

GLOBAL GARDENS PUBLIC CHARTER
SCHOOL, INC.

Appellant

v.

MONTGOMERY COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 11-01

OPINION

INTRODUCTION

In this appeal, Global Gardens Public Charter School, Inc. (“Global Gardens”), challenges the decision of the Montgomery County Board of Education (“local board”) to deny its application to establish a public charter school in Montgomery County. The local board has responded to the appeal maintaining that its decision is not arbitrary, unreasonable or illegal. Global Gardens filed a supplement to its appeal and a reply to the local board. The local board filed surreply.

FACTUAL BACKGROUND

Global Gardens submitted its 350 page application to establish a public charter school on March 1, 2010. The application describes an inquiry-based International Baccalaureate Primary Years Program with a foreign language component. The proposal is for a K – 8 school, that would begin with the primary years (grades K – 5) and later add middle years (grades 6 – 8), with a maximum population of 420 students. The application proposes extended day and year round learning time. (Appeal Ex. B-1, Application).

The Montgomery County Public Schools (“MCPS”) reviewed the application using a two phase process. During the first phase of the process, a non-substantive technical review occurs. Technical review focuses on the technical completion of the application such as whether the application was timely filed and contained all the necessary components. MCPS Regulation CFB-RA (IV)(C)(1). MCPS found Global Gardens’ application to be technically complete and it advanced to the next phase of the review process. (Appeal, Ex. F).

Phase two of the process is the substantive review which consists of review by an internal and external review panel. *See* MCPS Regulation CFB-RA (IV)(C)(2) & (3). If the MCPS internal reviewers¹ determine that the application meets criteria in all areas evaluated, the external review is initiated. MCPS Regulation CFB-RA(IV)(C)(2)(e). During external review, a group of reviewers external to MCPS, who are either experts in the field of education or key stakeholders in the community, review the application and make recommendations to the Deputy Superintendent on whether the application should be approved or not. MCPS Regulation CFB-RA (IV)(C)(3). In this case, it is undisputed that the internal and external reviews occurred simultaneously.

As part of the MCPS application review process, all reviewers complete a set of review sheets on the specific criteria that are required to be addressed in the application. Those criteria are set forth in the MCPS Public Charter School Application document and consist of academic design, governance, facilities and finance, and operations. (Local Bd's Response to Appeal, Ex. D, Review Sheet Packet; Appeal, Ex. E). Reviewers rate each area as either "Completely meets criteria", "Partially meets criteria," or "Does not meet criteria." The review sheets also advise reviewers of factors to look for in the application in order to help make this determination. (*Id.*). For example, for academic design, reviewers consider the following factors:

- Clearly articulated vision statement
- Consistency among mission, philosophy, goals, and objectives
- Curricular program leading to improved educational outcomes
- Unique concept design, techniques, and/or practices contrasted to existing programs
- Target population description
- Service provisions to accommodate students with disabilities
- Service provisions to accommodate English Language Learners
- Grading, promotion and retention policy details
- Compliance plan for local/state assessment programs

¹Internal reviewers include representatives from various MCPS offices, MCPS employee organizations, and representatives of the Montgomery County Council of Parent Teacher Associations and/or other parent organizations. (CFB-RA(IV)(C)(2)).

- Corrective action plan for students below achievement standards
- Strategies to assess and analyze student interests and needs
- Procedures for fulfillment of all prescribed federal, state, and local student requirements

(Local Bd's Response to Appeal, Ex. D, Review Sheet Packet). These factors correlate to the review criteria set forth in the MCPS Public Charter School Application Document. There is also space on the review sheets for the reviewers to note specific strengths and deficiencies in the application. Deficiencies must be recorded for ratings other than "Completely meets criteria." (*Id.*). Reviewers completed these review sheets for the Global Gardens application. (Appeal, Ex. F).

On May 6, 2010, representatives of Global Gardens attended a meeting with MCPS reviewers to respond to questions based on the application review. The meeting lasted approximately 45 minutes and consisted of a 15 minute presentation by Global Gardens' representatives and a 30 minute question and answer session between those representatives and the reviewers. Thereafter, on May 13, 2010, Global Gardens submitted a supplemental explanation in response to questions posed by reviewers at the meeting. (Appeal Memorandum, p.6).

