

MONARCH ACADEMY
PUBLIC CHARTER
SCHOOL,

Appellant,

v.

BALTIMORE CITY BOARD
OF SCHOOL
COMMISSIONERS

Appellee.

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Opinion No. 20-30

OPINION

INTRODUCTION

Monarch Academy Public Charter School (“Monarch”) appeals the decision of the Baltimore City Board of School Commissioners (“local board”) not to renew Monarch’s school charter. We referred the matter to the Office of Administrative Hearings (“OAH”) where an Administrative Law Judge (“ALJ”) issued a Proposed Decision recommending that the State Board uphold the non-renewal decision. Monarch filed Exceptions to the ALJ’S Proposed Decision and the local board responded. After holding oral argument on the Exceptions, we remanded to OAH for further proceedings. The ALJ issued a Proposed Decision on Remand, recommending that the State Board uphold the non-renewal decision, to which Monarch filed Exceptions and the local board responded.

FACTUAL BACKGROUND

The procedural posture of this case is complex. On January 8, 2019, the Baltimore City Board of School Commissioners (local board) voted not to renew Monarch’s charter, and on February 7, 2019, the local board issued a written decision. Monarch appealed the non-renewal decision on February 12, 2019 to the State Board, and on March 20, 2019, we transmitted the appeal to the Maryland Office of Administrative Hearings (“OAH”) to conduct a hearing and issue proposed Findings of Fact, Conclusions of Law and Recommendations.

After an Administrative Law Judge (“ALJ”) conducted a two day hearing, she issued a Proposed Decision recommending that the State Board affirm the local board’s decision not to renew Monarch’s charter. Monarch filed Exceptions to the ALJ’s proposed decision and the local board responded. The State Board heard oral argument on the exceptions on September 24, 2019 but determined that it needed additional information before issuing a final decision. *See* MSBE Order No. OR 19-17 (2019).

On October 22, 2019, the Board remanded the case to OAH for the purpose of taking testimony and receiving documentary evidence on the following matters:

- (1) The role that Baltimore City Public Schools (BCPS) has defined for charter schools in the context of all other schools in the school system. For example, is it the role of a charter school to “improve” or “enhance” BCPS performance as Christopher Wohn testified. If so, please explain.
- (2) The notice *Monarch* had of the renewal criteria. Specifically, what was the renewal criteria that governed the *Monarch Academy* renewal? When was it established? When was it provided to *Monarch*? Also, please identify where in the renewal criteria it requires the charter school to be above the 50th percentile of all BCPS schools in terms of achievement as testified by Christopher Wohn. Explain the basis and rationale for establishing that criteria.
- (3) The schools in *Monarch’s* economic disadvantage group. Please identify the comparison schools, set forth the data that was considered for each school, and explain the analysis that was done to develop the achievement comparison.

Id.

The ALJ conducted a hearing on the remand on January 17, 2020 and issued a Proposed Decision on Remand on February 25, 2020. The full factual background is set forth in the ALJ’s Proposed Decision on Remand at pp. 4 – 17. We have set forth below some information from the record. Appellant filed exceptions to the ALJ’s Proposed Decision on Remand and the local board responded. The State Board heard oral argument on the exceptions on July 28, 2020.

The local board’s Public Charter School Policy – IHB, adopted June 2011, informs charter operators that renewal is based on the evaluation of multiple factors including student academic achievement as measured by performance on State assessments, such as PARCC. Policy IHB puts charter schools on notice of the high level of importance of the student academic achievement criteria by stating that it counts towards at least 50% of the renewal score. It also sets forth the other criteria that include school climate, financial management and governance (Board Ex. 11). *Monarch* served students from Kindergarten through 8th grade. *Monarch* received its charter in 2014, which was renewed in 2016 for three years. The charter was due for renewal during the 2018-2019 school year.

On July 1, 2016, *Monarch* received notice of the renewal criteria with its 2016 Renewal Charter School Agreement. The Agreement provided that the renewal criteria included a review of: student achievement based on State assessment scores on absolute student achievement, student achievement trend, and student achievement growth. Student achievement would be given 50% weight in *Monarch’s* renewal score. School climate, fiscal management and governance were the other criteria. (Finding of Fact 47).

On June 22, 2018, the local board gave *Monarch* notice of the renewal rubric including the percentages required for the rating of Highly Effective, Effective, Developing, and Not Effective for absolute student achievement, student achievement trend, student achievement growth. Absolute student achievement was based on the mean scale score for the PARCC statewide assessment for 2018. Student achievement trend was based on the mean scale score on the PARCC assessment from 2015-2018. Student achievement growth was based on the mean

scale score on the PARCC for 2015-2018. (Finding of Fact 48). The renewal rubric provided that a charter school would be rated Not Effective if the students scored below 50th percentile of all the schools in the district based on grade band and rate of economic disadvantage. A charter school would rate Not Effective in student achievement trend and student achievement growth if it scored below the 50th percentile of all BCPS schools based on grade band. (Finding of Fact 50).

On August 20, 2018, the local board gave Monarch notice of the final renewal data tables including PARCC results, the SER ratings, and data related to attendance, chronic absences, and suspensions. (Finding of Fact 52).

BCPS calculated Monarch’s economic disadvantage rate to be 62.2%, compared to BCPS schools in the 60%-70% range. (Finding of Fact 58).

This chart reflects the schools in Monarch’s economic disadvantage group and their economic disadvantage ratings.

