

THE DAVINCI  
COLLABORATIVE, LTD.,

Appellant

v.

BALTIMORE CITY BOARD  
OF SCHOOL  
COMMISSIONERS

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 18-34

## OPINION

### INTRODUCTION

The Baltimore City Board of School Commissioners (“local board”) denied The DaVinci Collaborative, Ltd.’s (“DVC”) charter school application on June 12, 2018 and sent a letter to DVC with its reasons for denial on July 10, 2018. DVC appealed the denial to the State Board. The local board filed a Motion for Summary Affirmance to which DVC responded after which the local board replied.

### FACTUAL BACKGROUND

Before setting forth the facts of this case, it may be helpful to explain the review process that the Baltimore City school system uses to evaluate charter school applications. Step one in that process is a technical review conducted by the Office of New Initiatives to check that the application is complete. (Motion, Ex. 1, ¶5). If the application passes technical review, it is then reviewed by the Advisory Board.

According to the local board, the Advisory Board is a collection of stakeholders within the district and the community tasked with providing leadership and vision to identify innovations in instruction, curriculum, management and structure that positively impact student achievement. (Motion, Ex. 1, ¶6). During the charter school application process, the Advisory Board’s responsibilities include communicating with the CEO about public charter schools, overseeing the process of issuing the charter application/request for proposals, soliciting application/proposals, and evaluating proposals to make recommendations about potential public charter schools to the CEO. (Motion, Ex. 1, ¶6; Ex. 2). The Advisory Board not only reviews the application but interviews the applicant. (Motion, Ex.1, ¶11). It uses a rubric that assigns ratings such as exemplary, satisfactory, less than satisfactory, and unsatisfactory. (*Id.* ¶11).

According to the local board, each rating is assigned a numeric value that “correlates to the quality of the response and the detail each applicant was able to provide within the answer to the questions posed in the application, and during the interview.” (Motion at 4). However, according to the local board, the rubric used in this process is not determinative of whether the

application is approved or denied. No particular score equates to a specific recommendation. The rubrics are used “to guide the deliberative discussions around strengths and weaknesses of the application and interview.” (*Id.*). Thereafter, group worksheets are prepared to summarize the rubrics and the discussion. The worksheets are then further summarized into what ultimately becomes part of the Advisory Board’s recommendation communicated to the CEO through the Office of New Initiatives. In developing her recommendation to the local board for approval or denial of an application, the CEO takes the Advisory Board’s recommendation into consideration, as well as the contents of the application, the applicant’s testimony at the work session, and any supplemental material the applicant provides. (Motion at 4-5).

DVC went through that process in 2017. Its application was denied. (Motion, Ex. 1, ¶4). Thereafter, DVC worked with the Office of New Initiatives and the Maryland Alliance for Public Charter Schools to improve its application. (*Id.* ¶7-8).

On March 20, 2018, DVC submitted a second application to open a charter high school in the fall of 2019. (*Id.* ¶9). The high school would ultimately serve 500 students, some or most of whom would be English language learners, adding grades each year. DVC proposed a year-round model centered on personalized project-based learning using the Summit Learning Curriculum, blended learning through technology, the Sheltered Instruction Observation Protocol approach to teaching speakers of other languages, and internships and advisory programs. (Appeal at 12-13).

The second application underwent and passed the technical review. On April 27, 2018, the Advisory Board interviewed seven DVC team members. *See* Appeal, Affidavit of Helene Luce, at ¶12 (attached as Appendix A). During the written application and interview process, the Advisory Board used the rubric mentioned above. Six interviewers were present. All had a rubric in front of them on which they were taking notes. *Id.* This rubric was never shared with DVC. *Id.* Ms. Alvarez, Executive Director of the Office of New Initiatives, was not present at this interview. *Id.* The Advisory Board recommended approval of the charter application. (Appeal at 6).

On May 22, 2018, members of the DVC team presented to the local board at its work session for new charter applicants. The local board members asked questions about DVC’s ability to provide arts and physical education with a small number of students, its plan for internships, its improvements from last year’s applications, and its potential facility.<sup>1</sup> *See* Appeal at 4.

