

CECIL PUBLIC CHARTER HIGH SCHOOL, et al.,

Appellant

v.

CECIL COUNTY BOARD
OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 08-38

OPINION

INTRODUCTION

Cecil Public Charter High School and Dr. Alice McCurdy, a member of the founding group, have appealed the Cecil County Board of Education's denial of the charter school application for the establishment of Cecil Public Charter High School. The Cecil County Board of Education (local board) has filed a Motion to Dismiss or for Summary Affirmance. Appellants have responded.

FACTUAL BACKGROUND

Cecil Public Charter High School (CPCHS) is a charter school group in Cecil County that banded together in 2006 for the purpose of creating a local public charter school for high school students in Cecil County. Dr. Alice McCurdy, a member of the founding group and parent of a Cecil County public school student, is the primary representative of CPCHS. (Appeal at 1-2).

Dr. McCurdy submitted an initial application for the establishment of Cecil Public Charter High School on May 1, 2007. Over the next few months, Dr. McCurdy communicated with school system staff on several occasions. Among other things, these communications included a request by the school system for additional information in the areas of governance, waivers/negotiation, curriculum/instruction, salary/fringe benefits, relationship of professional staff, and financial questions. In response to this request, Dr. McCurdy provided additional information about the proposed charter school. (Response to Questions, 8/15/07).

At the August 29, 2007 meeting of the local board, Dr. Carl Roberts, Superintendent, and Dr. D'Ette Devine, Executive Director for Staff Relations, provided a formal report and

recommendation to the local board.¹ (Roberts' Affidavit). In that report Dr. Devine recommended that the local board deny CPCHS's application. As explained in the report, the recommendation was based on deficiencies in the areas of school management, curriculum/instruction, and finance, and on application provisions that violated negotiated agreements and legal requirements. (Report and Recommendation, 5/1/07 Application). The local board denied the application on August 29, 2007.

In a September 4, 2007 letter, Dr. Roberts advised Dr. McCurdy of the local board's denial of the charter school application. He stated:

The information provided [in the application] lacks clarity and contains inconsistencies. In school management, for example, administrators are not required to be certified; however, Maryland law requires that they hold the appropriate Maryland certification. In the area of curriculum and instruction, your application refers to the development of curriculum for over eighty courses by August of 2008. It is the Board's opinion that it is not possible to develop high quality curricula within that time frame. Additionally, upon review of your proposed budget, we are concerned about the amount of additional funds beyond the Board's required funding that would be necessary to open and operate your school. Finally, although you have assured us that you will not seek any changes to the negotiated agreements, numerous provisions in your application would require such changes.

Dr. Roberts encouraged Dr. McCurdy to make the necessary revisions and resubmit the application.

Approximately one month later, on October 1, 2007, Dr. McCurdy submitted a second application for the establishment of Cecil Public Charter High School. The local board denied the application on January 14, 2008, at an advertised public session board meeting. The minutes reflecting that vote are as follows:

Dr. Roberts noted that earlier this evening Dr. Devine submitted a detailed report on his behalf regarding this resubmitted application. The resubmitted application was received one month after the initial rejection. It was reviewed by Dr. Devine. Upon the recommendation of the Superintendent, Ms. Kammerer made a

¹Dr. Devine was assigned the responsibility of coordinating the review of the charter school application for CPCHS. (Devine Affidavit).

motion that was seconded by Ms. Zane, that the Board of Education not approve the resubmitted Cecil Public Charter High School application. Ms. Kammerer asked what the next steps will be if the application is rejected again. Dr. Roberts stated Dr. Devine will contact the author and share the reasons why the application was not accepted. The author will be offered the opportunity to meet to discuss the application in detail. Ms. Sopa, Ms. Kammerer, and Ms. Zane voted in the affirmative. Ms. Koch and Mr. Piner abstained. The motion passed.

(1/14/08 Meeting Minutes at 5).

