

IMAGINE BELAIR EDISON CHARTER
SCHOOL,

Appellant

v.

BALTIMORE CITY BOARD
OF SCHOOL COMMISSIONERS,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 06-16

OPINION

This is an appeal by Imagine Belair Edison Charter School (“Imagine”) contesting the decision of the Baltimore City Board of School Commissioners (“City Board”) to deny Imagine’s application to operate a public charter school. In its appeal, Imagine asserts that the City Board’s rationale for rejecting the application lacks merit.

The City Board has filed a Motion to Dismiss maintaining that the appeal was untimely filed and that the appeal is insufficient on its face. Alternatively, the City Board has filed a Motion for Summary Affirmance maintaining that its decision was not arbitrary, unreasonable, or illegal. The City Board asserts that it had legitimate concerns sufficient to deny the application as set forth in its rationale.

Imagine has submitted a response to the City Board’s Motion. This Board heard oral argument on April 24, 2006.

FACTUAL BACKGROUND

Ms. Eileen Bakke, on behalf of Imagine, submitted a charter school application on September 1, 2005. Imagine proposes to establish a Pre-K through 8th grade charter school program in Baltimore’s Belair-Edison neighborhood. It plans to enroll a total of 316 students in the first year in Pre-K through 4th grade, adding 5th grade in the second year and 6th grade in the 3rd year. Imagine plans to expand size and grade levels after the first year, subject to available facilities. It is designed to ultimately serve 500 students from Pre-K through 8th grade.

In its Opposition to the City Board’s Motion, Imagine describes itself in the following manner:

Imagine Belair distinguishes itself most through its core commitments to content, character, and community. In all that it does, Imagine Belair desires to be a place that is rooted in teaching solid content, directed toward the formation of sound character, and defined by a strong sense of community. It aims to build a solid, coherent foundation of learning on which its students can

stand and flourish. Through its focus on character as a holistic education involving the entire school, Imagine Belair will work to help its students grow to be people of integrity. Through the various forms of community that will be implemented (beginning with its academy approach), its goal is to foster genuine, trusting relationships between students, staff, families, and community members.

Imagine’s Opposition at p. 2.

Imagine’s application was initially reviewed by the Baltimore City Public School System (“BCPSS”) Charter Schools Advisory Board¹ (“Advisory Board”) and members of the BCPSS Office of New, Charter, and Community Schools. Laura Weeldreyer, Coordinator of New and Charter Schools for BCPSS, provided feedback to Ms. Bakke, sharing the Advisory Board’s questions, concerns, and requests for additional information. Affidavit of Laura Weeldreyer, ¶¶ 4 – 6. The Advisory Board had particular questions about Imagine’s curriculum; professional development; governing board and school management expertise; parent and community engagement; articles of incorporation, by-laws and certificate of good standing; budget; facility; waivers and proposed alternative policies; and enrollment and outreach plans and policies. *See* October 22, 2005 feedback document.

The Advisory Board met with and interviewed Imagine representatives on November 14, 2005. Ms. Bakke, Mr. Quinn Paek, Mr. Paul Faber, and two community residents represented Imagine. They responded to questions and concerns raised by the Advisory Board during its initial review of the application. The Advisory Board then asked the Imagine representatives a core set of questions asked of all charter school applicants during their interviews. The Advisory Board gave Imagine an average interview score of 20.5 out of a total possible 40 points. Affidavit of Laura Weeldreyer, ¶¶ 7 – 8.

The Advisory Board met again on November 15 to consider and score the overall proposals of Imagine and the other charter school applicants.² Of the 6 applications for new schools, the average combined scores for applications and interviews were 108.4, 107.2, 95.4, 87.2, 85.35, and 37.6. Imagine combined average score was 95.4. Affidavit of Laura Weeldreyer, ¶¶ 9 – 10.

¹The Advisory Board consists of 13 voting members, including school system staff and community foundation representatives, as well as non-voting school system staff members. Affidavit of Laura Weeldreyer, ¶ 4.

²The scoring rubric is published as an addendum to the Application for Establishment of a Charter School in Baltimore. *See* BCPSS Charter School Application.

