

IMAGINE-FOUNDATIONS PUBLIC
CHARTER SCHOOL,

Appellants

v.

PRINCE GEORGE'S COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 06-26

OPINION

This appeal was filed by Imagine-Foundations Public Charter School ("Imagine-Foundations") challenging the decision of the Prince George's County Board of Education ("local board") to deny it the opportunity to open for the 2006-2007 school year. The local board has filed a Motion for Summary Affirmance, arguing that its decision was not arbitrary, unreasonable or illegal. Imagine-Foundations has filed a Reply, to which the local board has filed a Response. Oral Argument was held on July 18, 2006.

FACTUAL BACKGROUND

On September 9, 2005, Imagine-Foundations submitted its application to the local board to operate a charter school in Prince George's County. On December 15, 2005, following the school system's review process and upon the recommendation of former Interim Chief Executive Officer, Howard A. Burnett, the local board granted conditional approval of Imagine-Foundations' application, "subject to certain conditions being addressed through the negotiation process." (Local Board Motion at 4; and Exh. 2, Minutes of Executive Session on 12/15/05.)

On December 20, 2005, Imagine-Foundations was notified of the local board's conditional approval in a letter from Scott Hangey, Director of the Department of Strategic Partnerships and New School Development. (Local Board Motion, Exh. 3.) Mr. Hangey's responsibilities included overseeing and managing the development and opening of all new public schools in the county, including charter schools. In this letter, Mr. Hangey extended an invitation for Imagine-Foundations to meet with the negotiating team of the school system in order to decide upon mutually acceptable terms and conclude negotiations, hopefully, within 60 days. (*Id.*)

In mid-January, the parties began to negotiate the substance of the charter school contract, which had to be approved in final form by the local board before Imagine-Foundations could open in fall 2006. (Appeal, Exh. D.) On February 16, 2006, Imagine-Foundations expressed

concern to the school system regarding the contract language involving risk management and insurance coverage.¹ (*Id.*)

On February 22, Mr. Hangey distributed a draft Timeline document via email to all charter schools whose applications had been conditionally approved by the local board. (Local Board Motion, Exh. 4.) Mr. Hangey stated that he anticipated that a finalized version would be distributed the following Tuesday, but that “[r]ather than delaying your receipt of this document, I am sending you a DRAFT so that you can have a perspective on the opening process.” (*Id.*, emphasis in original.) A final version of the Timeline document was distributed on March 9. (Appeal, Exh. D.) The local board describes the purpose of the Timeline document as follows:

This Timeline document was developed by the school system and intended to be used by the school system and the charter applicants to manage and facilitate opening for all charter schools in the County. The activity items in the Timeline document covered all areas for opening of charter schools, including, but not limited to, facilities, budget submission, educational specifications, student enrollment, assignment and lottery process, charter school staffing, technology requirements, and creation of website information for charter schools opening for the 2006-2007 school year.

(Local Board Motion at p. 26.) Indeed, the Timeline document sets forth 161 tasks that the school system has decided are required to be completed by a certain date in order to open a charter school.

On March 14, the parties met and the school system asked Imagine-Foundations to accept the proposed final contract language, which would be forwarded for review and approval by the local board. (Appeal, Exh. D.) Imagine-Foundations declined because of its concerns regarding the contract language involving risk management and insurance coverage. (*Id.*; Local Board Motion at 6-7.) The school system advised Imagine-Foundations that it would present all other charter school contracts to the local board for review and approval for opening the 2006-2007 school year. At the March 23 local board meeting, the local board accepted and approved the school system’s recommendation to approve the charter school contracts for all other charter school applicants. (Local Board Motion at 6-7.)

After the March 23 meeting, the school system continued to meet with Imagine-Foundations. On April 11, 12 and 24, Imagine-Foundations inquired if its contract and the

¹ In particular, Imagine-Foundations did not want to be bound by the requirement that it “shall not compromise, settle, negotiate or otherwise effect any disposition of potential claims asserted against it without the School System’s prior written approval.” (Local Board Motion, Exh. 5, Template Contract Agreement, ¶ 23.) Imagine-Foundations wanted the school system to provide an exception in those instances where the claims would not be defended, covered or indemnified under the school system’s Risk Management Funds and Bylaws and Procedures. (Local Board Motion at 8; Notice of Appeal, Exh. D.)

