

EUDAIMONIA FOUNDATION
CORPORATION,

Appellant

v.

BALTIMORE CITY BOARD
OF SCHOOL COMMISSIONERS

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 16-31

OPINION

INTRODUCTION

The charter school (MATHS), operated by Eudaimonia Foundation Corporation, appealed the decision of the Baltimore City Board of School Commissioners not to renew MATHS' charter and, thus, to close the school. This Board referred the case to the Office of Administrative Hearings (OAH) to resolve disputes of fact. The Administrative Law Judge (ALJ) issued a Proposed Decision on June 16, 2016.

On June 29, 2016, the charter school petitioned the Circuit Court of Baltimore City for a temporary restraining order to prevent the local board from implementing its decision to close the school. The court granted the restraining order effective until July 27, 2016, one day after the State Board's July meeting.

The charter school filed exceptions to the ALJ's Proposed Decision on July 1, 2016 and the local board responded. Both parties waived oral argument.

FACTUAL BACKGROUND

During the fall of 2015, the Baltimore City Public School staff conducted a review of the charter school to determine whether its charter should be renewed. The local board sent a notice to the charter schools involved in the renewal process explaining the Board's processes and procedures if the charter school were recommended for non-renewal. The notice states, in part:

The Board's final decision to close a charter school will be based on a consideration of renewal rubric findings; application for renewal; data tables for the school; the school effectiveness review; oral and written testimony submitted by the public; and the provisions of the Board's policy and associated administrative regulation regarding Charter Schools.

...

When the Board makes a final decision whether to close or relocate a school, it will announce its decision at a public meeting and the decision subsequently will be made available in writing. The written decision will include a rationale for the decision(s).

Notification of the final decision(s) will be provided to the community(s) in the geographic attendance area(s) of the school to be closed or relocated and the schools to which students will be reassigned.

An appeal to the Maryland State Board of Education must be submitted in writing within 30 days after the Board's written decision.

(Appeal, Ex. H).

On January 5, 2016, at the local board's special public business meeting, Dr. Gregory E. Thornton, Chief Executive Officer ("CEO") recommended that the local board not renew MATHS' charter and close the school, effective June 30, 2016, stating as follows:

The recommendation is to non-renew and close the school program at the end of this school year. . . . They received developing on their academic performance, not effective in the climate rating, developing on their financial management and not effective in their governance.

Based on the operator renewal findings, it is the recommendation of the CEO that the contract with Udmonia (sic) Foundation to operate [MATHS] be not renewed and that the school program close at the end of the current school year, 2015-16.

(Opposition, Ex. A, 1/5/16 Transcript).

The local board voted to non-renew and close MATHS stating, without more explanation, that its decision was based on "the recommendations and rationale of the CEO, the operator renewal report, the testimony given at public hearings, the contents of the official record and the factors listed in policy IHB and administrative regulation IHB-RA. . . ." *Id.* At the time of the meeting on January 5, 2016, the local board did not issue a written decision explaining the rationale for closing the school. On February 4, 2016, Appellant filed this appeal to the State Board.

On February 12, 2016, the school system issued its "School Closures and Building Surplusing Final Decisions" report which purports to provide the written decision for the local board's January 5th decisions to close various schools. (Opposition, Ex.C). The report states that the recommendation for MATHS' non-renewal and closure were not addressed in the report because the actions are governed under separate law. *Id.*

On February 14, 2016, Baltimore City Public Schools ("BCPS") hand delivered to MATHS the "Closing Schools Principal Checklist SY 15-16." (Opposition, Ex.D). This is a detailed checklist of the monthly actions that the principal must take to prepare for the school's closing at the end of the 2015-2016 school year. The checklist begins with the principal meeting with the School Closing Project Manager in February to discuss the closing process, with meetings continuing every 4 weeks through June 30th. *Id.* Among other things, it includes

notifying all “partners and volunteers” of the school closing and notifying students regarding placement for the next school year. *Id.*

On February 26, 2016, the local board filed a Motion to Dismiss the State Board appeal arguing that the matter was not ripe for review by the State Board because the local board had not yet issued a final written decision to non-renew MATHS’ charter and close the school.

