

THE DAVINCI
COLLABORATIVE, LTD.,

Appellant,

v.

BALTIMORE CITY
BOARD OF SCHOOL
COMMISSIONERS

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 21-41

OPINION

INTRODUCTION

This is the third time that this matter has been before the State Board. The DaVinci Collaborative, Ltd. (“DVC”) requests that the State Board reconsider its February 23, 2021, opinion reversing the decision of the Baltimore City Board of School Commissioners (“local board”) denying DVC’s charter school application and remanding the case to the local board for further action. The local board replied to the request and DVC responded.

FACTUAL BACKGROUND

The decision in this case, issued on February 23, 2021, recites the full factual and procedural history of this case. *See The Davinci Collaborative, Ltd. v. Baltimore City Board of Sch. Comm’rs*, MSBE Op. No. 21-05. The State Board reversed the decision of the local board denying Appellant’s charter application and remanded the case to the local board “to allow DVC the opportunity to have a discussion with school system representatives regarding the new deficiencies raised in the CEO’s January 8, 2019 recommendation; to allow DVC to submit a written response to those deficiencies; and for the local board to reconsider its decision based on the discussion and written responses.” *Id.* The decision was the State Board’s second remand of the local board’s review of DVC’s 2018 charter application.¹

After the State Board issued its decision, the parties scheduled a virtual meeting for March 15, 2021. In preparation for the meeting, on March 12, 2021, Trevor Roberts, Specialist in the Office of New Initiatives (“ONI”) for Baltimore City Public Schools (“BCPS”), sent DVC co-founders, Helene Luce and Travis Henschen, an email with post-remand information and a schedule of activities. (Reconsideration, Ex. A). The email stated that BCPS will be “asking [DVC] to provide a written response indicating how it will seek to cure the deficiencies identified in [the] CEO’s January 8, 2019 recommendation” and that BCPS will provide “specific questions to assist [DVC] in drafting its response” to be shared at the March 15 meeting. *Id.* The email also stated that, in addition to having DVC address deficiencies

¹The first remand was *The DaVinci Collaborative, Ltd. v. Baltimore City Bd. of Sch. Comm’rs*, MSBE Op. No. 18-34. (2021).

identified in the CEO's January 8, 2019 recommendation, BCPS would be seeking an update regarding developments in the more than two years since that time. *Id.* Specifically, BCPS requested an update on DVC's plans for acquisition of a school facility given changes in the real estate landscape and contingencies for virtual learning and plans to support academic recovery given changes to the educational landscape caused by the COVID-19 pandemic. *Id.*

The email outlined the following schedule for the post-remand activities:

- March 15 – Meeting to assist DVC in drafting its written response
- March 22 at 11:30 or March 24 at 11:30 – Meeting to check-in on progress and offer further technical assistance for drafting of response
- April 6 no later than 12 noon – DVC's written response due
- April 23 at 4 p.m. – Meeting to share substantive feedback on DVC's written response and to provide the CEO's preliminary recommendation report
- April 27 – At local board's public meeting, DVC allotted time for presentation and responding to board member questions to address and cure any deficiencies noted in the CEO's preliminary recommendation. BCPS to also present the CEO's recommendation to the board for information.
- April 30 – Due date for DVC to provide supplemental materials, if any, to cure any deficiencies identified in the CEO's preliminary recommendation report and/or to address questions from the board at the April 27 meeting.
- May 11 at 11:30 or 1:30 – Meeting to share substantive feedback on DVC's supplemental response and provide the CEO's final recommendation report.
- May 13 – Special board meeting at 6 p.m. to provide DVC another opportunity to present to the board any and all information to cure remaining deficiencies, if necessary, followed by the board's vote.

Id. The email also offered that DVC should “feel free to reach out to schedule additional meetings for technical assistance or send questions along the way that [DVC] may have about the process, application and/or concerns.” *Id.*

On March 15, 2021, Ms. Luce and Mr. Henschen met virtually with Mr. Roberts and Angela Alvarez, Executive Director of ONI, to discuss BCPS's proposed timeline and questions to assist with preparation of the written response to the CEO's recommendation. BCPS did not have the questions ready for DVC's review at the time, but provided them by email approximately one hour after the meeting. (Reconsideration, Luce Affidavit, ¶¶6 & 8). During the meeting, DVC requested an extension of the April 6 and April 30 deadlines to April 12 and May 3, respectively. *Id.* at ¶7. Mr. Roberts later responded that DVC could have until April 8 for the first deadline to submit responses and until May 3 for the second deadline. (Local Bd. Response, Attach. 3).

