

PISCATAWAY CREEK MONTESSORI
COMMUNITIES, INC.

Appellant

v.

PRINCE GEORGE'S COUNTY
BOARD OF EDUCATION

Appellee

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Opinion No. 07-21

OPINION

INTRODUCTION

Piscataway Creek Montessori Communities, Inc. (Piscataway) has appealed the decision of Prince George's County Board of Education (local board) denying its application to become a charter school. The local board has filed a Motion for Summary Affirmance. Piscataway has responded.

FACTUAL BACKGROUND

On June 30, 2006, Prince George's County Public School System (PGCPS) held a "Charter School Application Information Session" with potential charter school applicants. Representatives of Piscataway attended. (Motion, Ex. 1). At this meeting, charter school applicants received an overview of the charter school application process and were given an opportunity to ask questions about the approval process and the application. Applicants were given information regarding major content requirements for PGCP's application, including areas of compliance assurances; academic programs; student services; accountability; human resources; support services and school security; budget, management and financial services; and final documentation. (Motion, Ex. 2).

Charter applicants also received information and documents on the Charter School Waiver Request Form and process; budget forms; per-pupil funding information; Board of Education Policies and Administrative Procedures; charter school resources available on the school system's website; PGCPS' Charter School Agreement template document; and PGCPS' proposed timeline documents for Charter Schools. (Motion, Ex. 2).

On August 1, 2006, Piscataway submitted its application to establish a pre-k through 12th grade Montessori Charter School with an environmental focus. Piscataway planned to open grades pre-k through 8 in the fall of 2007.

PGCPS has established a process for review and approval of charter school applications. It is set forth, in part, in Administrative Procedure 3506 which provides that, "a public charter

school application shall be submitted to the Chief Executive Officer (Superintendent) or his/her designee for review and evaluation. (Motion, Ex. 3). For charter schools under consideration for opening for the 2007-2008 school year, the Superintendent established an Evaluation Committee delegated with the responsibility for review and evaluation of charter school applications.

The Evaluation Committee was comprised of representatives from each of the offices or divisions of PGCPs who had expertise in their respective areas in academics; student service; accountability; human resources; supporting services and budget and finance. The representative from each of the designated offices, along with Mr. Scott Hangey, Director, New Schools and Charter Schools Office, were delegated the responsibility for reviewing and evaluating the specific content of the application in each of the identified areas.

The Charter School Office developed the Evaluation Rubric (Motion, Ex. 4) and rating matrix (Motion, Ex. 5) used by the Evaluation Committee for its review of charter school applications. The Rubric called for Evaluation Committee members to rate specific content areas in the applications using three rating categories: satisfactory, marginal and unsatisfactory. These rating criteria were defined as (1) whether the charter school's application included evidence of sufficient information to qualify for a satisfactory rating; (2) whether the application included only "minimal evidence" in the subject content area that only warranted a "marginal" rating; and (3) whether the application warranted an "unsatisfactory" rating on the grounds that it included de minimus or no evidence in the content area required of the application.

Following the initial review phase of the application, PGCPs extended opportunities to charter school applicants to participate in an interview with members of PGCPs' Evaluation Committee. During the interview, the charter school could provide additional information and respond to questions about information included in the charter school application and any deficiencies that the Committee identified. According to the local board, the primary purpose for the interview process was to allow the founding group for the charter school an opportunity to respond to difficult questions about the application and to demonstrate their ability to carry out the school's plan to deliver educational services to students and to provide appropriate management and administrative oversight of the proposed charter school.

Piscataway participated in an interview with the Evaluation Committee on September 22, 2006. They were invited back on October 4, 2006 to meet with PGCPs' Evaluation Committee to provide additional information on the academic and accountability sections of the Application and to respond to additional questions regarding the charter school's high school model, the plans for three and four-year-olds, and implementation of State assessments. (Motion, Ex. 6).

