

UMOJA ACADEMY,

Appellant

v.

BALTIMORE CITY BOARD OF
SCHOOL COMMISSIONERS,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 06-14

OPINION

This is an appeal by UMOJA Academy of Performing Arts (“UMOJA”) contesting the decision of the Baltimore City Board of School Commissioners (“City Board”) to deny UMOJA’s application to operate a public charter school. In its appeal, UMOJA asserts that the City Board’s rationale for rejecting the application lacks merit. Specifically UMOJA expresses its disagreement with the following reasons for rejecting the application: (1) the lack of capacity of the governing board and proposed school leadership, including the lack of financial expertise, legal expertise, and instructional expertise; (2) the lack of clarity about the ongoing relationship with consultants, including the role consultants would play and the financial implications; (3) the absence of the necessary instructional expertise and detailed plans to support and implement a compelling vision of a music integrated school program; (4) the lack of community and parental support/demand for the proposed school; and (5) the lack of an alternative facility plan should space in a Baltimore City Public School System (“BCPSS”) owned facility not be available.

The City Board has filed a Motion for Summary Affirmance maintaining that its decision was not arbitrary, unreasonable, or illegal. The City Board asserts that it had legitimate concerns sufficient to deny the application as set forth in its rationale. UMOJA has submitted a response to the City Board’s Motion reiterating UMOJA’s position.

FACTUAL BACKGROUND

Dr. Billie Roberts-Spann, on behalf of UMOJA, submitted a charter school application on September 1, 2005. UMOJA proposes to establish a K-8 charter school program in the Park Heights Community of Baltimore City which will integrate music into all aspects of learning. UMOJA intends to use the curriculum from the Calvert School as its basic academic program, the Literacy First Process to ensure greater student literacy, and the Music Expressions curriculum as a guide to integrate music into the basic curriculum. *See* UMOJA’s Application at pp. 6–7.

UMOJA's application was initially reviewed by the BCPSS Charter Schools Advisory Board¹ ("Advisory Board") and members of the BCPSS Office of New, Charter, and Community Schools. Laura Weeldreyer, Coordinator of New and Charter Schools, provided feedback to Dr. Spann, sharing the Advisory Board's questions, concerns, and requests for additional information. Affidavit of Laura Weeldreyer, ¶¶ 3 – 6. The Advisory Board had particular questions about UMOJA's curriculum, professional development, governing board/school management expertise, parent and community engagement, articles of incorporation/by-laws/certificate of good standing, budget, facility, and waivers and proposed alternative policies. *See* October 22, 2005 feedback document.

The Advisory Board met with and interviewed UMOJA representatives on November 14, 2005.² UMOJA was permitted to respond to questions and concerns raised by the Advisory Board during its initial review of the application. The Advisory Board then asked the UMOJA representatives a core set of questions asked of all charter school applicants during their interviews. The Advisory Board gave UMOJA an average interview score of 16.25 out of a total possible 40 points. Affidavit of Laura Weeldreyer, ¶¶ 7 – 8.

The Advisory Board met again on November 15 to consider and score the overall proposals of UMOJA and the other charter school applicants.³ Of the 6 applications for new schools, the average combined scores for the applications and interviews were 108.4, 107.2, 95.4, 87.2, 85.35, and 37.6. UMOJA's combined average score was 85.35. Affidavit of Laura Weeldreyer, ¶¶ 9 – 10.

Thereafter, the Advisory Board made recommendations to Dr. Bonnie Copeland, Chief Executive Officer. The Advisory Board recommended approval of the charter school applications for the 2 applicants who had a combined average score of 108.4 and 107.2. The Advisory Board recommended that the other applications, including UMOJA's, be rejected. Affidavit of Laura Weeldreyer, ¶ 10. Dr. Copeland made recommendations on the charter school applications to the City Board. She recommended that UMOJA's application be denied.

¹The Advisory Board consists of 13 voting members, including school system staff and community foundation representatives, as well as non-voting school system staff members.

²The City Board maintains that the Advisory Board met with Dr. Spann, two UMOJA board members, and Dr. Iris Metts, a consultant hired by UMOJA. UMOJA maintains that the Advisory Board met with Dr. Spann, Dr. Metts, one UMOJA board member, one community member, and the Vice President of Calvert Educational Services.

³The scoring rubric is published as an addendum to the Application for Establishment of a Charter School in Baltimore. *See* Application for Establishment of a Charter School in Baltimore City.