During the first week of March 2016, BCPS hand delivered to MATHS a letter dated February 4, 2016, with the subject line “School Closure Process.”¹ (Opposition, Ex.B). In the letter, Amanda Ellison, School Closing Project Manager, advised Charles Spain, principal of MATHS, that the local board voted on January 5, 2016 to close MATHS in June 2016. *Id.* The letter included another detailed checklist of tasks that the principal needed to complete for the school closing. *Id.*

On March 14, 2016, representatives of BCPS met with MATHS to discuss the school closing process. BCPS requested that MATHS cancel its leases and provide its financial information to BCPS before the end of March. In addition, MATHS’ staff received notice that they would be considered surplus employees.

On March 18, 2016, the CEO wrote to the Appellant stating, in full:

As a result of the Operator Renewal Process, on January 5, 2016 the Baltimore City Board of School Commissioners voted not to renew the contract with Eudaimonia Foundation to operate [MATHS]. Accordingly, the contract to operate the school will end on June 30, 2016 and the school will close at the end of the school year.

Staff from the Office of New Initiatives has already reached out to you regarding the next steps in the contract termination and transition process.

You have the right to appeal this decision. If you choose to appeal you must send a letter to the Maryland State Board of Education within 30 days of receipt of this letter, which serves as official notice of the Board’s decision. The letter may be hand delivered, mailed, or emailed to the Maryland State Board of Education at the address below

The CEO’s letter did not explain the rationale for the local board’s decision.

On March 24, 2016, the local board withdrew its Motion to Dismiss stating that its written decision was reflected in the CEO’s March 18 letter thereby making the appeal ripe for review. (Local Bd. Mtn. for Summ. Aff.). It filed a Motion for Summary Affirmance maintaining that the local board’s decision to non-renew and close the school was not arbitrary, unreasonable or illegal and should be upheld.

¹ Although the letter was dated February 4, MATHS did not receive it by mail or otherwise until BCPS hand-delivered it in March.

On April 7, 2016, this Board issued an Order immediately referring this case to OAH “for a hearing on the merits, a resolution of the disputes of facts, and for the issuance of a proposed decision...” In doing so the Board stated:

Once again we are presented with a case from the Baltimore City Board of School Commissioners which fails to follow a rational procedure, fails to follow its own procedural rules, and flies in the face of concepts of fairness. Specifically, on January 5, 2016, the local board voted to non-renew the charter school. It stated that it would issue a written decision. Pursuant to State Board regulations, an appeal shall be taken within “30 calendar days of the decision of the local board...” COMAR 13A01.05.02(B)(1). Thus, on February 4, 2016, the charter school filed its appeal.

On February 26, 2016, the local board filed a Motion to Dismiss the appeal asserting that because there was no written decision of the board, the appeal should be dismissed. Yet, in January and February, the school system began procedures to close the charter school. Almost 2 months later, the CEO sent the March 18, 2016 letter, cited in full in the Factual Background, to the charter school. That purported final decision contained no explanation of the reasons for the decision to non-renew and close the school. In the usual case, as we have done several times in the past with cases from Baltimore City, we would remand the case for a full written decision within 30 days.

We are faced with a classic procedural absurdity – if the decision on January 5, 2016 was not appealable and if the decision of March 18, 2016 must be remanded, as we have done in the past for failure to explain the grounds for the non-renewal, the charter school’s opportunity to appeal and have its case heard on the merits in a timely way is effectively delayed again by several months – all while the closure process goes forward inexorably. Delay piled on delay is inherently unfair to the charter school.

Thus, by this Order, we are immediately referring this case to the Office of Administrative Hearings (OAH) for a hearing on the merits, a resolution of the disputes of fact, and for the issuance of a proposed decision on whether or not the decision of the board was arbitrary, unreasonable, or illegal.

At the hearing at OAH, the charter school focused its evidence and argument solely on whether the local board’s decision was illegal, in part, because it was unsupported by a rationale. It withdrew its argument on the merits that the decision was arbitrary or unreasonable. (ALJ Proposed Decision at 3). The ALJ determined that the local board’s decision was not illegal because MATHS had been provided with the rationale for non-renewal throughout the renewal review process.

