

IN THE MATTER OF  
BALTIMORE CITY PUBLIC  
SCHOOLS MANDATORY  
BLUEPRINT FEE

BEFORE THE  
MARYLAND  
STATE BOARD  
OF EDUCATION  
Opinion No.: 23-17

## OPINION

### INTRODUCTION

Seven charter school operators in Baltimore City filed a Petition for Declaratory Ruling asking the State Board to invalidate what they describe as a mandatory 25% Blueprint fee. The Baltimore City Board of School Commissioners (“local board”) responded to the Petition. The charter school operators replied, and the local board filed a surreply.

### FACTUAL BACKGROUND

For Fiscal Year 2023, the local board developed a funding formula that allocated at least 75% of certain programmatic funding streams associated with the Blueprint for Maryland’s Future directly to all public schools in Baltimore City, including charter schools. (Response at 1). The local board says that the remaining 25% of these funds are administered centrally “to address critical system-wide funding shortfalls for students with disabilities and pre-kindergarten . . . as well as [for] non-distributable employee benefits and other essential system-wide functions that benefit students in all schools, both traditional and charter.” (Response at 2).

The charter school operators have challenged the local board’s central administration of the remaining 25% of these funds, describing this as a “mandatory 25% fee” that the local board has implemented “for the current school year and is indicating its intention to do so for future school years as well.” (Petition at 1). The charter school operators argue that “the charter funding law requires the distribution of all unrestricted funds, in the form of cash (not mandatory services), subject only to a 2% administrative fee.” (Petition at 13). The charter school operators seek a ruling that the local board is implementing an illegal mandatory fee.

### STANDARD OF REVIEW

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.

### LEGAL ANALYSIS

This case centers on the relationship between two statutes. The first statute is § 9-109 of the Education Article, which sets forth the longstanding “commensurate funding” rule. That

statute requires a local board to “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 Ann., Educ. § 9-109(a). The second statute is § 5-234 of the Education Article, which sets forth a new “minimum school funding” rule. That statute requires the local board, for each school, to “distribute the minimum school funding amount for the applicable program multiplied by the school enrollment for the applicable program.” Md. Code Ann., Educ. § 5-234(b)(1).

### **A. Commensurate Funding Rule**

We have discussed the commensurate funding rule on several occasions.<sup>1</sup> Through prior opinions, we established the following formula as guidance for local boards: Total School System Operating Budget (excluding debt service and adult education dollars but including all other State, local, and federal funding) ÷ the September 30 enrollment count for the previous year = average per pupil amount – 2% (representing a reduction in average per pupil amount for the administrative costs borne by the school system) – any restricted State or federal funding per pupil for which the charter school or its students are not eligible – the per pupil cost of any “buy backs” of services from the school system = the adjusted per pupil amount. *See City Neighbors Charter School v. Baltimore City Bd. of Sch. Comm’rs*, Revised MSBE Op. No. 05-17 (2005).

### **B. Minimum School Funding Rule**

While we have explained the intent of the commensurate funding rule on numerous occasions, the minimum school funding rule—adopted as part of the Blueprint for Maryland’s Future—is new and thus requires some explanation. The intent of this rule was that “the majority of State and local formula funds allocated to school systems on the basis of student enrollment and student needs should follow students to their school for use in educating those students and providing the extra resources they may need.” Maryland Commission on Innovation and Excellence in Education, Interim Report (Jan. 2019) (“Kirwan Interim Report”) at 133. However, a local board may exclude from the minimum school funding amount “countywide obligations and contracts for goods and services that cannot be allocated at the school level.” Md. Code Ann., Educ. § 5-234(e).

As is relevant here, the “minimum school funding” amount is “at least 75% of the per pupil amount” for each of following programs:

- (i) The foundation program under Educ. § 5-213;
- (ii) The compensatory education program under Educ. § 5-222;
- (iii) The English learner education program under Educ. § 5-224;
- (iv) The special education program under Educ. § 5-225;
- (v) Public providers of prekindergarten under Educ. § 5-229;
- (vi) Transitional supplemental instruction under Educ. § 5-226;
- (vii) The comparable wage index grant under Educ. § 5-216; and

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<sup>1</sup> *See, e.g., City Neighbors Charter School v. Baltimore City Bd. of Sch. Comm’rs*, Revised MSBE Op. No. 05-17 (2017); *Monocacy Montessori, Inc. v. Frederick County Bd. of Educ.*, MSBE Op. No. 06-17 (2006); *Frederick Classical Charter School, Inc. v. Frederick County Bd. of Educ.*, MSBE Op. No. 18-27 (2018); *Frederick Classical Charter School, Inc. v. Frederick County Bd. of Educ.*, MSBE Op. No. 19-08 (2019).

(viii) The college and career readiness program under § Educ. 5-217.

Md. Code Ann., Educ. § 5-234(a)(1).<sup>2</sup> Thus, a local board has discretion as to how the remaining 25% is spent, namely, whether it is also distributed to schools or administered centrally.

