

KITZMILLER CHARTER SCHOOL
INITIATIVE, INC. t/a RIVERSIDE
ACADEMY PUBLIC CHARTER SCHOOL,

Appellant
v.

GARRETT COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-52

OPINION

INTRODUCTION

The Appellant, Kitzmiller Charter School Initiative, Inc. (charter school), appealed the decision of the Garrett County Board of Education (local board) denying the Appellant's charter school application to establish the Riverside Academy. The local board filed a Motion for Summary Affirmance. The Appellant responded and the local board replied to the response.

The State Board heard oral argument on August 27, 2013.

FATUAL BACKGROUND

The local board had used the Kitzmiller facility as a school building beginning in the 1920's until the school's closure in August 2012. The State Board upheld the closure of in *Martin, et al. v. Garrett County Bd. of Educ.*, MSBE Op. No. 12-35 (2012), along with the closure of Bloomington Elementary School. The schools were closed based on various factors including significant projected budget deficiencies within the school system, a decline in State funding, projected decline in student enrollment throughout Garrett County, and the fact that the two schools had the lowest student enrollments with no projected enrollment increase in future years and the highest costs of operation per student. In addition, Kitzmiller needed costly infrastructure repairs in order to maintain the school building. *Id.* at 4-9.

After the closing of Kitzmiller Elementary School, the local board no longer needed the building for educational purposes and transferred it to the Board of County Commissioners of Garrett County (County Commissioners). The County Commissioners agreed to lease the facility to the Town of Kitzmiller for one dollar per year, and the Town agreed to allow the Appellant to utilize the facility at no cost to operate a charter school there. (Application, Appx.G).

The Kitzmiller building is a shared-use facility. The Garrett County Community Action Committee operates a Head Start program there,¹ and the Ruth Enlow Library of Garrett County is located there. Both entities previously shared the facility with the Kitzmiller Elementary School when it was located there. (Application, Appx.F).

¹ The Head Start program has been operating there for over 25 years.

Prior to submitting its charter school application, one of the Founders of the proposed charter school attended two face-to-face meetings with school system personnel. The meetings covered topics such as the application process and review, timelines, charter school policy.

On October 15, 2012, Appellant submitted its application to establish the Riverside Academy Public Charter School in Garrett County. Barbara Baker, Assistant Superintendent, served as the school system liaison during the application review process. Six topical experts served as committee chairpersons in the following areas: (1) Curriculum, Instruction and Assessment; (2) Human Resources; (3) Student Services; (4) Budget and Finance; (5) Transportation; and (6) Facilities. Between November 20 and December 27, 2012, each topical committee sent clarifying questions to the Appellant in the respective category and the Appellant submitted responses to the questions. (Mtn. Ex. 4).

On January 22, 2013, the local board conducted a public hearing at Southern Middle School in Oakland, Maryland at which the Appellant made a 10 minute presentation on its charter school application. The local board also heard public comments from various speakers and received written comments accepted through the close of business on January 25, 2013.

School system personnel and the six topical committees reviewed the application. The Superintendent, Janet S. Wilson, also engaged the services of two outside consultants to review various aspects of the application. Dr. Gregory Faulkerson, a world language consultant, reviewed the partial Spanish immersion component and Apex Companies, LLC (Apex), conducted an environmental assessment of the Kitzmiller facility.

On January 29, 2013, the Superintendent issued her recommendation on the application to the local board. She reviewed three comprehensive volumes of information and supporting documentation which were incorporated by reference into her recommendation. In addition, Dr. Wilson toured the proposed facility on two occasions. (Mtn., Ex. 4 at 1-2). Ultimately, Dr. Wilson recommended that the local board deny the charter school application noting deficiencies in the following areas: facility, curriculum, professional development, pupil services/special education, human resources, fiscal processes and procedures, and technology.

On February 7, 2013, the local board adopted the Superintendent's recommendation and denied the Appellant's application.

