

SOMERSET ADVOCATES FOR EDUCATION,

Appellant

v.

SOMERSET COUNTY BOARD OF
EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 07-39

OPINION

INTRODUCTION

In this appeal, the Somerset Advocates for Education (“SAFE”), a charter school applicant, appeals the local board’s denial of their application. On June 21, 2007, in response to that appeal, the local board requested that the case be referred to the Office of Administrative Hearings (OAH). The local board generally asserted that the case involved disputes of fact appropriate for resolution at OAH. The charter school applicant opposed that request for referral to OAH. *See* SAFE Memorandum of August 10, 2007.

Because disputes of material fact are necessary to require a referral to OAH, COMAR 13A.01.05.07(A)(B), this Board requested that the local board identify the material facts in dispute. The local board responded by denying the truth of certain allegations made by the charter school applicant. *See* Memorandum of July 18, 2007. That response, however, did not address whether the facts alleged and denied were *material* facts or whether they were actually disputed.

FACTUAL BACKGROUND

On December 12, 2007, SAFE submitted a charter school application. (Appeal, Ex. W). The Charter School Review Committee of the Somerset County Public Schools (“SCPS”) reviewed the application for technical correctness. (Appeal, Ex. T). That committee was made up of twelve central office staff members. (Ex. T, p. 1). The Technical Review was extensive. In a ten page written document, the Reviewers pointed out inconsistencies or omissions in the application, as well as possible conflicts of interest. They requested clarifications in fifty areas, including:

- What SAFE was proposing that is different from the programs available at SCPS; (Ex. T, p. 3);

- The role of parents in the individual education planning process (Ex. T, p. 7); and
- Budget and accounting issues (Ex. T, p. 9-10).

The Technical Review was sent to SAFE on or about January 12, 2007. The Review Committee asked SAFE to respond to the Committees' concerns and questions within 30 days. (Ex. T, p. 1).

On February 12, 2007, SAFE responded to the Technical Review by submitting a 39 page document (Appeal, Ex. V), and on March 12, 2007 SAFE resubmitted its amended charter school application. (Ex. W). The Review Committee determined that of the 50 items of concern in the Technical Review, the amended application adequately addressed 8 items; inadequately addressed 29 items, and that 13 items required further discussion. (Ex. A, p. 6).

The Review Committee met with SAFE representatives four times "to discuss the Instructional Program, Administrative Structure, Special Education, Personnel, Finances, Business Management, Transportation, Technology and Facilities." (Ex. A, p. 6). Those meetings were held on March 22nd, 26th and April 2nd and 3rd and they lasted between 60-90 minutes each. At least 6 or 8 Review Team members, including the Superintendent, attended each meeting as did at least five representatives of SAFE. Minutes were written for each meeting. (See Appeal Ex.'s F-2; F-3; F-5; G; H&J). Although there is some dispute about the accuracy of statements in the Minutes, (See Appeal at 11), the Minutes reflect extensive discussion of the amended application on both broad philosophical grounds and on specific programmatic grounds.

Using all the information gained during that time, the Review Committee scored the application using a rating tool that "was developed from charter school information provided by the State of Maryland by Anne Arundel County Public Schools Charter School Division who gave permission for use to Somerset County Public Schools." (Ex. A, p. 12). Each member of the Review Team scored the application individually "without comparison among reviewers." (Ex. A, p.6). Their scores were similar. *Id.* Of a possible 530 cumulative points, SAFE's application received a score of 189. A base score, indicating the viability of the application, would have been 318. (Ex. A, p. 12).

In her recommendation to the local board to deny the application, the Superintendent explained to the local board that over 450 staff hours were spent in evaluating the charter school application. (Ex. A, p. 5). Superintendent Brofee set forth the strengths and weaknesses of each section of the application. Those comments are set forth below in their entirety.

Section I. OVERVIEW (This section considers the Executive Summary, Profile of the Founding Group; Background Information; Governance Structure, School Management and Administrative Structure; Student Populations and School Calendar; Recruiting and Marketing Plan)

Strengths:

- The applicants are enthusiastic, of good will, and committed.
- The applicants have good intentions.
- The key person has been able to raise funds through grants.
- The key person has made many vendor and consultant contacts for services.
- At least one contact has been made with TASC0
- Significant dollars are devoted to a marketing firm for TV and radio ads, billboard displays, fliers etc to recruit students and staff.