On June 6, 2018, Trevor Roberts of the Office of New Initiatives asked DVC via e-mail to address how the needs of ELL students would be met with the proposed curriculum and if there was evidence of the effectiveness of DVC’s approach for those students. *See* Appeal, Affidavit of Helene Luce at ¶13 (Appendix A). He asked DVC to provide a response by close of business the next day. *Id.* On June 7, 2018, DVC sent a five-page response addressing this issue. *Id.*

On June 11, 2018, Ms. Alvarez and Mr. Roberts of the Office of New Initiatives informed DVC by phone that they would not recommend approval of the application because it did not sufficiently address special education students, its model was complex, and because there was not a critical need for a high school in Baltimore City. *Id.* at ¶14.

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<sup>1</sup> Video of the local board’s work session is available at <https://vimeo.com/channels/board/271553869>. The local board’s questions can be found at 52:58 to 1:04:05.

On June 12, 2018, the local board held its meeting to vote on all charter school applications before it. Helene Luce, Charter School Founder, came to the meeting early to sign up to speak during public comment and address the reasons that the Office of New Initiatives recommended denying the application. *See* Appeal, Affidavit of Helen Luce at ¶15 (Appendix A). She arrived more than thirty minutes early, but Ms. Luce was informed by staff that she was “too late” to be included in the ten spots reserved for public comment. *Id.* Ms. Luce asked Alison Perkins-Cohen, the CEO’s Chief of Staff, if she could speak, but she was not permitted to do so. *Id.* Members of other charter applicant groups did, however, speak to the local board during public comment. (Appeal, Transcript 6/12/18, Baltimore City Public Schools Public Board Meeting at 100-108, 110-113, 125-128 (attached in part as Appendix G)). The local board also permitted an eleventh person to speak as well. (*Id.* at 132-138) (Appeal, Affidavit of Helene Luce at ¶15 (attached as Appendix A)).<sup>2</sup>

Angela Alvarez presented the CEO’s recommendation on the DVC charter application to the local board. She stated that DVC’s application had strengths, including efficacy of the curriculum, strong community support, an advisory group of community partners to facilitate internships, hands-on learning opportunities, and a strong founding board with experience in implementing aspects of its proposal. (Appeal, Transcript 6/12/18 Baltimore City Public Schools Public Board Meeting at 187 (attached in part as Appendix G)). She noted, however, several deficiencies in DVC’s application: the curriculum was ambitious and complex, and DVC did not demonstrate its ability to implement it fully; DVC did not explain how it would find teachers who were dually certified in English for Speakers of Other Languages (“ESOL”) and core content areas; and the district did not have a need for a high school. *Id.* at 187-190.

The local board voted 7-2 to accept the CEO’s recommendation and deny DVC’s charter application.

On June 21, 2018, DVC requested that the local board send an official decision with its reason for rejecting the application. (Appeal, Affidavit of Helene Luce at ¶16 (Appendix A). DVC received the letter on July 10, 2018. (Appeal, July 10, 2018 Letter (Appendix H). That letter represents the written final decision of the local board. It stated in pertinent part:

This letter serves to give you the rationale for the Board’s rejection of your application. In making its decision the Board considered the application and supplemental materials provided by the applicant, the testimony given at the Board Work Session, and the recommendation of the CEO. The Board determined the application did not meet its criteria for approval; specifically, some of the concerns about your charter application include:

- The academic plan would be varied and ambitious, integrating personalized learning, project-based learning, arts integration, sheltered instruction, observation protocol, and online elements, but the application did not adequately explain how such a complex curriculum would

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<sup>2</sup> BCPSS’ Public Comment Policy for its public board meetings can be found at <https://www.boarddocs.com/mabe/bcpss/board.nsf/public#>.

be implemented in terms of teacher resources such as professional development, on-going training and planning time for each component, how the various elements would work to form a coherent curriculum, or how tensions between the different approaches would be resolved when they conflict with each other.

- The application is reliant on online tools which would effectively create a blended-learning program; however, the application does not adequately address how it would prepare teachers or students for a blended approach to teaching and learning.
- The teacher recruitment plan does not adequately address how it would recruit dually-certified teachers qualified to deliver the academic plan; the plan requires teachers dually certified in ESOL and core content areas such as math or science, which are particularly hard to hire areas.
- Application does not adequately explain how teachers will develop or monitor personalized learning plans for 500 students.

DVC now appeals the local board's denial of its charter application.

#### STANDARD OF REVIEW

COMAR 13A.01.05.05(A)-(C) describes the standard of review that the State Board applies to local school board decisions on matters involving local charter school policy.