After the second interview, the Evaluation Committee did a final evaluation of the Piscataway application in seven overall areas: general operations; academics; student services; accountability; human resources; support services; budget and finance. As the local board explained in its Motion, the Evaluation Committee had "concerns" about the application and those concerns led to unsatisfactory ratings in compliance areas of its Application, including

Academics, at Sections 2.1-2.4, and Health Services, at Section 3.2 under Student Services, and marginal ratings in areas of Accountability, at Section 4.2 under Student Assessment, Faculties under Supporting Services 6.1, and Budget and Finance, at Section 7.4, Finances. (Motion, Ex. 5). Thereafter, the local board denied the charter school application because Piscataway “did not provide sufficient evidence of its ability to successfully open, manage, and operate a charter school for the 2007-2008 school year.” (Motion, Ex. 7). Attached to the denial letter was a 2 ½ page “detailed description of the basis for the Board’s decision....” *Id.*

On those 2 ½ pages the local board listed the problems the Evaluation Committee found in the application. They were:

Budget and Finance

- None of the governing board members are Montessori certified. They were all parents of Montessori students.
- Their prospective principal candidate is Montessori certified, but has never been a principal.
- The RFA indicated that only state and local funds should be used in the budget, but the applicant also used federal funds, including Title I and entitlement grants.
- They anticipate bringing on a guidance counselor in year 2; however, once informed that they would need a guidance counselor in year one because of 8th grade, applicants indicated that they could adjust their budget.
- Applicant needed to provide more detail regarding their contingency plan and the cash flow analysis. Applicant indicated that they would reduce a permanent instructional aide and seek additional funds from the Charter School Development Corporation.
- The salaries budgeted were toward the low end of the scale.
- Applicant wants to include 3 and 4 year olds in the program. When asked how they would fund it without funding from PGCPs, they reiterated their requests for funding. They also said that they may create a separate organization for 3 and 4 year olds.

Facilities

- The emergency preparedness plans were sketchy.
- The applicants have not identified a specific site.
- Applicants intend to consult with an architect or a general contractor.

Academics

- Applicants want a Montessori school from pre k through 12th grade. They want to provide continuity. They have seen a high school model in Ohio that they want to replicate. They do not have any other research to suggest that Montessori will work in high school.
- Applicants want to provide an environmental focus, but provided little detail to substantiate this.

- Applicant wants to begin in year one with Pre-K through 8th grade. They would like to seek a waiver to grant priority to students with past Montessori experience.
- When asked why they didn't focus on the early grades, they indicated that their children currently attend John Hanson and will soon enter middle and high school.
- They want a longer school day; purpose/benefits/rationale not specific during discussion to support proven data or specific strategies/plan for "longer day".
- Applicant does not have a technology plan. They intend to develop it. Applicant stated that they do not have an area of great expertise with respect to technology.
- Applicants intend to use the PGcps Elementary and Middle Montessori curriculum.

Student Services

- Applicant indicated that they have little expertise regarding COMAR guidelines for health services, but promised to comply.
- Applicants were planning to hire a health aide instead of a nurse, and discussed nursing volunteers.
- Applicants provided little information regarding children with disabilities and extracurricular activities. Applicants indicated that they want to be inclusive.

Accountability

- Applicant requested a calendar waiver so that school could begin after Labor Day. They want to balance home and community and ensure 2 weeks of additional vacation time. This would require negotiations with all negotiating representatives for all represented school system employees.
- Applicant is also requesting an admissions waiver to include other family members (not just children). This is not supported by the Charter School Law.
- Applicant had little knowledge regarding ALT-MSA. Applicant said that they would do what other County schools do.
- Applicant indicated that they need to do more work with regard to the high school curriculum and preparation for HSA. They did not indicate a plan for mapping the High school curricula to HSA and how student participation would be determined.
- They are still developing their plans for statistical analysis of trends and tracking. Applicant did not communicate a plan for this.

Human Resources

- Applicant requested a waiver for the calendar. When asked that this would require negotiations with all of the unions, applicant indicated that they might forget this for the first year.
- Applicant was asked to expand on the recruiting plan. Potential principal candidate was a former employee of PGcps and worked in the FOCUS Office. She indicated that she is able to successfully recruit Montessori certified teachers.

- Applicant was made aware of the difficulties associated hiring certified Montessori teachers for secondary school who are also highly qualified in subject and content areas.

Piscataway has appealed the decision of the local board asserting that its application was more than sufficient and that the local board's application process was deficient.

In defending its decision to deny the application, the local board argues that the Piscataway application did not provide "sufficient information" in the areas listed above. (Motion at 7-21).

