

TURNING POINT
FOUNDATION, INC.

Appellant

v.

PRINCE GEORGE'S
COUNTY BOARD OF
EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 18-35

OPINION

INTRODUCTION

On April 13, 2018, Turning Point Foundation, Inc. (“Turning Point”), operator of the Turning Point Academy (“TPA”), filed a Petition for Declaratory Ruling Regarding Charter Contract and Appeal Regarding School Closing Activities. In the petition and appeal, Turning Point asks the State Board to rule that its charter contract with the local board is still in effect, and that Prince George’s County Public Schools (“PGCPS”) breached the charter contract and illegally usurped the local board’s authority by initiating activities to close TPA and remove Turning Point as TPA’s operator absent a local board decision to do so. The Prince George’s County Board of Education (“local board”) opposed the petition and appeal maintaining that there is no charter contract between the parties because it expired by its own terms on June 30, 2017, and that PGCPS staff did not engage in “closing activities.”

FACTUAL BACKGROUND

TPA is a K-8 public charter school that received its charter in 2005 and opened in August 2006. The local board renewed TPA’s charter in 2014.

On November 15, 2016, Turning Point submitted its initial renewal application seeking a five-year charter renewal and seeking to expand to high school. After receiving notification of concerns about the application from PGCPS staff, Turning Point resubmitted the application on March 6, 2017.

PGCPS advised Turning Point about continued deficiencies with the application and offered another opportunity to resubmit it. On July 31, 2017, PGCPS staff and Turning Point attended a debriefing meeting to discuss ongoing concerns regarding the application, governance, and the lack of a strategic plan. On August 9, 2017, PGCPS staff advised Turning Point that it needed to restructure the Governing Board to address ongoing conflicts of interest. Staff also sought (1) a strategic plan identifying the Governing Board’s priorities and initiatives; (2) training materials for the reconstituted Governing Board on effective governance; and (3) information on the professional qualifications, roles, and responsibilities of the Executive

Director. Meanwhile, the local board allowed Turning Point to keep TPA open and operate it for the 2017-2018 school year, and provided funding for TPA during that time period.

On November 9, 2017, Turning Point provided PGCPs staff the requested information. Turning Point heard nothing further regarding the renewal process until staff scheduled a meeting on February 23, 2018, that was ultimately postponed until March 1, 2018. On February 23, 2018, staff requested additional information from Turning Point, which Turning Point provided.

At the March 1 meeting, PGCPs staff shared that it was recommending that PGCPs take over TPA at the end of the 2017-2018 school year and close TPA effective June 30, 2019. Also in March 2018, according to Turning Point, PGCPs staff engaged in “closing activities” intended to thwart Turning Point from keeping TPA open the following school year. Turning Point claimed that PGCPs staff were: (1) encouraging the TPA educational staff to seek other positions; (2) encouraging TPA families to withdraw their students; and (3) refusing to proceed with normal enrollment for the 2018-2019 school year, including for the entering kindergarten class. *See Paul Shackelford Affidavit.*

At its April 24, 2018 board meeting, the local board considered, as an emergency agenda item, the Chief Executive Officer’s (CEO) recommendation that the local board disapprove Turning Point’s renewal application. (Local Bd.’s Supp. Resp., Ex. 1). The recommendation stated that “Turning Point has failed to meet the conditions and standards to support the request for renewal of the Charter Agreement. The recommendation for non-renewal is due to overall ineffective governance, lack of an adequate facility and deficient academic achievement for TPA students. Moreover, the Governing Board has not demonstrated the capacity to address these issues.” *Id.* The CEO also recommended considering other options that would allow the school to remain open, such as continuing to operate with a new charter school operator beginning with the 2018-2019 school year.

The local board treated the recommendation as a “first reader” rather than an “emergency” agenda item and, thus, took no action on the matter. *Id.* The local board stated in its supplemental response, that it expected to take action on the recommendation at its May 10, 2018 board meeting. After receiving a request from TPA’s principal asking that the local board meet with faculty and school staff regarding the removal of TPA’s Governing Board, the local board removed the recommendation from its May 10 meeting agenda without taking action on it. *See Loretta White Affidavit.*

On June 7, 2018, the CEO recommended that the local board renew a charter agreement with Turning Point for a period not to extend beyond one year subject to certain conditions. (*See Local Bd.’s Third Supp. Resp., Ex. 1*). On June 28, 2018, the local board approved the following resolution:

WHEREAS, the Governing Board of [Turning Point] and its Executive Director have submitted an application requesting renewal of its Charter Agreement and a request to expand its school to serve students up to twelfth grade with the [local board]; and

WHEREAS, the Governing Board of [Turning Point] and its Executive Director have not provided a strong and compelling justification for a 5-year renewal of the Charter Agreement; and

WHEREAS, the Governing Board of [Turning Point] and its Executive Director have not provided the necessary structures and processes to ensure effective governance; and

WHEREAS, the Governing Board of [Turning Point] and its Executive Director have failed to demonstrate the capacity to execute its duties, and responsibilities of practice including submitting the required external financial reports for 2017; and

WHEREAS, [TPA] will continue to operate as a school within [PGCPS] for the 2018-2019 school year with specified conditions;

THEREFORE, BE IT RESOLVED, that the [local board] hereby approves the recommendation of the [CEO] to renew the Charter Agreement contract with [Turning Point] for one year with specified conditions as the operator of [TPA] for the 2018-2019 school year.

Id.

