the provisions of Section 7-9 of the Illinois School Code (105 ILCS 5/7-0 [1998]). The undersigned petitioners further pray that the Regional Board of School Trustees grant them such other and further relief as the Regional Board deems just and equitable in accordance with the requirements of Article VII of The School Code."

¶ 25 Districts 58 and 99 argue that there are significant differences in the two prayers for relief, in that the prayer for relief in the petition filed with the Board calls for the Board to schedule a hearing and publish notice of the hearing. That petition also calls for the detachment and annexation to be made effective immediately, subject to a statutory provision. Finally, the petition's last sentence for any other just and equitable relief is not contained in the circulated petition. Districts 58 and 99 argue that because the petition, on its face, fails to meet the requirements of the School Code, the Board acted contrary to the manifest weight of the evidence in denying the motion to dismiss.

¶ 26 Districts 58 and 99 cite *Board of Education of Indian Prairie School District 204 v. Regional Board of School Trustees of Will County*, 393 Ill. App. 3d 561 (2009). There, the petition contained an unlawful school choice provision. *Id.* at 564. The petitioners argued that the circuit court had the authority to strike the improper paragraph and grant the remainder of the petition. *Id.* at 565. The appellate court disagreed, stating that the School Code does not permit any substantive modification of the petition once it has been filed. *Id.* The court further stated that this outcome was supported by public policy, and it protected the wishes of the voters who signed the petition. *Id.* at 565-66. Districts 58 and 99 argue that in this case, if the detachment petition could be modified from the circulated petition, the requested relief similarly would no longer accurately reflect the wishes of the registered voters who signed it.

¶ 27 Petitioners note that while Districts 58 and 99 argue that section 7-1 requires that the "full prayer for relief" be contained in the circulated petitions, the section actually refers to the "full prayer of the petition." 105 ILCS 5/7-1 (West 2010). Petitioners argue that the petition's full prayer simply asks that the Board detach the territory from the Downers Grove districts and annex it to Districts 53 and 86. According to petitioners, the formal petition and the circulated petition ask for the same thing in essentially the same language. Petitioners argue that the prayer for relief in the circulated petition contains only three things not found in the wherefore paragraph of the filed petition: a statement that the signatories are registered voters; a legal description of the territory; and a listing and description of the role of the Committee of Ten. Petitioners argue that all of these items were nonetheless in the body of the filed petition. Petitioners argue that the filed petition similarly contains only three requests not found in the circulated petition: that the Board schedule a hearing as required by section 7-6 of the School Code; that the immediate effective date of detachment and

annexation be subject to section 7-9 of the School Code; and for any other just and equitable relief in accordance with Article VII of the School Code. Petitioners argue that the added language of the filed petition requests only that the Board exercise its powers as required by the School Code.

¶ 28 Petitioners cite *Seelhoefer v. Regional Board of School Trustees of Clinton & Washington Counties*, 266 Ill. App. 3d 516 (1994). There, the detaching districts argued that the circulated petition violated section 7-1's requirement that the full prayer of the petition be stated on each page, because the prayer was stated only on the petition's first page and not on the second, stapled page. The appellate court stated that not every irregularity in a petition is fatal to jurisdiction, and courts "should avoid hypertechnical reasons for avoiding decisions made on the merits of a case when neither party suffered any delay or harm as a result of the technical violation." *Id.* at 519. The court concluded that the petitioners substantially fulfilled the requirements of the School Code. It stated that if each page contained the full prayer for relief and the circulator's sworn verification, there would be space for, at most, one signature. Also, if the legal description of the territory were four lines longer, it would be impossible to comply with the statute. *Id.* The court concluded, "common sense dictates that we allow appellees to state the full prayer in the first page of the petition and bind it to the second page of signatures."

¶ 29 Here, we agree with petitioners that their circulated petition complies with the requirements of section 7-1. Petitioners sought to detach the Territory from Districts 58 and 99 and annex them to Districts 53 and 86, and this was clearly conveyed in the prayer listed on each page of the petition. Any additional language in the prayer of the circulated petition was present in other parts of the filed petition, and the additional language of the filed petition all related to requesting compliance with the School Code. Even if, *arguendo*, there was not full compliance with section 7-1, petitioners at

a minimum demonstrated substantial compliance with the statute, as in *Seelhoefer*. Like that case, no party here suffered delay or harm as a result of the alleged violation. This situation is distinguishable from *Indian Prairie* because there the petitioners sought to modify the petition after the administrative hearing, unlike this situation. Further, that case involved changing the petition to remove language relating to allowing a choice of districts, whereas the differences in the filed petition here amount to nonsubstantive language. Therefore, the Board did not err in denying the motion to dismiss.

¶ 30 C. Board's Decision to Grant the Petition

¶ 31 We next examine the argument by Districts 58 and 99 that the Board's decision to grant the petition was contrary to the manifest weight of the evidence. Districts 58 and 99 contend that the evidence established that there would be no benefit to granting the petition, let alone a benefit that clearly outweighed the resulting detriment to Districts 58 and 99.

¶ 32 Under section 7-6 of the School Code, regional boards receiving a petition to change educational boundaries:

> "shall hear evidence as to the school needs and conditions of the territory in the area within and adjacent thereto and as to the ability of the districts affected to meet the standards of recognition as prescribed by the State Board of Education, and shall take into consideration the division of funds and assets which will result from the change of boundaries and shall determine whether it is in the best interests of the schools of the area and the educational welfare of the pupils that such change in boundaries be granted ***." 105 ILCS 5/7-6 (West 2010).

