

FRIENDS OF THE BAY ARTS AND
SCIENCE PUBLIC CHARTER SCHOOL,

Appellant

v.

CALVERT COUNTY BOARD OF
EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 08-21

OPINION

INTRODUCTION

The charter school applicant, Friends of the Bay Arts and Science Public Charter School, (Friends), appealed the denial of its charter school application. The Calvert County Board of Education (local board) filed a Motion for Summary Affirmance as well as Motions to Strike certain exhibits filed by Friends. Friends filed a Reply to the Motion for Summary Affirmance. It also opposed the Motion to Strike.

On February 26, 2008, prior to issuing a final decision on the merits of this case, this Board ordered the parties to engage in a brief collaborative process to determine if problems in applications could be corrected. We did so because the application demonstrated a “thoroughness and capability in its detail.” The local board and the applicant requested that this Board reconsider that Order. In doing so, after hearing oral argument on March 25, 2008, the State Board vacated that Order and announced that it would issue a final decision forthwith. We do so herein.

FACTUAL BACKGROUND

In the Fall of 2005, a group of Calvert County parents met to discuss ideas for Calvert County’s first charter school. Soon thereafter, they contacted Calvert County Public Schools (CCPS) about the charter application process. After nearly two years of development and a year of discussion with CCPS, (Attachment 1, Friends Ex. A-20), on May 25, 2007, Friends submitted an application to CCPS for the proposed charter school which was scheduled to open its doors in the 2008-2009 school year. (Attachment 2, Local Board’s Ex. 1).

On June 29, 2007, Deborah Pulley, CCPS’s Charter School Liaison, informed Friends that the application was technically complete. She further explained that, although she had not

reviewed the substance of the application in any but a cursory way, her cursory review revealed some areas that could use supplemental information before CCPS conducted a full review. Ms. Pulley was specific in her recommendations for supplementing the application. She explained:

Generally speaking, my impression of the Application is that while it identifies your intentions and has a general discussion of concepts, in many areas it is lacking in the details of day to day implementation, as well as not demonstrating a sufficient grasp of the day to day issues that must be addressed and provided for in the running of a public school. In order for us to be able to recommend approval of an Application we must, among other things, be able to make a determination that the Applicant is not only able to set forth a clear and concise vision for a school, but also comprehends and will be able to actually implement and sustain the vision over the long term, in a manner that is consistent with Federal, State and local laws, regulations, rules and procedures. It is also critical that we are able to make a determination that the Applicant has a working knowledge and requisite body of experience in all matters involved in the operation and administration of a public school in general, and the specific charter school in particular. Lastly, we must be able to make a finding that the Application is capable of being implemented in the timeframe identified in the Application.

(Attachment 3, Local Board Ex. 2).

Ms. Pulley then went on to point out five specific areas of the Application that were lacking in specificity, including the School Facility section; high school curriculum; general school policies and practice; and need for waivers. *Id.*

On July 12, 2007, Friends submitted extensive supplementary information, particularly concerning the facility plan. They submitted all the school's policies which had been discussed and adopted by their Board. They explained that the full high school curriculum did not need to be in place because the school would start at grades 6-8 adding a new higher grade every year. They provided a timeline in their Application for that future curriculum development. (Attachment 4, Local Board Ex. 3 Answer #4, and Attachment 2, Ex. 1 at p.2).

On July 10, 2007 and July 20, 2007, CCPS staff met to discuss the evaluation process with the nine CCPS Area Directors who would be evaluating the Application. They completed their initial review on July 31, 2007.

On August 1, 2007, CCPS provided Friends with a list of 50 questions they would be

asked to address in an upcoming interview with the Superintendent and staff scheduled for September 5, 2007. (Attachment 5, Friends Ex. A-9).

Prior to that interview, CCPS identified additional areas of concern revealed by the initial substantive review (Attachment 6, Local Board Ex. 4) and Friends addressed those concerns on August 17, 2007. (Attachment 7, Local Board Ex. 5).

On August 31, 2007, the Directors completed their substantive review of the Application and supplemental materials. They scored the application, on a 500 point scale, from a low 247 to a high score of 470.¹ (Attachment 8, Friends Ex. A-11).

