

TURNING POINT  
FOUNDATION, INC.

v.

BOARD OF EDUCATION OF  
PRINCE GEORGE'S COUNTY

\* ORDER OF STATE

\* SUPERINTENDENT

\* OF SCHOOLS

\* ORDER NO. 18-01

\* \* \* \* \*

ORDER

On April 13, 2018, Turning Point Foundation, Inc. (Turning Point), operator of the Turning Point Academy (TPA) public charter school, filed with the State Board of Education (State Board) a Petition for Declaratory Ruling Regarding Charter Contract and Appeal Regarding School Closing Activities, with Request for Expedited Review. In the Petition and Appeal, Turning Point asks the State Board to determine that its charter contract with the local board is still in effect, and that Prince George's County Public Schools (PGCPS) breached the contract and illegally usurped the local board's authority by initiating activities to close TPA and remove Turning Point as TPA's operator absent a local board decision to do so. Turning Point alleged the following illegal closing activities: (1) encouraging the TPA educational staff to seek other positions; (2) encouraging TPA families to withdraw their students from TPA; and (3) refusing to proceed with normal enrollment at TPA for the 2018-2019 school year, including for the entering kindergarten class. Turning Point submitted the affidavit of Paul Shackelford, Executive Director of Turning Point and Founder and Executive Director of TPA, outlining the various meetings and notifications, all of which took place in March 2018, between PGCPS staff and TPA staff and parents in which these alleged activities occurred.<sup>1</sup>

Turning Point also filed a Request for Stay asking that the State Superintendent issue a stay "precluding PGCPS from continuing its school closing activities directed at Turning Point and TPA" pending a decision by the State Board on the underlying action. It argues that PGCPS has acted to its detriment by taking actions "to ensure that TPA will neither have students nor teachers next year, even though TPA's successes have generated over-subscriptions to the enrollment lottery and waiting lists of more than 1,000 students." It states that PGCPS issued transfer deadlines to TPA teachers and students that "have compelled them to take action toward leaving TPA in advance of any decision by the County Board as to TPA's or Turning Point's status." The deadline for teachers to transfer to another school was sometime before March 20 and the deadline for students to apply to the specialty programs lottery was March 12.

The local board responded on April 24 that a stay is inappropriate because there is no local board action to stay. It maintains that it has not issued a decision to close TPA and has not engaged in any school closing activities. The local board concedes only that it has shared

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<sup>1</sup> During one of the meetings, PGCPS staff shared that it was recommending that PGCPS take over TPA at the end of the 2017-2018 school year and that it close TPA effective June 30, 2019. Staff advised that the local board would make a final decision on March 20, 2018, but the local board took no such action.

information with staff and parents at TPA about the pending recommendation that is now before the local board and the possible consequences of such a decision. It claims that PGCPs administration has taken no action to reassign TPA teachers, staff and students, and may not need to do so in the event that TPA remains open.

Meanwhile, at its meeting on April 24, 2018, the local board considered an emergency agenda item and Board Action Summary in which the Chief Executive Officer (CEO) recommended that the local board disapprove Turning Point's renewal application for it to continue to operate TPA. It stated that "Turning Point has failed to meet the conditions and standards to support the request for renewal of the Charter Agreement. The recommendation for non-renewal is due to overall ineffective governance, lack of an adequate facility and deficient academic achievement for TPA students. Moreover, the Governing Board has not demonstrated the capacity to address these issues." The CEO also recommended considering other options that would allow the school to remain open, such as continuing to operate with a new charter school operator beginning with the 2018-2019 school year. The local board treated the recommendation at a "first reader," not as an "emergency" agenda item, and, thus, did not take action on the matter. The local board states in its supplemental response, filed on April 27, that it expects to take action on the recommendation at its May 10, 2018 board meeting. Given that the expected action by the local board may modify the matters at issue in the Petition and Appeal, the State Board has asked the local board to provide an updated response to the Petition and Appeal after May 10.

The issue before me is Turning Point's Request for Stay. Pursuant to COMAR 13A.01.02.01B, the State Superintendent of Schools has the authority, either on the request of the President of the State Board or on her own motion, to order a stay of an action taken by a local board of education. The stay, however, may not exceed 60 days in duration.

Granting a stay, just like granting a preliminary injunction, involves "the exercise of a very far reaching power to be [used] only sparingly and in limited circumstances." See *In Re Microsoft Corp. Antitrust Litigation*, 333 F.3d 517, 524 (4<sup>th</sup> Cir. 2003). When courts exercise that power, they carefully consider four factors: (1) the likelihood of success on the merits; (2) the balance of convenience which requires the balancing of harms; (3) the likelihood of irreparable harm to the plaintiff if the stay is denied; and (4) the public interest. *Lerner v. Lerner*, 306 Md. 771, 783-85 (1986); *DMF Leasing, Inc. v. Budget Rent-a-Car of Maryland, Inc.*, 161 Md. App. 640, 648 (2005); *Eudaimonia Foundation Corp. v. Baltimore City Bd. of Sch. Comm'rs*, State Sup't. Order No. 08-1.

Turning Point has failed to address the four factors stated above. I am allowing Turning Point to amend its Request for Stay in order to do so. Turning Point's amended filing is due on Monday, May 14, 2018.

5/8/18

Date



State Superintendent of Schools

Karen B. Salmon, Ph.D.