

DR. BEN CARSON PUBLIC
CHARTER PUBLIC SCHOOL, INC,

Appellant

v.

HARFORD COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Opinion No. 06-29

OPINION

INTRODUCTION

On June 20, 2006, Dr. Ben Carson Public Charter School (DBCPCS) appealed the May 22, 2006 decision of the Harford County Board of Education (local board) denying the charter school application. The local board filed an Answer and a Motion for Summary Affirmance or to Dismiss. The charter school filed a response. Oral argument was heard on August 29, 2006.

FACTUAL BACKGROUND

The Dr. Ben Carson Public Charter School, Inc., is a non-profit corporation incorporated in Maryland on August 12, 2005. On September 26, 2005, DBCPCS submitted its Public Charter School Application to the Harford County Board of Education. At the time that application was submitted, Denise Beck was the CEO, Designee. On October 13, 2005, during the technical review stage by the local school system, Ms. Beck tendered her resignation as CEO. She stated in her letter of resignation that she also was resigning from the Board of Trustees.¹ Ms. Beck's stated reasons for resigning were personal. Approximately six weeks later, Ms. Beck attempted to rescind her resignation, but the Board of Trustees declined to take action on her request to resume her position as CEO, Designee.

The DBCPCS Board of Trustees undertook to complete the technical review portion of the application process. At January 23, 2006 Harford County School Board Meeting, DBCPCS was on the agenda for conditional approval. (See Exhibit 3).

DBCPCS asserts that, prior to the January 23, 2006 meeting of the local board, Ms. Beck set about a pattern of conduct designed to frustrate the efforts of DBCPCS to obtain the charter. (Appeal ¶ 6). They allege that Ms. Beck refused to turn over corporate documents, charter school

¹The charter school asserts that Ms. Beck was never a member of the Board. (Appeal ¶ 4). The local board asserts that the revised application submitted on April 15, 2006 listed Ms. Beck as a director. (Motion at 10, Application p. 51).

mail, and property purchased with the MSDE Pre-Planning Grant funds. They allege that she held herself out as a representative of DBCPCS when she was not. They further allege that she threatened a number of actions that would “prevent the school from happening and make things difficult” for the Board President, Charles Hill. (Appeal ¶¶ 9-11).

Against that backdrop, and prior to the January 23rd meeting of the local board, the DBCPCS Board of Trustees filed a request for a Temporary Injunctive Order in Harford County Circuit Court. (Local Board Ex. 2). The Court granted some of the requested relief sufficient to allow that Board to advise those with whom the Board was dealing that Ms. Beck was no longer associated with the school. (Local Board Ex. 3, p. 36). The Board of Trustees did not pursue further and more permanent injunctive relief against Ms. Beck. They failed to appear at the hearing for further relief and their case was dismissed.

Also, prior to the January 23, 2006 meeting of the local board, Ms. Beck’s attorney wrote to the DBCPCS and the Harford County Board of Education claiming copyright in the application for the charter and threatening legal action to enjoin its use for any purpose. (Local Board Ex. 4). As a result, based on concern about the copyright and the legal relationship of Ms. Beck to the charter school, the Superintendent reversed her decision to recommend provisional approval of the charter application. (Local Board Ex. 5).

The representatives of DBCPCS appeared before the local board on the evening of the 23rd and were able to convince the local board to allow the withdrawal of the application for resubmission prior to May 1, 2006 so that several specific issues enumerated by the Superintendent could be addressed. The minutes of the January 23, 2006 local board meeting reflect the Superintendent’s concerns. They state:

Dr. Haas concurred that the [DBCPCS] tried to give HCPS information; met on regular basis; established a good relationship and these people are committed to what they are doing. She met with all people mentioned. Dr. Haas indicated that in the report board members would see outlined some things that need to be done, e.g., cleaning up of the application to revise so that confusion about participation is clear. She also believed the group needed to confirm with Ben Carson that they have the sole authority to use this name. The Superintendent requested the board extend the application; based on changes she recommended and by mutual agreement between them and the Board of Education wait until May 1 to see if they can comply with items set forth this evening. The Superintendent stated they would work with the State Department of Education to see if they can review grant funds to make sure everything is clean even if they can’t do a complete and formal audit.

(Local Board Ex. 6, p. 6 F).