Under section 7-6, "petitions for detachment and annexation should be granted only where the overall *benefit* to the annexing district and the detachment area clearly outweighs the resulting *detriment* to the losing district and the surrounding community as a whole." (Emphases added.) *Carver v. Bond/Fayette/Effingham Regional Board of School Trustees*, 146 Ill. 2d 347, 356 (1992).

¶ 33 In applying the benefit-detriment test, the following factors are to be considered: (1) the differences between school facilities and curricula; (2) the distances from the petitioners' homes to the respective schools; (3) the effect detachment would have on the ability of the districts to meet State standards of recognition; and (4) the impact of the proposed boundary change on the tax revenues of the districts. *Id.* Boards and reviewing courts may also consider the "whole child" and "community of interest" factors, which are the identification of the petitioning territory with the district to which the annexation is sought and the corresponding likelihood of participation in school and extracurricular activities. *Id.* The personal desires of the petitioning parents may be taken into account, but more than personal preference is required to support a change in school district boundaries. *Id.*

¶ 34 A petition for detachment and annexation may not be granted by a showing of a lack of substantial detriment to either district. *Board of Education of Marquardt School District No. 15*, 2012 IL App (2d) 110360, ¶ 21. At that same time, the petitioners do not have to show a particular benefit to the annexing district if the overall benefit to the annexing district and detachment area considered together outweighs the detriment to the detaching district and the surrounding community as a whole. *Id.* If there is not a substantial detriment to either school district, some benefit to the educational welfare of the students in the detaching territory is a sufficient basis to grant the petition for detachment. *Id.* Educational welfare is broadly interpreted to mean not just improved

educational programs or facilities; rather, improvements may also be demonstrated through a decreased distance between students' homes and their school. *Id.* ¶ 23. Petitioners must prove their case by a preponderance of the evidence. *Id.* ¶ 19.

¶ 35 1. Test Scores

¶ 36 Districts 58 and 99 argue that the Board erroneously considered test scores as a benefit in granting the petition, rendering the Board's decision manifestly erroneous. Districts 58 and 99 point to the following finding of the Board:

> "That in considering the 'benefit-detriment' test, the Board decided that the evidence showed that the facilities of the affected districts are substantially similar, and that the school curriculums were substantially the same, although there was evidence of the slightly higher performing standards of the Oak Brook Districts, and particularly in the higher average ACT scores of the students at District 86."

¶ 37 Districts 58 and 99 cite *Board of Education of Community No. 94 v. Regional Board of School Trustees of Du Page County*, 242 Ill. App. 3d 229 (1993). There, the court referred to evidence, including testimony, that test scores are not the best measure of the quality of a school's educational program because of differing student bodies and other variables. *Id.* at 239. The variables included the proportion of minority students, many of whom had to deal with language barriers, which contributed to the detaching school district's lower academic performance as reflected on school report cards. *Id.*

¶ 38 Districts 58 and 99 point to the parties' stipulation that all four school districts were high quality school districts staffed by competent professionals. They argue that because of this stipulation, the Board was required to conclude that the students in the Territory would attend high

quality school districts, regardless of whether the petition was granted or denied. Districts 58 and 99 argue that despite this stipulation, several of petitioners' witnesses indicated that they believed, based on test scores, that their children would receive a better education if the petition was granted. Districts 58 and 99 maintain that this testimony influenced the Board's decision to grant the petition, but the manifest weight of the evidence supported the conclusion that the test scores were skewed and did not indicate any benefit to granting the petition.

¶ 39 Districts 58 and 99 note that Cathie Peanowski, the Assistant Superintendent for Curriculum and Instruction for District 58, was admitted as an expert on curriculum and instruction. She testified that comparing ISAT scores, which are presented in terms of percentages of children meeting certain standards, is deceiving because the difference of several percentage points between the districts' elementary schools represented only one or two students in most grade levels. Peanowski also testified that District 58's middle school could not be compared to District 53's junior high school because they are very different sizes. Moreover, District 58's middle school was labeled as not meeting adequate yearly progress (AYP) under the No Child Left Behind Act because it had more than 45 students in the low income and Individualized Education Plan categories, so the school had to meet AYP for these groups. In contrast, District 53's junior high school had fewer numbers of children in these groups and therefore was not accountable to meet AYP for them.

¶ 40 Districts 58 and 99 also cite the testimony of Mark McDonald, Superintendent of School District 99. He testified that Downers Grove North high school's tests scores were strong and continued to improve, and statistics showed that the student body was becoming more diverse. He testified that test scores are important and provide a lot of information, but there are limits to the information they provide. For example, the high school offered a very wide curriculum, a lot of

which was not tested on standardized tests. Different subgroups also perform at different levels on such tests. McDonald further testified that the ACT is designed to sort students for college enrollment, so it is not possible for every student to score above average, and it does not show how much a student has improved.

¶ 41 Finally, Districts 58 and 99 refer to the testimony of parents of students attending their schools, all of whom testified about the high quality of education being provided. Districts 58 and 99 argue that the Board's entire decision should be overturned for considering test scores without also considering the racial and socio-economic factors that influence test scores.

¶ 42 Petitioners argue that even though the Board did not explicitly discuss in its order the potentially skewing factors of test scores, its finding that all the districts had substantially similar curriculums and facilities shows that it implicitly considered the factors, as the disparity in raw test scores could not otherwise support such a finding. Petitioners also argue that the plain meaning of "although" is "in spite of" or "even though," showing that the Board was stating that it found the curriculums similar in spite of the higher tests scores. Petitioners maintain that the Board was therefore indicating that it did not consider the scores a significant benefit.

