

BEFORE THE MARYLAND STATE BOARD OF EDUCATION

IN THE MATTER OF *
BALTIMORE CITY PUBLIC SCHOOL *
SYSTEM PUBLIC CHARTER *
SCHOOL MANDATORY 25% *
BLUEPRINT FEE *

**PETITION FOR DECLARATORY RULING INVALIDATING
THE CHARGING OF A MANDATORY 25% *BLUEPRINT FEE***

Pursuant to Md. Code, Education § 2-205(e) and COMAR 13A.01.05.05, the below-listed Charter School Operators¹ petition the Maryland State Board of Education (“State Board”) for a declaratory ruling that the Baltimore City Public School System’s (“City Schools”) inclusion of a mandatory 25% fee in its public charter school funding formula related to the funding authorized by House Bill 1300 (2020),² the Blueprint for Maryland’s Future legislation (“Blueprint”), is unlawful and invalid and must be reversed.³ The declaration that is sought “is material to an existing case or controversy,” as City Schools has been charging this mandatory 25% fee for the current school year and is indicating its intention to do so for future school years as well.⁴

¹ The Charter School Operators are Afya Baltimore, Inc., Baltimore Montessori, Inc., City Neighbors Charter School, Inc., City Neighbors Hamilton, Inc., City Neighbors High School, Inc., KIPP Baltimore, Inc., Patterson Park Public Charter School, Inc., New Song Community Learning Center, Inc., and Living Classrooms Foundation.

² Available at <https://mgaleg.maryland.gov/2020RS/bills/hb/hb1300e.pdf>.

³ A copy of City Schools’ FY23 Charter Funding Formula is attached hereto as Exhibit 1. The document attached as Exhibit 1 is the most recent copy of City Schools’ FY23 Charter Funding Formula that was provided to the Charter School Operators. The dollar amounts and total enrollment figures in Exhibit 1 may have been updated by City Schools based on actual enrollment as of September 30, 2022, however the formula or methodology used by City Schools has not changed from what is represented in Exhibit 1.

⁴ As required by the Charter School Operators’ charter contracts with City Schools, the parties (or their representatives) have engaged in lengthy good faith negotiations over many months regarding the issues raised in this Petition. This has included multiple in-person meetings with City Schools leadership. Unfortunately, the parties have been unable to reach an amicable resolution.

City Schools contends that it is allowed to retain this new mandatory 25% Blueprint program fee because the Blueprint legislation only requires that 75% of Blueprint category funding be distributed at the school level.⁵ In other words, City Schools interprets the Blueprint legislation's *minimum* school-level funding requirement to authorize City Schools to impose a mandatory 25% fee on all public charter schools, so that 25% of Blueprint category funding may be kept "centrally" to support "the needs of all schools."⁶

There is no such statutory authorization for this mandatory 25% fee. City Schools' interpretation of the law directly contradicts State Board precedent interpreting Maryland law requiring "commensurate" funding for public charter schools. The Blueprint legislation did not change the public charter school funding law, nor did it change State Board precedent interpreting that law. The Blueprint legislation's *minimum* school-level funding requirement "increases accountability" by requiring "districts to distribute funding to specific schools" so that per-pupil funding follows students to their schools.⁷ There is no basis to conclude that the Maryland General Assembly's enactment of the Blueprint legislation, ensuring that local school systems disburse *more* resources at the public-school level, would somehow mean that City Schools is now empowered to impose a mandatory 25% fee on public *charter* schools. In short, the Blueprint legislation mandates *minimum* school-level funding, not a *maximum* amount of school-level funding, therefore City Schools is not authorized under state law to impose its mandatory 25% fee on all public charter schools.

⁵ Md. Code, Education § 5-234 (Minimum school funding).

⁶ See City Schools' Charter Funding Explanation to the Maryland Alliance of Public Charter Schools, attached hereto as Exhibit 2.

⁷ See Maryland State Department of Education, *Blueprint Funding: Formula and Accountability*, available at: <https://blueprint.marylandpublicschools.org/funding-2/>.

For the reasons more fully explained below, the Charter School Operators respectfully request that the State Board issue a declaratory ruling concluding that City Schools' mandatory 25% Blueprint program fee is unlawful and invalid and must be reversed.

I. Existing Maryland Law on Allocating Funds to Public Charter Schools

Maryland's public charter school funding law has remained unchanged since its original enactment twenty years ago. Maryland law requires local school boards to "disburse" to "public charter school[s]" an "amount of county, State, and federal money" that is "commensurate with the amount disbursed to other public schools in the local jurisdiction." (Md. Code, Education § 9-109(a)).

In 2005, shortly after this law was passed, City Neighbors Charter School – one of the Charter Operators signing the present Petition – asked the State Board to resolve a dispute with City Schools regarding the meaning of "commensurate" funding under the law. The State Board interpreted the "commensurate funding" requirement to mean that City Schools must provide to public charter schools "an amount proportionate to the amount of funds expended for elementary, middle, and secondary level students in the other public schools in the same system," including "funding for services for which students in the public charter schools are eligible such as free and reduced price meals, pre-kindergarten, special education, English-language learners, Perkins, Title I, and transportation." *City Neighbors Charter School v. Baltimore City Board of School Commissioners*, State Board Opinion No. 05-17 at 3-4 ("CNCS Opinion").⁸ The State Board also ruled that "[b]ecause there are certain support functions including data collection and reporting [and other responsibilities] . . . that may only be performed by the central office of a local school system, the total average per pupil amount shall be adjusted by a 2% reduction as a reasonable cost

⁸ For the State Board's convenience, a copy of the CNCS Opinion is attached hereto as Exhibit 3.

to the charter school for these required central office functions.” *Id.* at 4. Following the 2% reduction, “[t]he total adjusted average per pupil amount is then multiplied by the student enrollment of the charter school to determine the total funding amount for the charter school.” *Id.* The State Board also ruled that this statutory funding obligation must be disbursed in cash, rather than in services. *Id.* at 3.

Other than the 2% administrative fee, the State Board has consistently held that City Schools may not charge any other mandatory fees to public charter schools or otherwise withhold funding to supply centrally administered services absent the public charter school’s agreement. This has been the law in Maryland for 17 years. In its decision in *Monocacy Montessori Cmty, Inc. v. Frederick County Bd. of Educ.*, MSBE Op. No. 06-17 (2006) (hereinafter “*Monocacy*”),⁹ the State Board affirmed the 2% administrative fee, and emphasized that it “encourage[s] school systems to negotiate fairly over the provision of in-kind services. They should not be announced as an edict under which the charter school must live without complaint.” *Id.* at 11. In 2007, the Maryland Supreme Court also affirmed the 2% administrative fee, and likewise emphasized that in-kind or mandatory services must not be “forced on [] charter schools at the whim of [local school] boards.” *Baltimore City Bd. of School Comm’rs v. City Neighbors Charter School*, 400 Md. 324, 356 (2007).

More recently, in 2017, the Maryland Supreme Court again addressed the issue of charges for mandatory or compulsory services at length in *Frederick Classical Charter School, Inc. v. Frederick County Board of Education*, 454 Md. 330 (2017). It reiterated and quoted its prior statement against compulsory fees from its *City Neighbors* opinion. *Id.* at 394. It further explained that

⁹ For the State Board’s convenience, a copy of the *Monocacy* Opinion is attached hereto as Exhibit 4.

to the extent that the State Board chooses to adhere to the formula and approach set forth in its City Neighbors declaratory rulings in the future, it should closely review local school board allocations to charter schools to determine whether withholdings for ‘in-kind’ services are solely for those services that the charter school has, in fact, requested that the local school board provide and that the local school board is in fact providing those services to the charter school. A local school board should not be permitted to flout the standards set by the State Board as to how funding is calculated for a charter school, and lower that school’s per-pupil allocation, simply by declaring that it has ‘provided’ a charter school with ‘services’ that provide no direct benefit to students and that the charter school neither needs nor desires.

Id. at 395. It also explained that

[T]here is at least a possibility that local school boards may, in some instances, be tempted to abuse their position as the chartering authority for charter schools and dictate ‘take it or leave it’ terms in a charter agreement that would require a charter school to forego funding to which it was otherwise entitled

Id. at 419.

In 2018, the State Board yet again affirmed the 2% administrative fee and the prohibition on “mandatory” fees or withholdings. In *In re: Baltimore City Public Charter Schools Mandatory Fees*, State Board Opinion No. 18-32, the State Board invalidated a mandatory \$125 per pupil fee that City Schools imposed on public charter schools for the provision of school police services.¹⁰ The State Board held that “if a school system offers a service for a fee, the charter school may decide whether to accept or reject the service offered.” *Id.* at 4. If the charter school rejects the service, the State Board held that “the school system cannot unilaterally impose a mandatory fee.”

Id.

In sum, the State Board’s prior decisions, as confirmed by Maryland’s Supreme Court, require City Schools to distribute to public charter schools, on a per pupil basis, *all* unrestricted funds. These funds must be provided in the form of cash. Because City Schools is responsible for certain data collection and reporting functions related to public charter schools, City Schools may

¹⁰ For the State Board’s convenience, a copy of the *In re: Mandatory Fees Opinion* is attached hereto as Exhibit 5.

charge a 2% administrative fee. Any other services, however, may only be provided in lieu of cash where a public charter school agrees in advance to receive that service from City Schools and the two parties have agreed on the cost for the service.

As the State Board noted in *In re: Baltimore City Public Charter Schools Mandatory Fees*, the State Board’s 2005 CNCS Opinion was intended to “establish [the State Board] funding formula as guidance to all 24 school systems,” including City Schools. *Id.* at 2. To help City Schools with following the state’s public charter school funding laws, the State Board’s 2005 ruling included a funding formula template and numerous guidance documents to be used by local school boards when calculating the commensurate funding level for each school year. See Exhibit 3 at 5 and attachments thereto. The State Board reproduced its funding formula template in its decision in *In re: Baltimore City Public Charter Schools Mandatory Fees*:

**CHARTER SCHOOL COMMENSURATE FUNDING
ADJUSTED PER PUPIL AMOUNT FORMULA**

Total Operating Budget	
Minus – Debt Service	
Minus – Adult Education	
Total Adjusted Operating Budget	
Divided by September 30 Enrollment =	
Per Pupil Amount	
Minus 2% Administrative Costs Deduction Per Pupil	
Minus Restricted State or Federal Funding	
Minus Cost of Buy Backs from School System =	
Adjusted Per Pupil Amount	

See Exhibit 5 at 2.

City Schools, however, has never used the State Board charter funding formula template, and has instead each year sought to devise its own funding formula for public charter schools. City

Schools' refusal to adhere to the State Board charter funding formula has predictably led to City Schools creating a wide variety of "funding formulas" over the years that have led to numerous disputes with charter school operators regarding whether City Schools' contrived funding formulas actually comply with the state public charter school funding law and State Board guidance.