From February 2006 until May 2006, DBCPCS re-worked its application, (Local Board Ex. 8); got a support letter from Dr. Ben Carson (Appeal, Ex. 6); obtained a good report from MSDE on the status of the charter school application and on the supporting documentation of invoices submitted to MSDE (Appeal, Ex. 7); hired counsel to deal with the copyright issues (Appeal, Ex. 8); and resubmitted its application on May 1, 2006 for approval on at the May 22, 2006 meeting of the local board.

Prior to the May 22, 2006 meeting, however, Ms. Beck sent three letters to Superintendent Haas. The first alleged copyright infringement; “highjacking” of her work; misuse of grant funds; and a variety of other charges against Charles Hill, President of the DBCPCS Board. (Local Board Ex. 8). The second alleged trademark infringement on the name of Dr. Ben Carson. (Local Board Ex. 9). The third concerned the non-profit status of DBCPCS. (Local Board Ex. 10).

Considering all the facts and allegations, the Superintendent recommended that the local board deny the application. She explained her reasons in a detailed Informational Report. It covered the litigation between the parties, the intellectual property disputes, and Beck’s allegations about the misuse of grant funds. She also explained her concerns about the DBCPCS budget and their facility plan. She concluded that the application should be denied for the following reasons:

1. The litigation and unresolved status of the issues raised therein.
2. The unresolved claims regarding intellectual property raised by Ms. Beck.
3. The unresolved status of the use and control of MSDE Grant Funds.
4. An incomplete proposed budget and “their expectations in the number of staff positions and contracted consultants are not aligned.”
5. Lack of a facility plan.

(Informational Report, attached to Answer to Appeal).

The local board, after discussion, voted to accept the Superintendent’s recommendation for all the reasons she gave. (Minutes, attached to Answer to Appeal). This appeal ensued.

STANDARD OF REVIEW

This case represents a challenge to the local board’s decision to deny a 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 judgement for that of the local board unless the decision is arbitrary, unreasonable, or illegal.” See COMAR 13A.01.05.05(A); *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.01.05.05(B)(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.01.05(C).

ANALYSIS

The facts set the stage and describe the climate in which a nascent charter school would open if it were to be approved. DBCPCS argues that because Ms. Beck’s claims are frivolous and the charter school board had done everything it was asked to do in January 2006 to make the application approvable, it can and should be allowed to open. DBCPCS also argues that the approval process was flawed because the local board did not entertain much discussion or debate on the issues at the May 22, 2006 meeting.² (Appeal, pp. 10-13). In our view, those arguments are not persuasive.

The local board recognized that in going forward to open a charter school . . . “everyone needs to be in sync and focused on how to get there.” (Minutes of May 23, 2006 meeting at p. 15, attached to Answer to Appeal). That is certainly not the case here.

As the Superintendent explained to the local board, “the way in which application process goes helps HCPS understand how the founding board would operate as a school and right now this is a mess.” (Minutes of May 22, 2006 meeting attached to Answer to Appeal). We agree.

The climate surrounding this charter school is a highly charged one; there has been litigation and threats of future litigation about who owns what rights in the charter school materials and name. It may well be that the claims are frivolous and the charges meritless. Yet, all of that foment creates a negative environment in which to open a charter school. We point out that DBCPCS had an opportunity in Harford County Circuit Court to pursue final injunctive relief against Ms. Beck. DBCPCS did not pursue that remedy which may have settled some of the legal issues swirling around this charter school applicant.

Even if all else were perfect with the application, those legal ranglings, whether legitimate or not, might be enough to support the local board’s denial of the charter. There were, however, other reasons for the denial. Two other reasons for the local board’s decision to deny the charter were the incomplete budget and lack of a facility plan. Those reasons, combined with

²This Board has ruled previously that a charter school applicant does not have a due process right “to be heard” before the local board makes a decision on the charter. *Dr. Ben Carson Charter School, et al. v. Harford County Board of Education*, MSBE Opinion 05-21.

the contentious legal climate, are clearly sufficient to support the local board's denial of the charter school application. That decision was neither arbitrary nor illegal.

CONCLUSION

Therefore, we affirm the decision of the local board.

Edward L. Root
Edward L. Root
President

Dunbar Brooks
Dunbar Brooks
Vice President

ABSENT
Lelia T. Allen

J. Henry Butta
J. Henry Butta


Beverly A. Cooper
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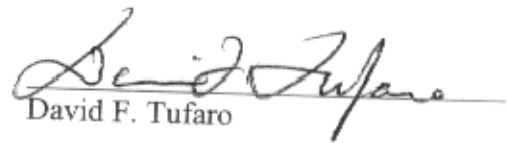
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September 26, 2006