On June 3, 2010, Global Gardens learned that the Superintendent had issued a memorandum to the board recommending that the local board not approve Global Gardens' application at the board's June 8, 2010 meeting. The Superintendent's memorandum to the local board, dated June 8, 2010, provided the bases for his recommendation. He pointed out numerous deficiencies noted by the review panel related to Global Gardens' academic design, as well as other deficiencies related to governance, facilities and operations. (Appeal, Ex. F).

On June 7, 2010, Global Gardens submitted a letter to the local board asking that it direct MCPS leadership "to initiate work with the applicant by providing feedback on the application and reasonable technical assistance for revision" if the local board decided not to approve the application. (Appeal Ex. H).

At the local board's June 8, 2010 meeting, Global Gardens made a brief presentation to the local board prior to its consideration of the application. During that presentation, Global Gardens' representative stated that Global Gardens had accepted the Superintendent's recommendation. The representative asked that the local board not approve the application and instead leave it pending for Global Gardens to receive feedback and then provide further

refinement of its application prior to the local board making a final decision. (Local Bd's. Response to Appeal, Ex. B).

Thereafter, the Superintendent made opening statements introducing Global Gardens' application for review by the board. MCPS staff made a presentation on the review of the application and noted, in particular, the review panel's concerns about Global Gardens' academic design. They addressed concerns including the lack of specificity about the skills and knowledge expected to be addressed at each grade level in each content; significant confusion in the design of the foreign language instruction; lack of detail about how the emphasis on inquiry, discovery and authenticity would be operationalized; and a lack of understanding of the complexities of integrating the curriculum. There were concerns about the available space of the potential facilities which left reviewers questioning whether Global Gardens had a full understanding of the facility requirements necessary to operate a school. There were also concerns about whether the budget was adequate for the proposed program. For example, reviewers found insufficient funding allotted for special education based on the size and scope of the school. Reviewers also questioned whether sufficient funds were available in the budget for staff development given the elaborate academic design of the school program. The Superintendent recommended that the board reject Global Gardens' application. (Local Bd's. Response to Appeal, Ex. B).

Several members of the board then spoke about their concerns with the application prior to the board taking a vote. The local board unanimously voted to reject Global Gardens' application in Resolution No. 312-10.

STANDARD OF REVIEW

Appellant argues that the State Board should apply a *de novo* standard of review in this case involving the denial of its charter school application by the local board given the State Board's broad visitatorial powers, as discussed in *Board of Education of Prince George's County v. Waeldner*, 298 Md. 354 (1084)(discussing the State Board's visitatorial power in terms of using a *de novo* review for cases concerning the suspension and termination of certificated employees under §6-202 of the Education Article.).

This Board has already spoken on the standard to be used in cases involving the denial of a charter school application. See *Potomac Charter School v. Prince George's County Bd. of Educ.*, MSBE Op. No. 05-08. Such cases utilize the general standard of review for appeals of local board decisions to the State Board which gives deference to the local board. See *Cecil Pub. Charter High Sch., et al. v. Cecil County Bd. of Educ.*, MSBE Op. No. 08-38. This Board has previously and often held that the decision to deny a charter school application is one "involving a local policy or a controversy and dispute regarding the rules and regulations of the local board." *Columbia Pub. Charter Sch. v. Howard County Bd. of Educ.*, MSBE Op. No. 05-31 at 7.

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.01.05.05(c).

Id. at 7-8. See also *UMOJA Academy v. Baltimore City Bd. of Sch. Comm’rs*, MSBE Op. No. 06-14; *Dr. Ben Carson Pub. Charter Sch. v. Harford County Bd. of Educ.*, MSBE Op. No. 06-29; *Friends of the Bay Arts and Science Pub. Charter Sch. v. Calvert County Bd. of Educ.*, MSBE Op. No. 08-21. The fact that the State charter school law, Md. Code Ann., Educ. §9-103(b), makes the State Board the secondary chartering authority if it were to overturn a local board’s decision denying a charter in a State Board appeal does not support a different standard of review as Global Gardens suggests.