While the present Petition focuses solely on City Schools' unlawful 25% Blueprint funding fee (as further explained below), it is worth noting that these ongoing disputes between Charter Operators and City Schools would undoubtedly be eliminated if City Schools simply adhered to the State Board's funding formula template when calculating the commensurate funding amounts for each school year. Particularly since the State Board has ruled in *Monocacy Montessori Communities, Inc. v. Frederick County Board of Education*, Opinion 06-17, that a local board cannot vary from the specific State Board formula, unless the variation "result[s] in a bottom line amount of money such that this Board could conclude that the school system was providing proportionate/commensurate funds to the charter school."¹¹

II. The 25% Blueprint Fee Violates Maryland's Public Charter School Funding Law

A. The Blueprint Legislation

The Blueprint legislation accomplished many things, but it did not change Maryland's public charter school funding law. Neither the Kirwan Commission's Blueprint for Maryland's Future Final Report, nor the Blueprint legislation itself, mentioned or amended Maryland's public charter school "commensurate" funding law, Md. Code, Education § 9-109(a).¹² State law still requires local school boards to disburse "commensurate" funding in accordance with § 9-109(a)

¹¹ See Exhibit 4 at p. 5.

¹² See Commission on Innovation and Excellence in Education, *Blueprint for Maryland's Future* (December 2020), available at: <http://dls.maryland.gov/pubs/prod/NoPblTabMtg/CmsnInnovEduc/2020-Final-Report-of-the-Commission.pdf>; House Bill 1300 (2020 Legislative Session), available at <https://mgaleg.maryland.gov/2020RS/bills/hb/hb1300e.pdf>.

of the Education Article, which City Schools also agreed to do in each of its operating contracts with the Charter Operators.¹³ While the Blueprint legislation does now require local school boards to disburse “*at least*” 75% of the funding for most education programs directly to individual schools,¹⁴ this *minimum* school-level funding requirement merely ensures that *all* public school students, including public charter school students, receive most of their resources at the school level.¹⁵ In this way, the Blueprint legislation is entirely consistent with the public charter school funding law and State Board precedent, which have always been centered on school-level funding for public charter schools, minus a 2% reduction as a reasonable payment to the local school board for central office oversight functions.

B. City Schools’ FY23 Charter Funding Formula Includes a Mandatory 25% Blueprint Fee

City Schools’ FY23 Charter Funding Formula does not follow the State Board’s commensurate funding formula template or guidance documents. Rather than distributing to public charter schools, on a per pupil basis, *all* unrestricted funds, City Schools’ FY23 Charter Funding Formula *excludes* 25% of the City Schools’ Blueprint legislation funding from the funding sources available for distribution to public charter schools.

¹³ In the City Schools’ standard charter agreement, City Schools and charter operators agree in Section 6.1 that “Title 9 requires funding of the charter school that is commensurate with the amount disbursed to other public schools in the local jurisdiction, and that Commensurate Funding is integral to this contractual relationship and essential to the School Operator’s ability to operate the School hereunder and that all funds provided by the School Board to the school are to be used solely for the benefit of the school and its students.”

¹⁴ Md. Code, Education § 5-234 (Minimum school funding).

¹⁵ See Maryland State Department of Education, *Blueprint Funding: Formula and Accountability*, available at: <https://blueprint.marylandpublicschools.org/funding-2/> (“The Blueprint includes new mechanisms to create more transparency and accountability around how the funding is budgeted and spent. The Blueprint law makes this happen through a few key provisions. In Maryland, State education funding, including the funding calculated through the Blueprint funding formula, is allocated to the county school districts. Each school district is then expected to distribute the funds to their individual schools. The Blueprint increases accountability for this process through the new “minimum school funding” provision which requires districts to distribute funding to specific schools based on an individual school’s student enrollment.”).

As shown in Exhibit 1, City Schools received \$603,309,950 in Blueprint-related funding—labeled by City Schools as “Foundation Funding”:¹⁶

FY23 Charter Funding Formula

	FY22 Final	FY23 Proposed
Districtwide or Needs Based Exclusions/ State Funding Categories	Districtwide/Needs Based Exclusion	State Funding Categories
Pre-K Funding	38,973,369	0
Foundation Funding	0	603,309,950

On a per pupil basis, this funding source amounts to \$8,425 per pupil for all 71,608 City Schools students (traditional and charter). But City Schools only distributed to public charter schools \$6,319 per pupil of the Blueprint (or “Foundation”) funding:

State Funding Category	Charter Per Pupil Average Share of State Funding Categories	Charter Average Share of State Funding Categories	Charter Enrollment By Category
Available Revenue (Minus State Funding Categories)	296	4,495,648	15,188
Foundation	6,319	95,971,171	15,188

That is because, prior to distributing those funds to public charter schools, City Schools imposes a mandatory 25% fee on the Blueprint (or “Foundation”) funding. After the mandatory 25% fee is withheld, City Schools only distributes \$95,971,171 of the Blueprint (or “Foundation”) funding to public charter schools, which, based on the total enrollment of public charter schools (15,188 students), amounts to \$6,319 per pupil.

In response to questions posed by the Maryland Alliance of Public Charter Schools (“MAPCS”), City Schools conceded that the funds collected through the mandatory 25% fee covers “districtwide” expenses and “central office administrative infrastructure that support the needs of all schools,” not just public charter schools:

¹⁶ See, *supra*, footnote 2. The dollar amounts and total enrollment figures in Exhibit 1 may have been updated by City Schools based on actual enrollment as of September 30, 2022, however the updated figures have not been provided to the Charter School Operators.

[The 25% Blueprint fee] cover[s] the districtwide and charter overages in special education and prekindergarten, referenced above, and will also begin to cover the cost of administrative services that includes the critical central office administrative infrastructure that support the needs of all schools such as overhead, severance, non-distributed benefits not covered directly by schools (e.g., tuition reimbursement for teachers), the overage in the Enterprise fund (primarily for school meals), and necessary district services (such as payroll, HC services, Infinite Campus, etc.).

See Exhibit 2 at p. 3. Additionally, City Schools asserted that it used a portion of the mandatory 25% Blueprint fee “to provide charter schools [a] one-time 5% or \$200K hold harmless [payment].” *Id.*

City Schools claims that its combination of supplemental “charter overages” funding totaling \$17 million to cover the actual cost of vital school-level programs (e.g., PreK and Special Education) and “one-time hold-harmless” payments to public charter schools totaling approximately \$2 million sufficiently offsets the charter school funding shortfall created by the mandatory 25% Blueprint fee. See Exhibit 2 at p. 3. Not only are these “supplemental” and “hold-harmless” funds insufficient to reimburse the Charter School Operators for the mandatory 25% Blueprint funding fee, but they also prove the arbitrary nature of the City Schools’ FY23 Charter Funding Formula. Instead of distributing *all* unrestricted funds to the City’s public charter schools as required by the State Board’s prior decisions interpreting the charter funding law, City Schools picks and chooses funds, or portions of funds, to distribute to reach a desired result. This practice is contrary to State Board guidance and should be stopped.

C. The 25% Blueprint Fee Does Not Comply With State Law

As explained above, Md. Code, Education § 9-109(a) and the State Board’s prior decisions, as confirmed by Maryland’s Supreme Court, require City Schools to distribute to public charter schools, on a per pupil basis, *all* unrestricted funds, in the form of cash, subject only to a 2% administrative fee. Any other services may only be provided in lieu of cash where a public charter

school agrees in advance to receive that service from City Schools, and the two parties have agreed on the cost for the service. City Schools' mandatory 25% Blueprint fee violates these state law requirements.

City Schools contends that the Blueprint legislation authorizes its mandatory 25% Blueprint fee, but that is not so. The Blueprint legislation did not amend Md. Code, Education § 9-109(a), nor did the Blueprint legislation expressly abrogate the State Board's 17-year history of consistently interpreting the state's charter school funding law, which has also been affirmed multiple times by the Maryland Supreme Court.

The goal of statutory interpretation is to "ascertain and effectuate the real and actual intent of the Legislature." *Gardner v. State*, 420 Md. 1, 8 (2011). Ascertaining this intent "begin[s] with an examination of the text of a statute within the context of the statutory scheme to which it belongs." *Nationstar Mortgage LLC v. Kemp*, 476 Md. 149, 169 (2021). "In some circumstances, [one] need not look beyond the statutory language to determine the legislative purpose. 'Sometimes the language in question will be so clearly consistent with apparent purpose (and not productive of any absurd result) that further research will be unnecessary.'" *State v. Pagano*, 341 Md. 129, 133 (1996) (quoting *Kaczorowski v. City of Baltimore*, 309 Md. 505, 515 (1987)).

Here, the only statute City Schools points to in support of its mandatory 25% Blueprint funding fee is Md. Code, Education § 5-234, which states that "[f]or each school, the county board shall distribute the minimum school funding amount [*i.e.*, at least 75% of the per pupil amount] for the applicable program multiplied by the school enrollment for the applicable program." This provision clearly only sets a *minimum* school-level funding requirement. Nowhere in the text of this law, nor in any other provision of the Blueprint legislation, did the General Assembly amend the charter school funding law (*i.e.*, Md. Code, Education § 9-109(a)) or otherwise authorize local

school boards to charge a mandatory 25% fee to exclude a substantial portion of Blueprint program funding from being distributed to public charter schools in the same manner as all other funding sources.

Moreover, the General Assembly did not include any provisions in the Blueprint legislation abrogating the State Board's and Maryland Supreme Court's long-held and consistent interpretation of the charter school funding law. Maryland courts "adhere to the policy that statutes are not to be construed to alter the common-law by implication." *Hardy v. State*, 301 Md. 124, 131–32 (1984). Therefore, a statutory scheme will not abrogate the common law unless "plainly announced" by the General Assembly. *State v. North*, 356 Md. 308, 312 (1999). Here, the imposition of a minimum school-level funding requirement is nowhere near the type of express abrogation of the common law that would be required to overturn the 17 years of precedent interpreting the charter school funding law. The General Assembly would not "change the common law so substantially without making such a purpose clear." *Nationstar Mortgage LLC*, 476 Md. at 178.

This is particularly true where, as is the case here, the General Assembly did not even amend the statute that specifically speaks to the issue of public charter school funding. Had the General Assembly desired to override the State Board's interpretation of "commensurate" funding under Md. Code, Education § 9-109(a), it would have done so through an amendment to Md. Code, Education § 9-109(a). It is well established that the more specific statute will override the more general statute. *See Magnetti v. Univ. of Md.*, 402 Md. 548, 567 (2007) (explaining that the specific statute is controlling and the general statute is overruled to the extent of the inconsistency). Therefore, 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.

In any event, there is no inconsistency between the “commensurate” funding requirement in Md. Code, Education § 9-109(a) and the *minimum* school-level funding requirement in Md. Code, Education § 5-234. The State Board’s consistent interpretation of 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, which necessarily directs those funds to individual public charter schools for the benefit of the schools’ students. Likewise, the intent of the Blueprint legislation’s minimum school-level funding requirement is to require local school boards to direct more funding to individual schools—even more than the 75% *minimum* level—for the benefit of those schools’ students. Therefore, if City Schools adheres to the State Board’s interpretation of the “commensurate” funding requirement in Md. Code, Education § 9-109(a), City Schools will also necessarily satisfy the minimum school-level funding requirement in Md. Code, Education § 5-234.

III. Request for Declaratory Ruling

The Charter School Operators are entitled to a declaratory ruling putting a stop to City Schools charging the mandatory 25% Blueprint funding fee because mandatory fees outside of the 2% administrative fee are unlawful. There can only be further agreed fees for agreed services that are the product of good-faith negotiations. The mandatory 25% Blueprint funding fee is neither, so the Charter School Operators respectfully request that the State Board strike it down.