Concerns:

- The summary, mission, and goals do not describe a school that is unique. The proposed school's features—small class size, character education, and individual attention are all descriptors of Somerset County Public Schools.
- The single individual for whom a resume was provided has withdrawn his name from the daily operations and Board of SCPCS. While various Board Members attended the four interview sessions, Mr. Thompson did all of the talking, with the exception of 4 comments.
- The Governing Board lacks experience in school leadership and operating a school.
- The Organizational Chart has been changed throughout the interview process and does not align with the narrative, the budget, or the discussion.
- There appears to be no plan for connecting programs to rigorous standards and assisting students in meeting these standards.
- Identified goals are not stated in measurable terms.

Section II. INSTRUCTION AND STUDENT SERVICES (This section considers the Education Plan; the Academic Program, Standards, and Curriculum; Student Assessment; Student Support Services; Code of Student Conduct; Parent Involvement and Community Participation)

Strengths:

- The applicant has established a 1:20 classroom ratio with a commitment not to go above 1:22.

- While traditional and isolationist in model, the Calvert Curriculum is a known and respected tool.
- It is admirable to aspire to provide foreign language mastery for all children as well as piano lessons.
- Project based Learning can engage reluctant learners.
- Applicants have selected a sophisticated technology tool for tracking each teacher's instruction: Curriculum Mapper.
- Applicants present the concept of Individual Learning Plans for each student at Intake with an annual review.
- Parents are expected to be active participants and the application repeatedly validates their importance.

Concerns:

- The ratio is presented as a unique feature of the SCPS but SCPS ratios are equivalent or lower.
- Goals are not measurable, lack baseline indicators, and reflect unclear methods or monitoring student performance and progress toward goals.
- There are notable calendar problems.
- The Special Education section is very weak with staffing plans changed from the application and within the interviews twice. There appears to be a significant absence of knowledge regarding Special Education law, processes, and IEP guidelines.
- There are no Intervention Plans or programs for bringing students up to grade level.
- There is an over reliance on class size to address challenges associated with serving the at-risk student population, a lack of discussion of methods, strategies, and programs that the school can use to meet the needs of at-risk youth.
- Multiple educational programs have been selected but not coordinated or matched for implementation.
- There is little evidence that the described program, standards and curriculum can be delivered; no working schedule was provided; current staffing numbers are inadequate to implement the program.
- There is very little evidence that the applicants understand the level of coordination, training, and monitoring that is necessary for particular methodologies (such as project based learning) if the methodology is to impact student achievement rather than simply provide an experience.
- A Parent Involvement Policy and plan are needed if this is to be a key feature of the school.
- There is a lack of focus on the Maryland State Assessment (MSA) and the attainment of Adequate Yearly Progress.
- There is very little alignment with SCPS Master Plan.

- The application reflects limited capacity to comply with Maryland statutes related to records management.
- The administrative structure lacks the capacity to comply with policies and procedures associated with Federal and State Records management and reporting requirements.
- Individual Learning Plans remain a concept; no models or application to learning was made. These appear to be centered around the need for therapy and entrance “intake.”
- Applicant conveys an intent to maintain a racial and ethnic balance but there is no clear procedure in the application to do this.

Section III. BUSINESS AND MANAGEMENT (This section considers Personnel; Human Resources; Payroll and Benefits; School Facilities; Finances; School Safety and Security; Transportation; Food and Nutrition; Accountability Plan)

Strengths:

- A budget item for charter school promotion, and advertising to solicit students and staff is included.
- SAFE is seeking multiple partnerships to provide a facility that will enhance success.
- The applicants have been aggressive in identifying land and modular units to be purchased by UMC and leased to SAFE.
- The applicants plan to maintain employees throughout the student’s 13 years in SCPS is a positive concept.

Concerns:

- Locating and attracting the multi-talented, highly qualified teachers and staff as described in the interviews and necessary to deliver the program will be difficult.
- There is no evidence of a plan to retain effective staff.
- The applicant does not demonstrate a clear understanding that without exception all employees of SCPCS are SCPS employees.
- Clear and complete job descriptions particular to each position are not included.
- SAFE intends to have the CEO report to their Board and not be an employee of SCPS. If the CEO is a part of the school staff and is funded through Charter School funding, that person is an employee of the BOE.
- There is little evidence of the certification process and requirements for Highly Qualified professional and paraprofessional staff.
- The design submitted in the application for the building is not the design that will be used.
- The technology infrastructure is absent from all plans and budgets and is critical

to the described program.

