

CITY NEIGHBORS CHARTER SCHOOL,

Appellant

v.

BALTIMORE CITY BOARD OF
SCHOOL COMMISSIONERS,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 04- 38

OPINION

City Neighbors Charter School (“CNCS”)¹ appeals the decision by the Chief Executive Officer for Baltimore City Public Schools to defer consideration of CNCS’s charter school application until September 1, 2004. CNCS argues that the failure of BCPSS to review the CNCS charter school application within 120 days of its submission “constitutes an effective denial of that application”. CNCS also challenges the City Board of School Commissioner’s policy of limiting approval of new charter schools to a total of three during the first three years of the school system’s consideration of charter school applications.

The local board has submitted a Motion to Dismiss the appeal maintaining that while the CEO has made a decision to defer consideration of CNCS’s application, no final decision has been made to grant or deny the application. Therefore, the City Board asserts that the State Board does not have jurisdiction to review this appeal. The City Board also maintains that its policy of chartering only three schools in the first three years of the process is sound educational policy because it allows BCPSS to provide more focus, scrutiny, and attention to a newly created school.

CNCS has filed a detailed reply in opposition to the motion.

FACTUAL BACKGROUND

The Baltimore City Board of School Commissioners (“City Board”) adopted a policy providing that charter schools with approved applications would open beginning in September 2005. The City Board made this policy decision after receiving public input. The policy was based on a desire to provide a planning year to each new school for technical support. *See* 3/31/04 letter from Donaldson. The City Board’s policy also limited the number of charter schools that could be approved to a total of three during the first three years of the school system’s chartering process.²

¹The appeal was filed by Bobbi Macdonald, President of CNCS, on behalf of CNCS.

²The 3-school limit is described in the City Board’s “Charter Application Guidance.”

On December 1, 2003, CNCS submitted a letter of intent to file an application for a public charter school, and on March 15, 2004, submitted its charter school application to Dr. Cynthia Janssen, Chair of the BCPSS Charter and New Schools Advisory Board. On March 23, 2004, Ms. Macdonald appeared before the Baltimore City Board of School Commissioners at the City Board's public comment session to request that the City Board waive its policy of delaying the opening of charter schools to September 2005.

Dr. Janssen acknowledged receipt of CNCS's application by letter dated March 30, 2004, and indicated that CNCS's application was premature because BCPSS's deadline for charter school applications was September 1, 2004. The letter stated that "[s]ince [CNCS's] application has been submitted so early, [BCPSS] will treat it as a first draft and [BCPSS] staff person, Laura Weeldreyer, will be in contact with you about further refining your application."

By letter dated March 31, 2003, Judith Donaldson, the City Board Executive, indicated that the matter had been referred to the Chief Executive Officer, Dr. Bonnie S. Copeland, for her recommendation. Dr. Copeland advised Appellant as follows:

I have received your charter school application dated March 15, 2004. The Baltimore City Board of School Commissioners has adopted a policy of opening charter schools beginning in September 2005. Pursuant to Section §9-104 of the state law, "the county board shall review the application and render a decision within 120 days of receipt of the application." Therefore, the Board will respond to your application by July 12, 2004.

In the meantime, I encourage you to continue working with Dr. Cynthia M. Janssen and Laura Weeldreyer throughout this process.

See 6/22/04 letter from Copeland to Macdonald. Thereafter, on July 12, 2004, Dr. Copeland informed Appellant that BCPSS adopted a September 1, 2004 deadline for submission of charter school applications and that all such applications would be formally reviewed and evaluated by the school system after that deadline. Dr. Copeland further advised that in accordance with this policy, BCPSS was deferring review of CNCS's application until September 1, 2004. This appeal to the State Board followed.

ANALYSIS

Legal Background

In 2003, the Maryland General Assembly enacted legislation establishing the Maryland Public Charter School Program as "an alternative means within the existing public school system in order to provide innovative learning opportunities and creative educational approaches to improve the education of students." Md. Code Ann., Educ. § 9-101(b). The legislation provides

that the local board of education is the “primary public chartering authority” for the granting of the charter. Md. Code Ann., Educ. § 9-103(a). Section 9-104(a) requires that an application to establish a public charter school be submitted to the local board and that the local board review the application and render a decision within 120 days of receipt of the application.³

Under State law, the State Board is the secondary chartering authority for the granting of the charter, acting in its appeal review capacity or as the public chartering authority for a restructured school. Md. Code Ann., Educ. § 9-103(b). Section 9-104(b) provides as follows:

- (1) If the county board denies an application to establish a public charter school, the applicant may appeal the decision to the State Board, in accordance with § 4-205(c) of this article.
- (2) The State Board shall render a decision within 120 days of the filing of an appeal under this subsection.
- (3) If the county board denies an application to establish a public charter school and the State Board reverses the decision, the State Board may direct the county board to grant a charter and shall mediate with the county board and the applicant to implement the charter.