For the foregoing reasons, the State Board should declare City Schools’ withholding of the mandatory 25% Blueprint funding fee to be unlawful and compel City Schools to refund all such fees collected to date and cease collecting any such fees in the future.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of February, 2023, a copy of the foregoing Petition for Declaratory Ruling was sent via federal express and electronic mail to the following:

Joshua Civin
Chief Legal Officer
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Christopher S. Gunderson

EXHIBIT 1

FY23 Charter Funding Formula

	FY22 Final	FY23 Proposed
General Fund Revenue		
State Sources	857,120,175	917,325,914
Local Sources	275,513,495	408,028,322
Federal Sources	5,400,000	5,400,000
Other Revenue Sources	7,110,000	7,110,000
Total General Fund Revenue	1,145,143,670	1,337,864,236
Deductions before Overhead Calculation		
Retiree Health Benefits	11,363,703	11,778,069
Debt Service	52,222,071	52,127,159
Revenue from other than State, Local, and Federal Sources	7,110,000	7,110,000
Total Deductions before Overhead Calculation	70,695,774	71,015,228
Net General Fund Revenue	1,074,447,896	1,266,849,008
Less Overhead and Indirect Administrative Cost @ 2%	21,488,958	0
Revenue Available for Per-Pupil Allocation	1,052,958,938	1,266,849,008

Districtwide or Needs Based Exclusions/ State Funding Categories	Districtwide/Needs Based Exclusion	State Funding Categories
Pre-K Funding	38,973,369	0
Foundation Funding	0	603,309,950
Compensatory Funding	0	464,297,941
Pre-K Funding	0	26,810,870
CCR Funding	0	896,779
Non-Public Education Funding	26,600,000	0
Students with Disabilities Funding	218,610,740	83,054,435
English Learners (EL) Funding	31,909,147	67,302,873
Specialized Transportation Funding	43,030,784	0
Total Exclusions/Categorical Funding	359,124,040	1,245,672,848

Available Revenue (Minus State Funding Categories)	693,834,898	21,176,160
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District Enrollment (net of Pre-K and non-public students)	71,605	71,608
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	FY22 Charter Base Per Pupil Allocation	Available Revenue Per Pupil (Before Adding Back Funding Categories)
Available Revenue (Minus State Funding Categories) As Per Pupil	9,690	296

State Funding Category	Charter Per Pupil Average Share of State Funding Categories	Charter Average Share of State Funding Categories	Charter Enrollment By Category
Available Revenue (Minus State Funding Categories)	296	4,495,648	15,188
Foundation	6,319	95,971,171	15,188
Compensatory	5,709	72,246,833	12,655
EL	6,211	4,353,942	701
SWD	5,616	11,766,232	2,095
Pre-K	4,942	2,811,880	569
Charter Overages in Areas Such as Special Education, Pre-K	1,126	17,097,788	15,188
Hold Harmless	155	2,356,805	15,188
Total	13,899	211,100,299	15,188

	FY22 Charter Base Per Pupil Allocation	Charter Per Pupil Allocation on Average (Amount will differ for each school based on eligibility for state funding categories)
Charter Per Pupil Allocation/Charter Per Pupil Allocation on Average (Amount will differ for each school based on eligibility for state funding categories)	9,690	13,899

EXHIBIT 2

Charter Funding Explanation to MAPCS Question 08 18 22

MAPCS asked City Schools: What were the differences in how charter and traditional schools are funded for FY 2023 under Kirwan and what is covered in the 25% that per state law is allowed to be centrally held? The below is a response to those questions.

By Board policy and state law, City Schools funds charter schools commensurately with traditional public schools, and we will continue to do so. The passage of the Blueprint for Maryland's Future (Kirwan) ushered in a new funding formula first utilized to create budgets for FY23. Kirwan fundamentally alters how funds are allocated to schools across Maryland, with even more emphasis on student-centered funding for all schools. The Kirwan legislation's approach to state funding results in more funding directed to schools on the basis of student characteristics with requirements for most categories that "'minimum school funding' means at least 75% of the per pupil amount" (HB1372 Section 5-234) be directly allocated to schools. This shift begins to structure the methodology for funding traditional schools more like charter schools, and Kirwan will require City Schools to increasingly consider how to adjust centralized funding support for school-based services for traditional schools. For example, this year, traditional schools with increased resources are being asked to allocate school-based funding for some facilities improvements that were previously funded centrally. With 75% of funds from most categories being directly allocated to schools, it leaves less resources for the central office to use to provide the critical systems and structures that support the needs of all schools. Kirwan makes clear that "the target per pupil *Foundation* amount includes costs associated with implementing The Blueprint for Maryland's Future including: maintenance and operations of schools; and supplies and materials for teachers; and educational technology including digital devices, broadband connectivity, and information technology staff" (HB1372 Section 5-212).

For this next section, we will refer to the labels used in the FY23 Charter Funding Formula City Schools shared with charter schools. For reference, this formula can be found on p. 2 and 3 of this document.

Under this new funding formula, there are a few key differences in how City Schools funded traditional schools and charter schools this year. For charter schools, the formula for FY 23 included \$296 per pupil labeled "Available Revenue Per Pupil (Before Adding Back Funding Categories) in the formula." The sources of funds that were used to arrive at this number were not directly allocated to traditional schools in their individual school budgets. However, these funds were allocated to charter school individual budgets. The categories for these funds include *Guaranteed Tax Base*, *Transition Grant*, *Transportation*, teacher salaries, and regional cost differences.

Another key area that has a few layers of difference is in the *Foundation* amount. Traditional schools did not receive the same level of funding as charter schools from the *Foundation* category. As established for certain categories of funding like special education, the dollars allocated by the state are far below the actual cost of providing services necessary to comply with IDEA and other legal obligations to students with disabilities; this gap creates an overage. For charter schools, the cost of overages in areas like special education and prekindergarten (i.e., the difference between the actual costs of special education and prekindergarten across all schools versus the funding City Schools receives) are considered in the formula as an equally shared cost distributed amongst all schools, and thus, charter schools received the full benefit of the allocable portion (75%) of the *Foundation* amount. By contrast, for this year, each traditional school covered the cost of its special education and prekindergarten overages through the allocable portion (75%) of their *Foundation* funding. Using the allocable portion of their *Foundation* funding, traditional schools' base funding covered approximately \$137 million in special education and prekindergarten overages.

The implementation of the requirements of the various Kirwan funding streams introduces complexities to the funding formulas for both traditional and charter schools and, like school districts across the State, City Schools will continue to think through how we fund all schools. This is particularly the case for traditional schools, given the new formula calls for school-based allocations for a greater share of expenses.

In the formula that was utilized for charter schools, two categories of funding, *Available Revenue Per Pupil* plus *Foundation*, make up the base funding. From this base, each charter school was provided additional funding from the designated Kirwan funding categories based on the eligible characteristics of the students they serve (i.e., compensatory, concentrations of poverty, EL, SWD, and Pre-K), as well as the one-time hold-harmless allocation, included this year to ensure no charter school received less than a 5% or \$200K increase.

Charter Funding Explanation to MAPCS Question 08 18 22

One area that we will look to present more clearly, going forward, is how we depict the base in the formula shared with schools. In hindsight, the way we presented the new charter formula (shown on the next page) could lead one to incorrectly believe the base is only the \$296 per pupil. A clearer way to present the charter base would be to show that the starting comparison for funding that is not associated with student eligibility characteristics is the combination of the funding entitled *Available Revenue Per Pupil (Before Adding Back Funding Categories)*, or \$296 per pupil, plus *Foundation* funding, or \$6,319 per pupil, which equals a total of \$6,615 per pupil. This is the true base starting place for charters/contract schools.

FY23 Charter Funding Formula		
	FY22 Final	FY23 Proposed
General Fund Revenue		
State Sources	857,120,175	917,325,914
Local Sources	275,513,495	408,026,322
Federal Sources	5,400,000	5,400,000
Other Revenue Sources	7,110,000	7,110,000
Total General Fund Revenue	1,145,143,670	1,337,864,236
Deductions before Overhead Calculation		
Retiree Health Benefits	11,363,703	11,776,069
Debt Service	52,222,071	52,127,159
Revenue from other than State, Local, and Federal Sources	7,110,000	7,110,000
Total Deductions before Overhead Calculation	70,695,774	71,015,228
Net General Fund Revenue	1,074,447,896	1,266,849,008
Less Overhead and Indirect Administrative Cost @ 2%	21,488,958	0
Revenue Available for Per-Pupil Allocation	1,052,958,938	1,266,849,008
Districtwide or Needs Based Exclusions/ State Funding Categories	Districtwide/Needs Based Exclusion	State Funding Categories
Pre-K Funding	38,973,369	0
Foundation Funding	0	603,309,950
Compensatory Funding	0	464,297,941
Pre-K Funding	0	26,810,870
CCR Funding	0	896,779
Non-Public Education Funding	26,600,000	0
Students with Disabilities Funding	218,610,740	83,054,435
English Learners (EL) Funding	31,909,147	67,302,873
Specialized Transportation Funding	43,030,784	0
Total Exclusions/Categorical Funding	359,124,040	1,245,672,848
Available Revenue (Minus State Funding Categories)	693,834,898	21,176,160
District Enrollment (net of Pre-K and non-public students)	71,605	71,608
Available Revenue (Minus State Funding Categories) As Per Pupil	9,690	296

Available Revenue Before Per Pupil



Charter Funding Explanation to MAPCS Question 08 18 22

Foundation

41	State Funding Category	Charter Per Pupil State	Share of Categories	Charter Average Share of State Funding Categories	Charter Enrollment By Category
42	Available Revenue (Minus State Funding Categories)		296	4,495,648	15,188
43	Foundation		6,319	95,971,171	15,188
44	Compensatory		5,709	72,246,833	12,655
45	EL		6,211	4,353,942	701
46	SWD		5,616	11,766,232	2,095
47	Pre-K		4,942	2,811,860	569
48	Charter Overages in Areas Such as Special Education, Pre-K		1,126	17,097,788	15,188
49	Hold Harmless		155	2,356,805	15,188
50	Total		13,899	211,100,299	15,188
51		FY22 Charter Base Per Pupil Allocation	Charter Per Pupil Allocation on Average (Amount will differ for each school based on eligibility for state funding categories)		
52	Charter Per Pupil Allocation/Charter Per Pupil Allocation on Average (Amount will differ for each school based on eligibility for state funding categories)	9,690	13,899		

As referenced above, the Kirwan legislation requires for most categories of funding that “at least 75% of the per pupil amount” is directly allocated to schools. With respect to the remaining 25%, per the state legislation that City Schools is allowed to hold centrally, this amount covered the districtwide and charter overages in special education and prekindergarten, referenced above, and will also begin to cover the cost of administrative services that includes the critical central office administrative infrastructure that support the needs of all schools such as overhead, severance, non-distributed benefits not covered directly by schools (e.g., tuition reimbursement for teachers), the overage in the Enterprise fund (primarily for school meals), and necessary district services (such as payroll, HC services, Infinite Campus, etc.). Additionally, City Schools also used these resources in the 25% of funding held centrally to provide charter schools the one-time 5% or \$200K hold harmless mentioned above. Without this support, schools with less students that qualify for the state funding categories would have experienced flat or reduced funding, without the time to prepare for the shift.

EXHIBIT 3

CITY NEIGHBORS CHARTER SCHOOL,

Appellant

v.