School (Elementary)	Economic Disadvantage Rate
Hilton Elementary	66.1%
George Washington Elementary	68.8%
Wolfe Street Academy	66.0%
Commodore John Rodgers Elementary/Middle	62.4%
Charles Carroll Barrister Elementary	64.9%
Montebello Elementary/Middle	69.1%
Waverly Elementary/Middle	63.9%
Barclay Elementary/Middle	68.1%
Dr. Nathan A. Pitts-Ashburton Elementary/Middle	61.2%
Gwynns Falls Elementary	67.3%
Liberty Elementary	61.3%
Edgewood Elementary	66.7%
Windsor Hills Elementary/Middle	65.5%
Lyndhurst Elementary	68.2%
Rognel Heights Elementary	67.6%
Moravia Park Elementary	62.1%
Walter P. Carter Elementary/Middle	65.0%
Dr. Carter Godwin Woodson Elementary/Middle	69.8%
Furley Elementary	69.2%
Curtis Bay Elementary/Middle	66.9%
Hazelwood Elementary/Middle	61.9%
Gradenville Elementary	61.5%
Govans Elementary	62.2%
Morrell Park Elementary/Middle	62.5%
Arlington Elementary/Middle	63.5%
Highlandtown Elementary/Middle	62.0%
Beechfield Elementary/Middle	62.1%
Calvin M. Rodwell Elementary	63.9%
New Song Academy	63.6%
Southwest Baltimore Charter	61.6%

School (Middle)	Economic Disadvantage Rate
Stadium School	62.8%
Commodore John Rodgers Elementary/Middle	62.4%
Montebello Elementary/Middle	69.1%
Waverly Elementary/Middle	63.9%
Barclay Elementary/Middle	68.1%
Dr. Nathan A. Pitts-Ashburton Elementary/Middle	61.2%
Windsor Hills Elementary/Middle	65.5%
Lyndhurst Elementary	68.2%
Roguel Heights Elementary	67.6%
Walter P. Carter Elementary/Middle	65.0%
Dr. Carter Godwin Woodson Elementary/Middle	69.8%
Curtis Bay Elementary/Middle	66.9%
Hazelwood Elementary/Middle	61.9%
Morrell Park Elementary/Middle	62.5%
Arlington Elementary/Middle	63.5%
Highlandtown Elementary/Middle	62.0%
Beechfield Elementary/Middle	62.1%
New Song Academy	63.6%
ConneXions: A Community Based Art School	63.2%
Southwest Baltimore Charter	61.6%
KASA (Knowledge and Success Academy)	68.4%
Joseph C. Briscoe Academy	66.7%
Bluford Drew Johnson STEM Academy West	68.3%
Vanguard Collegiate Middle	66.9%
National Academy Foundation	61.9%
Academy for College and Career Exploration	66.1%

(Board Ex. 3 at 14). Monarch received the following percentage rankings on the PARCC average mean score for Absolute Student Achievement compared to the other schools within its economic disadvantage group:

Subject and Grade Band	Percentage Rank in Educational Disadvantage Group
Math-grades 3-5	19.4 (Not Effective)
English-grades 3-5	22.6 (Not Effective)
Math-grades 6-8	40.7 (Not Effective)
English-grades 6-8	63.0 (Developing)

(*Id.* at 3).

The Baltimore City Public Schools (“BCPS”) Office of New Initiatives (“ONI”) evaluated the charter school for renewal. The areas of review were: (1) Academic Success

(50%); (2) School Climate (25%); and (3) Financial Management and Governance Practices (25%). Monarch’s results were as follows: ¹

Category 1: Is the School an Academic Success?		
Absolute Student Achievement	PARCC average mean score SY 18 Math (grades 3-5) English (grades 3-5) Math (grades 6-8) English (grades 6-8)	Not Effective Not Effective Not Effective Developing
Student Achievement Trend	PARCC average mean score SY 15-18 Math (grades 3-5) English (grades 3-5) Math (grades 6-8) English (grades 6-8)	Not Effective Not Effective Not Effective Not Effective
Student Achievement Growth	PARCC average mean score SY 15-18 Math (grades 3-5) English (grades 3-5) Math (grades 6-8) English (grades 6-8)	Not Effective Not Effective Developing Not Effective
Fidelity to Charter	Extent to which school has implemented its mission, delivered high quality programming, gathered data, addressed challenges evident in the data	Developing
Overall Rating		Not Effective

Category 2: Does the School have a Strong Climate?		
Highly Effective Instruction	SER score	Effective
Talented People	SER score	Developing
Vision and Engagement	SER score	Effective
Parent, Staff, Student Satisfaction	Staff survey Student survey Parent survey	Not Effective Developing Effective
Cohort Retention	Cohort retention rating	Developing
Attendance, Chronic Absence	School has implemented effective strategies to keep student attendance high and chronic absences low, or led to significant decrease in chronic absence	Not Effective
Suspensions	School has implemented effective strategies that keep suspension low or led to a significant decrease	Developing

¹ For Category 1, a “Highly Effective” rating is scoring in the 80th percentile or above; an “Effective” rating is in the 65th to 79th percentile; a “Developing” rating is in the 50th to 64th percentile; and a “not Effective” rating is below the 50th percentile. (T. 5/9/19 at 358-359; Board Ex. 1).

Programming for Students with Disabilities	School has shown trajectory of growth, is aware of its data and responsibilities, does not have gaps or had decreased gaps in data related to performance, consistently implemented processes, interventions, and strategies to support student outcomes	Not Effective
Climate Overall Rating		Developing

Category 3: Has the School Followed Sufficient Financial Management and Governance Practices?		
Audit Content, Internal Control	School’s independent auditor reports offer unqualified opinions and no management points, statement of cash flow and ratio of assets to liabilities indicate the operator has strong performance on short term liquidity measures	Meets Expectations
Operator Capacity	School has operated effectively, consistently met state, federal district reporting requirements and obligation, no Notice of Concern or Reprimand	Effective
Strategic Leadership/Governance	SER score	Effective
Overall Rating		Effective

On January 8, 2019, the local board approved the BCPS Final Renewal Report, which set forth the summary of findings of the review process and the recommendation to not renew Monarch’s charter. On February 7, 2019, the local board issued a written decision on the non-renewal.