Section	Maximum Points	Reviewer A	Reviewer B	Reviewer C	Reviewer D	Reviewer E	Reviewer F	Reviewer G	Reviewer H	Reviewer I	Composite Score
Overview 24%	120	85	85	90	75	60	103	73	112	68	751-Total 83.4-Mean 85-Median
Instructional & Student Services 38%	180	147	124	115	84	83	136	98	171	103	1061-Total 117.9-Mean 115-Median
Business & Management 38%	200	138	155	118	124	104	123	123	187	106	1172-Total 130.2-Mean 123-Median
Total Maximum Score 100%	500	370	364	323	283	247	362	294	470	277	2990-Total 332.2-Mean 323-Median

On September 5, 2007, Friends met with the Superintendent for the scheduled interview. The interview consisted of answering the 50 written questions CCPS had sent to Friends. (Attachment 9, Local Board Ex. 7 (Minutes of Interview)). After that interview, the Superintendent and his staff prepared the Final Evaluation of the Friends Application for presentation to the local board on September 20, 2007. (Attachment 10, Local Board's Ex. 9).

The Final Evaluation is a lengthy report on all aspects of the Application. It points out both minor and major problems. The major problems discussed are:

- (1) overall lack of specificity on turning "intention to reality;"
- (2) design of instructional program appears to mimic Chespax, a program already in

¹ These scores were not part of the record before the local board.

- place in Calvert County Public Schools;
- (3) budget issues that show that Friends does not understand the financing for charter schools;
- (4) an unreasonable facilities plan timeline; and
- (5) curriculum and assessment inadequacies.

(Attachment 10, Local Board Ex. 9 pp. 13-16).

On September 20, 2007, the Superintendent presented the Final Evaluation to the local board and recommended denial of the Application. The local board concurred and issued a decision to that effect. (Attachment 11, Local Board Ex. 8). This appeal ensued.

STANDARD OF REVIEW

In charter school application denial cases, this Board uses the standard of review for cases and controversies involving the rules and regulations of the local board. Under that standard, the decision of the local board is considered *prima facie* correct and the State Board will not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05(A).

LEGAL ANALYSIS

A. The Application Review Process

In order to place the parties' arguments in context, an explanation of the CCPS charter school application and evaluation process may be helpful.

The CCPS application process has several steps. First, the applicant submits an Intention Form and Prospectus. Next, the applicant and the CCPS staff may meet to discuss "all aspects of the proposed program." (Attachment 12, Local Board Ex. 10, Public Charter School Guidance Materials, p. 7). Thereafter, an application is submitted and reviewed quickly (within 30 days) for technical completeness. *Id.*

In the Guidance Materials and Application Packet, CCPS explains in detail each necessary component of the application focusing heavily on Instruction and Student Services and Assessment describing just what is required in each category to be approvable. The materials are clear that an application will not be approved unless it contains a full curriculum or a viable timeline and plan for the year-one curriculum sufficient to convince the local board that the curriculum will be in place prior to the opening of the charter school. (Attachment 12, Local Board Ex. 10, Application Instruction, p. 21). The Application Instructions also detail the requirements for Business and Management Services, including a well developed Facility Plan. (*Id.* at 27-34). The application materials also contain a list of Guiding Questions and FAQ's that the applicant can use to inform

the development of its application. (Attachment 12, Local Board Ex. 10, Forms and Guidelines).

All complete applications are reviewed by staff designated by the Superintendent using “rubrics and interviews.” *Id.* The rubric used comes from the Charter School Information and Application Booklet. It is a 23 page document that covers every component of the application, explains the scoring mechanism, ranging from (1) for “no evidence exists in the application to demonstrate that this criterion has been met to (5) for “extensive evidence exists.” (Attachment 12, Local Board Ex.10, Scoring Rubric).