BALTIMORE CITY BOARD
OF SCHOOL COMMISSIONERS,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 05-17

REVISED

OPINION

This is a petition for declaratory ruling by City Neighbors Charter School ("City Neighbors") regarding the appropriate level of funding for public charter schools in Baltimore City. When City Neighbors submitted its application to the Baltimore City Board of School Commissioners ("City Board"), it anticipated funding at approximately \$7,500.00 per pupil from the City Board. At the time this petition was filed, the City Board had not yet made any funding commitment to City Neighbors.

The City Board has submitted a motion to dismiss maintaining that the petition is now moot because on March 8, 2005, the City Board provided a funding formula and committed to fund City Neighbors in the amount of \$5,011 cash and \$2,943 in services per pupil. The City Board also maintains that the petition is untimely and that the State Board lacks jurisdiction to decide this case.

FACTUAL BACKGROUND

On November 9, 2004, the City Board approved City Neighbor's application to open a public charter school in September 2005. City Neighbors' application was predicated on \$7,500 per pupil. At the time the petition for declaratory judgment was filed with the State Board in this case, City Neighbors had not yet received a funding commitment from the City Board as to either dollar amount or as to the method of calculation. Nor had City Neighbors received a proposed charter agreement from the City Board.

On March 8, 2005, the City Board provided all of its approved charter school applicants with the City Board's proposed per pupil funding allocation for fiscal year 2006. The figures were based on the fiscal year 2005 budget, with a 5.2% adjustment for anticipated increases in the State's Thornton funding. With the 5.2% adjustment, the formula funds schools in the amount of \$5,011 cash and \$2,943 in services per pupil. *See* Charter School Per Pupil Funding Allocation Chart attached to David Stone's 3/8/05 memorandum to charter school operators.

The City Board has defined its per pupil allocation as the "amount of discretionary dollars available to operators to exercise the autonomy that is the defining principle of charter schools."

See 3/8/05 memorandum from David Stone to Charter School Operators. In addition to the per pupil allocation, the funding model proposes that some services and supports will be provided to the charter schools at no cost. Examples of services to be provided at no cost are as follows:

- All services related to the administration of the school system. For example, the City Board, Chief Executive Office, and Area Academic Officers;
- Psychological services that are part of special education related services. These services are offered on an as-needed basis;
- Special education instruction and required related services, such as transportation, will be provided upon a documented basis;
- Security services; and
- Food services for those schools desiring to participate in the program.

City Neighbors maintains that the school system's funding model is not consistent with the intent of the legislature in enacting § 9-109 of the Education Article on funding for public charter schools.¹

ANALYSIS

Standard of Review

Regarding interpretation of law, § 2-205(e) of the Education Article provides that the State Board, without charge and with the advice of the Attorney General, shall explain the true intent and meaning of the provisions of the Education Article that pertain to public schools and public school systems in Maryland and the rules and regulations adopted by the State Board. By regulation found at COMAR 13A.01.05.05E, the standard of review that the State Board applies when it is interpreting school laws and regulations is that:

The State Board shall exercise its independent judgment on the record before it in the explanation and interpretation of the public school laws and State Board regulations.

¹*Patterson Park Public Charter School v. Baltimore City Board of School Commissioners* and *Lincoln Public Charter School v. Prince George's County Board of Education* also concern the same funding issue.

Two-Step Application Process

In August 2003, MSDE issued the *Maryland Public Charter Schools Model Policy and Resource Guide* ("Guide") which envisions a two-step chartering system approach. The first step consists of the application development, submission, and review process. As noted in the *Guide*, the application process provides opportunities for the prospective public charter school organizing body and local school system officials to examine all aspects of the proposed educational program and the operation of the school to identify various administrative functions that will need to be fulfilled during the planning, opening, and day-to-day operation of the public charter school.

After the application has been approved, the second step is the completion of a charter agreement which is a legally binding contract that explains in detail the responsibilities of all parties involved in the operation of the public charter school. The thoroughness of the application process should pave the way for the incorporation of the approved application into the body of the charter school agreement with the need for minimal additional negotiation in completing the charter agreement. *See Guide* at p. 17 – 18.

Mindful of the 120 day statutory deadline for a local board decision on a charter school application as set forth in § 9-104 followed by the prompt completion of the charter agreement, we find that based on the parameters we set forth below on commensurate funding, employee status, and waiver processes, the charter agreement must be completed within 30 calendar days from the date of the decision approving the charter application. However, because of the extensive amount of time that has elapsed since City Neighbors submitted its application on August 31, 2004, and the urgency with next steps to have the charter school operational for the beginning of the 2005-2006 school year, we are directing the parties to complete the charter agreement for City Neighbors within 15 business days of the date of issuance of this revised opinion.

Commensurate Funding

On funding, § 9-109(a) of the Education Article provides that a local board "shall 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." As noted above, the parties have differing views on the meaning and intent of this statutory language. We begin with the plain meaning of two significant terms: "commensurate" having the definition "of the same size, extent, or duration; corresponding in size or degree; proportionate", and "disbursed" being defined as "paid out; expended, as from a fund." *See The American Heritage Dictionary*, 2nd Ed., at 297, 402. Thus, under the plain meaning rule, we believe the legislature intended that a public charter school receive federal, State, and local funding in an amount proportionate to the amount of funds expended for elementary, middle, and secondary level students in the other public schools in the same system. This includes funding for services for which students in the public charter schools

are eligible such as free and reduced price meals, pre-kindergarten, special education, English-language learners, Perkins, Title I, and transportation.

In order to determine that precise amount and because there is no statewide formula or methodology that determines how local school systems fund their schools, we believe that a reasonable starting point is the total annual school system operating budget that includes all federal, State, and local funding with the approved appropriations for each of the major categories as specified in § 5-101(b)(2) of the Education Article, that each local board of education submits to MSDE within 30 days of approval by the respective local government.² The next step is to divide the total annual operating budget and each of the major category appropriations by the annual September 30 enrollment count of the school system for the previous year to calculate the average per pupil funding overall and per major category.³

Because there are certain support functions including data collection and reporting as well as the responsibilities set out in §9-110(a) of the Education Article that may only be performed by the central office of a local school system, the total average per pupil amount shall be adjusted by a 2% reduction as a reasonable cost to the charter school for these required central office functions. The total adjusted average per pupil amount is then multiplied by the student enrollment of the charter school to determine the total funding amount for the charter school.

We note that the total annual school system operating budget contains all funds - federal, State, and local including, *e.g.*, Title I and special education funds. Therefore, with the exception of a student with disabilities for whom the IEP designates a nonpublic school placement, we find that an average per pupil amount derived from the total annual school system operating budget is sufficient for the charter school to deliver the services for which the school's students are eligible. The charter school will have to make budgetary allocations knowing its student population eligibility requirements and in doing so must comply with all applicable federal and

²For the charter school funding determination, the total annual school system operating budget amount shall exclude appropriations for debt service and for adult education, but shall include the appropriation for food services.

³In calculating the average per pupil amount, the charter school applicant and the school system shall use the approved school system annual operating budget for the school year in which the charter school application is filed. However, because the school system September 30 enrollment count is not finalized until late November, the school system enrollment count for the previous school year shall be used for the calculation. Nonetheless, in this appeal given the extensive delay since the application was filed and since the 2004 student enrollment count is known at this time, we direct the parties to this appeal to calculate the average per pupil amount using the 2004-2005 school system annual operating budget minus debt service and adult education, and the 2004 enrollment count. A template prepared by MSDE staff from the 2004-2005 approved system operating budget and the 2004 enrollment count is attached to this opinion as Exhibit 1.

State requirements.

For the special services that must be provided to its eligible students, the charter school must choose whether it will provide those services directly or whether those services will be provided by the school system. If the latter, the charter school must reimburse the school system the proportionate cost of those services.⁴ Further, the charter school must reimburse the school system for salary, local retirement, and other fringe benefit costs for the public school employees working in the charter school as well as for regular services and supplies that the charter school requests the local school system to provide.⁵

As further guidance on the implementation of the funding methodology set out above, the State Board adopts and incorporates by reference the guidance documents discussed at our public meeting on May 24, 2005. Those guidance documents are attached to this revised opinion as Exhibit 2 - Use of Average Per Pupil Funding and Central Support; Exhibit 3 - Steps to Include Title I Funding for Charter Schools; and Exhibit 4 - Charter Schools and Special Education.

CONCLUSION

The general purpose of Maryland's Public Charter School Program as enacted in 2003 is to establish an alternative means within the existing public school system in order to provide innovative learning opportunities and creative educational approaches to improve the education of students. *See* Educ. § 9-101(b). Under the law the charter school is a public school operating with agreed upon terms of flexibility within a public school system. The local school system must work collaboratively with the charter school as one of its schools and the charter school must work collaboratively with the school system as a public school within the local system.

We have issued this Revised Opinion as guidance and direction not only to the parties in this appeal but also to the other charter school applicants and local school systems in Maryland

⁴For a student with disabilities enrolled in a charter school for whom the IEP designates a nonpublic school placement, the charter school shall reimburse the school system the annual average per pupil funding amount. The local school system shall pay the excess costs of the placement.

⁵The Fiscal Note accompanying SB 75, Acts 2003, that established Maryland's Public Charter School Program, relied on average per pupil expenditures to calculate the estimated fiscal impact of the legislation. *See* SB 75/2003, Fiscal Note at 4. While not controlling, we believe the General Assembly considered the average per pupil analysis provided in the Fiscal Note in enacting §9-109.

for the refinement of their working relationships on behalf of the public school children throughout this State.

Edward L. Root

Edward L. Root
President

Dunbar Brooks

Dunbar Brooks
Vice President

Lelia T. Allen

Lelia T. Allen

JoAnn T. Bell

JoAnn T. Bell

J. Henry Butta

J. Henry Butta

Beverly A. Cooper

Beverly A. Cooper

Calvin D. Disney

Calvin D. Disney

Clarence A. Hawkins

Clarence A. Hawkins

Karabelle Pizzigati
Karabelle Pizzigati

Maria C. Torres-Queral
Maria C. Torres-Queral

David F. Tufaro
David F. Tufaro

May 26, 2005

Per Pupil Funding for Baltimore City

State Category	Total Budgeted	Per Pupil	Funds Provided to Charter School (Note 1)	Funds Reimbursed to LSS for Service
Administrative Services	\$49,523,881	\$546		
Mid-Level Administration	\$49,028,344	\$541		
Total Instruction	\$328,762,242	\$3,626		
Special Education	\$192,472,867	\$2,123		
Student Personnel Services	\$9,982,686	\$110		
Student Health Services	\$4,800,000	\$53		
Student Transportation	\$27,846,499	\$307		
Operation of Plant	\$55,012,253	\$607		
Maintenance of Plant	\$10,860,693	\$120		
Fixed Charges	\$137,454,772	\$1,516		
Food Service Transfer + Actual	\$51,201,089	\$565		
Community Services	\$0	\$0		
Capitol Outlay	\$0	\$0		
Undistributed Funds	\$76,470,017	\$843		
Total	\$993,415,343	\$10,956		

Per Pupil Funding Totals	Amount
Total Per Pupil Funding	\$10,956
Total Funds Provided To Charter School	
Funds Reimbursed to LSS for Services	

Note 1: This figure equals the amount in Column C (Per Pupil) times the number of students in the Charter School.

