

DR. BEN CARSON CHARTER
SCHOOL, DENISE BECK, AND
INDEPENDENT CHILD STUDY
TEAMS,

Appellants,

v.

HARFORD COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Opinion No. 05-21

OPINION

This is an appeal by Dr. Ben Carson Charter School, Denise Beck, and Independent Child Study Teams of Maryland (“the Appellants”) contesting the decision of the Harford County Board of Education (local board) to deny the Appellants’ application to operate a charter school because of deficiencies in the charter school application.¹ In their appeal, the Appellants assert that the application was not deficient, the local school personnel did not provide them with sufficient assistance, and the local school board failed to provide them with timely information about the review of the application thus depriving them of their due process rights. The Appellants argue that the decision to deny the application is arbitrary because it is contrary to sound educational policy.

The local board has filed a response to the appeal in which it contests some of the facts alleged by the Appellants, specifically facts concerning the sufficiency of the application. The Board also filed a motion for summary affirmance, asserting that its decision to deny the application was neither arbitrary, unreasonable, nor illegal.

The Appellants have submitted a reply to the local board’s response, raising two arguments in addition to those presented in their appeal: (1) the Harford County School System’s Public Charter School Policy is insufficient and inadequate; and (2) the local board violated the Open Meetings Act.

Oral argument by the parties took place before the Maryland State Board of Education on May 24, 2005.

¹On March 28, 2005, counsel for Appellants requested by letter to the Harford County Board of Education that they reconsider their decision. Counsel for the Harford County Board has informed us that the Board has declined to act on the request for reconsideration due to the pendency of this appeal.

FACTUAL BACKGROUND

On September 27, 2004, Denise Beck, submitted an application to the Board to establish a public charter school. The Charter School Coordinator for Harford County Public School District (Coordinator) initially reviewed the application for technical completeness pursuant to Board's "Process Flow Chart On Public Charter Schools." Finding the application incomplete, the Coordinator mailed a request for further information to Ms. Beck on October 10, 2004, setting forth 19 areas in the application requiring completion or further work. She also returned the application to Ms. Beck. Ms. Beck completed the application and resubmitted it on November 11, 2004.

Subsequently, the Charter School Advisory Committee met to review the application on its merits. The Committee found the application deficient for the following reasons:

- Information about the proposed charter school board members and advisors was incomplete. No resumes or background information was provided. Persons were listed as board members and officers who, when contacted, told the Coordinator that they were not board members and/or did not wish to be board members or advisors.
- The application did not contain a specific behavior management plan to address the way the charter school planned to address behavior issues of the special needs students it planned to serve.
- Information about the persons doing business with the proposed charter school was incomplete.
- Requests for waivers of Harford County Board of Education policies were not accompanied by alternate policies that the charter school proposed to follow.
- A feasibility study of the proposed site of the charter school was not provided.

The Charter School Advisory Committee submitted its findings to the Superintendent who prepared a detailed report for the January 10, 2005 board meeting. The Superintendent recommended that the charter school application be denied because, among other reasons, it was inconsistent, substantively incomplete, failed to provide necessary information about its board members and business partnerships, and named persons as board members who specifically stated that they wanted to be removed from the application. The Superintendent concluded:

The incomplete nature of the application raises serious concerns over the ability of the applicant to operate the proposed program. For example, the program description includes a therapeutic component that lacks coherence and a connection to the target behaviors indicated. The efficacy of techniques such as Pet

therapy is unsubstantiated when dealing with behavior disorders in children.

At the January 10th local board meeting, seven people, including Ms. Denise Beck, spoke on behalf of the proposed charter school, advocating approval of the application. The Charter School Coordinator described the Ben Carson Charter School application, its merits, and its deficiencies and presented the Superintendent's recommendation for denial. The Board, thereafter, voted unanimously to deny the application because of its deficiencies. The Board notified the Appellants by letter of January 11, 2005, of the decision to deny the application.

On February 9, 2005, this appeal of the local board's denial of the charter school application was filed.

