

GLOBAL GARDEN PUBLIC
CHARTER SCHOOL,

Appellant

v.

MONTGOMERY COUNTY BOARD OF
EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 11-42

OPINION

INTRODUCTION

Global Garden Public Charter School, Inc. (Global Garden) challenges the decision of the Montgomery County Board of Education (local board) denying its application to establish a public charter school in Montgomery County. The local board filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Global Garden filed an opposition to the motion and the local board filed a response.

FACTUAL BACKGROUND

Global Garden submitted its 350 page application to establish a public charter school on March 1, 2010. The application describes an inquiry-based International Baccalaureate Primary Years Program (IB PYP) with a foreign language component. The proposal is for a K -- 8 school, that would begin with grades K – 5 (primary years) and later add grades 6 – 8 (middle years), with a maximum population of 420 students. The application proposes a year round, extended day program. A major feature of the program is foreign language instruction in Spanish in grades K – 5 and Arabic beginning in grade 6. (Appeal, Ex. D-1, Application).

The Montgomery County Public Schools (MCPS) reviewed the application using a two phase process. During the first phase of the process, a non-substantive technical review occurs. Technical review focuses on the technical completion of the application such as whether the application was timely filed and contained all the necessary components. MCPS Regulation CFB-RA (IV)(C)(1). MCPS found Global Garden's application to be technically complete and it advanced to the next phase of the review process. (Appeal, Ex. E; Local Bd. Motion, Affidavit of Lori-Christina Webb).

Phase two of the process is the substantive review which consists of review by an internal and external review panel. *See* MCPS Regulation CFB-RA (IV)(C)(2) & (3). If the MCPS internal reviewers determine that the application meets criteria in all areas evaluated, the external review is initiated. MCPS Regulation CFB-RA(IV)(C)(2)(e). During external review, a group of reviewers external to MCPS, who are either experts in the field of education or key stakeholders in the community, review the application and make recommendations to the deputy superintendent on whether the application should be approved or not. MCPS Regulation CFB-RA (IV)(C)(3). In this case, it is undisputed that the internal and external reviews occurred simultaneously.

As part of the MCPS application review process, all reviewers complete a set of review sheets on the specific criteria that are required to be addressed in the application. Those criteria are set forth in the MCPS Public Charter School Application document and consist of academic design, governance, facilities and finance, and operations. (MSBE Op. No. 11-01). Reviewers rate each area as either “Completely meets criteria”, “Partially meets criteria”, or “Does not meet criteria”. The review sheets also advise reviewers of factors to look for in the application in order to help make this determination. (*Id.*). For example, for academic design, reviewers consider the following factors:

- Clearly articulated vision statement
- Consistency among mission, philosophy, goals, and objectives
- Curricular program leading to improved educational outcomes
- Unique concept design, techniques, and/or practices contrasted to existing programs
- Target population description
- Service provisions to accommodate students with disabilities
- Service provisions to accommodate English Language Learners
- Grading, promotion and retention policy details
- Compliance plan for local/state assessment programs
- Corrective action plan for students below achievement standards
- Strategies to assess and analyze student interests and needs
- Procedures for fulfillment of all prescribed federal, state, and local student requirements

(*Id.*). These factors correlate to the review criteria set forth in the MCPS Public Charter School Application Document. There is also space on the review sheets for the reviewers to note specific strengths and deficiencies in the application. Deficiencies must be recorded for ratings other than “Completely meets criteria”. Reviewers completed these review sheets for the Global Garden application. (*Id.*).

On May 6, 2010, representatives of Global Garden attended a meeting with MCPS reviewers to respond to questions based on the application review. The meeting lasted approximately 45 minutes and consisted of a 15 minute presentation by Global Garden representatives and a 30 minute question and answer session between those representatives and

the reviewers. Thereafter, on May 13, 2010, Global Garden submitted a supplemental explanation in response to questions posed by reviewers at the meeting. (*Id.*).

The reviewers reconvened on May 14, 2010 to discuss the application. The group recommended that the application be denied. (Local Bd. Motion, Affidavit of Lori-Christina Webb).

On June 3, 2010, Global garden learned the local Superintendent was recommending that the local board not approve its application. On June 7, 2010, Global Garden submitted a letter to the local board asking that it direct MCPS leadership to initiate work with the applicant by providing feedback on the application and reasonable technical assistance for revision if it decided not to approve the application. (MSBE Op. No. 11-01).