**Panel on State Board's Decisions
Regarding Charter School Appeals
Use of Average Per Pupil Funding and Central Support
May 24, 2005**

Use of Average Per Pupil Funding

- There is no statewide formula or methodology that determines how school systems fund their schools.
- Various methods are used nationally to address Charter School funding
- In choosing average per pupil budgeted expenditures, the Board followed the example of the Thornton Commission in determining funding allocations.
 - Two of the Commission's guiding principles were Flexibility and Simplicity
 - Using Average Per Pupil Funding maximizes flexibility of the funding at the Charter School level similar to how the Bridge To Excellence funding was allocated to local jurisdictions without the requirement that the dollars follow the child.
 - It was left up to the LEAs to address the best use of the funding.
 - The Thornton Commission did not attempt to allocate each of the three special needs program funds for each school based on their specific student population.
 - The use of Average Per Pupil Funding also maximizes simplicity. In the start-up year of Maryland's Charter School endeavor, it is imperative that funding levels be clearly defined and easily understood.
- There is no enrollment history at these charter schools upon which to base a more refined enrollment-driven allocation of funds. Of course, as an enrollment history develops this issue could certainly be revisited and a more complex funding methodology be examined.

**Panel on State Board's Decisions
Regarding Charter School Appeals
Use of Average Per Pupil Funding and Central Support
May 24, 2005**

- It is understood that some funding restrictions in two very large federal programs (Title I and Special Education) will require the Charter School to adjust the total budget to be in compliance with programmatic laws and regulations.
- The calculation of average cost does not mean that the funding mix of each fund source to the LEA must be duplicated at the Charter School level.
 - There is reason neither to assume nor expect that the LEA would create a mirror image of itself within the Charter School.
 - The actual funding sources that would be provided to the school would be dependent upon the specific school's eligibility for those restricted funds.
 - Even the use of only State and Local funds to meet the commensurate funding level would still be consistent with the calculation put forth by the State Board in its opinion.
- Using average funding per pupil serves as a method of targeting a sufficient level of funding to a charter school student in recognition of what that school system's budget has for each public school student.
 - It is important to know that average is just that, it does not necessarily represent an amount that any specific pupil gets.
 - Some students will cost more to educate, some will cost less. However, use of the average costs ensures that the same level of funding per pupil will be available to the Charter School as is available district wide.
 - It will be up to the charter school to spend its funds effectively as it is the responsibility of each local school system to do the same.

**Panel on State Board's Decisions
Regarding Charter School Appeals
Use of Average Per Pupil Funding and Central Support
May 24, 2005**

Central Support Costs

- The State Board indicated that the charter school would need to determine for special services whether they would provide those services directly or whether they would be provided by the school system.
- The Board further noted that the charter school would be required to reimburse the LEA for, among other things, services and supplies that the charter school requests the local school system to provide.
- While part of the overall revenue to the charter school, it is important to note that there are some services that can only be provided by the school system and for which the charter school would need to reimburse a portion of the funding.
- There are central support services (data collection, assessment, etc) that can only be provided by the central school office since that is MSDE's point of contact with the LEA for any public school information.
- Annually MSDE calculates a restricted indirect cost rate for use by the LEAs on funding sources to recognize the costs associated with operating and controlling the program.
- The current Financial Reporting Manual for Maryland Public Schools in the section for Cost Principles for State-Funded Grants (Appendix I) allows the use of the restricted indirect cost rate not to exceed a maximum of 2 percent.
- Given the administrative services required to be provided by the school system, the State Board may consider it an appropriate use of the Charter School funding to establish 2% of their annual allocation as a reasonable cost to the school and a reimbursement to the LEA central offices. - *Approved by unanimous vote of the State Board of Education on May 25, 2005, that the total average per pupil amount shall be adjusted by a 2% reduction*

May 24, 2005

STEPS TO INCLUDE TITLE I FUNDING FOR CHARTER SCHOOLS

- 1. Compute the Charter School Per Pupil Allocation (CPPA)**
 - a. Local \$+State \$+Federal \$=Total \$
 - b. Total \$/Sept. 30 Enrollment=CPPA
 - c. CPPA x Charter School projected enrollment=Total Charter School Funding

- 2. Compute the Title I Per Pupil Allocation (TPPA)**
 - a. Local School System (LSS) uses standard federal directions to rank all schools, both public and charter, in order by % FARM (or free meals in the case of Baltimore City and Anne Arundel County)
 - b. Charter schools must use an estimating procedure to determine the % FARM students
 - c. This ranking is then used to determine the Title I Per Pupil Allocation just as the LSS does every year.

- 3. If a charter school is Title I for the first time, it must be a Targeted Assistance School. If a charter school was a Title I—Schoolwide School the previous year and will continue to receive services after converting to a charter school, it can be a Schoolwide School. In both cases the computation of the funding is the following:**
 - a. Each FARM student's CPPA will remain.
 - b. The TPPA will be subtracted from the CPPA for the remaining students in the school
 - c. $(\#FARM \times CPPA) + [(\# \text{ not FARM} \times (CPPA - TPPA))] = \text{Total Charter School Funding}$

- 4. If a charter school is Not to Receive Title I funding:**
 - a. The TPPA should be subtracted from each student's CPPA.
 - b. $\#students \times (CPPA - TPPA) = \text{Total Charter School Funding}$

- 5. After each Charter School has completed this activity, the balance caused by the non-FARM students in Targeted Assistance and Schoolwide Schools and from all students in non-Title I schools will remain within the central Title I budget for allocation in accordance with an MSDE-approved budget.**

- **CPPA**—Charter School Per Pupil Allocation
- **TPPA**—Title I Per Pupil Allocation
- **FARM**—Free and Reduced Meals
- **Targeted Assistance School**—Schools that use Title I funds to serve only the students with the most severe academic needs
- **Schoolwide School**—Schools that use Title I funds to serve all students in the school

Conceptual Process for Determining Title I Per Pupil Allocation (TPPA)

Student Numbers

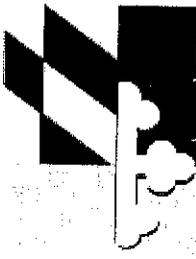
1. Rank all schools (including charters) from the highest to lowest percent of poverty.
2. Determine cut-off for Title I services.
3. Schools above this cut-off will receive Title I services.
4. **Identify the total number of low-income children in Title I school attendance areas (public and private).**

Title I Dollars

1. Begin with the full amount of the LSS Title I Grant.
2. Subtract the system-wide set aside amounts for Parent Involvement, Professional Development, Administration, Homeless, etc.
3. **Identify the total amount of Title I dollars remaining after the subtraction of the set-asides.**

Final Per Pupil Allocation

1. **Divide the amount of Title I dollars remaining after set-asides (blue above) by the Total number of low-income children (green above).**
2. **The result is the Title I Per Pupil Allocation (TPPA)**



May 24, 2005

Charter Schools and Special Education

Funding and Service Issues

1. What rights do children with disabilities have who attend public charter schools?

Students with disabilities retain all rights to receive a free appropriate public education (FAPE). LEA Charter schools are responsible for ensuring that the requirements of the IDEA are met. This includes conducting child find activities, completing evaluations, developing and implementing IEPs.

2. What are the specific requirements related to Charter Schools with the enactment of the Individuals with Disabilities Education Act (IDEA), 2004.

The local educational agency is required to serve children with disabilities attending charter schools in the same manner as the local educational agency serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the local education agency has a policy or practice of providing such services on the site to its other public schools; and

The local educational agency is required to provide funds to charter schools on the same basis as the local educational agency provides funds to the local educational agency's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and at the same time as the agency distributes other Federal funds to the agency's other public schools, consistent with the State's charter school law. [613 (a)(5)] **Attachment**

3. Does nonsupplanting apply to special education in Charter Schools?

Yes, the provisions of 34 CFR 300.184, 34 CFR 300.230 apply to charter schools. The excess cost requirement prevents an LEA from using funds provided under Part B to pay for all of the costs directly attributable to the education of a child with a disability.

Attachment

4. How is the per-pupil funding for Students with Disabilities formulated?

Federal Funding for Special Education:

Funding that a local school system receives is designated as Passthrough Funding. This funding is distributed on a two tier system. The first tier is a flat level of funding that the local school system received in FY 1999. The second tier represents the remaining Passthrough Funding. The formula for distributing these funds is that 85% of the funds are distributed based on total school (public and private) population and 15% on poverty (free and reduced meals). Because the funding formula is not child driven, the amount of funding per pupil will vary between jurisdictions. [611 D]

State Funding for Special Education:

State Funding is provided through the Bridge to Excellence funding formula that is in effect from FY 2004 –2008. The formula is a two-tier formula. Tier I is the funding that local school systems received prior to the Bridge to Excellence. This Tier is decreased each between FY 2004- FY 2008 until it expires at the end of FY 2008. Tier II is based on a portion of the per pupil foundation formula for general education students which increases annually and is then distributed to local school systems based on the local per pupil special education enrollment and local wealth per pupil. This calculation is done in the Budget Branch of the Division of Business Services. [Title 5, Section 2]

Local Funding for Special Education:

Local funding is determined at the local school system level and will vary depending on the amount of students with disabilities that are being serviced and the amount of local funding the local school system designates for meeting the IEP needs of these students.

Overall questions to be answered by local school systems regarding how the system distributes federal funding within the jurisdiction:

- What is the methodology used to assign funding to each school within the system for its students with disabilities? Please elaborate on how this methodology applies. Examples of distribution may include: on a per pupil basis, individual staffing assignments, overall staffing plan, services required on specific IEPs within the school, other (describe).
- Does the described methodology used to distribute the federal funds also apply to how the local school system distributes the State and local funding for students with disabilities?

5. How can special education and related services be provided under LRE A, B, and LRE C?

Option I:

The Charter School can provide all of the special education and related services for students identified for placement in LRE A, B, and C.

The Least Restrictive Environment (LRE) section of the Special Services Information System (SSIS) Manual of Instruction states that students who receive special education and related services outside the general education setting for less than 21% of the school day are considered LRE A students. The manual indicates that students who receive special education and related services outside the general education setting for at least 21% but no more than 60% of the school day are considered LRE B students. The SSIS manual states that students who receive special education and related services outside the general education setting for more than 60% of the school day are considered LRE C students.

Option II:

Under the terms of a contract between the LSS and the Charter School, the LRE A students may be provided services by the Charter School. The LRE B students may be the shared responsibility of both the LSS and the Charter School. The Charter School would provide services for the LRE B students while they are in the general education classroom and the LSS would provide services for the students while they are in the self-contained classroom. LRE C students would be provided services by the LSS.

Any combination of the above options is appropriate consistent with the requirements of the IDEA to ensure FAPE. To the maximum extent possible, all details should be clarified prior to initiating services to students with disabilities.

The Charter school's payment for the students with disabilities that they serve would be included in the per pupil funding they receive for the overall contract to operate a Charter School.

6. Who is responsible for the cost of transportation?

As a part of the contract agreement between the LSS and Charter School, transportation should be addressed for all students including students with disabilities attending the charter schools. This may include the Charter School returning to the LSS the portion of funds provided for transportation or the Charter School providing the transportation service for the student. For students who do not have transportation on their IEP as a related service, the entitlement to transportation should be in accordance with the policy for all students not attending their home school. When an IEP team has approved transportation as a related service, a student with a disability is entitled to this service.

7. What about students who are identified within the Charter school and require a nonpublic school placement?

Students with IEPs within Charter Schools that require a nonpublic setting for implementation of their IEPs are eligible for nonpublic placement through the LSS. The State and LSS payments are to be handled in the same manner as prescribed through the Nonpublic Tuition Assistance Program (300% of the local basic cost; 25% LSS, 75% State towards the remaining tuition). The Charter School shall reimburse the LSS the annual average per pupil funding amount (Patterson Park Public Charter School, Inc. v Baltimore City Board of School Commissioners, p. 7, note #7).