On December 19, 2005, the City Board rejected UMOJA’s charter school application. Dr. Copeland advised UMOJA of this decision by letter dated December 28, 2005. That letter states as follows:

This letter provides the rationale for the Board’s rejection of your application. As a result of an extensive and rigorous review process, your application did not meet the criteria to be recommended to the School Board for approval. Specifically, the concerns about your charter application include:

- Capacity of governing board and proposed school leadership (including the lack of financial expertise, legal expertise, and instructional expertise);
- The lack of community and parental support/demand for the proposed school;
- The lack of an alternative facility plan (should space in a BCPSS-owned facility not be available);
- The lack of clarity about your ongoing relationship with consultants, including the role consultants would play and the financial implications; and
- The absence of the necessary instructional expertise and detailed plans to support and implement a compelling vision of a music-integrated school program.

STANDARD OF REVIEW

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

ANALYSIS

UMOJA challenges the various reasons set forth by the City Board for rejecting its charter school application. We have addressed each of the issues below.

Capacity of Governing Board and Proposed School Leadership

Appellant disagrees with the City Board's rejection of UMOJA's application based on the governing board's and proposed school leadership's lack of capacity in matters of financial, legal, and instructional expertise. Appellant points out that the individuals working with UMOJA have substantial qualifications and expertise in the designated areas. For example, several founding board members have been teachers, one is a practicing attorney, and several others are leaders in non-profit organizations. In addition, UMOJA has a contractual relationship with a consulting firm, A+ Choice Solutions, Inc. ("A+CSI"), which will provide "back-office" support as required by the school.⁴ The firm has access to consultants in various fields, including instructional, legal, financial, personnel, and facilities. UMOJA also intends to seek out those with additional expertise as it transitions to its operating board.

The local board explains in its Motion that the determination regarding the lack of capacity of school leadership developed during UMOJA's interview with the Advisory Board. The majority of the presentation was made by Dr. Spann and Dr. Metts, with the two other board members offering little input. The Advisory Board was unimpressed with the presentation, finding that Dr. Spann and Dr. Metts were unable to sufficiently answer critical questions about the charter school. In particular, the Advisory Board had major concerns about Dr. Spann functioning as leader of the school. As stated by David Stone, Director of the Office of New, Charter, and Community Schools, in ¶ 5 of his affidavit:

When the Advisory Board conducted its interview with the Appellant, it was struck by the lackluster responses of Dr. Spann and her two UMOJA board colleagues. While Dr. Spann and Dr. Metts answered most of the questions, Dr. Spann's responses failed to link the school's vision, mission, goals, and curriculum with an assessed need based on the target population of the community. As the announced school leader, Dr. Spann was unable to articulate clearly and with sufficient detail her school vision or philosophy about music education. Rather, she and her two colleagues relied upon their consultant, Dr. Metts, to answer the substantive interview questions. Dr. Spann and Dr. Metts indicated that Dr. Metts and her company, A Plus Choice Solutions, Inc., would not be a management company or operator for the UMOJA charter school; Dr. Metts would be providing "back office" services only. However, her description of these services and the role she would play lacked clarity. Moreover, Dr. Spann could not articulate a detailed philosophy for a school with a music-based curriculum.

⁴Dr. Iris T. Metts and Dr. Kenneth Brown, both formerly employed by the Prince George's County Public Schools as Chief Education Officer and Associate Superintendent for Business and Finance, respectively, are principals in the firm.

Dr. Spann was only able to talk in generalities. Given Dr. Spann's announced leadership role at the school, it was the opinion of the Advisory Board based upon the scoring rubric provided in the application that her inability to articulate the school's philosophy and music focus was a major weakness.

In response to the local board's comments about the interview, UMOJA states that Dr. Spann and Dr. Metts were accompanied by one UMOJA board member, one community supporter, and the Vice President of the company providing the curriculum, Calvert Educational Services. They were not accompanied by two board members as stated in the local board's Motion. Furthermore, UMOJA defends the lack of input provided by those present, other than Dr. Spann and Dr. Metts. UMOJA explains that all who were present at the interview on behalf of UMOJA were prepared to address different aspects of the charter school application. For example, the board member was prepared to address facilities issues and parental involvement, the community member was prepared to discuss community issues, and the Calvert representative was prepared to respond to questions about the Calvert curriculum. Dr. Spann and Dr. Metts were responsible for the remainder of the issues that might arise. Thus, UMOJA maintains, the specific questions asked by the Advisory Board dictated who responded and the lack of response from those other than Dr. Spann and Dr. Metts should not be viewed as a detriment.

One of the most difficult yet critical issues in reviewing a charter school application is assessing the capacity of the founding group putting forth the application. While a written application may appear well done, it does not necessarily mean that the founding group responsible for implementing the application has the ability to do so. This is especially true in light of the fact that many founding groups hire consultants to write their applications. One way in which to determine the capacity of the founding group is to review the resumes of the founding group members, looking for expertise in areas such as education, finance, law, business, marketing, community advocating, and real estate. In addition, as espoused by many national experts in the field, it is essential to interview the founding group and ask difficult questions about the application. It is in this way that the local school system can gain a better understanding of the group's ability to carry out their plan.