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

Preliminary Issue – Board of Public Works Approval

As a preliminary issue, we address the legality of the Appellant’s use of the facility to house a charter school.² The Board of Public Works approved the transfer of the Kitzmiller facility from the local board to the Garrett County Government on October 3, 2012 . When it did so, it conditioned approval of the transfer on the requirement that the Garrett County Government obtain approval from the Board of Public Works before “transferring any right, title or interest to any portion of the facility.” (Local Bd. Supp. Mem., Ex.B).

On October 18, 2012, the County Government leased the facility to the Town of Kitzmiller for use as the “Kitzmiller Community Center.” To our knowledge, the County did not obtain the requisite approval from the Board of Public Works to do so. Thus, in our view, without approval by the Board of Public Works, the Garrett County Government lacked the authority to enter into a lease agreement with the Town of Kitzmiller. In addition, the lease describes the contemplated use of the facility as the “Kitzmiller Community Center.” (Lease, §5). It does not indicate any intent to use it as a school. This is consistent with the Board of Public Works’ statement in the transfer approval that the “school will no longer be used for educational purposes.” (Local Bd. Supp. Mem., Ex.B).

These facts call into question the validity of the County Government’s lease of the facility to the Town and of the lease agreement between the Town of Kitzmiller and the Appellant to allow the charter school to operate in the facility. Thus, there is, at best, questionable legal authority to support the operation of a charter school at Kitzmiller.

Reliance on Fiscal Concerns of the Local School System to Deny Application

Appellant maintains that the local board’s decision to deny the application was based on illegal consideration of the fiscal impact on the school system of opening a charter school.

² This issue arose in the supplemental memoranda submitted by the parties and at oral argument before the State Board.

The local board adopted the Superintendent’s Recommendation which includes an appendix discussing the fiscal implications on the school system of opening a charter school in light of the reduction in State aid for education and the closure of three elementary schools in the past two years in the County. The Recommendation states:

[T]he addendum to this Recommendation also addresses the fiscal implications of granting the charter application during a period of declining student enrollment and unprecedented financial hardships for the Garrett County Public Schools. In my opinion, these fiscal implications cannot be ignored, as the granting of the charter application would place an increased financial burden on the school system as a whole that would result in the need for further school closings and student redistricting, reductions in force of employee staff, and the continued inability to meet negotiated pay scales. In my opinion, these fiscal realities cannot be ignored by the Board and serve as an additional reason for denying the charter application.

(Recommendation at 3). It further states:

If the proposed charter is granted, the consequence will be the closure of additional schools which will inevitably result in the re-districting of students and reduction of staff. . . . It is important to understand the implications of the approval if the charter application in light of the current fiscal climate. For fiscal 2014, the system anticipates cutting approximately 12 positions through attrition. These savings would likely have been used to cover the current state aid funding gap as well as provide a possible step or additional compensation . . . Therefore, in order to cover the cost of funding the charter application of \$573,600 as outlined in year one of the application, the system would again not likely meet its contractual obligation relative to a step in order to cover the costs of the charter.

* * *

As previously mentioned, funding availability is a distinct consideration for recommendation against the approval of the Riverside Academy’s charter application. For the reasons previously discussed regarding curriculum program, student services, facilities and other areas, I would recommend the rejection of the charter application for those reasons alone. However, what is clear and compelling is that there will be a significant impact to all Garrett County Public Schools and all students should Riverside Academy become a reality. . . . Therefore, I must also recommend the rejection of Riverside Academy’s charter application due to the dire financial

consequences that Garrett County Public School System would face should the charter be approved.

(Recommendation at 16-17).

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, and the school system receives commensurate funding for students enrolled in charter schools. *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 *Frederick Outdoor Discovery Charter School v. Board of Educ. of Frederick County*, MSBE Op. No. 13-14 (2013), we again admonished a local board raising system wide fiscal concerns in considering a charter school application. In that case, there were some well-founded comments about spending school resources wisely while discussing the board’s fiduciary duty to the school system. But board members went further, making comments suggesting that when money is allocated to a charter school, such an allocation would require cuts “to our own schools.” We stated as follows:

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.”

