



Maryland State Board of Education

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MEMORANDUM

December 6, 2017

TO: Dr. Theresa R. Alban
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FROM: Michelle L. Phillips *MLP*
Administrative Officer
Maryland State Department of Education

SUBJECT: Frederick Classical Charter School, Inc. v. Frederick County Board of Education

Enclosed is a copy of **Opinion No. 17-41** for the above named case which was rendered by the Maryland State Board of Education at its December meeting.

Enclosure

cc: State Board File

FREDERICK CLASSICAL
CHARTER SCHOOL

Appellant

v.

FREDERICK COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Opinion No. 17-41

OPINION

INTRODUCTION

In October 2013, Frederick Classical Charter School, Inc. (“Frederick Classical”) appealed the decision of the Frederick County Board of Education (local board) concerning the level of commensurate funding allocated for the 2013-14 school year. In the alternative, Appellant sought a declaratory ruling that the local board’s 2013-14 per pupil allocation formula was inconsistent with state law.

On May 24, 2014, the State Board affirmed the decision of the local board. Appellant appealed. The Circuit Court for Frederick County affirmed the State Board’s decision, as did the Court of Special Appeals. On July 14, 2017, the Court of Appeals reversed the State Board’s decision and remanded the case for further proceedings consistent with that opinion. *Frederick Classical Charter School, Inc. v. Frederick County Bd. of Educ.*, 454 Md. 300 (2017).

FACTUAL BACKGROUND

The local board approved Appellant’s application for a charter in 2011 and the parties executed a charter agreement in 2012. Frederick Classical began operating in 2013. On December 14, 2016, the local board renewed Appellant’s charter for eight years.

Maryland law requires that local boards disburse funds to public charter schools in an amount that is “commensurate with the amount disbursed to other public schools in the local jurisdiction.” Md. Code, Educ. § 9-109(a). In Frederick County Public Schools (“FCPS”), this amount has been calculated as a Per Pupil Allocation (“PPA”). On June 26, 2013, Frederick County Public Schools (“FCPS”) sent Appellant the PPA for the 2014 fiscal year, along with documents describing how FCPS calculated that figure, to assist with the preparation of the budget for Frederick Classical. FCPS set the PPA at \$8,818.54, resulting in Appellant receiving approximately \$2.4 million for the 2014 fiscal year based on an enrollment of 280 students. (Motion, Pellegrino Affidavit).

Appellant submitted its budget on August 14, 2013. In a letter accompanying the budget, Appellant stated that it objected to FCPS’s calculation of the PPA because it did not include transportation funds. (Motion, Affidavit Ex. 4). The local board defended the PPA Allocation in a letter sent to Appellant on September 25, 2013. In the letter, the local board stated it based its

allocation of funds on a formula previously accepted and approved by the State Board. The local board maintained that its allocation formula, which did not include transportation funds because Appellant was not providing transportation to students, was consistent with Maryland law. (Motion, Affidavit Ex. 5).

On May 24, 2014, the State Board affirmed the decision of the local board. Appellant appealed to the Circuit Court for Frederick County, which affirmed the State Board's decision, as did the Court of Special Appeals.

On July 14, 2017, the Court of Appeals reversed the State Board's decision and remanded the case for further proceedings. *Frederick Classical Charter School, Inc. v. Frederick County Bd. of Educ.*, 454 Md. 300 (2017). The Court held that the State Board (1) applied the incorrect standard of review in deciding the appeal; (2) incorrectly determined that Appellant was not entitled to transportation funds because it did not provide transportation services; and (3) incorrectly found that Appellant had agreed not to receive transportation funds in its Charter Agreement. *Id.* at 420. The Court remanded the case for the State Board to apply the correct standard of review and render a decision as to Appellant's claims consistent with the Court's holdings. *Id.* at 422. Finally, the Court ordered that if "the State Board determines that [Appellant] is entitled to additional funds in its per-pupil allocation for the 2014 Fiscal Year, or for other years during the term of the charter agreement, it shall issue an order calculating the exact amount of additional funds owed based upon [Appellant's] enrollment during the relevant years, and directing the Local Board to pay that amount." *Id.*

The local board sought reconsideration of the Court's decision, which the Court denied on August 24, 2017. On September 6, 2017, the Court of Special Appeals remanded the case to the Circuit Court for Frederick County. On October 10, 2017, the Circuit Court remanded the case to the State Board.

STANDARD OF REVIEW

This case concerns the interpretation of Md. Code, Educ. §9-109 as it applies to the calculation of commensurate funds for a local charter school. In such a case, 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; *see also Frederick Classical*, 454 Md. at 371-77.

LEGAL ANALYSIS

The Court of Appeals outlined several errors in our previous opinion, which we shall address in turn.

Standard of review

The Court of Appeals concluded that our previous opinion applied the incorrect standard of review and gave improper deference to the decision of the local board. *Frederick Classical*, 454 Md. at 371-77. In amending our decision, we apply the independent judgment standard and give no deference to the local board's conclusions.