After the initial evaluation is conducted, the Superintendent and staff conduct a panel interview with the applicant. (*Id.*, Application Process, p. 7). Based on all the information gathered during the whole evaluation process, the Superintendent prepares a Final Evaluation for presentation to the local board. The local board will decide whether to grant or deny the application within 120 days of receipt of the technically complete application. *Id.*

B. Legal Issues Raised By The Charter School Applicant

Friends is the first applicant for a charter school reviewed by CCPS. Friends argues that the local board’s decision was arbitrary, unreasonable or illegal. Those arguments fall into two categories: (1) the application and evaluation process was not fair and open; (2) the Superintendent was wrong to the point of arbitrariness in his assessment of the Friends application and thus, so was the local board. (*See Appeal pp. 3-8*).

We will address each argument *seriatim*.

1. Fair and Open Application and Evaluation Process.

This Board has consistently encouraged school systems to conduct a fair and open application and evaluation process. The basic hallmarks of such a process are informative application materials, clear instruction on what the application must contain, and an explanation to the applicant of the scoring rubric and the point system, if one is used, disclosure of timelines and deadlines - - in essence a transparent process.

We have reviewed the CCPS’s application materials and find them to be instructive, informative, detailed, and clear. We have examined the scoring rubric and find it comprehensive and useable. It was shared with the Applicant along with all the application materials. We are satisfied that the materials form the basis of a fair and open process.

Friends argues, however, that during the application process CCPS staff misled them to believe that the application they were preparing “would be appropriate, both as to form and level of detail.” (*Appeal p. 12 and 18*). They also assert that they asked many questions, particularly about the financial aspect of the school, but “[n]o answers were ever forthcoming.” (*Appeal at 18*). They assert that CCPS acted in bad faith during the process.

We have reviewed the voluminous exhibits submitted by both parties in this case and we do not agree with Friends that CCPS misled them or acted in bad faith. Specifically, we note that early in the process, after just a cursory review of the Application, Deborah Pulley, CCPS Charter School Liaison, sent Friends a very detailed letter about deficiencies in the Application. (Attachment 3, Local Board Ex. 2). Thereafter, CCPS provided Friends with two opportunities to supplement their Application with additional materials and explanations. (Attachments 4, 6, 7, Local Board Ex.'s 3, 4, 5). CCPS also provided time for a lengthy and detailed face to face interview with Friends and the Superintendent to review the Application. (Attachment 9, Local Board's Ex. 7). During this part of the application process, CCPS asked questions and problems with the Application.

We also reviewed all the e-mails that went back and forth during the application process between Friends and CCPS staff. (Attachment 13, Friends Ex. C 1-19). While there may have been delays in answering Friends' questions, we detect no withholding of information. In fact, both parties appear to have worked together fully and openly.

Friends argues that it was ultimately judged by an "undisclosed standard." (See Reply at 2, 4-5). They point to the e-mail from Deborah Pulley explaining that the scoring rubric "was not a part of the record before the Board. Consequently, [she explained] it was not used by the Board in any way, and would not be part of the record or any review on appeal. The Board only reviewed the Application documents and the Superintendent's recommendation." (Attachment 14, Friends' Ex. A-11). They conclude, therefore, that the detailed evaluations using the scoring rubric were not used to inform the Superintendent's Final Evaluation and, thus, the evaluation is based on undisclosed standards. (Reply pp. 9-11).

That conclusion is based on a false presumption. The Superintendent's Final Evaluation reflects that it is based on the reviews of the Applications and the interview. (Attachment 10, Local Board Ex. 9). It appears to us to be a composite of all that CCPS learned during the review process. That the Final Evaluation does not set out the scores that the 9 reviewers gave the application or that the scores were not given to the Board does not mean that the Superintendent did not take them into consideration in developing his Final Evaluation.

What is clear from the Superintendent's Evaluation is that it uses the expectations set forth in the application instructions to evaluate the application and to explain the deficiencies in the application. We cannot agree that Friends' Application was judged by an undisclosed standard.²

As we have said in the past, no evaluation process is perfect. We reiterate this Board's recent statement in *Somerset Advocates for Education v. Somerset County Board of Education*,

² Friends also argues that the instructions and rubric changed in April 2007 right before Friends submitted its Application. The local board has detailed the changes made (Attachment 16, Local Board Ex. 11) and we agree that none were major. We disagree that the changes somehow prejudiced Friends.

MSBOE No. 07-39 (October 30, 2007):

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.

