

MOUNTAIN MARYLAND PUBLIC CHARTER
SCHOOL,

Appellants

v.

ALLEGANY COUNTY PUBLIC SCHOOLS,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 11-13

OPINION

INTRODUCTION

An existing pre-school in Allegany County has applied to establish an elementary charter school. The charter school applicant, Mountain Maryland Public Charter School filed a request for eight waivers of State law. Allegany County Public Schools (ACPS) has filed a response in opposition to that request. The charter school has withdrawn the waiver request related to the Food and Nutrition program. Seven requests remain for disposition.

STANDARD OF REVIEW

In making waiver request decisions, the State Board exercises its independent judgment on the record before it to explain and interpret education law. COMAR 13A.01.05(E).

LEGAL ANALYSIS

In considering these waiver requests, we are guided by the parameters of the charter school law, Md. Educ. Code Ann. §9-101 *et. seq.*, which, when read as a whole, sets both opportunities and limits. By law, charter schools in Maryland are public schools, not independent entities. We must consider that fact when we consider a request for a waiver of a State law that governs how public schools operate in this State.

In considering these waiver requests, we will also be guided by our recently adopted Charter School Program Policy (attached hereto). In that Policy, this Board “recognize[d] that providing flexibility and autonomy in exchange for innovation, educational reform and high accountability is a big component of the Charter School concept.”

We recognize that establishing effective charter schools requires strong, cooperative relationships between the local board and the charter school. It requires the local board to openly

welcome charter schools to public education and to treat the charter school fairly in all its dealings. If the board does not do so, the charter school has recourse to this Board on appeal. In return, the charter school needs to work within the essential elements of public school law and policy. We have said this many times, and we repeat it here, both parties must work together to provide an excellent educational opportunity to the students they serve.

Waiver Request #1 - Collective Bargaining

The charter school requests a waiver of Education Article §9-108(a) which states that all charter school employees are public school employees subject to applicable collective bargaining agreements. In *Patterson Park Public Charter School v. Baltimore Teachers Union*, 399 Md. 174 (2007), the Court of Appeals held that the provisions of the charter school law set forth in Article 9 cannot be waived. *Id.* at 200. In that case, the charter school specifically requested waiver of §9-108 to exempt their employees from the collective bargaining agreement. Based on the precedent in *Patterson Park*, we must deny Waiver Request #1.

Waiver Request #2 - Education Article §§4-103(a) and 6-201, Local Superintendent's Power to Nominate Appointments.

The charter school applicant asked that it “be able to recruit and select its own principal, teachers, and clerical personnel, subject to final approval of the superintendent . . .” To do so, it seeks a waiver of §4-103(a) and §6-201 of the Education Article. Both of those statutes provide that the local superintendent will recommend all staff appointments for approval by the county board.

It appears to us that the charter school applicant’s waiver request, which states that the superintendent has “final approval authority” over the selection of charter school staff, implicitly recognizes that the superintendent retains the authority to recommend charter school staff applicants to the county board for employment. It seems that the waiver request merely seeks some freedom to recruit employees, subject, however, to superintendent and county board approval. If that is the case, no waiver of §§4-103 and 6-201 is necessary. We encourage local school systems to allow charter schools to interview and recruit applicants. They would then recommend their selected applicants to the superintendent who can approve or disapprove the applicant for recommendation to local board. That process would be in congruence with our Charter School Policy.

We advise, however, that we will not waive the statutes that give the superintendent and the local board the ultimate authority to make employment decisions concerning charter school employees.

Waiver Request #3 - Education Article §9-102(3), Open Enrollment

The charter school applicant requests a waiver of §9-102(3), the open enrollment

requirement, to give priority enrollment to three categories of children: (1) children of founders and teachers; (2) students whose parents timely re-enroll the student; and (3) siblings of students attending the charter school. As we explained last month in *Carroll Creek Montessori Public Charter School v. Frederick County Public Schools*, MSBE Op. No. 11-06, no waiver is necessary to effectuate priority enrollment for children of founders and teachers, and siblings of students attending charter school

Because the charter school applicant is an existing pre-school, we express a reservation about "students who timely re-enroll." We are concerned that granting a waiver for this population would be interpreted as a guarantee that the pre-schoolers enrolling in the charter school would have priority admission into the charter school each year. This is not, in our view, the intent of the charter school law which established an open enrollment policy. The United States Department of Education's Non Regulatory Guidance on Charter Schools states:

May a tuition-based private preschool program that becomes a public charter school at the kindergarten level permit children enrolled in the preschool program to continue in the elementary program without giving through a lottery process?

No, because the preschool program is private, charges tuition, and most likely does not admit all students, allowing its students to gain admission to the elementary program without going through a lottery process would violate the statute. Therefore, all applicants to the charter school (the elementary program) would have to be selected by lottery if there are more applicants than there are spaces available.