Frederick Outdoor Discovery at 6. We concluded that if the local board used that type of “loss” rationale to deny the charter school application, we would find that decision illegal. We found, however, that the local board had other legitimate bases for denial of the application. *Id.*

The circumstances of this case, however, differ from those in the *Global Garden* and *Frederick Outdoor Discovery* cases. In those cases, the local board policies contained provisions requiring the consideration of the fiscal impact of the charter school on the school system in every case, thus illustrating the “us versus them” mentality we rejected in the *Frederick Outdoor Discovery* case. Both cases also dealt with otherwise financially stable school systems.

In this case, we have a school system that is experiencing severe financial hardship. GCPS is facing a dramatic decline in student enrollment coupled with a decline in State funding. To deal with the financial climate of the school system, GCPS has had to close three elementary schools in the past two years, including the one located at the facility where Appellant would like to open its charter school; is poised to consider closing four additional schools in the coming fiscal year; has delayed necessary renovations to one of the two middle schools in the county; and has had to cut funding for student support services, programs of study, textbooks, technology, athletic programs, and other educational opportunities. (See Addendum to Recommendation; Local Bd. Supp. Mem.).

Garrett County has the second largest land mass but the third lowest student population across Maryland. (Local Bd. Supp. Mem.). As such, the school system must spread its resources over a wide geographic area for very few students. This is different from counties that have a similar or slightly larger land mass but a much greater student population or counties with increasing student enrollment.

GCPS is also subject to a wealth formula that ranks it as the 5th wealthiest county in the State due, in part, to high priced vacation homes that skew the statistical average value of real estate in Garrett County. Based on the wealth formula, the State has reduced educational funding to GCPS, as has the Garrett County Government. All of this has left the school system insufficiently compensated relative to the per pupil wealth ranking. *Id.*

There is no denying that the fiscal and enrollment realities in GCPS impact the ability of a school system to deliver quality academic programs and services in a cost effective and efficient manner. There are significant economies of scale that can be achieved by delivering academic programs and services to more students in fewer settings. Under the present circumstances, when GCPS is looking to close schools to achieve better economies of scale, it is our view that the school system is not in a position to reopen a closed school, charter or otherwise.

In light of the totality of circumstances that exists here, it is our view that, in denying the Appellant’s charter school application, it was not illegal for the Superintendent or local board to consider the detrimental fiscal impact of opening a charter school on the school community.

Does the Decision Apply an Illegal Uniqueness Standard?

The Appellant maintains that the decision illegally applied a uniqueness standard based on the following references in the Recommendation in discussing the Coalition of Essential Schools (CES) component of the curriculum:

I have personally visited every school and classroom in the district . . . All schools in the district are guided by principles unique to their schools, that is, principles that are based on beliefs, values, and practices.

Although the philosophy and language of the CES is not used in the strictest sense to define any particular school in Garrett County, the model teaching and the student learning that I have personally witnessed validates that the CES is not innovative to the Garrett County Public Schools. To provide a further example that this component part is not unique to the school system, one of the founders of the Riverside Academy proposal has provided professional development to a school in the Garrett County Public School System on the ten essential guiding principles of the CES for the past three years.

In *Global Gardens Public Charter School, Inc. v. Montgomery County Bd. or Educ.*, MSBE Op. No. 11-01 (2011), we held that use of a uniqueness standard would be illegal in light of the purpose of Maryland’s charter school program to “provide innovative learning opportunities and creative educational approaches to improve the education of students.” See Md. Code Ann., Educ. §9-101. We stated that:

“Unique” means “distinctively characteristic” or “without a like or equal” and “innovative” means having the quality of being new. See Merriam-Webster On-Line Dictionary. A charter school, to be approvable, need not be unique in the school system. Indeed, if that were the case, given the Superintendent’s comment about the multitude of choices in Montgomery County, no charter school could likely ever be approved there. The language of the statute is not so restrictive. It requires a charter school to be innovative, not necessarily “unique.”