(Id. at 8).

The CCPS application and evaluation process as a whole was a fair one, in our view.

2. *Assessment of the Application*

Friends argues that the substantive assessment of the Application was unfair to the point of being arbitrary. To determine if a local board's decision is arbitrary we begin, as we do in cases such as this one, with the legal proposition that the local board's decision is presumed to be correct, and it is the Appellant's burden to show that the decision is arbitrary or unreasonable. COMAR 13A.01.05.05. In this regard, the State Board does not substitute its judgment for that of the local board's as to the sufficiency of the application. Rather, this Board considers whether a "reasoning mind could not have reasonably reached" the decision to deny the application. COMAR 13A.01.05.05(B)(2). To decide whether the decision to deny was a reasonable one, we look to the Appellant's arguments and then to the local board's reasons for the denial.

The application contains two major substantive areas: (a) Instruction and Student Services; and (b) Business Management. We agree with the local board that for a charter school to be successful it must demonstrate its competency in both areas. The local board concluded that Friends had not done so.

(a) Business Management Issues

(1) Business Plan

Under Business Management, the local board expressed serious concerns about the Business Plan and the Facility Plan. It states that the Business Plan had some "fundamental flaws." (Attachment 10, Local Board's Ex. 9 at p. 14).

First of all, the applicant appears both in the documents and during the interview process to lack a clear understanding of the State Board's decisions about the purpose of the 2% administrative fee that CCPS is allowed to retain from the per pupil allocation provided to a public charter school. Clearly the applicant believes that CCPS must provide 98% of the per pupil allocation as well as provide system special education services, special education related services, English

Language Learner Programing, legal services, special education transportation services, Internet access and other central administration services at no cost to the charter school. Given this misunderstanding, the budget that has been provided is not viable and does not represent an accurate picture of what the school will actually be able to provide students in terms of programing, class size, etc.

Furthermore, the information provided has failed to indicate a serious understanding of cash flow and related issues. No clear evidence or analysis has been provided to show that during start up and on a monthly basis the school will have the cash on hand to meet its obligations. A sensitivity analysis has not been provided to show that given a change in circumstances, such as a drop in enrollment, the school would be financially solvent.

Id.

Friends adamantly argues that those conclusions are neither fact-based nor fair. First, Friends argues that it asked CCPS staff repeatedly to explain the State funding formula, and CCPS staff did not do so at all or gave answers that were unclear. (Appeal at 18-19; Reply at 33; 37; Friends' Reply Ex. 22, Affidavit of Mittleman §§ 13-15, 22.) Friends also asserts that it did as good a job as possible of preparing its proposed budget, relying on experts in the field and the information it was given by CCPS. *Id.*

Understanding the sources of funding for a charter school is critical. The local board's conclusion that Friends' did not have a sufficient understanding of budget and funding is supported in the record and reflected in the statements contained in Friends' Appeal and Reply and in Dr. Mittleman's affidavit. Dr. Mittleman developed the Business Plan for Friends. *See* Reply, Exhibit 22, ¶ 1. It is clear from that affidavit that Friends did not understand that if they wished the school system to provide services, such as Special Education, that Friends' would need to reimburse CCPS for those services. *See* Reply, Ex. 22, Affidavit ¶ 15. That is a basic misunderstanding.

Friends blames CCPS for not being forthcoming in giving them budget information. But, Friends need not have relied solely on CCPS for an explanation of the funding and budget process. This Board has issued several opinions addressing such matters making clear that charter schools can purchase services however they wish, but if they rely on the local school system to provide the service they must reimburse the local school system. *See, e.g., Monocacy Montessori Communities, Inc. v. Frederick County Board of Education*, MSBOE, 06-17 at p. 10-11.

We agree with the local board that Friends lacked sufficient understanding of the funding and budget process. Friends, however, does not appear to be unsophisticated in this area. Developing and understanding a proper budget and cash flow does not appear to be an insurmountable problem.

