POSSIBILITY STEM PREPARATORY ACADEMY CHARTER SCHOOL,

Appellant

v.

PRINCE GEORGES' COUNTY BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 11-43

OPINION

INTRODUCTION

Possibility STEM Preparatory Academy Charter School (STEM PREP) has appealed the decision of the Prince George's County Board of Education (local board) to revoke STEM PREP's charter. The local board filed a Motion for Summary Affirmance to which STEM PREP has filed a Reply. The local board responded to STEM PREP's Reply.

FACTUAL BACKGROUND

On April 29, 2010 the local board approved STEM PREP's application to operate a charter school. Both parties signed a Charter Agreement thereafter. (Motion, Ex. 1). As set forth in its application, STEM PREP was granted a charter to offer a STEM-based college preparatory program for boys in grades 6-12. (Appeal, Ex. 2). In recruiting students, it prepared a flyer that described the school's vision and focus. The flyer stated:

> Possibility Prep is designed to be a STEM focused curriculum that guides pliable young minds into promising reliable scholars . . . The STEM disciplines are expected to be the core subjects that will best prepare our students for the greatest careers and highest leadership positions of honest achievement in the 21st century. The teaching and learning of these disciplines are expected to be fully propagated through the Arts, Sports, Languages, Simulations, Challenges, and Mentoring Quests as well as vibrant and vigorous community engagement . . .

(Local Board's Reply, Ex. 1)

STEM PREP's program was planned around and was based on an initial enrollment of 448

students in grades 6-8.[1] STEM PREP opened on August 24, 2010 with 396 students enrolled. By October 1, 2010, STEM PREP had 419 students. (Motion, Ex. 13). Therafter, however, enrollment began to decline so that by December 1, 2010 enrollment was down to 300 students. (Id.).

In December 2010, STEM PREP's Governing Board met with the Superintendent of Schools to request the removal of the school's principal. The Superintendent, recognizing that a charter school needed some autonomy in making staffing choices, acceded to the request for removal of the principal. (Motion, Ex. 14).

On January 25, 2011, the Superintendent expressed his serious concerns about the school. He explained in a letter to STEM PREP's Governing Board, that because of the substantial decline in enrollment combined with concerns of parents, staff, and community, he would recommend to the local board that STEM PREP be placed on probationary status with the following conditions.

1. Provide by February 15, 2010 performance metrics of the Governing Board that will develop and monitor an instructional management plan that includes the following:

    a. Timeline for full implementation of a STEM curriculum;
    b. Professional development plan for core content teachers in specified curriculum with appropriate instructional materials and support;
    c. Implementation of clear performance standards for the incoming principal and teachers that are attached to student performance; and
    d. Provide monthly student academic/behavior reports disaggregated by grade.
2. Timely selection of an instructional leader with appropriate leadership support from the Governing Board.
3. Immediate implementation of the required mentoring program as described in the Charter Application.
4. Implementation of a positive behavior intervention system for students.
5. Address physical plant/safety issues immediately.
6. No expansion to 9th grade next year based upon the severity of academic concerns at this time.

(Motion, Ex. 15). The local board concurred with the Superintendent's recommendation and, on February 10, 2011 placed STEM PREP on probation subject to an end of the year review of STEM PREP's compliance with the conditions set forth above. (Motion, Ex. 2).

[1] STEM PREP planned to add grades 9-12 as their 8th grade students moved up a grade level.

On February 15, 2011, STEM PREP's Governing Board submitted its response and Action Plan to meet all the conditions imposed by the local board. (Motion, Ex. 17). Thereafter, a group of parents, teachers, and staff reviewed the Action Plan and called into question much of what was written in the Action Plan. (Motion, Ex. 18). They were particularly negative about STEM PREP's education management organization, Edison Learning, for its failure to provide sufficient textbooks, to develop timely a STEM curriculum, and to provide adequate teacher training. They took particular issue with many of the statements made in the Action Plan. For example, they state:

> The [Board of Governors] mentions that full implementation [of the STEM curriculum] began in November 2010 because it took almost an entire quarter to obtain email addresses for every student. They also mention students were completing their first STEM project. Many students and parents shared with the teacher and the school that many students didn't have user login names and passwords. As a result, students either weren't able to use the computer during their STEM class and/or had to share login IDs with other students, which caused a lot of problems. The "first STEM project" was a Fast Food Project where students had to create 2 menus (1500 calorie and 2000 calorie diet menus) from at least 6 different fast food restaurants. Communication to students was extremely unclear, if any. Students were unaware of deadlines and direction and rubics were not provided to students for clarity and expectations.

