

EUDAIMONIA FOUNDATION
CORPORATION,

Appellant

v.

BALTIMORE CITY BOARD OF
SCHOOL COMMISSIONERS,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Order No. OR16-01

ORDER

INTRODUCTION

The Appellant, Eudaimonia Foundation Corporation, operator of the Maryland Academy of Technology and Health Services (“MATHS”) public charter school, filed an appeal of the decision of the Baltimore City Board of School Commissioners (“local board”) to non-renew MATHS’ charter and close the school. The local board filed a Motion to Dismiss maintaining that the appeal was premature because the local board had not yet issued a written decision. Appellant opposed the Motion. The local board then filed a Motion for Summary Affirmance stating that on March 18, 2016, the CEO issued a letter which served as the local board’s written decision, thus making the appeal ripe for review. The local board also argued that its decision to non-renew the charter and close the school was not arbitrary, unreasonable or illegal and should be upheld. The Appellant filed an opposition to the motion.

FACTUAL BACKGROUND

During the fall of 2015, the Baltimore City Public School staff conducted a review of the charter school to determine whether its charter should be renewed. The local board sent a notice to the charter schools involved in the renewal process explaining the Board’s processes and procedures if the charter school were recommended for non-renewal. The notice states, in part:

The Board’s final decision to close a charter school will be based on a consideration of renewal rubric findings; application for renewal; data tables for the school; the school effectiveness review; oral and written testimony submitted by the public; and the provisions of the Board’s policy and associated administrative regulation regarding Charter Schools.

...

When the Board makes a final decision whether to close or relocate a school, it will announce its decision at a public meeting and the decision subsequently will be made available in writing. The written decision will include a rationale for the decision(s). Notification of the final decision(s) will be provided to the community(s) in the

geographic attendance area(s) of the school to be closed or relocated and the schools to which students will be reassigned.

An appeal to the Maryland State Board of Education must be submitted in writing within 30 days after the Board's written decision.

(Appeal, Ex. H).

On January 5, 2016, at the local board's special public business meeting, Dr. Gregory E. Thornton, Chief Executive Officer ("CEO") recommended that the local board non-renew MATHS' charter and close the school, effective June 30, 2016, stating as follows:

The recommendation is to non-renew and close the school program at the end of this school year. . . . They received developing on their academic performance, not effective in the climate rating, developing on their financial management and not effective in their governance.

Based on the operator renewal findings, it is the recommendation of the CEO that the contract with Udionia (sic) Foundation to operate [MATHS] be not renewed and that the school program close at the end of the current school year, 2015-16.

(Opposition, Ex.A, 1/5/16 Transcript).

The local board voted to non-renew and close MATHS stating, without more explanation, that its decision was based on "the recommendations and rationale of the CEO, the operator renewal report, the testimony given at public hearings, the contents of the official record and the factors listed in policy IHB and administrative regulation IHB-RA. . . ." *Id.* At the time of the meeting, the local board did not issue a written decision explaining the rationale for closing the school.

On February 4, 2016, Appellant filed this appeal to the State Board.

On February 12, 2016, the school system issued its "School Closures and Building Surplus Final Decisions" report which purports to provide the written decision for the local board's January 5th decisions to close various schools. (Opposition, Ex.C). The report states that the recommendation for MATHS' non-renewal and closure were not addressed in the report because the actions are governed under separate law. *Id.*

On February 14, 2016, Baltimore City Public Schools ("BCPS") hand delivered to MATHS the "Closing Schools Principal Checklist SY 15-16." (Opposition, Ex.D). This is a detailed checklist of the monthly actions that the principal must take to prepare for the school's closing at the end of the 2015-2016 school year. The checklist begins with the principal meeting with the School Closing Project Manager in February to discuss the closing process, with meetings continuing every 4 weeks through June 30th. *Id.* Among other things, it includes notifying all "partners and volunteers" of the school closing and notifying students regarding placement for the next school year. *Id.*

On February 26, 2016, the local board filed a Motion to Dismiss the State Board appeal arguing that the matter was not ripe for review by the State Board because the local board had not yet issued a final written decision to non-renew MATHS' charter and close the school.

