

POTOMAC CHARTER SCHOOL,

Appellant

v.

PRINCE GEORGE'S COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 05-08

OPINION

This is an appeal by Potomac Charter School, Inc. ("PCSI"), of the local board's decision denying PCSI's application to establish a public charter school in Prince George's County. PCSI argues that the local board's conclusion that aspects of PCSI's application are insufficient, inadequate, or incomplete lacks any factual basis. PCSI further argues that the local board acted improperly by failing to grant PCSI a hearing so that it could properly address those issues and answer questions while the application was under consideration. Because PCSI believes that the local board "is philosophically opposed to enabling PCSI, or any other parent group, to interfere with its monopoly over public education by opening a charter school in Prince George's County" and that the local board "has decided to resist effective implementation of the Public Charter School Act at every turn", PCSI requests that the State Board exercise its chartering authority pursuant to §9-103(b) and grant PCSI's charter to establish and operate a public charter school in Prince George's County. *See* Appellant's letter of appeal at pp. 2-3.

The local board has submitted a motion to dismiss maintaining that the appeal was untimely filed. Alternatively, the local board has submitted a motion for summary affirmance maintaining that a review and evaluation of PCSI's application failed to demonstrate satisfactorily that PCSI could establish and operate a public charter school within the Prince George's County school system and, therefore, the local board's decision denying a charter was not arbitrary, unreasonable, or illegal. The local board also argues that there is no support for Appellant's allegations regarding the local board's position on charter schools or its alleged resistance to State law.

PCSI has submitted an opposition to the motion maintaining that the untimeliness charge is hypertechnical and the evaluation process was flawed.

FACTUAL BACKGROUND

On February 18, 2004, PCSI submitted a letter of intent to file an application for a public charter school, and on April 15, 2004, submitted its own application to establish a public charter school in Prince George's County. The application was returned to PCSI on April 26, 2004 without consideration of the merits, because the school system had not yet completed development of the application process and was therefore not accepting proposals. PCSI

appealed the return of its application to the State Board. At the time the appeal was considered by the State Board, the local board had recently completed development of its public charter school application process.

On August 4, 2004, the State Board issued *Potomac Charter School v. Prince George's County*, MSBE Opinion No. 04-32, finding that the local board's return of PCSI's application without consideration of the merits failed to comply with the intent of the Maryland charter school law. The State Board indicated that PCSI could revise its application if necessary to conform to the new application format of the Prince George's County Board and resubmit the application to the local board with a decision to be rendered within 60 days of its receipt.

PCSI revised and resubmitted its application on September 10, 2004. By letter dated November 3, 2004, Eugene Thornton, Director of Purchasing and Supply for Prince George's County Public Schools, advised PCSI that its charter school application was denied by the local board. The letter advised that a comprehensive review of the responses to PCSI's Application indicated that PCSI "is unable to satisfactorily demonstrate an ability to establish and operate an effective alternative means within the existing public school system to provide innovative learning opportunities and creative educational approaches to improve the education of students in Prince George's County." The letter categorized the reasons for the local board's denial based on deficiencies in the following categories: *Academic Program; Accountability and Student Services; Budget, Finance and Management; Human Resources; Information Technology, Security, Facilities and Support*. Thereafter, by letter dated November 12, 2004, the local board invited Deborah Driver, President of PCSI, to schedule a meeting in January 2005 in the event that PCSI wanted to apply for a charter school during the next Request for Applications (RFA) cycle beginning August 2005. See letter of appeal at 3.¹

Evaluation Process

The process used by the school system for evaluating PCSI's application is described in the "Charter School Application Evaluation and Recommendation" document submitted with the local board's motion. Responses to the RFA were evaluated by teams of three or more staff members in each of the five major areas: *Academic Program; Accountability and Student Services; Budget, Finance and Management; Human Resources; Information Technology, Security, Facilities and Support*. Each of the 25 sections of the RFA was assigned to one of these five areas.

