

MENTORING BY
EXAMPLE COLLEGE AND
CAREER ACADEMY
BUSINESS LEARNING
INSTITUTE (“MBLI”)

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Order No. OR 22-06

ORDER

INTRODUCTION

The Montgomery County Board of Education (“local board”) denied the charter school application of the M.E.C.C.A Business Learning Institute (MBLI) on July 27, 2021. MBLI has appealed that denial.

FACTUAL BACKGROUND

The primary area of contention between the local board and MBLI is evidence of sufficient revenue to support a charter school. We have broken down our factual background into two sections due to the back and forth between the Montgomery County Public Schools (“MCPS”) and MBLI regarding the financing.

Section 1: Timeline

Ultimately, MBLI plans to serve grades 6 – 12 in Takoma Park or Silver Spring, Maryland. MBLI intends initially to enroll sixth and seventh grade students in Fall 2022 with annual grade expansion phases through grade 12. (Appeal, Ex. B at 1).

MBLI applied for a charter on April 2021. On July 27, 2021, the local board voted to adopt a resolution presented by Superintendent McKnight to deny approval of the charter. *See* Resolution. (Appeal Reply, Ex. 19). Here are the financial issues identified in the resolution:

1. MBLI “is unable to provide evidence of necessary funding supports.”
2. MBLI failed to explain how it would fund 28% of its start-up costs
3. MBLI has a funding gap for the first school year of approximately \$3.5 million
4. MBLI failed to provide a complete transportation plan for the staff to evaluate the adequacy of \$350,000 budgeted for yellow bus transportation. Further, MCPS believes that MBLI will need more bus routes than projected by its transportation budget

5. MBLI did not establish that it would receive \$600,000 in revenue for the first school year from before-and-after school enrichment programs or support that this revenue would increase by an additional \$200,000 on an annual basis
6. MBLI stated that it had banking relationships to support a “shortfall in revenue” but did not provide satisfactory details or commitment letters.

The events leading up to the Resolution:

On February 17, 2021, MBLI participated in the Montgomery County Public School District (the “District”) Technical Session, which detailed the elements charter applicants needed to consider in the implementation of a successful charter. *See MBLI Appeal*, p. 3.

MBLI submitted its charter School Application to MCPS on April 1, 2021.¹ The local board is guided by its Policy and Regulation governing charter schools. On May 7, 2021, the MCPS Charter Application Review (the “Review Panel”) began its review of MBLI’s application. On May 11, 2021, the Review Panel presented a workbook to MBLI listing questions and comments. *See Review Panel Questions and Comments (Response, Ex. 8)*. Dr. Kenneth Marcus, the MCPS Charter School Liaison, emailed MBLI to respond to the questions during its Capacity Review. *See Emails between Dr. Marcus and MBLI (Response, Ex. 9)*. The Review Panel workbook contained the following applicable comments, questions, and concerns regarding funding and transportation services:

1. If Year 1 MCPS per pupil allocation is \$3.6M, what are the other projected sources of revenue to cover the remaining budget gap?;
2. Please provide more detail regarding the \$7.1M in revenue sources;
3. If fundraising goals are not met, what are the other options to meet MBLI’s financial responsibilities?;
4. MBLI will need to secure substantial funding outside of the cost per student allocation that MCPS will provide to meet their goals;
5. Please provide the detailed timeline to raise the funds to supplement budget revenues and the monthly projection to identify the revenue shortfall;
6. Not providing transportation services could be a barrier to access considering some public options may not be appropriate or safe enough for some parents.

On May 20, 2021, MBLI met with the Review Panel for the Capacity Interview. On May 28, 2021, MBLI shared additional documents with MCPS including an expanded budget for revenues and expenses. *MBLI Email to MCPS. (Appeal, Ex. E)*.

On June 23, 2021, MCPS emailed MBLI with Superintendent McKnight’s recommended contingent approval with concerns. The stated concerns were:

1. MBLI must “demonstrate to the Board community interest in the school.”
2. MBLI must “confirm resources for additional funding.”

¹ MBLI submitted an application to MCPS on March 16, 2021, and revised the application based on feedback from MCPS. The March 16, 2021 application was not included in the appeal.

Memorandum from Superintendent McKnight to the Local Board (Appeal, Ex. F).

Dr. Marcus presented the contingent approval at a board meeting on June 29, 2021. MBLI provided a presentation at the meeting and board members provided MBLI with comments and questions. On July 14, 2021, MBLI responded to issues raised by MCPS regarding revenue shortfalls. *See* Appeal, Ex. K. We provide each issue followed by a response from MBLI:

- Gap of funding—business plan requires start-up costs over \$7.9 million
 - MBLI separated the start-up costs of \$1.1 million and facility costs of \$6.7 million. MBLI will fund 72% of the facility costs with the MSDE grant and through commercial financial products.
- No clear path to a revenue stream to support the ongoing operation of the school
 - MBLI stated that 60-70% of annual revenue is supported by the annual per-pupil allotment. MBLI stated it would use “fundraising, corporate sponsorships, donations, grant aid and commercial bank products (if necessary) to fund the remainder.
- Panel’s concern of running a profitable childcare program to generate revenue
 - MBLI will run a Before and After School program, not a daycare.
- Review Panel questions sustainability if student enrollment declines or if funding sources are rescinded
 - MBLI states that it conducted this analysis and will use commercial bank products should the need arise.
- Concern that transportation only provided for students who need specialized transportation based on their Individualized Education Program and the lack of dedicated transportation will discourage other students from attending.
 - MBLI intends to offer transportation to all students.

