

JAIME ESCALANTE PUBLIC CHARTER  
SCHOOL,

Appellant

v.

MONTGOMERY COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 00-39

### OPINION

In this appeal, Appellant challenges the local board's decision rejecting the recommendation of the local superintendent to approve conditionally the application for a charter for the Jaime Escalante Public Charter School. Appellant argues that the local board denied its application in an arbitrary, unreasonable and illegal manner by failing to provide a written rationale for its decision as required by the local board's procedures for public charter schools.

The local board has filed a Motion to Dismiss the appeal maintaining that the appeal to the State Board is not proper because the State Board does not have jurisdiction to require issuance of a public school charter. Appellant submitted an opposition requesting that the State Board consider the appeal. On August 29, 2000, the parties presented oral argument to the State Board on whether or not the appeal should be dismissed for lack of jurisdiction by the State Board.

### FACTUAL BACKGROUND

The Public Charter School Study Group was created by the State Board in October 1996 to explore issues that might impact charter schools in Maryland. In July 1997, the State Department of Education issued "Guidelines for Use by Local School Systems in Considering Charter School Applications." Following those guidelines, on November 10, 1998, the Board of Education of Montgomery County adopted local board policy CFB, entitled "Public Charter Schools." Policy CFB sets forth the procedures for application for a public school charter and the criteria which public charter school applicants in Montgomery County must satisfy to obtain a charter. Additionally, Policy CFB requires the local superintendent or his designee to evaluate proposals, make recommendations to the local board, and oversee the implementation of approved public charter schools. *See* Policy CFB (C.5 & E.2). The MCPS "Public Charter School Application Guidelines" ("Guidelines") were developed to implement the policy, and set forth the form and basic content requirements of charter applications, as well as the procedures by which the applications will be reviewed.<sup>1</sup>

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<sup>1</sup>An approved application becomes part of the contract between the public charter applicant and the local board.

On September 13, 1999, the organizers of the Jaime Escalante Public Charter School submitted their application for a charter. A review panel reviewed the application and raised issues that needed clarification. The applicant responded in writing and provided explanation during a panel interview in October 1999.

On November 11, 1999, the local superintendent recommended that the local board not approve Appellant's application. The local board did not take action at that time; rather it directed the superintendent to assist Appellant with portions of the application that the panel believed were incomplete or confusing. As a result, and at Appellant's request, the review process was divided into three phases for approval: Phase I consisting of the "Academic Design" and the "Governance and Management" components described in the Guidelines; Phase II consisting of the "Finance and Facilities, Operations, and Final Documentation" components; and Phase III consisting of a period of negotiations towards granting the charter, which if recommended, would then require final approval by the local board.

Further meetings between Appellant and the review panel occurred, and Appellant submitted additional information in response to various concerns. On March 14, 2000, the local superintendent recommended that the local board conditionally approve the application for the Jaime Escalante Public Charter School to proceed with the next phase of the application process, and to allow the applicant to focus on the work involved in the finance, facilities, operations, and final documentation required in preparing the application for final approval by the local board. The recommendation for approval was conditioned on Phase I deficiencies being corrected satisfactorily. In his memorandum to the local board, the superintendent explained:

My recommendation for a conditional approval acknowledges that the applicants have worked hard towards developing an academic concept for the opening of a public charter school in Montgomery County but that there are deficiencies in the design of the academic program that need further work. These notable deficiencies will need to be remedied by the applicants in a timely and successful manner while work proceeds on the next phase. A review panel of educators and representatives from employee organizations as well as a parent identified the deficiencies.

The Board of Education's approval, even conditionally, of the phase I portion of the application does not foreclose eventual denial of the entire application, nor does it prejudice the Board's involvement in the next phase of the approval process. Indeed, there are serious issues related to the financial and facility aspects of this endeavor that will require the Board's close scrutiny and judgment. In the meantime, however, Board action on the academic portion of the proposed school provides the opportunity

to establish whether a public charter school can provide an educationally viable alternative to regular public school services in Montgomery County. . . .