Thereafter, the Advisory Board made recommendations to Dr. Bonnie Copeland, Chief Executive Officer (“CEO”). The Advisory Board recommended approval of the charter school applications for the 2 applicants who had a combined average score of 108.4 and 107.2. The Advisory Board recommended that the other applications, including Imagine’s, be rejected. Affidavit of Laura Weeldreyer, ¶ 10. Dr. Copeland made recommendations on the charter school applications to the City Board. She recommended that Imagine’s application be denied.

The City Board voted to deny Imagine’s charter school application at its board meeting on December 19. This decision was communicated to Imagine in an unsigned letter from Dr. Bonnie Copeland, dated December 20, 2005, which was e-mailed to Imagine on December 23, 2005. Thereafter, Imagine received a signed, hard copy of the letter, using slightly different wording, from Dr. Copeland dated December 28, 2005. Dr. Copeland states in her letter that she is “writing to inform [Imagine] of the Baltimore City Board of School Commissioner’s decision on December 19, 2005 to reject your charter application from further consideration.” The letter provides the rationale for the City Board’s rejection of the application and states the following specific concerns regarding the application:

- Lack of community involvement (or potential for community/parent involvement) and parental demand for your proposed school in what is a very organized and active community;
- Lack of an alternative facility plan (in the scenario that the Archdiocese does not agree to sell the Shrine of the Little Flower building to Imagine);
- Lack of a compelling educational vision, including curriculum plans that differed between the application and the interview;
- Refusal to submit a proposed budget based on actual BCPSS FY 2006 allocations, after specifically requested by school system staff; and
- Lack of clarity about the relationship between local non-profit LLC and national parent company, including the legal and financial relationship as well as ongoing roles and responsibilities for governing the school.

The State Board received Imagine’s appeal on January 30, 2006 via certified mail postmarked January 26, 2006.

STANDARD OF REVIEW

This case represents a challenge to the local board’s decision to deny Imagine’s charter school application. That decision is one “involving a local policy or a controversy and dispute regarding the rules and regulations of the local board.” As such, the standard of review is that the decision “shall be considered *prima facie* correct . . . [T]he State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal.” See COMAR 13A.01.05.05A; *Potomac Charter School v. Prince George’s County Board of Education*, Opinion No. 05-08. 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.01.05.05B(1) & (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.01.05C.

ANALYSIS

Motion to Dismiss

Sufficiency of Letter of Appeal to State Board

The City Board maintains that Imagine's appeal should be dismissed because its Letter of Appeal fails to set forth the necessary elements of an appeal as required by COMAR 13A.01.05.02A. Specifically, the City Board argues that the appeal does not contain the "issues or charges for which the appeal is being taken" or the "reasons in support of the appeal."

Imagine's Notice of Appeal explains that it is appealing the City Board's denial of its application to establish a charter school in Baltimore City. Attached to the Notice of Appeal is Dr. Copeland's letter explaining the basis for the City Board's denial. Imagine requests, among other things, that the State Board reverse the denial and approve its application.

Based on our review, it is our opinion that the appeal provides sufficient information to understand that Imagine disagrees with the City Board's rationale, believes that its charter school application sufficiently addressed those issues identified in Dr. Copeland's letter, and seeks reversal of the application denial on that basis. *See Carder and Parsons v. Garrett County Bd. of Educ.*, MSBE Opinion No. 05-03; *Hartman v. Washington County Bd. of Educ.*, MSBE Opinion No. 99-27. Nevertheless, even if Imagine's Notice of Appeal were flawed for failure to detail the rationale for the appeal, that flaw has been cured by the information contained in its Opposition to the City Board's Motion, to which the City Board has an opportunity to reply prior to oral argument in this case.

Untimeliness

The City Board also maintains that Imagine's appeal should be dismissed because it was untimely filed. COMAR 13A.01.05.02B(1) provides that an appeal to the State Board "shall be taken within 30 calendar days of the decision of the local board" and that the "30 days shall run from the later of the date of the order or the opinion reflecting the decision." An appeal is deemed transmitted within the limitations period if it has been delivered to the State Board or deposited in the United States mail, as registered or certified, before the expiration of the time period. COMAR 13A.01.05.02B(3). Time limitations are generally mandatory and will not be overlooked except in extraordinary circumstances such as fraud or lack of notice of the decree. *See Scott v. Board of Education of Prince George's County*, 3 Op. MSBE 139 (1983).

