

MBEF COLLEGE AND
CAREER ACADEMIES,
INC.,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 23-03

OPINION

INTRODUCTION

The Montgomery County Board of Education (“local board”) declined to award a charter to MBEF College and Career Academies, Inc. (“MBEF”) to open the MECCA Business Learning Institute.¹ MBEF appealed; the local board responded to the appeal and MBEF filed a response to the local board. The local board replied.

FACTUAL BACKGROUND

This is the second time this Appellant has applied for a charter. In the previous case, the superintendent recommended conditional approval of the application subject to certain financing contingencies. *See Mentoring By Example College and Career Academy Business Learning Institute (“MBLI”) v. Montgomery County Bd. of Educ.*, Order No. OR22-06 at 3. The local board, however, declined to award the charter because, among other reasons, the applicant had not presented “firm” evidence of financing commitments from banks. Although we referred the case to the Office of Administrative Hearings (“OAH”) to resolve other disputes of fact, we advised that because “financial institutions will not provide firm commitments for financing prior to the award of the charter,” requiring “firm” commitments for financing prior to the award of the charter established a complete barrier to approval of most, if not all, charter schools. *Id.* at 7. Such a requirement was, in our view, unreasonable. At OAH, the applicant withdrew its appeal and proceeded to re-apply for a charter.

In the case before us, the superintendent also recommended conditional approval of the charter subject to certain financial contingencies related to attaining, furnishing, and renovating a building by July 1, 2023. If the contingency was met, the school would open for the 2024-2025 school year. MBEF agreed to the contingency. Thus, the superintendent asked that the local

¹ The MECCA Business Learning Institute is a proposed public charter school for the Gaithersburg area designed as a college preparatory and vocational school for middle and high school students with a business education theme. (Appeal, Ex. H).

board “approve the application of M.E.C.C.A. Business Learning Institute to operate a public charter school in Montgomery County, Maryland, beginning in the 2024-2025 school year, as described in the application conditionally approved today, July 26, 2022, and contingent upon M.E.C.C.A Business Learning Institute demonstrating, by July 1, 2023, its ability to meet the financial requirements, and any state, federal, or local laws associated with attaining and renovating a building suitable for use as a public school in Maryland.” (Appeal, Ex. A).

On July 26, 2022, the local board voted to deny the charter. It did so essentially out of concern that “the proposed charter school would not be “financially sustainable if its enrollment did not track expectations set forth in the Appellant’s April 1, 2022 application.” (Local Board Response to Appeal at 5). The superintendent, however, had not included the issue of enrollment on her list of concerns about the applicant’s proposed school, the local board explains, “because her written statement referenced the fact that the Appellants would need to collaborate with MCPS professionals regarding their enrollment projections.” (Appellant Ex. V Attachments). It further explained that “[d]uring the July 26th County Board meeting the Board did not receive any additional evidence of community demand for the Appellant’s proposed Gaithersburg charter school. Nor did the County Board receive any information regarding the Appellant’s ability to secure full enrollment consistent with its projected timeline, and, thus, guarantee MCPS per pupil allocation funding for the initial six years of the proposed charter school.” *Id.* at 6.

The local board’s concerns about enrollment appear to rest on a lack of solid enrollment commitments, related to the charter school’s ability to provide transportation, decline in the economy, and the existence of “similar” schools in Montgomery County. With those concerns in mind, the local board voted to deny the charter. The local board did not issue a written opinion, relying instead on the vote on the charter school application and preceding discussion during the July 26th board meeting. This appeal ensued.

STANDARD OF REVIEW

For decisions of the local board involving a local policy, the local board’s decision is 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.01.05.06A.

The State Board exercises its independent judgment on the record before it in the explanation and interpretation of the public school laws and State Board regulations. COMAR 13A.01.05.06E.

LEGAL ANALYSIS

The Appellant asserts that the local board’s decision was arbitrary and unreasonable. We agree and explain our reasoning below.

Enrollment Commitments

It is true that any charter school, unless it has additional funding from outside sources, will need to enroll a sufficient number of students to obtain the per pupil funding it needs to sustain operations. The local board points to a State Board decision to support enrollment concerns as a reason for denial of the charter:

The State Board has made clear that because each local board has a “responsibility to the students and public school community to require its charter school to demonstrate fiscal viability,” they cannot turn a “blind eye” to threshold facts, such as student enrollment data, that impact a charter school operator’s “fiscal viability.” *Possibility STEM Preparatory Academy Charter School v. Prince George’s Co. Bd. of Educ.*, MSBE Op. No. 11-43 (2011), p. 6. Indeed, in *STEM Preparatory*, the State Board concluded it was “reasonable and legally appropriate for the local board to consider projected enrollment facts when making its charter school decision. *Id.*”

(Local Board’s Response to Appeal at 7).