- SAFE is completely dependent upon the hiring of a consultant for all financial activities and the amount of hours budgeted are inadequate.
- There is no plan or designation of an individual to handle site based finances.
- There is no site based crisis emergency plan included in the application.
- The applicant is requesting SCPS to provide transportation. There is no alternate plan other than possible use of parent car pooling and church vans.
- The applicant is requesting Food and Nutrition services to be provided by SCPS. There is no alternative plan included in the application.
- There is no evidence of an accountability plan in the application.
- The amount budgeted for a student and staff promotion campaign is excessive as it requires consultants and may limit other necessary expenditures for programs.
- There is little evidence to suggest that there is a working knowledge of negotiated contracts or that substantive conversations have been held with TASCOS.
- There are assurance statements that the charter school will follow hiring practices of SCPS but there is little awareness of the actual requirements for background checks, payroll procedures, and record and file management.
- There is no provision for procedures providing compensation and management of persons responsible for extra curricular activities.
- Evaluation responsibilities are defined but criteria and procedures are absent.
- There is concern about a conflict of interest regarding the lease arrangement.
- The \$6500 monthly mortgage will be difficult to meet over a 45 year loan and interest will be excessive.
- The site has not been approved yet.
- The cost of computers is not reasonable.
- The cost of furniture and equipment is not adequately included in the budget.
- The point is made that contingency dollars will be procured through allowing 22 students per grade to enroll, but that they will leave. This seems an inadequate means for establishing a contingency.

(Ex. A, pp. 7-11).

After considering the comments of the Superintendent, the local board voted to deny the application. On April 12, 2007, the Superintendent informed SAFE of the local board's decision to deny the application. (Ex. A, p. 1). This appeal ensued.

STANDARD OF REVIEW

In charter school application denial cases, the standard of review is that the local board's decision is considered *prima facie* correct. The State Board will not substitute its judgment for that of the local board's unless the local board's decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05(A). A decision is arbitrary or unreasonable if it is (1) 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 is illegal if it is:

- (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.

COMAR 13A.01.05.05(B) & (C).

The Appellant has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.05(D).

LEGAL ANALYSIS

SAFE challenges the local board's decision on three grounds. First, SAFE asserts that the denial was based on vague evaluation criteria which lacked an "analytical key" and that they did not receive the specific evaluation rubric during the evaluation process. Second, SAFE asserts that a denial based on budget concerns is arbitrary because the local school system did not provide SAFE with the necessary funding information. Third, SAFE lists a series of incidents which it asserts demonstrate abuse of discretion based on the local school system's alleged resistance to charter schools.

A. Evaluation Process

SAFE argues that this Board has ruled that, in order for a denial of an application to be legally supportable, the review must "include an explanation of the applicant's scores or the required analytical key." Appeal at 4. SAFE asserts that the evaluation process that the local board used did not follow that directive.

This Board has indeed directed that "if a numerical key 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." *Potomac Charter School v. Prince George's County Board of Education*, MBOE 05-08. In that case, however, the failure to provide an analytical key to the applicant raised a concern on the part of the Board, but the Board did not conclude that such failure required a finding that the evaluation process was per se arbitrary and capricious. In *Imagine Belair Edison Charter School v. Baltimore City Board of School Commissioners*, MBOE 06-16, this Board reiterated the importance of explaining the scoring process to the applicant. Yet, the Board did not conclude that the evaluation process was arbitrary because of the local board's failure to fully explain the numerical scoring system to the

applicants.

We returned to this issue again in *Piscataway Creek Montessori Communities, Inc. v. Prince George's County Board of Education*, MBOE 07-21. In that case, it was not clear from the record that the local school system had shared the Evaluation Rubric with the applicants. Despite that flaw, this Board concluded that the evaluation process was a fair one because applicants had ample opportunity to discuss the evaluation criteria in interviews with the Review Committee.

What is clear from those cases is that this Board looks at the evaluation process as a whole to determine if the process itself was so unfair that it resulted in an arbitrary decision. Although pieces of the whole process may be imperfect, imperfection does not necessarily mean the process is arbitrary. As this Board stated in the *Piscataway* decision:

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 sufficient.

In the case before us, even if the applicant did not receive a full explanation of the evaluation instrument or a copy of an analytical tool, it is abundantly clear from the facts that the applicant had an extraordinary number of opportunities to discuss with the Review Team their concerns about flaws in the application. The applicant also received fully descriptive written comments on the application. Specifically, the 10 page Technical Review document was focused and specific on the problems in the application - - many of which continued to be present in the final evaluation. That review should have put the applicant on notice of school system's specific areas of concern and the areas that were being evaluated.