On March 7, 2011, representatives from the Maryland State Department of Education (MSDE) performed a special education audit at STEM PREP as part of MSDE's statewide Monitoring for Continuous Improvement and Results program. Among the comments and concerns that arose during the audit, MSDE noted "the STEM curriculum, which is to be in place, was not in place at the time of the MSDE on-site visit." (Motion, Ex. 19).

According to the local board, school system staff met on multiple occasions with the Governing Board to address the school's looming budget deficit caused by the continuing decline in enrollment from 300 in December, 2010 to 249 in March, 2011.

On April 8, 2011, because of complaints received from parents about students having seizures while in the education wing of the school, two Environmental Safety Officers from the Environmental Safety Office visited STEM PREP to investigate. (Motion, Ex. 20). The Environmental Safety Officers found that at least three students had suffered seizures in classrooms; the building temperature was not in conformance with the school system's temperature standard; administrative offices had been chemically treated for termite infestation during school hours; and there was evidence of rodent droppings and mold in the building. A follow-up visit to STEM PREP one month later revealed that STEM PREP had not acted to mitigate all of the problems that were uncovered during the April 8, 2011 inspection. (Motion,

Ex. 21).

On April 27, 2011, the Deputy Superintendent contacted the President of the Governing Board to express concerns about STEM PREP's enrollment and financial outlook, both of which were continuing to decline. The Deputy Superintendent explained that the number of applications received for the upcoming 2011-2012 school year (349) was down 53% as compared to the prior school year (757). Based on the applications, he projected that there would be at least 116 fewer students than STEM PREP's projected 448 students. This enrollment deficit would reduce the projected budget by $939, 252. (Motion, Ex. 22).

As concern for the school mounted and enrollment continued to decline, on May 12, 2011, the Superintendent informed STEM PREP that it would recommend revocation of STEM PREP's Charter at the May 19th meeting of the local board. The Superintendent explained his reasons for the recommendation:

. . .

> When Possibility Prep opened its doors in August of 2010, we all had high hopes for a bright, successful future for the school. Unfortunately, almost immediately, problems with governance and leadership issues presented themselves. These issues were significant enough for the Governing Board to request removal of the principal. Indeed the exodus of so many students over a relatively short period of time (from 419 on October 1 to 249 by March 1), indicated that there were many underlying issues regarding both the STEM and the mentoring program. Unfortunately, the loss of students affected Possibility's financial picture which required a reduction in staff.
>
> . . .
>
> The Administration does not believe that [the probationary] conditions have been fully met. To date, we have not received performance metrics for the Governing Board and Edison Learning. We believe this is of major concern because so many of the issues concerned pertained to the governance and management issues. Since the new principal was hired, we have not seen any performance measures for the principal. Although we have received monthly academic reports, we have not received behavior reports. We do not know if there is a mentoring program established at the school. While none of these conditions are insurmountable standing alone, these issues coupled with the budget deficit are extremely troublesome.
>
> Possibility Prep has submitted a budget for fiscal year 2012 built on 448 students. The budget totals $3.6 million supporting 31 FTE/positions and discretionary spending. The current student enrollment is less than 242. We can assume that the current eighth graders will go if 9th grade is not offered. We requested information

> on how many of the current 6th and 7th graders intend to stay, but to date, this information has not been provided.
>
> . . .
>
> The Administration is extremely concerned about the enrollment projections for the 2011-2012 school year. We are not confident that you can reach you maximum enrollment numbers. The school system is not in a position to continue to allow Possibility to operate with a deficit; nor can we continue to remove teachers in the middle of the school year and find a suitable placement for them.

(Motion, Ex. 23).

On May 19, 2011, the local board passed a Resolution authorizing that the notice of intent to terminate and revoke be issued in accordance with the Charter Agreement. (Motion, Ex. 3). The board issued the notice on May 20, 2011. (Motion, Ex. 4).