¶ 43 We agree with petitioners that the districts' argument is without merit. While Districts 58 and 99 rely on *Board of Education of Community No. 94* for the proposition that the Board was required to include written findings about factors that might skew test scores, that case does not support such a proposition. In fact, the court there affirmed the regional board's decision even though it was unclear whether the regional board even took the school report cards into account. *Board of Education of Community No. 94*, 242 Ill. App. 3d at 239.

¶ 44 Moreover, we agree with petitioners' argument that the Board's phrasing can be interpreted to state that it found that the schools' facilities and curriculums were substantially the same *in spite of* the higher test scores of the annexing schools. Courts look to dictionaries to give words their ordinary and popularly understood meaning. See *LeCompte v. Zoning Board of Appeals*, 2011 IL App (1st) 100423, ¶ 29. Webster's Dictionary defines "although" as, "granting or supposing that: even if: even though: in spite of the fact that: [and] notwithstanding that." Webster's Third New International Dictionary 63 (1986). Districts 58 and 99 note that the online Oxford English Dictionary defines "although" as "however; but." They fail to acknowledge that even that dictionary first defines "although" as "in spite of the fact that; even though." Oxford Dictionaries, *available at* http://oxforddictionaries.com/us/definition/american_english/although?q=although (last visited August 14, 2013). Regardless, the Board's findings show that it either found that the facilities and curriculums were substantially similar despite higher test scores in the annexing schools, or that it did not put any significant weight on test scores in arriving at its decision. Accordingly, the treatment of test scores does not provide a basis to overturn the Board's decision.

¶ 45 2. Community of Interest

¶ 46 Districts 58 and 99 next argue that the Board erred in finding petitioners' community of interest to be with the annexing districts. As stated, the "whole child" and "community of interest" factors are the identification of the petitioning territory with the district to which the annexation is sought and the corresponding likelihood of participation in school and extracurricular activities. *Carver*, 146 Ill. 2d at 356. More specifically, the "community of interest" factor looks at whether the detaching area is identified with the annexing school district and community. *Marquardt*, 2012 IL App (2d) 110360, ¶ 29. The "whole child" factor is based on the concept that extracurricular

participation in social, religious, and commercial activities is important in a child's development and supplements his or her academic involvement. *Id.* It relates to the community of interest factor in that when children attend school in their natural community, it has the effect of enhancing their educational opportunities while also encouraging participation in social and extracurricular activities. *Id.*

¶ 47 We summarize the testimony of petitioners' witnesses on this subject.

¶ 48 Petitioner Kimberly Jerich testified that her children were six and four years old. They both attended preschool at the Oak Brook Park District and took additional classes there, such as phonics, dance, music, swimming, and sports. They used the Oak Brook library and took classes there as well. The kids had play dates with friends they met through the classes, all of whom lived in Oak Brook. One friend four houses away attended Brook Forest in Oak Brook. Jerich had to explain to her elder daughter why she could not attend school with her friends. Jerich had not considered enrolling her children in Downers Grove Park District classes because they were residents of the Oak Brook Park District, and the cost would have been substantially different. She had looked at a preschool program in Downers Grove but because she had an Oak Brook address, she was not considered a Downers Grove resident. Jerich's elder daughter attended a Catholic school because Jerich did not like the "open air" design of the Downers Grove elementary school. However, Jerich would send her to Brook Forest if the petition were granted. The Catholic school was in Downer's Grove, where the family's parish was located.

¶ 49 Michael Jerich, the husband of Kimberly Jerich, testified that he takes their children to the Oak Brook golf course, where he also plays golf. The girls also took tennis lessons at the Oak Brook Bath and Tennis club. The girls did not engage in any activities in Downers Grove other than the

church. He believed that his elder daughter would benefit more from attending Brook Forest Elementary than the Catholic school because of its proximity, diversity, and because she already had friends attending school there. According to Jerich, the lake in the subdivision divided it like a major road, making it "two separate worlds," and most of their interactions were with people on their side of the lake. He also believed that the school district boundaries divided their community on Baybrook Lane rather than bringing it together and allowing friendships to flourish.

¶ 50 Georgia Chulos testified that she lives just outside the Territory on Baybrook Lane. She and her children were friends with the Jerich family, whom they met through the Oak Brook Park District preschool. Their children also took other park district classes and library classes together, and they had play dates. It was hard for her children to understand why their neighbors down the street, whom they saw often socially, were not going to the same school. Chulos believed that her children would benefit if the petition were granted because they would get to see their neighbors both in and out of school.

¶ 51 Tracy Trilla testified that she lives within the Territory and had a seven-year-old son, Guy. Guy had been involved in numerous activities and sports through the Oak Brook Park District, and the family was also a member of the Oak Brook Bath and Tennis Club, which was a public facility run by the Village of Oak Brook. Guy went to the Oak Brook library regularly and had attended some classes there. Guy was in second grade and went to Catholic school in Hinsdale, where the family used to live. Brook Forest was about one mile from their home, and it took about five minutes to get there. In contrast, Belle Air was 12 to 15 minutes away. Guy had attended Brook Forest for some speech classes. Trilla had to explain to Guy every time baseball season, camp, or

school started why he could not go to the same school as his neighborhood friends. She would send Guy to Brook Forest if the petition were granted.

¶ 52 Michael Trilla, Tracy Trilla's husband, testified that Guy had been offered speech services at Brook Forest after attending a prescreening for kindergartners offered through the park district. After one year they learned that it was meant only for children in the Brook Forest district, so Guy could not continue. In their community, a lot of the kids' activities revolved around the park district. If the petition were granted, about two-thirds of Ginger Creek would still be in the Downers' Grove districts.