The issue here is which date triggers the start of the limitations period. The City Board's

written rationale of its decision in this case was conveyed to Imagine in a letter from Dr. Copeland, but there are two such letters. One letter is not on letterhead, is unsigned, is dated December 20, 2005, and was e-mailed to Ms. Bakke on December 23, 2005. The other letter, using slightly different wording, is on BCPSS letterhead, is signed by Dr. Copeland, dated December 28, 2005, and was sent to Ms. Bakke via the U.S. postal service.

It is our opinion that the December 28, 2005 letter is controlling date in this instance because it formally conveys the City Board's opinion reflecting the decision. Not only is the letter signed by Dr. Copeland and appears on BCPSS letterhead, but it is a different letter from the one dated December 20 and sent by e-mail on December 23. While the changes to the December 28 letter are not substantive, such changes make it obvious that the December 20 letter was merely a draft of Dr. Copeland's letter and not the final version. We conclude, therefore, that the appeal should have been filed with the State Board by January 27, 2006. Because the appeal was postmarked certified mail on January 26, 2006, we find the appeal was timely filed with the State Board. Thus, we recommend that the City Board's Motion to Dismiss be denied.

Preliminary Issues

Timeliness of City Board's Motion

Imagine argues that the City Board's Motion to Dismiss, or in the Alternative, Motion for Summary Affirmance, was untimely filed and should therefore be stricken. While Appellant correctly cites the deadline for a response under COMAR 13A.01.05.03A ("Within 20 days after a copy of the appeal has been sent, the respondent shall file an answer or motion"), it is quoted out of context. The time frame for a response does not begin to run until the State Board acknowledges receipt of the appeal in writing and sends a copy of the appeal to the local superintendent pursuant to COMAR 13A.01.05.02C. Read in its proper context, it is clear from the regulation that the State Board must first acknowledge receipt of the appeal before deadlines are set. *See Ryan H. v. Anne Arundel County Bd. of Educ.*, MSBE Opinion No. 06-08.

The State Board acknowledged receipt of the appeal and sent a copy of the appeal to the local superintendent on February 3, 2006. The City Board's response was not due until the State Board said it was due on February 27, 2006.³ *See* 2/3/6 memorandum from La Fiandra to Copeland and Williams. Moreover, the State Board or its designee may modify the time schedule for filing of pleadings upon timely notice to all parties. COMAR 13A.01.05.04E(3). Accordingly, we find that the City Board's Motion was timely filed.

Transmission of Transcript and Record

³Although the 20th day was February 23, the State Board allows 3 days for mailing. Because the last day of the time period would have been Sunday, February 26, the next day which is not a Saturday, Sunday, or State holiday was the ending day of the period. COMAR 13A.01.05.02B.

Imagine contends that the City Board has failed to transmit the record of proceedings in this case, as required by COMAR 13A.01.05.03E(1), making it impossible for the State Board to entertain the City Board's Motion to Dismiss, or in the Alternative, Motion for Summary Affirmance. Specifically, Imagine refers to the lack of transcript of the proceedings below from the "quasi-hearings" conducted by the Advisory Board. *See* Imagine's Opposition at p. 14.

Attached to its Motion, the City Board has submitted the BCPSS Charter School Application; Imagine's Charter School Application; the City Board's October 22, 2005 feedback document; the letters from Bonnie Copeland giving the City Board's rationale for its denial; the affidavits of Laura Weeldreyer⁴, David Stone⁵, and Douglas R. Kington⁶; materials submitted to the City Board to support the CEO's recommendations on the charter school applications which includes the membership of the Advisory Board, a summary of the 2005 application process, a summary of the charter school applicants, the scoring rubrics for the application and presentation, and Advisory Board scoring results.

Although COMAR 13A.01.05.03E(2) requires the filing of the stenographic record of an evidentiary hearing before the local board or its designee, no such evidentiary hearing took place and no transcript of any such proceedings exists. While Imagine refers to the interview before the Advisory Board as a "quasi-hearing", the interview does not rise to the level of an evidentiary hearing for which a transcript is required as contemplated by COMAR 13A.01.05.03E(2). We believe that there is sufficient documentation which constitutes the record below so that the State Board is able to render a decision in this case.