In a June 8, 2010 memorandum, the local Superintendent recommended that the local board accept the recommendation of the review panel and deny Global Garden's application. The memorandum provided the bases for the recommendation, pointing out deficiencies noted by the review panel related to Global Garden's academic design, as well as other deficiencies related to governance, facilities and operations. (Local Bd. Motion, Def. Ex. 1).

At the local board's June 8, 2010 meeting, Global Garden made a brief presentation to the local board prior to its consideration of the application. During that presentation, Global Garden's representative stated that Global Garden had accepted the Superintendent's recommendation. The representative asked that the local board not approve the application and instead leave it pending for Global Garden to receive feedback and then provide further refinement of its application prior to the local board making a final decision. (MSBE Op. No. 11-01).

Thereafter, the Superintendent made opening statements introducing Global Garden's application for review by the board. MCPS staff made a presentation on the review of the application and noted, in particular, the review panel's concerns about Global Garden's academic design. They addressed concerns including the lack of specificity about the skills and knowledge expected to be addressed at each grade level in each content; significant confusion in the design of the foreign language instruction; lack of detail about how the emphasis on inquiry, discovery and authenticity would be operationalized; and a lack of understanding of the complexities of integrating the curriculum. There were concerns about the available space of the potential facilities which left reviewers questioning whether Global Garden had a full understanding of the facility requirements necessary to operate a school. There were also concerns about whether the budget was adequate for proposed program. For example, reviewers found insufficient funding allotted for special education based on the size and scope of the school. Reviewers also questioned whether sufficient funds were available in the budget for staff development given the elaborate academic design of the school program. The Superintendent recommended that the board reject Global Garden's application. (*Id.*).

Several members of the board then spoke about their concerns with the application prior to the board taking a vote. The local board unanimously voted to reject Global Garden's application in Resolution No. 312-10.

Global Garden appealed the local board's decision to the State Board. On January 25, 2011, the State Board issued MSBE Opinion No. 11-01 reversing and remanding the local board's decision based on the local board's failure to provide a sufficient rationale for its decision.¹ We stated in that decision that the local board "may reconsider its decision in light of the rulings we have made in this case." (*Id.*, p.15).

Thereafter, the local board sought clarification of whether MSBE Opinion No. 11-01 required the local board to review the application anew. The State Board President responded that the purpose of the remand was to have the local board provide a clear and legally supportable rationale for its decision. (Local Bd. Motion, Def. Ex. 3). In addition, the State Board declined Global Garden's request to reconsider the decision. The State Board President explained: "The purpose of the remand was to require the local board to provide a legally supportable rationale for its decision or, alternatively, to grant the charter if its review reveals that there is no legally supportable rationale for denying the charter." He also acknowledged that Global Garden could simultaneously choose to submit an application to participate in the next round of the MCPS charter school application review. (Local Bd. Motion, Def. Ex. 4).

On March 28, 2011, the local board president issued a memorandum to the local board summarizing concerns with Global Garden's application and presenting a resolution for the local board's consideration at its meeting that day. (Appeal, Ex. E). When its charter school application came up for discussion at the meeting, Global Garden was not permitted the opportunity to address the local board or respond to statements made by MCPS staff during the meeting. (Appeal, p.5). The local board voted to deny the charter school application.² The local board also directed school system staff to offer Global Garden meaningful technical assistance and substantive feedback on the application, and allow Global Garden a one month extension of time to submit a revised charter school application. (Appeal, Ex. A).

Pursuant to the local board's resolution, school system staff offered to meet with Global Garden to provide further technical assistance and feedback. That meeting took place on April 7, 2011.³ This assistance was in addition to the technical assistance made available for all charter

¹ Global Garden has sought judicial review of the State Board's decision.

² Two local board members dissented.

³ School system representatives included Elizabeth Brown, Director of Department of Curriculum and Instruction; Sean Gallagher, Director of Department of Facilities Management; Stephanie Williams, Director of Shared Accountability; Marshall Spatz, Director of Department of Management, Budget and Planning; Todd Watkins, Director of transportation Central Administration; Lori-Christina Webb, Executive Director of Office of the Deputy Superintendent; and Roger Pisha, Supervisor of Shared Accountability. School staff also had a

school applicants who could attend one of the three technical assistance meetings held in February and March of 2011. (Local Bd. Motion, p. 7). Global Garden did not attend any of those sessions. Global Garden did not submit a new charter school application.