STANDARD OF REVIEW

For decisions of the local board involving a local policy, the local board’s decision is considered *prima facie* correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06A; *See also Northwood Appold Community Academy Pub. Charter Sch. v. Baltimore City Bd. of Sch. Comm’rs.*, MSBE Op. No. 14-04 (2014). A decision may be arbitrary or unreasonable if it is contrary to sound educational policy or a reasoning mind could not have reasonably reached the same conclusion as the local board. COMAR 13A.01.05.06B. 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 unlawful procedure; (5) is an abuse of discretionary powers; or (6) is affected by any other error of law. COMAR 13A.01.05.06C.

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.01.05.06E.

The State Board transferred this case to OAH for proposed findings of fact and conclusions of law by an ALJ. In such cases, the State Board may affirm, reverse, modify or remand the ALJ's proposed decision. The State Board's final decision, however, must identify and state reasons for any changes, modifications or amendments to the proposed decision. *See* Md. Code Ann., State Gov't §10-216. In reviewing the ALJ's proposed decision, the State Board must give deference to the ALJ's demeanor based credibility findings unless there are strong reasons present that support rejecting such assessments. *See Dept. of Health & Mental Hygiene v. Anderson*, 100 Md. App. 283, 302-303 (1994).

LEGAL ANALYSIS

Monarch filed exceptions to the ALJ's Proposed Decision and the Proposed Decision on Remand. In its Exceptions on the Proposed Decision on Remand, Monarch renewed the prior exceptions and added additional ones. We address them below:

EXCEPTIONS TO PROPOSED DECISION (Issued 6/7/19)

Monarch identifies 14 specific exceptions to the ALJ's "findings of fact," numerous unnumbered exceptions to the "discussion and summaries of testimony and evidence" and numerous unnumbered exceptions to the "legal analysis" section of the Proposed Decision. The basis given for many of these exceptions is that the ALJ should have cited and relied upon additional testimony and documentary evidence that was part of the record. This is essentially an argument that the ALJ should have given more weight to certain evidence. "Hearing officers are not required to give equal weight to all of the evidence." *Hoover v. Montgomery County Bd. of Educ.*, MSBE Op. No. 19-03, *citing Karp v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 15-39 (2015). As the fact finder, it is the ALJ's job to sort through conflicting evidence and reach factual conclusions based on the weight the ALJ assigns to that evidence. It is also not necessary for them to cite to every piece of evidence or testimony given in a decision. An ALJ's failure to agree with an Appellant's view of the evidence does not mean the decision is arbitrary, unreasonable, or illegal. *Id.*

Exceptions 1 and 5 (Findings of Fact 10 and 19) and Exceptions to the Use of PARCC to Measure Student Achievement

BCPS uses the PARCC² assessment to evaluate student achievement in the renewal review process to determine if the school is successful academically in the ratings for (1) Absolute Student Achievement, (2) Student Achievement Trend and (3) Student Achievement Growth. Out of the three classifications, BCPS gives the most weight to Student Achievement Growth in its evaluation. BCPS determines if the charter school is "Developing," "Meets Standards," is "Effective," or is "Highly Effective" in each area for math and English in grades 3 – 5 and 6 – 8.

BCPS found Monarch to be overall "Not Effective" in the Category of academic success based on the "Not Effective" ratings in 10 out of the 12 PARCC measures used in the process. This means that Monarch was in the bottom half of comparison schools on these 10 measures,

² The PARCC is now called the Maryland Comprehensive Assessment Program ("MCAP"). (T. 5/9/19 at 447).

and it ranked on or near the bottom of the school system in several measures. (*See Letter to Monarch Families, 1/9/19*). On the Absolute Student Achievement classification, when compared to schools with similar levels of economically disadvantaged students, Monarch scored in the 41st percentile or lower in three of the four measures.

Monarch's Exceptions dispute the use of the PARCC test as the measure of student achievement in the renewal process. Specifically, Monarch maintains that the ALJ should have included information from Monarch's expert witness on academic assessments, Dr. Schuh, who opined that BCPS's assessment of Student Achievement Growth and Absolute Student Achievement were unreliable and could not be used to estimate accurately whether students really improved. (T. 5/9/19 at 304-305; Monarch Ex. 20, Report of Schuh).

The ALJ heard the testimony and reviewed the evidence. She determined, however, that Dr. Schuh's witness testimony in this area was inadequate. Thus, she gave more weight to the testimony of the local board's witnesses. She stated that Dr. Schuh misstated facts, lacked necessary information to form an opinion and that he gave "insufficient" testimony to prove that ONI was unreasonable. (Proposed Decision at 26-28). The ALJ relied heavily on the testimony of Christopher Wohn,³ Director of Research Services, and Ms. Alvarez. Contrary to Monarch's claim, the fact that Mr. Wohn was not qualified as an expert witness does not negate the ALJ's reliance on his testimony. The PARCC assessment was used because that is what has been used in Maryland as an accountability assessment and it is used in the other BCPS schools, making it easy to use for comparison purposes. (T. 5/9/19 at 366).

The ALJ provides a variety of reasons for not giving as much weight to Dr. Schuh's testimony, including his opinion on the economic disadvantage group ranking method, as is her prerogative. Monarch has simply not established that the local board's reliance on the PARCC scores in the evaluation process renders the local board's decision to non-renew arbitrary or unreasonable.