In setting up the second meeting with personnel from BCPS to review the questions, Ms. Luce and Mr. Henschen asked if they could bring Ms. ██████ to the meeting. (Reconsideration, Luce Affidavit, ¶12). Ms. ██████ is a recognized expert in charter school matters in Maryland and has worked for the Maryland Alliance for Public Charter Schools (“MAPCS”)² and its predecessor, the Maryland Charter School Network, for over a dozen years. *Id.* She also served as DVC’s “mentor and advisor” for its 2018 charter application and beyond. *Id.* Additionally, in 2017 and 2018, she served as a member of the Charter and Operator-Led Advisory Board (“Advisory Board”) for BCPS, which deliberated on charter applications and made recommendations to BCPS Chief Executive Officer (“CEO”) regarding approval. (Local Bd. Response, Ex. 1, ¶13).

Ms. Alvarez responded that BCPS has never had a member of MAPCS administrative staff participate in individual meetings regarding an application and that BCPS was “uncomfortable with this request.” (Reconsideration, Ex. C). Ms. Luce replied that Ms. ██████ advised DVC in 2018 and has had a continuing role as DVC’s “advisor.” *Id.* Ms. Luce also stated that Ms. ██████ “did not participate either in [DVC’s] 2018 review or interview, or in the post-remand review of that application and [DVC’s] supplemental answers, and is no longer a member of the Charter School Advisory Board.” *Id.* Ms. Alvarez responded that Ms. ██████ “did participate in the review process in both 2017 and 2018 as a member of the Advisory Board,” and thus it is “not appropriate for her to participate in this process as [DVC’s] advisor.”³ *Id.* See also Local Bd. Response, Ex. 1, ¶13.

On March 22, 2021, Mr. Henschen and two additional members of the DVC founding board met virtually with Ms. Alvarez and Mr. Roberts for BCPS “to check-in on progress and offer further technical assistance for drafting of response.” (Reconsideration, Henschen Affidavit, ¶¶2 & 3). The DVC team asked general questions about the post-remand process and specific questions about BCPS’s proposed questions as detailed in Mr. Henschen’s affidavit. *Id.* at ¶¶5-36. During the meeting, Mr. Henschen pointed out that DVC’s team believed there were redundancies in the questions and asked to what extent BCPS wanted new responses or just clarification of things that DVC answered previously. *Id.* at ¶8. Ms. Alvarez responded that the questions were derived from deficiencies that were not cured with the prior submissions and recommended looking at how DVC answered the previous questions along with the feedback on those questions. *Id.* DVC submitted its written response to BCPS on April 8, 2021. (Local Bd. Response, p.4, n.1). Although DVC filed the request for reconsideration, the parties proceeded with the post-remand process.⁴

² According to its website, MAPCS is a non-partisan group that serves as a voice for charter school communities. Among other things, it provides technical support to its members for the purpose of starting charter schools and operating charter schools around the State. See <https://mdcharters.org/start-a-school>.

³ MAPCS, a non-party to the reconsideration, has submitted a letter to dispute certain statements in Ms. Alvarez’s affidavit with regard to Ms. ██████ and asks that certain statements be stricken from the record in the case. Because MAPCS is not a party to the reconsideration and expressly states that it “has no stake in the . . . case and takes no side in this dispute,” we are excluding the letter from consideration. However, the letter will remain on file to ensure a complete record.

⁴ The filing of a request for reconsideration does not stay the State Board’s original decision. COMAR 13A.01.05.10(F).

STANDARD OF REVIEW

The State Board exercises its discretion in deciding whether to grant a request for reconsideration. COMAR 13A.01.05.10. The State Board may, in its discretion, abrogate, change, or modify its original decision. COMAR 13A.01.05.10G. A decision may not be disturbed unless (1) the decision resulted from a mistake or error of law; or (2) new facts material to the issues have been discovered or have occurred subsequent to the decision. COMAR 13A.01.05.10D.

LEGAL ANALYSIS

DVC maintains that the State Board should reconsider its decision remanding the case to the local board for further action claiming that the actions of BCPS post-remand demonstrate that it is incapable of providing a fair application review process. Instead, DVC again asks that the State Board reverse the local board's decision denying its DVC's charter application and direct the local board to grant DVC a charter for 5 years, or in the alternative 3 years, and to mediate with the local board and DVC to implement the charter.