Lincoln Public Charter School contract² would be placed before the local board for approval. (Appeal, Exh. D.)

On April 28, Roger Thomas, legal counsel for the school system, verbally advised Imagine-Foundations that the school system did not anticipate being in position to present the contracts for approval at the next local board meeting. (Local Board Motion at 9; Appeal, Exh. D.) Imagine-Foundations states that, on this call, when asked about the status of the insurance language that had held up the contract, Mr. Thomas' response was "oh, that part is OK." (Appeal, Exh. D.) However, no final contract language was accepted or approved after this call. *Id.*

Also on April 28, Imagine-Foundations requested the opportunity to meet with the school system to demonstrate its progress on the Timeline tasks and its ability to meet further Timeline requirements. (Appeal, Exh. D.) The parties met on May 4, and additional information was requested by Mr. Hangey, and provided, by May 10. (Local Board Motion, Exhs. 9, 10; Appeal, Exh. D.)

Following this meeting and review of all the documentation submitted by Imagine-Foundations, Mr. Hangey compared the activity items required under the Timeline document, the due dates and status of each item. In addition to the fact that the charter school contract had not been finalized and approved by the local board, Mr. Hangey determined that 22 of the 28 tasks required to be completed by May 4 had not been completed or begun by Imagine-Foundations. (Local Board Motion at 11- 16; Hangey Affidavit at 8-12.) Imagine-Foundations argues, however, that it had in fact completed or begun 11 of those 22 tasks identified by Mr. Hangey. (Reply at 12-14.)

Mr. Hangey further determined that 18 of the 22 additional tasks to be completed by June 1 were not or could not be completed by Imagine-Foundations. (Local Board Motion at 16-19; Hangey Affidavit at 13-16.)

Based on these observations, the school system determined that Imagine-Foundations would not be prepared to make a successful opening for the start of the 2006-2007 school year. Imagine-Foundations challenges this conclusion and asserts that it is capable of opening for the 2006-2007 school year. (Appeal at 2-3.)

The school system notified Imagine-Foundations by letter on May 12 that it would not present a recommendation to the local board for contract approval to open for the 2006-2007

² The charter school agreements for Imagine-Foundations and Lincoln Public Charter School were negotiated at the same time, between the same parties. It is not clear whether the two schools are owned by the same company, but they are both represented by Richard Daniels, Esq., and Paul Faber negotiated for both with the school system. (*See, e.g.*, Appeal, Exh. D; Local Board Motion, Exhs. 7, 8.) Despite Imagine-Foundations' repeated references in its Appeal and Reply to the school system's treatment of it and Lincoln, the local board correctly asserts in its Motion that the only issues before the State Board are those involving the Imagine-Foundations appeal. (Local Board Motion at 8, n.2.) The State Board is scheduled to review and hear oral argument on the Lincoln appeal at its August meeting.

school year. (Local Board Motion, Exh. 12.) At its May 18 meeting, the local board accepted the school system's recommendation by adopting Resolution #9, which states in part:

[T]he Board of Education of Prince George's County hereby ... agrees that a contract will not be approved for the Imagine and Lincoln Public Charter Schools to open for the 2006-2007 school year because of the requirements of the timeline document and the management process to ensure successful opening, but they will be invited and encouraged to participate for the 2007-2008 school year in accordance with the approved timelines for program implementation.

(Local Board Motion, Exh. 13.) Imagine-Foundations was notified of the local board's decision by letter on May 26, 2006. (Local Board Motion, Exh. 14.)

This appeal followed to the State Board, accompanied with Imagine-Foundations' request for an expedited review. Imagine-Foundations requests that the State Board reverse the local board's decision, approve its application to open in fall 2006, and mediate with the local board to implement the charter for the fall 2006 opening. Alternatively, Imagine-Foundations requests that the State Board become the Second Chartering Authority.

The local board has filed a Motion for Summary Affirmance arguing that its decision was not arbitrary, unreasonable or illegal. Alternatively, because of the factual disputes concerning Imagine-Foundations' readiness to open in the fall, the local board requested that the State Board transfer the appeal for an evidentiary hearing before an administrative law judge with the Office of Administrative Hearings.