Exceptions 2, 3, 4, and 6 (Findings of Fact 15, 16, 17 and 22) and Exceptions to School Effectiveness Review (SER) Team Analysis

The SER Team conducts the school effectiveness review, which is the evaluation of the school climate category of the renewal process. Monarch's exceptions take issue with the findings related to the School Effectiveness Review. Monarch argues that when viewing various actions by the SER Team as a whole, the actions of the SER Team undermined the validity of the survey methodology and did not permit a fair evaluation of the school.

The ALJ reviewed all of the testimony and evidence presented to her during the hearing and made findings based on what she found material, reliable and instructive to the case. The facts raised by Monarch either were disputed at the hearing or are not material to the appeal. Again, this is a situation in which Monarch disagrees with the weight the ALJ attached to the evidence in the case.

Exceptions 7, 8, 9, 10, 11 and 12 (Findings of Fact 28 — 39) and Exception to Special Education Analysis

The SER Team found that Monarch was "Not Effective" in Programming for Students with Disabilities. This measure evaluates whether the school is exhibiting a trajectory for growth

³ Mr. Wohn's last name is incorrectly spelled in the transcript and Proposed Decision as Juan.

for students with disabilities, is aware of its data for this subgroup, and has effectively and consistently implemented processes, interventions, and strategies to support student outcomes in this area. The measure is rated by looking at the totality of special education programming at the school, including achievement and climate data for students with disabilities, the school's practices, including information in the renewal application, and compliance with State, federal, and district requirements.

Monarch takes exception to the factual findings that relate to Monarch's special education programming rating and the ALJ's analysis in this area. Essentially, Monarch maintains that the analysis of special education overlooks the fact that it reached out to BCPS for help and received insufficient technical support to help Monarch resolve its issues.

Again, the ALJ weighed the evidence and did not find the evidence presented by Monarch to overcome the "Not Effective" rating with regard to special education programming. While BCPS provides technical support to the charter schools, it is ultimately the charter operator's responsibility to make sure they are compliant with special education requirements. The ALJ determined that any technical assistance shortcomings on BCPS's part that were raised by Monarch were not sufficient to affect the final determination. In the end, Monarch was responsible for ensuring compliance with special education requirements and was not effective at doing so.

Monarch also takes issue with the timing of the special education audit performed by the BCPS Office of Special Education Monitoring and Compliance ("OSEMC"). OSEMC issued the compliance review audit report on September 19, 2018. The audit was part of the renewal consideration even though it was conducted after Monarch had submitted its renewal application. The report noted as follows:

- IEP Team Process (applicable to 10/10 students) – 50% compliant
- Referral and Assessment (applicable to 1/10 students) – 0% compliant
- Initial Evaluation (applicable to 1/10 students) – 0% compliant
- Reevaluation (applicable to 5/10 students) – 20% compliant
- Development of IEP (applicable to 10/10 students) – 80% compliant
- LRE Determination (applicable to 5/10 students) – 100% compliant
- Extended School Year (applicable to 5/10 students) – 100% compliant
- Secondary Transition (applicable to 2/10 students) – 0% compliant

The ALJ found that Monarch failed to prove that the timing of the special education audit was unfair or adversely affected the final renewal report in a manner to render it arbitrary or unreasonable. This is supported by the record.

Exception 13 (Findings of Fact 42)

Monarch takes exception to the fact that, on November 20, 2018, it was given four minutes to address the local board regarding ONI's recommendation not to renew Monarch's charter. Monarch maintains that there was no time for a meaningful response and this denied Monarch a full, fair, open and realistic vehicle to present argument. Ms. Alvarez testified that due to the number of schools seeking to address the board, each of the schools was allotted four minutes. Monarch was also allowed to submit a written response to ONI's recommendation not to renew its charter, which it did on December 7, 2018.

Exceptions Regarding Absenteeism and Suspension Rate

The absenteeism and suspension rates are areas of the non-renewal evaluation that concern the school climate. Monarch received a “Not Effective” rating in the Attendance and Chronic Absence area and a “Developing” rating in the Suspension area. Monarch maintains that there could have been error in the calculation of the absenteeism rate based on withdrawals in the first month of school and possible duplicates because of double counts for homeroom and classroom rather than just homeroom. The ALJ found that Monarch provided no concrete examples of any errors. Monarch has not demonstrated that any change to the absenteeism rating would affect the non-renewal decision given that it is just one measure of the school climate evaluation. With regard to the suspension data, the majority of suspensions related to three emotionally disabled students. We agree with the ALJ that this information does not make reliance on the suspension data impermissible.

Remaining Exceptions Regarding Testimony and Evidence

There are several other exceptions in which Monarch believes that the ALJ should have cited to additional testimony or evidence to add to the factual findings and summaries of the testimony. Again, this simply comes down to the fact that the ALJ does not have to cite to every single page of testimony or piece of evidence and that the ALJ makes determinations regarding the weight of the evidence. Monarch’s disagreement with the ALJ’s choices does not render the decision arbitrary or unreasonable.

Do the School Closing Procedures Apply to the Non-renewal of a Public Charter School?

Monarch takes exception to the ALJ’s determination that the local board was not required to apply the school closing factors set forth in COMAR 13A.02.09.01. We exercise our independent judgment on this question to interpret the public school laws and State Board regulations. COMAR 13A.01.05.06E.

