

COLUMBIA PUBLIC CHARTER
SCHOOL,

Appellant

v.

HOWARD COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 05-31

OPINION

This is an appeal by Columbia Public Charter School (“CPCS”) contesting the decision of the Howard 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 board did not provide adequate justification for its evaluation of the CPCS application; (2) the local board acted contrary to legislative intent; and (3) the local board failed to credit the substantive merits of the CPCS 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.¹ The local board asserts that HCPSS provided CPCS sufficient technical assistance and that the local board’s denial of CPCS’s request to establish a public charter school was based on Appellant’s failure to submit a clear, complete, understandable and workable proposal that demonstrated ability to implement a sound operational plan. The major deficiencies were in the quality of the curricular plan and deficiencies in the management structure including conflicts of interests of the family members who were the founders of the school.

FACTUAL BACKGROUND

The local board adopted Policy 1009 (Charter Schools), pursuant to the Maryland Public Charter School Act, on October 23, 2003.² Policy 1009 requires that parties interested in

¹The local board initially filed a Motion to Dismiss based on untimeliness. We have determined that the appeal was timely filed by CPCS as evidenced by the certified mail receipt postmarked May 28, 2005.

²The 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,

establishing a charter school submit a prospectus which must be approved by the local superintendent prior to the submission of a full application. The full application must include the following components: (1) a statement of intent to comply with applicable federal, state, and local laws and regulations and the Howard County Public School System (HCPSS) Charter School Policy; (2) an educational program; (3) student admission procedures; (4) a facilities plan; (5) a management plan; and (6) a financial plan. All but two of these components are broken down further into other categories. For example, the educational program must include the applicant's vision of the public charter school's expectations and mission, a description of any special or unique educational focus, strategies for developing and delivering educational programs, requests for specific waivers of requirements to implement the proposed educational program, specific educational results including student academic outcomes and how they will be measured, and specific plans for meeting or exceeding current accountability provisions of HCPSS and state law and regulations. *See* HCPSS Implementation Procedures No. PR-1009.

CPCS began development of its first charter school application after the Maryland General Assembly adopted the Maryland Public Charter School Act in 2003. After several months of planning, CPCS submitted its first public charter school application to the HCPSS. After this initial application was denied, CPCS made alterations to the document and submitted a new prospectus on October 15, 2004. The Superintendent approved CPCS's prospectus on October 27, 2004.

CPCS submitted a comprehensive application on January 4, 2005.³ Ms. Maureen Mirabito, Charter School Liaison, conducted a technical review of the application to identify the presence or absence of required information.⁴ Ms. Mirabito identified several items that were missing, incomplete, or required further information and advised Joanne Rynn, CPCS founder, board member, and authorized agent, of the deficiencies by letter dated January 6, 2005. In her letter, Ms. Mirabito also indicated that the Superintendent agreed to continue with the review process if CPCS presented the needed information by Friday, January 7th.⁵ CPCS provided supplemental information and review of the application continued.

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

³At some point prior to submission of the application, CPCS met and received technical assistance from a HCPSS health representative and a HCPSS transportation department representative.

⁴The application is not evaluated for quality, approval, or denial during the technical review process. *See* 1/5/05 letter from Cousin to J. Rynn.

⁵The Superintendent agreed to the receipt of additional information despite a January 5, 2005 letter stating that resubmission of an incomplete application would not be considered for this round of applications.

By letter dated January 19, 2005 letter, Dr. Sydney Cousin, Superintendent, requested further clarification on conflict of interest concerns that were raised in the application. Dr. Cousin set forth the following specific item at issue:

If the charter school or its applicants or partners own or lease its facility, provide a description of the ownership or lease agreement of the facility, including specifically, potential conflicts of interest and arrangements by which such conflicts will be managed or avoided. Property settlement or lease documents are required as part of the application.

The attachment to the letter explained that while the lease agreement was provided to the school system, the lease disclosed that Joanne Rynn who is a CPCS founder, board member, and authorized agent was the lessor as well as the lessee of the facility. CPCS did not provide information in its application describing how potential conflicts of interest and arrangements by which such conflicts would be managed or avoided. See 1/19/05 letter from Cousin with attached 1/3/05 Technical Review Form. Other concerns identified in the attachment were lack of zoning approval for use of the proposed facility as a school, and CPCS budget calculations using a per pupil expenditure of \$9,534.00.

CPCS provided a response to HCPSS on January 25, 2005 indicating that an independent agent would be hired to provide a fair market lease value once the charter is approved in order to resolve concerns regarding the lease. The response also indicated that the zoning issues could not be resolved until approval of the charter application. See 1/25/05 letter from R. Rynn to Cousin with attachment.