On July 20, 2021, Dr. Marcus sent an email to MBLI that raised additional issues. MBLI provided responses on July 22, 2021. *See* Appeal, Exs. L and M. We provide the MCPS query followed by the MBLI response. MBLI did not respond to every issue raised.

- Requesting how MBLI will fund the remaining 28% of the start-up funds
 - Per MBLI, MSDE has authorized MBLI to reallocate grant award as needed to fund remaining 28%
- Evidence that the Before and After Enrichment programs will bring “in \$600,000 of revenue the first year and an additional \$200,000 each year thereafter”
 - No response
- Detailed information about revenue sources posted on lines five through ten of the budget
 - No response
- Concerns about MBLI underestimating the budget
 - No response

- How MBLI will fund a second building in the future using Plan A
 - MBLI will work with the Maryland Health & Higher educational Facilities Authority to “explore capital financing options for both site Plans A and B.” Based on meeting with MHEFFA Executive Director, MBLI understands that it can receive MHHEFA financing upon charter approval.
- Commitment Letter(s) from the Banks(s) and terms of the loan(s)
 - MBLI responded that lending institutions usually do not start due diligence for a loan prior to approval of a charter, but that M&T Bank provided a draft MOU to be finalized after charter approval. This included agreement to pay \$1,000/month for monthly rental of ATM and corporate sponsorship of initial \$25,000 (and \$25,000 on an annual basis)
- Concern that MBLI has overestimated the amount it will receive in Per Pupil Allotment from \$3,528,782 as opposed to \$3,695,028
 - MBLI provided a response but did not directly answer question
- MCSPS stated that MBLI has significantly underestimated the bus line considering that MCPS pays \$125,000 per bus route/per year and asks MBLI to identify the number of bus routes
 - MBLI did not provide a response to this concern.

On July 23, 2021, MCPS counsel Stephanie Williams, along with Associate Superintendent Niki Hazel and Dr. Marcus, met with MBLI to inquire into their ability to raise funding. *See* MBLI Meeting (Response, Ex. O). Ms. Williams expressed her concerns about MBLI raising revenue with a focus on the \$3 million gap between MCPS funding and private funding for School Year 1. *Id.* at 11:00. Ms. Williams questioned the accuracy of the \$600,000 revenue from Before and After Enrichment. Superintendent Hazel stated that they wanted proof that the middle school families were willing to pay \$125 per week for before and after school. *Id.* at 31:18. In response, MBLI said this was based on market data and the facility they obtained and stated there were still many variables that would affect the funding. *Id.* at 33:00. Ms. Williams reiterated that they needed proof that there were the number of students that would commit to \$125 per week. *Id.* at 35:00.

During the meeting, MBLI stated that its projected facility expenses might not be accurate and that MCPS should not take the facility expenses into account. Ms. Williams stressed that even without the facilities, there was a \$2 million gap for operations for Year 1. *Id.* at 40:00. Superintendent Hazel stressed the need for MBLI to prove the available funding. *Id.* at 46:00. Ms. Williams also stated that MCPS would honor contingent funding in making a recommendation to the board. *Id.* at 54:00. Ms. Williams expressed concern about a failing charter program that affected MCPs and student families. *Id.* at 56:18. MBLI asked if an unsigned draft financing document is sufficient or more is needed. Ms. Williams stated the Board needed MBLI to raise the confidence level. *Id.* at 1:05.

At the 11th hour, on July 26, 2021, MBLI emailed more documents to MCPS to show support of revenue. *See* Appeal, Ex P. On July 27, 2021, Superintendent Hazel read out

strengths and weaknesses from the Review Panel. July 27 Board Meeting at 1:35.² Superintendent Hazel stated that her office received follow-up documentation from bank and community partners the previous day but did not have the time to do an analysis or vetting of the documents. *Id.* at 1:36. Board Chairman Wolff stated that she did not have time for detailed analysis, but it did not appear MBLI sufficiently closed the gap. *Id.* at 1:38. Ms. Harris, another Board member, also stated that she did not have the time to review all the information that had arrived the previous evening and encouraged the MBLI to address the concerns raised and come back for the Board to “make a thorough review of the application.” *Id.* at 1:41. The Board unanimously approved the resolution not to approve the charter. *Id.* at 1:42.

Section 2: Proposed Budgets and Sources for Revenue from MBLI

Original Budget Submission

The initial submission provided the following breakdown for revenue and expenses:

	Start - Up	Year 1
Total Expenditures	\$1.2M	\$5.3M
Capital Expenditures	\$6.7M	\$1.2M
Public Revenue	\$759K	\$4.9M
Private Revenue	\$7.2M	\$2.3M

MBLI Budget (Appeal, Ex. B Attach. 3).

