

NATIONAL EDUCATION PARTNERS, INC. (II),

Appellant

v.

BALTIMORE CITY BOARD OF
SCHOOL COMMISSIONERS,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 14-63

OPINION

INTRODUCTION

National Education Partners, Inc., has appealed the decision of the Baltimore City Board of School Commissioners (Local Board) to deny its application to establish a public charter school. The local board filed a Motion for Summary Affirmance maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant did not respond.

FACTUAL BACKGROUND

On March 6, 2014, Appellant filed an application with Baltimore City Public Schools (“BCPS”) to establish and operate a new public charter school serving grades 6 – 8 in the former William March Elementary School in East Baltimore with a proposed enrollment capacity of 850 students.¹

School system staff presented the application to the local board at its public board meeting on April 8, 2014. Thereafter, the New and Charter School Advisory Board (“Advisory Board”) reviewed and scored the application, and prepared interview questions to ask Appellant. (Motion, Ex. 4). On April 23, 2014, the Advisory Board interviewed the Appellant and engaged in a detailed discussion of the application. Later that same day, Johnny J. Patterson, II., the CEO of National Education Partners, Inc., sent additional information to the Advisory Board in response to questions about special education processes and procedures, adjusted student population, and teacher salary information. (Motion, Ex. 3).

At the local board’s meeting on May 27, 2014, school system staff recommended that the local board deny the application. Staff noted that “several aspects of the application were not strong” in that Appellant was “unable to demonstrate sufficient academic expertise and knowledge” and the budget and enrollment plan “were unrealistic.” (Motion, Ex. 1). The local board accepted the recommendation and unanimously voted to deny Appellant’s application to establish a public charter school in Baltimore City. *Id.*

¹ In 2013, the Appellant submitted to the local board an application to establish a K – 5 public charter school in the former William March Elementary School, which the local board denied. In MSBE Op. No. 14-08 (2014), this Board affirmed the local board’s decision to deny Appellant’s prior application.

By letter dated June 20, 2014, Tisha Edwards, Interim Chief Executive Officer, formally notified Mr. Patterson of the rationale for the local board's decision. The reasons cited for the denial were: lack of direct experience running schools; concern about capacity of the full board to implement the school plan; lack of clarity about how the education plan, organizational plan, and mission all come together in a cohesive way; lack of clarity concerning what parts of the plan are based on models or how the models fit together; inability of the interview team to provide sufficient details about the educational plan, curriculum, methods for monitoring student progress, and professional development plan; and no clear connection to Common Core. (Motion, Ex. 5). Ms. Edwards also indicated that the Advisory Board was available to meet with Appellant to discuss the application and the rationale for its recommendation should the Appellant desire to do so.

Appellant filed this appeal with the State Board on June 27, 2014.

STANDARD OF REVIEW

This is an appeal of a decision of a local board to deny a charter school application. Such a decision is one involving a local policy or controversy and dispute regarding the rules and regulations of the local board. Accordingly, the local board's decision must "be considered *prima facie* correct" and upheld unless the Appellant proves that the local board's decision was arbitrary, unreasonable, or illegal. See COMAR 13A.01.05.05; *Kitzmilller Charter School Initiative, Inc. v. Garrett County Bd. of Educ.*, MSBE Op. No. 13-52 (2013).

A decision is considered arbitrary or unreasonable if it is "contrary to sound educational policy or if a reasoning mind could not have reasonably reached" the decision. COMAR 13A.01.05.05.B(1) and (2). A decision is illegal if it is unconstitutional; exceeds statutory or jurisdictional boundaries; misconstrued the law; results from unlawful procedures; is an abuse of discretion or is affected by errors of law. COMAR 13A.01.05.05.C.

LEGAL ANALYSIS

Appellant maintains that it complied with all requirements for a charter application and challenges the local board's decision. In support of its appeal, Appellant argues that the local board violated its due process rights by failing to provide a rationale for its decision; disputes some of the basis for the local board's decision; and claims that the local board did not sufficiently assess the application materials, specifically the budget and enrollment plans.

No Rationale Explaining Basis for Decision

Appellant maintains in its appeal that its due process rights have been violated because the local board did not send any correspondence notifying Appellant of the local board's rationale for denying the application. This claim lacks merit. Ms. Edwards advised the Appellant of the local board's rationale for its decision by letter dated June 20, 2014.

