

NATIONAL EDUCATION PARTNERS, INC.,

Appellant

v.

BALTIMORE CITY BOARD OF
SCHOOL COMMISSIONERS,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 14-08

OPINION

INTRODUCTION

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

FACTUAL BACKGROUND

Appellant filed an application on March 22, 2013, with Baltimore City Public Schools ("BCPS") to establish and operate a grades K-5 charter school on the former William March Elementary School campus. The BCPS Office of New Initiatives ("ONI") and the New and Charter School Advisory Board ("Advisory Board") reviewed the application and conducted a phone interview with the operator, Johnny J. Patterson, II. (Motion, Ex. 3). Mr. Patterson presented the application to the local board and took questions during a June 4, 2013 special board meeting. On June 11, 2013, the local board denied the application on the recommendation of BCPS staff and Dr. Andrés Alonso, the chief executive officer of BCPS.

After the local board voted to deny the application, Board Chair Neil Duke stated the following:

I know with respect to this particular charter applicant, I believe this was their first time before the Board. Mr. [Johnny] Patterson has waited patiently this evening throughout our debate. He is present in the room. I also take note of the fact that we had a number of other individuals who presented. Ms. Williams, Ms. Fields, Ms. Pridgeon and, I believe, Linda Isaac as well who is going to be a proposed member of the Board. I thought the energy that they brought to the table was very palpable. We commented on the fact, and they picked up on the fact that their youth was certainly part of the benefit of what they are going to bring to bear with respect to their application.

On my brief time on the Board, six years which, in dog years I think equates to about 42 or so, I know that the processes become more rigorous and more challenging over the years as we've developed our policies with respect to charter applications, and the law is certainly very complex.

We know Baltimore City is the home to a large and healthy share, a super majority share, of the state's charter population. So, it's our way, hopefully, of encouraging not only Mr. Patterson and his colleagues, but all charter applicants that we are here to listen and we are here to learn from your applications.

So, despite the adverse decision point tonight with respect to your charter application, we do salute your efforts and we hope to see you again in some form of collaboration. Thank you. (Motion, Ex. 1)

Dr. Alonso formally notified Mr. Patterson of the decision in a June 20, 2013, letter that explained the local board's decision. (Motion, Ex. 4). The reasons cited in the letter for the denial were: a weak mission and vision statement; the need for the school was not articulated well; no clear plan for instructional programming, including assessment; limited understanding of the Common Core; vague professional development plan that did not align with the education plan; a limited understanding of how to serve students with disabilities; application lacking performance goals; limited experience in operating a school; limited connection to the community; no documentation of engagement with parents at proposed school location; no documentation of support from partners; and the reason for selecting the school site was unclear. (Motion, Ex. 4).

This appeal to the State Board followed.

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 argues that it complied with all requirements for a charter application and challenges the local board's decision to deny its application. In support of its argument, Appellant alleges discrimination in the selection process and disputes some of the criteria used by the local board in reaching its decision.

Age Discrimination

Appellant first argues that the local board "showed blatant bias and discriminatory practices" by discriminating against Appellant's staff members based on their young age. Appellant states that local board members were "continuously pointing to our youthful looks as a statement of disqualification or lack of qualification to manage or operate a school" during the June 4, 2013, special board meeting. Maryland law prohibits government entities from discriminating based on age in employment.¹ *See* Md. Code Ann., State Govt. § 20-901. Even assuming the denial of a charter application can be considered employment discrimination, Appellant does not provide specifics about discriminatory comments or provide affidavits setting forth the comments it found discriminatory.

The State Board has consistently held that an Appellant must support allegations of illegality with factual evidence. *See Breedon v. Prince George's County Board of Education*, MSBE Op. No. 08-34 (2008). "Unsupported statements or conclusions are insufficient." *Id.* The transcript of the June 11, 2013 meeting, provided by the parties, shows only that age was raised, albeit tangentially, after the vote on Appellant's charter application. Board Chair Neil Duke stated that Appellant's staff brought "energy" to their presentation and that their youthful nature would be a benefit in establishing a charter school. These statements, made after the local board rendered its decision, in our view, do not support a finding of discriminatory intent.

Biased Application Process

Appellant claims that the application process was biased and unfair because the local board granted the charter application for another applicant, the Banneker Blake Academy of Arts and Sciences, against the recommendation of BCPS staff while denying Appellant's application. The local board counters that this assertion is meritless and unfounded and that the denial was based on "very legitimate concerns" the board had about Appellant's application.