The local board failed to point out, however, that the *STEM Preparatory* case, cited above, involved the revocation of the charter of an existing charter school with serious enrollment deficiencies. The facts there supported our conclusion that the existing charter school was not financially viable because it did not actually meet enrollment projections prior to opening the charter school for the following year. *Stem Preparatory v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 11-43 (2011).

There is no legal requirement that a charter school *applicant* present evidence of actual enrollment commitments from parents of potential students. As we stated in the previous appeal in the case, expecting firm commitments from a bank for financing before an award of a charter presents an almost insurmountable barrier to approval. Likewise, expecting an applicant to provide firm commitments for enrollment prior to the award of a charter presents a similar insurmountable barrier to approval.²

It is reasonable, however, to look to facts that would support the conclusion that this charter school applicant would not be able to attract a sufficient number of students to make the school sustainable financially. The local board members, in their discussion on the motion to deny the charter, proposed several concerns that they believed supported their vote to deny the charter. Thus, we must turn to the video record of the board’s discussion on the motion to assess the reasonableness of those concerns. <https://mcpsmd.new.swagit.com/videos/177730> at 2:08:32-2:40:36.

The discussion on the motion to deny the charter was short. Dr. Docca expressed concern about transportation given that the Gaithersburg community was a “walking community” and she wasn’t sure how many students could walk to the proposed school. Ms. Smondrowski expressed a similar concern. The local board then voted to deny the charter.

² We note that the applicant “reported that 611 persons had ‘pledged support’ online for the charter school.” (Local Board’s Response to Appeal at 4). We also note that “MCPS administration [agreed to] collaborate with the Appellant to advertise its program during the open enrollment period for other specialized programs across the county....” *Id.*

Given the brief discussion on the motion, to ascertain if there were reasonable grounds for denying the charter, we listened to the full discussion about the charter school prior to the motion. One board member noted enrollment deficits across the county, but MCPS staff and the charter school applicant explained that the schools in Gaithersburg were enrolled at or over capacity. Ms. Silvestre asked about the choices of business and finance programs in the “up county.” Staff explained that there were three programs related to business and finance, but the applicant explained that their program was at the middle school level where others started at high school.

Questions arose about the budget, but staff explained that the applicant had addressed those questions to the staff’s satisfaction. Likewise, questions about curriculum alignment elicited a staff response that the charter school curriculum was aligned to State standards, just as the MCPS curriculum was.

This case demonstrates the problem presented by relying on the local board’s discussion to support denial of a charter application, particularly when the superintendent has recommended approval. In our view, the board’s full discussion was short on facts and long in supposition. As we have pointed out:

in fairness to the applicants and members of the public...[the local board] must provide in addition to its decision...an explanation or rationale for its decision.” *Id.* at 7; *Imagine Harford, LLC v. Harford County Board of Education*, MSBE Op. No. 09-03 at 5. The State Board has been explicit in its requirements for specificity in the local board’s rationale requiring local boards “to provide more than a conclusory explanation for the denial of a charter school application...” *Cecil Public Charter High School v. Cecil County Board of Education*, MSBE Op. No. 08-38 at 6-7 citing *Rodriguez v. Prince George’s County*, 79 Md. App. 537, 550 (1989)(“It is not permissible for...any administrative body, simply to parrot general statutory requirements or rest on broad conclusory statements)

The DaVinci Collaborative v. Baltimore City Board of School Commissioners, MSBOE Op. No. 18-34.

While there is no statutory requirement that a local board issue a written decision denying a charter school application, *see Chesapeake Public Charter School v. St. Mary’s County Bd. of Educ.*, MSBE Op. No. 05-23 (2005), in our view, a written decision is more likely than a discussion on a motion to contain facts that support the local board’s vote to deny the charter. In this case, the board’s discussion, based on speculation, is conclusory in nature and does not support the decision to deny the charter.

CONCLUSION

Having found no reasonable, articulated basis for the denial of the charter, we reverse the local board’s decision. Pursuant to Md. Code Ann., Educ. §9-104(d), we remand the matter to the local board and direct it to award contingent approval of the charter beginning with the 2024-

2025 school year on the condition that Appellant demonstrate, by July 1, 2023, its ability to meet the financial requirements, and any state, federal or local laws associated with attaining and renovating a building suitable for use as a public school in Maryland.

Signatures on File:

Clarence C. Crawford
President

Susan J. Getty
Vice-President

Shawn D. Bartley

Gail H. Bates

Chuen-Chin Bianca Chang

Charles R. Dashiell, Jr.

Lori Morrow

Warner I. Sumpter

Absent:
Vermelle D. Greene
Jean Halle
Rachel McCusker
Joan Mele-McCarthy
Holly Wilcox

January 24, 2023