As described in the local board's legal memorandum, evaluation criteria were developed for each section to determine the extent to which the RFA requirements were met. Responses were classified into one of three levels with scores to indicate the relative strength of the

¹Although the appeal letter indicated that the next cycle would not be until August 2006, local board counsel clarified at oral argument that the next cycle was for August 2005.

response, as demonstrated in the following model:²

- **Level 1**
Description - No or insufficient capacity evidenced; Indicates a weak response to demonstrate that the requirements have been met.
Scores - 0 – 4

- **Level 2**
Description - Questionable capacity and/or viability; Indicates that a minimal amount of evidence exists to demonstrate that the requirements have been met.
Scores - 5 – 7

- **Level 3**
Description - Adequate capacity evidenced; Indicates an excellent response with sufficient evidence to demonstrate that requirements have been met.
Scores - 8 – 10

A consensus approach was used by the teams to assign a level and score for each section, following their individual reviews and group discussion. Responses deemed inadequate were given justification. Each team’s evaluation was reviewed and finalized by the respective division chief. The division chiefs and regional assistant superintendents performed a comprehensive evaluation of the responses, considering the merits of the entire application. The Chief Executive Officer, with input from executive and support staff, reviewed the evaluations and made a recommendation to the local board for approval or denial of the application.

Evaluation Results

PCSI was assigned the following levels and scores for each section of its RFA:

| | | | |
|-----|------------------------------------|---------|----------|
| (1) | Needs Assessment | Level 1 | 3 Points |
| (2) | Planning and Establishment | Level 1 | 4 Points |
| (3) | Mission Statement/Goals/Assessment | Level 2 | 5 Points |
| (4) | Background Information | Level 1 | 0 Points |
| (5) | Affidavit, Disclosure, and Consent | Level 2 | 5 Points |
| (6) | Compliance Assurances | Level 2 | 7 Points |
| (7) | Projected Population | Level 1 | 1 Point |

²Two sections were not applicable in terms of this scoring scheme.

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|------|--|---------|----------|
| (8) | School Calendar | Level 2 | 5 Points |
| (9) | Academic Program, Standards, and Curriculum | Level 1 | 4 Points |
| (10) | Student Assessment | Level 2 | 5 Points |
| (11) | Management Structure | Level 2 | 5 Points |
| (12) | School Management | Level 2 | 6 Points |
| (13) | Student Policies and Services | Level 2 | 5 Points |
| (14) | Human Resources | Level 1 | 0 Points |
| (15) | Parent Involvement and Community Participation | Level 1 | 4 Points |
| (16) | School Facilities | Level 3 | 8 Points |
| (17) | Technology | Level 1 | 3 Points |
| (18) | Finances | Level 2 | 5 Points |
| (19) | Recruiting and Marketing Plan | Level 2 | 5 Points |
| (20) | Emergency Preparedness | Level 1 | 0 Points |
| (21) | Operations | Level 2 | 5 Points |
| (22) | Transportation | Level 1 | 3 Points |
| (23) | Additional Board Governance | N/A | |
| (24) | Final Documentation | N/A | |
| (25) | Miscellaneous | Level 3 | 9 Points |

See Charter School Application Evaluation and Recommendation, Capture Sheet, p.1.

Motion to Dismiss for Untimeliness

As a threshold matter, the local board argues that this appeal should be dismissed because it was untimely filed. State law and regulation require appeals of local board decisions to be filed with the State Board within thirty days of the local board decision. See Md. Code Ann. Educ. § 4-205 (c) and COMAR 13A.01.05.02B (1)(a). The 30 days run from the later of the date of the order or the opinion issued explaining the decision. COMAR 13A.01.05.02B(1)(b). 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). Here, the letter relating the local board’s decision was issued on November 3, 2004. The appeal should therefore have been filed with the State Board by Friday, December 3, 2004. The appeal was sent to the State Board by certified mail postmarked December 4, 2004.