¶ 53 Dr. Samir Gupta testified as follows. He had been living in the Territory for just a few weeks. Therefore, he was not registered to vote in Oak Brook and did not have the opportunity to sign the petition, but he was in favor of it. He had two children, ages six and four. Both children had been attending swim classes through the Oak Brook Park District for a few months, and his daughter was in a class at the library as well. Gupta's elder child was in first grade and attending Belle Aire; he had attended a private kindergarten the previous year. If the petition were granted, Gupta would send his children to the Oak Brook schools. He thought the change would benefit the children because they could go to school with other children on the block and with friends they met through the park district and library. He also believed that the Oak Brook schools had stronger academic and extracurricular programs. Most of the children attending community events went to Brook Forest, which was walking distance from the Territory. Gupta's son loved Belle Aire and Gupta was not trying to discredit it, but he felt that most of the kids on their street attended Brook Forest. He did not know of any other children on the street who attended Belle Aire.

¶ 54 Dr. Federico Aliaga, a Territory resident, testified that he has five children, all school-aged. They resided part-time with him and part-time with their mother in Hinsdale under a joint-custody agreement. He did not sign the petition because he was not a registered voter, but he was in favor of it. Aliaga and his former wife had purchased their home directly from another doctor who misled them to believe that it was within the annexing districts. They learned that it was not only when they went to register at Brook Forest. They did not enroll the children in Belle Aire because they did not like the open classroom design, and it was a 30-40 minute bus ride each way, as the children would be the first to be picked up and the last to be dropped off. Belle Aire was about a 20-minute drive. Currently, three of his children attended Catholic school in Hinsdale and two attended public school there. Both Aliaga and his ex-wife wanted the children to attend school at the annexing districts if the petition were granted.

¶ 55 Michael Wencel testified that he lives in the Territory and grew up a few blocks away, in the same subdivision. His childhood home was in the Downers Grove school district, but his parents sent him to private schools. Wencel had two children, ages three and two. His son was taking swimming classes at the Oak Brook Park District, and he had also taken music and art classes there. The family attended church at Ascension Parish, which was on the border of Oak Brook and Oakbrook Terrace. If the petition were granted, they would enroll their children in the Oak Brook schools. If not, they would probably attend Catholic schools.

¶ 56 Tim Weselak testified that he resides in the Territory. He and his wife had a one-year-old daughter. They hoped that she could go to the same school as their neighbors, and they would enroll her in Brook Forest if the petition were granted.

¶ 57 Fred Lin, who lives in the Territory, testified that he and his wife had a three-year-old son, Evan. Lin did not sign the petition because he was not a registered voter at the time. Evan had been attending preschool through the Oak Brook Park District for a little over one year. He had made a lot of friends there, and they attended his birthday party recently and also had play dates. If the petition were granted, Lin would send his son to the Oak Brook schools. A lot of their friends were in the annexing district and Brook Forest was close by, whereas Belle Aire seemed far away.

¶ 58 The Board found as follows:

> "[T]he evidence presented by the Petitioners overwhelmingly showed the families' community connections to the City of Oak Brook, the Oak Brook park district and the Oak Brook Schools. The Petitioning parents all testified that they and their children identify strongly with the Oak Brook community and not the Downers Grove community, and that their children will be much more likely to participate in both public schools and extracurricular activities if the annexation is granted.
>
> *** Several of the petitioners with school age children participate in extra curricular activities of the Oak Brook Park District, Library, and the Oak Brook Bath and Tennis Club, such as swimming and tennis lessons, with other children who attend the Oak Brook Schools, but that the Petitioners' children cannot continue these relationships into the classroom because the current boundary line divides their neighborhood street."

¶ 59 Districts 58 and 99 argue that petitioners' participation in a limited number of social activities is insufficient to justify granting the petition. They argue that similar testimony was rejected in *Eble v. Hamilton*, 52 Ill. App. 3d 550, 553 (1977), and *Board of Education of Carrier Mills-Stonefort*

Community Unit School District No. 2 of Saline County v. Regional Board of School Trustees of Gallatin, Hardin, Pope & Saline Counties, 160 Ill. App. 3d 59 (1987).

¶ 60 In *Eble*, the petitioning family shopped, banked, and attended church in the annexing district, and the children had after-school jobs there. However, the high school in the annexing district was significantly farther away. *Eble*, 52 Ill. App. 3d at 552. The court stated that there was no evidence that the disputed area would naturally have ties to the annexing area, but rather the evidence showed that one family continued to do business and maintain social ties in the community from which they recently moved. *Id.* at 553.

¶ 61 In *Board of Education of Carrier Mills-Stonefort Community Unit School District No. 2 of Saline County*, the court stated that the evidence showed that the petitioning family had a personal preference to associate with the annexing district, which was located in a town where they had relatives and was more convenient for their work schedules. *Board of Education of Carrier Mills-Stonefort Community Unit School District No. 2 of Saline County*, 160 Ill. App. 3d at 63-64. The court noted that it is unusual to find a case where the party seeks to detach from a district with a closer school and annex to a district with a more distant school. *Id.* at 64.

¶ 62 We conclude that this situation is readily distinguishable from the above-cited cases, which both involved single families seeking to join schools that were farther away in communities to which that they had personal, prior connections. Here, multiple families are involved, and they sought to join school districts in which the elementary school is measurably closer, which we discuss later in this disposition. Further, the testifying witnesses from the Territory all live in the Village of Oak Brook, and their children correspondingly participate in Oak Brook activities.