COMAR 13A.02.09.01 requires each local board to establish procedures to be used in making school closing decisions which, at a minimum, give consideration to the impact of the proposed closing on the following factors: (1) Student enrollment trends; (2) Age or condition of school buildings; (3) Transportation; (4) Educational programs; (5) Racial composition of student body; (6) Financial considerations; (7) Student relocation; and (8) Impact on community in geographic attendance area for school proposed to be closed and school, or schools, to which students will be relocating. The provision also sets forth procedural steps that the local board must take when closing a school.⁴ These include notice to parents/guardians of students attending the school proposed for closure; a public hearing to permit concerned citizens an opportunity to submit their views on the proposed closure. COMAR 13A.02.09.01(C).

The ALJ concluded that the school closing factors in COMAR 13A.02.09.01 do not apply to the charter school’s non-renewal. We agree with the ALJ’s conclusion, but for different reasons. The ALJ made her determination based on the notion that §9-104.1 of the Education Article governs the manner in which a local board assesses a charter school for non-renewal. The ALJ’s reliance on §9-104.1 is mistaken. Section §9-104.1 sets forth standards a local board implements to assess whether a charter school can be designated an “eligible charter school” which then makes the charter school eligible to negotiate exceptions from certain policies of the local school system. The criteria set forth in §9-104.1 are not intended to replace the existing

⁴ Monarch has not raised an issue regarding the procedural aspects of the COMAR provision in this appeal.

charter school renewal rubric of the local board. (MSDE Guidance Document- *Maryland Charter Schools – Eligibility for Exemptions from Local Policy §9-104.1*, 12/6/16). Section 9-104.1 does not control in this situation

The school closing regulations set forth in COMAR 13A.02.09 are not applicable to the charter school renewal/non-renewal process because the manner and criteria by which a local board assesses if a charter school should be renewed has been left to the discretion of the local board under State law. Pursuant to §9-110 of the Education Article, each local board is required to develop a public charter school policy that includes guidelines and procedures regarding: (1) Evaluation of public charter schools; (2) Revocation of a charter; (3) Reporting requirements; and (4) Financial, programmatic, or compliance audits of public charter schools. Thus, the General Assembly has left it to the discretion of the local boards to determine the manner in which they are going to evaluate their charter schools, which is the primary aspect of determining whether to renew a charter.

In light of this, local boards of education, including the Baltimore City Board of School Commissioners, have developed detailed charter school policies that address the evaluation of a charter school in terms of the criteria considered in the charter renewal decision. The local board's Public Charter School Policy -- Policy IHB provides as follows with regard to renewal:

The initial term for a public charter school shall be five years. At the end of each contract term, the public charter school shall undergo the process of renewal. Through renewal, the school will be evaluated on multiple measures including but not limited to:

- (a) Student Achievement (performance on state assessments, growth measures/value added measures, unique indicators, and fidelity to charter). Student achievement measures will be at least 50% of the renewal score;
- (b) School Climate (attendance, suspensions, enrollment, graduation and dropout rate, student choice data, parent/teacher/student climate surveys);
- (c) Financial Management and Governance (annual audits, budget submission, grants management, and board documentation); and
- (d) Compliance/adherence with applicable federal, state, and local laws, rules, policies, and regulations.

When a local board decides not to renew a charter for a public charter school, the result of that action is a *de facto* closure of the school. There is no need to require a local board to also apply the school closing factors that are set forth in the school closing regulations. It is superfluous and strips from the local boards the discretion to set their own evaluation standards. Furthermore, the school closing factors are not particularly relevant in the charter school arena where the greatest concern is student performance and compliance with education requirements.

EXCEPTIONS OF PROPOSED DECISION ON REMAND (Issued 2/25/20)

Exception to Statement of Case and Issues

Monarch takes exception to the issues presented in the Issues section of the Proposed Decision on Remand. Monarch maintains they set forth the overarching issues on appeal and do

not include the specific issues on remand as noted in the Remand Order. (Exceptions at 3). Our remand was for very specific factual findings to be made as recognized and set forth by the ALJ in the Statement of the Case. (Proposed Decision on Remand at 2). We find that the ALJ made the related factual findings we requested. *Id.* at 12-17. Thus, we find no harm in the issues as set forth by the ALJ in the Issues section.

Economic Disadvantage Group - Exceptions 6, 7 and 8 (Findings of Fact 54, 55, 56, and 58) and Exceptions to Discussion)

Monarch takes exception to the ALJ's Findings of Fact regarding the manner in which BCPS developed the economic disadvantage groups. Monarch argues that BCPS calculated Monarch's 62.2% economic disadvantage group too narrowly because it based the calculation only on poverty factors with no account for the trauma that students endure. Monarch also argues that the economic disadvantage rate was not a fair and appropriate measure because it does not include student neighborhood data. Monarch argues that the ALJ's discussion does not state how and when Monarch was provided with information about its economic disadvantage rating or group, the ability of Monarch to challenge the rating or group, or an analysis substantiating the equity in developing the groups. We will address each of its exceptions in turn.

Monarch's economic disadvantage group and the data considered and analysis to develop the achievement comparison.

BCPS generally develops economic disadvantage rates calculated by the school's direct certification rate plus students enrolled in Medicaid and students with low English proficiency as measured by the WIDA test. (Bd. Ex. 3).⁵ Direct certification is the process conducted by local school systems to certify eligibility for free meals or free milk based on a student being a member a household receiving certain types of federal assistance under various governmental programs and students who scored below a 2.5 proficiency level on the WIDA assessment, which is an English-language proficiency assessment. (Proposed Decision on Remand at 15). *Id.* The reason for including Medicaid and low English proficiency students is to capture students from low-income households who might not be identified by direct certification alone. Because MSDE had not released Medicaid information for the 2017-2018 school year by August 20, 2018, the BCPS economic disadvantage rates represented the direct certification rate plus students with low English proficiency.