Global Garden filed this appeal to the State Board.

STANDARD OF REVIEW

Global Garden again makes the argument, as it did in its prior appeal, that the State Board should use an independent judgment standard in its review of the local board's decision in this case. As we explained in *Global Garden v. Montgomery County Bd. of Educ.*, MSBE Op. No. 11-01 (2011), and the cases cited therein, in appeals involving a local board's denial of a public charter school application, this Board uses the standard of review for cases and controversies involving the rules and regulations of the local board. Under that standard, the decision of the local board is considered *prima facie* correct and the State Board will not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable or illegal. See COMAR 13A.01.05.05A.

To the extent, however, that the Appellant challenges the legality of the MCPS policy and regulation 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.

ANALYSIS

Re-Initiation of Evaluation Process

Global Garden argues that the local board's decision should be reversed because the local board provided simultaneous internal and external review of the application in violation of the charter school policy and because it failed to "provide any evaluation, technical assistance, or other process" between its June 8, 2010 decision and its March 28, 2011 decision. (Appeal, p.9).

The State Board has already reviewed the process utilized by the local board and did not find that the problems that arose required the local board to reinitiate the entire charter school application review process from the beginning. Because the parties disagreed over what was required by the remand in this regard, the local board requested additional clarification from the State Board shortly after the issuance of Opinion No. 11-01.

On February 2, 2011, on behalf of the State Board, the Board President responded to the local board's request as follows:

You ask whether the State Board reversed and remanded [the] charter school cases for the purpose of a new review of the prior applications

subsequent conference call with Global Garden's representative to discuss food service issues.

or for the purpose of getting an explanation of the basis for the local board's decision. The purpose of the State Board decision was to require the local board to provide a clear, legally supportable rationale for its decision to deny the charter school applications.

(Motion, Ex. 3). Additionally, in response to a request for reconsideration filed by Global Garden, in a letter dated February 24, 2011, the State Board President stated the following:

The State Board considered your request, on behalf of Global Garden, for reconsideration of the Global Garden decision. You asked that the State Board either order the Montgomery County Board of Education to grant the charter or direct that local board to re-initiate the review process. The State Board declined to reconsider its decision.

As explained in our letter of February 2, 2011, the State Board's decision to reverse and remand the Global Garden's case was based on the fact that the local board had provided no rationale for its decision to deny the charter. The purpose of the remand was to require the local board to provide a legally supportable rationale for its decision or, to grant the charter if its review reveals that there is no legally supportable rationale for denying the charter.

Meanwhile, Global Garden may choose to submit an application to participate in the next round of charter school application review in Montgomery County. We, of course, encourage the school system staff and the local board to engage in a meaningful dialogue with Global Garden about its application.

(Local Bd. Motion, Ex. 4). Having not found a basis to restart the evaluation process anew in our prior decision, we decline to do so here.

We note that through our decision in the prior case we hoped to provide future guidance for MCPS and other school systems regarding our view of the collaborative process we now envision in the charter school application process. We stated:

The case before us presents us with the opportunity to examine the issue of technical assistance and application feedback given the evolution of public charter schools since the Public Charter School statute was first enacted in Maryland, and the various application and evaluation processes used in the different jurisdictions. This case, as others did before it, allows us to develop sound practices and shape the public charter school process for the better. We are more aware now of the dialogue and collaboration needed between applicants and local school systems during the application process to achieve the goal of having viable charter schools in Maryland.

(Opinion No. 11-01, p. 10).

We also note that the local board offered to provide Global Garden with additional technical assistance and to extend the filing deadline for the next round of charter school application review so that Global Garden could revise its application. Moreover, Global Garden already had the benefit of the explanation of the deficiencies identified by the local board in its April 21, 2011 decision and detailed through the local board's submissions to the State Board in the prior case.⁴

Curriculum Issues

This case presents yet another instance in which the parties disagree on the adequacy of the academic design and instructional methods of a school. A similar situation presented itself in *Friends of the Bay Arts and Science Public Charter School v. Calvert County Board of Education*, MSBE Op. No. 08-21, in which the local board identified problems with the proposed curriculum and the applicant rebutted each concern. The State Board gave deference to the judgment of the school system's curriculum staff and found that their concerns provided a reasonable basis for denying the application. As this Board stated:

This case presents a classic dispute. Friends says the curriculum is sufficient; the local board says it is not. In the past, we have been presented with disputes about the adequacy of a charter school applicant's curriculum and resolving those disputes is admittedly difficult. 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 of review applicable in this case. The Board will not substitute its judgment for that of the local board's unless the local board's decision is arbitrary – that is, unsupported by the evidence. . . . In our view, local school system curriculum staff are the ones who have the day to day experience in curriculum design and development in alignment with the VSC. Their view of the adequacy of the applicant's curriculum carries the great weight of their expertise. . . [W]e give greater weight to the assessment of the local board in this

⁴ Global Garden asserts that there was no point to resubmission of its application because the school system is "hostile to charter school applicants" and it "is unclear what 'remedy' will be received through reapplication. (Global Garden Reply, p. 2 n.2). Yet MCPS has given approval to the revised application for the Community Montessori Public Charter School subject to successful negotiation of a charter between MCPS and Crossway Community. (Local Bd. Response, p.3).

area than we do to the charter school's own assessment of its curriculum alignment.

Friends of the Bay Art and Science Pub. Charter Sch. v. Calvert County Bd. of Educ., MSBE Op. No. 08-21, p. 13. We believe this notion applies not just to the specific curriculum to be used at a school but to the other aspects of the school's academic design and instructional methods as well. Therefore, we address here the curricular design issues in dispute in this case noting that it is Global Garden's burden to show that the local board was arbitrary and unreasonable in its decision-making.

Inadequate Curriculum

Global Garden argues that the local board's decision was premised on an erroneous application of review criteria because it required Global Garden to have a finalized and complete curricular program at the time of application or approval when that is not the standard required by MCPS policy.

It is our view that the local board's denial was not based on the fact that Global Garden had failed to submit a finalized curriculum. The MCPS policy does not require the applicant to provide a finalized curricular program at the time of application. It requires that the applicant provide "specific plans and strategies for developing and delivering educational programs." CFB(C)(11)(a)(3); CFB-RA(IV)(B)(2)(d). The MCPS Public Charter School Application document explains to applicants what is necessary to fulfill this requirement. It advises applicants to describe the curriculum that will be used, including the objectives, content, and skills to be taught in the different subject areas at each grade level and in each course. It asks for an outline of the instructional and assessment methods and strategies that will be employed to enhance student learning, monitor progress, assess performance, and inform instruction. It requests an explanation of how the curriculum is aligned with the Maryland Content Standards and the VSC. (MSBE Op. No. 11-01, p. 12). Such a requirement does not violate the MCPS charter school policy.

Global Garden asserts that the information it submitted is sufficient to meet the standard required by the MCPS policy. It asserts that having accepted the Maryland State Curriculum's detailed performance standards, indicators, and objectives, it did not believe there was an option or necessity to create its own subtopics, indicators or objectives. The local board, however, was looking for something more specific. It had serious concerns about the lack of clarity regarding what was going to be offered and why, and what skills would be taught in the different subject areas at each grade level. As stated in the local board's decision:

Global Garden relied on State Curriculum standards, but only to describe curricular goals. The application submitted by Global Garden still lacks information about the specific skills and knowledge that would be taught and learned at each grade level. Instead, the application reflects a loosely constructed listing of state content standards, which are identical for each grade Pre-K – 8, without a plan

for when and how staff would complete the curricular framework for all content areas that contains a clear progression of specific grade-level goals. The specificity that is necessary for performance standards is missing in the Global Garden academic design so it is impossible to determine the progression of concepts and skills that will be taught and learned from one grade level to the next.

(Local Bd. Decision, p. 5; *See also* Local Bd. Motion, Affidavit of Elizabeth R. Brown). The local board concluded that the absence of sufficient curricular information alone was such a significant flaw in the application that, standing alone, it warranted denial of the application. (Local Bd. Decision, p.5).

IB PYP Program of Inquiry

Global Garden's application includes a PYP draft Program of Inquiry to be used in the school's first year of operation and indicates that its teachers will develop the curriculum. (Appeal, Ex. D-1, Application and Appendix AD1). Global Garden's expectation is that its teachers will have completed the required training and will have written the Program of Inquiry by the summer after the first year of operation.