Id. at 14.

The Superintendent uses the terms “unique” and “innovative” interchangeably in her Recommendation in describing the fact that the curricular models cited by the Appellant were already utilized by the school system in the same manner as that proposed by the Appellant. We believe her intent was to show that the curricular components were not new and thus, not innovative, given her statement that teachers in the school system have received professional development on the CES component for the past three years.

Alleged Bias Against All Charter Schools

Appellant argues that the reasons given by the local board are mere pretext for its bias against generally establishing charter schools in the County under any circumstances. We disagree. The bias claim relates to the view that the establishment of a charter school in the

County would negatively impact the school system as a whole, a view that the local board adopted in its decision to deny the application. It is feasible for the Superintendent and local board members to hold this view and at the same time objectively review the substantive aspects of the application on the merits alone. Indeed, that is precisely what the Superintendent did in the Recommendation when she explained that even, without considering the financial impact to the school system, she would have rejected the application on the substantive components of the proposal.

Was the Decision a Result of Unlawful Procedure?

Appellant maintains that the decision resulted from unlawful procedure because the application procedures changed during the process and the process was not transparent.

Appellant claims the school system engaged in unlawful procedure due to a change in the application format. The alleged irregularity stems from a July 25, 2012 email from Ms. Baker in which she initially advised the Appellant that either the approved school system application or the State model application could be used in the application process. Several days later, on July 30, 2012, Ms. Baker advised that Appellant should use the school system's application instead due to potential changes in the State model. (Appeal, Ex. 22). The Appellant has not explained why this constitutes illegal procedure or has otherwise impacted this case.

Appellant also maintains that the school system engaged in unlawful procedure with regard to the application due date. On July 30, 2012, Ms. Baker also advised the Appellant that the application was due on November 1 based on an upcoming change to the local board charter application policy, rather than the September 1 deadline that currently existed. (Appeal, Ex. 22). At an August 14, 2012 board meeting, the proposed change to the application process contained a window for submission of applications from October 15 – November 1. It is unclear what illegal procedure Appellant suggests is at play here.

Appellant includes in its list of unlawful procedure some additions the local board made to its policy regarding the application review process. The additions include a flow chart and the process for review by the various committees, use of a scoring rubric, committee recommendations to the superintendent, and the superintendent's recommendation to the local board. While it appears that there was a minor issue with regard to the transmittal of the scoring rubric to the Appellant, this fact does not diminish the review process in any way or render it illegal.

The Appellant also claims that the school system had not turned over certain facility documents to the County government when the school system claimed they had been sent. The local board explained that there was a miscommunication and the documents were sent once it had been made aware the County did not yet have them. Appellant again has not explained how this negatively impacted the decision in this case or constitutes illegal procedure.

The Appellant also objects to the fact that on December 4, 2012, Ms. Baker stated that it was "not in the best interest of the process" for her to provide Appellant any additional clarification on the clarifying questions being asked by the Student Services and Curriculum,

Instruction and Assessment Committees. We do not find this to be illegal. The Appellant submitted its application and each of the topical Committees provided the Appellant with questions on matters that the Committees believed needed further clarification. The school system left it to the Appellant to respond and explain its answers in the best way it could without discussion with school system personnel.

The Appellant believes the application review process was not transparent because it had no knowledge of the Apex Report on the Kitzmiller facility or Dr. Faulkerson's evaluation of the partial Spanish immersion component prior to the Superintendent's Recommendation. These third party consultations were used as part of the application review process. There is no requirement for the school system to present them prior to the Superintendent's recommendation. Appellant could have presented its own expert reviews of the facility and partial Spanish immersion components of its application if it so desired.