PCSI maintains that the appeal was postmarked a day late “through a series of extraordinary circumstances that were beyond the control of PCSI and its counsel”. PCSI explains that the mailroom at the office of counsel for PCSI unknowingly calculated the wrong postage for the three appeal packages which were to be sent out by certified mail on December 3; affixed the incorrect postage to the envelopes; and placed the items in a bin for pick up by a

courier.³ At approximately 6:00 pm, the courier picked up the mail and took it to the post office where the post office employee stamped December 3, 2004 on the certified mail receipt for the package addressed to Eugene Thornton, but then rejected the packages for mailing because there was insufficient postage. The courier did not have enough money to pay the extra postage and contacted his supervisor who unsuccessfully attempted to contact the mailroom of the law firm representing PCSI. The courier then took the packages home with him and mailed them the next day, without again attempting to contact anyone at the law firm about the delay. Counsel for PCSI first became aware that the packages were not mailed on December 3 once he received the certified mail receipts dated December 4, 2004.

Time limitations are generally mandatory and will not be overlooked except in extraordinary circumstances such as fraud or lack of notice. *See Scott v. Board of Education of Prince George's County*, 3 Op. MSBE 139 (1983); *See also* COMAR 13A.01.01.03G (2). The State Board has strictly applied this rule of law, and has dismissed appeals that have been filed a mere one day late based on untimeliness. *See Christine Schwalm v. Board of Education of Montgomery County*, 7 Op. MSBE 1326 (1998); *Marie Friedman v. Board of Education of Montgomery County*, 7 Op. MSBE 1260 (1998); *Eleanor Duckett v. Board of Education of Montgomery County*, 7 Op. MSBE 620 (1997).

After reviewing the reasons for the filing delay, we do not find that they qualify as extraordinary circumstances, such as fraud or lack of notice. Counsel for PCSI was aware of the filing deadline but asserts that this case is similar to the situation in *Hughley v. Anne Arundel County Board of Education*, MSBE Opinion No. 00-26 (June 21, 2000). In *Hughley*, the appeal letter was misdirected after it was delivered to the Maryland State Department of Education building making the date on which the appeal was actually filed unknown. The State Board found that the appeal was timely filed as a result of the confusion. Here, although counsel for Appellant argues that the situation was beyond the control of PCSI and its counsel, it was the law firm's own mailroom that miscalculated the postage. Furthermore, counsel for PCSI waited until the last hour to send the filing, giving no leeway for error, and failed to confirm with the courier on December 3 that the certified mailing had actually taken place as scheduled.⁴ Accordingly, we dismiss this appeal as untimely. *See* COMAR 13A.01.05.02B.

³The official request for appeal was addressed to Dr. Grasmick and the State Board. There were two other packages with courtesy copies of the appeal addressed to Assistant Attorney General, Jacqueline La Fiandra, and Eugene Thornton of the Prince George's County Board of Education.

⁴Counsel for PCSI also argues that the stamped certified mail receipt addressed to Eugene Thornton demonstrates that the request for appeal was deposited in the United States mail as certified on December 3, 2004. This argument lacks merit given that the post office rejected the package as having insufficient postage, and that particular receipt was not addressed to the State Board.

Although we have dismissed this appeal as untimely, for the guidance of the parties we will address the standard of review that applies to denials of charter school applications. We will also describe concerns we have with the evaluation tool used by the local board as well as concerns we have with the lack of sufficiency provided in certain substantive areas on the application filed by the Appellants.

Standard of Review

PCSI argues that the State Board should exercise its independent judgment in reviewing this appeal because this is an appeal which calls for an explanation and interpretation of the public school laws. We disagree. While the Maryland Public Charter School Act established the Maryland Charter School Program, the law requires each local school system to establish a policy to implement that program which addresses, among other things, the evaluation of public charter schools. *See* Md. Code Ann., Educ. § 9-110. In accordance with State law, PGCPs developed a policy as well as an application and evaluation process for those seeking to establish a public charter school. PGCPs evaluated PCSI's application and denied it. This appeal is a challenge of that evaluation and denial by the local board.