To the extent, however, that the Appellant challenges the legality of the MCPS policy and regulation as violating the Maryland public charter school law, thus requiring this Board to explain and interpret that law, this Board will exercise its independent judgment on the record before it. COMAR 13A.01.05.05

ANALYSIS

Alleged Failure to Provide Explanation or Rationale for Local Board’s Decision

Global Gardens argues that the local board failed to provide an explanation or rationale for its decision to deny the charter school application either orally at the public meeting or in writing.

The State Board has recognized that while there is no specific legal requirement in the Maryland Public Charter School law requiring a local board to render a written decision on a charter school application, “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.” *Chesapeake Pub. Charter Sch. v. St. Mary’s County*

Bd. of Educ., MSBE Op. No. 05-23; *Columbia Pub. Charter Sch. v. Howard County Bd. of Educ.*, MSBE Op. No. 05-31. This means that if a local board chooses to issue its decision orally, it must also include the explanation or rationale for its decision at the public meeting. *Id.*

As to the specificity required in the explanation or rationale, this Board has stated that a local board must provide more than a conclusory explanation so that the State Board can understand how the conclusion was reached in order to determine whether the local board decision was arbitrary, unreasonable or illegal on appeal. *Cecil Pub. Charter High Sch., et al. v. Cecil County Bd. of Educ.*, MSBE Op. No. 08-38. The local board must identify the areas of concern so that the State Board knows what aspects of the application need to be reviewed on appeal and understands how the local board reached its conclusions. *Id.* It is our expectation that the rationale will be conveyed clearly with non-vague terminology, and will provide the degree of specificity necessary to understand the deficiencies with the application in a comprehensive way.

Here, the local board voted to reject Global Gardens' application at its June 8, 2010 meeting. First Dr. Weast presented the following resolution: "Whereas the Superintendent of Schools supports the recommendation of the review panel, now therefore be it resolved that the Montgomery County Board of Education does not approve the application of Global Gardens, Inc. to open a public charter school in Montgomery County." (Local Bd's. Response to Appeal, Ex. B). Then the Board Chair asked for a vote of "all those in favor of rejecting the Global Gardens' application." The vote unanimously passed. (*Id.*)

There is nothing in the resolution or the phrasing of the vote that provides a rationale for the local board's decision. The decision fails to convey any understanding of how the local board reached its conclusion and leaves the State Board with no idea what particular aspects of the application need to be reviewed on appeal.

While we acknowledge that Dr. Weast provided the local board a memorandum explaining the reasons for the review panels' recommendations, and that those recommendations in turn served as the basis for Dr. Weast's recommendation that the local board deny the application, the local board did not incorporate those reasons into its decision. In the *Columbia Public Charter School* case we inferred from the discussion and comments of board members that the local board's vote to approve the staff recommendation denying the application included an approval of the reasons supplied by staff for that recommendation even though they were not specifically incorporated or adopted in the vote. In that case we accepted those reasons as the basis for the local board's decision not to grant the charter. Here, the link to Dr. Weast's memorandum is more attenuated than the link to the recommendations in the *Columbia Public Charter School* case. We are unwilling to close the gap left by the local board and divine after the fact what we think the local board intended. It is the local board's responsibility to state in a clear and understandable way the reasons that serve as the basis for its decision. If a local board

intends to adopt the reasons set forth in review panel recommendations, it should do so explicitly.

Even if the local board had incorporated the reasons for denial set forth in Dr. Weast's memorandum, we have concerns that some of the matters raised therein fail to support a denial of the application. For example, the memorandum states: "Panelists raised concerns that the application implies that MCPS does not 'cultivate each child's natural curiosity through a vigorous curriculum that emphasizes inquiry, discovery, and authenticity,' and they questioned that assumption." (Appeal, Ex. F). We are unsure what this means and how it serves as a basis for denial of the application. In addition, the memorandum sets forth concerns of the review panel related to foreign language instruction stating as follows:

The plan for world language instruction evidences a significant misunderstanding of how individuals learn a nonnative language and reveals, at best, unfamiliarity with the language acquisition needs of English language learners. Multiple models for foreign language instruction are confused in the GGPCS document with models to support English language learners, to the degree that non-synonymous terms are used interchangeably—full or partial immersion, dual language, and bilingual instruction—with little indication that the design team understands the terms used or their implications for students, scheduling, staffing, and resources.

(Appeal, Ex. F, p.4). That explanation is vague and, at best, confusing.

