

CHESAPEAKE PUBLIC CHARTER
SCHOOL,

Appellant

v.

ST. MARY'S COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 05-23

OPINION

This is an appeal by Chesapeake Public Charter School ("CPCS") contesting the decision of the St. Mary's County Board of Education to deny CPCS's application to operate a public charter school. CPCS contends that the local board's decision was arbitrary, unreasonable, and illegal because (1) the local superintendent failed to make a recommendation regarding approval or denial to the local board; (2) the denial was based on vague evaluation criteria; (3) notification of the denial was not in writing but was given orally during the local board's open session; and (4) the denial was based on the local board's disagreement with the concept of charter schools generally rather than substantive issues in CPCS's application. CPCS requests that the State Board direct the local board to grant CPCS a charter, or direct the local board to grant a conditional charter and then mediate between the parties to implement the charter.

The local board has filed a Motion for Summary Affirmance maintaining that its decision is consistent with its Charter School Policy and Regulations, and was not arbitrary, unreasonable, or illegal. The local board asserts that after many months of collaboration between CPCS and the local board, the local board had significant legitimate concerns sufficient to deny the application based primarily on CPCS's failure to identify a proposed facility to house the charter school.

CPCS has submitted an opposition to the local board's motion maintaining that if the local board actually denied the application based on lack of a facility rather than for other reasons, the local board's decision is arbitrary and unreasonable in light of its requirement that a successful charter school applicant cannot begin to operate the charter school until the second school year after the charter is granted.

Oral argument by the parties took place before the Maryland State Board of Education on June 28, 2005.

FACTUAL BACKGROUND

CPCS began development of its charter school application in May, 2003. In January 2004, a CPCS representative contacted the school system regarding establishment of a public charter school in St. Mary's County. On January 21, 2004, the local superintendent, Dr. Patricia M. Richardson, forwarded copies of the local board's charter school policy (Policy IHBH) and

regulation (Regulation IHBH-R), as well as other documents required for obtaining application approval. Regulation IHBH-R provides that each application must include the following components: the applicant's vision, philosophy, and goals for the public charter school; specific focus and strategies for developing and delivering educational programs; specific educational goals; a description of community support; a facilities plan; a staff plan; a management plan; and a financial plan. IHBH-R at pp. 2– 3. With regard to facilities, Regulation IHBH-R states the following:

The applicant must submit a facilities plan that specifies cost, location, available space and its use, and, if it is a lease, the terms and conditions. The location of the public charter school must be approved by the Board of Education of St. Mary's County following a site inspection and proof of insurance. Use of existing St. Mary's County Public Schools buildings must be negotiated with the Board of Education of St. Mary's County. Policies and regulations related to health and safety cannot be waived.

IHBH-R at p. 2. IHBH-R also provides that a charter school "shall begin the second school year after the date the charter is granted." IHBH-R at 2.

Among the charter school documents provided to CPCS by Dr. Richardson was the "Public Charter School Application Checklist" which Dr. Richardson indicated would "serve as a guide for the review of the application. See 1/21/04 letter from Richardson. The checklist categories for the "Facilities Plan" are as follows:

1. Identification and location of site if known at time of application;
2. Identification and location of site pending approval of application;
3. Planning and zoning;
4. Building site plan and floor plan;
5. Building gross and net square footages;
6. Building current and proposed space use;
7. Building inspection report(s);
8. Building systems and materials condition;
9. Facility acquisition/lease - terms and conditions;
10. Proposed site redevelopment, new construction or renovation, and estimated costs;
11. Schedule for occupancy; and
12. Plans for building security, maintenance and custodial services.

See IHBH-F at p.3.

On March 30, 2004, CPCS submitted a preliminary application to the local superintendent. Dr. R. Lorraine Fulton, Deputy Superintendent, responded indicating the following:

It is important to note that the purpose of this review is to provide the necessary feedback for the continued development of your proposal. St. Mary's County Public Schools will use this opportunity to collaborate with Chesapeake Public Charter School to assist with the refinement of your proposal before it is submitted to the Board of Education for their review and decision.

