FREDERICK OUTDOOR DISCOVERY
CHARTER SCHOOL

Appellant

v.

BOARD OF EDUCATION
FREDERICK COUNTY,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-14

OPINION

INTRODUCTION

The Appellant, Frederick Outdoor Discovery Charter School, Inc. (charter school) appealed the decision of the Board of Education of Frederick County (local board) denying the Appellant's charter school application. The local board filed a Motion for Summary Affirmance to which the charter school responded.

FACTUAL BACKGROUND

On May 1, 2012, the local board received a concept proposal from Appellant based on its plan to open a charter school using the Environment as an Integrating Context (EIC Model™) and outdoor education as the foundation of the program. On June 27, 2012, Appellant met with the local board to discuss the concept proposal. At this meeting, Appellant had direct dialogue with local board members and the Frederick County Public Schools ("FCPS") Superintendent and staff. They gave Appellant preliminary feedback to consider prior to the submittal of a charter school application.

At the June 27, 2012 meeting, the local board also discussed Board Policy 440 Charter Schools which contained a provision that the current and long-term fiscal status of the Frederick County Public Schools was a relevant factor for the local board to consider in deciding whether to grant a charter. The local board discussed eliminating that provision from Board Policy 440. At that meeting, however, on a vote of 5 to 2, the Board retained the "fiscal status of the school system" as one factor in determining the approvability of a charter school application. *See* http://apps.fcps.org/tv/boe.cfm.

On July 17, 2012, Appellant submitted an application to the local board proposing a K-6 public charter school using the EIC Model™. Upon receipt of the application, the Superintendent identified an Evaluation Team to review the submitted application. The Evaluation Team consisted of the following individuals:

- Jason Anderson, Executive Director of Curriculum, Instruction, Assessment, and Innovation
- Ray Barnes, Executive Director of Facilities Services
- Joni Berman, Charter School Consultant
- Ann Bonitatibus, Chief Operating Officer
- William Boyer, Executive Director of Technology Services
- Jamie Cannon, Chief of Staff and Legal Counsel
- Dr. Michele Krantz, Charter School Liaison
- Paula Lawton, Executive Director of Human Resources
- Steve Lockard, Deputy Superintendent
- Leslie Pellegrino, Executive Director of Fiscal Services
- Dr. Paulette Shockey, Science Professor, Hood College

The Evaluation Team was directed to review the submitted application and provide an assessment of the application based on the following categories:

A. Executive Summary
B. Education Programs and Services
C. Special Populations
D. Student Outcomes
E. Student Admission Procedures
F. Staffing Plan
G. Management Plan
H. Facilities Plan
I. Financial Plan
J. Community Support
K. Conflict of Interest Forms
L. Assurance
M. Waivers

Each evaluator on the team completed an evaluation form checking off whether a particular criterion was met or not met. The application received 37 check marks of "does meet" criterion and 27 check marks "does not meet" criterion.

Thereafter, the Superintendent conducted an independent review of the application. She recommended denial of the charter for three primary reasons. The local board, in its Motion, summarized those reasons:

1. **Curriculum and Instructional Methodology**

   A clear cohesive curricular and instructional plan is required for an elementary school to be successful. The Appellant presented a curriculum with an excessive amount of indicators and standards that could not possibly be fully implemented. It appears to be a compilation of several different curricula with

every indicator and standard from both the Maryland State Curriculum and the Common Core indicators and standards. The instruction plan is primarily a constructivist approach instead of a balance of instructional opportunities. Although there are a variety of instructional theories presented, there is little evidence of how instruction will actually occur and how everything will pull together in a cohesive and effective plan for instruction.

2. Facility Issues

Appellant has identified two potential facilities as possible locations for the charter school. The first potential location is Camp Shoresh, located in Southern Frederick County near Adamstown. The second potential location is Camp Round Meadow located in the Catoctin National Park. No formal written agreement has been reached with either location for the use of their facility. Upon staff's review of these locations, it has been determined that the Camp Shoresh site is not an acceptable facility that meets the necessary requirements for operating a public school…

Camp Round Meadow does not present zoning issues since it is located on land owned by the National Park Service (NPS) and, therefore, local zoning and planning rules and regulations do not apply. However, approval procedures established by NPS and the park superintendent would apply.

There have been no formal lease terms and conditions presented for evaluation for either site.

3. Lack of Confidence in Appellant's Knowledge Level to Effectively Operate a Public School

After reviewing this application, I lack confidence in the Appellant's overall knowledge and understanding to effectively operate a school in Frederick County. Following are some of the reasons I have come to this conclusion:

(1) The massiveness of the curriculum presented indicates that the Appellant is not knowledgeable of the amount of material that can realistically be mastered in one school year.

