

ACADEMIC ENRICHMENT AND TRAINING  
ACADEMY,

Appellant

v.

MONTGOMERY COUNTY BOARD  
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 10-48

### OPINION

#### INTRODUCTION

Academic Enrichment Training Academy, Inc. (“AETA”) has filed an appeal asking the State Board to review the decision of the Office of the Deputy Superintendent of Schools denying a request to review AETA’s public charter school application.

#### FACTUAL BACKGROUND

Montgomery County Public Schools’ (“MCPS”) public charter school application process requires that all applications be submitted for consideration by March 1. (Administrative Regulation CFB-RA(IV)(B)(1)).

On or about April 9, 2010, Valerie W. Ross, Executive Director of AETA, submitted a charter school application to establish the Academic Enrichment Training Academy in Montgomery County. Ms. Ross had been in contact with MCPS regarding the charter school application for approximately two years prior to its submission. (Letter of Appeal).

On April 28, 2010, Lori-Christina Webb, Executive Director of the Office of the Deputy Superintendent of School for Montgomery County Public Schools (“MCPS”), advised Ms. Ross that AETA’s charter school application was filed late and would not be accepted for consideration by the school system during the current round of charter school application reviews. Ms. Webb stated as follows:

On April 10, 2010,<sup>1</sup> you sent a letter and charter school application without acknowledgment of the March 1 submission date. Given the continued conversations we have had over the past two years it is not clear why the application was not

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<sup>1</sup> AETA maintains that the application was submitted to MCPS on April 9, 2010 with an erroneously dated cover letter of April 10, 2010. Whether the application was filed on April 9 or April 10 is inconsequential to the State Board’s decision in this case.

submitted on March 1, 2010. MCPS received two applications for charter schools on March 1, 2010 and both applications are currently in the review process. The process is rigorous and requires significant amounts of staff time as well as commitments from external reviewers from the community, all of whom schedule time to review charter proposals and plan for managing their duties based on the March 1 submission date. The review is intensive and, as you know, must be accomplished within 120 calendar days. The March 1 submission date assures that a decision can be made by the end of June, before the end of the school year for 10-month employees and the onset of summer. **Since the process was well underway prior to your request, over a month past the submission date, we cannot accept your request for review at this time.** (emphasis added).

(Webb Letter, 4/28/10). Ms. Webb noted in her letter that MCPS had previously apprised Ms. Ross of the March 1 deadline on several occasions. (*Id.*).

Thereafter, on May 14, 2010, AETA filed an appeal of Ms. Webb's decision with the State Board.

#### ANALYSIS

The local board has filed a Motion to Dismiss the appeal maintaining that it is premature and not ripe for adjudication given that there is no local board decision.

The State Board has previously discussed the process for appealing a decision denying a charter school application. *See Meridian Academy v. Baltimore City Bd. of Sch. Commrs.*, MSBE Op. No. 08-33 (2008); *Sojourner Truth Preparatory Charter School v. Prince George's County Bd. of Educ.*, MSBE Op. No. 08-25 (2008). In those cases, this Board explained that appeals from decisions denying charter school applications are appeals pursuant to §4-205(c) of the Education Article. *See Md. Code Ann., Educ. §9-104(b)*. Under §4-205(c), each local superintendent is empowered to decide all controversies and disputes involving the rules and regulations of the local board of education. The charter school application filing procedures fall within the ambit of such rules and regulations, and this case is about the proper application of those rules in the context of the timely filing of a charter school application.

Ms. Webb, the Executive Director to the Deputy Superintendent of Schools, issued a decision regarding the untimely filing of the charter school application. Presumably, Ms. Webb was the Superintendent's designee, thus an appeal of her decision should have been taken to the local board pursuant to the §4-205 process. Only after the local board decides issues raised in an appeal, does the right to an appeal to the State Board arise. As this Board has previously noted in both the *Meridian Academy* and *Sojourner Truth Preparatory Charter School* cases cited herein, the view of the local board as to the immutability of the filing deadline and its rationale for the application cycle time frames would have been necessary in order for this Board to conduct an informed review of the timeliness issue.