BCPS develops economic disadvantage groups to compare student academic performance only in the Absolute Student Achievement renewal category in order to compare charter schools to schools that match them in the number of economically disadvantaged students served in the school population. (Board Ex. 10 at 6-7). BCPS does this to put a control in place due to research linking socio-economic status and absolute performance on PARCC. (T. 1/17/20 at 31, 89-90). When compared to its economic disadvantage group, Monarch scored in the 41st percentile or lower in three of the measures. (Bd. Ex. 3 at 3).

The ALJ's findings explain BCPS's use of direct certification rates to develop Monarch's economic disadvantage groups. These findings are reasonable based on the record and simply state the way in which BCPS developed the ratings. Monarch clearly would have preferred a different methodology for development of the economic disadvantage group. The evidence in the record shows that the BCPS methodology used to develop the group came over a number of

⁵ WIDA means World-Class Instructional Design and Assessment.

years in consultation with Education Resource Strategies. (T. 1/17/20 at 100). BCPS provided rational reasons for the calculation of the economic disadvantage group, including its basis for considering WIDA assessment results and for excluding the Medicaid data. Monarch's disagreement with the calculation does not render it arbitrary, unreasonable or illegal.

Monarch argues that the ALJ's discussion does not state how and when Monarch was provided with information about its economic disadvantage rating or group, the ability of Monarch to challenge the rating or group, or an analysis substantiating the equity in developing the groups. BCPS provided Monarch final tables showing the schools in its economic disadvantage group on August 20, 2018. (Bd. Ex. 3). Our remand to OAH was for very specific reasons. The ALJ answered our charge with regard to our economic disadvantage group inquiry; to identify the comparison schools, to set forth the data that was considered for each school, and explain the analysis to develop the achievement comparison. The record in this case sets forth the methodology used to create those groups and addresses matters surrounding that topic. Monarch has challenged the economic disadvantage rating or group and the methodology used to establish them through this appeal. There is simply no basis for this exception.

Role of Charter Schools and 50% Threshold – Exceptions 1 and 5 (Findings of Fact 46 and 53) and Exceptions to Discussion

Monarch takes exception to the ALJ's Finding of Fact #46 and #53. Finding #46 states:

The role the Board has defined for charter schools to improve or enhance BCPS's performance is based on Maryland law and the Board policy. (Md. Code Ann., Educ. §§ 9-101(b) and 9-104.1 (2018); Policy IHB.) The statute and policy provide that the general purpose of the charter school program is to establish an alternative means within the existing public school system to provide innovative learning opportunities and creative educational approaches to improve the education of students. Also, student achievement must exceed the average in the local school system in which the public charter school is located on statewide assessments and on other measures developed by MSDE.

Finding #53 states:

The renewal criteria requiring a charter school to be above the 50th percentile of all BCPS schools in terms of achievement, (or schools in the charters school's economic disadvantage group for absolute performance), derives from Maryland law and Board policy.(Md. Code Ann., Educ. §§ 9-101(b) and 9-104.1; Policy IHB.) The basis and rationale for the criteria are founded on the statute which states student achievement must exceed the average in the local school system in which the public charter school is located on statewide assessments and on other measures developed by MSDE

Monarch also argues that the ALJ failed to offer a complete response to this Board's remand question regarding the role of charter schools and maintains that the explanation of the 50% threshold requirement was too simplistic. We disagree.

The role that BCPS has defined for charter schools in the context of all other schools in the school system.

Section 9-101(b) of the Education Article states that the general purpose of the Maryland Charter School Program “is to establish an alternative means within the existing public school system in order to provide innovative learning opportunities and create additional approaches to improve the education of students.” The local board’s Policy IHB – *Public Charter Schools* echoes this stating that the purpose is “[t]o provide parents and students an alternative means within the existing public school system for additional innovative learning opportunities and creative educational approaches to improve the education of students.” (Policy IHB at I).

BCPS maintains that the role of the charter school is to “improve” or “enhance” BCPS performance based on the purpose of the charter school program to “create additional approaches to improve the education of students.” (T. 1/17/20 at 8-9, 12). From this purpose, BCPS developed its criteria for evaluating charter school renewal, as set forth in the section of the rubric that requires charter schools to score in the 50th percentile or above to achieve a rating other than “Not Effective” in the areas of Absolute Student Achievement, Student Achievement Trend, and Student Achievement Growth.⁶

Monarch argues that the terms “improve” and “enhance” are not defined by law or by the local board policy with regard to student achievement and provide no discernible criteria on the progress required to reasonably determine what constitutes improvement or enhancement. The lack of definition in the law and policy does not render BCPS’s position arbitrary or unreasonable as these terms have understandable ordinary meanings. In determining what the ordinary and commonly accepted meaning of a phrase or word is we often consult an appropriate dictionary for guidance, without losing sight of the context provided by the statute and the Legislature. *Baltimore Police Dep’t v. Brooks*, 2020 WL 4362254, at *6 (Md. Ct. Spec. App. July 30, 2020). The ordinary meaning of the term “improve,” is “to enhance in value or quality: make better.” <https://www.merriam-webster.com/dictionary/improve>. The ordinary meaning of the term “enhance,” is “heighten, increase.” <https://www.merriam-webster.com/dictionary/enhance>.