During the first week of March 2016, BCPS hand delivered to MATHS a letter dated February 4, 2016, with the subject line "School Closure Process."¹ (Opposition, Ex.B). In the letter, Amanda Ellison, School Closing Project Manager, advised Charles Spain, principal of MATHS, that the local board voted on January 5, 2016 to close MATHS in June 2016. *Id.* The letter included another detailed checklist of tasks that the principal needed to complete for the school closing. *Id.*

On March 14, 2016, representatives of BCPS met with MATHS to discuss the school closing process. BCPS requested that MATHS cancel its leases and provide its financial information to BCPS before the end of March. In addition, MATHS' staff received notice that they would be considered surplus employees. As a result, in late April/early May, MATHS' staff will be attending the Baltimore City Voluntary Transfer Fair at which many staff may obtain new positions and commit to work at new schools for the upcoming school year.

On March 18, 2016, the CEO wrote to the Appellant stating, in full:

As a result of the Operator Renewal Process, on January 5, 2016 the Baltimore City Board of School Commissioners voted not to renew the contract with Eudaimonia Foundation to operate [MATHS]. Accordingly, the contract to operate the school will end on June 30, 2016 and the school will close at the end of the school year.

Staff from the Office of New Initiatives has already reached out to you regarding the next steps in the contract termination and transition process.

You have the right to appeal this decision. If you choose to appeal you must send a letter to the Maryland State Board of Education within 30 days of receipt of this letter, which serves as official notice of the Board's decision. The letter may be hand delivered, mailed, or emailed to the Maryland State Board of Education at the address below

The CEO's letter does not provide any rationale for the local board's decision.

On March 24, 2016, the local board withdrew its Motion to Dismiss stating that its written decision was reflected in the CEO's March 18 letter thereby making the appeal ripe for review. (Local Bd. Mtn. for Summ. Aff.). It filed a Motion for Summary Affirmance maintaining that the local board's decision to non-renew and close the school was not arbitrary, unreasonable or illegal and should be upheld.

¹ Although the letter was dated February 4, MATHS did not receive it by mail or otherwise until BCPS hand-delivered it in March.

STANDARD OF REVIEW

The State Board shall exercise its independent judgment on the record before it in the explanation and interpretation of the public school laws and State Board regulations. COMAR 13A.01.05.05E.

LEGAL ANALYSIS

Once again we are presented with a case from the Baltimore City Board of School Commissioners which fails to follow a rational procedure, fails to follow its own procedural rules, and flies in the face of concepts of fairness. Specifically, on January 5, 2016, the local board voted to non-renew the charter school. It stated that it would issue a written decision. Pursuant to State Board regulations, an appeal shall be taken within “30 calendar days of the decision of the local board...” COMAR 13A01.05.02(B)(1). Thus, on February 4, 2016, the charter school filed its appeal.

On February 26, 2016, the local board filed a Motion to Dismiss the appeal asserting that because there was no written decision of the board, the appeal should be dismissed. Yet, in January and February, the school system began procedures to close the charter school. Almost 2 months later, the CEO sent the March 18, 2016 letter, cited in full in the Factual Background, to the charter school. That purported final decision contained no explanation of the reasons for the decision to non-renew and close the school. In the usual case, as we have done several times in the past with cases from Baltimore City, we would remand the case for a full written decision within 30 days.

We are faced with a classic procedural absurdity – if the decision on January 5, 2016 was not appealable and if the decision of March 18, 2016 must be remanded, as we have done in the past for failure to explain the grounds for the non-renewal, the charter school’s opportunity to appeal and have its case heard on the merits in a timely way is effectively delayed again by several months – all while the closure process goes forward inexorably. Delay piled on delay is inherently unfair to the charter school.

Thus, by this Order, we are immediately referring this case to the Office of Administrative Hearings (OAH) for a hearing on the merits, a resolution of the disputes of fact, and for the issuance of a proposed decision on whether or not the decision of the board was arbitrary, unreasonable, or illegal.

IT IS SO ORDERED.

MARYLAND STATE BOARD OF EDUCATION



Guffrie M. Smith, Jr.
President

April 17, 2016

Date