AETA argues that the *Meridian Academy* and *Sojourner Truth Preparatory Charter School* cases do not apply because Ms. Webb's determination was not a denial of a charter school application but merely a deferral of the application as evidenced by the language that the school system "cannot accept [AETA's] request for review at this time." We disagree. Ms. Webb's determination was a decision concerning the procedural aspects of the charter school application process, albeit not a decision on the merits of the application itself. In fact, the language was nearly identical to that used to communicate the untimeliness of the application submission in the *Sojourner Truth Preparatory Charter School* case. (MSBE Op. No. 08-25 at 2). Ms. Webb's letter clearly conveys the point that AETA's application was untimely filed and would not be considered in the current round of the charter school application process. This effectively results in the denial of the application on procedural grounds.

AETA also maintains that it made efforts to "seek redress within the Montgomery County Board of Education structure and has received no response." (Reply to Mtn. to Dismiss, p.2). On May 14, 2010, counsel for AETA sent the local Superintendent a letter with a copy of AETA's appeal to the State Board, stating that AETA would be willing to withdraw the appeal if "Montgomery County would agree to begin reviewing AETA's charter school application immediately . . . ." (Robinson Letter, attached to AETA's Reply). AETA's counsel followed up that letter with calls to the local Superintendent's office and the Deputy Superintendent's office "reiterating AETA's willingness to withdraw the appeal if MCPS would agree to review AETA's application . . . ." (Robinson E-mail, 6/25/10). AETA's counsel also contacted counsel for the local board, restating the offer to withdraw the State Board appeal if the local board would agree to review the application. (*Id.*). None of AETA's efforts described here occurred prior to the time it filed its appeal to the State Board. Nor do the communications seek an appeal of Ms. Webb's decision regarding the timeliness of AETA's filing of the charter school application. Rather, the communications explicitly seek review of the merits of the charter school application in exchange for withdrawing AETA's appeal to the State Board.

AETA argues that the State Board's decisions in *City Neighbors Charter School v. Baltimore City Board of School Commissioners*, MSBE Op. No. 04-38 (2004) and *Potomac Charter School v. Prince George's County Board of Education*, MSBE Op. No. 04-32 (2004) require the local board in this case to render a decision on the merits of AETA's application. As explained below, AETA's reliance on these cases is misplaced.

In *Potomac Charter School*, the local board returned the appellant's charter school application without considering it because the school system was still in the process of developing an application form and adopting a procedure to review and evaluate applications. The local board indicated that it was not yet accepting any charter school proposals until it finalized such a process. The State Board found as follows:

As noted above, §9-104(a) [of the Education Article] mandates that a local board review a charter school application and render a decision on the application within 120 days of its receipt. . . . We believe the intent of the legislation was for local boards to then

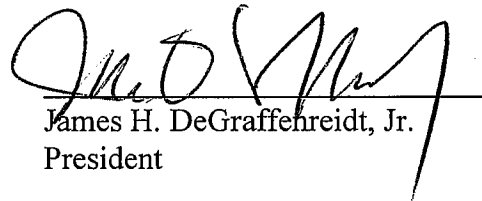
proceed with all deliberate speed in receiving and reviewing charter school applications. In the case at hand we find that delaying the process for an additional ten months for consideration of applications is not in compliance with the intent of the Maryland charter school law.

Likewise, in *City Neighbors*, the school system deferred consideration of the appellant's charter school application until a later date because the Baltimore City Board of School Commissioners had determined that it was not going receive any applications for the establishment of charter schools until September of 2004. The State Board again explained that the charter school law went into effect in July of 2003, and that school systems could not defer the consideration of charter school applications until a future date.

Both *Potomac Charter School* and *City Neighbors* were decided soon after the enactment of the charter school law. This was a time when school systems were still developing their policies and procedures for processing and evaluating charter school applications. These two cases merely clarified that school systems could not unreasonably delay the review of charter school applications. This is not a case of "unreasonable delay," but rather a case about the applicability of announced deadlines.

#### CONCLUSION

For these reasons, we dismiss the appeal.


  
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October 26, 2010