The legislation also requires each local board to develop a public charter school policy and submit it to the State Board by November 1, 2003. Md. Code Ann., Educ. § 9-110. The statute further requires that each policy include guidelines and procedures regarding the following: (i) evaluation of public charter schools; (ii) revocation of a charter; (iii) reporting requirements; and (iv) financial, programmatic, or compliance audits of public charter schools. Md. Code Ann., Educ. §9-110(a)(2).⁴

On August 4, 2004, the State Board issued its first opinion in a charter school appeal under this legislation. In *Potomac Charter School v. Prince George’s County Board of Education*, MSBE Opinion No. 04-32, the school system did not consider the merits of Potomac Charter School’s application, neither granting nor denying a charter, and returned the application to Potomac Charter School without taking action on it. The school system maintained that it had not yet completed development of its charter school application process and was not yet accepting applications for consideration. Potomac Charter School claimed that this action violated §9-104(a) of the Education Article. The State Board found as follows:

³For restructured schools, unless an extension of time has been granted, the local board must review the application and render a decision within 30 days of receipt of the application.

⁴Each local board did submit a charter school policy to MSDE by November 1, 2003.

As noted above, §9-104(a) mandates that a local board review a charter school application and render a decision on the application within 120 days of its receipt. . . . We believe the intent of the legislation was for local boards to then proceed with all deliberate speed in receiving and reviewing charter school applications. In the case at hand we find that delaying the process for an additional ten months for consideration of applications is not in compliance with the intent of the Maryland charter school law.

The State Board allowed Potomac Charter School to revise and resubmit its application to conform with the format of the local board's newly developed charter school application, and directed the local board to review and issue its decision on Potomac Charter School's application within 60 days of its receipt. MSBE Op. No. 04-32, at 3.

State Board Jurisdiction to Review Appeal

The City Board argues that the State Board lacks jurisdiction to hear this appeal because the City Board has made no final decision either granting or denying CNCS's charter. To the contrary, CNCS maintains that the law set forth in §9-104 of the Education Article is not being followed by the City Board and that a decision to defer consideration of its application is a decision that may be appealed. We concur with CNCS and find that the State Board has authority to review this case as an exercise of its original jurisdiction under §2-205(e) of the Education Article which provides that the State Board shall decide all controversies and disputes arising under the provisions of the Education Article that apply to the public school systems of the State. See *Board of Educ of Garrett County. v. Lendo*, 295 Md. 55 (1982).

Substance of Appeal

As previously noted, CNCS maintains that deferring consideration of its application until September 1, 2004 is an effective denial. On the other hand, the City Board asserts that the deferral is not a denial and that the City Board has made no decision regarding the merits of CNCS's application. In its Motion to Dismiss, the City Board explains that the reason for the deferral was to "provide equal opportunities for all applicants and not to confer an advantage on an applicant who had hurried to beat other applicants to the head of the line." Motion to Dismiss at 3.

As the State Board recently held in the *Potomac Charter School* case, §9-104(a) mandates that a local board review a charter school application and render a decision on the application within 120 days.⁵ This law went into effect on July 1, 2003, more than a year ago.

⁵Contrary to the City Board's argument, we find that the *Potomac Charter School* case is precisely on point here. In our review, the fact that the school system in the *Potomac Charter School* case returned the application and indicated that appellant could resubmit it once the

There is nothing in the law that permits a local board to defer consideration of an application for a public charter school or to defer the establishment of charter schools generally until a future date.

The City Board argues that §9-104 does not define the term “decision” and therefore the statute does not preclude a decision deferring consideration of the application. We believe this argument lacks merit. The statute sets forth a time frame for making decisions on school charter applications. As the State Board has already determined, the legislature intended for local boards to proceed with all deliberate speed in receiving and reviewing charter school applications. The City Board’s interpretation would obviate these time requirements and would permit a local board to grant or deny a charter within any time frame it so chooses. We find that CNCS is aggrieved because its application has not been processed in accordance with the time line set forth by the General Assembly.

Further, we find no basis in the Maryland Public Charter School Act that authorizes the City Board to adopt a policy not to charter more than three schools in the first three years of the charter school program. There is nothing in the Act that permits the arbitrary setting of a limit on the number of charters that are granted. Each application must be considered on its own merit without regard to other applications.

Although the City Board maintains that its 3-school limitation policy has not been applied, the fact that the City Board deferred consideration of CNCS’s application so as not to “confer an advantage on an applicant who had hurried to beat other applicants to the head of the line” suggests otherwise. Motion to Dismiss at 3–4. There would be no advantage to be gained over other applicants by submitting an application prior to September 1, 2004, and no fundamental unfairness in the granting of an application prior to that time if there were no limitation on the number of charter schools that could be approved. These issues arise as a result of the imposed limit.

CONCLUSION

For these reasons, we deny the Motion to Dismiss filed by the City Board. Further, we find that the 3-school limit in the City Board’s policy is not authorized by the Maryland Public Charter School Act. That limitation is therefore null and void. Moreover, since the BCPSS September 1, 2004 application deadline has now passed, and given the City Board’s noncompliance with legislative intent as described above, we direct the City Board to review and render a decision granting or denying CNCS’s application on or before November 9, 2004.⁶

process was developed has the same effect as a school system holding on to the application for review and consideration at a later date.

⁶This is the date proposed by CNCS in its request for a remedy for the violations noted above.

Edward L. Root
President

Dunbar Brooks
Vice President

Lelia T. Allen

JoAnn T. Bell

J. Henry Butta

Beverly A. Cooper

Calvin D. Disney

Clarence A. Hawkins

Karabelle Pizzigati

Maria C. Torres-Queral

David F. Tufaro

Date: October 6, 2004