¶ 63 Districts 58 and 99 argue that petitioners could have participated in the park and library activities in Downers Grove if they chose to do so. Peanowski testified that a District 58 student who does not reside within the Downers Grove Park District could pay resident rates for park district events on school grounds. However, that a limited number of activities could have been available to petitioners' school-age children at resident rates in Downers Grove does not equate to that area equally aligning to the Territory's identity. Notably, many of the Territory's children participated in Oak Brook Park District activities at a young age, with most of them attending preschool through the Oak Brook Park District. It was these activities which produced friendships with other children on the street and in other parts of Oak Brook who attended the annexing districts. Kimbery Jerich specifically testified that she inquired about preschool in Downers Grove but was told she would have to pay the nonresident rate. Therefore, the argument that petitioners were equally affiliated with both park districts is without merit. Michael Trilla testified that in the community, a lot of the kids' activities revolved around the Oak Brook Park District, and this testimony was supported by the testimony from other Territory residents about their children's level of involvement with the park district. Residents also testified about their involvement with the Oak Brook library and Bath and Tennis Club. Such testimony supports the Board's finding that the Territory's children identify strongly with the Oak Brook community. See also *Board of Education of Marquardt School District No. 15*, 2012 IL App (2d) 110360, ¶ 33 (considering park district and library boundaries, among other things, in determining whether petitioning area identified with the school districts and community to which annexation was requested).

¶ 64 Districts 58 and 99 also argue that there is no precedent for granting a detachment petition based on promoting a sense of community within a subdivision, but that this sense of community

with the Ginger Creek subdivision constituted much of the testimony of petitioners' witnesses. The districts argue that the testimony demonstrates only petitioners' personal preferences, which are not relevant when evaluating a detachment and annexation petition.

¶ 65 We agree that the focus should lie with the community of interest in the Territory, rather than the subdivision as a whole. See *Marquardt*, 2012 IL App (2d) 110360, ¶ 29. However, petitioners' witnesses correspondingly testified about the sense of community of families in the Territory being linked with other families on the same street who attended the annexing districts. In fact, Michael Jerich testified that a lake divided the subdivision and the houses on the other side of the lake, making it "two separate worlds." Furthermore, contrary to the argument by Districts 58 and 99, while more than personal preference is required to support a change in school district boundaries, the personal desires of the petitioning parents may be taken into account. *Carver*, 146 Ill. 2d at 356; *Board of Education of St. Charles Community Unit School District No. 303 v. Regional Board of School Trustees of Kane County Educational Service Region*, 261 Ill. App. 3d 348, 364 (1994) (regional board could properly consider testimony from petitioning parents about their preference for associating themselves with particular suburb).

¶ 66 Districts 58 and 99 argue that the manifest weight of the evidence actually established that the Territory is linked to their districts. They cite the testimony of Michael Heinz, the science department chair at Downers Grover North, whose two children attend Belle Aire. He testified that the former PTA president of Belle Aire lives in Ginger Creek and that his children have friends in the Ginger Creek area. Districts 58 and 99 further cite the testimony of Kim Kastner, whose two children attend Belle Aire. She testified that her son has a friend from school who lives in Ginger Creek, and they participate in Downers Grove Park District sports together and are in the same

Indian Guides group. Districts 58 and 99 note that Michael Trilla testified that about 75% of the homes in Ginger Creek were part of their districts and would remain there if the petition were granted. Districts 58 and 99 argue that this shows that outside of the sixteen parcels of land seeking detachment, the remainder of the subdivision is fully integrated into the community served by the Downers Grove schools.

¶ 67 Petitioners argue that all of the parent witnesses called by Districts 58 and 99 lived outside of the Territory, within the boundaries of the Downers Grove Park District, and within 1½ miles of their children's schools. Petitioners argue that these families participated in the Downers Grove Park District and Downers Grove library, unlike Territory residents. Petitioners note that only one of these witnesses testified that her child had a single friend in Ginger Creek, as Heinz clarified on cross-examination that his daughters' friends actually live in the Avenue Chateau subdivision across from Ginger Creek. Petitioners also cite evidence from the hearing that only 80 of District 58's nearly 5,000 students were from Oak Brook; that no more than about three or four children from Ginger Creek have attended Belle Aire per year since 2006; and that less than 1% of students in District 99 reside in Oak Brook.

¶ 68 While the portion of Ginger Creek within the boundaries of Districts 58 and 99 logically would have some connection to Downers Grove, we agree with petitioners the evidence showed that in recent history, just a few children from the subdivision actually attended Belle Aire each year, and that the districts' evidence regarding friendships with Ginger Creek students attending Downers Grove schools was quite limited. Moreover, as discussed, the focus is on the community of interest in the Territory, rather than the subdivision as a whole. Given witness testimony regarding the level of participation of the Territory's children in Oak Brook-based activities, it was not against the

manifest weight of the evidence for the Board to conclude that the Territory identified with the Oak Brook community.

¶ 69 Districts 58 and 99 argue that even if one gave credence to petitioners' position, the impact of granting the petition would be only to shift the issue away from petitioners and onto petitioners' neighbors. The districts cite testimony that the new boundary line will lie right next to a home in which two District 99 students currently reside.

¶ 70 Michael Trilla, who circulated the petition, testified that he limited the Territory to a particular group of houses partially based on a density of children between the ages of one and six; the neighboring homes did not have young children. Therefore, it is not inevitable that the bordering houses would automatically associate with the same community as the Territory. Further, the new boundary line would be near the bend of the subdivision's long, thin lake, and Michael Jerich testified that the lake divided the subdivision into "two separate worlds." Finally, a detachment petition may not be denied based on speculation of possibly setting precedent for future detachment petitions. *Fosdyck v. Regional Board of School Trustees, Marshall, Putnam, and Woodford Counties*, 233 Ill. App. 3d 398, 409 (1992).