However, the statute does not preclude an elementary charter school in this type of situation from holding its lottery a few years early - e.g., when students are ready to enroll in the preschool. Under this approach, the prospective applicants that winning the lottery would not require them to enroll in the private preschool. Thus, any child selected through the lottery would be guaranteed a slot in kindergarten, a few years later, whether or not she or she enrolls in the preschool program.

Additionally, given the high mobility of children and families, schools that choose to exercise this option should ensure that families new to the area or who were not aware of the previous lottery are given the opportunity to apply for admission. Such actions must meet the admissions requirements of the CSP and might include holding a second lottery to fill vacancies created by normal attrition or failure of early lottery winners to enroll in the

charter school.

United States Department of Education's Non Regulatory Guidance on Charter Schools at C-6.

We adopt that reasoning. Therefore, we deny that part of the waiver request directed at students who timely re-enroll.

Waiver Request #4 - Education Article §5-112 and Local Procurement Rules

The charter school applicant seeks a waiver of §5-112 of the Education Article which sets forth certain bidding and contracting rules that apply to local boards. For example, under the statute a local board must advertise most procurements over \$25,000, award bids competitively, and must purchase green product cleaning supplies. The applicant wishes to adopt its own procurement policy based on best practices for Maryland non-profits. It wants to establish a system to obtain goods and services quickly and economically without having to go through the local board's processes and rules.

We must deny this request. As a public school, the charter school has an obligation to expend public funds in compliance with the laws governing bids and contracts. We believe this is an essential component of education law. We note that local board procurement rules impose more specific requirements than State law. It will be up to the local board to determine whether and to what extent it will waive the applicability to the charter school of its own local procurement rules.

Waiver Request #5 - Education Article §9-105, Teacher Certification

The applicant seeks a waiver of §9-105 because it wishes to hire the "best person for the job" even if he/she is not currently certified. As set forth herein, based on the ruling in *Patterson Park*, the State Board may not waive any part of Article 9.

Waiver Request #6 - Education Article §4-205, Approval of Contracts

The applicant seeks a waiver of §4-205 which states that a "contract made by a county board is not valid without the written approval of the county superintendent." The applicant seeks autonomy to contract for goods and services. We deny this waiver request because a charter school, as part of the public school system, must be accountable for expenditure of public funds subject to the approval of the superintendent. We recognize, as the ACPS points out, "that the grant or denial of waiver request #6 at the state level does not resolve the need for a local waiver determination because the language of local policy . . . is broader than state law." This request must also be addressed locally.

Waiver Request #7 - Education Article §4-205(1)(2), Preparation of Building Plans

The applicant seeks a waiver of §4-205(1) which states:

Subject to the provisions of §2-203(f) of this article that relate to approval by the State Superintendent, the county superintendent shall prepare all plans and specifications for remodeling an old building or constructing a new building.

The applicant explains that it needs autonomy and authority to prepare the plans and specifications for remodeling or constructing its school building to “support its unique mission and academic program.” It promises, however, to follow “MSDE facilities guidelines.”

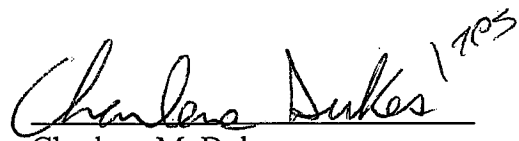
ACPS does not endorse a waiver to §2-203(f), which requires that local school systems obtain the State Superintendent’s approval of certain school construction projects. As ACPS explains, the Public Charter School Construction Program’s review procedures help to guarantee a safe, healthy environment for our students that is consistent with current regulations and codes. We agree.

ACPS does not object to allowing the applicant the autonomy to prepare the plans and specifications for the charter school. We decline to grant the waiver, however, because we believe that the county superintendent should be involved in the preparation of all plans and specifications for charter school construction projects. Such involvement will foster the kind of cooperative relationship we encourage local boards and charter schools to form.

CONCLUSION

For all the reasons stated herein, we deny the charter school applicant’s waiver requests.


James H. DeGraffenreidt, Jr.
President


Charlene M. Dukes
Vice President

Mary Kay Finan
Mary Kay Finan

S. James Gates, Jr.
S. James Gates, Jr.

Luisa Montero-Diaz
Luisa Montero-Diaz

Sayed M. Naved
Sayed M. Naved

Madhu Sidhu
Madhu Sidhu

Guffie M. Smith, Jr.
Guffie M. Smith, Jr.

Donna Hill Staton
Donna Hill Staton

Absent
Ivan C.A. Walks

Kate Walsh

Kate Walsh

March 22, 2011