On June 9, 2011, the local board met in executive session with the attorney for STEM PREP and afforded him the opportunity to present information on behalf of his clients addressing the issue of the proposed revocation. (Motion, Ex. 5). The board was not convinced that STEM PREP could overcome its budget and enrollment problems. On June 27, 2011, the local board voted to revoke the Charter Agreement. (Motion, Ex. 6). The board notified parents of its decision to revoke and terminate the Charter Agreement on July 12, 2011, after both the Interim State Superintendent of Schools and Circuit Court for Prince George's County, Maryland denied STEM PREP's request for a stay of the decision to terminate and revoke the Charter Agreement. (Motion, Ex. 24).

This appeal ensued.

STANDARD OF REVIEW

This is an appeal from a decision of a local board involving a "local policy or a controversy and dispute regarding the rules and regulations of the local board," thus, the decision of the board "shall be considered *prima facie* correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal." COMAR 13A.01.05A.

ANALYSIS

In its appeal, STEM PREP asserts that before the local board voted to revoke its charter, STEM PREP had "cured the stated causes" for termination of its Charter Agreement and thus there was no legal or factual basis for the local boards' decision. (STEM PREP's Reply at 2). It also asserts that, because the local board's action was procedurally defective, it was illegal.

A. "Stated Causes" Argument

STEM PREP views the "stated causes" for the revocation in a narrow fashion, essentially arguing that the local board's gestalt approach to defending the revocation misses the legal mark. For the purposes of this analysis, we will accept STEM PREP's argument that there were only three "stated causes" for the revocation: (1) the deficit and budget; (2) the projected enrollment issue; (3) the STEM curriculum. (*See* STEM Prep's Reply, *passim*).

1. Deficit and Budget

In its first year of operation, STEM PREP had a $150,000 deficit due to the decline in enrollment. In its proposed budget for the second year of operation, it included the repayment of the $150,000 to the local board. In our view, however, the inclusion of that repayment in a proposed budget does not cure the deficit issue. Curing the deficit depends on the viability of STEM PREP's budget for the 2011-2012 school year. Budget viability is directly related to the projected enrollment for the 2nd year of operation because the ability to repay the deficit and operate the school in a fiscally solvent manner depends on the school meeting enrollment targets. Thus, we turn to the projected enrollment issue.

2. Projected Enrollment

STEM PREP asserts that it projected an enrollment of 448 students in the 2011-2012 school year. It argues that the projection is enough to satisfy the projected enrollment provision in the Charter Agreement and therefore, contrary to the local board's decision, it did not breach the projected enrollment provision. It bases that argument on the fact that the Charter Agreement does not require proof of actual enrollment until September 30, 2012. Therefore, STEM PREP concludes that the local board could not base its revocation decision, in whole or part, on its concern that STEM PREP would not meet its enrollment target.

Accepting that argument would require the local board and this Board to close our eyes to facts that make it highly unlikely that STEM PREP would enroll sufficient numbers of students in year two to repay the $150,000 it owed the school system and operate solvently. Those facts include, the enrollment decline in year one from 419 to 242 students, followed by the significant decline in the number of applications from year one to year two, as well as the difficulty in confirming the number of students who actually planned to attend the school in year two. For example, on June 15, 2011, just prior to the local board's vote on the revocation, the number of existing students with completed notices of intention to attend was only 95. (Appeal, Ex. 12).

If the local board had turned a blind eye to those facts, it would have abdicated its responsibility to the students and public school community to require its charter schools to demonstrate fiscal viability. In our view, it was reasonable and legally appropriate for the local board to consider the projected enrollment facts when making its decision to revoke STEM PREP's charter.

3. STEM Curriculum

STEM PREP advertised itself to students and parents as providing a STEM focused curriculum promising that "[t]he teaching and learning of these disciplines are expected to be fully propagated through the Arts, Sports, Languages, Simulations, Challenges and Mentoring Quests . . . ." (Local Board's Reply, Ex. 1). STEM PREP correctly asserts, however, that in its application it promised only to deliver "STEM electives" in the high school years. (Reply at 8; Appeal, Ex. 2 at 8). Yet, the record reflects much discussion by the Superintendent and the local board of the expectation that the school would provide a STEM focused curriculum in the middle school. That may have been a misplaced expectation caused by the way STEM PREP advertised itself. Whatever the source of the confusion, we agree with STEM PREP that technically it did not breach its Charter Agreement concerning the STEM curriculum. It was only operating a middle school and it did not promise a STEM curriculum in middle school.