The interpretation of “commensurate funding”

This appeal concerns the State Board’s interpretation and calculation of commensurate funding. The Charter School Program, which became law in 2003, requires that a local board “disburse to a public charter school an amount of county, State, and federal money for elementary, middle, and secondary students that is commensurate with the amount disbursed to other public schools in the local jurisdiction.” Md. Code, Educ. §9-109. The law does not define the terms “commensurate” or “disbursed.”

On May 26, 2005, this Board issued three opinions explaining the meaning of the terms “commensurate” and “disbursed” in accordance with our power to interpret State education law. This Board stated that the word “commensurate” meant “proportionate” and that “disbursed” meant “expended.” *City Neighbors Charter Sch. v. Baltimore City Bd. of Sch. Comm’rs*, MSBE Op. No. 05-17 (2005). This Board further stated that commensurate funding “includes funding for services for which students in the public charter schools are eligible such as free and reduced price meals, pre-kindergarten, special education, English-language learners, Perkins, Title I, and transportation.” *Id.*

In order to assist local school systems, this Board in the *City Neighbors* cases provided a formula designed to result in a proportionate amount. *Id.* The formula takes the annual school system operating budget (including all federal, State, and local funding) divided by the September 30 enrollment count for the previous year minus two percent for reasonable central office functions to arrive at the per pupil allocation. *Id.* In addition, the charter school may be responsible for reimbursing the school system for the cost of any services that the county provides. *Id.* The Court of Appeals upheld the State Board’s decisions in the *City Neighbors* cases, concluding that the State Board had discretion to interpret “commensurate” funding and that the board committed no legal error by using an average per pupil funding approach. *Baltimore City Bd. of Sch. Comm’rs v. City Neighbors Charter School*, 400 Md. 324, 356 (2007).

The Court of Appeals has recognized that the State Board may depart from our previous interpretation of commensurate funding as described in the *City Neighbors* cases. We may do so either through adjudicatory proceedings or through formal notice-and-comment rulemaking. *Frederick Classical*, 454 Md. at 411. To make such a change through the adjudicatory process, however, we must offer a rational explanation for the change and take into account the substantial reliance that various parties, including charter schools and local boards, have placed on our past decisions. *Id.* at 412. In this decision, we do not depart from our previous interpretation. Instead, we apply the *City Neighbors* formula as further interpreted by the Court of Appeals.

Transportation funds as part of “commensurate funding”

Keeping these principles in mind, we turn to the current appeal. In our original decision, we concluded that FCPS did not violate State law by withholding transportation funds from its calculation of a PPA for Appellant. In *Frederick Classical*, the Court of Appeals concluded that transportation funding must be included when calculating the per pupil allocation:

[W]hen calculating a charter school’s per-pupil allocation of commensurate funds, a local school board generally must include in that calculation funds

budgeted for any of the services expressly identified in the declaratory rulings – including funds for transportation services. However, a local school board is not required to include funds for services that have detailed eligibility requirements under state and federal law when the charter school does not meet those eligibility requirements. For transportation, there are no such eligibility requirements for general education students, and a local school board must therefore include the funds budgeted for that service when calculating a charter school’s per-pupil allocation, regardless of whether a charter school provides transportation services to its general student population.

454 Md. at 392.

Applying this approach enunciated by the Court of Appeals, we conclude that the local board should have included transportation funds as part of its PPA to Appellant. It does not matter whether or not Appellant actually provided transportation services to its students, according to the Court of Appeals, the charter school was entitled to those funds for the 2014 fiscal year.

In coming to that conclusion, the Court considered the meaning of the State law governing the use of state transportation funding. The statute at issue is Md. Code, Educ. §5-205(a):

The State shall distribute grants as provided under this section to the county boards to provide transportation services for public school students and disabled children for whom transportation is to be provided under §8-410 of this article. Appropriations for student transportation shall be budgeted in a separate budget category as provided in §5-101 of this title. If the amount that is appropriated to a county under this section in a fiscal year is more than the actual cost of providing student transportation services in that county, a county board may apply any excess funds to costs of pupil transportation in subsequent years. None of these funds may be paid to or claimed by any subdivision, nor may any of these funds be reverted to any subdivision. A county board may not transfer State revenues from the student transportation category to any other category as a result of this section.

The Court of Appeals reviewed these provisions and concluded that “transportation funding is not restricted under state law” and that “the General Assembly has not imposed detailed programmatic restrictions on how those [State transportation] funds must be used.” *Frederick Classical*, 454 Md. at 388. The Court reached this conclusion, in part, by recognizing that aside from providing transportation for students with disabilities, “a local school board is not required by state law to provide transportation to any particular public school student.” *Id.* at 389. The Court explained, however, that “for disabled students who are entitled to transportation . . . a charter school must elect to actually provide transportation services to disabled students in order to receive its proportional share of county funding for the transportation of disabled students. In contrast, if the charter school elects to have transportation for special education students provided by the local school board, it must reimburse the cost of those services.” *Id.* at 390-91. Local boards must apply the Court’s reasoning in calculating commensurate funding.