BCPS, like other local boards of education, have developed detailed charter school policies that address the evaluation of a charter school in terms of the criteria considered in the charter renewal decision. The local board’s Policy IHB requires the evaluation of multiple measures including student Achievement (performance on state assessments, growth measures/value added measures, unique indicators, and fidelity to charter). In developing its charter renewal policy, BCPS looked to the language of the purpose statement in §9-101 (to “create additional approaches to improve the education of students”) and determined that the role of the charter school is to “improve” or “enhance” BCPS performance. (T. 1/17/20 at 14). In pursuit of the goal “to improve the education of students,” BCPS has established its academic achievement ratings that require charter schools to score in the 50th percentile or above to achieve a rating higher than “Not Effective.” (T. 1/17/20 at 25, 54).

Monarch argues that BCPS’s approach is not acceptable because it results in an unintended consequence in that innovative and creative schools such as Monarch would only succeed if they recruit students who can score well on a standardized test and it discourages mission-driven operators like the Children’s Guild from investing in charter schools that serve students in the most challenged neighborhoods. (Exceptions at 7-8). As explained by the local

⁶ As also set out in footnote 1, for Category 1, a “Highly Effective” rating is scoring in the 80th percentile or above; an “Effective” rating is in the 65th to 79th percentile; a “Developing” rating is in the 50th to 64th percentile; and a “not Effective” rating is below the 50th percentile. (T. 5/9/19 at 358-359, Board Ex. 1).

board, BCPS addresses the difficulty of rating students who are unable to excel on a standardized test in the evaluation process by comparing similarly situated students at different schools against each other through the economic disadvantage groups. In addition, the record reflects that BCPS does not calculate academic ratings in a way that only ranks current academic scores. BCPS also calculates the ratings to track improvement over time of individual students. A school with students from an underperforming population is still capable of being ranked “highly effective” if its students show individual growth throughout their years at school. According to Ms. Alvarez, BCPS has charter schools with high poverty populations that are meeting the standards. (T. 1/17/20 at 66-67). We find the local board’s position and the measures taken to achieve its goal to be reasonable and consistent with educational policy.

We find that the ALJ’s response was complete. Moreover, the record contains a full explanation of BCPS’s view of the role of charter schools, the basis for the ratings, how the rubric is used, what each measure signifies, and how it obtains the ratings. (T. 1/17/20 at 22-27). We agree with the ALJ that the section of the rubric that requires charter schools to score in the 50th percentile or above to achieve a rating other than Not Effective was not illegal, arbitrary or unreasonable.

We point out one error by the ALJ in her discussion of the 50% threshold on p. 33 of the Proposed Decision on Remand. In this discussion the ALJ improperly relies on §9-104.1 of the Education Article in stating that it “requires the Board to employ statewide assessments to determine if a school is eligible for charter.” As we noted earlier, §9-104.1 sets forth standards a local board implements to assess whether a charter school can be designated an “eligible charter school” which then makes the charter school eligible to negotiate exceptions from certain policies of the local school system. The criteria set forth in §9-104.1 are not intended to replace the existing renewal rubric of the local board. (MSDE Guidance Document- *Maryland Charter Schools – Eligibility for Exemptions from Local Policy §9-104.1*, 12/6/16). For the reasons stated herein, her reliance on this section does not change our conclusion that the local board’s decision is reasonable and not arbitrary.

Notice of Renewal Criteria – Exceptions 2, 3 and 4 (Findings of Fact 46, 47 and 51) and Exceptions to Discussion

Monarch takes exception to several of the ALJ’s Findings of Facts suggesting the addition of some language. We note the language Monarch wants added in italics as follows:

- “On July 1, 2016, Monarch received *initial* notice of the *anticipated* renewal criteria with its 2016 Renewal Charter School Agreement.”
- “On June 22, 2018, *following the end of the critical 2017-2018 renewal year*, Monarch received *updated and revised* notice of the renewal rubric, including percentages required for the rating of Highly Effective, Effective, Developing, and Not Effective. *At that time, Monarch did not receive the all important renewal data.*”
- “On July 27, 2018, Monarch received *preliminary* notice of the Renewal Data Tables.”

(Exceptions at 4).

We disagree with Monarch that the ALJ’s findings of facts need to be edited as it suggests. We find that the ALJ’s findings of fact are supported by the record and accurately reflects the timeline and what information BCPS disclosed to Monarch on each of the dates. We find no basis to add the language requested by Monarch.

Notice to Monarch of the renewal criteria to be at or above the 50th percentile of all BCPS schools in terms of achievement.

Monarch also takes exception to the ALJ's discussion regarding its notice of the renewal criteria. Monarch concedes that the dates outlined accurately reflect communication from BCPS to Monarch regarding renewal criteria. Monarch states that the dates do not completely reflect the actual notice received and maintains that the criteria was "ever-changing" and the associated data was sometimes unavailable or incomplete.

The State Board has looked closely at the fairness of the renewal evaluation process in this case, specifically related to notice of the renewal criteria and rubric as it relates to academic achievement. Much like the process for evaluating the initial charter school application, this Board expects a fair and open evaluation process for charter renewal. We expect local boards to develop clear guidelines for the renewal process, to explain the renewal process to all charter schools that will be subject to renewal, and to make the process as consistent and transparent as possible. This includes sharing the renewal criteria and rubric with charter schools rather than shrouding them in mystery.

As we stated in *Somerset Advocates for Educ. v. Somerset County Bd. of Educ.*, MSBE Op. No. 07-39 (Oct. 30, 2007), in the context of an initial charter application approval, we assess the evaluation process as a whole. Although the process for initial charter school approval is somewhat different from the charter renewal process, the analysis in *Somerset* provides us with useful guidance here. We look at the renewal evaluation process as a whole to determine if the process itself was so unfair that it resulted in an arbitrary decision. Our decision in *Somerset* concluding that withholding a scoring rubric in the evaluation of a charter school application was not arbitrary and unreasonable as long as the process as a whole is otherwise well-explained and fair to the applicant is similarly applicable in the renewal of a charter to operate the school.