(2) Facility Plan

The Final Evaluation also addresses concerns about the Facility Plan. It states:

As indicated in the first part of this report, the BASPCS Facilities Plan is particularly difficult to assess as presented in the application, supplemental materials, and interview process. This problem with assessment of the project is due, in large part, to the fact that at this point the facility is only at the conceptual stage. Indeed, no aspect of the plan is at a point where it can be reasonably assessed considering that the land is not yet purchased, the building is not yet designed, and funding is at this point unsecured. The applicant has indicated a desire to open a school in 11 months in a temporary location and move to the new facility in 16 months. With all that is yet undone and unanswered, these timelines are unreasonable.

Identifying and obtaining a viable facility to house a charter school is emblematic of the phrase “what comes first, the chicken or the egg?” Time and again this Board has heard from charter schools how difficult it is to make binding commitments to purchase or lease property for a charter school absent an approved charter agreement. *See, e.g., Chesapeake Public Charter School v. St. Mary’s County Board of Education*, MSBOE, 05-23. That difficulty is understandable. Also understandable is the local board’s concern that a solid facility plan is necessary prior to approval of a charter. *See, e.g., Piscataway Creek Montessori Communities, Inc. v. Prince George’s County Board of Education*, MSBOE, 07-21.

We have reviewed the information that Friends submitted in the Application and Supplemental Materials about its Facility Plan. (Attachments 2 and 4, Local Board’s Ex. 1, Application; Local Board Ex. 3, Supplemental Materials). To us, those documents reflect progress in facility location, design, and governmental approvals.

In this case, Friends has purchased property on which it plans to build its school. (Attachment 2, Local Board Ex. 1, Application at 43-48). The building process apparently will take at least 16 months. In our view, Friends has made progress in this area such that it should not be a stumbling block to approval. But, Friends wishes to open in a temporary location before the new school building is complete. It is not clear from the record (as far as we can tell) whether Friends has identified a temporary location for the school. (*See e.g., Attachment 7, Local Board’s Ex. 5 at 17-18*). The existence of a viable temporary location is a valid concern of the local board sufficient to raise questions about that part of the Facility Plan.

(b) Instruction Issues

The foundation of a successful learning program is a strong, integrated curriculum aligned to the Voluntary State Curriculum. The application guidelines explain that the applicant must provide

“an overview of the curricular objectives and content of the main subject areas that support the core learning goals of the Maryland State Department of Education. These must include the objectives, content, and skills to be taught for the main subject areas at each performance level (grade level, age grouping, etc.) in the charter school.” (Attachment 12, Local Board Ex. 10 at 19). The application guidelines give prominent notice to the applicant that curriculum deficiencies will lead directly to non-approval. (*Id.* at 21).

The Final Evaluation contains a lengthy explanation of curriculum and assessment deficiencies.³ (Attachment 10, Local Board’s, Ex. 9 pp. 15-16). It states, in part, “the Application does not present a fully-developed curriculum by either content or grade that contains, at a bare minimum, the essential learning expressed either as content standards or core learning goals; a scope and sequence; and outcome expectations expressed as indicators/objectives that are quantifiable and able to be systematically assessed to align to the Voluntary State Curriculum (VSC), . . . what has been submitted fails to demonstrate how the testing limits, let alone the full curriculum, will be delivered and learned.” *Id.* at p. 15.

The charter school applicant disagrees. It presented its curriculum and lessons for 6th-8th grades. (Attachment 2, Local Board, Ex. 1, Application Part B and Ex. L-M). Friends states that the Application “describes the content and core learning goals of the main subject areas Appendix L provides sample teaching units and lesson plans for a range of subjects (Art, English, Social Studies, and Science). Each teaching unit indicates the specific learning objectives and skills to be taught, explains how the particular lesson aligns with relevant learning standards from the Maryland Voluntary State Curriculum.” (Attachment 2, Local Board, Ex. 1, Part B at 19).

The Final Evaluation credits Friends for its “commitment to align curriculum to the VSC.” (Attachment 10, Local Board’s, Ex. 9 at 3). Yet, the Final Evaluation reflects significant concerns about such alignment.

