

M.E.C.C.A BUSINESS
LEARNING INSITUTE
(MBLI)

Appellants,

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 20-25

OPINION

INTRODUCTION

M.E.C.C.A. Business Learning Institute (“MBLI”), a charter school applicant, filed a request with the State Board for four waivers of State law.¹ Montgomery County Public Schools (“MCPS”) has filed a response in opposition to that request.

STANDARD OF REVIEW

In making waiver decisions regarding charter schools and charter school applicants, the State Board exercises its independent judgment in the record before it to explain and interpret education law. COMAR 13A.01.05.06(E).

LEGAL ANALYSIS

In considering waiver requests, we are guided by the parameters of the Maryland charter school law, Education Art. §9-101 *et. seq.* Charter schools are public schools and not independent entities, and we must consider that fact when reviewing a request to waive State laws that govern how public schools operate in Maryland. Education Art. §9–106 (a) and (b) provides that the public charter schools “shall comply with the provisions of law and regulation governing other public schools,” and that a waiver of those requirements “may be sought through an appeal to the State Board [of Education].” *Patterson Park Pub. Charter Sch., Inc. v. Baltimore Teachers Union*, 399 Md. 174, 180–81 (2007). In considering the waiver request we also consider the flexibility and autonomy to allow innovation, educational reform and high accountability that is a big component of the charter school concept. *Mountain Maryland Public Charter School v. Allegany County Pub. Schs.*, MSBE Op. No. 11-13 (2011).

¹ MBLI describes itself as a college preparatory and vocational school for middle and high school students, with a business education theme.

*Waiver Request #1 – Education Article §§4-103(a), 4-311, 6-201, and 9-104.1(f) and (g)
- Personnel Hiring*

MBLI requests a waiver of Education Art. §§4-103(a), 4-311, 6-201, and 9-104.1(f) and (g). MBLI states that it must be granted the authority to lead the recruitment and selection of its staff, and manage turn-over and retention. MBLI maintains that MCPS will have “final approval” of the staff recruited and selected by MBLI.

Education Art. §4-103(a) requires the local board to appoint all principals, teachers, and other certificated and noncertificated personnel and set their salaries. Section 4-311 requires the local board to establish the personnel system governing certificated and noncertificated employees and a system-wide personnel evaluation system. Under §6-201, the local board employs individuals in the positions that the local board considers necessary for the operation of the public schools in the county. The local superintendent nominates all professional assistants, all principals, teachers, and other certificated personnel for appointment by the local board. The local superintendent is authorized to assign personnel to their positions in the schools; transfer them as the needs of the schools require; recommend them for promotion; and suspend them for cause and recommend them for dismissal. Supervisory and administrative personnel must hold the appropriate certificate from the State Superintendent issued in accordance with the rules and regulations of the State Board. The local board determines the qualifications, tenure, and compensation of each appointee. Consistent with Education Article § 9–105, the local board must ensure that MBLI’s professional staff hold the appropriate Maryland certification. *Baltimore City Bd. of Sch. Com'rs v. City Neighbors Charter Sch.*, 400 Md. 324, 330 (2007).

We recognize that MBLI desires the flexibility to lead the recruitment and selection of its staff, and manage turn-over and retention. However, the local board must have the final authority to appoint all principals, teachers, and other certificated personnel and set their salaries, and we do not waive those requirements. Since charter schools are public schools, the local superintendent must retain the authority to have final authority over personnel decisions to meet the overall needs of the school system. *See Mountain Maryland Pub. Charter Sch.*, *supra*, (The State Board “will not waive the statutes that give the superintendent and the local board the ultimate authority to make employment decisions concerning charter school’s employees.”).

To the extent that MBLI seeks flexibility over leading the recruitment and selection of its staff, and managing turn-over, and retention, waiver from Education Art. §§4-103(a), 4-113, and 6-201 is not required. Education Art. §9-104(c)(1) allows the charter school application to include a staffing model, including provision for staff recruitment, training, evaluation, and professional development. These are matters subject to negotiation with the local board. However, because the employees that work at charter schools are employees of the local board and the local board ultimately maintains the personnel system, the final personnel decisions must remain with the local board. *Patterson Park Pub. Charter Sch. v. Baltimore Teachers Union*, 399 Md. at 182 (All employees of public charter schools are public school employees with the right to be collectively represented, and the right to all of the benefits deriving from any existing collective bargaining agreements).

MBLI has requested a waiver of Education Art. §9-104.1(f) and (g). Section 9-104.1(f) allows a local board and an “eligible public charter school” to jointly develop a communication process and supervision methodology among the local board, the charter school operator, and the administration of the charter school. Section 9-104.4(g) contains provisions regarding assignment of a principal and assignment or transfer of staff of an “eligible public charter school.” The entirety of §9-104.1 applies only to “eligible public charter schools” which are charter schools that have been in existence for 5 years and that have demonstrated a history of sound fiscal management and student achievement on statewide assessments and other State Board developed measures. Because MBLI is a charter school applicant and has not been in existence for 5 years, MBLI is not an “eligible charter school” and this statute is not applicable here. Moreover, the provisions of Title 9 of the Education Article are not subject to waiver. *Patterson Park Pub. Charter Sch., Inc. v. Baltimore Teachers Union*, 399 Md. 174, 200 (2007) (To conclude otherwise would lead to the absurd result that all of Title 9’s provisions could be waived, rendering the entire Title nugatory); *See also* Education Art. §9-106(a) and (b) (allowing a charter school to seek a waiver of “provisions of law and regulation governing **other** public schools.”)(emphasis added).