The local board questions what would be taught during the first year of operation given the expectation that the training and writing of the program would not be completed before the year was over. Although Global Garden believes that, in making this assessment, the reviewers and the local board failed to take its draft Program of Inquiry into consideration, such is not the case. As stated by Ms. Elizabeth R. Brown, Director of the Department of Curriculum and Instruction:

MCPS acknowledges the work of Global Garden in crafting an initial PYP draft Program of Inquiry. This starting point can be used by teachers, once they are hired, to help create a structure for an inquiry-based model of instruction. However, lacking in the Global Garden plan is *when* a curriculum framework will be developed that clarifies for teachers how the state standards documents are to be applied and how to assist children in achieving mastery of the stated objectives and indicators.

(Local Bd. Motion, Affidavit of Elizabeth R. Brown)(Emphasis included).

The local board had serious concerns about the time frame for developing the proposed program, finding that Global Garden's proposed schedule for completion was "overly optimistic." The Superintendent explained in his Memorandum that the process for developing an IB curriculum is very lengthy, requiring many hours of collaboration and discussion, and that the IB documentation recommends using existing curriculum documents to assist in the development. (Local Bd. Motion, Def. Ex. 1, p.5). Concurring with the Superintendent's point of view, the local board stated:

Without an existing curriculum, with the necessary grade level specificity, the task of creating the Program of Inquiry will be even more daunting. Experienced school staff note that the IB organization timeline is three and a half years and, while concentrated effort may shorten that expected timeline, we are highly skeptical that this can be accomplished by Global Garden in one year, particularly when its teachers have other duties. Under the Global Garden proposal, teachers will be teaching students, planning lessons for ongoing instruction, and undergoing IB training. At the same time, they will be responsible for developing the IB PYP curriculum. Also, it is not clear how teachers will provide instruction during the summer while at the same time they are receiving training and developing a curriculum.

(Local Bd. Decision, p. 6. *See also* Local Bd. Motion, Affidavit of Elizabeth R. Brown.)

Integrated Curriculum

The local board expressed concern about Global Garden's ability to have staff develop lesson plans for an integrated curriculum in the first year of the school's operation while staff is also receiving IB training and developing an IB curriculum. This concern was intensified by the local board's view that Global Garden had failed to provide a "curricular framework for all content areas that contains a clear progression of specific grade-level goals." The board explained that the work on integration of the curriculum cannot happen until a curricular framework is in place. (Local Bd. Decision, p.7; Local Bd. Motion, Affidavit of Elizabeth R. Brown).

Global Garden's response to the integrated curriculum issue is to highlight the fact that MCPS has curricular programs based on the integrated instructional model. (Technical Addendum, p.5). The local board did not object to Global Garden's use of the approach, rather it questioned Global Garden's ability to carry it out. The local board did not believe that the general description of the school's academic design provided sufficient information about how specific curricular outcomes would be accomplished to ensure successful integration.

Foreign Language Instruction

The local board found Global Garden's explanation of the approach to be used for foreign language instruction to be confusing and ambiguous. There was a great deal of discussion in the local board's decision and supporting documents about how this lack of clarity left the reviewers and the local board questioning whether Global Garden had an adequate understanding of foreign language instruction, and whether Global Garden could meet the needs of native and non-native speakers of the target language, including native speakers of languages other than Spanish and Arabic who require English instruction. (Local Bd. Decision, p.7; Local Bd. Motion, Affidavit of Elizabeth R. Brown). Global Garden maintains that its proposal for foreign language is clear, but provides little more here than its disagreement with the local board's assessment. (Appeal, p.10). Something more is required for Global Garden to satisfy its burden.

What we find more significant than the concerns about clarity are the local board's methodological concerns with the proposal to pair instruction in Spanish during elementary school with instruction in Arabic during middle school. The board explained that the compiling of the two languages is not complimentary because Arabic is a complex language that uses an alphabet different from Spanish or English. Typically, if a student is to receive instruction in different languages before reaching proficiency, it is better to stay with a language on similar sound, symbol and syntactic structures. This would not be the case with the introduction of Arabic. In addition, the local board explained that the plan to teach Spanish in the elementary years and Arabic in middle school years runs counter to the IB program philosophy, which emphasizes reaching proficiency in one language. (Local Bd. Decision, p.8).