Lack of Direct Experience Operating an Elementary School

The local board indicated that Appellant's lack of direct experience operating schools played a part in its decision. Appellant argues that there is no legal requirement that it have previous experience in operating a charter school. (Appeal). As we stated in *National Education Partners, Inc. v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 14-08 (2014), "[a]lthough there is no legal requirement that an applicant have previous experience in operating an elementary school, in our view it is not per se arbitrary or unreasonable for a local board to take into account such experience, or lack thereof, in rendering its decision." While Appellant makes broad claims that some of the board members operate or have operated very successful charter schools and one currently manages a network of 12 national charter schools, Appellant has not pointed to specific evidence to support these statements.

Inability to Demonstrate Sufficient Academic Expertise

Appellant also disputes the notion that it was "unable to demonstrate sufficient academic expertise and knowledge running schools" by relying on the fact that the Commonwealth Education Connections Management Group, LLC, assisted the Appellant in the development of its charter application. Appellant explains that the company manages eight charter schools, some of which have become National Blue Ribbon Schools in multiple states, and that those schools were founded with almost identical proposals.

It is up to the Appellant to demonstrate that the local board's decision denying the application was arbitrary, unreasonable or illegal. We do not find that simply stating that the company that helped develop the application successfully manages some other charter schools in other states is sufficient to dispute the claims. The local board determined that the Appellant could not provide sufficient details about the educational plan, curriculum, and methods for monitoring student progress, or how items would connect to the Common Core. The Appellant has not addressed any of this in its appeal to the State Board.

Budget and Enrollment Plan Concerns

The local board had budget concerns. Appellant maintains that its budget was realistic in light of the fact that Appellant had received two additional grant commitments from partnering organizations totaling an additional 1.7 million dollars the first operational year and 2.5 million dollars to be sustained over a five year period. (Appeal). Appellant concedes, however, that it did not provide information on these added commitments for consideration by the school system due to the timing of when its submission was due to the local board and the date on which Appellant received the grant information. By Appellants own concession, the local board did not have all of the relevant budget information before it. It was not unreasonable for the local board to make a decision on the budget information that had been submitted. Appellant has failed to make a case for why the local board's decision regarding its proposed budget as originally submitted (Application, Appendix P)² should be rejected.

² We note that the location of the appendices listed on the application index do not match up.

Although the Appellant claims that the local board did not sufficiently assess its enrollment plan, it provides no specific argument as to why staff concerns that the enrollment plan was “unrealistic” were unfounded. Appellant simply states in its State Board appeal that it based the projections on community support, interest, and applications it had received during the community outreach and information sessions indicating that people would like to have their children attend the school. (Appeal). While it is clear from the application that the school intends to serve many of the students who previously attended March Middle School, and it appears that there is some support for the establishment of the school in the community based on the letters of support and the petition signed by parents and community members (Application, Appendix G & S), Appellant has not pointed to any specific quantifying information to explain how the enrollment projections were reached.

Summary

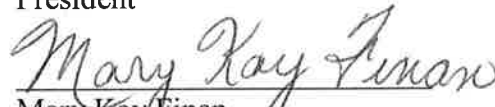
The local board argues that its decision was not arbitrary, unreasonable, or illegal because it had legitimate concerns that supported the denial of the application. Appellant may disagree with the conclusions reached by BCPS staff and the local board, but it has failed to demonstrate that the board’s decision was arbitrary, unreasonable, or illegal.

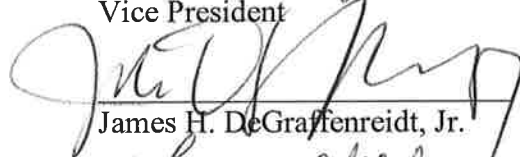
CONCLUSION

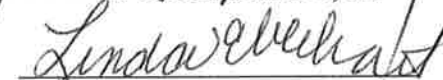
For all these reasons, we affirm the decision of the local board because it is not arbitrary, unreasonable, or illegal.

ABSENT

Charlene M. Dukes
President



Mary Kay Finan
Vice President


James H. DeGraffenreidt, Jr.


Linda Eberhart

ABSTAIN

S. James Gates, Jr.


Larry Giammo

ABSENT

Luisa Montero-Diaz

ABSENT

Sayed M. Naved

Madhu Sidhu

Madhu Sidhu

Donna Hill Staton/mcp

Donna Hill Staton

Guffie M. Smith, Jr.

Guffie M. Smith, Jr.

October 28, 2014