Dr. Fulton's response also indicated that CPCS would make a formal presentation to the Superintendent's Executive Team and that department heads would meet with CPCS to "ensure accuracy and compliance with the necessary requirements prior to submittal to the [local board]." See 3/31/04 letter from Fulton to Sullivan. Reports of the findings and suggested modifications from the various school system departments were provided to CPCS on August 9, 2004.

With regard to a facilities plan, the preliminary application indicated that "no one facility has been identified or accepted for use by CPCS". The application listed four possible locations and sought feedback from the St. Mary's County Public Schools Facilities Office regarding the building options. The application stated that CPCS "plans to commit to a site upon approval of this charter." 3/30/04 Preliminary Application at p. 51.

Over the course of the next several months, CPCS worked with the school system to refine and further develop the proposal. CPCS made various changes and clarifications to its application based on recommendations made by the Executive Team. Dr. Fulton has described the process as one in which CPCS and the school system had a "cordial and collaborative working relationship". See Affidavit of Dr. R. Lorraine Fulton.

After many meetings between CPCS representatives and the local board's Executive Team, CPCS submitted a formal application on November 22, 2004. Meetings and discussions continued between the parties. On January 12, 2005, CPCS filed an addendum to its application in which it identified a facility location at St. George's Episcopal Church in Valley Lee, Maryland. CPCS also outlined its application in a presentation to the local board.

The St. Mary's County Public Schools Division of Supporting Services visited CPCS's proposed facility and conducted a detailed analysis. The analysis reviewed the facility in terms of food services, transportation, maintenance, operations, regulatory/compliance concerns, adequacy of the proposed facility, and lease and insurance. The section on adequacy of the facility included an evaluation of the facility's electrical distribution systems, capacity, lighting, ceilings, HVAC systems, grounds, fire alarm/life safety, ADA requirements, and space requirements for instructional and support areas. The analysis summary states as follows:

In summary, through the information provided, the Division of Supporting Services believes the facility is too small to meet the program needs and code requirements. The setting of this building and the surrounding properties is an excellent one for the Chesapeake Public Charter School's philosophy. However, given the space requirements and the church's use of the property simultaneously with the Chesapeake Public Charter School, it appears to be one that would present a compromise to the instructional program as well as to the church's activities.

See Division of Supporting Services Review Comments for proposed location at St. George's Episcopal Church.

Thereafter, CPCS made more revisions to its application. On February 9, 2005, the local board held a work session with CPCS. CPCS withdrew the proposed addendum identifying St. George's Episcopal Church as its proposed facility. CPCS submitted a final, comprehensive version of its application on March 1, 2005, incorporating its responses from the work session. The updated facilities plan consisted of three phases in which CPCS would lease a building as a temporary site in Phase I and have its own facility constructed by the end of Phase III. The plan failed to identify a facility as a temporary site and indicated that the facility search was ongoing. It also indicated that CPCS would only consider sites not requiring renovations for Phase I of the plan. *See* 3/1/05 Charter School Application at p. 75.

At the local board's meeting on March 9, 2005, the superintendent requested that the local board render a decision regarding CPCS's application to establish a public charter school. The local board engaged in a discussion which raised concerns about the establishment of charter schools generally, the lack of an identified facility by CPCS to house the school, as well as concerns about the curriculum and the financial plan for CPCS. *See* unofficial transcript of 3/9/05 local board meeting. After its discussion, the local board unanimously denied CPCS's application to establish a public charter school. Other than the minutes and unofficial transcript of the board meeting, there is no written document memorializing or explaining the board decision.

The superintendent thereafter advised CPCS to consider submitting a new application after continuing its search for a facility.