In considering all the curricular issues we find that Global Garden has not met its burden of showing that the local board's decision is arbitrary, unreasonable or illegal. When a party takes an appeal to the State Board, procedurally it is their burden to show that the local board's decision should be reversed. It is up to the charter school applicant to come forward with evidence to contest what is presented by the local board. It is not sufficient for a charter school to simply assert that the school system's experts are incorrect. The State Board will not assume Global Garden's burden here and make its case for it.

On the other hand, the local board has done what we have asked it to do. It has provided a rational explanation of its decision to deny Global Garden's charter school application. The local board has supported its decision through the affidavit of its curriculum experts, Ms. Brown, MCPS Director of the Department of Curriculum and Instruction, and Ms. Williams, retired Director of the Division of Accelerated and Enriched Instruction who has special expertise in instruction and educational programming.⁵ As stated above, we give great weight to this assessment, particularly in light of the fact that Global Garden has not sufficiently countered the local board's evidence.⁶

⁵ Global Garden maintains that the local board has gone outside of the record in this case to make its arguments, relying heavily on affidavits rather than the record that existed before the local board. In light of this, Global Garden requests the opportunity to conduct discovery and possibly depose the affiants. The local board filed a Motion for Summary Affirmance. The State Board appeal procedures require that a memorandum in support of or in opposition to a motion for summary affirmance contain any supporting documents, exhibits, and affidavits. COMAR 13A.01.05.03D(2). The local board submitted what was required by regulation. Global Garden was entitled to do the same and could have submitted the supporting documents, exhibits, and affidavits it desired.

⁶ The local board also addressed staffing issues and facility issues. Upon review, we conclude that neither would be a weighty factor in denying the application.

Petition for Declaratory Rulings

Global Garden asks the State Board to issue declaratory rulings invalidating various provisions of the local board's charter school policy, claiming they are contrary to the Maryland public charter school law, §§9-101, *et seq.* of the Education Article, and contrary to sound educational policy.⁷ Global Garden believes such a ruling is necessary to change the approach of the majority of the local board who "oppose the creation of charter schools in Montgomery County" and to "allow for the possibility of the creation and success of charter schools" there. (Appeal, p.16).

State Board regulations allow a party to file a petition for a declaratory ruling requesting an interpretation of a public school law or regulation of the State Board that is material to an existing case or controversy. COMAR 13A.01.05.02D.

Application Cycle Deadline

Global Garden seeks a declaratory ruling that MCPS's April 1 filing requirement runs afoul of §9-104(a) of the Education Article which requires that a local board review an application and render a decision within 120 days of receipt of the application. It argues that the statute precludes a local board from setting a filing deadline.

In our view, there is nothing in the charter school law that precludes a local school system from establishing a review schedule with time frames for submission of the application. The law merely states that the application shall be submitted to a county board and the county board shall review it within a certain time frame. Establishing a schedule with a deadline for application submission makes sense for planning and review purposes.⁸

Financial Impact on MCPS Budget

Global Garden asks the State Board to declare that the following provisions of the MCPS charter school policy violate the Maryland public charter school law:

⁷ MCPS revised its policies at CFB-RA – Public Charter Schools in January, 2011, just prior to the publication of Opinion No. 11-01.

⁸ Global Garden cites *City Neighbors Charter School v. Baltimore City Board of School Commissioners*, MSBE Op. No. 04-38, as generally prohibiting a local board from deferring consideration of an application for a public charter school until a future date. Global Garden's reliance on *City Neighbors* is misplaced. 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 to receive any applications for the establishment of charter schools until September of 2004. The State Board explained that the charter school law went into effect in July of 2003, and that the school system could not arbitrarily defer the consideration of charter school applications for more than a year after the enactment of the law.

- The superintendent will submit to the Board of Education a fiscal impact statement as a component of his/her recommendation. Policy CFB(C)(6);
- All implementation and final contracting is contingent upon the Board's final action on the MCPS budget. Board of Education approval of an application is a commitment to request appropriations from funding agencies. All implementation and final contracting is contingent upon adequate financial resources. Policy CFB(C)(7);
- Public charter school decisions must not have an unduly detrimental impact on other MCPS public schools. Policy CFB(C)(10)(h).