By letter dated January 15, 2008, Dr. Roberts advised Dr. McCurdy of the local board's decision denying the application. That letter states:

The Board of Education is the chartering authority for public charter schools, and, as such, is responsible to ensure that the charter school application under review has met all the necessary requirements as outlined in *The Maryland Public Charter Schools Model Policy and Resource Guide*. Upon review of your application, it is the Board's decision that your application does not sufficiently speak to these requirements. School management and governance, the educational program, financial solvency and issues with provisions of the negotiated agreements are examples of components that continue to be inadequately addressed.

Although you did revise some of the original application, the revision did not provide enough clarity and information to address Board concerns. In school governance, for example, you changed the title Head of School to Chief Executive Officer but did not change the accompanying duties. In the area of curriculum and instruction, your application reduced the number of courses to be developed but did not provide a clear plan to develop the remaining ones. Additionally, you did not present a financial plan that was viable to develop, open and operate a charter school. Finally, although you stated that you would abide by the negotiated agreements, many provisions in your application would violate these provisions.

Dr. Devine communicated the local board's decision to Dr. McCurdy by phone as well. (Devine Affidavit). Dr. Devine states that she communicated the local board's concerns about the application to Dr. McCurdy by telephone. (Devine Affidavit). Dr. McCurdy states that Dr.

Devine did not apprise her of the reasons for the local board's denial, but that she merely advised her that the local board denied the application and that she would be receiving a letter in the mail. (McCurdy Affidavit).

This appeal ensued.

STANDARD OF REVIEW

In charter school application denial cases, this Board uses the standard of review for cases and controversies involving the rules and regulations of the local board. Under that standard, the decision of the local board is considered *prima facie* correct and the State Board will not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05(A).

ANALYSIS

Standing

The local board argues that CPCHS does not have standing to bring this appeal. (See Reply to Response at 1, fn. 1). As the State Board noted in *Adams, et al. v. Montgomery County Board of Education*, 3 Op. MSBE 143, 149 (1983), the general rule on standing is that "for an individual to have standing, even before an administrative agency, he must show some direct interest or 'injury in fact, economic or otherwise'." See also *Schwalm v. Montgomery County Board of Education*, MSBE Opinion No. 00-10 (February 23, 2000); *Vera v. Board of Education of Montgomery County*, 7 Op. MSBE 251 (1996); *Way v. Howard County Board of Education*, 5 Op. MSBE 349 (1989).

The charter school law allows four types of persons or entities to submit charter school applications and, thus, by inference, the same four groups are allowed to appeal a denial of the charter: (1) staff of public school; (2) a parent or guardian of a student who attends public school in the county; (3) a nonsectarian nonprofit entity; (4) a nonsectarian institution of higher education in the State. Md. Code Ann., Educ. § 9-104(a)(2). With regard to a nonsectarian nonprofit entity, the State Board has held that an entity that has obtained a federal tax identification number will have sufficiently demonstrated its non-profit status for the purpose of applying to be a charter school under §9-104(a)(2)(iii) of the Education Article. *Dr. Ben Carson Charter School, et al. v. Harford County Bd. of Educ.*, MSBE Opinion No. 05-21.

This appeal to the State Board was filed by Dr. McCurdy and by CPCHS. Dr. McCurdy, as a parent of a student attending public school in Cecil County, is the legally appropriate applicant with standing to pursue this appeal. Because no federal tax identification number has been provided for CPCHS, however, there is no evidence that it is a "nonsectarian nonprofit entity." Therefore there is no evidence that CPCHS was authorized to submit an application on

its own behalf. Accordingly, we find that CPCHS lacks standing to appeal the denial of the application on its own behalf.