Review of CPCS Application

Thereafter, substantive review of CPCS's application began. The process included two separate phases of formal review prior to review by the Superintendent. Part One review consisted of internal review and assessment by HCPSS staff. Part Two review included review and evaluation by a large group Review Committee comprised of school system staff and community stakeholders. At the conclusion of Part One and Part Two, the Superintendent reviewed the CPCS application and the assessments from the two review phases. The Superintendent then made a recommendation to the local board. The local board then reviewed CPCS's application, the Superintendent's detailed recommendation, and the comments and assessments from the two review phases.

1. Part One Review

The Superintendent directed all reviewers to read the entire application and then work in subcommittees based on their requisite skills and professional credentials. For example, the Financial Plan section of the application was reviewed by a subcommittee comprised of the Chief

Financial Officer; Director of Finance; Safety, Environment, and Risk Management Specialist; Budget Officer; and Purchasing Officer. *See* complete listing of subcommittee assignments.

The subcommittees used a scoring rubric for each section of the application. The rubric was aligned with the application and policy requirements and included a legend explaining the scoring criteria applicable to each of the available numerical scores. The scores and narrative comments obtained through the group review process in Part One were compiled, summarized, and served as a resource for the large group review committee as it undertook the review and assessment of the CPCS application in Part Two.

2. *Part Two Review*

On March 22, 2005, the large group review committee convened to begin its formal review of the CPCS application. *See* 3/22/05 Process Outline. The group that met included 32 school system staff and community members.⁶ The large group divided into smaller groups to review their assigned sections of the CPCS application and to review the feedback from Part One review. Each small group completed a small group worksheet for its section which asks the following questions:

1. Is the section consistent with the vision, mission, and goals of the school?
2. Is this section free of conflicts of interest, or provide an adequate explanation for how conflicts of interest will be avoided or managed?
3. Would you agree that this section is well organized and well written?
4. If a waiver has been requested, has the applicant provided an adequate justification for the waiver and a reasonable alternative?

See Small Group Worksheet. After the small work groups were completed, the smaller groups reported their findings to the large group. Group members engaged in discussion of the issues and had the opportunity to provide input and request clarifications.

The review committee then worked as a large group to consider and discuss the questions on the Large Group Worksheets. The questions assess the application in its entirety on its adherence to State law, overall quality, and the applicant's ability to implement the proposed program. The Large Group Worksheet is an evaluation instrument completed and signed by every member of the large group review committee. *See* Large Group Worksheet. The participants of the large group review committee unanimously proposed that the application for CPCS be denied.

⁶The president of the Maryland Charter School Network was invited to attend and was present as a resource to the group, but was not present as a voting member.

3. *Quality of Plan*

Committee members were interested in the general concept proposed in the application, specifically with regard to the provision of smaller class sizes and exposure to foreign language in elementary school. However, committee members were unable to develop a clear understanding of how the goals of the school supported the vision and mission of the school. Members also felt that the goals and objectives for student performance were vague and did not equal the expectations established for other Howard County public schools.

While the application referenced administration of the State assessments, members felt that the application lacked sufficient understanding of the requirements of the *No Child Left Behind Act (NCLB)* and how to meet these requirements for subgroup populations. In addition, members found that the application lacked a strong accountability plan.

The proposed use of the Multiple Intelligences model for instructional purposes was well received by the members, however members found the selection of publisher developed curricula for reading and mathematics and the use of video instruction for Spanish contradictory to this approach. Committee members did not believe that these curricula could accommodate the level of flexibility required to provide differentiated instruction based on Multiple Intelligences to multiple grade levels within a single classroom.

Members found numerous problems concerning the proposed facility and insufficient evidence that the facility complied with zoning, health, and safety laws.⁷ The facility operates a daycare program and it was unclear to members whether the facility as described could meet the standards required of a charter school program. The facility is not approved by the Howard County zoning office for school use. In addition, the indicated classroom size was not in compliance with current educational specifications and Appellants failed to identify required common or recreational areas. Also, the lease indicates the phrase “as is” with regard to parking which left questions about whether the parking lot complies with safety standards, the Americans With Disabilities Act, and other standards.

⁷The Howard County department of Planning and Zoning has indicated that the property on which the facility is located is properly zoned to permit a public charter school to operate. In order to comply with local zoning laws, however, that property cannot be privately owned as it appears to be by Joanne Rynn. The parcel is designated as credited open space and open space must be dedicated to the County or a Homeowner’s or Condominium Association under the zoning laws, not to a private owner. Thus, the options are for Ms. Rynn to sell or donate the parcel to the Howard County Public School System or for Ms. Rynn to retain private ownership but request amendment of the Final Development Plan land use designation for the space to another category that permits private ownership. See 4/20/05 letter from McLaughlin, Director of Howard County Department of Planning and Zoning.