Financial Impact on MCPS Budget

It appears that the Superintendent's introductory comments at the local board's June 8 meeting raised the issue of Global Gardens' impact on the MCPS budget as a basis for denying the application. As part of his introduction of the charter school applications and school system staff to the local board, the Superintendent stated the following:

As you know, you are charged with providing education for children throughout the county. One of the things that charter schools are to do . . . I have been a proponent of charter schools. In fact I tried to start a KIPP school if you remember But it's a business. And you are in very lean budget times. And in very lean budget times you have to share your revenues with other schools. So we look at things about school choice, and there's over 150 private schools in our community. And so there's choices for.

And there's choices in our 200 schools with their thematic approaches. So choice is something that's in abundant supply in Montgomery County.

The second thing we need to look at is quality of program and sustainability. And there is a lot more than just program and sustainability. How will children with special needs be handled? How will you get your curriculum delivered? What levels of issues will you have to deal with that we have to deal with? How do you handle the state testing. How do you handle the No Child Left Behind, because it is with us until its replaced, and even if its replaced it will be there? Is your trajectory to get kids college ready? Or are your vertical articulation?

(Local Bd's. Response to Appeal, Ex. B; Appeal Memorandum, p.8, Unofficial Transcript of 6/8/10 Local Board Meeting).

In addition, the MCPS charter school policy contains the following provisions: (1) the requirement that the Superintendent include a fiscal impact statement in his recommendation of the applicant (CFB(C)(6)); (2) the statement that the total costs to MCPS for operating the proposed public charter school will not exceed the equivalent costs for like students in MCPS (CFB(C)(10)(d)); (3) the statement that public charter school decisions must not have an unduly detrimental impact on other MCPS public schools (CFB(C)(10)(h)); and (4) the statement that implementation and final contracting is contingent upon the local board's final action on the MCPS budget and upon adequate financial resources (CFB(C)(7)).

It may be inferred from this that fiscal impact was a consideration in the local board's decision. It would be helpful for the local board to explain in its rationale if it considered fiscal impact and, if so, the reasons why such a consideration comports with the charter school law.

Review Process

Appellant maintains that there were various problems with the MCPS application review process that resulted in unfairness and illegality.

The State Board has recognized that a fundamentally fair and transparent process can exist although certain elements of the process may be imperfect. As the State Board has explained in *Somerset Advocates for Education v. Somerset County Board of Education*, MSBE Op. No. 07-39 at 8:

[T]his 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.

Thus, we look at the totality of the evaluation process in determining whether the local board's decision was arbitrary or unreasonable.

Lack of Feedback Opportunities

Global Gardens maintains that the MCPS application and review process was unfair because it lacked the opportunity for the technical assistance and substantive feedback rounds that have been provided to applicants by some of the other school systems. Global Gardens explains that other than submitting its application, it had only one other meeting, on May 6, 2010, to make a presentation to the review panel and answer panelist questions, and only one opportunity to file a written response after the May 6 meeting. (Appeal memorandum, p.6; Appeal Ex. K, E-mail from Webb to Mordhorst, 5/10/10).

We have recognized in the past that the State charter school law does not require a local school system to provide technical assistance to a charter school applicant. See *Columbia Pub. Charter Sch. v. Howard County Bd. of Educ.*, MSBE Op. No. 05-31; *Dr. Ben Carson Charter School v. Harford County Bd. of Educ.*, MSBE Op. No. 05-21. Yet we have also recognized that various jurisdictions have provided substantial technical assistance and feedback to applicants.

For example, in *Columbia Pub. Charter Sch. v. Howard County Bd. of Education*, MSBE Op. No. 05-31, we recognized that the school system provided the applicant several opportunities for technical assistance and feedback on its application throughout the application and review process. In *Friends of the Bay Arts & Science Pub. Charter Sch. v. Calvert County Bd. of Educ.*, MSBE Op. No. 08-21, this Board also noted the assistance and feedback provided by the school system. Shortly after its application was submitted, the charter school applicant received a detailed letter of deficiencies. It received two opportunities to supplement the application with additional materials and explanations. *Id.* at 6. There were e-mails between the applicant and the school system throughout the process. In addition, there was a lengthy and detailed face to face meeting with the applicant and the local Superintendent to discuss the application. *Id.*

In *Monocacy Montessori Communities, Inc. v. Frederick County Bd. of Educ.*, MSBE Op. No. 08-23, the charter school applicant submitted a concept proposal for the establishment of the school and received a detailed feedback document from the review team. Thereafter, the applicant had a 1 hour discussion on the proposal with the local board and received additional

written feedback. On the application, the applicant received an e-mail detailing deficiencies and missing information shortly after the application was submitted, as well as a face to face meeting with the local superintendent and review team. *Id.* at 3. The applicant also had the opportunity to present to the local board and answer questions over a period of four hours.