ANALYSIS

Standard of Review

This case represents a challenge to the local board's decision to deny the charter school application on the grounds that the application was neither sufficient nor complete. 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 judgment 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)

Standing

In its motion to dismiss, the local board argues that none of the three Appellants has standing to appeal because the named applicant was not legally authorized to submit a charter school application pursuant to Maryland Public Charter School Law.² It asserts that Independent Child Study Teams of Maryland (ICSTM) is the actual applicant; that Denise Beck is the authorized agent of ICSTM; and that Dr. Ben Carson Public Charter School is the name of the proposed charter school. The cover page of the application reflects those facts. (*See pp. 1 & 2 of Application*).

²Although lack of standing of Appellant Beck was initially raised as a basis for dismissal, the local board has acknowledged that Appellant Denise Beck has standing because she has children enrolled in the Harford County Public School System.

The law allows four types of persons or entities to submit charter school applications: (1) staff of a 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). The local board argues that ICSTM fits none of those categories because it has not filed for corporate status. We believe the Appellants correctly point out in their reply, however, that the Charter School Act does not specifically require an applicant to be a corporation.

The Appellants also assert that Denise Beck is the actual applicant. *See* Reply at 3. Indeed, the Notification of Intent to Apply indicates that Denise Beck is the applicant. It is clear that Denise Beck is the person who proposed the charter school, prepared the application, and represented the proposed charter school in all its dealings with Harford County Public School System. Denise Beck is a parent of a student attending public school in the county and is a staff member of a public school. *See* Reply at 3. As such and as the local board has acknowledged, Denise Beck is a legally appropriate applicant and has standing to pursue this appeal on her own behalf and on behalf of the proposed Dr. Ben Carson Charter School and ICSTM, for which she is the authorized agent.

As to the standing of ICSTM itself, the Appellants in their reply assert that ICSTM “is a proposed nonsectarian nonprofit entity to be established upon conditional approval of the charter application.” *See* Reply at 3. We point out that the charter school law does not define the term non-profit entity³ nor does it provide guidance as to whether an applicant that “proposes” to be a non-profit entity upon approval of the application can be a proper applicant. Absent statutory guidance on whether the entity must be formally established rather than “proposed,” we have focused our inquiry on the non-profit requirement of the statute.

According to the Maryland Secretary of State, most, if not all, non-profits obtain a federal tax identification number from the Internal Revenue Service. *See* www.sos.state.md.us/Charity/Non-Profit. Therefore, we believe, if an entity has obtained a federal tax identification number, it will have sufficiently demonstrated its non-profit status for the purpose of applying to be a charter school. In this case, the Appellants assert in their Reply that ICSTM “does, in fact, have a federal tax identification number” Reply at 3. Therefore, we conclude that ICSTM has standing as a proper applicant to bring this appeal.

³Our research of state law reveals no generic definition of non-profit entity. State regulations from other agencies contain a variety of definitions. For example, Housing and Community Development regulations contain three different definitions depending on the program being regulated. Compare COMAR 05.05.02.02(a)(14) with COMAR 05.06.01.03(a)(17) with COMAR 05.06.03.04(a)(10).

Assistance to the Applicant during the Application Process

The Appellants argue that the local school district did not provide them with sufficient assistance or information during the application and review process. As the local board points out, however, the Charter School Coordinator did conduct a comprehensive completeness review of the application and sent to the Appellants a letter detailing 19 areas of deficiencies. That letter not only pointed out each of the areas for which more information was needed, it also explained each problem area in the application. The Appellants were allowed to re-submit the application after addressing the deficiencies.

Based upon our review of the record, we find that the school system has implemented an appropriate process for the review of applications. Moreover, we note that the charter school law does not require the local school system to provide technical assistance to an applicant.⁴

Due Process Concerns

The Appellants argue that, because they were not informed prior to the January 10th board meeting that the Superintendent would recommend denial of the charter school application and were not informed of the reasons for that recommendation, they could not adequately prepare a reply. Thus, they argue that they were denied “due process rights.” Implicit in that assertion is the premise that a charter school applicant is entitled to notice and an opportunity to be heard prior to a decision on the merits of the application. Such is not the case. As this Board has stated in *Potomac Charter School v. Prince George’s County Board of Education*, Opinion No. 05-08. “There is no legal requirement that a charter school applicant be afforded a hearing prior to a decision on the merits of the application.” Opinion at 7 n.7.