4. *Ability to Implement - Conflicts of Interest*

Members had great concern about various conflicts of interest and believed that these conflicts should be resolved in order to have successful implementation. One area of concern is the lease. The lease does not provide a clear description regarding the ownership of the facility. Joanne Rynn proposes to function as both the landlord and tenant of the school. The applicant proposes to charge a “fair market rate” in an effort to address the conflict but this leaves unresolved issues such as the maintenance and repair of the facility given that a board member has a financial interest in the lease.

Information provided in the management structure indicates that several members of the Rynn family will operate and govern the school. The plan relies on the services of another member of the family for staff training on assessment methods and analysis. Members had concerns about the amount of control and interwoven financial interests of this single family and how that could affect the degree to which the school will serve the greater Howard County community.

Another concern of the members was the benefit and availability of the charter school to the greater community. CPCS planned to limit student enrollment for the 2005-2006 school year to a single week in May. Members did not believe that one week of registration was sufficient time for enrollment, despite publicity regarding the school over the past year. This limited time frame raised concerns about CPCS’s ability to sufficiently inform the broader community of the school’s opening to attract a sufficient cross-section of students.

5. *Ability to Implement - Management Structure*

Members felt that CPCS provided insufficient information regarding the responsibilities, roles, policies, and practices necessary to effectively manage the school, including the administrative management structure of the school and its relationship to teachers and administrators. In addition, the application indicates a 16 member board but there is no evidence of a plan to recruit board members with a broad range of skills. Members also thought that a 16 member board might be too large for a school with a population of 90 students and such a structure might have an impact on the functioning and effectiveness of the board.

Recommendation and Local Board Review

Ms. Mirabito presented the review committee’s recommendation to deny the application to the Superintendent on March 29, 2005.⁸ The Superintendent concurred with the review committee and submitted a detailed written recommendation to the local board at its regularly scheduled meeting on April 14, 2005, that the application be denied. The local board allowed

⁸On April 4, 2005, CPCS was awarded a grant in the amount of \$49,973.00 pending approval of its charter school application.

CPCS the opportunity to make an oral presentation in order to address concerns about the application. The local board decided to delay its decision on the application and give CPCS time to respond to the concerns raised by the review committee and asked CPCS to respond to five specific questions: (1) Whether CPCS complies with the criteria for a charter school set out in Sections 9-102 and 9-104 of the Education Article; (2) Whether the identified location complies with all applicable zoning laws; (3) Whether the building complies with all applicable building codes and accessibility laws; (4) Whether the proposed lease arrangement complies with the local board's Ethic's Regulations; and (5) Whether payment of salary to family members for services rendered violates the local board's Ethic's Regulations. *See* 4/15/05 letter from Blom to J. Rynn.

The local board also decided to get further clarification from the local board's Ethics Panel on conflict of interest issues concerning the proposed lease arrangement and payment of salary to John Rynn. On April 25, 2005, the Ethics Panel concluded that both circumstances violated the Ethics Regulations. The Ethics Panel determined that the CPCS officers and employees would be employees of HCPSS for purposes of the Ethics Regulations. With regard to the lease, the Ethics Panel indicated that Joanne Rynn, as a public school employee, cannot participate in any matter on behalf of the school system which would have a direct financial interest on her or certain family members. Ms. Rynn would be entering into a lease on behalf of CPCS, which would be part of the school system, and the lease would directly benefit her. The same provision would apply for other members of the Rynn family who are incorporators and officers. With regard to Dr. John Rynn's employment, Robin Rynn, as President of CPCS, would not be able to approve any contract that would directly benefit her father. In addition, the Ethics Panel had concerns about CPCS's corporate organization and lack of compliance with corporate documents. *See* Ethic's Panel Advisory Opinions of 4/28/05 and 5/19/05.

On April 28, the local board took action on CPCS's application. CPCS made a presentation at the meeting on its charter school proposal and participated in the local board's question and answer session regarding the request. Local board members expressed concern about the curriculum and its implementation and questioned whether CPCS could satisfy an unmet need in the jurisdiction. After discussion, deliberation, and consideration of all of the information presented, the local board voted to deny CPCS's charter school application.

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. 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)

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. The State Board recently held that 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, 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. If a local board chooses to give its decision orally, it must include the rationale for its decision at the public meeting. *See Chesapeake Public Charter School v. St. Mary’s County Board of Education*, MSBE Opinion No. 05-23 (July 20, 2005).⁹

A review of the minutes of the board meeting on April 28, 2005, discloses that a board member “moved approval of staff recommendation to deny the application for the Columbia Public Charter School.” The motion was seconded and unanimously passed by the board. There followed comments that referenced the concerns raised by the Review Committee and incorporated in the superintendent’s detailed written recommendation.