The case before us presents us with the opportunity to examine the issue of technical assistance and application feedback given the evolution of public charter schools since the Public Charter School statute was first enacted in Maryland, and the various application and evaluation processes used in the different jurisdictions. This case, as others did before it, allows us to develop sound practices and shape the public charter school process for the better. We are more aware now of the dialogue and collaboration needed between applicants and local school systems during the application process to achieve the goal of having viable charter schools in Maryland.

It is our view that providing a charter school applicant with meaningful technical assistance, substantive feedback, and the opportunity to cure deficiencies in the application is one component in a fair application process. Providing meaningful technical assistance, substantive application feedback, and the opportunity to cure deficiencies is a matter of sound educational policy. Providing the assistance, feedback and opportunity to cure strengthens the quality of the application, and in turn, the quality of the charter school. School systems have a vested interest in being active and supportive throughout the charter school application process as it will benefit students, faculty, and staff in the event a charter is granted. After all, many of these applicants will become a part of the local school system serving the public school students in this State.

Simultaneous Internal and External Reviews

It is not disputed in this case that the evaluation of the application by the internal and external review panels took place simultaneously, while MCPS regulation requires that the internal review be completed first with a determination that the application meets criteria in all areas prior to initiating external review. *See* MCPS Regulation CFB-RA(IV)(C)(2)(e). Appellant argues that this “conflation of internal and external reviews, without notice or explanation, resulted in an unfair and illegal process” that requires reversal of the local board’s decision. (App’s Reply, p.11).

Because there was a violation of MCPS Regulation CFB-RA, we look to the consequence of that action. The *Accardi* doctrine provides that “[a]n agency of the government must scrupulously observe rules, regulations, or procedures which it has established.” *U.S. ex rel Accardi v. Shaughnessy*, 347 U.S. 260 (1954). This doctrine applies to regulations that are intended to “affect individual rights and obligations” or to “confer important procedural benefits upon an individual.” *Pollack v. Patuxent Institution Bd. of Rev.*, 274 Md. 463, 503 (2003). Where the *Accardi* doctrine is applicable, a complainant must show that prejudice to him or her

resulted from the agency's violation in order for the agency decision to be struck down. *Id.* at 504.

An understanding of MCPS's evaluation process is necessary to determine if the sequence of the internal and external reviews confer an important procedural benefit. As set forth in CFB-RA(IV)(C)(2)(c), if the internal reviewers determine that the application does not meet criteria in an area evaluated, the application may be returned to the applicant with feedback for revision and possible resubmission. At that time, the applicant may receive technical assistance from MCPS staff upon request. *Id.* If the application is not withdrawn at that time, based on the recommendation of the internal reviewers, the Superintendent may recommend to the local board that the application be denied. (CFB-RA(IV)(C)(2)(d).

If the application meets criteria in all areas evaluated, the Superintendent forwards the application to an external review panel for further review. (CFB-RA(IV)(C)(2)(d) & (e). The external review panel reviews the application and makes recommendations to the Deputy Superintendent of Schools who, in turn, makes a recommendation to the Superintendent. (CFB-RA(IV)(C)(3)(c). The Superintendent considers the recommendations of the Deputy Superintendent and the internal review panel, and presents a recommendation to the local board for approval or denial of the application. (CFB-RA(IV)(C)(3)(d).

Based on the bifurcated review process, we believe that the MCPS regulations confer an important procedural benefit. This design allows an applicant to receive feedback on the application, get technical assistance from MCPS staff, make substantive revisions and resubmit, or withdraw the application altogether.

Failure to Use Set Criteria in Evaluating the Application

Global Gardens maintains that the local board failed to use set evaluative criterion in considering the application, claiming instead that the process merely provides an applicant with factors to be addressed in the application.