8. How are billings for Medical Assistance handled?

The 1988 amendments to the Medicaid law require Medicaid to pay for medical services that are included in Medicaid eligible students with disabilities Individualized education programs (IEPs) when coverage of such services is included in the State plan for Medicaid. Local school systems may bill Medicaid for health-related services, service coordination, and transportation for services for students with disabilities and infants and toddlers with individualized family service plans (IFSPs). The Charter School shall use the same Tax ID number as the local school system. The local school system will bill Medicaid for services on behalf of students enrolled in the Charter School. The LSS will receive the revenue from Medicaid through MSDE and be responsible to distribute these funds to the Charter School. The Charter School will be responsible for compliance with the Medicaid requirements for students within the Charter School and billed by the LSS.

ADDITIONAL ATTACHMENTS

ATTACHMENT **Federal Register, Section 300.184, Excess Cost Requirement**

ATTACHMENT **IDEA Side by Side, NASDSE**

Secretary may waive the requirement of paragraph (a) of this section for a State, for one fiscal year at a time. If the Secretary determines that—

(1) Granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or

(2) The State meets the standard in § 300.589 for a waiver of the requirement to supplement, and not to supplant, funds received under Part B of the Act.

(d) *Subsequent years.* If, for any fiscal year, a State fails to meet the requirement of paragraph (a) of this section, including any year for which the State is granted a waiver under paragraph (c) of this section, the financial support required of the State in future years under paragraph (a) of this section must be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

(Authority: 20 U.S.C. 1412(a)(19))

§ 300.155 Policies and procedures for use of Part B funds.

The State must have on file with the Secretary policies and procedures designed to ensure that funds paid to the State under Part B of the Act are spent in accordance with the provisions of Part B.

(Authority: 20 U.S.C. 1412(a)(18)(A))

§ 300.156 Annual description of use of Part B funds.

(a) In order to receive a grant in any fiscal year a State must annually describe—

(1) How amounts retained for State-level activities under § 300.602 will be used to meet the requirements of this part;

(2) How those amounts will be allocated among the activities described in §§ 300.621 and 300.370 to meet State priorities based on input from LEAs; and

(3) The percentage of those amounts, if any, that will be distributed to LEAs by formula.

(b) If a State's plans for use of its funds under §§ 300.370 and 300.620 for the forthcoming year do not change from the prior year, the State may submit a letter to that effect to meet the requirement in paragraph (a) of this section.

(Authority: 20 U.S.C. 1411(f)(5))

LEA and State Agency Eligibility—
General

§ 300.180 Condition of assistance.

An LEA or State agency is eligible for assistance under Part B of the Act for a fiscal year if the agency demonstrates to the satisfaction of the SEA that it meets the conditions in §§ 300.220–300.250.

(Authority: 20 U.S.C. 1413(a))

§ 300.181 Exception for prior LEA or State agency policies and procedures on file with the SEA.

If an LEA or a State agency described in § 300.194 has on file with the SEA policies and procedures that demonstrate that the LEA or State agency meets any requirement of § 300.180, including any policies and procedures filed under Part B of the Act as in effect before June 4, 1997, the SEA shall consider the LEA or State agency to have met the requirement for purposes of receiving assistance under Part B of the Act.

(Authority: 20 U.S.C. 1413(b)(1))

§ 300.182 Amendments to LEA policies and procedures.

(a) *Modification made by an LEA or a State agency.* (1) Subject to paragraph (b) of this section, policies and procedures submitted by an LEA or a State agency in accordance with this subpart remain in effect until it submits to the SEA the modifications that the LEA or State agency decides are necessary.

(2) The provisions of this subpart apply to a modification to an LEA's or State agency's policies and procedures in the same manner and to the same extent that they apply to the LEA's or State agency's original policies and procedures.

(b) *Modifications required by the SEA.* The SEA may require an LEA or a State agency to modify its policies and procedures, but only to the extent necessary to ensure the LEA's or State agency's compliance with this part. If—

(1) After June 4, 1997, the provisions of the Act or the regulations in this part are amended;

(2) There is a new interpretation of the Act by Federal or State courts; or

(3) There is an official finding of noncompliance with Federal or State law or regulations.

(Authority: 20 U.S.C. 1413(b))

§ 300.183 [Reserved]

§ 300.184 Excess cost requirement.

(a) *General.* Amounts provided to an LEA under Part B of the Act may be used only to pay the excess costs of providing special education and related services to children with disabilities.

(b) *Definition.* As used in this part, the term *excess costs* means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary or secondary school student, as may be appropriate. Excess costs must be computed after deducting—

(1) Amounts received—

(i) Under Part B of the Act;

(ii) Under Part A of title I of the Elementary and Secondary Education Act of 1965; or

(iii) Under Part A of title VII of that Act; and

(2) Any State or local funds expended for programs that would qualify for assistance under any of those parts.

(c) *Limitation on use of Part B funds.*

(1) The excess cost requirement prevents an LEA from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a child with a disability, subject to paragraph (c)(2) of this section.

(2) The excess cost requirement does not prevent an LEA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the ages 3, 4, 5, 18, 19, 20, or 21, if no local or State funds are available for nondisabled children in that age range. However, the LEA must comply with the nonsupplanting and other requirements of this part in providing the education and services for these children.

(Authority: 20 U.S.C. 1401(7), 1413(a)(2)(A))

§ 300.185 Meeting the excess cost requirement.

(a)(1) *General.* An LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B of the Act are used.

(2) The amount described in paragraph (a)(1) of this section is determined using the formula in § 300.184(b). This amount may not include capital outlay or debt service.

(b) *Joint establishment of eligibility.* If two or more LEAs jointly establish eligibility in accordance with § 300.190, the minimum average amount is the average of the combined minimum average amounts determined under § 300.184 in those agencies for elementary or secondary school students, as the case may be.

(Authority: 20 U.S.C. 1413(a)(2)(A))

§§ 300.186–300.189 [Reserved]

§ 300.190 Joint establishment of eligibility.

(a) *General.* An SEA may require an LEA to establish its eligibility jointly

Attachment # 1

with another LEA if the SEA determines that the LEA would be ineligible under this section because the agency would not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.

(b) *Charter school exception.* An SEA may not require a charter school that is an LEA to jointly establish its eligibility under paragraph (a) of this section unless it is explicitly permitted to do so under the State's charter school statute.

(c) *Amount of payments.* If an SEA requires the joint establishment of eligibility under paragraph (a) of this section, the total amount of funds made available to the affected LEAs must be equal to the sum of the payments that each LEA would have received under §§ 300.711-300.714 if the agencies were eligible for these payments.

(Authority: 20 U.S.C. 1413(e)(1), and (2))

§ 300.191 [Reserved]

§ 300.192 Requirements for establishing eligibility.

(a) *Requirements for LEAs in general.* LEAs that establish joint eligibility under this section must—

(1) Adopt policies and procedures that are consistent with the State's policies and procedures under §§ 300.121-300.156; and

(2) Be jointly responsible for implementing programs that receive assistance under Part B of the Act.

(b) *Requirements for educational service agencies in general.* If an educational service agency is required by State law to carry out programs under Part B of the Act, the joint responsibilities given to LEAs under Part B of the Act—

(1) Do not apply to the administration and disbursement of any payments received by that educational service agency; and

(2) Must be carried out only by that educational service agency.

(c) *Additional requirement.*

Notwithstanding any other provision of §§ 300.190-300.192, an educational service agency shall provide for the education of children with disabilities in the least restrictive environment, as required by § 300.130.

(Authority: 20 U.S.C. 1413(e)(3), and (4))

§ 300.193 [Reserved]

§ 300.194 State agency eligibility.

Any State agency that desires to receive a subgrant for any fiscal year under §§ 300.711-300.714 must demonstrate to the satisfaction of the SEA that—

(a) All children with disabilities who are participating in programs and

projects funded under Part B of the Act receive FAPE, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and

(b) The agency meets the other conditions of this subpart that apply to LEAs.

(Authority: 20 U.S.C. 1413(f))

§ 300.195 [Reserved]

§ 300.196 Notification of LEA or State agency in case of ineligibility.

If the SEA determines that an LEA or State agency is not eligible under Part B of the Act, the SEA shall—

(a) Notify the LEA or State agency of that determination; and

(b) Provide the LEA or State agency with reasonable notice and an opportunity for a hearing.

(Authority: 20 U.S.C. 1413(c))

§ 300.197 LEA and State agency compliance.

(a) *General.* If the SEA, after reasonable notice and an opportunity for a hearing, finds that an LEA or State agency that has been determined to be eligible under this section is failing to comply with any requirement described in §§ 300.220-300.250, the SEA shall reduce or may not provide any further payments to the LEA or State agency until the SEA is satisfied that the LEA or State agency is complying with that requirement.

(b) *Notice requirement.* Any State agency or LEA in receipt of a notice described in paragraph (a) of this section shall, by means of public notice, take the measures necessary to bring the pendency of an action pursuant to this section to the attention of the public within the jurisdiction of the agency.

(c) In carrying out its functions under this section, each SEA shall consider any decision resulting from a hearing under §§ 300.507-300.528 that is adverse to the LEA or State agency involved in the decision.

(Authority: 20 U.S.C. 1413(d))

**LEA and State Agency Eligibility—
Specific Conditions**

§ 300.220 Consistency with State policies.

(a) *General.* The LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established under §§ 300.121-300.156.

(b) *Policies on file with SEA.* The LEA must have on file with the SEA the policies and procedures described in paragraph (a) of this section.

(Authority: 20 U.S.C. 1413(a)(1))

§ 300.221 Implementation of CSPD.

The LEA must have on file with the SEA information to demonstrate that—

(a) All personnel necessary to carry out Part B of the Act within the jurisdiction of the agency are appropriately and adequately prepared, consistent with the requirements of §§ 300.380-300.382; and

(b) To the extent the LEA determines appropriate, it shall contribute to and use the comprehensive system of personnel development of the State established under § 300.135.

(Authority: 20 U.S.C. 1413(a)(3))

§§ 300.222-300.229 [Reserved]

§ 300.230 Use of amounts.

The LEA must have on file with the SEA information to demonstrate that amounts provided to the LEA under Part B of the Act—

(a) Will be expended in accordance with the applicable provisions of this part;

(b) Will be used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with §§ 300.184-300.185; and

(c) Will be used to supplement State, local, and other Federal funds and not to supplant those funds.

(Authority: 20 U.S.C. 1413(a)(2)(A))

§ 300.231 Maintenance of effort.

(a) *General.* Except as provided in §§ 300.232 and 300.233, funds provided to an LEA under Part B of the Act may not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

(b) *Information.* The LEA must have on file with the SEA information to demonstrate that the requirements of paragraph (a) of this section are met.

(c) *Standard.* (1) Except as provided in paragraph (c)(2) of this section, the SEA determines that an LEA complies with paragraph (a) of this section for purposes of establishing the LEA's eligibility for an award for a fiscal year if the LEA budgets, for the education of children with disabilities, at least the same total or per-capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available:

(i) Local funds only.

(ii) The combination of State and local funds.