¶ 71 3. Distances

¶ 72 Districts 58 and 99 next note that in applying the benefit/detriment tests, one consideration is the distances from the petitioners' homes to the respective schools. *Marquardt*, 2012 IL App (2d) 110360, ¶ 21. Still, a shorter travel time alone will not justify a boundary change. *Pochopien v. Regional Board of School Trustees of Lake County Educational Service Region*, 322 Ill. App. 3d 185, 194 (2001).

¶ 73 On this subject, the Board found:

> "The evidence also showed that granting the Petition would significantly decrease the distance that the younger, grade school children would have to travel to the Oak Brook School, versus the approximately 60 minutes of total bus time the grade school children would have if they attended the Downers Grove Schools. The Board recognized that granting the Petition results in a slightly longer bus ride for the older high school aged children, but that the case law recognizes it is an acceptable compromise if the granting of a petition results in elementary students having a shorter travel distance, but lengthens the travel distance for older students."

¶ 74 Districts 58 and 99 argue that the Board erred in finding that granting the petition would significantly reduce the distance elementary students would have to travel to reach school. Districts 58 and 99 point out that, according to the evidence, Brook Forest is 3.38 miles closer to the Territory than Belle Aire , and that the drive to Brook Forest is about nine to twelve minutes shorter. Districts 58 and 99 argue that while Illinois courts have emphasized distances to school facilities in detachment and annexation proceedings, the difference in driving distances and travel times have been greater in other cases than in this situation. They cite: *Pochopien*, 322 Ill. App. 3d at 187 (detaching school was 5.8 miles away and a 20 to 50-minute bus ride, whereas attaching school was within walking distance); *Pontiac Township High School District No. 90 v. Regional Board of School Trustees for Livingston County*, 183 Ill. App. 3d 88, 887 (1989) (petitioners were 7½ to 12 miles closer to the annexing district); *Board of Education of Avoca School District No. 37 v. Regional Board of School Trustees of Cook County*, 82 Ill. App. 3d 1067, 1069 (1980) (annexing school was a few blocks away while detaching school was over 2½ miles away); and *Seelhoefer v.*

Regional Board of School Trustees of Clinton & Washington Counties, 266 Ill. App. 3d 516, 521 (1994) (bus ride to annexing district was 30 to 45 minutes shorter).

¶ 75 Districts 58 and 99 argue that while there is an option for children in the Territory to receive bus service to the Downers Grove schools, which would be about a 30-minute ride, there was no evidence regarding the length of a bus ride to Brook Forest, so there was no basis for the Board to find that students would spend less time on a bus if the petition was granted. Districts 58 and 99 also argue that, despite the testimony of one Territory resident, it is unrealistic to assume that students could walk to Brook Forest, as 1.3 miles is a considerable distance, there are no sidewalks in the Ginger Creek subdivision, and the children would have to cross busy Midwest Road to get to school.

¶ 76 Districts 58 and 99 further argue that counterbalancing the distances to the elementary schools are the distances to the junior high and high schools. The districts maintain that the distances to the middle/junior high schools are essentially the same, with Butler Junior High School being about 0.8 miles closer. The districts note that the Territory is actually 2.53 miles closer to Downers Grove North High School than Hinsdale Central High School. The districts argue that the Board overestimated the reduction in travel times, which erroneously increased the supposed benefit of granting the petition and skewed the Board's decision.

¶ 77 We conclude that the Board did not err in its findings regarding travel distances. While Downers Grove North High School is closer to the Territory than Hinsdale Central, it is proper to give greater weight to the distance traveled by elementary school children even if the proposed action increases the distance traveled by older children. *Id.* While the fact that the annexing district's junior high school is 0.8 miles closer than the detaching district's middle school may not be significant, the fact that Brook Forest is 3.38 miles closer can properly be labeled as significant.

Indeed, this distance is greater than the 2.5-mile difference in *Board of Education of Avoca School District No. 37*, 82 Ill. App. 3d at 1069, a case cited by Districts 58 and 99. See also *Fosdyck*, 233 Ill. App. 3d at 409 (finding that children would benefit from the shorter distances they would have to travel to school, with the annexing school being about 4.7 miles closer). Further, Belle Aire's principal testified that the bus ride to Belle Aire would be about 30 minutes each way for the Territory's children, as they would be the first to be picked up and the last to be dropped off. Although bussing to Brook Forest was not discussed, it is reasonable to infer that parents would have an easier time dropping their children off at a nearby school, and even driving to Belle Aire would add 18 to 24 minutes round trip under the figures given by Districts 58 and 99. The distance from the petitioners' homes to the schools is a factor to consider in applying the benefit-detriment test, and we find no error in the Board's findings on this subject.

¶ 78 4. Financial Impact

¶ 79 Districts 58 and 99 argue that it was against the manifest weight of the evidence for the Board to find that there was be no substantial detriment to the financial health of the detaching districts.

¶ 80 We summarize the testimony on this subject. Douglas Galois, petitioners' witness, was accepted as an expert in school finance. He opined that Districts 58 and 99 were financially very healthy and would remain so even with the loss of property tax revenue from the Territory, because the losses were small in relationship to total revenues, and the districts had managed their finances extremely well during the previous few years, during very stressful financial times. In arriving at his conclusion, Galois also considered the tentative budgets for the 2012 fiscal year. Galois considered the working cash fund balance of $10 million held by District 58 and the $13 million working cash fund balance held by District 99 to be substantial. Those funds had stayed at relatively

the same levels for several years. Applied to tax year 2010, District 99 would lose $78,142.80 from a budget of $78,799,000 as a result of the detachment; the loss represented less than 1/10 of one percent (.0992%). The loss to projected receipts for District 58 was $92,432.36 from a budget of $55,582,200, which represented about 16/100ths of one percent (0.1663%). Galois agreed that the losses would occur every year if the petition were granted. Galois did not know the number of employees of each district, and he did not look at the collective bargaining agreements. However, he had looked at annual financial reports and felt that employees were adequately paid based on the "cost per student" in each district.