As part of its charter school application process, MCPS has an MCPS Public Charter School Application document which contains a section entitled "Review Criteria For Public Charter Application." (Appeal, Ex. E, p. 2). That section is broken down into several main categories: Academics, Governance, Facilities and Finance, and Operations. Each category contains a detailed list of the "review criteria" for that category, which are detailed components that the application must contain. Here is a sampling of the "review criteria" from the "Academics" category:

1. State the vision for the proposed public charter school. Describe the vision and core philosophy and the underlying purpose of the proposed school and the school's educational program.
2. Describe the mission and philosophy for the proposed charter school. Provide a clear and concise statement that defines the purpose and nature of the school. The mission statement should indicate what the school intends to do, for whom, and to what degree. Avoid jargon and technical terminology. Parents and community members who wish to know more about the school should be able to read the mission statement and get a clear sense of the school and its philosophy.
3. What are the goals and objectives of the public charter school? Summarize the goals and associated performance measures in relation to academic performance, organizational viability, and specific school objectives.
4. Describe the curricular program and how it will lead to improved educational outcomes.

Educational Philosophy

Describe the educational philosophy of the proposed school. Include a discussion of the instructional strategies to be used. Explain the research that substantiates this approach with the targeted audience and how the strategies will focus attention to student achievement.

Curriculum

- a. Describe the curriculum that will be used by the school, including the objectives, content, and skills to be taught in the different subject areas at each grade level and in each course.
- b. Outline the instructional and assessment methods and strategies that will be employed to enhance student learning, monitor progress, assess performance, and inform instruction.
- c. Explain how the curriculum is aligned with Maryland Content Standards and the voluntary state curriculum.

- d. Describe the criteria and procedures that will be employed for the selection of textbooks and other instructional materials.
 - e. Describe how the school will meet the needs of special students, including English Language Learners, students with an Individualized Education Program or Section 504 plan, as well as student covered under the *Americans with Disabilities Act*. Include how services such as screening, evaluation, diagnostic and psychological testing, and health-related support to students would be provided.
5. Describe the uniqueness of your program; include concept design, techniques, and/or practices. . . .

Id. These “review criteria” correlate to the factors listed on the review sheets for consideration by the reviewers in assessing the application as meeting, partially meeting, or not meeting criteria.

The review conducted by MCPS mirrors the type of review found satisfactory in *Monocacy Montessori Communities, Inc. v. Frederick County Board of Education*, MSBE Op. No. 08-23, which was modeled after the sample checklist in the Maryland State Department of Education’s *Maryland Public Charter Schools Model Policy and Resource Guide*. In the *Monocacy* case, the reviewers noted whether the applications elements “exceeds criteria, meets criteria or does not meet criteria.” *Id.* at p.9. The review sheets completed in this case are similar. In our view, the MCPS Public Charter School Application document and the review sheets provide sufficient guidance for the reviewers to distinguish their responses.

While the Appellant is concerned with subjectivity of the reviewers in the decision making process, as we recognized in *Piscataway Creek Montessori Communities, Inc. v. Prince George’s County Board of Education*, MSBE Op. No. 07-21, a decision regarding the adequacy of a charter school application inevitably entails some degree of subjectivity. We stated therein:

Admittedly, deciding what is sufficient may be a subjective decision. As with any evaluation process, some level of subjectivity must occur based on the professional and practical work experiences that each member of the evaluation team brings to the process. Some level of subjectivity is an evaluation process, however, does not render the process arbitrary, unreasonable or illegal.

Id. at p.7. See also *Monocacy Montessori Communities, Inc. v. Frederick County Bd. of Educ.*, MSBE Op. No. 08-23.

Use of Improper Criteria in Review Process

Uniqueness Requirement

Global Gardens argues that the local board used an illegal “uniqueness” requirement in reaching its decision. Global Gardens bases this argument on the local board’s response to the appeal. The local board argued:

One of the essential characteristics of a charter school is that it offers a new, innovative approach to educating students. The Superintendent’s statement that, in addition to many innovations within the public school system, there are 150 private schools in the community simply noted the challenge facing charter school applicants.