Oral argument on the issues was held on July 18, 2006. On July 27, 2006, counsel for Imagine-Foundations wrote to the Board and explained that Imagine-Foundations had lost the lease on its proposed facility and, therefore, would not be able to open in the fall of 2006. Imagine-Foundations requested amended relief that, "subject to facility approval, the County Board be ordered to enter into a charter agreement at the present time for Imagine-Foundations to open for the 2007-2008 school year." (See attached letter).

STANDARD OF REVIEW

This case involves a challenge to the local board's decision to deny approval for Imagine-Foundations to open its charter school for the 2006-2007 school year. It is appealable pursuant to Maryland Code Annotated, Education Article §9-104(b). The decision is one "involving a local policy or a controversy and dispute regarding the rules and regulations of the local board." COMAR 13A.01.05.05(A). 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." *Id.*; *Potomac Charter School v. Prince George's County Board of Education*, MSBE Opinion No. 05-08 (Mar. 11, 2005).

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; misconstrues the law; results from unlawful procedures; is an abuse of discretion; or is affected by errors of law. COMAR 13A.01.05.05(C).

ANALYSIS

Mootness

Imagine-Foundations has abandoned its position that it can open in the fall of 2006. That was the remedy they requested in this case and the basis for their request for expedited review. The local board decided that Imagine-Foundations was not prepared to open in the fall of 2006. When it decided not to enter into a charter agreement with Imagine-Foundations, it invited them to participate in the 2007-2008 school year approval process. Because the controversy about the 2006-2007 opening no longer exists, the mootness doctrine would usually apply, and the case would be dismissed.

In our view, however, this is not the usual case. The charter school approval process is a long one. If an applicant is disapproved, by the time the issues are ready for argument on appeal, the new school year is looming. If this Board were to reverse a local board’s disapproval decision, time is short for contract negotiation and for the charter school to prepare to open.

It is not only the Board’s difficulty in conducting timely review, it is also that the issues presented in this case occur frequently. As the Court of Special Appeals has stated, “if the matter involved is likely to recur frequently and its recurrence will involve a relationship between the government and its citizens, or a duty of government and upon any recurrence, the same difficulty . . . is likely again to prevent a [timely] decision,” there is justification for deciding the issues raised by a question which has become moot. *Alberts v. Department of Health and Mental Hygiene*, 166 Md. App. 726, 744 (2006). In addition, the Court of Special Appeals has explained that when it is important to establish rules for future conduct in a case, the mootness doctrine need not be applied. *Id.* We are particularly concerned that there will be delays in the upcoming 2007-2008 review process which will again cause this charter school agreement to be as unapprovable as it is today. Therefore, for all those reasons, it is our view that this case remains ripe for review. We address the issues below.

Substantive Issues

The gravamen of Imagine-Foundations’s appeal is that the contract negotiation/approval process was so flawed that the resulting decision of the local board was arbitrary, unreasonable or illegal. We agree.

Since 2003, when the Public Charter School statute was enacted, this Board has heard at least twelve appeals - - 10 of which have involved challenges to the processes that the various school systems have used either to approve the application or to negotiate the final charter school

agreement. We take this opportunity, therefore, to review some of the principles announced in those cases.

First, this Board has explained that there is a two-step chartering process. At the first step, the school system examines all aspects of the applicant's program and operation. If the application is approvable, the second step is the completion of a charter agreement that explains in detail the responsibilities of all parties involved in the operation of the public charter school. *See, e.g., Lincoln Charter Public School v. Prince Georges' County Board of Education*, MSBE Opinion No. 05-18 (Revised).

This Board has explained that school systems by statute have 120 days to issue a final local board decision on the charter school application. That statutory requirement for a timely decision at the first step of the process does not mean, however, that the second stop of the process - - approving the charter agreement - - can proceed at a leisurely pace. Indeed, this Board has stated that charter agreements "must be completed within 30 calendar days from the date of the decision approving the charter application." *Id.* at 5.

To accomplish that task within 30 days requires that the 120 day application review process be thorough and complete. This Board advised school systems early on that "[t]he thoroughness of the application process should pave the way for the incorporation of the approved application into the body of the charter school agreement with the need for minimal negotiation in completing the charter agreement." *Id.* at 5.

That holding remains particularly appropriate today, three years into the charter school approval process. This case demonstrates why.