- A. General. Decisions of a local board involving local policy or a controversy and dispute regarding the rules and regulations of the local board shall be considered *prima facie* correct, and the State Board may not substitute its judgement for that of the local board unless the decision is arbitrary, unreasonable, or illegal.
- B. A decision may be arbitrary on unreasonable if it is one or more of the following:
  - (1) It is contrary to sound education policy; or
  - (2) A reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached.
- C. A decision may be illegal if it is one or more of the following:
  - (1) Unconstitutional;
  - (2) Exceeds the statutory authority or jurisdiction of the local board;
  - (3) Misconstrues the law;
  - (4) Results from an unlawful procedure;
  - (5) Is an abuse of discretionary powers; or
  - (6) Is affected by any other error of law.

## LEGAL ANALYSIS

The appeal initially presents questions about fairness and transparency during the local school system's evaluation process and about the fairness of the process that occurred once the CEO decided to recommend to the local board denial of the charter. Both of those questions involve local policies applicable during the charter school review process.

Over the course of years, the State Board has reviewed the evaluation processes used by local boards and announced, in its decisions, rules and guidelines designed to foster a fair and open evaluation process. We take this opportunity to look back on those rules and guidelines comprehensively and to apply them in the case at hand.

It would hardly be an exaggeration to state that since the inception of the law, almost all of the forty plus charter school appeals have contained complaints about the fairness of the charter school review process conducted by the local school system. Early on and through all of those appeals, the State Board has consistently pronounced that the review process must be fair, open, and collaborative. *See, e.g. Lincoln Charter Public Charter School, Inc. v. Prince George's County Board of Education*, MSBE Op. No. 05-18 at 9. Those pronouncements took on a tangible form as the Board focused on specific parts of the review process. As it did so, the Board gained knowledge and insight into the complexity of the review process and the resources expended in that process by both the charter school and the school system. As a result, the Board's view of the fairness requirements in the evaluation process has evolved.

For example, we concluded in our initial charter school opinions that because Maryland's charter school law did not specifically require a local school system to provide "technical assistance" to an applicant in preparing and improving its application, failure to provide meaningful technical assistance did not mean that the process was unfair. *See, e.g., Dr. Ben Carson Charter School v. Harford County Board of Education*, MSBE Op. No. 05-21 at 5; *Columbia Public Charter School v. Howard County Board of Education*, MSBE Op. No. 05-31 at 9.

That view began to change in 2011. In *Global Gardens Public Charter School v. Montgomery County Board of Education*, we recognized our previous rulings on technical assistance but noted that most school systems had provided "substantial technical assistance and feedback to applicants." MSBE Op. No. 11-01 at 9 (citing cases). The State Board took the opportunity in that case 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." *Id.* The State Board explained that "[t]his 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." *Id.*

Thus, the State Board advised that:

providing a charter school applicant with meaningful technical assistance, substantive feedback, and the opportunity to cure deficiencies in the application is one component in a fair application process. Providing meaningful technical assistance, substantive application feedback, and the opportunity to cure deficiencies is a

matter of sound educational policy. Providing the assistance, feedback, and opportunity to cure strengthens the quality of the application, and in turn, the quality of the charter school. School systems have a vested interest in being active and supportive throughout the charter school application process as it will benefit students, faculty, and staff in the event a charter is granted. After all, many of these applicants will become a part of the local school system serving the public school students in this State.

*Id.* at 10.

Several years later, the State Board again addressed meaningful technical assistance finding that it need not meet the “gold standard” of face-to-face discussions between school system staff and applicant, *Frederick Outdoor Discovery Charter School v. Board of Education of Frederick County*, MSBE Op. No. 13-14 at 7-8. If, however, the local board’s own policies and procedures call for a face-to-face interview, failure to provide one could be grounds to reverse the decision of the local board. *Maryland Eastern Shore Charter School v. Dorchester County Board of Education*, MSBE Op. No. 14-36 at 4-5. Thus, at the front-end of the review process, meaningful technical assistance means providing the applicant substantive feedback on the deficiencies of the application and an opportunity to cure those deficiencies.