Motion to Dismiss

As a preliminary matter, the local board has filed a Motion to Dismiss the appeal. The local board maintains that the charter school application attached as an exhibit to the State Board appeal "is materially and substantially different from the charter school application submitted to the County Board" and did not serve as the basis for the local board's January 14, 2008 decision. The local board argues, therefore, that because the new application was not initially reviewed by the local board, it should be dismissed by the State Board as there is no local board decision to review. It is the long held position of this Board that it will not review matters that have not been reviewed initially by the local board. See *McDaniel v. Montgomery County Bd. of Educ.*, MSBE Op. No. 03-22; *Craven v. Board of Educ. of Montgomery County*, 7 Op. MSBE 870 (1997); *Hart v. Board of Educ. of St. Mary's County*, 7 Op. MSBE 740 (1997); *Sojourner Truth Preparatory Charter School v. Prince George's County Bd. of Educ.*, MSBE opinion No. 08-25.

Dr. McCurdy has amended the appeal by submitting to the State Board a copy of the application that was submitted to the local board on October 1, 2007 and denied by the local board on January 14, 2008. See COMAR 13A.01.05.04 (Amendment of Appeal or Other Pleading). Thus the basis for a Motion to Dismiss has been remedied. We shall consider the merits of the appeal.

Merits of the Appeal

As grounds for the appeal, Dr. McCurdy raises the following issues:

- (1) The local board failed to explain its denial with sufficient clarity, precision and detail so that the applicants, and any reviewing authority, could understand the basis of the denial;
- (2) There is a lack of a record in the case;
- (3) The local board misapplied the *Maryland Public Charter Schools Model Policy and Resource Guide* by treating each and every element of the policy as a mandatory requirement, rather than a guide to be used in conjunction with the local board's own policies, thereby indulging in impermissible rulemaking; and
- (4) The local board failed to evaluate the merits of the application to the extent required by law.

1. *Local Board's Explanation of Decision*

Dr. McCurdy argues that the local board failed to explain its denial of the application in sufficient detail to provide an understanding of the reasons why the application was denied. She describes Dr. Roberts' January 15 letter conveying the basis for the decision as being vague and conclusory.

Dr. McCurdy maintains that the State Board's decision in *Chesapeake Public Charter School v. St. Mary's County Bd. of Educ.*, MSBE Opinion No. 05-23, supports her claim that the local board's decision lacked sufficient detail. *Chesapeake* does not speak to the level of specificity required in the local board's rationale. Rather, *Chesapeake* merely requires that an explanation or rationale be provided.

Dr. McCurdy also relies on the State Board's decision in *Potomac Charter School v. Prince George's County Bd. of Educ.*, MSBE Opinion No. 05-08. *Potomac* dealt, in part, with the charter school application evaluation instrument used by the Prince George's County Board of Education. That instrument was based on a numerical rating system. The State Board held "that if a numerical rating scale is used to evaluate an application, the local board must provide an analytical key that describes with specificity what is necessary or adequate to achieve each point on the scale." *Potomac* at 7. In *Potomac*, neither the evaluation instrument nor the letter from the school system conveying that the application had been denied contained an explanation of the numeric rating scale. The case is not on point.

The State Board has held that a local board must provide an explanation or rationale for its decision denying a charter school application. See *Columbia Public Charter School v. Howard County Bd. of Educ.*, MSBE Opinion No. 05-31; *Chesapeake Public Charter School v. St. Mary's County Bd. of Educ.*, MSBE Opinion No. 05-23. These cases, however, do not specify the level of detail that is required in the explanation or rationale.

The State Board recently dealt with a similar issue in *Mohan Gupta v. Montgomery County Bd. of Educ.*, MSBE Opinion No. 08-15, in which the State Board held that the local board failed to provide a sufficient basis for its decision denying a child early kindergarten entry. Although *Gupta* is not a charter school case, its analysis is instructive here. The Board stated,

The role of the State board is to determine whether the local board's decision was arbitrary, unreasonable or illegal. A decision is arbitrary if "a reasoning mind could not have reasonably reached the conclusion the local board or superintendent reached." COMAR 13A.01.05.05(B)(2). In order to make this assessment, the State Board must understand how the conclusion was reached.