The Evaluation states that there was a:

Failure to demonstrate how the objectives of the VSC (Voluntary State Curriculum—content standards and core learning goals) would be meshed with a curriculum essentially driven by student-inquiry and place-based learning that requires a “moment-in-time” curriculum design each time the students come to a bend in the road of their learning. When answering this question during the interview, the example offered by the applicant involved a student asking why we

³ The deficiencies cited include critiques of the innovativeness of the curriculum and concerns about the likeness to the Chespx program. We do not address those issues, but focus only on the alignment to the Voluntary State Curriculum because, it is to us, the most critical of the curriculum issues.

have homelessness in Calvert County. A curriculum would be developed and delivered for that student or any group of students interested in that line of inquiry.

There was neither demonstration of staff credentials in curriculum design nor an articulated understanding of how the VSC skills, knowledge, indicators and objectives would be integrated into that “on the spot” curriculum so that the VSC would be fully addressed, as well as the students’ immediate questions. Would the curriculum be interdisciplinary? What portion of the existing curriculum would it displace? What portion of the available learning time would be devoted to student inquiry-driven curriculum? These questions were not answered.

(*Id.* at 4).

Those concerns were based not only on the written materials Friends submitted but also on what the Superintendent and his staff learned during the interview with Friends.

Friends responds to those criticisms with an explanation of its instructional philosophy. (Reply at 16-19). It also addresses specifically alignment to the VSC.

[CCPS’s] Memorandum echoes the Denial Evaluation in repeatedly claiming that it is “impossible to assess” whether “spur of the moment” and student-driven teaching “would align with VSC.” (Memorandum, p. 13, ¶78; also pp. 35-36, 43). This would appear to betray an alarming failure of imagination on the part of CCPS Board members. Please note that in all of the instances described above, the student pursues his or her question in a manner which does not require departing from the VSC-aligned curriculum. Rather, the student’s question is skillfully woven into the teaching unit already underway, extending student learning and deepening the student’s engagement with, and understanding of, the subject at hand. This part of the genuine innovation proposed by the applicant Friends of BASPCS.

Reply at 20.

Friends further asserts that:

The original BASPCS application provides core learning goals for every subject, which are matched to the relevant VSC standards. The curriculum grids on pages __ through __ [sic] outline content by

grade level, subject, and quarter, indicating the order in which topics are to be taught. Key texts to be used have been identified for mathematics, science, social studies, and English. The fully developed curricula for math and science have been set forth, with sample texts provided or offered to CCPS staff during the review process. In addition, sample lesson plans and teaching units have been provided for math, science, social studies, English, and art. Outcome expectations, including quantifiable indicators of success, have been provided in the detailed Assessment Plan (BASPCS Application, Part C).

Reply p. 21-22.

The Final Evaluation criticizes the curriculum further:

One test of a curricular document is whether the classroom teacher can pick up that document and know what must be taught on Monday, what resources and materials are to be used, what methods can successfully accomplish this objective, and how the teacher will grade a successful and an unsuccessful student. Neither the submission nor related discussions have shown how a teacher would take a generated question from a student (inquiry-based), growing out of a hands-on experience (correlated to what indicator or objective?) and deliver a lesson that students could be assessed as learning or not learning. Throughout the application, the applicant repeatedly talks about individualization but, for purposes of instruction, fails to establish the standards for the group, how the gaps for learners against the standard will be determined, how they will design the scaffolding necessary to move some individuals to mastery (or proficiency) and others to enrichment within the time allowed, with the resources available, using the methods of choice outlined in the application.

(*Id.* at 16).

Friends' responds:

A final week by week or day by day sequence of instruction cannot reasonably be expected to be in place until the school's instructional staff is hired. As explained in the application, the BASPCS principal, in consultation with BASPCS teachers, will develop final lesson plans. It is unreasonable for CCPS to expect that a curriculum and accompanying instructional guides be fully developed eighteen (18) months before the school's opening, to the point that a teacher could

“pick it up and know what she must teach on Monday.” BASPCS teachers will not be told what to teach on a given Monday or Tuesday. Rather, as we have explained, interdisciplinary teams of teachers will work with the BASPCS principal to develop the final structure and sequence for their lessons. This is a process that has been carefully crafted in consultation with the teachers and educators on our Board and Advisory Board. The sample schedule developed for BASPCS teachers (see Application) allows extra teacher planning time and a conference period each day to allow groups of teachers to work together to discuss and refine their upcoming lesson plans.