ANALYSIS

Standard of Review

This case represents a challenge to the local board's decision to deny CPCS's charter school application. That decision is one "involving a local policy or a controversy and dispute regarding the rules and regulations of the local board." As such, the standard of review is that the

decision “shall be considered *prima facie* correct [T]he State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal.” See COMAR 13A.01.05.05(A); *Potomac Charter School v. Prince George’s County Board of Education*, Opinion No. 05-08 (March 11, 2005). A decision is considered arbitrary or unreasonable if it is “contrary to sound educational policy or if a reasoning mind could not have reasonably reached” the decision. COMAR 13A.01.05.05(B)(1)&(2). A decision is illegal if it is unconstitutional; exceeds statutory or jurisdictional boundaries; misconstrued the law; results from unlawful procedures; is an abuse of discretion or is affected by errors of law. COMAR 13A.01.05(C).

Recommendation of Superintendent

As a preliminary matter, CPCS maintains that the local superintendent never made any recommendation to the local board regarding whether CPCS’s application should be approved, in violation of Policy IHBH. The provision cited by CPCS, Policy IHBH at 5, pertains to an annual review procedure in which the “superintendent or designee will oversee the public charter school and make recommendations to the [local board] **regarding renewal or revocation.**” (Emphasis added). This provision is therefore not relevant to the approval or denial of the initial application for a charter. See CPCS Memorandum in Support of Appeal at p. 10.

Nonetheless, we find it beneficial to the local board, the charter school applicant, and the general public for the local superintendent to make a recommendation with supporting rationale for approval or denial of a charter school application. We therefore direct each local superintendent from now forward to provide to the local board a detailed recommendation for approval or denial of a charter school application.

Local Board Policy IHBH – Public Charter Schools

As a second preliminary issue, CPCS contends that Policy IHBH, Regulation IHBH-R, and the application checklist set forth vague components indicating the items that should be included on a charter school application, but fail to provide any criteria regarding how the application will be evaluated. CPCS asserts that this information gives no specific guidance as to what is necessary or adequate for a public charter school application to receive approval.

The local board has indicated that Policy IHBH and Regulations IHBH-R were developed by the local board and submitted to the Maryland State Department of Education in November, 2003.¹ The local board also indicates that the checklist was modeled after the “sample checklist”

¹The charter school legislation requires each local board to develop a public charter school policy and submit it to the State Board. Md. Code Ann., Educ. § 9-110. All local boards were required to submit their policies to the State Board by November 1, 2003. Each policy is required to include guidelines and procedures regarding the following: (i) evaluation of public charter schools; (ii) revocation of a charter; (iii) reporting requirements; and (iv) financial,

in MSDE's *Maryland Public Charter Schools Model Policy and Resource Guide*, and that the checklist was used as a basis for issuing the more detailed written comments and recommendations throughout the collaborative process between CPCS and the school system beginning in January, 2004.

We have reviewed the various St. Mary's school system documents which provide guidance for public charter school applicants in St. Mary's County. Among other things, the documents indicate that an application must have the following components: executive summary; educational programs and services; special populations; student outcomes; student admission procedures; staffing plan; management plan; facilities plan; financial plan; community support; and assurances. The documents further break down the specific types of information required for each section of the application. In addition, for each application section, the school system has referenced for applicants the relevant local board policies. *See Policies and Regulations of Particular Note for Public Charter School Applicants* (IHBH– F-attachment A of attachment 5).

In this case, in addition to the guidance contained in the charter school documents which were provided to CPCS, CPCS had substantial feedback from the school system. Prior to submitting its final application on March 1, 2005, CPCS had submitted at least two other applications and received substantive comments from school system officials on those proposals. Based on our review of the record in this case, including the entirety of the feedback documents prepared by school system representatives during the collaborative process, we believe that CPCS was provided with specific guidance regarding what was necessary to include in its application.

Written Denial of Charter School Application

CPCS argues that the local board's decision to deny CPCS's application was arbitrary, unreasonable, and illegal because the local board failed to provide a detailed written rationale justifying its denial. CPCS contends that the lack of any written explanation has left CPCS without any clear understanding as to why its application was denied. In support of its argument CPCS relies on *Potomac Charter School v. Prince George's County Board of Education*, MSBE Opinion No. 05-08 (March 11, 2005), in which the local school system utilized a numerical rating scale to evaluate charter school applications. The State Board held that "if a numerical rating scale 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* at 7.²

programmatic, or compliance audits of public charter schools. Md. Code Ann., Educ. §9-110(a)(2).

