

SOJOURNER TRUTH PREPARATORY,
CHARTER SCHOOL

Appellant

v.

PRINCE GEORGE'S COUNTY BOARD OF
EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 08-25

OPINION

INTRODUCTION

The charter school applicant, Sojourner Truth Preparatory Charter School, has appealed the local board's failure to consider the merits of its charter school application because the application was untimely filed with the school system. The Prince George's County Board of Education (local board) has filed a Motion for Summary Affirmance. Appellant has filed an opposition to the Motion.

FACTUAL BACKGROUND

All charter school applicants seeking to operate a charter school in Prince Georges County for the 2008-2009 school year were required to submit their applications to the school system by August 3, 2007 at 3:00 p.m. This deadline was specifically stated in the local board's Request for Application document. (Motion, Exhibit 2). The document also stated that the "applicant is solely responsible for the arrival of the application in the PURCHASING OFFICE, FACILITIES ADMINISTRATION BUILDING, ROOM 20, 13300 OLD MARLBORO PIKE, UPPER MARLBORO, MARYLAND 20772-9983, prior to the prescribed deadline for return of applications." (*Id.*)(emphasis in original).

On August 3, 2007, Appellant submitted its charter school application to the Purchasing Office after the 3:00 p.m. deadline. Appellant states that Ms. Carol Campbell, CEO of Sojourner Truth, became lost at approximately 2:55 p.m. while on her way to hand deliver the application. Ms. Campbell contacted the Purchasing Office, received directions, and proceeded to deliver the application. (Appeal, p.3). The document was date/time stamped received on August 3, 2007 at 3:10 p.m.

By letter dated August 8, 2007, Loretta White, then Acting Director of the Charter School Program for Prince George's County Public Schools ("PGCPS"), notified Appellant that its

application was not received by the required posted deadline, and that PGCPS would only consider Applications received by the deadline at 3:00 p.m. on August 3, 2007. (Motion, Exhibit 3).

In mid to late October 2007, the PGCPS Charter School Program Office received a call from Ms. Campbell requesting a meeting. (Motion, Exhibit 4, Mitchell Affidavit). Derek Mitchell, the Director of the Charter School Program, agreed to meet with her for the purpose of providing information about future opportunities for submitting a charter school application, and to provide information about contract school opportunities that might become available. (*Id.*). During that meeting, on November 2, 2007, Ms. Campbell attempted to resubmit the charter school application and requested that the school system review it on its merits.¹ Mr. Mitchell advised her that the application would not be considered for the current application cycle, but that the Appellant could resubmit it for consideration during the next charter school application review cycle for schools opening for the 2009-2010 school year. (*Id.*). Mr. Mitchell also advised that the Appellant would have to seek recourse of the August 8th decision through an appeal to the State Board of Education. (*Id.*).

Appellant filed an appeal with the State Board on December 3, 2007. As the basis for its appeal, Appellant states as follows:

This appeal is timely submitted in specific response to PGCBE's November 2, 2007 decision to neither receive nor review STPCS' 2007 application for the establishment of a public charter school opening in August 2008 until after the August 2008 deadline for submission of 2008 applications for charter schools opening in August 2009 and thereby PGCBE effectively denied STPCS's 2007 application.

(Appeal at p.4).

ANALYSIS

This case is an appeal of the failure of PGCPS to consider the merits of Appellant's charter school application for two reasons - - first, because it was filed ten minutes beyond the school system's charter school application filing deadline of August 3, 2007 at 3:00 p.m., and second because the attempt to re-submit the application in November 2, 2007 was outside the application cycle. The local board argues that the appeal should be dismissed because it was untimely filed with the State Board.

¹In its opposition to the local board's motion, Appellant cites to an affidavit from Ms. Campbell. No such affidavit was provided with the filings to the State Board.

The parties dispute which date of which decision to deny the application (August 3 or November 2), triggers the Appellant's review of 30 day limitations period for timely filing an appeal to the State Board. Based on our review, however, we believe that the critical issue here is not whether this appeal was timely filed with the State Board, but rather, whether the appeal was appropriately filed with the State Board, at all, given that there is no local board decision in the matter.

The law authorizing charter schools establishes that appeals from decisions denying charter school applications are appeals pursuant to § 4-205(c) of the Education Article. *See* Md. Educ. Code Ann. § 9-104(b). Under § 4-205(c), each county superintendent is empowered to decide all controversies and disputes involving the rules and regulations of the county board. The charter school application filing procedures are such rules, and this case is about the proper application of those rules in the context of the timely filing of the charter school application.

Ms. White, the Acting Director of the Charter School Program, made the decision that the application was untimely filed on August 3, 2007. Mr. Mitchell, the Director of the Charter School Program decided on November 2, 2007, not to accept the charter school application because it was outside the application cycle. Both, we presume, were the Superintendent's designees, thus an appeal of either decision should have been taken to the local board. That is the process that § 4-205 establishes. Only after the local board decides the issues raised in the appeal, does the right to appeal to the State Board arise.

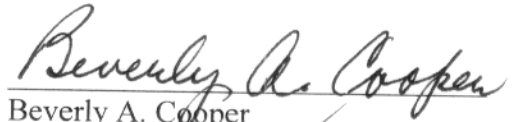
In this case, the view of the local board as to the immutability of the 3:00 filing deadline would have been, not only valuable, but necessary, in order for this Board to conduct an informed review of the timeliness issue. Likewise, the local board's rationale for the application cycle date would have been essential for this Board's review. Thus, we take the time to emphasize here the proper appeal procedure because it appears that this applicant was told in November, 2007 to appeal directly to the State Board. Direct appeals to the State Board occur only in the rarest cases, and they are not legally appropriate in an appeal under § 4-205. We encourage local school systems to include in the decision letters that they send to charter school applicants, an explanation of the applicant's appeal rights, if any.

CONCLUSION

Because we find that the appeal to the State Board was premature, this appeal is dismissed.



Dunbar Brooks
President



Beverly A. Cooper
Vice President



Leha T. Allen



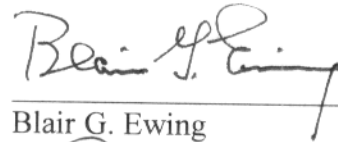
J. Henry Butta



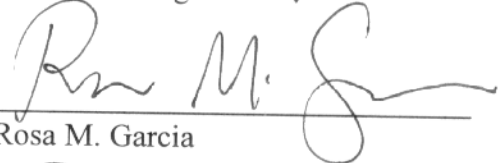
Charlene M. Dukes



Mary Kay Finan



Blair G. Ewing



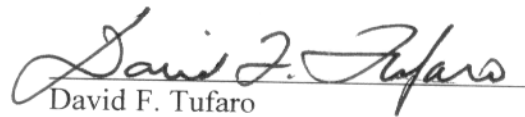
Rosa M. Garcia



Richard L. Goodall



Karabelle Pizzigati



David F. Tufaro

April 30, 2008