¶ 81 James Popernik, District 58's controller, was accepted as an expert in school finance and offered the following testimony. Illinois schools were facing cuts from federal and State sources and there was additional uncertainty due to the State's cashflow problems. Investment income had dropped, and decreased property values meant less revenue: in 2007 the district's equalized assessed value was 2.75 billion, and in 2010 it was 2.74 billion. Any additional school district revenue from property tax was limited to "CPI" and any new growth on property tax rolls. In 2010, the district made $2 million in cuts including a reduced textbook budget, hiring less experienced teachers when new positions opened, cutting staff development, and forgoing about $165,000 in building projects. The previous year, the district cut $750,000 from its budget. For fiscal year 2011, the district additionally decreased its premiums to its self-funded insurance plan and reduced programs such as discretionary field trips.

¶ 82 District 58 received about 83% of its income from property taxes. If the petition were granted, District 58 would lose about $92,500 per year. The district's expenses would not decrease much because that area does not generate a lot of students to begin with. Although the loss was less

than 1% of the district's revenue, it represented 2.3 full time teachers, six teachers' aids, or 200 iPads. The district could have to make cuts, such as eliminating staff. The district could increase fees, but that would not be "pleasant" because 640 or 650 families in the district were low income. While the district could use money from the fund balance, that was a "slippery slope" and could lead to cash flow problems, as about $6 million of the fund were loaned out to other funds at times.

¶ 83 Popernik agreed that the State only provided general aid to the district of $218 per pupil. Further, District 58's budget was balanced in 2010-2011, and the district had adopted a balanced budget for 2011-2012.

¶ 84 Mark Staehlin, District 99's controller, was also accepted as an expert in school finance. He cited the same concerns regarding school finances as Popernik, and he also mentioned a possible second recession. In the previous few years, District 99 was seeing younger families move in, which resulted in enrollment growth without any new equalized assessed value. In 2009-2010, the district cut $750,000 from its budget, and in 2010-2011, it cut $2 million from its budget. District 99 had to cut six teachers and increase student fees. Property taxes account for 83 to 85% of the district's budget, and it would lose $87,804 per year if the petition were granted. This amount represented a little less than two teachers. The district could not increase property taxes and was limited to an inflationary increase, and many contracts also increased by the same inflationary percentage. Although the revenue at issue was less than 1% of District 99's budget, something would have to be eliminated as a recurring expense to keep a balanced budget. The working cash fund was "fully borrowed," though he agreed it was "not loaned out all 365 days."

¶ 85 Staehlin agreed that District 99 was "relatively in a strong" financial position. In an August 10, 2011, letter he wrote to the District 99 school board, he stated as follows. During the 2010 to

2011 fiscal year, the General Assembly increased the income tax rates and approved a budget that did not reduce revenue to the district, which led to actual revenues exceeding the budget by 3%. The actual expenditures were 1% under budget, leading to a net increase in the combined operating funds of nearly $3 million. Also, paying off bonds from 2001 early would reduce annual operating fund transfers to the debt service fund by $200,000 per year for the next three years. The memo went on to say that the 2011 to 2012 tentative budget reflected several changes that sought to capitalize on the district's strong fiscal position, including the hiring of about 8 additional teachers. Staehlin testified that the figures in his letter were on a cash basis of accounting rather than a modified accrual basis.

¶ 86 The Board found:

> "the effect of the detachment on the Downers Grove Schools would have little impact on the ability to meet state standards of recognition; and that the loss of tax revenue to the detaching districts was minimal when compared to the schools' overall budgets, and would have negligible impact upon the Downers Grove Schools' budget.

¶ 87 *** the Board considered the credibility of the financial impact testimony and evidence presented by the witnesses of the Objecting Downers Grove Districts, and found that evidence to be flawed, presenting a skewed calculation of the possible financial loss to the districts. In particular, a majority of the Board did not find testimony of District 99 Comptroller Mark Staehlin credible, in that his testimony on the financial condition of the District contradicted earlier reports prepared by him for the District 99 School Board, and that documents he created for the hearing inaccurately portrayed the District's fund balances as lower than the impact report prepared by the Regional Superintendent and were artificially

skewed to show greater purported losses on the District. The Board found that the explanation for these inaccuracies was less than sufficient to support the Objectors' claim of dire financial consequences if the Petition were granted."

¶ 88 Districts 58 and 99 argue that the Board should have given little weight to Galois's testimony because he did not personally research the financial reports on which he based his testimony, and he was unfamiliar with the number of employees, collective bargaining agreements, vendor contracts, and capital budgets of the districts. Districts 58 and 99 highlight the testimony of their employees/expert regarding the difficult financial times, loss of state and federal funding, the inability to increase property taxes beyond the inflationary factor, the recurring nature of the losses, and prior cuts made by the districts. They argue that the "bottom line is that granting the Petition will result in 2.3 teachers or six teacher aids being laid off at School District 58" and "two teachers being laid off in School District 99."

¶ 89 Districts 58 and 99 argue that regardless of what percentage of assessed value the petition represents or what percentage of a school district's overall revenue will be lost, the key point is whether the loss of revenue would be serious. The districts argue that their witnesses established that just over four teachers will be laid off if the petition were granted, which demonstrates a serious loss of revenue. The districts argue that the districts are levying the maximum tax rate and cannot simply increase its tax rate to replace the lost revenue.