Based on this reasoning, we find that a local board is required to provide more than a conclusory explanation for the denial of a charter school application in its rationale. See *Rodriguez v. Prince*

George's County, 79 Md. App. 537, 550 (1989) ("It is not permissible for . . . any administrative body, simply to parrot general statutory requirements or rest on broad conclusory statements."). At a minimum, the explanation or rationale must identify the areas of concern to the local board so that the State Board knows what aspects of the application need be reviewed on appeal.

Although the minutes of the local board do not reflect the rationale for the denial,² Dr. Roberts conveyed the basis for the local board's decision denying the application to Dr. McCurdy in his January 15 letter. Dr. Roberts identified specific components of the application that were inadequate to support the granting of a charter. Those components are school management and governance, educational program, and financial solvency. Dr. Roberts also stated that there were problems in the application with regard to provisions of the negotiated agreements between the local board and the unions. Specific examples of deficiencies were cited. With regard to school governance, the title Head of School was changed to Chief Executive Officer but the accompanying duties were not changed. In the area of curriculum, the application reduced the number of courses to be developed but failed to provide a clear plan to develop the remaining ones. As for finances, the financial plan was not viable to develop, open and operate a charter school. There were also concerns about whether the charter school could abide by the negotiated agreements as promised given that provisions in the application were in violation of those agreements. We believe that Dr. Roberts' January 15, 2008 letter provides a rationale that sufficiently explains the basis of the local board's decision. It provides notice of the reasons for denial to the charter school applicant and also provides a basis for the local board's decision which is capable of being reviewed on appeal to the State Board

2. *Case Record*

As for Appellant's claims that there is an insufficient record in this case, we disagree. The record consists of the charter school application, correspondence between the parties, the superintendent's report and recommendation from the May 1 application that was also relied upon for review of the October 1 application, the local board's meeting agendas and minutes, and Dr. Roberts' letters to Dr. McCurdy. This record is similar to the types of records that this Board has seen in other charter school cases. We believe that there is a sufficient record here for the State Board to review the local board's decision.

The Superintendent did not create a written report and recommendation contemporaneous with the review of the October 1 application, as Dr. McCurdy claims, but there is nothing in the charter school law that mandates this. The State Board has required only that the superintendent prepare a detailed recommendation to the local board to accept or deny a charter school application. *See Chesapeake Public Charter School v. St. Mary's County Bd. Of Educ.*, MSBE

²There is no requirement that minutes of local board meetings contain detailed transcriptions of the proceedings. They need only detail the recordation of the agenda, the motions, seconds, and votes taken. *See Md. Code Ann., State Gov't. §10-509(c)(1)*.

Opinion No. 05-23 at 5. Although we believe that memorializing the recommendation in writing is the best practice, failure to do so is not a violation of law. According to the affidavit of Dr. Roberts, the October 1 application was so similar to the May 1 application that it was unnecessary to submit a new written report to the local board. The report and recommendation for the May 1 application was relied upon, and minor modifications based on any differences between the two applications were made orally to the local board members. (Roberts' Affidavit).

While Dr. McCurdy views the affidavits submitted by the local board as post-hoc rationalizations for its decision to deny the application, we do not. As already explained, Dr. Roberts' January 15 letter provides the rationale for the local board's decision. The rationale is supported by the record, including Dr. Roberts' report and recommendation for the May 1 application. The affidavits have been submitted in support of the local board's motion. This is provided for in the State Board regulations. *See* COMAR 13A.01.05.03D(2)(e).

3. *Use of the Maryland Public Charter Schools Model Policy and Resource Guide*

Dr. McCurdy contends that Dr. Roberts' letter impermissibly sets up full compliance with the *Maryland Public Charter Schools Model Policy and Resource Guide* as a mandatory requirement. Memorandum at 4. This claim refers to the statement that the local board is "responsible to ensure that the charter school application under review has met all the necessary requirements as outlined in *The Maryland Public Charter Schools Model Policy and Resource Guide*." (Roberts' Letter, 1/15/08).