(2) The lack of specificity regarding outdoor instruction which is of particular concern when considering this is the foundation of this charted school program.
(3) The choice of Everyday Math that is similar to the Math Investigations series for a school in Frederick County in light of recent County Board action to eliminate this from its instructional program.
(4) Four of the six Maryland schools known to have adopted the EIC Model failed to make AYP in 2011. Three of the six schools were previously placed on the state's school improvement list. These facts bring into question Appellant's choice of the EIC Model for a Maryland public school.
(5) Lack of detailed information regarding safety and security.
(6) Insufficient support from families to populate a school.
(7) Absence of an administrative staffing plan.
(8) No methods provided for accountability for the operation of the school.
(9) Absence of accountability statement for performance results.

(Motion at 4-6).

The local board met on October 10, 2012 and provided both the Superintendent and Appellant an opportunity to present information regarding the Superintendent's recommendation. Subsequent to the October 10, 2012 local board meeting, Appellant provided additional information and argument by submitting extensive written responses to the Superintendent's recommendation. The Superintendent evaluated each response, conferred with appropriate staff and provided lengthy written comments to both the Appellant and the County Board. (See Motion at 7-15).

On October 24, 2012, the local board again discussed the application and considered comments from the applicant, the school staff, and the Superintendent of Catoctin National Park, which is the proposed site for the school. They voted unanimously (one member absent) to support the Superintendent's recommendation and reject the charter school application. http://apps.fcps.org/tv/boe.cfm.

In a letter dated November 1, 2012, the President of the local board provided written notification to the charter school indicating that the board's decision to reject the application was based on reasons set forth in the Superintendent's submitted documentation as well as specific reasons articulated during the meeting by individual local board members. The charter school was apprised of its right to appeal and this appeal ensued.

STANDARD OF REVIEW

This is an appeal of a decision of a local board to deny a charter school application. Such a decision is one involving a local policy or controversy and dispute regarding the rules and regulations of the local board. Accordingly, the local board's decision must "be considered *prima facie* correct" and upheld unless the Appellant proves that the local board's decision was arbitrary, unreasonable, or illegal. *See* COMAR 13A.01.05.05; *Potomac Charter School v. Prince George's County Bd. of Educ.*, MSBE Op. No. 05-08 (2005); and *Monocacy Montessori Communities, Inc. v. Frederick County Bd. of Educ.*, MSBE Op. No. 06-17 (2006).

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.01.05.05B(1) and (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.01.05.05C.

To the extent, however, that the Appellant challenges the legality of the local board policy 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.

LEGAL ANALYSIS

The charter school raises three general arguments challenging the local board's decision as arbitrary, unreasonable, or illegal: (1) the local board's decision to deny the charter rests on an unspoken illegal consideration of the fiscal status of the local school system; (2) the local board is biased against charter schools thus, its decision is biased and arbitrary; (3) the charter school did not get meaningful technical assistance in the review process.

(1) Unspoken Reliance on Fiscal Concerns of the Local School System in Denying the Application

As set forth in the factual background, on June 24, 2012 the local board discussed the factors set forth in Board Policy 440 that could be used in evaluating a charter school's application. One of them was the fiscal status of the school system. At that meeting, counsel to the school system advised the board that there was a legal risk in retaining that factor in its charter school policy. After some discussion, 5 of the 7 board members voted to retain the fiscal status language.

In *Global Garden Public Charter School v. Montgomery County Bd. of Educ.*, MSBE Op. No. 11-42 (2011), this Board considered the legality of using concerns about the fiscal status of the school system as a reason to deny a charter school application. In that case, the charter school requested a declaratory ruling that the charter school policy in Montgomery County Public Schools was illegal because it contained provisions calling for consideration of fiscal impact in deciding whether to approve a charter school. *Id.* at 13. We called such provisions "extremely troublesome as they appear to violate both the spirit and intent of the charter school

law." *Id.* We came to that conclusion because by law charter schools are public schools that are part of the local school system and serve the school system's students. *See* Md. Code Ann., Educ. §9-201. Thus, we announced in *Global Garden* that if the fiscal impact provisions were applied, we would have grave concerns about the legality of the local board's decision. *Global Garden* at 13.

In this case, counsel to the school system advised the board about the *Global Garden* decision and stated there was some legal risk in retaining a fiscal impact factor in the charter school policy. Even in light of that admonition, the local board voted to retain the language.