Due Process

Imagine argues that it was denied due process because there was no formal hearing at which it was given notice of a hearing and afforded the opportunity to present evidence or argument in support of its charter school application. This assertion presupposes that a charter school applicant is entitled to notice and an opportunity to be heard prior to a decision on the merits of the application. Such is not the case. As this Board has stated in *Potomac Charter School v. Prince George's County Board of Education*, Opinion No. 05-08. "There is no legal

⁴Ms. Weeldreyer is the Coordinator of New and Charter Schools for BCPSS. Her affidavit explains generally the charter school application review and interview review process, and the ultimate results reached by the Advisory Board and City Board on the charter school applications filed in 2005.

⁵Mr. Stone is the Director of the BCPSS Office of New, Charter, and Community Schools and is also a voting member of the Advisory Board. His affidavit explains the charter school application review and interview review process as it relates to Imagine's application.

⁶Mr. Kington is a member of the City Board. His affidavit gives reasons why the City Board was troubled by Imagine's application.

requirement that a charter school applicant be afforded a hearing prior to a decision on the merits of the application.” Opinion at 7, n. 7. The Maryland Charter School statute does not require a hearing, nor does any other State law.

Additionally, there is no constitutional due process right possessed by charter school applicants that would impose a hearing obligation on the local school system. *See Dr. Ben Carson Charter School, Denise Beck, and Independent Child Study Teams v. Harford County Bd. of Educ.*, MSBE Opinion No. 05-21 at 5. Imagine’s due process claim, therefore, lacks merit.

Affidavits

The City Board has attached the three affidavits described above in support of its Motion. Imagine maintains that these affidavits constitute inadmissible evidence which are post-decision recitations of the events that occurred and not the actual record.

COMAR 13A.01.05.03D requires that a Motion for Summary Affirmance contain any supporting documents, exhibits, and affidavits. These affidavits, which Imagine opposes, are attached to the City Board’s Motion in support thereof. The affiants have signed the affidavits under penalties of perjury and upon personal knowledge of the affidavit contents. A review of these affidavits fails to disclose inadmissible matters.

Motion for Summary Affirmance

Imagine argues that each of the reasons for the denial of its charter school application as set forth in Dr. Copeland’s letter are refuted by Imagine’s application, and therefore, there is a dispute of material fact which would preclude “summary” affirmance in this case. Imagine maintains that the determination of whether the City Board’s decision was arbitrary, unreasonable or illegal can only be made by the State Board after review of Imagine’s application in its entirety.

On this appeal, the State Board does indeed review the whole record, including Imagine’s application. This Board makes its decision based on that record to affirm, reverse, or if there is a need for further consideration of the facts, to remand the case. Imagine’s position, that disputes of material fact remain because it has “refuted” the reasons for denial of the application, is incorrect. The relevant, material facts of this case are contained in the record and are what they are. Legal conclusions to be drawn from those facts may be in dispute, but that does not preclude “summary” affirmance, if appropriate, in this case.

Substance

1. *Community Involvement and Parental Demand for School*

The City Board found that Imagine’s application failed to demonstrate community

involvement and parental demand for the school in a very organized and active community. Specifically, the City Board concluded that the application failed to demonstrate “significant demand among parents for the proposed school” and a “continuing plan for broad outreach and recruitment, including to families traditionally less informed about options.” *See* BCPSS Charter School Application at p.7, Section IV(A). The City Board also found that Imagine failed to provide endorsements from community or neighborhood associations and failed to adequately provide information about community outreach and the desire for a charter school in the Belair-Edison neighborhood.

Imagine explains that full local community involvement at the application stage was not feasible because Imagine was unable to promise parents and the community that it would be able to provide educational services given what it perceived as resistance to charter schools by the City Board. Imagine also maintains that it undertook community efforts which were not a part of its application but which were later communicated to the Advisory Board. Imagine does not provide any detail to this Board about these additional community efforts. *See* Affidavit of Paul Faber, ¶ 15.