Standard of Review

The Standard of Review is set forth at COMAR 13A.01.05, which states that "decisions of the local board involving a local policy or controversy and dispute regarding the rules and regulations of the local board shall be considered prima facie correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal.

- A decision may be arbitrary or unreasonable if it is one or more of the following:
 1. It is contrary to sound educational policy; or
 2. A reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached.
- A decision may be illegal if it is one or more of the following:
 1. Unconstitutional;
 2. Exceeds the statutory authority or jurisdiction of the local board;
 3. Misconstrues the law;
 4. Results from an unlawful procedure;
 5. Is an abuse of discretionary powers; or
 6. Is affected by any other error of law.

ANALYSIS

Mootness

The local board argues that this case is moot because Piscataway has conceded that it cannot open in the fall of 2007. Therefore, the board asserts there is no case or controversy to resolve. This issue arises in almost every charter school case. It is the nature of these cases that a denial of the application will almost always set back the possibility of opening the charter school for at least a year. We do not conclude, however, that that fact moots the case. There are live issues in this case and those issues are likely to recur in a future consideration of this application and, if

appealed, they will face the same mootness challenge. That is sufficient reason to go forward with this appeal. See *Albert S. v. Department of Health and Mental Hygiene*, 166 Md. App. 726, 743-744 (2006). *Imagine Foundation Public Charter School v. Prince George's County Board of Education*, MSBOE Op. No. 06-26.

Issues Presented On Appeal

1. Whether the evaluation process used by Prince George's County Public Schools is so deficient that it is illegal on its face?
2. Whether the Prince George's County Board of Education's decision to deny the Application of Piscataway Creek Montessori Communities, Inc. was arbitrary, unreasonable or illegal?
3. Whether under state law a Montessori Charter School may establish an admission preference for children with prior Montessori or Montessori-like experience?
4. Whether the Prince George's County Public Schools is required to provide commensurate funding for 3 and 4-year olds for Piscataway Creek Montessori Schools when it provides funding for 3 and 4-year olds in its comparable Contextual Learning Environments (formerly, Magnet) program for Montessori students?

(1) The Application Review and Decision-making Process

Because of alleged faults in the process, Piscataway challenges the legality of the Prince George's County School Systems application evaluation process. Piscataway sets forth several reasons why the PGCPS evaluation process is so flawed that it must be declared illegal. First, Piscataway asserts that there are no guidelines for the application reviewers. We do not agree.

In order to fulfill the obligation to review and evaluate charter school applications, the Superintendent established an Evaluation Committee comprised of representatives of each of the offices or divisions of the school system who had expertise in their respective areas, including academics, student services, accountability, human resources, supporting services and budget and finance, and who had experience in reviewing and evaluating charter school applications. Each of the representatives of the Evaluation Committee, along with Mr. Scott Hangey, Director, New Schools and Charter Schools Office, were delegated with the responsibility for reviewing and evaluating specific content areas for the application in their identified area of specialty.

The Evaluation Committee used an Evaluation Rubric developed by PGCPS' Charter School Office to evaluate each section of the application. The Evaluation Rubric was used to rate each section of the application and to determine whether the information provided by a charter applicant in each section was satisfactory, marginal, or unsatisfactory. A satisfactory rating would result where the Evaluation Committee determined that the application included sufficient

information to meet all criteria set forth in the Rubric under the section of the application. A marginal rating would result where the application presented minimal evidence that met the criteria standards established for each of the sections. Finally, an unsatisfactory rating would result where an application only included de minimus or no information that met the criteria standards required under each of the sections.

Piscataway argues that the Rubric was not a sufficiently analytical tool to provide guidance as to what would “distinguish satisfactory response from a marginal or [un]satisfactory one.” (Reply at 14). The applicant points to the State’s scoring rubric for its Grant Application process as a model rubric. Although, the State’s rubric may well be a good model, that does not necessarily lead to the conclusion the PGCPS rubric was so deficient to be illegal, arbitrary or unreasonable.

We believe that PGCPS’ Evaluation Rubric provided its Evaluation Committee members with guidance on how information set forth in each section of a charter school’s application should be reviewed and evaluated. The Rubric established that “sufficiency” of the information presented was the standard. Admittedly, deciding what is sufficient may be a subjective decision. As with any evaluation process, some level of subjectivity must occur based upon the professional and practical work experiences that each member of the evaluation team brings to the process. Some level of subjectivity in an evaluation process, however, does not render the process arbitrary, unreasonable, or illegal.