The State Board has also had much to say about the evaluation rubric that school systems use in the review process. Because the charter school application process is a collaborative process, the rubric with which a charter school is evaluated should not be shrouded in mystery, but should be shared and discussed with the applicant. *See, e.g., Friends of the Bay Public Charter School v. Calvert County Board of Education*, MSBE Op. No. 08-21 at 5. Specifically, the State Board directed school systems to explain the scoring process to the applicant and provide the analytical key to its numerical rubric describing with specificity what is necessary or adequate to achieve each point on the scale. *See, e.g. Somerset Advocates for Education v. Somerset County Board of Education*, MSBE Op. No. 07-39 at 7; *Potomac Charter School v. Prince George’s County Board of Education*, MSBE Op. No. 05-08 at 7; *Imagine Belair Edison Charter School v. Baltimore City Board of School Commissioners*, MSBE Op. No. 06-16 at 11.

State Board decisions have also addressed what process an applicant is due when the local board is making its decision to grant or deny the charter. The State Board announced early on that there was “no legal requirement that a charter school applicant be afforded a hearing prior to a decision on the merits of the application.” *See Potomac Charter School v. Prince George’s County Board of Education*, MSBE Op. No. 05-08 at 7 n. 7; *Ben Carson Charter School v. Harford County Board of Education*, MSBE Op. No. 05-11 at 5. The State Board has said, however, that notice of the deficiencies and an opportunity to cure them is an integral part of a fair evaluation process. *See, e.g., Ben Carson*, MSBE Op. No. 05-26 at 5. Those are the basic requirements of due process, and we reiterate them today.

Finally, at the end of the evaluation and review process, the State Board has required that the local board’s decision be specific and detailed in its rationale for denial. Conclusory statements would not suffice to support a denial. For example, in 2005 the Board directed each local superintendent “to provide the local board a detailed recommendation for approval or denial of a charter school application. *Chesapeake Public Charter School v. St. Mary’s County Board of Education*, MSBE Op. No. 05-23 at 5. Thereafter, the State Board explained that the

local board, “in fairness to the applicants and members of the public...must provide in addition to its decision...an explanation or rationale for its decision.” *Id.* at 7; *Imagine Harford, LLC v. Harford County Board of Education*, MSBE Op. No. 09-03 at 5. Finally, the State Board has been explicit in its requirements for specificity in the local board’s rationale requiring local boards “to provide more than a conclusory explanation for the denial of a charter school application....” *Cecil Public Charter High School v. Cecil County Board of Education*, MSBE Op. No. 08-38 at 6-7 citing *Rodriguez v. Prince George’s County*, 79 Md. App. 537, 550 (1989)(“It is not permissible for...any administrative body, simply to parrot general statutory requirements or rest on broad conclusory statements). At a minimum, the explanation or rationale must identify the areas of concern to the local board so that the State Board knows what aspects of the application need to be reviewed on appeal.

With those rules in mind, we turn to the local school system’s evaluation and review process.

- **Use of the Rubric**

First, and most problematic, is that the document the Advisory Board used to evaluate the application as well as the applicant’s responses during the interview was not shared with the applicant. (It is attached as Exhibit 9 to the Local Board’s Motion). Nor was DVC told how the scoring was given numeric value. Thus, the rubric the Advisory Board used and how it was used was shrouded in mystery causing us to question the fairness of the application review process *ab initio*.

The local board downplays the rubric asserting that the “rubrics were not determinative of whether the application was approved or denied; that [n]o particular score equated to a specific recommendation [and that] [t]he rubrics were used to guide deliberative discussions....” (Motion at 4). The local board goes on to explain that “group worksheets summarized the rubrics” and that those worksheets were ultimately summarized into the CEO’s recommendation. (*Id.*). In using that explanation, the local board apparently relies on language from *Columbia Public Charter School v. Howard County Board of Education*, MSBE Op. N. 05-31. In that case, the applicant maintained that the scoring rubric was “faulty.” (*Id.* at 8). Assuming for the moment that the rubric was faulty, the State Board considered and accepted the response from the local board. The State Board said:

In its Motion for Summary Affirmance, the local board explains that the Scoring Rubric Chart was completed by HCPSS staff during Part One of the review process and was utilized as background information only for the larger Review Committee and the Superintendent and as a resource to “spark discussion.”...Although the chart contains a numerical scoring rubric, this instrument was apparently not determinative of whether CPCS’ application was approved or denied. During Part Two, the larger Review Committee completed small group worksheets and large group worksheets as part of the process. The large group worksheets were summarized into what ultimately became a local board agenda item which unanimously recommended denial of the application. This report to the local board is sufficiently detailed and contains an adequate explanation of the reasons for recommending denial of CPCS’s application.

(*Id.* at 9).