What BASPCS provided in its original application more than adequately meets the requirements set forth in the CCPS charter application.

Reply at 22.

This case presents a classic dispute. Friends says the curriculum is sufficient; the local board says it is not. In the past, we have been presented with disputes about the adequacy of a charter school applicant’s curriculum and resolving those disputes is admittedly difficult. This Board does not sit as an expert in curriculum design. We do not conduct a de novo review. We sit to assess the weight of the evidence presented, remembering that it is the Appellant’s burden to show that the local board was arbitrary in its assessment of the curriculum.

In assessing disputes about curriculum deficiencies, we again refer to the standard of review applicable in this case. This Board will not substitute its judgment for that of the local board’s unless the local board’s decision is arbitrary - - that is, unsupported by the evidence. In view of that standard of review, when a dispute about the adequacy of a charter school applicant’s curriculum is presented to this Board, we are mindful of two propositions. First, Maryland has a Voluntary State Curriculum (VSC) to which each public school’s curriculum should be aligned. Second, while each local school system adopts its own curriculum, it must submit verification to MSDE that the curriculum is aligned to the VSC. It is our view that, in the charter school application review process, those two propositions can guide us in assessing the reasonableness of the local board’s decision concerning sufficiency of the curriculum.

In our view, local school system curriculum staff are the ones who have the day to day experience in curriculum design and development in alignment with the VSC. Their view of the adequacy of applicant’s curriculum carries the great weight of their expertise. Because assessment of curriculum is a complex, hands-on process, and because we find that the decision of the local board here is a thoughtful one reflecting significant concerns about the curriculum and its alignment to the VSC in its entirety, we give greater weight to the assessment of the local board in this area than we do to the charter school’s own assessment of its curriculum alignment.

One way for the charter school to avoid this type of dispute is for the charter school applicant to present verification to the local school system that the curriculum is aligned to the VSC just as the local school system presents such verification from an independent contractor to MSDE. Such verification from an independent contractor who would attest to the alignment would represent an expert's review of the curriculum. In our view, if the charter school presents such verification from a reliable expert, the local board could accept that as *prima facie* evidence of satisfactory alignment of the curriculum to the VSC.

(c) Motion to Strike

The local board has moved to strike numerous exhibits submitted by the Appellant. We deny that Motion because many of the documents presented were material and have been helpful to us in understanding the evaluation process and the interaction between CCPS staff and the applicant.

Summary

We have concluded that the evaluation process was an essentially fair process. We have also concluded that the substantive review reflects valid reasons for denial of the Application: concern about funding and budget, about finding a viable temporary facility, and most importantly the staff's view that the curriculum was not aligned to the VSC. We believe a reasoning mind could come to the conclusion that the local board reached to deny the charter school application.

We are impressed, however, by the work the charter school applicant and the local school system have done. We have stated our belief on the record that the application was a thorough and detailed one. We would encourage continued work to get this charter school up and running. Particularly, we encourage the applicant to re-submit its application using the Final Evaluation as a guide to the areas needing improvement. We encourage the local board to review the application in as expedited a way as possible.

CONCLUSION

We affirm the decision of the local board denying the charter school application.



Dunbar Brooks
President



Beverly A. Cooper
Vice President

recused
Lelia T. Allen

Henry Butta Em K
J. Henry Butta

Absent
Charlene M. Dukes

Mary Kay Finan Em K
Mary Kay Finan

Blair Ewing Em K
Blair G. Ewing

Rosa Garcia Em K
Rosa M. Garcia

Richard Goodall Em K
Richard L. Goodall

Karabelle Pizzigati
Karabelle Pizzigati

Dissent:

The State Board initially concluded in its decision dated February 26, 2008, that the Friends application was very thorough and that the minor differences would be worked out with the local board if the parties acted in good faith. In response to the local board's request for reconsideration, the majority of the State Board changed its opinion and decided to affirm the local board's decision to deny Friends charter school application. I dissent from this decision.