Piscataway assails the expertise and work of the Evaluation Committee. They assert that the local board has not provided evidence of a quality review by a quality committee. That is not, however, the local board’s burden. We reiterate here our standard of review- - the local board’s decision is presumed to be correct unless the applicant proves otherwise. On this issue, the applicant has not met its burden.

It is not clear from the record, however, whether PGCPS shared the Evaluation Rubric or Matrix with the applicants. We believe, however, that the interview process gave the applicant every opportunity to discuss the evaluation criteria with the Committee.

Second, Piscataway offers as proof of the arbitrariness of the charter school process that all of the 10 charter school applications were denied. We do not, however, have those nine applications before us on appeal. We cannot base a finding of arbitrariness on the fact of the denial of all applications, all of which may very well have been deficient.

Third, Piscataway asserts that it received no information about how the applications were to be evaluated qualitatively or which components of the application were most important. We have reviewed the information provided at the Charter School Application Information Session in June 30, 2006 and find it to be sufficient for an applicant to determine what the application needed to contain, at minimum.

For example, in the Student Assessment section, the applicant is told:

- Assessment should confirm student progress, identify areas of low and high achievement, and improve the accountability of the school.
- Formal assessments should be integrated with the curriculum to indicate overall achievement levels.
- Commitment to high academic standards for all students, well-developed assessment mechanisms, and understanding of the state assessment requirements are essential to public charter school planning.

(See Motion, Ex. 2 § 4.0).

Similar guidance is found in other substantive sections of the information. (See, e.g, Motion, Ex. 2 § 7.0). Moreover, it is clear from the materials that, although the sections on budget and assessments were critical, all elements of the application were interrelated and important.

Fourth, Piscataway argues that the 30 day time period to respond to the charter school RFA was arbitrary. We do not agree. Thirty days is, we believe, a reasonable time period particularly when the interview process provided additional opportunities for clarification and discussion of the application.

Of course, there can always be improvements to an evaluation process. We continue to encourage all local school systems to develop a transparent charter school application evaluation process, particularly defining with as much specificity as possible what an application must contain and how it will be evaluated. In this instance, although the PGCPS' review process is not perfectly transparent, we find that the application review process, as designed, is legally sufficient¹.

(2) Decision to Deny the Application

The local board denied the charter school application stating that Piscataway “did not provide sufficient evidence of its ability to successfully open, manage, and operate a charter school for the 2007-2008 school year.” Piscataway argues that that decision of the local board was arbitrary, capricious, and unreasonable. We note that the local board listed 28 deficiencies in the charter school application. Piscataway asserts that many of the reasons are not sufficiently substantive to have lead to a denial. We agree.

We focus, however, on 3 substantive areas in which Piscataway received unsatisfactory or marginal ratings.

¹We have had several opportunities in the past to assess the PGCSS charter school application review process and had found it legally deficient. We take this opportunity to commend the local board on the changes and improvements in the 2006 review process and encourage further improvements, including full disclosure of the evaluation rubric.

Facilities:

The PGCPS application states that if there has been no facility identified, the applicant must describe plans and timelines for doing so and the applicant must also inform PGCPSS within 10 days of identifying a facility. Piscataway had not identified a site for its proposed charter school. Following interviews with the applicant, PGCPS apparently had concerns about whether Piscataway fully understood the process required for finding and developing a school within the time frame allotted for opening for 2007-2008. The local board asserts that during the interview process with Piscataway's representatives, PGCPS expected that the applicant would be able to demonstrate sufficient understanding of the process required for planning and design of a proposed facility, construction phases and, most importantly, timely obtaining use and occupancy permits.

The Evaluation Committee rated this category as marginal. We have reviewed the applicant's response to this requirement and conclude that it was incomplete in several areas. From the information in the application we conclude that the applicant appears to lack an understanding of the process of locating and opening a facility as well as the potential cost associated with acquiring a facility. We note that the timeline was somewhat unrealistic with too short a window to complete activities. Moreover, we believe the applicant could have given more detail about its financing options than to say, "that it has explored many financing options."