The local board maintains that none of these provisions are contrary to law. The board argues that it is not impermissible to seek a fiscal impact statement or to assess the impact of a proposed school on other schools in the school system. Indeed, the local board maintains that "final action on the budget is a necessary precursor to the opening of any new school and is of particular concern if an applicant seeks any start up funds from the public school system." (Motion, p. 21). The local board also claims that these provisions do not give priority to MCPS spending over any potential charter school spending, as Global Garden suggests.

These policy provisions are extremely troublesome as they appear to violate both the spirit and intent of the charter school law. Charter schools are public schools that are part of the local school system and serve the school system's students. *See Md. Code Ann., Educ. §9-201*. If the provisions were applied in this case, we would have grave concern about the legality of the local board's decision. But the local board has made clear that these provisions were not applied in this case and did not impact the local board's decision. As stated by the local board:

Reviewers were explicitly instructed not to consider cost as a factor. It was not a factor that was considered by the reviewers, was not a factor in the recommendation of the reviewers, was not a factor in the memorandum of June 8, 2010, explaining and conveying the Superintendent's recommendation, and is not a factor in this case.

(Local Bd. Decision, p. 3, n.4). Thus, this issue is not a part of this case and controversy and there is no basis to issue a declaratory ruling.

Evidence of Utilization of MCPS Input on Operations

Global Garden seeks a declaration on the legality of the MCPS requirement that an approved charter school must include in its annual report "[e]vidence of utilization of MCPS input on the operation of the charter school" for the school to remain in operation. (CFB-RA(IV)(F)(1)(b)(6)). Global Garden believes that such a requirement crosses the line between having oversight responsibilities for a charter school and requiring the charter school to "actually utilize all MCPS input" such that MCPS is the "charter school operator in every meaningful


way.” Global Garden also objects to MCPS Charter Guidance that states that “charter schools can expect to have the same oversight from the Board of Education as other schools in the school system, with the exception of any specific waivers approved by the Board of Education as part of the charter,” finding that this is unreasonable and inconsistent with the charter school approach. (Appeal, p.18).


We note that the Maryland public charter school law makes it clear that a public charter school is a public school that operates under the supervision of the public chartering authority from which its charter is granted. The public charter school is also subject to the same laws and regulations governing other public schools unless those provisions have been waived. Md. Code Ann., Educ. §9-102(11). We decline to issue the declaratory ruling Global Garden seeks.

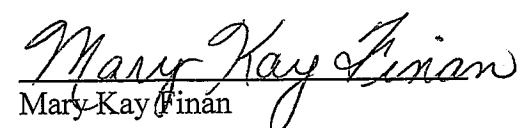
CONCLUSION

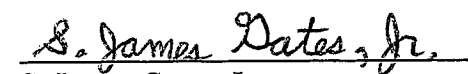
For the reasons described above, we find that the local board’s decision was not arbitrary, unreasonable or illegal. We therefore affirm the local board’s denial of Global Garden’s public charter school application. There is nothing in our decision that would preclude Global Garden from submitting a charter school application in the future in accordance with MCPS charter school application cycles.

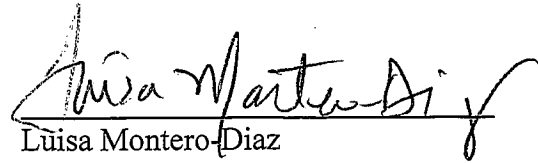
As for Global Garden’s request for a declaratory ruling, we find that § 9-104(a) of the Education Article does not preclude a local school system from establishing a charter school review cycle with established deadlines for the filing of an application. Moreover, we find no basis to issue a declaratory ruling on whether the Maryland public charter school law prohibits the MCPS charter school policy provisions related to finances as those matters are not part of this case and controversy. Finally, we find that MCPS oversight of the charter school would not violate the charter school law.


James H. DeGraffenreidt, Jr.
President



Charlene M. Dukes
Vice President

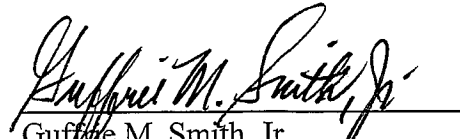

Mary Kay Finan


S. James Gates, Jr.



Luisa Montero-Diaz


Sayed M. Naved


Madhu Sidhu


Guffie M. Smith, Jr.


Donna Hill Stator


Ivan C.A. Walks

DISSENT
Kate Walsh

September 27, 2011