Record of Proceedings

The Appellant maintains that the local board failed to submit the full record of proceedings in this case because it did not file with the State Board a transcript of the local board's August 14, 2012 meeting, at which the board discussed and voted to deny the charter school application. COMAR 13A.01.05.03E(1) requires the local board to transmit a record of the local proceedings with the local board's response to the appeal. COMAR 13A.01.05.03E(2)(a), however, requires only that the board provide a transcript of a stenographic record of an evidentiary hearing before the local board or its designee, not of oral argument or other non-evidentiary proceedings. In this case, the local board was not required to provide a transcript because the presentation, discussion and vote on the Appellant's charter school application at the local board's August 14th meeting was not an evidentiary hearing.

Appellant further maintains that the record must contain all the documentary evidence considered in the denial of the application, including all of the emails and memoranda generated prior to the submission of the application. We disagree. The record of local board proceedings in a charter school case does not contain every written communication that was made between school system personnel and the charter school applicant prior to submission of the application. Rather, the record should contain all documents provided to the local board as a whole by the school system in preparation of the board's consideration of the charter school application at the local board's meeting. See *Kurth, et al v. Montgomery County Bd. of Educ.*, MSBE Order No. OR11-12 (2012). We find the record in this case to be complete.

Other Reasons for Denying the Charter School Application

The Appellant challenges the reasonableness of the local board's decision to deny the application.³

³ Because we find that there are legitimate reasons for the denial of Appellant's charter school application, we did not find it necessary to address each and every one of Appellant's arguments or each and every basis of the local board's denial of the charter school application.

Curriculum Issues

The Superintendent based her recommendation to deny the application, in part, on the curriculum component. The charter school curriculum intends to include the following components – Coalition of Essential Schools, Placed-Based Education, Partnership for 21st Century, blended grade classrooms, and partial Spanish immersion. The Recommendation stated that the application’s overall plan did not include concrete plans for a comprehensive and well aligned curriculum scope and sequence, nor a process or template of curriculum development for moving students through a transition to the Common Core. The Recommendation states:

A definitive curriculum plan is absolutely required if students enrolled in Riverside Academy Public Charter School are to achieve content and skill mastery in a cogent and logical manner. There is very little discussion of how the five component parts will be integrated to provide for the organizing elements of a basic curriculum i.e., themes, recurring concepts, and the basics of linking concepts, lessons, units, and courses within grade and across grade levels. A clear design is essential to considering this application especially in light of the fact that the Founders propose the use of a blended grade classroom approach. The five components are presented in isolated parts in the application with student achievement on state assessments cited as one outcome of the proposed plan. A curriculum process and evidence of a proposed curriculum to achieve the stated outcome is absent from the application. In as much, the lack of a clearly designed curriculum process and no evidence of a proposed curriculum raises additional concerns about the ability to provide students with mandated and integrated concepts such as Environmental Literacy (COMAR 13A.04.017), Financial Literacy (COMAR 13A.04.06), Universal Design for Learning (COMAR 13A.03.06), and the School Enrichment Program (COMAR 13A.04.07) requirements.

(Recommendation at 3).

As for the blended classroom approach, it is noteworthy that Kitzmiller Elementary utilized such an approach prior to its closure. In *Martin*, we viewed the elimination of the blended classroom at Kitzmiller as a positive step. The ALJ stated in his proposed decision that it “would improve educational opportunities because students who were forced into multi-grade classrooms at Kitzmiller would benefit from the increased opportunities for services at Broad Ford, which has both the capacity and the personnel to support classes for each grade level.” *Martin*, MSBE Op. No. 12-35 at 9. We concurred and adopted that proposed decision as our own. It seems illogical now to support the reinstatement of an approach that was just eliminated by the Kitzmiller closure. This is particularly so when the Superintendent is of the view that the Appellant’s proposed staffing model fails to support the blended classroom approach.

With regard to the partial Spanish immersion proposal, the Superintendent concluded that the manner in which the program was presented by the Appellant would be detrimental to student learning.⁴ The world language consultant, Dr. Faulkerson, reviewed and evaluated the partial Spanish immersion portion of the application.⁵ He found the proposal to be “extremely problematic”, stating that it was not clearly thought out in terms of instructional practice, teacher certification requirements, program expectations, student language and culture outcomes, valid evaluation tools or parent engagement.