The *Maryland Public Charter Schools Model Policy and Resource Guide* (Guide) is a document published by the State Department of Education (MSDE).³ It contains a variety of information which is intended to "guide local boards of education and school systems in Maryland in assisting individuals and organizations interested in establishing public charter schools." (Guide at 1). Among other things, the Guide contains a sample checklist of the possible components of a public charter school application. The checklist contains 13 components – executive summary, management and administrative structure, school's education program, student performance accountability, student affairs, special populations, transportation, facilities, professional/support personnel qualifications, student support services, regulations/legal, professional support staff services; and budget and finance. There is no legal requirement that mandates strict adherence to the Guide with regard to these components. Rather, the Guide is to serve as a resource to the school systems. In this regard, the State Board has found that it is appropriate for local boards to utilize the Guide for the application and review

³The Guide was not provided as an exhibit in any filing in this case, despite the fact that it is referred to by both parties and is used as the basis for Dr. McCurdy's appeal. The Guide is a publication of MSDE. We therefore take judicial notice of it. *See* Md. Rule 5-201 (Judicial notice of adjudicative facts).

process. See *Monocacy Montessori Communities, Inc. v. Frederick County Bd. of Educ.*, MSBE Opinion No. 08-23 at 10; *Chesapeake Public Charter School v. St. Mary's County Bd. of Educ.*, MSBE Opinion No. 05-23 at 6; *City Neighbors Charter School v. Baltimore City Bd. of School Commissioners*, MSBE Opinion No. 05-17 at 3.

Many local boards have utilized the Guide in determining the components of the charter school application for their jurisdiction. Cecil County is no exception. The local board's *Guidelines to Make Application for a Proposed Charter School* (BL-EA) contain the same components as those listed in the Guide. The local board requires charter school applicants to address these components in their applications. See BL-RA and BL-EA. While MSDE's Guide is not mandatory, the local board's requirements are. Thus, the local board's use of the Guide in this case with regard to the necessary components of the application under the school system's requirements was not improper.

4. *Evaluation of Application*

Dr. McCurdy asserts that there was no meaningful involvement by the local board in its evaluation of the application and that it blindly followed Dr. Roberts' recommendation without an effort on the board's part to review it, thereby rendering the local board's decision arbitrary. (Appeal at 22). To determine if a local board's decision is arbitrary, we begin with the legal proposition that the local board's decision is presumed to be correct, and it is the Appellant's burden to show that the decision is arbitrary or unreasonable. COMAR 13A.01.05.05. In this regard, the State Board does not substitute its judgment for that of the local board's as to the sufficiency of the application. Rather, this Board considers whether a "reasoning mind could not have reasonably reached" the decision to deny the application. COMAR 13A.01.05.05(B)(2). To decide whether the decision to deny was a reasonable one, we look to the arguments of the parties and the local board's reasons for the denial.

Budget and Fiscal Solvency

The local board concluded that the financial plan presented in the application was not viable to develop, open and operate a charter school. (Roberts' Letter, 1/15/08). The local board has included in its Motion for Summary Affirmance an affidavit from Mr. Thomas Kappra, the school system's Chief Financial Officer, supporting this basis for denial of the application. Mr. Kappra reviewed the October 1 application and provided a detailed analysis of the proposed budget.⁴ He concluded that CPCHS would not be able to operate in a fiscally solvent manner while meeting the requirements of the negotiated agreements and the charter school's vision for a high school with a low staff to student ratio. He raises the following budget concerns:

⁴Mr. Kappra also reviewed the May 1, 2007 application and provided a similarly detailed analysis of that proposed budget.