We point out here the difference between this case and *Columbia Public Charter School*. In *Columbia*, there was a larger Review Committee that evaluated the application after the school system staff did an initial review. In the case before us, the Advisory Board review was central in the process. It is their work that was summarized on the group worksheets and ultimately used to form the basis of the CEO's recommendation. Thus, failure to share the evaluation rubric with the applicant and explain how it would be used we believe seriously affected the fairness of the evaluation process.

Interestingly, it appears that the Advisory Board's evaluation resulted in their recommending the application for approval. (*See* Appeal at 6). Yet, that recommendation seems to be shrouded in mystery. That fact also casts doubt on the fairness of the process and the validity of the ultimate decision.

We emphasize that the evaluation of a charter school application is not a pass-fail process where the evaluation criteria remain hidden. It is incumbent on school systems to share their evaluation criteria with charter school applicants, whether the criteria are embodied in rubrics or not.

- **Technical Assistance**

Next, we consider the requirements of meaningful technical assistance which the State Board has defined as substantive feedback and an opportunity to cure the problems identified during the review. The local board's explanation of the feedback provided is vague at best. They state only that "[d]uring the applicant's interview, the Advisory Board inquired about improvements the Appellant made to their second application...and the various other aspects of the new application." (Motion at 5).

To the extent that the Advisory Board had some concerns, even though it recommended approval of the application, those concerns apparently were not shared as feedback to the applicant. It appears that the Advisory Board conveyed its findings solely to the CEO through the Office of New Initiatives. (*Id.*).

The applicant received some feedback from Board members at the work session. As DVC explained:

On May 22, 2018, members of the DVC team presented to the local board at its work session for new charter school applications. The local board members asked questions about DVC's ability to provide arts and physical education with a small number of students, its plan for internships, its improvements from last year's applications, and its potential facility.

(Appeal at 4).

A few weeks later, apparently in response to a question that arose out of the work session, the Office of New Initiatives asked DVC to address how the needs of ELL students would be met within the proposed curriculum and if there was evidence of the effectiveness of DVC's approach for those students. (*See* Appeal, Affidavit of Helene Luce at ¶13 (attached as Appendix

A)). DVC did so the next day. Several days later, the Office of New Initiatives staff told DVC in a courtesy phone call that the charter application would not be approved because it did not sufficiently address special education students, its model was complex, and because there was not a critical need for a high school in Baltimore City. (*Id.* at ¶14.)

To summarize, it appears that DVC was asked questions on a variety of issues, but given little or no meaningful feedback. It is difficult to ascertain from the record, except for the ELL student issue, whether any opportunities to cure were offered. In *Maryland Eastern Shore Charter School Alliance v. Dorchester County Board of Education*, MSBE Op. No. 14-36, the State Board addressed a similar set of facts:...

rather than notify Appellant of these deficiencies at the time and offer Appellant an opportunity to address the concerns, Dr. Hughes and the local board remained silent. Appellant is entitled to a fair process, not one in which it must read the minds of the application's reviewers and conclude that there are problems. The opportunity to cure deficiencies is one component of a fair application process and a matter of sound educational policy. *See Global Gardens*, MSBE Op. No. 11-01. We agree with the local board that a charter school is not guaranteed approval, and perhaps Appellant would not have been able to address the local board's concerns had they been given the opportunity to address the deficiencies. An exchange of information between the parties is vital to a fair approval process. On remand, Appellant should be allowed the opportunity for an interview and the chance to address deficiencies in its application.

*Id.* at 5-6.

- **Process Provided**

When the CEO's recommendation was made to the board, DVC was not allowed to speak to the board before it voted. While we have never required local boards to provide charter schools with formal hearings before the board makes a decision, some opportunity to respond to the CEO's recommendation would be more in keeping with the concept of fairness. To the extent that we have been unclear about that in the past, we now provide some clarity - - at least one day, before a board votes on a charter school denial, the applicant should be provided with a copy of the CEO's recommendation. At the board meeting, the applicant must be provided with a short, but sufficient, time period to address the concerns raised in the recommendation. If the applicant had not been provided an opportunity to cure the problems, the local board should direct that such an opportunity be provided forthwith.

- **Decision Issued**

We next turn to the local board's decision. It listed four areas of concern:

- The academic plan would be varied and ambitious, integrating personalized learning, project-based learning, arts integration, sheltered instruction, observation protocol, and online elements, but the application did not adequately explain how such a complex curriculum would be implemented in terms of teacher resources such as professional development, on-

going training and planning time for each component, how the various elements would work to form a coherent curriculum, or how tensions between the different approaches would be resolved when they conflict with each other.

