

IN THE MATTER OF  
CARROLL CREEK MONTESSORI  
PUBLIC CHARTER SCHOOL

BEFORE THE  
MARYLAND  
STATE BOARD  
OF EDUCATION

Opinion No. 16-43

## OPINION

### INTRODUCTION

The Carroll Creek Montessori Public Charter School (CCM) requests a waiver of certain provisions in Education Article §9-102(3) to modify the lottery enrollment process they currently utilize. The Frederick County Board of Education supports this request.

### FACTUAL BACKGROUND

CCM is a public charter Montessori school that implements a school-wide Spanish language program. Central to their mission is maximizing the effectiveness of the Spanish language program. Currently, there is no priority system in place to enroll native Spanish speakers. At present, students are admitted by lottery with the following priorities: children of founders first, followed by children of CCM employees, and then siblings of enrolled students. After these priorities are met, CCM is requesting a waiver to allow it to prioritize native Spanish-speaking students in the lottery.

They seek to prioritize native Spanish-speaking students by making the following changes: removing founders from the priority list after 2016-17 and then – after employee children and sibling priorities are filled - admitting students at each grade level in a 1:1 ratio of native Spanish speakers to all other students. This system would continue until all native Spanish speakers who have entered the lottery are accepted, or until all lottery slots are filled.

### STANDARD OF REVIEW

The State Board uses its independent judgment when declaring the true intent and meaning of the education laws over which it has jurisdiction. COMAR 13A01.02.05E.

### LEGAL ANALYSIS

Except in certain circumstances, charter schools are required to open their lotteries to all students. Md. Educ. Cod. Ann. §9-102(3). Maryland law allows a public charter school to give certain preferences and establish certain priority categories in its lottery. Specific to this request, Maryland law allows a charter school to give “greater weight” to a student’s lottery status, “[i]f

the student is...a student with limited English proficiency.” *Id.* §9-102.2(a)(3). Given that the law allows a charter school to establish a weighting factor for students with limited English proficiency, if the native Spanish speakers CCM wishes to enroll have limited English proficiency, no waiver of the law is necessary. However, the law does not provide a priority for native Spanish speakers over all other students with limited English proficiency. Therefore, all students in the limited English proficiency category must be weighted the same.

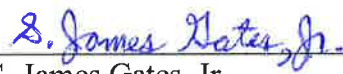
If, CCM is asking this Board to grant a waiver of the law to allow them to establish a priority in the lottery for native Spanish speakers over all other students, whether or not they have limited English proficiency, this Board’s general waiver authority under Education Article §9-106 does not extend that far. The Court of Appeals has held that the provisions of the public charter school law are not subject to waiver, unlike other general provisions of State education law which the State Board may waive. The Court reasoned that no statutory provision in the charter school law is waivable because that law “contains the defining elements of a public charter school.” Waiving any of those elements “would lead to the absurd result that all Title 9’s provisions could be waived, rendering the entire Title nugatory, a result which conflicts with the canons of statutory construction.” *Patterson Park Public Charter School v. Baltimore Teacher’s Union*, 399 Md. 174, 199-200 (2007). In short, this Board cannot waive the rules established by statute governing the lottery and the limited set of priorities contained in the statute.


Therefore, while CCM may give greater weight in the lottery to students with limited English proficiency, they cannot single out native Spanish speakers as a priority or give them greater weight than the other students with limited English proficiency. To do so would require a statutory change.


CONCLUSION

For all the reasons set forth herein we must deny the request for waiver.

  
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Andrew R. Smarick  
President

  
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S. James Gates, Jr.  
Vice-President

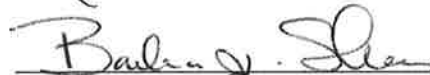
  
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Chester E. Finn, Jr.


  
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Michele Jenkins Guyton

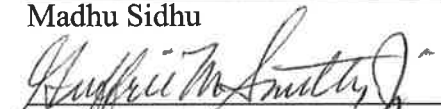
  
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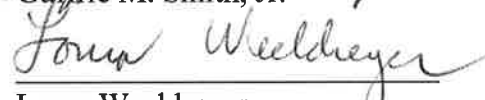
  
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October 25, 2016