First, during the application approval process, which occurred from September 9, 2005 to December 15, 2005, the applicants did not receive full and complete information. They were not given the school system's proposed contract language or the Timeline for opening a charter school. Both of those documents elucidate the school system's expectations for finalizing the charter agreement in order for a charter school to open. It is our opinion that applicants should have had both documents provided to them as part of the application package in order to be fully informed of the schools system's expectations.

We point out particularly that the Timeline was not given to the approved applicants until February 22, 2006. Further, that document was merely a draft which was not finalized until March 9, 2006. The deadline for meeting the first task on the Timeline was February 24, 2006.

Consistently, this Board has encouraged school systems to make the charter school application and approval process as fair and transparent as possible. *See Imagine Belair Edison Charter School v. Baltimore City Board of School Commissioners*, MSBE Opinion No. 06-16; *Potomac Charter School v. Prince George's County Board of Education*, MSBE Opinion No. 05-08. Full and timely disclosure of all expectations, including proposed contract language, will go a long way to achieving that goal.

The proposed contract language was of particular importance in this case because a final contract would be required for Imagine-Foundations to comply with most of the Timeline tasks. We note that on March 14, 2006, the school system asked Imagine-Foundations to accept the proposed final contract language for presentation to the Board on March 23, 2006. (Appeal Exh. D).

This Board has recently stated that school systems should negotiate contract provisions fairly. "They should not be presented as an edict under which the charter school must live without complaint." *Monocacy Montessori Communities, Inc. v. Frederick County Board of Education*, MSBE Opinion 06-17. In this case, the contract language appears to have been presented as an edict. When Imagine-Foundations declined to accept the contract "as is" because it had proposed changes in the insurance clause language, the school system advised Imagine-Foundations that its contract would not be presented at the March 23, 2006 meeting of the local board.

Negotiations over an insurance clause in the proposed contract caused a major delay in the process. It was not until April 28, 2006 that the school system informed Imagine-Foundations that the insurance language that Imagine-Foundations originally proposed was acceptable to the school system - - four months after Imagine-Foundations charter school application was conditionally approved. Yet, even the agreement on the contract language did not lead to a recommendation to the local board for final contract approval.

We reiterate, this Board has often stated that the negotiations process must be a fair one. Here, weeks after the local board's approval of other charter school contracts at its March 23, 2006 meeting, the school system advised Imagine-Foundations that it "did not anticipate" making additional recommendations to the local board for final contract approvals to open in the fall. It appears, therefore, that the school system set March 23, 2006 as the deadline by which a contract needed to have been presented to the local board.

However, this deadline was never clearly communicated to Imagine-Foundations. Moreover, the school system continued to negotiate and meet with Imagine-Foundations as late as early May regarding the charter school agreement and Imagine-Foundations' progress on the Timeline tasks. The school system asserted that Imagine-Foundations should have known that its contract would not be approved for a fall opening since it was not presented with the other charter school applicants at the March 23, 2006 meeting. We find this rationale unpersuasive.

It is our opinion that deadlines for action are important to move a process forward. A deadline must be announced, however, if it is to be useful and enforceable. The school system did not announce a specific deadline by which a contract must have been finally negotiated and approved by the local board in order for the charter school to proceed to opening; yet it enforced such a deadline. This, too, we find was a serious flaw in the process.

The failure to provide the critical information to applicants at the first step of the approval process and the failure to announce a critical deadline at the second step leads us to conclude that the flaws in the approval process resulted in an arbitrary and illegal decision by the local board. That decision was an abuse of discretion and contrary to sound educational policy.

We recognize that Imagine-Foundations has now requested this Board to order the local board to enter into a charter agreement now for the 2007-2008 school year. *See* attached letter. It is, however, the local board that has access to and can evaluate progress on all the tasks necessary to open a charter school. Imagine-Foundations, however, should not be required to start at step one of the process.

In this case, Imagine-Foundations has passed step one of the process and received conditional approval. In step two, the local board and the school system staff must develop a reasonable set of actions that Imagine-Foundations must accomplish, including facility approval, within a reasonable time period so that opening the school in the fall of 2007 is doable. We believe it would be reasonable, if the local board is satisfied with Imagine-Foundations performance, that the local board would sign a final charter agreement by November 30, 2006. That gives the parties three months to resolve their issues. We expect that they will do so amicably and expeditiously. If, however, the local board decides not to sign a charter agreement with Imagine-Foundations, the November 30, 2006 date provides sufficient time for appeal.