Rather than proceeding in good faith to resolve the differences with the applicants as this

Board had urged, the local board chose instead a path of resistance and requested the State Board to reconsider its decision to ask the parties to seek to resolve their differences. In my view, the local board's approach to the Friends' application reinforces my initial view that the local board was being arbitrary and unreasonable in denying Friends' application to open a charter school. The affirmance of the local board's decision to deny Friends' application by the State Board majority seems to reinforce the benefits of the local board's uncompromising and arbitrary behavior.

A review of this matter requires some context for the State Board's review of charter applications on appeal. First, the State charter law grants to the local boards the authority to grant school charters, and accordingly, the Calvert County Board of Education assumes a heavy responsibility to exercise its discretionary authority in a fair, reasonable and non-arbitrary manner. Second, this is the first charter school application to be considered by the Calvert County Board. Third, the State Board has reviewed numerous charter school applications as a part of its appeal authority flowing from decisions by the local boards. The Friends' application is the most thorough and most consistent with local board's standards that this Board has seen, and that was the implicit view of this Board when it rendered its decision on February 26, 2008.

With this context as background, there are several matters in the record, individually and collectively, which lead to the conclusion that the local board's decision in denying the charter was unreasonable.

First, the thoroughness and responsiveness of Friends' application when juxtaposed to the local superintendent's evaluation and local board's very bureaucratic queries and conclusions demonstrates the unreasonableness of the local board's decision. More on this below.

Second, the evaluation rubric employed by the local district staff and its use in reaching a decision is open to very serious questions. The local district had 9 Area Directors review the charter application and supplemental materials. They then scored the application. The maximum score possible was 500, and the scores ranged from 247 to 470, with a median of 332. The Superintendent reviewed the Directors' evaluation, but Friends was not told what the scoring meant and the Superintendent did not share the scoring results with the local board. There is nothing that indicates why the scoring rubric was not shared with the local board in rendering its decision to deny the application.

Third, the staff said that the proposed curriculum did not meet the county's requirements. A single example demonstrates the unreasonableness, the pettiness, and the lack of understanding of Friends' application. In the Final Evaluation, the Friends' curriculum was criticized as follows:

“One test of a curricular document is whether the classroom teacher can pick up that document and know what must be taught on Monday, what resources are to be used, what methods can successfully accomplish this objective, and how the teacher will grade a successful and an unsuccessful student.”

Does that sound like the description of a teacher's lesson plan for an individual lesson, rather than a school curriculum? The comment was totally inappropriate and unjustified. It reveals a lack of fundamental understanding of proper review, and cannot be allowed to deny a charter school applicant its charter.

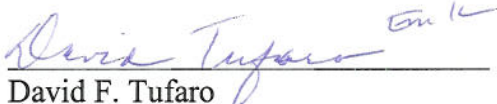
Fourth, the memorandum from Deborah Pulley, Executive Director of the Calvert County Public Schools, states that there is "no reference to graduation requirements in the application." This comment misses a fundamental aspect of the Friends' application which was that initially it would open with grades 6, 7, and 8, with high school grades to follow later. Accordingly, it was premature to be asking for graduation requirements which should have been obvious from a reading of the application.

Fifth, the Final Evaluation contains what appears to be an important misstatement about the student makeup of the proposed charter school. It states that "no plan is in place to assume a demographic distribution that would attempt to mirror the county population." As long as there is proper open enrollment and recruitment, there is no requirement that the school enrollment mirror the county's population.

Sixth, the district staff's comments on the charter school's proposed budget are very petty and minor in the context of what is clearly a very thorough and detailed budget. (One only wonders whether CCPS has school-based budgets with this level of detail since there is no reference to them in the records). One can always find line items to take issue with when reviewing a budget, but the comments were relatively minor, and Friends answered them with detail, including specific price quotes from vendors.

In conclusion, the thoroughness of Friends' application and the supplemental information provided in response to queries from the CCPS staff, and the kind of non-material, and inapplicable comments contained in the Final Evaluation indicate that the local board's denial of Friends' charter school application was not substantively justified, but rather was arbitrary and unreasonable.

I stand firmly by the State Board's initial decision to have Friends, CCPS, and the local board sit down and work out their relatively minor differences, so that Friends' charter application can be granted.


David F. Tufaro

April 10, 2008