Therefore, it is reasonable to infer from the discussion and comments of the board members that the motion incorporated not only the recommendation to deny the application but the reasons set forth by the Review Committee and incorporated in the superintendent’s written recommendation. Those reasons provide ample basis to support the board’s denial to grant a charter.

Evaluation Instrument

CPCS maintains that the evaluation instrument utilized by HCPSS demonstrates that the review of CPCS’s application was faulty based on the varying scores of identical material.¹⁰ For example, subcategories in the “Academic Program Standards, Curriculum, and Assessment” Section contain conflicting evaluation results which range from a rating of 1 to a rating of 4 within the same subcategory, with 1 indicating that “no or insufficient evidence exists to demonstrate that the criterion has been met” and 4 indicating that “extensive evidence exists to

⁹The State Board’s opinion in *Chesapeake Charter* was issued after the local board took action on CPCS’s application, thus the local board did not have the benefit of this ruling.

¹⁰The evaluation instrument referenced by CPCS is the Scoring Rubric Chart.

demonstrate that the criterion has been met or exceeded.” *See* Scoring Rubric at pp. 6 – 16. 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 7.¹¹

In its Motion for Summary Affirmance, the local board explains that the Scoring Rubric Chart was completed by HCPSS staff during Part One of the review process and was utilized as background information only for the larger Review Committee and the Superintendent and as a resource to “spark discussion.” *See* Motion at p.5. Although the chart contains a numerical scoring rubric, this instrument was apparently not determinative of whether CPCS’s application was approved or denied.¹² During Part Two, the larger Review Committee completed small group worksheets and large group worksheets as part of the process. The large group worksheets were summarized into what ultimately became a local board agenda item which unanimously recommended denial of the application. This report to the local board is sufficiently detailed and contains an adequate explanation of the reasons for recommending denial of CPCS’s application.

Technical Assistance

CPCS argues that the school system failed to provide sufficient technical assistance in the development of CPCS’s charter school application. Maryland’s charter school law does not require a local school system to provide technical assistance to an applicant. *See Dr. Ben Carson Charter School v. Harford County Board of Education*, MSBE Opinion No. 05-21 (June 7, 2005). The local board has indicated that CPCS submitted an initial application the previous year and the school system provided technical assistance and multiple opportunities to resubmit the application at that time. In addition, in an October 28, 2004 letter, the Superintendent encouraged CPCS to contact the HCPSS charter school liaison and also attached suggested sources of technical assistance to aid CPCS with development of its application. Furthermore, HCPSS gave CPCS regular feedback regarding problems and deficiencies in its application.

¹¹There 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.

¹²Nevertheless, the Scoring Rubric Chart is highly confusing and sends mixed messages to the applicant. We urge the local board to examine the scoring rubric for clarity of purpose and the way in which it is used in the review process.

CPCS's claim that the Local Board Acted Contrary to Legislative Intent

CPCS argues that the local board acted contrary to legislative intent when it denied CPCS's application, focusing on policy issues already decided in favor of the charter school initiative by the General Assembly rather than focusing on the substantive considerations of CPCS's proposal. Clearly, CPCS disagrees with the local board's decision and believes that the CPCS application to establish a public charter school in Howard County should have been approved. While the purpose of the charter school law is to establish "an alternative means within the existing public school system in order to provide innovative learning opportunities and creative educational approaches to improve the education of students", the charter school law does not envision that every application will be approved. Thus, the fact that the local board denied the application, does not mean that the local board violated the legislative intent.¹³ Moreover, a review of the minutes of the local board's April 28, 2005 meeting establish that local board members had concerns about the proposed curriculum and CPCS's ability to implement it.

CPCS's Claim that the Local Board Failed to Credit Merits of the Application

CPCS maintains that the local board did not properly weigh and credit the substantive merits of the CPCS application. This is merely another way of CPCS expressing its disagreement with the local board's decision. The local board engaged in a thorough review process and ultimately decided that CPCS's application to establish a public charter school was inadequate.

CONCLUSION

Based on a review of the record in this matter including the arguments made by the parties, we find that the Howard County Board of Education did not act arbitrarily, unreasonably, or illegally in this matter. We therefore affirm the decision of the Howard County Board of Education denying the charter school application submitted by Columbia Public Charter School.

Edward L. Root
President

Dunbar Brooks
Vice President

¹³The Charter School Law contemplates denial of applications and provides a review mechanism. See Md. Code Ann., Educ. §9-104.

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