The issue of community partnerships is addressed in Section II.B of Imagine’s application to establish a charter school. The application sets forth general ideas for engaging the community, such as presentations at neighborhood association meetings, delivering information door to door or by mass mailing, and working with partners to reach the Hispanic population, but does not elaborate on these generalities. Imagine also states that its founding committee members are in the process of working to establish partnerships within the community and are in the process of meeting with parents and local leaders to solicit their support. There is no detail provided about community partnerships or support except for nine letters included in Appendix D. A review of the letters reveals the following:

- One letter is to the Archbishop of Baltimore from Belair-Edison Neighborhoods, and signed by several residents of the Belair-Edison area, expressing their desire to have the Shrine of the Little Flower School building continue to be used as a school. This letter does not purport to support Imagine specifically. Rather, it asks the Archbishop to review the several proposals for use of the building and “decide in favor of the school with the most solid proposal and community backing.”
- One letter of support from the principal of Patterson Park Public Charter School which is run by the same parent company as Imagine.
- Six of the letters are identical letters from individuals expressing their support for Imagine’s vision for a charter school campus in Northeast Baltimore City. There is no explanation of who these individuals are or if they have children who would attend such a school.

- One letter is from a Baltimore City physician who supports the concept of charter schools in Baltimore City. The letter does not specifically support Imagine.

The City Board indicates that Imagine brought two community residents to the interview, but that neither of them endorsed Imagine and appeared to be there to generally support the concept of a new public school for their neighborhood. *See* Affidavit of David Stone, ¶ 7.

Based on our review of the record in this case, we do not see the necessary evidence of community support or demand for Imagine's proposed school. While we recognize that Imagine was not in a position to execute final partnering agreements, at the very least, we would expect to see a list of organizations with which it intends to partner and letters of support from those organizations. *See* BCPSS Charter School Application. In addition, Imagine has set forth general ideas about promoting the school and recruiting students, but has provided no detail about its plans. In sum, the record contains little information about community outreach and community desire and support for the school.

2. *Submission of Proposed Budget*

As one basis for denying Imagine's application, the City Board cited Imagine's failure to submit a revised budget in line with the current per pupil allocation provided to the twelve current BCPSS charter schools, as requested by the Advisory Board in its feedback. While Imagine had submitted a budget based on revenue amounts it believes it is entitled to receive based on the State Board's ruling in *Patterson Park Public Charter School, Inc. v. Baltimore City Bd. of Sch. Comm'rs, et al.*, MSBE Opinion No. 05-19, the Advisory Board requested the revised budget given that the case was on appeal before the Maryland Court of Special Appeals. Based on Imagine's failure to submit a revised budget, the City Board maintains that it was unable to evaluate the economic viability of Imagine's plan of operation. Moreover, the City Board maintains that Imagine stated during the interview that it would be unable to run the proposed school on the current funding allocation. *See* Affidavit of David Stone, ¶ 8.

The BCPSS Charter School Application does not specifically ask for a budget based on any specific per pupil figure. Consequently, as part of its application, Imagine submitted a budget based on a per pupil figure that was consistent with the State Board's decisions on funding. It is our opinion that it was appropriate that Imagine submitted a budget that it believes reflects its program needs.

3. *Relationship Between the Local Non-Profit and the National Parent Company*

The City Board cited lack of clarity regarding the relationship between the local school level non-profit, Imagine-Baltimore, LLC and the national parent company as a basis for denial of Imagine's application. According to its application, Imagine would be partnered with the Imagine Schools Non-Profit, Inc. of Arlington, Virginia, a national non-profit organization that

operates public charter schools. As part of its feedback to Imagine, the Advisory Board requested that Imagine provide a detailed description of the relationship between the national non-profit organization and the local governing board. During the interview, the Advisory Board did not find the clarity it was seeking regarding this relationship. This lack of clarity about the relationship raised the Advisory Board's concerns about Imagine's capacity to operate the school.

Based on a review of Imagine's application, there appears to be an understandable structure in place between the local and national companies. Essentially, the school level non-profit will partner with the parent company for services such as advising the school on operational issues, providing resources, and monitoring the school. This structure is similar to the one in place at Patterson Park Charter School which is run by the same parent company, Imagine Schools Non-Profit, Inc. Thus, we conclude that there is no reasonable basis for the Advisory Board's concerns on this point.