In *Somerset County v. Somerset Advocates for Educ.*, 189 Md. App. 385, 401 (2009), the court explained that arbitrary is something done "'without adequate determining principle,' 'nonrational,' and 'willful and unreasoning action, without consideration and regard for facts and circumstances presented'; and the term 'arbitrary and capricious' as 'willful and unreasonable action without consideration or in disregard of facts or law or without determining principle.'" The court noted that our regulations define decisions of a county board as being "arbitrary" where "contrary to sound educational policy" and/or where a "reasoning mind could not have reasonably reached the conclusion the county board reached." *Id.*

The local board's Public Charter School Policy – IHB, adopted June 2011, informs charter operators that renewal is based on the evaluation of multiple factors including student academic achievement as measured by performance on State assessments, such as PARCC. (Board Ex. 11). Policy IHB puts charter schools on notice of the high level of importance of the student academic achievement criteria by stating that it counts towards at least 50% of the renewal score. *Id.* It also sets forth the other criteria that include school climate, financial management and governance. *Id.*

BCPS also includes the renewal criteria in its contracts with the charter school operators (T. 1/17/20 at 15). Monarch previously went through the renewal process during the 2015-2016 school year and BCPS provided the Renewal Framework to Monarch as part of its 2016 Renewal Charter School Agreement on July 1, 2016. (Board Ex. 12, Attach. 2). The Renewal Framework provided notice that student achievement, specifically performance on state assessments such as

PARCC to include achievement, trends and growth, was a factor for evaluating academic performance. (*Id.* at Attachment 2 at 1-2). It also advised that student achievement would be given 50% weight in the renewal score, with school climate, fiscal management and governance making up the remaining 50%. Thus, Monarch has been on notice for several years that BCPS evaluates academic performance on PARCC in the renewal process and that academic performance weighs very heavily in the evaluation.

The charter school contract and the Renewal Framework specifically state that BCPS reviews the framework annually with input from the charter school operators and that BCPS can make modifications. *Id.* BCPS publically discussed any subsequent changes to the renewal framework, and provided the data used to produce the ratings to operators at multiple times throughout the process as soon as the data became available. (T. 1/17/20 at 15-17).

On June 22, 2018, BCPS provided Monarch notice of the renewal rubric including the specific percentages required to achieve the ratings of Highly Effective, Effective, Developing, and Not Effective for absolute student achievement, student achievement trend, student achievement growth. (Board Ex. 1). This document sets forth the 50% threshold for the rating scale on academic achievement on PARCC in order to achieve a rating other than Not Effective on a particular grade band measure. On August 20, 2018, the local board gave Monarch notice of the final renewal data tables including PARCC results, the SER ratings, the schools in its economic disadvantage group and data related to attendance, chronic absences, and suspensions.

We have some concerns about the timing of notice of the rubric specifying the achievement rating scale. While we believe that the better practice is to inform charter schools of information such as this earlier in the renewal process, we cannot conclude that BCPS's action was so unfair or lacked transparency as to render the local board's decision arbitrary, unreasonable or illegal. As explained above, Monarch was on notice for years of the high level of consideration BCPS gave to academic achievement in the renewal process, specifically PARCC performance, and that it was the most heavily weighted criteria of the evaluation. Not knowing the exact percentages for PARCC performance for each specific rating until June 22, 2018 did not prejudice Monarch in this case. BCPS did not withhold the renewal criteria and Monarch was aware for several years that student achievement would count for 50% of its renewal evaluation score.

Monarch also maintains that the ALJ's Proposed Decision on Remand does not articulate the basis and rationale for requiring a charter school to be in the 50th percentile or above all BCPS schools in terms of achievement (or school in its economic disadvantage group), but simply notes that the requirement was contained within the renewal rubric. The basis for the 50% threshold for the ratings is related to BCPS's view of the role of charter schools to improve education of students, as we discussed above and as referenced in the ALJ's Proposed Decision on Remand. In her testimony, Ms. Alvarez explained that the notion of improving the education of students is embedded in the renewal process through the ratings and the weight placed on academic performance in the review. (T. 1/17/20 at 52-56). Because we have fully addressed the basis for the requirement in our discussion of the role of charter schools we need not address it further here.

CONCLUSION

In our view, the record supports the conclusions reached by the ALJ. We do not find that the local board acted in an illegal, unreasonable, or arbitrary manner in deciding not to renew

Monarch's charter. We adopt the ALJ's Proposed Decision on Remand, except to the extent specified in this Opinion.

Signatures on File:

Clarence C. Crawford
President

Jean C. Halle
Vice-President

Gail H. Bates

Charles R. Dashiell, Jr.

Susan J. Getty

Vermelle D. Greene

Rachel McCusker

Joan Mele-McCarthy

Lori Morrow

Warner I. Sumpter

Holly C. Wilcox

Dissent:

Charter schools have come about due to the need for education alternatives to create competitive successful learning environments to aid our children in becoming academic winners. In my view, the result of eliminating the charter school is, in this case, that children may be placed in lesser performing similarly situated public schools. Such a result does not improve the opportunity for the children to become academic winners or provide a competitive educational

environment. I am concerned that a charter school that is academically similarly situated to a traditional public school is being held to a higher standard. If so, could this be construed as an admission that charter schools have a better chance of educating our children than the public schools? I pray not. I believe Monarch has demonstrated a cause for concern.

Shawn D. Bartley

Absent:
Rose Maria Li

August 25, 2020