The program is proposed as a phased in partial immersion program in which students in kindergarten will receive one hour per day of regular instruction with Spanish as the primary language, with increases in Spanish instructional time of 10% each year until the goal of 50% of instruction with Spanish as the primary language in grades 6, 7, and 8 is attained. Mr. Faulkner explained:

The model that is presented here for one hour per day for grades K-5 does not fit the definition of partial immersion. It is unclear whether content will be delivered via the study of Spanish for this hour or if the focus will be strictly on Spanish language development....

He also listed concerns about a single classroom teacher delivering instruction in both languages, the lack of specifically stated proficiency targets and valid proficiency assessments, and the lack of planning for students entering the immersion program after the kindergarten year. (Mtn., Ex. 3).

In addressing curriculum issues in *Global Garden*, we said:

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 evidenceIn our view, local school system curriculum staff are the ones who have the day to day experience in curriculum design and developmentTheir view of the adequacy of the applicant’s curriculum carries the great weight of their

⁴ Appellant correctly points out that the Superintendent referred to program as “Spanish immersion” rather than “partial Spanish immersion” in her Recommendation. It is clear, however, that the Superintendent understood the proposal as a partial immersion program.

⁵ Appellant takes issue with the use of a consultant by the school system, claiming that there was no transparency because the consultant report was not made public until the Superintendent issued her recommendation. It was within the Superintendent’s discretion to use an outside expert to give an additional assessment of the curricular proposal. The Appellant was also free to use its own experts to assist with the creation of its application.

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....

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, we give great weight to the Superintendent's assessment of the curriculum, along with the curriculum review committee and the world language consultant.

Maintenance and Operation of Facility

The Appellant has proposed a site-specific charter school to be located at the former Kitzmiller Elementary School. As such, a major concern of the Superintendent's was the risk of exposing students and school personnel to the environmental and safety hazards associated with the ninety year old building. Based on an environmental study of the facility conducted by Apex Companies, LLC on behalf of the school system, John Conaway, a certified hazardous materials manager (CHMM) and senior project manager with Apex, alerted Dr. Baker to the following issues:⁶

- Exposed floor tiles and plaster that may have asbestos containing materials;
- Mold detected throughout the facility, the cause of which was unknown;
- Cracked and peeling lead paint in various parts of the facility; and
- Presence of mercury in some of the thermostats.

The Maintenance and Operations Committee had also inspected the facility and noted safety hazards as a result of exposed radiators in instructional areas, outdated electrical boxes in areas accessible to students, and uneven and cracked sidewalks. The Committee further noted water damage in the exterior walls which had caused deterioration of the brick mortar.

The Kitzmiller facility no longer qualifies for State funding for the necessary renovations. *Martin*, MSBE Op. No. 12-35 at 9, n.28. Thus, given the environmental and building concerns, the Superintendent concluded that the charter school's pre-operational budget which stated there were "no immediate capital needs" was unrealistic, even with the \$10,000 reserve for building enhancements. (*Id.* at 8-9).

We already know that Kitzmiller needs costly infrastructure repairs which will necessitate renovation of some type. See *Martin, et al. v. Garrett County Bd. of Educ., supra*. This much was clear at the time the local board closed Kitzmiller Elementary School. Indeed, the Garrett County Board of Education Site Evaluation Sheet, which was completed in February 2012, assigned Kitzmiller Elementary an overall "fair" score noting that the building

⁶ Although Mr. Conway's written report on the inspection had not been issued at the time of Dr. Wilson's recommendation on the application, Mr. Conaway shared the information with her during a conference call on January 29, 2013, prior to Dr. Wilson issuing the recommendation. The report was available to the local board at the time it made its decision.

infrastructure was very old and all utilities, although safe, needed upgrading. (Application, p.39). The Apex report simply compounds those issues with regard to asbestos, mold, lead paint, and mercury. Given the totality of this information, we believe there are legitimate facility concerns.