Moreover, the Review Team met with the applicant four times to discuss the application at length. The Minutes of those meetings reflect a full and fair discussion of the issues involved. Each meeting lasted between 60-90 minutes. Most of the Review Team was present at each meeting and participated in the discussions. (*See Minutes*). The Superintendent shared her views of the application. Given all those opportunities, it is difficult to conclude that the applicant did not understand how its application was being evaluated.

SAFE also complains because the evaluation tool was developed by another county school system. SAFE asserts that the evaluation tool was not congruent with Somerset County School System's own Public Charter School Guidance Materials. Again we explain that the

evaluation process is, by necessity, a fluid one. We would not expect absolute congruence between every piece of information the school sends out about charter schools and the evaluation tool. Here, we have reviewed the evaluation tool and find it to be an appropriate tool congruent with the Technical Review.

B. Budget Issues

SAFE asserts that problems with its budget, particularly concerning special education reimbursement, transportation, and food services, were caused by the local school system's failure to provide sufficient budget information to SAFE.

It is understandable that this charter school's budget is an issue. The record reflects some discussions between the parties on reimbursement issues and per pupil allocation. Vickie Miller, Finance Director for SCPS stated in an e-mail that the charter school contract would spell out the exact dollar amounts. (Appeal, Ex. P, p. 2). A per pupil amount of \$8,776 was proposed by the school system in December 2006. (Ex. P, p. 1).

Suffice it to say, that until the Court of Appeals of Maryland ruled in *City Neighbors v. Baltimore City Board of School Commissioners*, 400 Md. 324 (2007), that the State Board's formula for establishing the per pupil allocation for a charter school was legal, some school systems used their own per pupil allocation formula. Because the allocation formula was not a settled issue, we believe that those budget issues might not have been clearly enough defined to be factored into the evaluation. It is our view, however, that even if the budget issues were disregarded, SAFE's application still would not be viable because of the other, myriad substantive problems identified in the evaluation process.

C. Bias Against Charter Schools

SAFE lists a series of ten incidents that it asserts cumulatively demonstrate the school system's resistance to the charter school effort. They fall into one general category, failure to provide assistance:

- (1) SAFE was required to respond to questions that could only be answered effectively after negotiations with SCPS.
- (2) SCPS failed to document requests for assistance with food services and denied assistance with food services.
- (3) SCPS failed to provide job descriptions.
- (4) SCPS retracted an offer of assistance with special education in violation of its written Public Charter School Policy.
- (5) SCPS denied SAFE the use of a vacant school building in contradiction of its Policy.
- (6) SCPS failed to make staff available to assist in developing a charter school

- application in contradiction to its Policy.
- (7) SCPS failed to invite SAFE to the public Board meeting concerning their application.
 - (8) SCPS misrepresented SAFE's attitude and intentions in the Minutes of the four meetings.
 - (9) SCPS made false statements to the media and community.
 - (10) SCPS did not work with SAFE in a way that would enhance the chartering effort.

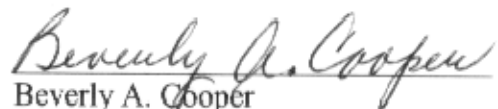
We return to the fact that the SCPS spent 450 hours in reviewing the application, meeting with SAFE, and evaluating the amended application. We believe that type of commitment shows good faith on the part of the local school system, not resistance to the charter school effort. It may well be that the review and evaluation process was rigorous, grueling, difficult or even contentious, but that does not make the process illegal. When the evaluation process is viewed as a whole, it is our conclusion that it was a fair process and certainly one that was legally sufficient.

CONCLUSION

For all those reasons, we affirm the decision of the local board to deny the charter school application.



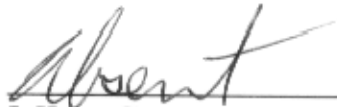
Dunbar Brooks
President



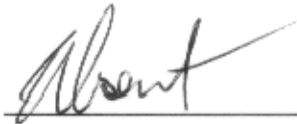
Beverly A. Cooper
Vice President



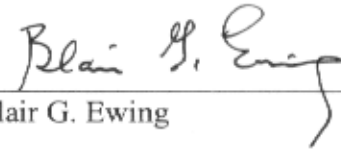
Lelia T. Allen



J. Henry Butta



Charlene M. Dukes



Blair G. Ewing



Mary Kay Finan



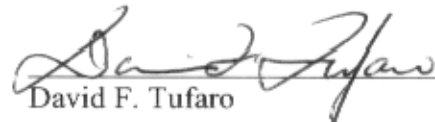
Rosa M. Garcia



Richard L. Goodall



Karabelle Pizzigati



David F. Tufaro

October 30, 2007