The renewal was subject to the following conditions: (1) TPA submitting its annual financial audit document no later than August 1, 2018; (2) TPA appointing a PGCPS-approved member to its Board of Directors by August 1, 2018, who will have full rights and responsibilities and will be allowed to attend all meetings of Turning Point, its Board, and TPA; (3) Turning Point's Board of Directors submitting a professional development plan focused on effective governance for the Board and its Executive Director; and (4) PGCPS appointing a liaison to work with Turning Point and TPA leadership to conduct a climate survey for staff and parents to assess the effectiveness of school operations, school climate, facility concerns, and academic progress. *Id.* The local board also required TPA's Board of Directors to evaluate the performance of their Executive Director, and work with PGCPS Administration to develop the evaluation metrics within the first 3 months that includes documented input from staff and the community. (*See* Local Bd.'s 3rd Supp. Resp., Ex. 2). As of the date of this decision, the parties have not negotiated a new charter contract.

STANDARD OF REVIEW

The State Board exercises 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

Charter Contract

Turning Point filed its petition and appeal in April 2018 arguing that its original charter contract with the local board was still in effect by virtue of the fact that the local board has continued to fund TPA for the 2017-2018 school year and has allowed Turning Point to continue to operate the school. Turning Point maintains therefore that the local board breached its duty to perform in good faith under the contract by initiating activities to close TPA and remove Turning Point as TPA's operator. We held off on ruling in this case because matters with regard to

Turning Point were in flux and changing as the briefing period proceeded. Turning Point, however, continues to maintain that its original charter contract remains in effect.

The relevant terms of the contract are as follows:

This Agreement shall be effective upon complete execution and shall be reviewed annually. The Agreement has been approved for a period of three (3) full fiscal years and will terminate on June 30, 2017. Charter School will be eligible for Agreement renewal or may reapply for a new Agreement during the third (3rd) year of the existing Agreement period. Subsequent years' renewals are subject to annual evaluation and approval by the Board. The School Board and the Charter School recognize that the interests of the students are best served by maintaining a stable learning environment and, therefore, the School Board and the Charter School shall apply their best efforts toward such a renewal or reapplication and shall conduct the renewal or reapplication in good faith.

We agree with the local board that the written contract between the parties expired by its own terms on June 30, 2017. Renewal of the charter contract was subject to evaluation and approval by the local board. We find nothing ambiguous about the contract provision. Although Turning Point relies on *Deere Construction and Forestry Co. v. Reliable Tractor*, 406 Md. 139, 148 (2008), to support its position that the charter contract remains in effect because the parties continued to perform under an otherwise expired contract, its reliance is misplaced. *Deere* involved open-ended agreements that contained "notice of termination" provisions, but no set termination dates. The case concerned whether a law, enacted after the parties executed the contracts but before any party attempted termination of the contracts, applied to the agreements. It does not stand for the proposition that, because the local board has continued to allow Turning Point to operate TPA, the charter agreement remains legally in effect and enforceable until a new charter agreement is negotiated and accepted by the parties.

Nevertheless, the parties have continued to operate on what appears to be a year-to-year basis as evidenced by the fact that TPA is still open and being operated by Turning Point, and the local board is providing funding for Turning Point to do so. It has been clear since before the start of the 2017-2018 school year, however, that PGCPs staff and the local board found deficiencies in Turning Point's operation of TPA. The local board has since voted to enter into a charter contract with Turning Point under certain conditions, but that agreement has yet to be negotiated and finalized by the parties. Despite this, the school continues to remain open. In our view, the charter school law envisions that local boards and charter school operators will enter into charter agreements that specify the duties and obligations of each party. We therefore, direct the parties to enter into negotiations of the charter contract and report their progress to this Board within 30 days. If negotiation does not lead to a contract, it is our expectation that the local board will issue a decision providing a rationale for why it is not entering into a charter agreement with Turning Point and a plan for closure of the school.

Breach of Contract Claims

Turning Point originally sought breach of contract for failure to operate in good faith based of the alleged "closing activities" of PGCPs staff in the late winter/early spring of 2018.

We find that issue to be moot given that TPA is open and running for grades kindergarten through grade 8 for the 2018-2019 school year and there are not any “closing activities” taking place now. A case is moot when “there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the courts (or agency) can provide. *In Re Michael B.*, 345 Md. 232, 234 (1997); *see also Mallardi v. Carroll County Bd. of Educ.*, MSBE Op. No. 00-07 (2000).

Turning Point also claims breach of contract because the school system gave kindergarten families only three days to register for school upon receipt of acceptance notification by mail this school year, and because PGCPS has not provided it with a list of lottery winners for kindergarten and other grades. TPA’s students are already enrolled in school and the 2018-2019 school year is underway. There is no effective remedy that this Board can provide on these issues. In Turning Point’s final response, it argues for the first time that the local board breached the contract because it failed to provide commensurate funding for the 2018-2019 school year by omitting funding for kindergarten. This is a new argument that must first be raised before the local board.

CONCLUSION

For the reasons stated above, we deny Turning Point’s Petition for Declaratory Ruling Regarding Charter Contract and Appeal Regarding School Closing Activities. We direct the parties to enter into negotiations of the charter contract and report their progress to this Board within 30 days.

Signatures on File:

Justin M. Hartings
President

Stephanie R. Iszard
Vice-President

Chester E. Finn, Jr.

Vermelle D. Greene

Michele Jenkins Guyton

Jean C. Halle

Rose Maria Li

Joan Mele-McCarthy

Michael Phillips

David Steiner

Warner I. Sumpter

October 23, 2018