That conclusion does not mean, however, that the local board's decision to revoke was arbitrary or unreasonable. The budget and enrollment concerns, we conclude, were sufficient and serious enough to support the decision to revoke.

B. Procedural Defects

STEM PREP points to two procedural issues that it asserts make the local board's decision illegal. First, the student member was not allowed to vote on the revocation matter. Second, the local board failed to follow its own First Reader/Second Reader procedure. We address each issue below.

1. Student Member Vote

At the June 27, 2011 Special Meeting, counsel advised the local board that the student member could not vote on the revocation matter because it was a school closing matter. (Motion, Ex. 5, Minutes at 6). With the exclusion of the student member's vote, counsel stated, "you would need five Board Members to vote in order for the Superintendent's recommendation [to revoke] to be upheld." *Id.* STEM PREP argues that the decision to exclude the student member from voting on the revocation of the Charter was made by "fiat of Board counsel" not pursuant to the procedures set forth in Education Article §3-1002.

Under Education Article §3-1002, a student member cannot vote on matters relating to "school closings, re-openings, and boundaries." *Id.* §3-1002(f)(3). The statute goes on to say that the local board by majority vote "may determine if a matter before the board relates to a subject that the student member may not vote on . . . ." *Id.* §3-1002(f)(4). There was no such vote at the June 27, 2011 meeting.

The local board did not address this procedural issue in its briefs. Assuming without deciding that there should have been a vote to determine whether the matter "related" to a school

closing, we must conclude that the failure to conduct such a vote was not the type of procedural defect that would make the local board's decision illegal. Indeed, the vote in support of the revocation was 6 to 1. Even if the student had voted against the revocation, the motion to revoke the charter would have passed. The violation of procedure did not affect the outcome here. It is not a basis on which to find that the local board's decision was illegal.

2. *First Reader/Second Reader/Emergency*

At the May 19, 2011 meeting, the local board voted to issue a notice of intent to revoke the charter providing STEM PREP 30 days to cure the alleged contractual breaches. STEM PREP argues that the vote was illegal because it was taken on a First Reader agenda item in violation of local board procedures. Under the ByLaws of the local board:

> Decisions of the Board of Education will follow the First Reader and Secord Reader process unless adopted by a two-thirds (2/3) vote as an Emergency, in which event the matter does not require a Second Reader. . . . Items declared as emergencies are described as those relating to an urgent public matter that is a threat to public health and safety or a reasonably unforeseeable situation requiring the Board to take immediate action in order to maintain the effective business operations of the system, or other matters determined to be an emergency as declared as such by the Board. A vote to treat or add a matter as an Emergency requires passage by seven (7) Board Members if the Student Board Member is entitled by law to vote on the issue; and six (6) Board Members if the matter is one on which the Student Member is precluded from voting.

(ByLaw – 9360, Appeal, Ex. 11)

As counsel advised the local board at the May 19, 2011 meeting, "In looking at Policy 9360 the first reader does not allow you to take action. Dr. Hite has indicted (sic) that this is an emergency issue that needed to be dealt with for many obvious reasons, notice to parents, etc. If it was treated as a first reader, you would not be able to take any action and therefore you would not be able to meet Dr. Hite's request." (Motion, Ex.3, Minutes at 3).

After that explanation and more discussion by the board, the motion to issue a notice of intent to revoke the charter passed unanimously with eight votes which was more that the two-thirds vote necessary to consider the matter as an emergency. Because it appears from the minutes that the matter moved from the first reader category to the emergency category and was approved by a vote that met the requirements of the Bylaw, we conclude that the local board did not violate its own procedures.

CONCLUSION

For all the reasons stated above, we affirm the local board's decision to revoke the charter.

James H. DeGraffenreidt, Jr.
President

ABSTAINED

Charlene M. Dukes
Vice President

Mary Kay Finan

S. James Gates, Jr.

Luisa Montero-Diaz

Sayed M. Naved

Madhu Sidhu

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September 27, 2011