While Educ. §§ 5-234 and 9-109 are related, there are notable differences. First, whereas minimum school funding only applies to specified Blueprint funding streams, commensurate funding applies to funding from all sources. *See* Md. Code Ann., Educ. § 9-109 (“A county board shall disburse to a public charter school *an amount of county, State, and federal money* for elementary, middle, and secondary students . . .” (emphasis added)). Second, whereas minimum school funding does not distinguish between charter schools and other public schools, the essence of commensurate funding is a comparison between the two. *See id.* (“A county board shall disburse to a public charter school an amount . . . that is commensurate with *the amount disbursed to other public schools in the local jurisdiction.*” (emphasis added)).

### C. Mandatory 25% Blueprint Fee

In this case, the local board has developed a funding formula that allocates at least 75% of specified Blueprint funding streams to all public schools in Baltimore City, including charter schools. (Response at 1). At issue is whether the remaining 25% of those funds, which the local board has decided not to distribute to any schools, as contemplated by Educ. § 5-234, constitutes a mandatory fee on charter schools in violation of Educ. § 9-109.

The charter school operators argue that “the Blueprint legislation did not change the public charter school funding law, nor did it change State Board precedent interpreting that law.” (Petition at 2). We agree. However, the charter school operators go on to interpret Educ. § 9-109 as a more specific statute that overrides the more general statute, Educ. § 5-234, asserting that “even though the Blueprint legislation enacted a new minimum school-level funding requirement for *all* public schools, that requirement does not control over the more specific funding statute that applies *only* to public charter schools.” (Petition at 12-13) (emphasis in original). Here, we disagree. In our view, Educ. § 9-109 does not provide a basis to treat charter schools differently from all other public schools for purposes of Educ. § 5-234.

In effect, the charter school operators’ argument is that Educ. § 9-109 requires charter schools to receive no less than 98% of specified Blueprint funding streams under Educ. § 5-234, because anything beyond the 2% administrative fee imposed on charter schools constitutes an illegal mandatory fee and must be subject to bargaining with the charter schools. If a local board distributes 98% of these funds to charter schools but only 75% to all other public schools, their argument goes, all schools still receive the minimum funding required by Educ. § 5-234. This interpretation, however, inserts the 2% administrative fee from the commensurate funding formula, derived from Educ. § 9-109, into the calculation of minimum school funding under Educ. § 5-234, without express statutory language or a clear legislative intent to do so.

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<sup>2</sup> As applied to two other programs—private providers of prekindergarten under Educ. § 5-229 and the per pupil grant for concentration of poverty under Educ. § 5-223—the “minimum school funding” amount is “100% of the per pupil amount.” Md. Code Ann., Educ. § 5-234(a)(2).

At base, this is a question of statutory interpretation. The oft-stated “cardinal rule of statutory interpretation is to ascertain and effectuate the real and actual intent of the Legislature.” *Lockshin v. Semsker*, 412 Md. 257, 274 (2010). In doing so, “we presume that the Legislature intends its enactments to operate together as a consistent and harmonious body of law, and, thus, we seek to reconcile and harmonize the parts of a statute, to the extent possible consistent with the statute’s object and scope.” *Id.* at 276. To be sure, if two related statutes are in conflict, the more specific statute may be interpreted as an implied exception to the more general one. *See GEICO v. Ins. Comm’r*, 332 Md. 124, 132-33 (1993). But we also presume that, “when the Legislature enacted the later of the two statutes, it was aware of the one earlier enacted.” *Id.*

Had the Legislature wanted to apply a different standard to charter schools in Educ. §5-234 and set the minimum school funding amount at 98% instead of 75%, the Legislature would have said so. The statute’s language, however, simply directs the local board to distribute, “[f]or each school,” the minimum school funding amount for the applicable program, regardless of whether it is a charter school or a traditional public school. Md. Code Ann., Educ. § 5-234(b)(1). The purpose of this requirement is to have the majority of these funds “follow students to their school for use in educating those students and providing the extra resources they may need.” Kirwan Interim Report at 133. That purpose is accomplished when a local board’s distribution decisions under Educ. § 5-234 are applied the same to all schools. This view is supported by the minimum school funding monitoring provision of Educ. § 5-406(b)(2). This statute requires the local school systems to report to MSDE its school-level spending. Each local school system that includes public charter schools must account in its report to MSDE for the distribution of school-level funding to public charter schools to demonstrate compliance with Educ. §5-234. Thus, through the accountability provision, the Legislature affirmed that public charter schools are included with traditional schools in the accountability of minimum school funding reporting.

The plain language of Educ. § 5-234 acknowledges there may be central administration of up to 25% of specified Blueprint funding streams, and the fact is, school systems do carry excess costs.<sup>3</sup> If the local board excludes from its minimum school funding amount for all schools “countywide obligations and contracts for goods and services that cannot be allocated at the school level,” that is a valid exclusion under Educ. § 5-234, not a mandatory fee on charter schools under Educ. § 9-109. Here, the decision not to distribute funds applied equally to all schools, and system-wide obligations are very different from allocable services we have deemed an impermissible mandatory fee. *See In re: Baltimore City Public Charter Schools Mandatory Fees*, MSBE Op. No. 18-32 (2018)) (invalidating a \$125 per pupil fee for school police services).