- The proposed budget for CPCHS is unrealistic. Mr. Kappra's analysis calculated the average per pupil expenditure at \$16,140.00 per student. This amount is significantly higher than the average per pupil expenditure for CCPS which is \$7,852.00. CPCHS would need significant additional funding in order to provide the additional \$8,288.00 per student needed to operate the school.
- There is a large disparity in the operating costs in the application which comes from the application's failure to calculate staff salaries in accordance with the negotiated salary schedules for the local board's bargaining units. This resulted in a calculation of \$1,203,274.00 for year one staff salaries compared to the application's calculation of \$66,765.00. Assuming that the \$66,765 figure in CPCHS's proposed budget is a typographical error, as Dr. McCurdy claims, and that the amount she meant to budget for staff salaries is \$626,765.00, the amount is still not enough to provide salaries necessary to operate the school.⁵
- Dr. McCurdy proposed to hire a non-certificated individual to fill the position of Executive Director/CEO at a salary of \$114,826.00. This amount is more than one sixth of the total amount allotted by CPCHS for all staff salaries for the operation of the entire school. Dr. McCurdy proposed this inflated salary for the position despite the fact that CPCHS proposed payment of sub-scale salaries for certificated and non-certificated individuals.
- There is no evidence of an ability to raise the amount of funding to close the gap between the local board's contribution and the amount needed to run CPCHS. There is no evidence that CPCHS has the ability to obtain tax deductible donations essential to meeting the anticipated budgetary needs. CPCHS has not been incorporated as a non-profit 501(c)(3) entity and has no federal tax identification number.

(Kappra Affidavit). The concerns raised by Mr. Kappra in response to CPCHS's October 1 proposed budget are similar to those presented in the Superintendent's report and recommendation for the May 1 application. (Evaluation Report).

Dr. McCurdy's affidavit, submitted in response to the local board's Motion, does not

⁵Mr. Kappra claims that he provided the salary schedules, chart of accounts, and reporting structure to Dr. McCurdy in a meeting on August 10, 2007. (Kappra Affidavit). Dr. McCurdy claims that she did not see those items prior to the appeal to the State Board. (McCurdy Affidavit).

dispute the financial and budgetary points raised by the local board. In response to concerns about CPCHS's ability to raise tax deductible donations to help reduce budgetary shortfall, she provides for the first time a federal tax identification number for a tax exempt organization called "Octave" with which she claims to be affiliated. Dr. McCurdy referred to Octave as a partner with CPCHS in the October 1 application. (Application at 190-191).

In response, the local board researched the organization identified by Appellant. It found that the full name for "Octave" is the "Faithful Women of God-Paws Octave" which was formed as a tax exempt religious organization by Dr. McCurdy.⁶ The entity is listed as a private foundation and reports no assets or receipts. It is not registered to do business in the State of Maryland. (*See Octave Information*). In addition, there may be issues with regard to Octave's religious affiliation. Based on this information, the extent to which CPCHS can rely on "Octave" for fundraising seems questionable.

The school system's view is that CPCHS has not developed a financially solvent budget. In *Friends of the Bay Arts and Science Public Charter School*, MSBE Opinion No. 08-21 at 8, this Board noted that "[u]nderstanding the sources of funding for a charter school is critical" for a charter school applicant. It does not appear that Dr. McCurdy fully understands the budgetary process here. Based on our review, we believe that there is evidence in the record that supports the local board's assessment that CPCHS's budget and financial solvency was lacking.

Curriculum and Instruction

Dr. Roberts advised Dr. McCurdy that the application was deficient with regard to the educational program. In particular, he states that the application lacked a clear plan to develop courses. The local board has provided an affidavit from Dr. Carolyn Teigland, the school system's Associate Superintendent of Education Services, supporting this basis for denial of the application. Dr. Teigland reviewed both CPCHS applications and provided an analysis of the curricular component. She states that the October 1 application failed to establish a clear or viable plan for the development of curricula aligned with the VSC. This same concern was identified in the Superintendent's report and recommendation for the May 1, 2007 application. Dr. Teigland also identified numerous problems with staffing, grouping, scheduling, and other academic programming. For example, the application suggests various groupings of students in grades 9 through 12 that are contradictory and unclear; there is no provision of staffing for art, music, or health; there is no mention of the one credit government course required for graduation; there is no plan to assist students who fail to pass the Maryland High School Assessments; there is no staffing for the "Twilight School" extended day program; and there is no identified facility for the athletic programs. (Teigland Affidavit).