CONCLUSION

Based on the evidence presented, we reverse the local board's decision and remand this case to the local board for an expedited review to decide by November 30, 2006 whether Imagine-Foundations can manage a timely charter school opening for the 2007-2008 school year.



Edward L. Root
President



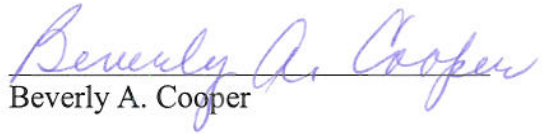
Dunbar Brooks
Vice President

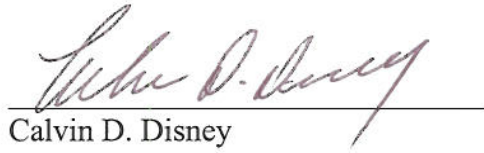


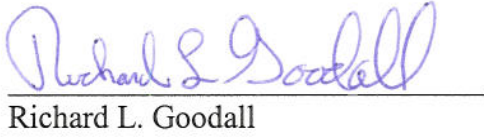
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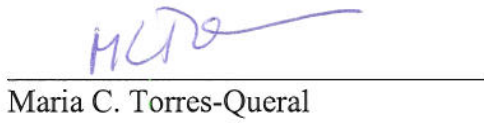
J. Henry Butta



Beverly A. Cooper

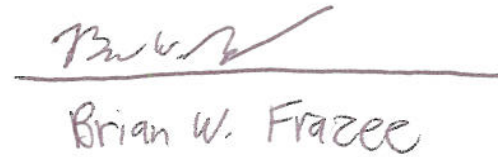

Calvin D. Disney


Richard L. Goodall


Karabelle Pizzigati

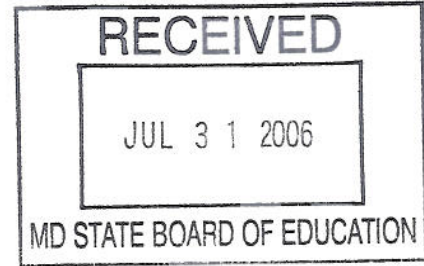

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July 27, 2006

VIA FAX 410-576-6309 and USPS

Dr. Edward L. Root, President
Maryland State Board of Education
200 West Baltimore Street
Baltimore, Maryland 21201

Re: *Imagine Foundations Public Charter School*

Dear Dr. Root:

I am writing in response to an issue raised at the hearing before the State Board on July 18, 2006, with respect to Imagine Foundations Public Charter School's ("Imagine Foundations") facility.

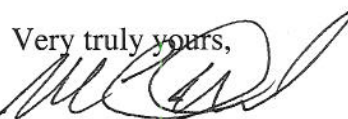
Imagine Foundations had negotiated terms of a lease with a potential landlord for premises located at 6251 Ammendale Road, Beltsville, Maryland. Imagine Foundations had not executed a lease with the landlord because it had not yet had its charter agreement approved and was unable to commit to its use of the facility. On July 14, 2006, another public charter school entered into a lease with the landlord for the same facility. The landlord had been made aware by someone that Imagine Foundations' charter agreement had not been approved and accordingly leased the premises to someone else. Imagine Foundations was unaware of the loss of its proposed facility until after the hearing on July 18, 2006.

The failure of the County Board to approve the charter agreement on a timely basis resulted in Imagine Foundations losing the opportunity to lease the facility.

Consequently, Imagine Foundations will not be in a position to open for the 2006-2007 school year. However, given its continuing problems with the County Board, Imagine Foundations does not want to find itself in this same position next year. Therefore, Imagine Foundations is amending the relief it has requested to request that, subject to facility approval, the County Board be ordered to enter into a charter agreement **at the present time** for Imagine Foundations to open for the 2007-2008 school year.

Dr. Edward L. Root, President
July 27, 2006
Page 2

Thanking you for your kind consideration of this request, I remain

Very truly yours,


Richard C. Daniels

RCD:kml

cc: Roger Thomas, Esq.
Andrew W. Nussbaum, Esq.
Imagine Foundations Public Charter School