Given this difficulty, the Advisory Board properly addressed this capacity issue through its interview process. The Advisory Board asked difficult questions and graded the group on its ability to provide adequate answers. Based on this interview, the Advisory Board determined that the group was unable to sufficiently answer the interview questions posed thereby demonstrating a lack of capacity to handle the various matters that may arise while attempting to implement the application.

Relationship With Consultants

The local board asserts that UMOJA's relationship with A+CSI remains unclear. While Appellant's proposed budget included an initial outlay of \$90,000 for A+CSI and an outlay up to \$340,000 per year in the charter school's fourth year, the Advisory Board was unable to get a clear picture of the role A+CSI is to play in the proposed charter school's day-to-day operations and how the funds are intended to be used. The Advisory Board found Appellant's responses to legitimate questions about its financial relationship with the consulting firm during the interview to be defensive. The Advisory Board was also concerned that the initial budgeted amount did not accurately reflect the major role played by the consultant given the Advisory Board's concern with the lack of leadership capacity in Dr. Spann. *See* Affidavit of David Stone, ¶ 5.

Appellant maintains that it has been clear about its ongoing relationship with its consultant A+ Choice Solutions, Inc. Appellant has explained that A+CSI is a consulting company providing UMOJA with advisory services in various areas and has no decision-making authority for UMOJA. As stated in UMOJA's letter of appeal, "At all times the decisions regarding UMOJA Academy, and responsibility for the operation of UMOJA Academy, are entirely in the hands of the board of trustees of the school." Letter of Appeal at p. 5.

A+CSI has already been providing consulting services to UMOJA. In 2005, A+CSI provided the following services to UMOJA at no cost: drafted the charter school application; drafted the Maryland Charter School Preplanning Grant application; drafted the Maryland Charter School Planning & Design Grant Part I and Part II applications; represented UMOJA at BCPSS and Maryland State meetings; provided assistance with school set up; provided assistance with recruiting and hiring principal. A+CSI may also provide the following services to the school in each year of its contract with UMOJA: grant writing, financial services advice, staff development support, curriculum development assistance, human resources services, accreditation preparation, State and federal compliance reporting, strategic planning, assistance with securing capital funding, and additional services as needed for the improvement of teaching and learning at UMOJA. UMOJA notes that the fees charged by A+CSI are much lower than the fees charged by charter school management companies. UMOJA further notes that if BCPSS chooses to provide any of these services to UMOJA at a lower cost than A+CSI, A+CSI will adjust its fees accordingly.

There is some concern among the school systems about the influx of consultants contracting with charter schools to oversee various operations of charter schools. This concern is based primarily on the belief that many of the consultants are putting the charter schools at financial risk based on the amount being charged for services. As a result of this concern, we conclude that charter school applicants must reveal to the chartering authority both the financial and operational arrangements made with the educational management organization or consultant due to the implications such an arrangement can have on the daily and financial operations of a school. The chartering authority needs to have a solid understanding of the arrangement and the way in which it will affect the school.

Here it seems that, although UMOJA maintains that A+CSI would be providing consulting services only, the Advisory Board was unable to understand from Appellant's explanation the manner in which such services would be provided and utilized on a daily basis during the operation of the school. It also seems that the Advisory Board believed that A+CSI's role would be much greater than anticipated by UMOJA given the perceived lack of capacity of the school leadership.

Plans to Support and Implement Music Integrated School Program

The local board found UMOJA's philosophy about music education and the integration of performing arts with traditional school curricula were absent from its application and explanations during the interview process. The Advisory Board felt that Dr. Spann and her colleagues were unable to describe in any detail the manner in which the music curriculum would mesh with the overall vision for the school. Nor was there any explanation of the integration of the curricula and how they would complement each other or support students in meeting specific performance goals. In addition, the local board noted that UMOJA's budget failed to include any money for the purchase or rental of musical instruments which are vital to implementation of the music curriculum. *See* Local Board's Motion at 6.

UMOJA believes that it has provided sufficient explanation for an understanding of how music would be incorporated into the school program. UMOJA explains that it plans to integrate music into each student's day by linking regular classroom learning to musical and performing arts concepts. In addition, the music and performing arts classes will be based on topics being studied in the regular classes.

We note that the curriculum identified for music is a commercially available program called Music Expressions. UMOJA's application provides no information explaining how this music curriculum will be integrated with the Calvert School curriculum and the Learning First philosophy and materials. We note also, that the proposed charter school is "UMOJA Academy for the Performing Arts" and that the Music Expressions curriculum is a general music curriculum without an emphasis on performance. Generally, a school for performing arts would be expected to include theater and dance in its activities. UMOJA's application makes no indication that plans are under consideration for either of these components of Maryland's fine arts curricula.