Because this case concerns a decision of a local board involving a local policy or a controversy and dispute regarding the rules and regulations of the local board, the applicable standard of review is that the local board decision shall be considered *prima facie* correct, and the State Board may not substitute its judgment for that of the local board unless the State Board finds the local board decision is arbitrary, unreasonable, or illegal.⁵ *See* COMAR 13A.01.05.05A.

Evaluation Instrument

PCSI argues that the letter from the PGCPs denying it a charter lacks the specificity for an understanding of what information is lacking from its application that would constitute sufficient responses for the granting of a charter. In addition, PCSI indicates that the Application Evaluation and Recommendation document fails to provide sufficient specificity of the defects in PCSI's application, instead providing vague generalizations without specific guidance for improvement.⁶ PCSI finds the methodology of the evaluation to be problematic and internally

⁵As set forth in § 9-103(b) of the Education Article, the State Board is the secondary public chartering authority for the granting of a charter acting in its appeal review capacity or as the public chartering authority for a restructured school. Contrary to the PCSI's position, this provision does not require the State Board to exercise its independent judgment in reviewing an appeal of a local board's denial of a charter application.

⁶PCSI indicates that it had not previously been provided the Application Evaluation and Recommendation document and was unaware of the document's existence until it was received as an attachment to the local board's motion in this appeal.

inconsistent and believes that the evaluation system allows a reviewer unfettered discretion to reject a charter school applicant with minimal justification.⁷

With respect to the evaluation instrument and the rejection letter, we concur with the concerns raised by PCSI. The evaluation instrument used by the local board attempted to quantify numerically the adequacy of the charter application in each of 25 sections listed in the Request for Applications. For example, Section 1 of the RFA, Needs Assessment, contained three requirements: provide an overview of needs to be addressed by the public charter school; describe the analytical tools that you used to determine your needs; and describe your vision for the public charter school. A rating of 8 to 10 points was necessary to receive a satisfactory rating in that category.

PCSI received 3 points for Section 1 that equated to “no or insufficient capacity evidenced; indicates a weak response to demonstrate that the requirements have been met.” However, there is no analytical key that describes with clarity the type of evidence necessary to achieve a point or an explanation of why PCSI received 3 points. Nor is there an explanation indicating how many points overall were necessary to receive approval of the application. We find 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.

We also concur with PCSI that the 3-page evaluation letter should have included as an attachment a copy of the complete charter school evaluation and recommendation prepared by Dr. Hornsby and his staff.

Deficiencies in the Application

Based upon our review of the record, we find that PCSI’s application does not provide enough specificity in critical areas such as a description of how the educational program aligns with the Maryland content standards or that the educational program contains distinctive instructional techniques for the needs of exceptional students, including English language learners and students with disabilities; how the charter school will interact with the school system’s ERP financial system, the student information system, systems for student data collection and reporting and staff payroll; a detailed plan for transporting students; a detailed staff recruitment plan; a detailed budget for the principal, teacher mentors, or supporting costs; no detailed information on insurance coverage; no evidence of student due process procedures for suspensions or expulsions; and no technology plan for at least the first year of operation.

⁷PCSI also argues that once the local board determined that aspects of PCSI’s application were lacking or incomplete, it should have held a hearing in order to give PCSI the opportunity to further explain or clarify items. We disagree. There is no legal requirement that a charter school applicant be afforded a hearing prior to a decision on the merits of the application.

Therefore, if we were to rule on the merits of the application, we would conclude that the local board did not act arbitrarily or unreasonably in denying the application.

CONCLUSION

For the reasons described above, we dismiss this appeal as untimely.

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March 11, 2005