- The application is reliant on online tools which would effectively create a blended-learning program; however, the application does not adequately address how it would prepare teachers or students for a blended approach to teaching and learning.
- The teacher recruitment plan does not adequately address how it would recruit dually-certified teachers qualified to deliver the academic plan; the plan requires teachers dually certified in ESOL and core content areas such as math or science, which are particularly hard to hire areas.
- Application does not adequately explain how teachers will develop or monitor personalized learning plans for 500 students.

The decision goes no further in its explanation. The decision poses six questions which, it seems to us, it would have been appropriate to ask DVC during the evaluation process and provide DVC with an opportunity to explain:

- (1) how it would implement a “complex curriculum” in terms of teacher resources;
- (2) how various elements would work to form a coherent curriculum;
- (3) how tensions between different approaches would be resolved;
- (4) how it would prepare teachers and students to use a “blended approach”;
- (5) how it would recruit ESOL certified teachers;
- (6) how teachers would develop and monitor personalized learning plans?

In our view, the decision is cursory. It lacks the rationale to support the denial. In that regard, the end of the review process was not fair and open. Thus, given our review of the evaluation and decision process in this case, we conclude that the process was not a fair one. The State Board has stated in the past that when the evaluation process, viewed as a whole, is found to be unfair, this Board may find that the decision of the local board was arbitrary or unreasonable. *See Global Gardens Public Charter School v. Montgomery County Board of Education*, MSDE Op. No. 11-01 at 9. We conclude here that the decision of the local board was arbitrary and unreasonable.

### **Remedy for an Arbitrary and Unreasonable Process**

Under the law, we have one option in providing a remedy. We are required to remand this matter to the local board. Md. Educ. Code Ann. §9-104(d)(3). We *may* direct the local board to grant the charter and *may* mediate with the local board and applicant to implement the charter. *Id.* If we do not direct the local board to grant the charter, we believe implicit in the law is the option, if appropriate, to direct an expedited re-review in conformance with the rules set forth in our opinion.

The State Board has in the past considered carefully its role in directing approval of a charter based on its own review of the merits of a charter school application. A charter school application is a comprehensive explanation of many aspects of the school. In Baltimore City, and in most jurisdictions, the application must address: (1) the school’s academic plan, including curriculum and assessments for both special education and general education students, ELL students, and any other special population the school plans to serve; (2) a school climate and culture philosophy and plan; (3) a full explanation of school governance and finance; (4) a full explanation of school operations, Board members, experience in education, etc.; (5) a facility and finance plan. Most applications run into the hundreds of pages, as does the DVC application.

As a general rule, the evaluation process involves several school system staff, and, as in this case, an Advisory Committee. Each brings specific expertise to the table. A synergy evolves in the review as those persons interview and interact with the charter school applicants. Evaluation criteria are applied and discussed. The process takes several months before a recommendation is made to the local board. This Board cannot replicate that evaluation process, and thus, the State Board has been reluctant to undertake that task.

In this case, however, we need not undertake an evaluation of the application. The local board in its final decision did not find fatal flaws in the program DVC proposed to implement but merely sought further explanation to questions posed. In light of that, we will remand the case to the local board for them to provide a timely opportunity to DVC to answer the six questions posed in the final decision and to reconsider its decision in light of those answers. Those questions are:

- (1) how it would implement a “complex curriculum” in terms of teacher resources;
- (2) how various elements would work to form a coherent curriculum;
- (3) how tensions between different approaches would be resolved;
- (4) how it would prepare teachers and students to use a “blended approach”;
- (5) how it would recruit ESOL certified teachers;
- (6) how teachers would develop and monitor personalized learning plans?

## CONCLUSION

The decision of the local board is reversed as arbitrary and unreasonable. The case is remanded to the local board to provide timely opportunity to DVC to answer the six questions posed in the final decision and to reconsider its decision in light of those answers.

Signatures on File:

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Justin M. Hartings  
President

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Stephanie R. Iszard  
Vice-President

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Chester E. Finn, Jr.

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Vermelle D. Greene

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Michele Jenkins Guyton

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Jean C. Halle

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Rose Maria Li

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Joan Mele-McCarthy

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Michael Phillips

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David Steiner

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Warner I. Sumpter

October 23, 2018