

SENECA CREEK CHARTER SCHOOL

Appellants

v.

MONTGOMERY COUNTY BOARD  
OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 11-15

## OPINION

### INTRODUCTION

Seneca Creek Charter School is a charter school applicant in Montgomery County. It seeks a waiver of two State laws. Montgomery County Public Schools opposes, in most part, the granting of the waivers requested.

### STANDARD OF REVIEW

In making waiver request decisions, the State Board exercises its independent judgment on the record before it to explain and interpret education law. COMAR 13A.01.05(E).

### LEGAL ANALYSIS

In considering these waiver requests, we are guided by the parameters of the charter school law, Md. Educ. Code Ann. §91-101 *et. seq.*, which, when read as a whole, sets both opportunities and limits. By law, charter schools in Maryland are public schools, independent entities. We must consider that fact when we consider a request for a waiver of a State law that governs how public schools operate in the State.

In considering these waiver requests, we will also be guided by our recently adopted Charter School Program Policy. In that Policy, this Board, “recognize[d] that providing flexibility and autonomy in exchange for innovation, educational reform and high accountability is a big component of the Charter School concept.”

We recognize that establishing effective charter schools requires strong, cooperative relationships between the local board and the charter school. It requires the local board to openly welcome charter schools to public education and to treat the charter school fairly in all its dealings. If the board does not do so, the charter school has recourse to this Board on appeal. In return, the charter school needs to work within the essential elements of public school law and policy. We have said this many times, and we repeat it here, both parties must work together to

provide an excellent educational opportunity to the students they serve.

*Waiver Request #1 - Education Article §4-103(a) and §6-201, Power to Nominate Appointments*

Education Article §4-103(a) and §6-201 provide that, on the recommendation of the superintendent, the county board shall employ individuals in positions the county board considers necessary for the operation of the public schools in the county. The charter school applicant seeks a waiver, in part, of those laws. It proposes the following language:

“Seneca Creek Charter School shall recruit and select all staff **through an independent process**, subject to the final approval of the superintendent, and where required by statute, subject to the final approval of the Montgomery County Board of Education. The Montgomery County Board of Education, the superintendent, and SCCS will cooperate in good faith in all decisions on hiring, assignment, discipline, and discharge of employees of SCCS. **Local policies, regulations, and collective bargaining agreements that contradict this decision shall be waived automatically, without necessitating a separate local waiver.**”

The proposed language would create an “independent process” for recruiting and selecting staff and would automatically waive contrary local policies, regulations and collective bargaining agreement terms. We decline to adopt the proposed language.

We will not waive the statutes that give the superintendent and the local board the ultimate authority to make employment decisions concerning charter school employees. We encourage local school systems to allow charter schools to interview and recruit applicants. They would then recommend their selected applicants to the superintendent who can approve or disapprove the applicant for recommendation to local board. That process would be in congruence with our Charter School Policy.

*Waiver Request #2 - Open Enrollment, §9-102(3)*

The charter school applicant requests a waiver to the open enrollment requirement in order to admit, on priority basis, children and grandchildren of founders, as well as children and grandchildren of employees.

In *Carroll Creek Montessori Public Charter School v. Frederick County Public Schools*, MSBE Op. No. 11-06, we explained that no waiver was necessary to effectuate priority enrollment for children of founders and teachers, and siblings of students attending charter the school. That holding does not extend to grandchildren and we decline to grant a waiver for grandchildren.

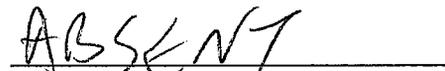
MCPS points out that the United States Department of Education's Non-Regulatory Guidance on Charter School recognizes priority admission for the children of founders and employees as long as the total number of those enrolled constitutes a small percentage of the school's total enrollment. The charter school applicant references an 8% priority enrollment figure. That percentage is appropriately small.

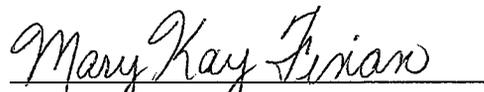
MCPS also asks that we clarify that children of founders and staff must also meet the residency requirements to be eligible to attend public schools in Montgomery County. Thus, for example, if a teacher in the charter school were a resident of Prince George's County, her child would not be eligible to attend a public school in Montgomery County tuition free. Likewise, that child could not attend the charter school tuition free.

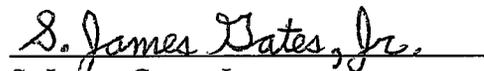
CONCLUSION

For all these reasons, we deny the charter school applicant's waiver requests.

  
James H. DeGraffenreidt, Jr.  
President

  
Charlene M. Dukes  
Vice President

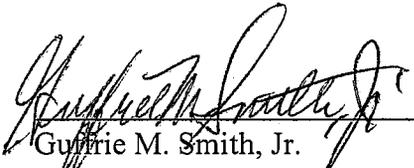
  
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March 22, 2011