Waiver Request #2 - Education Article §§4-111 and 9-104.1(e) - Curriculum Guides and Courses of Study.

MBLI states that it will be a college preparatory and vocational school with a business education theme and it is essential that the MBLI designed curriculum and courses of study be utilized to meet its mission and goals. MBLI maintains that its courses of study will be aligned with Maryland’s College and Career-Ready Standards and the Common Core, subject to the final approval of MCPS, and governed by the terms of the charter agreement with MCPS.

Education Art. §4-111 requires the local board to develop curriculum guides for the schools within its jurisdiction that are subject to laws, regulations, policies, and guidelines established by the State Board. The local board’s curriculum guides and courses of study for the schools in its jurisdiction include appropriate programs for students with disabilities.

We agree that charter schools should have some freedom and flexibility over how they deliver curriculum, but the curriculum must be aligned with State Board adopted standards and subject to approval of MCPS. A waiver is not required because the extent of curriculum flexibility will be governed by the terms of the MBLI’s charter agreement. We encourage both the local board and MBLI to include flexibility in the charter agreement to meet their missions and goals. However, the MCPS is responsible for approving the curriculum guides and courses of study of the public schools, including the charter schools.

MBLI requests a waiver of Education Art. §9-104.1(e) which provides that an “eligible public charter school” may be exempt from certain requirements, including textbook, instructional program and curriculum requirements, if the “eligible public charter school” and the public chartering authority mutually agree to an alternative means for the “eligible charter school” to satisfy the intent of the policies of the public chartering authority. As already explained above, the statute is inapplicable here because MBLI is not an “eligible public charter school” and waiver of the provisions of Title 9 are prohibited.

Waiver Request #3 Education Article §§4-310 and 5-112 - Bidding and Procurement

MBLI seeks a waiver of Education Art. §§4-310 and 5-112 which set forth certain bidding and contracting rules that apply to local boards. MBLI also requests a waiver of all local board regulations governing procurement. It states that it will be operating on small margins and should not be required to comply with the same regulations applied to MCPS. MBLI states it will develop and submit policies to MCPS that are consistent with the goals of public accountability and public procurement practices. MBLI maintains that it will use MCPS procurement policies where possible unless they “impose undue hardship on the regular course of business of MBLI.” It will make its accounting available to the public and procurements that exceed \$150,000 will be submitted to MCPS for review.

Education Art. §5-112 sets out the bidding process local school systems must follow to procure any school building, improvement, supplies, or equipment that is more than \$25,000. The provision specifically requires the Montgomery County Board of Education to establish a minority business utilization program to facilitate participation of certified minority business enterprise in contracts. (§5-112(d)(2)). The law also requires local school systems to procure green product cleaning supplies for use in schools. (§5-112(e)(2)(i)). Contracts entered into or purchases made in violation of §5-112 are void. (§5-112(i)).

The procurement laws ensure a transparent procurement process that holds public schools, including public charter schools, accountable for the money spent on public education. In *Mountain Maryland Pub. Charter Sch., supra*, the State Board characterized §5-112 as “an essential component of education law.” In refusing to grant the waiver, the Board explained that charter schools are public schools that have an obligation to expend public funds in compliance with the laws governing bids and contracts. We, likewise, refuse to grant a waiver of §5-112 here. MBLI will receive public funds and must account for them the same way as public schools. This includes advertising most procurements over \$25,000, awarding bids competitively and purchasing green product cleaning supplies. MBLI’s statement that it will follow MCPS procurement policies unless they “impose undue hardship” does not justify a waiver. To the extent that the local board can provide flexibility in procurement, it will be up to the local board to determine whether and to what extent it will waive the applicability of its local procurement rules for MBLI.

With regard to Education Art. §4-310, the statute applies only to Baltimore City Public Schools and is therefore inapplicable to MBLI.

Waiver Request #4 - Education Article §§7-106 and 9-104.1(e) - Textbooks, Materials of Instruction and Supplies

MBLI seeks a waiver of Education Art. §§7-106 and 9-104.1(e) for the selection and purchase of textbooks, materials of instruction, and supplies. MBLI maintains that it is essential that it be permitted to utilize textbooks, materials of instruction, and supplies it deems appropriate to fulfil its academic plan, which is tied to its mission and goals. MBLI states that it will develop and present its textbooks, materials of instructions and supplies to MCPS for its review.

Education Art. §7-106 requires the local board to adopt procedures for the selection and purchase of textbooks, supplemental readers, materials of instruction visual and auditory aides, stationary and school supplies. (§7-106(a)). The local board furnishes the materials and supplies free of cost for use in public schools and in sufficient quantities. (§7-106(c)). This statute imposes no obligation upon MBLI. Thus, no waiver is necessary. If MBLI wants a waiver of the local board's procedures for the selection and purchase of textbooks, materials of instruction and supplies, it will have to seek the waiver from the local board.

As to MBLI's request to waive Education Art. §9-104.1(e) with regard to its selection of textbooks, materials of instruction and supplies, we again reiterate our explanation above that this statute is inapplicable to MBLI because it is not an "eligible public charter school" and that the requirements of Title 9 cannot be waived.

CONCLUSION

For all the reasons stated herein, we deny MBLI's waiver requests.

Signatures on File:

Warner I. Sumpter
President

Jean C. Halle
Vice-President

Gail H. Bates

Clarence C. Crawford

Charles R. Dashiell, Jr.

Vermelle D. Greene

Justin M. Hartings

Rose Maria Li

Rachel McCusker

Joan Mele-McCarthy

Lori Morrow

David Steiner

Abstained:
Michael Phillips

June 23, 2020