In its Exceptions, MATHS renews its argument that the local board's decision was illegal because it was not supported by a written rationale. That is the sole argument presented.

STANDARD OF REVIEW

The State Board uses its independent judgment when declaring the true intent and meaning of the education laws over which it has jurisdiction. COMAR 13A01.02.05E.

LEGAL ANALYSIS

The ALJ addressed the issue of the legality of the local board's decision by reviewing the whole record. The ALJ found that during the charter renewal process MATHS was provided with the rationale for the decision not to renew its charter. The ALJ concluded:

A thorough review of the record clearly support a finding that MATHS knew the reasons for the recommendations of ONI and had ample opportunity before the BCBSC's decision not to renew its charter to thoroughly immerse itself into the process. MATHS knew the reasons for the recommended decision as early as October 26, 2015. The rationale was explained in subsequent meetings between representatives of BCBSC and MATHS. Even at the final BCBSC meeting on January 5, 2016, Ms. Alison Perkins-Cohen provided the rationale in a PowerPoint presentation, including that MATHS received "developing" on their academic performance, "not effective" in the climate rating, "developing" on their financial management, and "not effective" in their governance. Ms. Ghosh was fully aware of these findings. She participated in the discussions and was provided the data to support the findings. It is simply untrue to say that MATHS was unaware of the rationale for the closing of MATHS and then argue that it did not know on what basis to appeal the decision. While it may be a benefit to all parties to have a summary of the bases for the decision in writing, there is no requirement under its own regulations and, secondly, the affected parties knew the rationale for the decision.

(Proposed Decision at 22-23).

We agree with the ALJ's finding.

As this Board has repeatedly recognized, the remedy for a decision that contains no written rationale is to remand the case to the local board to issue a reasoned decision. *See, e.g. Chesapeake Public Charter School v. St. Mary's County Board of Education*, MSBE Op. No. 05-23 (2005); *Jaime Escalante Public Charter School v. Montgomery County Board of Education*, MSBE Op. No. 00-39 (2000). When this Board referred this case to OAH for a hearing, rather than remanding it to the local board to explain its reasons for not renewing the charter, it did so to provide MATHS with a meaningful opportunity to present its case for renewal on the merits to a neutral hearing officer before the closure process was final. In essence, this Board crafted a remedy to address MATHS' assertion that it needed to understand the factual basis for the local

board's decision for declining to renew MATHS' charter. In our view, a hearing on the merits would provide an opportunity for both parties to present their evidence.

Interestingly, MATHS did not take that opportunity. It withdrew its argument that the local board's decision was arbitrary or unreasonable. It proceeded with one argument - - that the local board's decision was legally defective for lack of a rationale. Yet, the opportunity for a hearing was designed to address that defect in a timely way and give MATHS an opportunity to convince a neutral hearing officer that its charter school should be renewed.

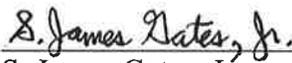
MATHS proceeded down a different road. The ALJ has concluded that the local board, through the review process, provided MATHS with the rationale for the decision not to renew the charter. This is the rationale that would have been reiterated in a revised decision had the matter been remanded to the local board. We concur with the ALJ's decision.

CONCLUSION

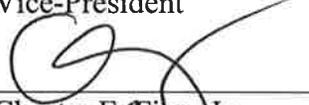
For all these reasons, with the additions included herein, we adopt the ALJ's Proposed Decision as final and affirm the local board's decision not to renew MATHS' charter.



Andrew R. Smarick
President



S. James Gates, Jr.
Vice-President



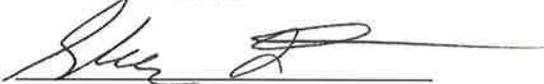
Chester E. Finn, Jr.



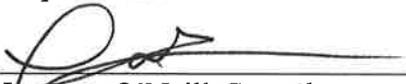
Michele Jenkins Guyton



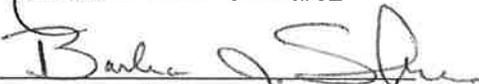
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July 26, 2016



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