¶ 90 Regarding credibility, it is the administrative agency's responsibility to weigh the evidence and determine witness credibility. *Aich v. City of Chicago*, 2013 IL App (1st) 120987, ¶ 18. We find no error with the Board's credibility determinations here. Although the Board did not specifically reference Galois, there was no evidence that he relied on false financial reports, especially when

considering that the figures he relied on were substantially similar to those of the witnesses from Districts 58 and 99. Further, although he did not know details about employment numbers and contracts, he had examined the districts' annual reports, which incorporated these costs. Further, the Board's finding that Staehlin was not credible is supported by the fact that his own recent report to the school board, which he repeatedly attempted to distance himself from at the hearing, indicated strong financial health and successful cost-saving measures.

¶ 91 Every detachment proceeding results in a loss of assessed valuation and tax revenue to the losing district. *Carver*, 146 Ill. 2d at 357. Therefore, to constitute a valid basis to deny a detachment petition, the resulting depletion of tax revenues must be "serious." *Id*. The financial health and ability to meet statutory standards is more important than the size of the loss of tax revenues and assessed valuation. *Id.*

¶ 92 We conclude that the Board's finding that the detachment would have a minimal effect on the budgets of Districts 58 and 99 is not against the manifest weight of the evidence. The Regional Superintendent's Impact Report, a stipulated exhibit, projected losses of $92,634 to District 58 and $87,804 to District 99. As petitioners point out, these amounts represent 0.1989% of District 58's assessed valuation and 0.1641% of its 2010 revenue of $56,451,921. They represent 0.1190% of District 99's assessed valuation and 0.1065% of its 2010 revenue of $82,431,359. Precedent shows that figures much greater than these have been considered to have a *de minimus* impact. See *Board of Education of Marquardt School District No. 15*, 2012 IL App (2d) 110360, ¶ 27 (budget impact of less than 2% minimal); *Bowman v. County Board of School Trustees of Du Page County*, 16 Ill. App. 3d 1082, 1086 (1974) (0.5% of loss in assessed value was minimal); *School District No. 106 v. County Board of School Trustees of Cook County*, 48 Ill. App. 2d 158 (1964) (loss of less than

2.5% of total budget was insignificant); *cf. Oakdale Community Consolidated School District No. 1 v. County Board of School Trustees*, 12 Ill. 2d 190, 193-94 (1957) (loss of 10 and 20% of the assessed valuations of the detaching districts was a serious depletion of the districts' resources).

¶ 93 Further, although Districts 58 and 99 attempt to downplay the small percentages by stating that a grant of the petition will result in 2.3 teachers or six teachers' aids being laid off in District 58 and two teachers being laid off in District 99, such assertions distort the testimony presented. Popernik testified that the amount of the loss represented 2.3 full time teaches, six teachers' aids, or 200 iPads. That is, Popernik did not testify that the district would be forced to lay off a particular number of personnel, as he also recognized that the district could increase fees or access reserves. The district had made much more significant cuts in recent years in manners that were not limited to laying off staff, such as reducing the textbook budget, cutting staff development and field trips, and reducing payments to the self-funded insurance plans. Similarly, Staehlin testified that the loss represented a little less than two teachers for his district, not that the district would be laying off two teachers as a result. In fact, the district had managed significant cuts in the past few years, had recently hired additional teachers, and had realized an increase in net operating funds of about $3 million. Even at the hearing, Staehlin himself described the district as being in a relatively strong financial position.

¶ 94 To be sure, making cuts to educational budgets is never easy or pleasant, but *Carver* instructs us that because every detachment produces a loss in funds, the decrease in revenue must be "serious" to form a basis to deny a detachment petition. *Carver*, 146 Ill. 2d at 357. Considering the fraction of one percent that revenues would decrease as a result of this petition, we cannot say that the Board's finding that the losses are minimal is against the manifest weight of the evidence.

¶ 95 Districts 58 and 99 also argue that the Board should have considered Michael Trilla's testimony that he kept the detachment area small because one of the determining factors is the financial impact. The districts equate this to Trilla designing the petition to not have the appearance of being a substantial financial detriment. However, Trilla also testified that he wanted to limit the Territory to households who would benefit from it, and he chose an area with a density of one to six-year-olds. Even otherwise, the "appearance" of the petition does not affect that actual amount of money at stake.

¶ 96 Districts 58 and 99 argue that the Board should have considered successive detachment and annexation petitions, and that this court should take judicial notice of other such petitions that have come before the Board. Such evidence was not before the Board, so it would not serve as a basis to overturn its decision. 735 ILCS 5/3-110 (West 2010) ("No new or additional evidence in support of or in opposition to any finding, order, determination or decision of the administrative agency shall be heard by the court."). Moreover, as discussed, a petition may not be denied based on speculation of possibly setting precedent for future detachment petitions. *Fosdyck*, 233 Ill. App. 3d 398, 409 (1992).

¶ 97 III. CONCLUSION

¶ 98 In light of the evidence of the Territory's connection to the Oak Brook community; the preference of Territory residents to attend the annexing schools; the closer distance of the annexing district's elementary schools; the fraction of the detaching schools' budget that would be affected by a boundary change; and the lack of effect the detachment would have on the ability of the districts to meet State standards of recognition, the Board's conclusion that the overall benefit to the Territory and annexing districts from granting the petition clearly outweighs the resulting detriment to

Districts 58 and 99 and the surrounding community is not against the manifest weight of the evidence. Therefore, we affirm the judgment of the Du Page County circuit court affirming the Board's decision to grant the petition to detach the Territory from the boundaries of Districts 58 and 99 and annex the Territory into the boundaries of Districts 53 and 86.

¶ 99 Affirmed.