Moreover, the Maryland Charter School Act does not require a hearing. No other state law requires a hearing. There is no constitutional due process right possessed by charter school applicants that would impose a hearing obligation on the local school system. As to notice of deficiencies, we find that the Harford County Board’s process provided Appellants not only with detailed notice of deficiencies but also with written suggestions for improving the application, along with a list of concerns delineating 19 areas requiring further work. See October 10, 2004 letter from Charter School Coordinator. For all of these reasons, we find the Appellants’ due process claim has no merit.

Open Meetings Act

The Appellants allege that the local board violated the Open Meetings Act because the agenda was not clear that the charter school application could be approved or denied. The Open Meetings Act sets forth the procedures to be followed by those aggrieved by a public body’s

⁴One provision of the law calls for the State Board to provide technical assistance to charter school operators. Md. Code Ann., Educ. § 9-107.

alleged failure to comply with the provision of the Act. *See* Md. Code Ann., State Govt., § 10-501 *et seq.* Under the Act, an individual who is adversely affected by a public body’s failure to comply with the Open Meetings Act may file a petition in circuit court. *Id.* § 10-510. Moreover, any person may file a written complaint to the Open Meetings Compliance Board which will review it and may issue a written opinion. *Id.* §§ 10-502.4; 10-502.5. Thus, as this Board has stated, the State Board of Education is not the appropriate forum for redress of an Open Meetings Act complaint. *See Dale and Donna Danner v. Carroll County Board of Education*, Opinion No. 02-45 at 2-3.

Sufficiency of Application

The Appellants contend that the decision to deny the application is arbitrary,⁵ capricious, and unreasonable because it is contrary to sound educational policy. They point to the fact that Dr. Ben Carson Charter School had received a “Planning and Design” grant from MSDE. They cite the score their grant application received (86 out of 100) as relevant to show that their charter school application should have been approved. Needless to say, a grant application and a full blown charter school application are not comparable documents. A high score on one does not necessarily mean that a high score on the other must follow. Moreover, the grant approval letter makes clear that approval of the charter is a condition precedent to receiving the grant. In short, the grant score is not relevant in judging the sufficiency of the charter school application. Sufficiency of the application must be judged on the quality of the application alone.

As to the insufficiency of the application, the local board points out that the Appellants:

- failed to provide resumes and other necessary information about proposed board members and organizers.⁶
- failed to provide proposed alternative policies for each waiver of local board policy they requested. Those waiver requests involved staff evaluations, student dress code, food service, disciplinary policies, and school calendar.
- failed to include a construction plan or schedule in the application and that no

⁵The Appellants assert that the decision was arbitrary because they should have been conditionally approved just as two other Harford County applicants had been. *See* Appeal at 8-9. Approval of an application on the merits is, however, fact-specific. It is not arbitrary *per se* for one applicant to be denied while another is conditionally approved. We find it reasonable to infer that the deficiencies in the Appellant’s application were more significant than in the other applications. Appellants also make unsubstantiated allegations of bias in favor of those other applicants. Without more, those allegations are meritless.

⁶The Appellants admit that such is the case, stating that they feared public disclosures of social security numbers, names, and addresses. (Appeal ¶ 7). That fear, however, was unfounded because the Coordinator told Ms. Beck that social security numbers would be redacted from the publicly available documents. *See* Board Informational Report, p. 1.

construction was underway for the school even though an August 1, 2005 opening date was planned.

CONCLUSION

Based on a review of the record in this matter including the arguments made by the parties and for the reasons stated in the January 10, 2005 Charter School Application Recommendation to the Harford County Board of Education, we find that the Harford County Board of Education did not act arbitrarily, unreasonably, or illegally in this matter. We therefore affirm the decision of the Harford County Board of Education denying the charter school application submitted by the Appellants.

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June 7, 2005