(Local Bd’s. Response to Appeal, p. 7-8). Global Gardens also bases this claim on statements by Doug Prouty, local board President, that “one criterion for prospective charter schools is that the intended program is unique.” (Prouty Affidavit, ¶5, attached to Local Bd’s. Response to Appeal). We assume that the Global Gardens argues that “uniqueness” as a consideration is illegal given that §9-101(b) states that “[t]he general purpose of the [Maryland Public Charter School] Program 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.” (Emphasis supplied).

We agree with Global Gardens that applying a uniqueness standard would be illegal. “Unique” means “distinctively characteristic” or “without a like or equal” and “innovative” means having the quality of being new. See Merriam-Webster On-Line Dictionary. A charter school, to be approveable, need not be unique in the school system. Indeed, if that were the case, given the Superintendent’s comment about the multitude of choices in Montgomery County, no charter school could likely ever be approved there. The language of the statute is not so restrictive. It requires a charter school to be innovative, not necessarily “unique.”

Not Ready for Prime Time

Global Gardens also claims that at least two local board members based their decisions on some consideration of whether the Appellant was “ready for prime time,” which Global Gardens argues is not a standard for review. (Appeal Memorandum, p.25). Specifically, Appellant is

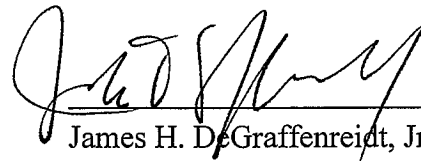
referring to the statements by two board members at the June 8 meeting that the application was “not ready for prime time.” (Appeal Memorandum, p. 25; Local Bd’s. Response to Appeal, Ex. B). Common sense tells us that this was merely a colloquialism not a review standard.

Board Member Bias

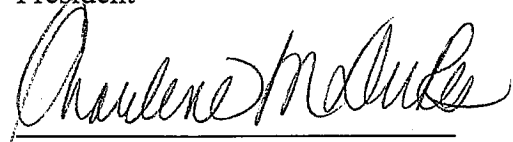
We are extremely concerned to learn of statements made by three local board members in their candidate questionnaires concerning their views on public charter schools while they were campaigning for reelection several weeks prior to the local board’s decision in this case. In short, Judith Docca stated that she opposes charter schools. (App’s. Reply to Response, Ex. L). Patricia O’Neil stated that she is “skeptical about charter schools” and that she “worr[ies] about the draining of funds from MCPS.” *Id.* Michael Durso expressed that he “would be interested in the cost and impact on the local schools, especially with current budget challenges before [he] stated that we should try charters in Montgomery County.” *Id.* We remind the local board that the General Assembly has determined that public charter schools shall exist in the State of Maryland and that these schools are a part of the public school system. Md. Code Ann., Educ. §9-102 *et seq.* Members of a local board have a duty to evaluate public charter school applications based on the sufficiency of their contents, and not on the board member’s own personal view of whether charter schools should exist.

CONCLUSION

As explained above, because we find that the local board has failed to provide any rationale for its decision, we reverse and remand this case so that the local board may reconsider its decision in light of the rulings we have made in this case. We expect that such reconsideration shall occur within 90 days of the date of this decision.

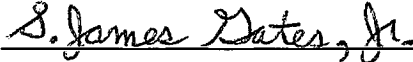


James H. DeGraffenreidt, Jr.
President

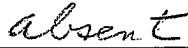


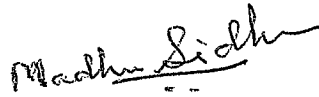
Charlene M. Dukes
Vice President

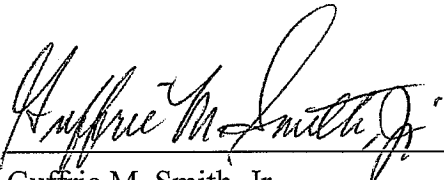

Mary Kay Finan

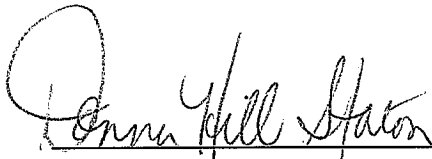

S. James Gates, Jr.



Luisa Montero Diaz


Sayed M. Naved


Madhu Sidhu


Guffrie M. Smith, Jr.


Donna Hill Staton


Ivan C.A. Walks

Kate Walsh

Kate Walsh

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