Post-Remand Process

DVC has outlined the various post-remand communications and interactions citing it all as evidence of an unfair process. Based on our review, we find that the actions of BCPS post-remand demonstrate the local board's attempt to comply with the State Board's remand decision. Within 16 days of the State Board's decision, BCPS prepared and presented to DVC a detailed timeline for an interactive process designed to provide DVC the opportunity to cure deficiencies in its application. BCPS also provided a list of questions designed to assist DVC in addressing the deficiencies. Although the questions were provided very shortly after the March 15 meeting so they were not discussed at that time, BCPS made clear to DVC that the lines of communication were open. Moreover, the questions were discussed with DVC at the March 22 meeting. Based on our review, BCPS's post-remand actions appear to be an effort by BCPS to provide collaborative engagement through technical assistance and opportunities for feedback.

DVC objects to the questions presented by BCPS as redundant and creating a never-ending review process amounting to a *de facto* denial of DVC's application. We do not view it that way. The questions were meant to provide specificity and clarity to assist DVC in crafting its written response to the deficiencies. BCPS indicated it was open to dialogue about the questions. The new information presented only demonstrates BCPS's willingness to do what the State Board asked in the remand decision.

DVC also maintains that BCPS's schedule of the post-remand process is "extremely quick and aggressive" and states that "proper, complete responses to [BCPS's] questions would require far more time than has been allotted to DVC." BCPS modified two of the original deadlines per DVC's request. The April 8 deadline provided a response time of approximately three and half weeks, during which BCPS was open to inquiries and providing feedback. Ultimately, DVC was to receive written feedback on its submission and the CEO's recommendation several days prior to the board meeting where it would then address the local

board. Ms. Alvarez explained that further extensions were not feasible because ONI and BCPS Academic Office staff needed time to thoroughly review DVC's materials to ensure sufficient time prior to the local board meeting to provide substantive feedback to DVC. (Local Bd. Response, Ex. 1, ¶9). We do not find the time-frame unreasonable.

Conflict of Interest

DVC also argues that the remand process is unfair because BCPS objected to the participation of Ms. [REDACTED] as an "advisor" to DVC. The local board maintains that Ms. [REDACTED] role as an "advisor" is a conflict of interest because she participated in the review process for DVC's charter applications in 2017 and 2018 when she was a member of the Advisory Board, which reviewed the DVC charter applications and made recommendations to the CEO.⁵ (Local Bd. Response, Attach. 1). Specifically, the Advisory board reviewed DVC's charter application as part of the review process in Spring 2018 and the local board's initial vote on this application on June 12, 2018 took into account the Advisory Board's recommendation. This is the same application that is the subject of this case. In her affidavit, Ms. Alvarez indicates that, as an Advisory Board member and participant in the review process, Ms. [REDACTED] had access to confidential information regarding the internal deliberative process regarding DVC's application. (Local Bd. Response, Ex. 1, ¶13). The local board has explained that it is the practice of Advisory Board members to recuse themselves from review of a charter application in which the member has a specific relationship with the charter applicant, but that Ms. [REDACTED] did not recuse herself until the State Board's first remand of the 2018 application denial to the local board in October 2018. (Local Bd. Letter, 5/21/21).

Contrary to Ms. Alvarez's assertion in her affidavit that Ms. [REDACTED] participated in the review of DVC's 2018 application, DVC maintains, through Ms. Luce's affidavit, that Ms. [REDACTED] did not review either DVC's 2017 or 2018 applications. (Reconsideration, Luce Affidavit, ¶14). DVC has not submitted an affidavit from Ms. [REDACTED] or any other conclusive evidence to corroborate this assertion. The only other evidence regarding Ms. [REDACTED] recusal from DVC matters is a December 6, 2018 email in which Ms. [REDACTED] recuses herself from the Advisory Board's meeting to discuss the DVC application after the State Board's first remand of this case. (Local Board 5/21/21 Letter, Attach. 2). It is DVC's burden to satisfy the basis for reconsideration. Because there was critical engagement and deliberation of the Advisory Board on DVC's 2018 application before the remand involving sharing of confidential information, and there is no conclusive evidence of Ms. [REDACTED]'s recusal from that process, we find BCPS's determination regarding a conflict of interest with Ms. [REDACTED] to be reasonable.

⁵ The local board does not suggest that Ms. [REDACTED] should be generally disqualified from assisting charter school applicants. Rather, this conflict of interest concern was directly related to her participation with the BCPS process to review DVC's application, which is also the subject of the remand.

CONCLUSION

We do not find any new material facts that would require us to reverse our prior decision, or any mistake or error of law.

Signatures on file:

Clarence C. Crawford
President

Charles R. Dashiell, Jr.
Vice-President

Chuen-Chin Bianca Chang

Susan J. Getty

Vermelle Greene

Jean C. Halle

Rachel McCusker

Joan Mele-McCarthy

Lori Morrow

Warner I. Sumpter

Holly C. Wilcox

Absent:
Shawn D. Bartley
Gail H. Bates

July 27, 2021