The Appellant claims that the Town of Kitzmiller, as the lessor of the property, is responsible for keeping the property maintained in good order and in compliance with the law, and is responsible for capital improvements and repairs as required. (Lease, p.3 §9.01). The Town of Kitzmiller has applied for a Community Development Block Grant funding that it plans to use to identify and provide a plan to rectify any deficiencies in the facility, but no details were provided. There is no clear indication from the Town that it will bear the financial cost of the specific renovations that are necessary to have the facility in useable condition as a school.

Appellant also claims that the mold, lead paint, and mercury thermometer issues are all being remediated, as recommended in the Apex Report, relying on statements in an email from DaVina Griffith, Risk Manager for the Garrett County Office of Human Resources. (Appeal, Ex. 30). Ms. Griffith's email, which was addressed to various Garrett County officials, notified the officials of the facility problems identified by the school system and stated that the "County is discussing measures to address the items noted as timely and cost effectively as possible." The email merely refers to a discussion taking place to address the items noted, but does not provide any firm commitment about the remediating measures or if, how and when they will be performed.

We note that a Head Start program and a public library are located in the Kitzmiller building. For this reason, the facility issues identified through the local board's review process deeply concern us. Although the building is no longer owned by the school system, we hope that the local board shares the Apex report and other facility information with appropriate program personnel to alert them of potential issues.

Human Resources

Among the human resources issues that the Superintendent raised was the Appellant's plan to use the principal as a full time teacher in the first two years of opening. In following years, the principal's teaching function would slightly decrease, beginning during year three with an anticipated enrollment of 65 students.⁷ (Appeal, Ex. 5, Clarifying Responses for Student Services,12/10/12).

The Superintendent concluded that this was unrealistic in terms of having the principal fulfill the administrative demands of operating a school. Although the Appellant points out that the principal at Kitzmiller Elementary School was also a teaching principal, the Kitzmiller principal taught only two hours per day when the school was functioning with approximately 50 students. The local board has explained that no public school in the County has a principal who teaches full time because it makes it too difficult to fulfill the administrative demands of the

⁷ The principal would have two days allotted per month to perform some of the administrative duties.

position, which include administration of the school, attending county-wide meetings, and observing and evaluating all staff.

The Superintendent was also skeptical that the proposal included sufficient staff to carry out the functions necessary to operating a school. There was no real plan for who would be responsible for what in terms of executing school system policy and procedure. In addition, the Appellant planned to rely heavily on volunteers to perform essential job functions, such as office work, classroom assistants, custodians, cafeteria assistants. While school system policy encourages parent volunteers, as the Appellant points out, the Superintendent felt such heavy reliance for vital functions could be unreliable and difficult to implement, especially long term.

Cumulatively, the substantive reasons discussed above, in our view, support the local board's decision to deny the charter school application.

CONCLUSION

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



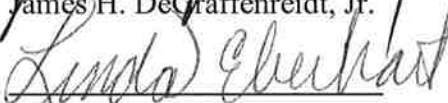
Charlene M. Dukes
President



Mary Kay Finan
Vice President



James H. DeGraffenreidt, Jr.



Linda Eberhart

Absent

S. James Gates, Jr.



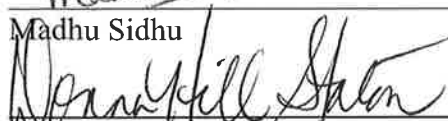
Luisa Montero-Diaz



Sayed M. Naved

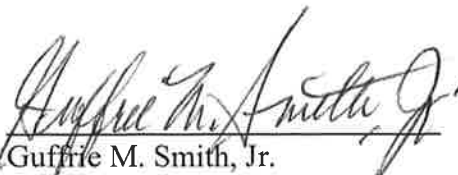


Madhu Sidhu



Donna Hill Staton

September 24, 2013


Guffie M. Smith, Jr.