⁶Dr. McCurdy did not reveal in the application the extent of her affiliation and control with an organization with which CPCHS intends to partner.

As this Board stated in *Friends of the Bay Arts and Science Public Charter School v. Calvert County Bd. of Educ.*, MSBE Opinion No. 08-21, local school system curriculum staff are the ones who have the day to day experience in curriculum design, curriculum development and delivery in alignment with the Voluntary State Curriculum. Their view of the adequacy of applicant's curriculum carries the great weight of their expertise. Dr. Teigland has provided an assessment of the curriculum and instruction component that demonstrates problems in this area in the CPCHS application. Dr. McCurdy has presented nothing to counter Dr. Teigland's assessment. We therefore find that Dr. McCurdy has not met her burden of showing that the local board's decision on this point is arbitrary.

Staff and Labor Relations

The local board also denied the application because various portions of the application violated provisions of the existing collective bargaining agreements between the local board and the school system's bargaining units. (Roberts' Letter, 1/15/08). Although the October 1 application states that CPCHS will abide by the negotiated agreements, the substance of the application does not reflect this. Dr. Devine identifies specific application provisions in violation of the negotiated agreements with the unions. (Devine Affidavit). They are as follows:

- A proposal to pay public school employees at CPCHS salaries lower than those provided for in the negotiated salary scales with the bargaining units. Although Dr. Devine raised this concern with Dr. McCurdy during the summer and fall of 2007, the application states that "CPCHS will make every attempt to comply with Cecil County Public Schools FY 08 Budget for Salaries based upon Fiscal Year Scale Step 6; however, please note that CPCHS functions on a more restrictive budget." (Appendix S to application at IV). Moreover, based on the salary schedule attached to the application, it was clear that the negotiated salary scales would not be implemented.
- A proposal that teachers supervise paraprofessionals (Application at 18);
- A proposal to have a bachelor's level "coordinator of discipline" without any certification requirement, but with supervisory responsibilities over teachers. (Application at 43-47);
- The proposal that the CPCHS Board would have the responsibility of hiring, firing, and evaluating top administrative staff. (Application at 108);
- A proposed attendance policy that was not aligned with the leave provisions set forth in the negotiated agreements. (Application at 117);

- A proposed employee evaluation process that was not aligned with the negotiated evaluation process. (Application at 141-143);
- The proposal that the CPCHS Governing Board would be responsible for the resolution of disagreements and the dispute resolution process. (Application at 172).

(Devine Affidavit). The Superintendent's written report and recommendation to the local board in response to the May 1 application sets forth the same concerns. (Report and Recommendation at 2). Although Dr. McCurdy's affidavit assures that the proposed charter school dispute resolution provisions would not apply to grievances arising under the negotiated agreements, she does not address the other discrepancies between the application and the negotiated agreements.

School Governance

Another deficiency identified by the local board is in the area of school governance. This same issue was raised by Dr. Roberts in response to the May 1 application. (Report and Recommendation at 1-2). The problem cited had to do with the position of Chief Executive Officer (CEO), which was previously named Head of School. This position did not call for certification, yet the position included duties and responsibilities consistent with those of a school principal, a position that requires certification. The CEO was to be involved in the school's management and the supervision and evaluation of staff. Although the Head of School title used in the May 1 application was changed to CEO in the October 1 application, the duties and responsibilities of the position did not change. Thus the application proposed a position that would perform the duties of a school principal without the appropriate certification requirements as required by COMAR.