To more fully understand the reasons supporting that decision, we listened to the local board's discussion at the June 24, 2012 meeting. *See* http://apps.fcps.org/tv/boe.cfm. We heard board members discuss their fiduciary duty to spend school resources wisely. Those concerns are well placed. We also heard comments that suggested that when money is allocated to a charter school that would require cuts "to our own schools." Those comments, we believe, are misplaced. In the charter school context, there should be no *"us v. them."* Specifically, a charter school in Frederick County is a local public school, as much a part of the local school system as a non-charter school. State law requires that local boards fund charter schools with a per pupil allocation commensurate with non-charter schools. Md. Educ. Code Ann. §9-109. Thus, when a charter school seeks to serve FCPS students, the funding for those students is not lost to the local board. It remains in the local board's budget for use in funding the education of those FCPS students in the charter school just as the money would remain in the budget to fund the education of students in non-charter FCPS public schools. While we do not espouse that commensurate funding for charter schools is a zero-sum game on either side of the ledger, funding a charter school cannot accurately be considered as a "loss" of dollars to "our schools."

Thus, to the extent that the local board used that type of "loss" rationale to deny the charter school application, we would find that decision illegal. In our view, the local board did not do so in this case. We explain more fully herein.

Bias Against Charter Schools

The charter school presents a litany of reasons why the local board's decision is arbitrary and unreasonable. The fiscal concerns and bias against charter schools are at the base of the charter school's argument. We listened to the local board's deliberation on October 24, 2012 to get a real sense of the full discussion. We watched as the board listened to the responses of the Superintendent of Catoctin National Park, the proposed site for the charter school. That discussion was very positive and seemed to eliminate many of the facility issues as well as the safety and access to the site concerns of the staff and the local board.

The central concern of the local board, however, was the curriculum design. The discussion on that issue was rational and reasoned. The problems with the curriculum arose when the application attempted to align and mesh the Voluntary State Curriculum and the Common Core Curriculum. There was much discussion back and forth between the local board and the applicant about the numerous standards and indicators in the curriculum design.

We addressed curriculum issues in *Global Garden*. We said:

> In the past, we have been presented with disputes about the adequacy of a charter school applicant's curriculum and resolving those disputes is admittedly difficult. This Board does not sit as an expert in curriculum design. We do not conduct a de novo review. We sit to assess the weight of the evidence presented, remembering that it is the Appellant's burden to show that the local board was arbitrary in its assessment of the curriculum. In assessing disputes about curriculum deficiencies, we again refer to the standard review applicable in this case. The Board will not substitute its judgment for that of the local board unless the local board's decision is arbitrary – that is, unsupported by the evidence . . . .In our view, local school system curriculum staff are the ones who have the day to day experience in curriculum design and development in alignment with the VSC. Their view of the adequacy of the applicant's curriculum carries the great weight of their expertise...[W]e give greater weight to the assessment of the local board in this area than we do to the charter school's own assessment of its curriculum alignment.

Id. at 7-8, *see also Friends of the Bay Art and Science Pub. Charter Sch. v. Calvert County Bd. of Educ.*, MSBE Op. No. 08-21, p.13.

Here again we will give great weight to the local board's assessment of curriculum alignment. The curriculum design issue, in our view, is sufficient to support the decision to deny the application.

As to the general assertions of bias, we point out that most of the board members invited the charter school to reapply and affirmed their general support for the outdoor environmental education experience the charter school plans to provide. They encouraged the charter school to resubmit the application and the budget and present both more coherently. In short, we did not ascertain a particular bias against this charter school specifically or charter schools in general.

Meaningful Technical Assistance

The central issue on technical assistance appears to be the lack of face-to-face discussions with the evaluation staff about the deficiencies they found in the application as they proceeded through the review process. While face-to-face meetings may be the gold standard for technical assistance, we note that there were over 25 e-mails exchanged between the charter school liaison and the charter school. There were also three, full, face-to-face discussions with the applicant, staff, and board members at board meetings on June 24, October 10, and October 24.

We recognize that the application review process presents challenges to the school system and to the applicant. Reviewing and evaluating an application, this one over 700 pages, is

a staff-intensive undertaking. We recognize that local school systems do not have the resources to assist every applicant to correct the deficiencies in the application. That is the job of the applicant. It may be that the full explanation of deficiencies comes late in the review process and, if the deficiencies are major, they may not be correctible in time. In those cases, resubmission of the application will likely be the more appropriate way to proceed. The local board here invited the applicant to resubmit. Like the local board, we encourage this charter school applicant to persevere and resubmit an application that is cohesive and coherent, addressing among other things the curriculum concerns expressed by staff and the local board.

CONCLUSION

For these reasons, we affirm the decision of the local board.

Charlene M. Dukes
President

Mary Kay Finan
Vice President

James H. DeGraffenreidt, Jr.

Absent
S. James Gates, Jr.

Luisa Montero-Diaz

Sayed M. Naved

Madhu Sidhu

Donna Hill Staton

Ivan C.A. Walks

Guffrie M. Smith, Jr.

Linda Eberhart

February 26, 2013