²There is no legal requirement, however, that a school system use such a scale in the evaluation process. If no numerical scoring rubric is utilized, an analytical key is unnecessary.

In response, the local board points out that there was no need for a written opinion because its decision was made during open session after full discussion of the issues by local board members. In addition, the final vote by the local board followed months of communications between the parties during which the school system provided comprehensive guidance and recommendations.

A review of the local board's discussion preceding the vote on March 9, 2005 discloses a basis for denying the application – the lack of an identified facility in which to house the school. While some of the comments made by the local board members focused on county-wide budgetary concerns and on the impact of public charter schools generally,³ lack of an identified facility was identified during the discussion as a basis for denial. Further, the affidavits of Dr. Fulton and J. Bradley Clements, Chief Administrative Officer for St. Mary's County Public Schools, indicate that the lack of an identified facility left the local board without the ability to ascertain essential facility considerations such as adequacy with regard to school safety, student health, classroom and building space, and electrical supply.

While there is no specific legal requirement in the Maryland Charter School statute that requires a local board to render a decision on a charter school application in writing, we find that in fairness to the applicants and members of the public, a local board must provide in addition to its decision approving or denying a charter application, an explanation or rationale for its decision. Furthermore, if a local board chooses to give its decision orally, it must also state the rationale for its decision at the public meeting.

Lack of Identified Facility

The key issue in this case is whether the lack of an identified facility alone is a sufficient basis for denial of the charter school application. In other words, was it arbitrary or unreasonable for the local board to deny the application because there was no facility or is this an issue on which reasoning minds can differ.

We note that the CPCS final application set forth a three phase facilities plan but did not identify any one facility to house the school or list any possible locations. CPCS had withdrawn the previously identified St. George's facility because the school system found the site unsuitable. Other sites previously suggested by CPCS were hampered by the fact that CPCS would not consider any facility requiring renovation.

On the other hand, local board regulation IHBH-R provides that a charter school "shall begin the second school year after the date the charter is granted." IHBH-R at 2. Given this waiting period, CPCS argues that it is impractical, if not impossible, to locate a facility to lease

³Some of the local board members made comments which demonstrated disfavor towards the establishment of public charter schools. *See* unofficial transcript of 3/9/05 local board meeting.

so far in advance of the school's opening date. CPCS maintains, therefore, that if the local board denied its charter school application based on lack of an identified facility, its decision was arbitrary and unreasonable.

We acknowledge that the local board's policy and regulation were developed before any implementation of charter schools began. In this regard, the State Board recently held that a local board and a charter school applicant have 30 calendar days from the date of the application approval in which to complete a charter school agreement. *See Patterson Park Public Charter School, Inc. v. Baltimore City Board of School Commissioners*, MSBE Opinion No. 05-19 Revised (2005). This holding envisioned that all facility arrangements and approvals would be completed within that 30 day time frame.

In this case we concur with the Appellants that the two-year delay policy on opening a charter school places charter school applicants in a "catch-22" situation regarding acquisition or leasing of a facility. Further, we find nothing in the Maryland Public Charter School Act that authorizes a local board to impose a two-year delay between approval of an application and the opening of a charter school. We therefore find that the two-year delay in the St. Mary's Board policy is unreasonable.

Nonetheless, we are troubled that the Appellants have not yet identified any facility for housing its school.

CONCLUSION

Given the undisputed collaboration that has existed between the Appellants and the St. Mary's County School System officials and for the reasons noted above, we are reversing the local board decision and remanding the matter for further consideration by the local superintendent, staff, and local board.

In addition, given the Appellants' acknowledgment that they now intend to open their charter school for the 2006-2007 school year, we direct the Appellants to work with local school system officials to identify an acceptable facility by December 31, 2005. Failure to do so may constitute a justifiable basis for denial of the application.

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July 20, 2005