Community and Parental Support and/or Demand for the School

The City Board found that UMOJA's application failed to demonstrate community and parental support and/or demand for establishment of the proposed school. Specifically, the application failed to demonstrate "a significant demand among parents for the proposed school" and a "continuing plan for broad outreach and recruitment, including to families traditionally less informed about options" as set forth in the BCPSS charter school application. *See* Application for Establishment of a Charter School in Baltimore City at p. 7, Section IV(A). UMOJA's board

includes one parent and one representative of the Clyburn Community Action Association. The local board believes that neither of these individuals was able to articulate before the Advisory Board whether the Park Heights community, where the UMOJA charter school would be located, would like a music focused curriculum. The City Board maintains that UMOJA made few formal efforts to engage parents and community members. For example, it does not appear that UMOJA sought support from any of the strong community groups in the Park Heights Neighborhood, such as the CHAI Neighborhood Housing Program and the Park Heights Community Association. *See* Affidavit of David Stone. In addition, other than listing various community and city organizations in the application, UMOJA did not provide any evidence that it actually has the support of these groups.

UMOJA disagrees with the City Board's assessment of its community support. UMOJA maintains that members of the Park Heights community have been involved in the creation of the school for four years. Attached to UMOJA's application is a "Petition for Community Support of Proposed Charter School" which appears to have been signed by 58 individuals attesting that they are a parent of a child of interest who could benefit from the opportunity to attend the charter school and that they support the concept for the school.⁵ With regard to the organizations with which UMOJA anticipates establishing partnership agreements, such as Arena Players, Baltimore Symphony Orchestra, Johns Hopkins University, Morgan State University, and Real Estate Brokers of America, UMOJA explains that no such partnership agreements are included because none can be finalized with a school that does not yet exist. UMOJA also explains in its application that student recruitment will begin as soon as approval is given and formal promotion of the school will begin in January 2006. Promotion will be in English and Spanish language. Recruitment will include the use of advertisements in print and on radio, open public forums, written distributions of information to community establishments, and oral announcements at community establishments.

Other than having the Petition signed by 58 parents in the community, we do not see any evidence in the record regarding community support or demand of UMOJA's proposed school. Nor do we find evidence of any formal actions UMOJA has taken to garner awareness and support for the school in the community. While UMOJA may have been unable to execute final partnering agreements with the various organizations it has listed, it would have been helpful if it had obtained letters of support from the organizations with which it intends to partner and descriptions of the services to be provided from those partners as set forth in the Baltimore City Application. *See* Application for Establishment of a Charter School in Baltimore City at p. 4, Section II(B). In addition, UMOJA has set forth some general ideas about how it will promote the school and recruit students in the future, but these plans lack detail. In sum, UMOJA did not present sufficient concrete evidence of the support and demand for this school in the community.

⁵UMOJA states in its letter of appeal to the State Board that it submitted numerous letters of community support containing more than 100 signatures. Other than the Petition mentioned above and letters of support from UMOJA board members, we were unable to locate such letters as attachments to the application and other appeal materials.

Alternative Facility Plan

The local board has also expressed concern regarding Appellant's inability to identify any facility for its school. Appellant's facility's information is set forth in Appendix 16 of its application. Appellant's proposed plan calls for a campus located in the Park Heights neighborhood. UMOJA would prefer to use an existing school building belonging to BCPSS but will seek alternative facilities if no such building is available.

It is our understanding that as of the date of this Opinion, UMOJA had identified a facility. Therefore, we have not based our opinion on this issue.

Improper Influence

UMOJA alleges that an Advisory Board member improperly tried to influence UMOJA's selection of a consultant when an Advisory Board member left a telephone message for Dr. Spann advising her to contact a specific representative of a specific educational management organization ("EMO") and resubmit the UMOJA application under the auspices of that EMO.

At oral argument, UMOJA again alleged that the Advisory Board had improper contacts with charter school vendors. This Board requested that UMOJA be specific about the persons they believed had engaged in improper conduct. This Board requested BCPSS to provide affidavits from the persons named. Those persons have submitted affidavits to this Board. Upon careful review of the affidavits, we conclude that no improper contact occurred. However, we remind those persons who review charter school applications of the importance of avoiding the appearance of impropriety and of maintaining an arms length relationship with charter school consultants and vendors.

CONCLUSION

For all of these reasons, the decision of the City Board to deny the UMOJA application is affirmed. We encourage UMOJA to meet with BCPSS and to reapply now that the facility issue has been addressed.

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