The charter agreement between Appellant and FCPS

In our original decision, we concluded that it would be unreasonable for Appellant to receive transportation funds because its Charter with FCPS indicated that it was not providing transportation to students. The Court of Appeals interpreted two provisions in the Charter between Appellant and FCPS. Those provisions are:

In accordance with [Md. Code, Educ.] § 9-109 and further clarified in corresponding State Board rulings, the [local board] shall disburse to [Appellant] an amount of county, state, and federal money for elementary, middle, and secondary students that is commensurate with the amount disbursed to other public schools in the local jurisdiction. [Appellant] may seek and receive other funds through local, state or federal government sources and/or from private sources without a reduction in its annual commensurate allocation.

Transportation shall be the responsibility of [Frederick Classical] families with the following exceptions:

1. Students who live along an established bus route that passes the School facility; and
2. Special education students with transportation on their IEPs.

If [Frederick Classical] subsequently determines to provide transportation during the term of this Charter, it may contract with an approved provider for transportation services within provisions allowable under the negotiated agreement.

The Court of Appeals interpreted these provisions to mean that Appellant was not responsible for providing transportation and that the responsibility for providing transportation was placed on the families of students who attend Frederick Classical. *Frederick Classical*, 454 Md. at 415. The Court concluded, however, that the first provision above (that discusses funding) must be read together with the second provision that covers transportation. Because charter schools are entitled to “a commensurate share that includes transportation funds,” Appellant did not waive its right to those transportation funds by declining to provide transportation for its students. *Id.* at 415-16. Appellant was entitled to the transportation funds, which it may “dedicate to providing other educational programs or services.” *Id.* at 416. We apply the Court’s analysis here and conclude that Appellant did not waive transportation funds by virtue of the language in its Charter agreement.

Relief for Appellant

The Court of Appeals ordered that if the State Board found that the Appellant was entitled to additional funds, it “shall issue an order calculating the exact amount of additional funds owed based upon [Appellant’s] enrollment during the relevant years, and directing the [local board] to pay that amount.” *Frederick Classical*, 454 Md. at 422. Although we conclude that Appellant is entitled to additional funds, it is impossible to calculate the exact amount of

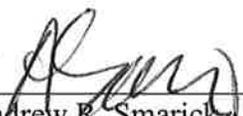
funds owed to Appellant for the 2014 fiscal year and beyond based on the limited and incomplete record before us.

We therefore remand this case to the local board for several reasons. First, it is unclear from the record whether the amount of money withheld by the local board each year included State and county transportation dollars earmarked solely for the transportation of students with disabilities. Second, the record does not include Appellant's enrollment for the 2015 fiscal year forward, which will impact the amount of money it will receive. Third, the record is incomplete regarding Appellant's PPA and the amount of transportation funds that were subtracted from the PPA by the local board for the 2015 fiscal year forward. Without these key pieces of information, we cannot calculate an exact figure that is owed to Appellant.

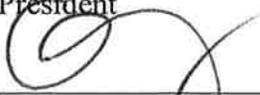
In remanding, we are aware that it has been more than four years since this dispute originated. We therefore require the local board to report to us within 60 days the following: the revised PPA for Appellant for the 2014 fiscal year and each subsequent year; the amount of additional funding owed to Appellant for each fiscal year as a result of the revised PPA; the local board's calculations showing how it determined the revised PPA and additional funding owed; and the local board's plan for timely compensating Appellant to comply with this opinion and the Court's order. We encourage both parties to work together to accomplish those purposes.

CONCLUSION

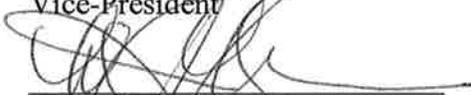
For all these reasons, we reverse the decision of the local board because it was contrary to State law. We remand this case to the local board to revise its calculations in accordance with this opinion and to report to this Board within 60 days.



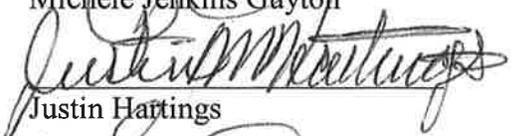
Andrew R. Smarick
President



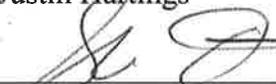
Chester E. Finn, Jr.
Vice-President



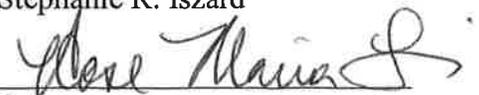
Michele Jenkins Gayton



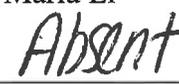
Justin Hartings



Stephanie R. Iszard



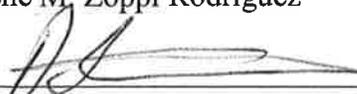
Rose Maria Li



Michael Phillips

Absent

Irene M. Zoppi Rodriguez



David Steiner

December 5, 2017