4. *Educational Vision and Curriculum Plan*

The City Board stated that Imagine lacked a compelling educational vision. Its curriculum plans differed between the application and the interview. In the written application, Imagine stated it would be using the Imagine Schools Standards Based Curriculum and Core Knowledge. During the interview, Imagine stated it would be using Houghton Mifflin's Open Court without giving any basis for the change. The City Board also maintains that Imagine did not provide any evidence that it used BCPSS data to customize its package to the population it would be teaching and failed to align its goals and objectives with the BCPSS Master Plan. *See* Affidavit of David Stone, ¶¶ 5, 6.

Imagine disagrees with the City Board's conclusions. Imagine explains that the proposed use of the Houghton Mifflin's Open Court Curriculum as its reading program was in response to the Advisory Board's request for more information. It was not a change from using the Imagine School's Standards Based Curriculum and Core Knowledge, but was a reading program component which was an addition to the information previously given to the Advisory Board. Affidavit of Paul Faber, ¶ 16. Imagine also maintains that it utilized BCPSS data and considered the student demographics of the Belair-Edison community, as well as the BCPSS Master Plan, in preparing its application. Affidavit of Paul Faber, ¶¶ 11, 12.

We requested MSDE's Office of Curriculum and Instruction staff to review Imagine's proposed curriculum. While MSDE staff believes this application has one of the strongest curricular components of all the charter school applications it has reviewed, staff found some missing key alignment components in the following content areas: reading, math, social studies and science. Nevertheless, although there may be some problems with curriculum alignment, staff believes that with feedback from MSDE's Office of Curriculum and Instruction, Imagine could further align its curriculum with the VSC.

5. *Alternate Facility Plan*

The City Board cited Imagine's lack of an alternate facility plan as a basis for denial of its application. At the time of its written application, Imagine intended to use a closed parochial school in Baltimore, the Shrine of the Little Flower, to house its public charter school. As part of its feedback to Imagine, the Advisory Board requested updated information at the interview with regard to location of the school, including whether it had an alternative plan in the event that its acquisition of the space fell through. *See* 10/22/05 Feedback Document. The Advisory Board requested the alternative plan even though the BCPSS Charter School Application does not request applicants to list alternative arrangements if a charter school facility has been identified. *See* BCPSS Charter School Application at p. 10. At the time of the interview, Imagine was unable to confirm acquisition of the facility and did not identify any alternate locations. *See* Affidavit of David Stone, ¶ 13.

Imagine states that it now has a commitment for the lease of the facility at Shrine of the Little Flower from Schoolhouse Finance, L.L.C., which has the site under contract from the Baltimore Archdiocese. *See* Affidavit of Paul Faber, ¶ 20.

The Charter School Application Evaluation Process

During oral argument, we asked probing questions about the process that BCPSS uses to evaluate Charter School applicants. In that process, there is both a somewhat objective scoring mechanism and a subjective judgment analysis that results in a recommendation to approve or deny the application. Imagine argued that the evaluation process was not well explained and thus, the applicant did not know what to expect. BCPSS argued that the evaluation process was comprehensive and could not and should not be reduced to numerical scoring and cut-off scores. We note, however, that all applications receive a total numerical score and that only those over 100 were approved.

We encourage BCPSS, as we have other school systems, *see Potomac Charter School v. Prince George's County Board of Education*, Op. No. 05-08 (3/11/05), to develop clear guidelines for the evaluation process, to explain the process to all applicants, and to make the process as consistent and transparent as possible. If a numerical scoring system is being used, the point system should be clearly explained to the applicant. Moreover, we reiterate the importance of consistency and fairness in the total evaluation process.

CONCLUSION

After considering the record in this case and after hearing oral argument, we conclude that several of the initial concerns about this application have been resolved or are not significant barriers. We note that Imagine now has a facility and that the curriculum and parent company issues are not insurmountable barriers. There remains the evidence of community involvement and the budget. At the oral argument, counsel for BCPSS stated that BCPSS was willing to reconsider the application. Therefore, for all the reasons stated, we remand this case to BCPSS

for further consideration and action.

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