(2) An LEA that relies on paragraph (c)(1)(i) of this section for any fiscal year

(5) TREATMENT OF CHARTER SCHOOLS AND THEIR STUDENTS--
 In carrying out this part with respect to charter schools that are public schools of the local educational agency, the local educational agency --
 (A) serves children with disabilities attending those schools in the same manner as it serves children with disabilities in its other schools; and
 (B) provides funds under this part to those schools in the same manner as it provides those funds to its other schools.

(5) TREATMENT OF CHARTER SCHOOLS AND THEIR STUDENTS.--In carrying out this part with respect to charter schools that are public schools of the local educational agency, the local educational agency--
 (A) serves children with disabilities attending those charter schools in the same manner as the local educational agency serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the local educational agency has a policy or practice of providing such services on the site to its other public schools; and
 (B) provides funds under this part to those charter schools--
 (i) on the same basis as the local educational agency provides funds to the local educational agency's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and
 (ii) at the same time as the agency distributes other Federal funds to the agency's other public schools, consistent with the State's charter school law.

Attachment #2

EXHIBIT 4

MONOCACY MONTESSORI
COMMUNITIES, INC.

Appellants

v.

FREDERICK COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 06-17

OPINION

This is an appeal by a charter school, Monocacy Montessori Communities, Inc. (MMCI), from a “commensurate funding” decision of the Frederick County Board of Education (local board). The local board filed a Motion for Summary Affirmance and a Memorandum and Supplemental Memorandum in Support. MMCI filed a Response and the local board filed a Reply.

FACTUAL BACKGROUND

The Frederick County Board of Education was the first school system in Maryland to adopt a policy on Charter Schools and the first to approve a charter school application. This occurred in June, 2002, prior to the passage of the charter school law.

MMCI began operation in the 2002-03 school year with 168 students and it has grown to approximately 242 students in the 2005-06 school year. The local board has approved the MMCI charter for an eight year term.

When MMCI obtained its original charter, there were no statutory directives concerning funding of a charter school. The local board, therefore, established a policy to govern the funding allocation. That policy stated that the allocation for MMCI would include: (1) the cost of salary and benefits for the staffing positions identified in a charter school; (2) an appropriate amount for materials of instruction and equipment; and (3) proportionate allocations from the following budget categories: building specific mid-level management, instructional salaries, instructional supplies, instruction-other, and appropriate fixed charges less budgeted amounts for extracurricular activities. The policy also stated that the allocation would not include FCPS resources necessary for central administration, special education, pupil personnel, health services, transportation, operations, maintenance, fixed charges, community service, and capital outlay.

Apparently, in addition to the above described charter school funding policy, MMCI agreed that “expenses such as teachers’ salaries, employee benefits, and the various types of required insurances will be paid by [the local board] for the charter school.” In addition, MMCI was to receive all federal funds for which MMCI students were eligible and its share of any system-wide gifts or endowments to the Frederick County Public Schools.

In its initial year (2002-2003), MMCI received \$5,348 per pupil.

In July 2003, the Maryland Public Charter School Program became law. *See* Md. Educ. Code Ann., § 9-101, *et. seq.* One provision of that law addresses funding. It 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.” *Id.* § 9-109.

During the 2003-2004 school year, various local school systems applied the new statute to determine funding for charter schools in their system. In the spring of 2005, three disputes about commensurate funding reached this Board. *City Neighbor Charter School v. Baltimore City Board of School Commissioners* (request for declaratory judgment); *Lincoln Public Charter School v. Prince George’s County Board of Education* (direct appeal); *Patterson Park Public Charter School v. Baltimore City Board of School Commissioners* (direct appeal). On May 26, 2005, this Board issued three Revised Opinions in which it determined that, because it had the responsibility to “explain the true intent and meaning of the provision of the Education Article that pertains to public schools and public school systems in Maryland . . .”, Md. Educ. Code Ann. § 2-205(e), it was required to explain the meaning of certain provisions of the Maryland Charter School Program Act.

This Board explained the meaning of two significant terms in the statute, “commensurate” and “disbursed.” This Board decided, based on the plain meaning of those words, that commensurate meant “proportionate” and that disbursed meant “expended.” The Board stated:

Thus, under the plain meaning rule, we believe the legislature intended that a public charter school receive federal, State, and local funding in an amount proportionate to the amount of funds expended for elementary, middle, and secondary level students in the other public schools in the same system. This includes funding for services for which students in the public charter schools are eligible such as free and reduced price meals, pre-kindergarten, special education, English-language learners, Perkins, Title I, and transportation.

This Board recognized, however, that there was an inherent problem in ascertaining whether a charter school was actually funded in an amount proportionate to the amount expended in other public schools in the system. The problem was there were no established formulas used by school systems to calculate funds expended for each school within their systems. Thus, it would provide no meaningful guidance to say, without further explanation, that charter schools were entitled to an amount proportionate to the amount of funds expended in the other schools in the system.

Therefore, this Board developed a formula that would, in its opinion, result in a proportionate amount. That formula is: total operating budget¹ ÷ September 30 enrollment count for previous year average per pupil funding - 2% for reasonable administrative costs for school system central office functions. Any restricted state or federal funds for which the charter school or its students were *not* eligible would be subtracted from that adjusted per pupil amount. Moreover, the charter school would need to reimburse the school system for any buy backs from the local school system.

In this case for the 2005-2006 school year, the local board did not use the formula set forth by this Board, but used one that it asserts is “aligned with the direction” given by the State Board in its Revised Opinions. The local board asserts that its formula is appropriate because the “situation in Frederick County is unique in the State of Maryland and is very different from the facts presented in the appeals heard by MSBE from Baltimore City and Prince George’s County. . . there is a history in Frederick County and funding is not just simply a theoretical concept.”

The formula used by the local board had three steps. First, it subtracted from the total budget all restricted budget amounts targeted for specific programs and services. That resulted in the “unrestricted budget.” Second, it adjusted the total unrestricted budget proportionally subtracting the value of the services it provided in-kind and directly to MMCI. It divided that amount by the number of students enrolled. This formula resulted in a per pupil amount of \$6,838. Finally, the local board would add on to that per pupil amount any restricted funds for which charter school or its students were eligible.

The local board argues that this methodology is consistent with the State Board rulings. But, the local board argues, if the State Board does not agree with that argument, the State Board’s rulings and formula are legally wrong.

In its Response, MMCI argues that because the “County Board’s budget provided for overall per pupil spending of \$9,597,” the local board has not provided commensurate funding to MMCI. MMCI focuses on the meaning of commensurate, arguing that it means “equal” funding. It asserts that, although the local board has not made all the figures available, the amount of funding provided to MMCI for the 2005-06 school year, \$6,838 per pupil, is less than 72% of the amount provided to other public schools in the system. That, it concludes, is not equal funding.

MMCI does not argue that the prior State Board rulings or the formula should apply here. It essentially argues that the State Board should adopt MMCI’s equal funding formula and award MMCI \$9,597 per student.

STANDARD OF REVIEW

¹This amount shall exclude debt service and adult education, but include all state, local, and federal funds whether restricted or unrestricted.

This case represents a controversy or dispute regarding the rules and policies of a local board. In these types of cases, the decision of the local board is considered prima facie correct unless this Board decides that the local board's decision was arbitrary, illegal, or unreasonable. COMAR 13A.01.05.05(A). A decision is arbitrary or unreasonable if it is contrary to sound educational policy or if a reasoning mind could not have reached the conclusions of the local board. COMAR 13A.01.05.05(B). A decision is illegal if it is unconstitutional; exceeds the authority of the local board; misconstrues the law; results from unlawful procedure; is an abuse of discretion; or is affected by any other error of law. COMAR 13A.01.05.05(C).

ANALYSIS

The question presented in this case is whether MMCI has received commensurate funding. The dispute herein centers on which funding formula should be used to determine commensurate funding—the State Board's, the local board's formula, or MMCI's equal funding formula? We begin our analysis with the proposition that the local board's decision to use its own formula is prima facie correct. We have asked, therefore, whether that decision is illegal, arbitrary, or unreasonable? We analyze first the local board's position that its decision is a legal one, even though it has used a formula different from the State Board's formula. Thereafter, we will address MMCI's argument that the local board's decision is illegal and should be reversed.

A. The Local Board's Position

The local board asserts that its approach to funding MMCI is legal because it is consistent with the State Board's formula and results in commensurate funding. The local board, however, has used a different methodology from the one used by the State Board. For example, instead of using the total operating budget to calculate the average per pupil amount, the local board's formula backed out all restricted funds and in-kind services from the total operating budget before calculating the average per pupil amount. The local board did not take a flat 2% administration fee but has withheld the entire amount of the Administration budget, \$6.9 million. Finally, the local board did not include any reimbursement for transportation in its total unrestricted budget amount.

The local board's formula is not consistent with the State Board's formula. The question is whether that inconsistency renders the local board's decision illegal *per se*? Therefore, we asked: Is a deviation from the State Board's formula an error of law? The answer to that question depends on whether the State Board's formula is a lock-step mandatory one or whether it allows flexibility depending on the circumstances.

This Board stated when it issued its Revised Opinions that they were “issued . . . as guidance and direction not only to the parties in this appeal but also to the other charter school applicants and local school systems in Maryland for the refinement of their working relationships on behalf of public school children throughout this State.” Ex. A at 5-6.

The question has arisen in this appeal, and in others, whether this Board's formula, announced in an adjudicatory proceeding, rather than by regulation, could actually be applied to school systems that were not parties to the Revised Opinions. The Maryland Court of Appeals has consistently held that administrative agencies are not precluded from announcing new principles in adjudicative proceedings and that the choice between rulemaking and adjudication lies within the agency's discretion. *See, e.g., Consumer Protection Division v. Consumer Publishing Co.*, 304 Md. 731, 753-754 (1985); *Maryland Assoc. of Health Maintenance Organizations v. Health Services Const Review Comm'n*, 356 Md. 581, 600 (1999). Only once has the Court of Appeals mandated that an agency proceed by rulemaking. In that case, *CBS v. Comptroller*, 319 Md. 687 (1990), the Comptroller announced a substantially new and generally applicable policy which also changed existing rules. *Id.* at 699. Thus, the court held that if an agency changes existing law or formulates a rule of widespread application, it must do so through the rulemaking process. *Id.*; *see also Department of Health and Mental Hygiene v. Chimes*, 343 Md. 336, 346 (1996).

In the Revised Opinions, this Board did not change any existing rules, but it could be argued that the Board formulated a rule of widespread application if the Board intended that the formula it presented in the Revised Opinions had to be used, *without deviation*, by every local school system in calculating a charter school's funding allocation, no matter what the circumstances. As this opinion reflects, we did not intend such a rigid approach to determining commensurate funding.

As this Board has recognized, the term commensurate funding has meaning only when it can be reduced to dollar and cents. The State Board formula, when used, results in a bottom line amount of money that this Board considers proportionate/commensurate funding. If a school system decides to use a different formula, it is our opinion that that formula must result in a bottom line amount of money such that this Board could conclude that the school system was providing proportionate/commensurate funds to the charter school.

The analysis set forth herein illustrates how the State Board formula can be used as a measure of whether a local school system has provided proportionate funding to a charter school. The facts concerning the local board's methodology places this issue in context.

The facts of this case reflect a several year history of charter school funding by the local board and a commitment and collaboration with MMCI over that time period. Under the local board policy that applied prior to the enactment of the charter school statute, the funding allocation to MMCI generally included salaries and instructional costs, but did not include administration, special education, pupil personnel, health services, transportation, operations, maintenance, fixed charges, community services and capital outlay.