Academics:

In Section 2.3, Academic Program, Standards, and Curriculum, the applicant is to demonstrate innovative teaching methods and curriculum approaches. Regarding curriculum, the applicant was required to present an overview of curriculum objectives and content of main subject areas.

The Evaluation Committee questioned whether Piscataway fully understand the Montessori model it proposed to adopt. The Committee focused on goals and objectives of the curriculum and the alignment of the curriculum to the Voluntary State Curriculum. The local board asserts that:

"At Section 2.2 of Piscataway's Application, although "goals and objectives are outlined in the proposal, evidence of quantifiable targets for performance is minimal. (Motion, Exhibit No. 4, p. 3.)....Curriculum and alignment were also incomplete. Piscataway represented that, prior to July 2007, school leaders working with Montessori consultants will develop physical education, foreign language, arts and music curriculum aligned with both the Maryland Voluntary State Curriculum and the Montessori Curriculum and philosophy. Considering the fact that these programmatic pieces were not adequately included in Piscataway's Application, PGCPS determined that the curriculum and alignment goals were incomplete." (Motion, Exhibit No. 4, at pp. 3-4.).

Although the Committee commented on a number of other "academic" area deficiencies, we

believe that the focus on alignment with the VSC is appropriate. Thus, we have reviewed the applicant's submission in this area, particularly focusing on the applicant's understanding of Components of the Voluntary State Curriculum (VSC) and the Core Learning Goals. We found that even at the elementary level essential VSC components and concepts were not evident. We recognize, of course, that the applicant can choose to use an innovative curriculum, but alignment of that curriculum to the VSC, remains a critical component of the school's overall academic standards.

Health Services:

Two issues regarding Health Services were listed in the denial letter to the applicant. Specifically, the review team had issues with the applicant's perceived lack of expertise regarding COMAR guidelines regarding health services as well as applicants planning to hire a health aide instead of a nurse.

Upon review, we have concluded that the applicant's response to the provisions of school health services accurately listed most of the requirements set forth in the School Health Services Standard, Code of Maryland Regulations (COMAR) 13A.05.05.05-15. It is not clear in the application, however, that there is a provision for a designated school health professional (registered nurse, physician or nurse practitioner) as required by the regulation.

In two of the three areas described above, Facilities and Academics, the application was not sufficient. We note also that after the interview process the Evaluation Committee concerns about the applicant's preparedness to open a charter school increased not decreased.

After considering all the arguments, after discarding as non-substantive many of the reasons given for the denial, after reviewing the fairness and legality of the evaluation process, which admittedly is not fully transparent, we agree with the local board's conclusion that the application was deficient. It's decision, by law, is *prima facie* correct. Although the applicant has expressed its overwhelming belief that the decision was wrong, in our view, it has not overcome the presumption of correctness.

(3) Admission Preference

Piscataway requested a waiver of the open admission requirements to give admission priority to, *inter alia*, children with Montessori experience. The local board argues that such a waiver is not appropriate. Piscataway requests that this Board declare the legality of a preferential admission waiver.

Under the Maryland Public Charter School law, one of the defining characteristics of a charter school is that it is "open to all students on a space-available basis and admits students on a lottery basis if more students apply than can be accommodated." Md. Educ. Code Ann. § 9-102. The charter school asserts that "the question for the State Board is whether all children must be

eligible for admission into charter schools all of the time, or whether all children must be eligible at least some of the time during the admission process.” (Appeal at 44). It argues that,

“The purpose of the charter schools is to give parents educational choices, to allow for flexibility in the education process and meet community needs. Consequently, charter schools sometimes are more specialized in focus in order to meet the need of community segments not being serviced by local school districts. If all children must be eligible for admission into charter schools all of the time, these schools of choice could not bring innovative choice to local school systems. For example, recently pending before the Baltimore City Board of Commissioners were schools designed for various categories of children, i.e., children in foster care and a boys only program. If charter schools were not allowed to grant preferences to students with certain qualifications, these schools would not be able to fulfill their proposed missions.” (*Id.*)

On the issue of the preferential admissions to charter schools, the United States Department of Education (USDE) has provided non-regulatory guidance governing the federal Charter School Program. Under that Program, USDE provides funds to State Education Agencies for the planning, design and implementation of charter schools. Those funds are used to provide grants to charter school applicants. MSDE administers that grant program. Grant recipients must comply with federal requirements. 20 U.S.C. § 7221, *et seq.* Because most if not all charter school applicants receive some federal funds, the non-regulatory guidance from USDE is relevant in deciding whether to waive the open enrollment requirement and grant automatic admission to certain students.