Rather than viewing the two statutes in conflict, with Educ. § 9-109 controlling over Educ. § 5-234, we view them as distinct school funding requirements that operate together as part of a consistent and harmonious body of law. Under Educ. § 5-234, the local board must ensure that at least 75% of specified Blueprint funding streams is distributed to all public schools in Baltimore City, including charter schools. Separately, under Educ. § 9-109, the local board must ensure that the amount disbursed to charter schools from all sources is commensurate to the amount disbursed to other public schools. To the extent the amount disbursed to charter schools

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<sup>3</sup> *See, e.g., City Neighbors*, Revised MSBE Op. No. 05-17 (2017) at n.4 (observing that, even if a charter school reimburses the school system the annual average per pupil funding amount for a student with a disability requiring a nonpublic placement, “[t]he local school system shall pay the excess costs of the placement”).

under the commensurate funding formula differs from the amount disbursed to all other public schools, that difference is bound by the 2% administrative fee and whatever additional in-kind services the schools may bargain for.

As explained previously, commensurate funding under Educ. § 9-109 is “calculated by starting with the local school system’s total annual operating budget that includes all federal, State, and local funding, and dividing by enrollment for the previous year to reach an average per-pupil figure, overall and for each major category of spending.” *Frederick Classical Charter Sch. v. Frederick County Bd. of Educ.*, 454 Md. 330, 347 (2017). Minimum school funding under Educ. § 5-234 applies to only a portion of the school system’s operating budget and impacts the per pupil amount for all schools similar to debt service. By contrast, commensurate funding under Educ. § 9-109, which is calculated after distribution decisions under Educ. § 5-234 are made for all schools, impacts only the per pupil amount for charter schools.

The charter school operators seek a declaratory ruling that the local board’s decision not to distribute 25% of funds to any schools under Educ. § 5-234 is an impermissible mandatory fee on charter schools under Educ. § 9-109. That argument, however, rests on a theory that the Legislature intended to set the minimum school funding amount for charter schools at 98% rather than 75% of specified Blueprint funding streams. We think it is more likely that the Legislature envisioned these two statutes operating in harmony, whereby traditional public schools and charter schools are treated similarly and both funding requirements are met as constructed. *Witte v. Azarian*, 369 Md. 518, 525-26 (2002) (recognizing that legislative intent may be discerned from “the relative rationality and legal effect of various competing constructions”).

Because system-wide obligations that cannot be allocated to schools are a valid exclusion under Educ. § 5-234, they are not part of the administrative fee, nor are they part of the per pupil amount disbursed to schools. As such, they do not bear on whether commensurate funding has been provided under Educ. § 9-109. We therefore decline to issue a ruling that the local board’s funding formula constitutes an illegal mandatory fee on charter schools.

As a final matter, the local board raised a question about jurisdiction. More specifically, the local board queried whether this matter falls within the jurisdiction of the Accountability and Implementation Board (“AIB”), which has “plenary authority over all matters within its jurisdiction . . . including the intended outcomes of the Blueprint for Maryland’s Future.” Md. Code Ann., Educ. § 5-402(h)(3). The local board’s position is that “[i]f the State Board issues a decision upholding [the local board’s] FY23 funding formula by interpreting Section 9-109 through the lens of the Blueprint Act, there would be no interpretive conflict requiring AIB’s intervention.” (Response at 15).

We disagree with the local board. Regardless of our ruling here, there is no interpretive conflict requiring AIB’s intervention. The State Board’s authority to resolve matters regarding interpretation of the State’s education laws is well established. *Wiley v. Allegany County Bd. of Sch. Comm’rs*, 51 Md. 401, 405-406 (1879); *Wilson v. Montgomery County Bd. of Educ.*, 234 Md. 561, 565 (1964), *Zeitschel v. Carroll County Bd. of Educ.*, 274 Md. 69, 80 (1975); *Monarch Acad. Baltimore Campus, Inc. v. Baltimore City Bd. of Sch. Comm’rs*, 457 Md. 1, 13 (2017). It is squarely within the province of the State Board to “explain the true intent and meaning” of both statutes at issue here. Md. Code Ann., Educ. § 2-205(e).

CONCLUSION

For the reasons stated herein, we deny the Petition for a Declaratory Ruling.

Signatures on File:

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Clarence C. Crawford  
President

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Susan J. Getty  
Vice-President

\_\_\_\_\_  
Gail H. Bates

\_\_\_\_\_  
Chuen-Chin Bianca Chang

\_\_\_\_\_  
Charles R. Dashiell, Jr.

\_\_\_\_\_  
Rachel McCusker

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Joan Mele-McCarthy

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Lori Morrow

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Warner I. Sumpter

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Holly Wilcox

Absent:

Shawn D. Bartley  
Jean Halle

June 27, 2023