As part of the charter application review process, BCPS staff recommended denying both applications. During the June 11, 2013, board meeting, Dr. Alonso informed the local board that he disagreed with his staff's recommendation for Banneker Blake. Dr. Alonso told the local board that "there is potential for enormous synergy here in terms of community, a vision, certain resources, East Baltimore and the future of this school." Dr. Alonso recommended a three-year instead of five year approval for Banneker Blake because of concerns about the school's academic plan, curriculum, and assessments. Appellant notes that these concerns were some of

¹ Discrimination based on youth is not an actionable age discrimination claim under federal law. *See* 29 U.S.C. § 621 *et seq.* (Age Discrimination in Employment Act applies to those who are at least 40 years old).

the same ones staff had about its application. One difference, though, was that Banneker Blake sought to open in 2015, giving staff additional time to address BCPS concerns before opening. Appellant sought to open in the fall of 2014.

Appellant bears the burden of showing that the local board's decision to grant one application and deny another was arbitrary, unreasonable, or illegal. The mere fact that the local board approved one application and not the other is not evidence of bias.

No Clear Vision for Instruction, Academics, or Assessment, and No Performance Goals

Appellant challenges the claim that it lacks a clear vision for instruction, academics, or assessments and does not have performance goals. Appellant indicates that it planned to adopt the Baltimore City Public Schools curriculum for its first year and later develop or adapt "a more comprehensive and innovative curriculum." Appellant further argues that it outlined its goals and proposed assessment plan in its application.

We generally give great weight to the Superintendent's assessment of a proposed curriculum. As we have previously stated, we do "not sit as an expert in curriculum design. We do not conduct a *de novo* review. We sit to assess the weight of the evidence presented, remembering that it is the Appellant's burden to show that the local board was arbitrary in its assessment of the curriculum." *Kitzmiller Charter School Initiative, Inc. v. Garrett County Bd. of Educ.*, MSBE Op. No. 13-52 (2013) (citing *Global Garden Public Charter School v. Montgomery County Bd. of Educ.*, MSBE Op. No. 11-42 (2011)). The local board's concerns, as outlined in the letter sent to Appellant, focused on a lack of specificity in Appellant's plans. On appeal, Appellant has indicated it disagrees with the local board's assessment, but has not presented evidence to show that the local board's decision was arbitrary, unreasonable, or illegal.

Weak Connection to Community and Parents

Appellant disputes the finding that it lacks community engagement by presenting a letter from Councilman Stokes in support of the project. The letter, while demonstrating some community support, is not sufficient evidence to overcome the local board's conclusion that parents in the community have not been engaged in the process.

Minimum Experience Operating an Elementary School

Appellant argues that there is no legal requirement that it have previous experience in operating an elementary school. Moreover, Appellant states that it will seek the services of an education service provider if necessary. Although 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.

Limited Understanding of How to Serve Students with Special Needs or Disabilities

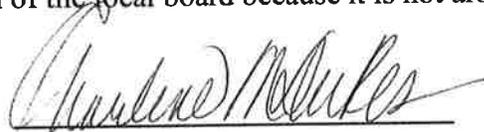
Appellant acknowledges that it lacks staff who have experience dealing with students with disabilities, but indicates that it plans to partner with the Kennedy Krieger Institute, hire a Director of Special Education and Support Services, and recruit teaching staff to serve this population. Some of Appellant's plans were included as part of its initial application. Appellant states that it was not allowed to present to the board an additional document outlining its special education plan during the June 4, 2013, special meeting. As a result, some of Appellant's plans may not have been considered by the local board. Even assuming that all of Appellant's special education plans were considered by the local board and found acceptable, there are other deficiencies in the application that support the local board's denial.

Summary

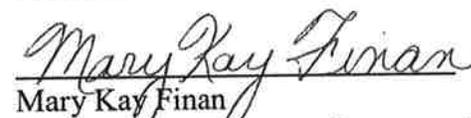
The local board argues that its decision was not arbitrary, unreasonable, or illegal because it had legitimate concerns that supported the denial of the application. Although any one of the local board's dozen rationales for denying the application might not have been sufficient, taken as a whole, the reasons provide ample support for the denial. The rationales are not contrary to sound educational policy or conclusions that no reasoning mind could have reasonably reached. 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

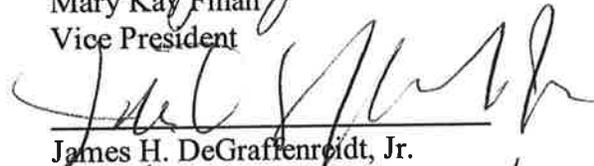
For all these reasons, we affirm the decision of the local board because it is not arbitrary, unreasonable, or illegal.



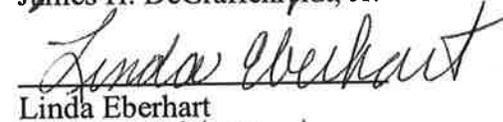
Charlene M. Duker
President



Mary Kay Finan
Vice President



James H. DeGraffenreid, Jr.



Linda Eberhart

Absent

S. James Gates, Jr.

Absent

Larry Giammo

Absent

Luisa Montero-Diaz

Absent

Sayed M. Naved

Madhu Sidhu

Madhu Sidhu

Donna Hill Staton

Gulrie M. Smith, Jr.

February 25, 2014