May 28, 2021 Submission

The May 28 Expanded Budget included additional revenue line items:

	Start-Up	Year 1
Per pupil Charter Payments		\$3,695,028
MSDE Start-Up Grant		\$117,012
Government Funding/Grants		\$1,000,000
Government Funding/Grants (US DOE; US DHHS program grants)		\$275,000
Private Grants (Goodwill Foundation, Verizon, Gates Foundation, Walton Foundation, Charter school Incubator, Ed Forward, etc.		\$141,578
School fundraising		\$10,000
Corporate Sponsorships		\$275,000
Activity Fees (collected from students)		\$16,000
Before and After Enrichment		\$600,000
Summer Learning Enrichment		\$384,000
Total	\$759,325	\$6,752,268

² <https://mcpsmd.new.swagit.com/videos/129603>

See MBLI 5/28/21 Budget (Appeal, Ex. E).

For support of the revenue, MBLI provided a contingent notice of grant award from MSDE. *Id.*

July 22, 2021 Budget Submission

On July 22, 2021, MBLI submitted a new budget:

	Start-Up	Year 1
Per pupil Charter Payments		\$3,695,028
MSDE Start-Up Grant	\$759,325	\$123,663
Government Funding/Grants		\$1,000,000
Government Funding/Grants (US DOE; US DHHS program grants)		\$275,000
Private Grants (Goodwill Foundation, Verizon, Gates Foundation, Walton Foundation, Charter school Incubator, Ed Forward, etc.)		\$473,963
School fundraising		\$10,000
Corporate Sponsorships		\$275,000
Activity Fees (collected from students)		\$12,000
Before and After Enrichment		\$600,000
Summer Learning Enrichment		\$144,000
Total	\$759,325	\$6,545,752

See MBLI 7/22/21 Budget (Appeal, Ex. N).

July 26, 2022 Supporting Revenue Documents

On July 26, 2022, MBLI provided additional documents to support proof of sufficient revenue:

Donor	Amount	Notes
Agreements from Individual Donors	\$110,000 per year	Signed pledges from individual donors
Pledges from institutional donors	\$210,000 per year	Some pledges not signed
Donation from UCONNECT (University of California at Berkley) to MBLI	\$1,125,000(an annual donation transferred in a divisible amount)	Does not break down the amount per year and is unsigned.
Installment Loan Agreement from M&T Bank to MECCA for operation and renovation	Not to Exceed \$6,000,000 for a seven year term	Unsigned loan terms subject to charter approval
Agreement Between MBLI and M&T for ATMs	Provides MBLI with 1,000 monthly rent per year and \$25,000 initial scholarship and \$25,000 due annually on March 2, 2022; also agreement to fund up to 50%/per year of any financial literacy programs; also agreement to pay 50% of financial support for student activities and events	Not signed

See MBLI 7/26/21 Email. (Appeal, Ex. P).

The record before us contains several different budget submissions and several series of questions from MCPS about the budgets submitted and MLBI's responses thereto. As best we can tell, the per pupil allocation in the first six years of operation does not cover the charter school's operating expenses. There appears to be a budget gap each year. The applicant states that it will fund that gap by grants, loans, and donor contributions. MCPS responds, among other things, that there are no firm commitments for the funding.

There are disputes of facts in the record as to the size of the budget gap each year and whether it is possible to sustainably fill that gap each year. We believe it would be helpful for our decision-making to refer these disputes of fact to the Office of Administrative Hearings ("OAH") for a hearing on the sustainability of the charter school. We do so with the following caveats: First, we agree with the charter school applicant that financial institutions will not provide firm commitments for financing prior to the award of the Charter. *Cf. Watershed Public Charter School, Inc. v. Baltimore County Bd. of Educ.*, MSBE Op. No. 18-31 (2018). Approval contingent in the receipt of firm loan commitments, as well as firm grantor commitments, is the way to address this issue.

Second, sustainability must be assessed over several years until full enrollment. In this case, full enrollment will not occur until year six. The applicant must present a reasonable plan showing how it will sustain operations over that course of time, filling the budget gaps with sufficient funding in a fiscally responsible way.

Third, the applicant has raised arguments involving procedural due process. The Administrative Law Judge ("ALJ") need not address those arguments.

Therefore, for the reason stated, we refer the financial sustainability issue to the OAH to answer the following questions:

- (1) Has the applicant met its burden to show the financial sustainability of the charter school over at least six years?
- (2) To answer that question, the charter school and MCPS should provide evidence of the budget gaps for each of the first six years of operation. To the extent that the parties do not agree on the budget gap numbers, we ask the ALJ to resolve that dispute of fact.

The applicant must then provide evidence of how it will fund those gaps each year. We ask the ALJ to assess whether that evidence represents a reasonable and sustainable funding plan.

Therefore, it is this 26th day of April 2022, by the Maryland State Board of Education, ORDERED, that this dispute of fact is referred to the OAH for a hearing on the financial sustainability of the charter school.

MARYLAND STATE BOARD OF EDUCATION

Signature on File:

Clarence C. Crawford
President