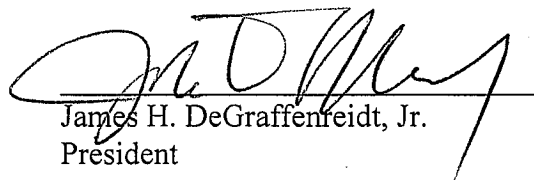
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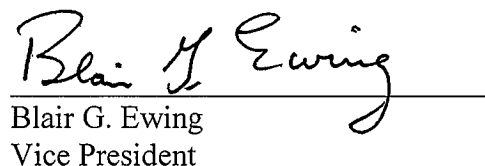
Although not mentioned as a basis for denial in Dr. Roberts' letter conveying the board's decision, another problem with the application is that CPCHS has no identified facility to house the school. Although CPCHS hoped to utilize a facility at Cecil College, there is no facility available there. (Affidavit of Dr. W. Stephen Pannill, President of Cecil College). There is no evidence that CPCHS has located an alternative facility. The State Board has held that the failure to identify an acceptable facility "may constitute a justifiable basis for the denial of the application." *Chesapeake Public Charter School v. St. Mary's County Bd. of Educ.*, MSBE Opinion No. 05-23 at 8.

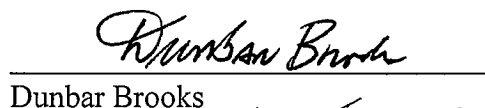
CONCLUSION

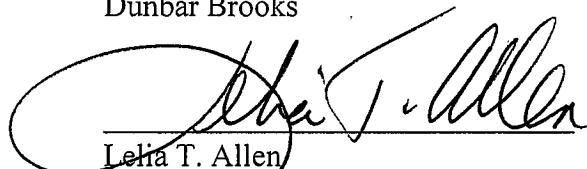
For all of these reasons, we do not find that the local board acted arbitrarily, unreasonably, or illegally in this matter. We therefore affirm the local board's decision to deny the charter school application submitted by Dr. McCurdy for the establishment

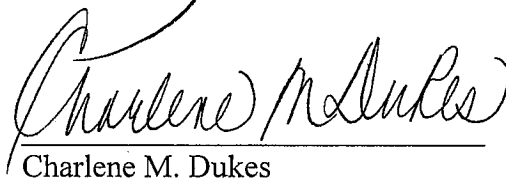
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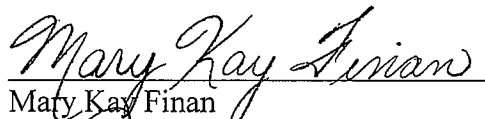

James H. DeGraffenreidt, Jr.
President

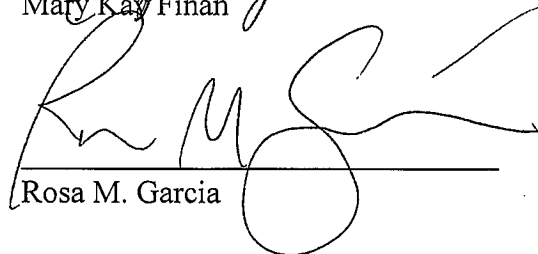

Blair G. Ewing
Vice President

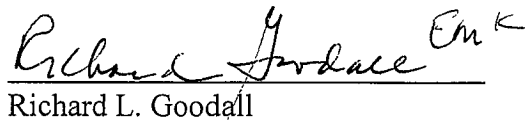

Dunbar Brooks


Lelia T. Allen

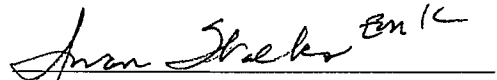

Charlene M. Dukes

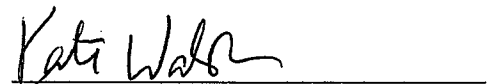

Mary Kay Finan


Rosa M. Garcia


Richard L. Goodall


Karabelle Pizzigati


Ivan C.A. Walks


Kate Walsh

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