USDE has stated that only following types of students can be automatically admitted to a charter school:

(a) students who are enrolled in a public school at the time it is converted into a public charter school; (b) siblings of students already admitted to or attending the same charter school; (c) children of a charter school’s founders (so long as the total number of students allowed under this exemption constitutes only a small percentage of the school’s total enrollment); and (d) children of employees in a work-site charter school (so long as the total number of students allowed under this exemption constitutes only a small percentage of the school’s total enrollment). When recruiting students, charter schools should target all segments of the parent community. The charter school must recruit in a manner that does not discriminate against students of a particular race, color, national origin, religion, or sex, or against students with disabilities; but the charter school may target additional recruitment efforts toward groups that might otherwise have limited opportunities to participate in the charter school’s program.

See Charter Schools Program, Title V. Part B. Non-Regulatory Guidance, July 2004 at 12.

Based on that guidance, we conclude that granting a preferential automatic admission for

students with Montessori experience by waiving the open enrollment requirement would violate federal requirements for receipt of federal charter school funds. Such a waiver would implicate one of the basic elements of charter school. Indeed, the USDE's non-regulatory guidance addresses such waiver requests by answering the following question: "May the Secretary or the SEA waive any eligibility or application requirements?" USDE states that:

Although the statute permits a charter school to apply for and receive (from the Secretary or the SEA, as the case may be) waivers of statutory and regulatory requirements, it prohibits waivers of any requirement relating to the elements of a "charter school," as defined in section 5210(1) of ESEA. *Id.* at 9. One of the basic elements of a charter school is that a charter school must be one "to which parents choose to send their children, and that admits students on the basis of a lottery, if more students apply for admission they can be accommodated." 20 U.S.C. § 7221 i(1)(H).


The federal open enrollment definitional requirement is similar to this State's open enrollment requirement. In short, to receive federal funds and to comply with federal law all interested students must be allowed to apply for admission to the charter school and, if there are more applicants than can be admitted, compete for admission by an open lottery. Because the concept of open enrollment is one of the basic definitional elements of a charter school under both State and federal law, the request for a waiver of the open enrollment requirement is denied.

(4) Funding for 3 and 4 year olds


Piscataway argues that PGCPs must provide commensurate funding for the Pre-k programs for 3-4 years olds that it plans to institute. Under the Maryland charter school law, the local board is to provide commensurate funding "for elementary, middle and secondary students..." Md. Educ. Code Ann. § 9-109(a). It does not require funding for Pre-k students. Piscataway is not legally entitled to such funding.

CONCLUSION

For all the reasons stated, we affirm the local board's decision in this case and deny the request for a waiver of open enrollment requirement.



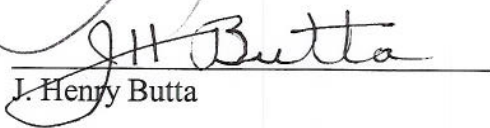
Edward L. Root
President



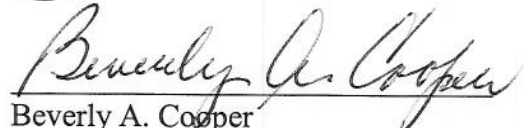
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Vice President




Lelia T. Allen




J. Henry Butta



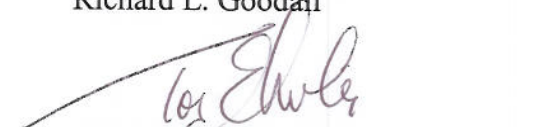
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Calvin D. Disney




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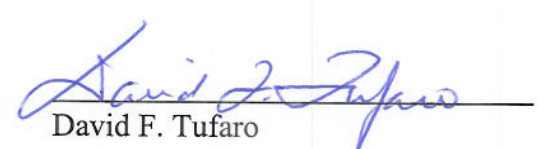
Tonya Miles



Karabelle Pizzigati



Maria C. Torres-Queral



David F. Tufaro

April 24, 2007