On March 14, 2000, the local board voted to reject the recommendation of the local superintendent. Appellant was advised of the denial by letter dated March 21, 2000, from the Board President, Patricia B. O’Neil, which stated:

The reasons for the Board’s action are as stated by individual members at the Board meeting. Board Members made their own decision as to how to vote based upon their individual assessment of the application, the Superintendent’s submission, and the discussion at the Board table. You may obtain a copy of the video recording of the meeting by contacting . . . .

Appellant appealed the denial to the State Board maintaining that the local board is required to set forth its rationale with its decision.

#### ANALYSIS

In its Motion to Dismiss the appeal, the local board essentially argues that the State Board lacks authority to review its denial of Appellant’s application. For the following reasons, we disagree with the local board. Under § 2-205 of the Education Article, Annotated Code of Maryland, the State Board has a “visitatorial power of such comprehensive character as to invest the State Board ‘with the last word on any matter concerning educational policy or the administration of the system of public education.’” *Bd. of Educ. of Prince George’s County v. Waeldner*, 298 Md. 354, 360 (1984) (citations omitted.) This visitatorial power authorizes it to correct all abuses of authority and to nullify all irregular proceedings. *Zeitschel v. Bd. of Educ. of Carroll County*, 274 Md. 69, 81 (1975). Further, § 2-205(e) specifically mandates that the State Board shall decide all controversies and disputes arising under the Education Article.

In *Board of Educ. of Garrett County v. Lendo*, 295 Md. 55 (1982), the Court of Appeals explained that “a litigant has the choice of either going first to the county superintendent under § 4-205 and then on up the appellate ladder, or going directly to the State Board under § 2-205.” (citations omitted). Under these statutes, we believe that if the decision being appealed is made in the first instance by the local board, the avenue of appeal is under § 2-205. An example of this is a school redistricting decision. On the other hand, if the decision in dispute was made by the local superintendent, then the avenue of appeal is first to the local board, and then to the State Board under § 4-205(c). Examples are student transfer disputes, bus stop disputes, and discipline disputes involving noncertificated employees. Here, because the decision to deny the charter was made by the local board, we find that the appeal is authorized under § 2-205(e).

This right to appeal is further supported by the MCPS Public Charter School Application

Guidelines which include a right of appeal to the State Board. These Guidelines provide that if an application is denied, the local board must give written notice of the reasons for denial within 10 calendar days to the Appellant. The process further provides for an appeal of the denial to the State Board within 30 days of the local board's decision, and for the local board to act upon the State Board's recommendation within 10 days after it is received. *See* Guidelines at p.9.<sup>2</sup> This appeal process was confirmed in writing to the local board by memorandum from the deputy superintendent. *See* memorandum dated February 29, 2000. For all of these reasons, we find that the State Board does have jurisdiction to hear this appeal.

With regard to Appellant's claim that the local board failed to follow its own procedures for public charter schools, as stated above, the MCPS guidelines provide that the local board give Appellant written notice of the reasons for denial within 10 calendar days of denial of the charter school application. *See* Guidelines at p. 9. In this case, the local board denied Appellant's application despite the superintendent's recommendation for conditional approval. However, instead of providing a rationale, the local board referred Appellant to a video recording of the local board meeting for an explanation of its action.

#### CONCLUSION

Finding that the State Board has jurisdiction to review this matter, we are remanding the matter to the Board of Education of Montgomery County and requesting that the Board promptly provide a written rationale for its decision. If Appellant is not satisfied with that decision, it may then appeal on the merits to the State Board.

Philip S. Benzil  
President

Marilyn D. Maulsby  
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Raymond V. Bartlett

JoAnn T. Bell

Reginald L. Dunn

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Walter S. Levin, Esquire

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<sup>2</sup>This is consistent with the recommendation by the Public Charter School Study Group that the State Board consider appeals of public charter school controversies.

Judith A. McHale

Edward L. Root

Walter Sondheim, Jr.

John L. Wisthoff

September 26, 2000