When the State Board issued its Revised Opinions, the President of the local board directed the FCPS staff to re-evaluate the budget allocation to MMCI. As a result, the FCPS staff submitted a revised budget allocation for MMCI for the 2005-2006 school year, which the local board approved, increasing the allocation by \$176,000. The per pupil amount increased from \$6,112 to \$6,838.

Mr. Keller, Executive Director for Fiscal Services, has explained in his affidavit how FCPS staff arrived at the new per pupil amount. First, they established the total budget for each of fifteen general budget categories and from those amounts subtracted all restricted budget dollars. Thus, from the total operating budget of \$376,481,306, they subtracted \$19,561,570 in restricted dollars resulting in a total unrestricted budget of \$356.9 million.

They then took the total unrestricted budget and adjusted each of the fifteen categories further. For example, the total unrestricted budget for Administration was \$6.9 million. Instead of assessing the 2% administrative charge the staff included \$0 in the charter school budget for this category.² It did so because FCPS provides all central office functions to MMCI. It used the same rationale to include \$0 for Special Education, Pupil Personnel, and Food Services because FCPS provides each of those services in-kind directly to MMCI. The staff included \$0 for transportation because, pursuant to the Charter School Agreement, MMCI agreed that transportation was generally its responsibility.

The staff included the total unrestricted budget funds in each of the following categories: Instructional Salaries; Instructional Supplies; Other Instructional Costs; Operations; Maintenance; and Capital Outlay. *Id.*

In the remaining categories, the staff reduced the total unrestricted budget amount. For example, the Mid Level Management Category was reduced from \$28 million to \$20.9 million because the Curriculum, Administrative and Supervision Office funds support training for delivery of State/Federal programs and provides oversight for the Charter School. The Health Services category was reduced from \$4.5 million to \$47,132 because the majority of the category represents in-kind services provided by the Frederick County Government. MMCI is, therefore, assigned a health technician and nurse by the County Health Department. The \$47,132 represents funding for medical supplies. *Id.* The staff reduced the Fixed Charges category from \$73.2 million to \$49.2 to exclude funds that represent in-kind revenue and expenditures for state retirement, and fringe benefits. *Id.*

After all these calculations were made, the adjusted amount of \$268,270,701 was divided by student enrollment resulting in a per pupil amount of \$6,838.

The question for this Board, therefore, is: Did the local board's formula and methodology result in proportionate funding to MMCI? Using the information and data provided by the parties, we analyzed the FCPS per pupil calculation and compared it to the per pupil amount if the State Board's formula were used.

²We point out that \$6.9 million is less than 2% of total budget of \$376,481,306.

CHART I
Initial Per Pupil Amount

FCPS Calculation

Total Operating Budget	\$376,481,306.00
Restricted Budget	(\$19,561,570.00)
Total Unrestricted Budget	\$356,919,735.00
Further Adjustments for In-Kind Services	(\$88,649,034.00)
Total Budget After All Adjustments	\$268,270,701.00
Estimated Enrollment	39,231
No 2% reduction	-----
Initial Per Pupil Amt.	\$6,838.00

State Board Calculation

Total Operating Budget	\$376,481,306.00

Estimated Enrollment	39,231
Per Pupil Amount	\$9,597.00
Less 2% for Admin.	(\$192.00)
Initial Per Pupil Amt.	\$9,405.00

That chart starkly demonstrates the differences between the two formulas. Specifically, the State Board formula includes up-front all restricted dollars in the Total Operating Budget and does not deduct from that amount the value of any buy backs, whereas the FCPS formula deducts all restricted dollars as well as in-kind services up-front from the Total Operating Budget.

Thus, there is a difference of \$2,567 between the State Board’s calculation and FCPS’s calculation. If that were the final step in calculating the average per pupil amount, we would necessarily conclude that FCPS is not providing proportionate funding to MMCI.

Another step is necessary, however. Because FCPS provides in-kind services to MMCI, the value of those services must be added back into the initial per pupil amount to reflect the accurate average per pupil amount *expended* on MMCI students.

CHART II
Average Per Pupil Amount

FCPS		State Board	
Initial Per Pupil Amt.	\$6,838.00	Initial Per Pupil Amt.	\$9,405.00
Special Education	\$676.00 ⁴	-----	
Pupil Personnel	\$53.00 ⁵	-----	
Health Services	\$115.00	-----	
Partial Fixed Costs Including State Retirement and Fringes	\$613.00	-----	
Administration	\$176.00	-----	
Food Service	\$2.00	-----	
Total In-Kind	\$1,635.00	-----	
Average Per Pupil Amt.	\$8,473.00	Average Per Pupil Amt.	\$9,405.00

The differences in the dollar amounts when all in-kind services are added to the initial per pupil amount is \$932.00 (\$9,405-\$8,473).

One of the main reasons for the difference is that FCPS put no money into the charter school budget for transportation. As it points out, however, the Charter Agreement dated 1/14/05 states that transportation shall be the responsibility of MMCI except for students who live along on established route and for special education students. Thus, its average per pupil amount does not reflect transportation costs.

⁴This amount has been calculated by using the FCPS total unrestricted Special Education budget. ($\$26,517,455 \div 39,231$ pupils = \$676.00).

⁵Unrestricted Pupil Personnel funds ($\$2,074,282 \div 39,231$ = \$53.00). The same formula applies to all the calculations in this chart: unrestricted budget funds \div enrollment.

All transportation dollars are included in the State Board's average per pupil amount of \$9,405, however. Yet, it is our view that, if MMCI agreed to cover transportation (except for certain students), that the cost of transportation services per pupil should be deducted from the \$9,405 because MMCI essentially has agreed that it is not entitled to the transportation dollars contained in FCPS Total Operating Budget. If that deduction occurred ($\$16,470,287 \div 39,231$ \$420 per pupil), the adjusted per pupil amount in the State Board's formula would be \$8,985.

With that deduction, the difference between the State Board's average per pupil amount (\$8,985) and FCPS's average per pupil amount (\$8,473) is \$512.

Moreover, we point out that, for all the calculations presented here, if MMCI and/or its students are eligible for restricted funds, those amounts would be added to the FCPS Average Per Pupil Amount because FCPS deducted those amounts up-front from the Total Operating Budget. Just the opposite would occur in the State Board formula. Because all restricted funds are included in the State Board's Total Operating Budget, restricted funds for which MMCI and/or its students are *not* eligible must be subtracted from the Average Per Pupil Amount.

Thus, the difference of \$512 between the FCPS calculations and the State Board calculations will be further decreased.

II. MMCI's Position

It is MMCI's position that neither the State Board nor the local board are correctly interpreting the term "commensurate." MMCI argues that commensurate means equal, particularly when that term is used in relation to a specific, quantifiable sum of money. Because Maryland courts have not ruled on the meaning of "commensurate," MMCI cites cases from other jurisdictions to support its argument. Based on those cases, MMCI argues that the amount of money disbursed to other schools in the school system is a specific, quantifiable amount, and, therefore, commensurate means equal in this context.

The State Board and the local board's formulas are an attempt to ascertain a specific, quantifiable amount. MMCI asserts that both formulas are illegal, however, because they do not result in "equal" funding to MMCI. It is MMCI's position that equal funding occurs only if the total operating budget (\$376,481,306) is divided by student enrollment (39,231). That calculation results in a per pupil amount for the 2005-06 school year of \$9,597. That amount includes all state, federal, and local dollars, restricted and unrestricted, including administrative costs.

If MMCI were entitled to the full per pupil amount, however, MMCI would receive an amount greater than an "equal" amount of funds. It would receive the full cash payment of \$9,597 and all in-kind services for free. It is our opinion that if MMCI accepts in-kind services from FCPS it would have to buy back those services from FCPS. When the cost of in-kind services MMCI receives from FCPS (\$1,635) is subtracted from \$9,597, the per pupil amount is \$7,962. That amount of cash is, of course, greater than the \$6,838 per pupil payment that FCPS is providing to MMCI currently.

The following chart reflects the calculations that result from each formula.

CHART III
Adjusted Per Pupil Amount Per Formula

	FCPS	State Board	MMCI
Total Operating Budget	\$376,481,306	\$376,481,306	\$376,481,306
Restricted Budget	(19,561,570)	----	----
Total Unrestricted Budget	\$356,919,735	----	----
Further Adjustments For In-Kind Services	(\$88,649,034)	----	----
Total Budget After Adjustments	\$268,270,701		
Estimated Enrollment ÷	39,231	39,231	39,231
Per Pupil Amount	\$6,838	\$9,597	\$9,597
2% Administrative Costs Deduction	-	(\$192 per pupil)	-
Initial Per Pupil Amount (Cash)	\$6, 838	\$9,405	\$9,597
In-Kind Add-Ins	\$1,635	----	----
Transportation Deduction	-	(\$420 per pupil)	-
Average Per Pupil Amount Expended	\$8,473, plus restricted funds	\$8,985, minus restricted funds	\$9,597, minus restricted funds

Based on the amounts reflected in that chart, it is our opinion that the MMCI formula results in an amount greater than a proportionate amount. Therefore, we conclude that using such a formula does not comport with the statutory requirement for commensurate funding.

As to the FCPS formula, we recognize the terms of the pre-existing agreement that MMCI would absorb the cost of transportation. We recognize also that the agreement may be renegotiated in the future and paying the cost of transportation may fall to FCPS, thus resulting in a different average per pupil amount expended. At this point, however, we reduced the State Board's average per pupil amount by \$420 to reflect the transportation agreement.

We also recognize here the value of in-kind services at \$1,635 per pupil. We have not looked behind why particular in-kind services were chosen or whether MMCI had any choice in

the matter. We take this opportunity to encourage school systems to negotiate fairly over the provision of in-kind services. They should not be announced as an edict under which the charter school must live without complaint. We recognize here, however, that in-kind services have a cash value and that if the charter school decided to “buy back” those services from FCPS it would have paid \$1,635 per student. Therefore, we add that amount to the FCPS per pupil calculation.

At this point, the difference between the FCPS formula amount and the State Board’s is \$512. We conclude, using this analysis, that FCPS has not provided proportionate/commensurate funding to MMCI.

We recognize, however, that there is an amount by which each average per pupil amount must still be adjusted; that is the amount of unrestricted funds to which the charter school is entitled. That amount must be added to the FCPS per pupil amount and deducted from the State Board’s.

In order to place both formulas on the same footing concerning the restricted dollars, we have recalculated the State Board formula by subtracting the restricted dollars upfront from the total operating budget. The chart below reflects that calculation. That calculation reflects a \$12 difference between the two numbers.

CHART IV
Recalculated Adjusted Per Pupil Amount Per Formula
Minus Restricted Dollars

	FCPS	State Board
Total Operating Budget	\$376,481,306	\$376,481,306
Restricted Budget	(19,561,570)	(19,561,570)
Total Unrestricted Budget	\$356,919,735	\$356,919,735
Further Adjustments For In-Kind Services	(\$88,649,034)	----
Total Budget After Adjustments	\$268,270,701	\$365,919,735
Estimated Enrollment ÷	39,231	39,231
Per Pupil Amount	\$6,838	\$9,097
2% Administrative Costs Deduction	-	(\$192 per pupil)
Initial Per Pupil Amount (Cash)	\$6, 838	\$8,905
In-Kind Add-Ins	\$1,635	----
Transportation Deduction	-	(\$420 per pupil)
Average Per Pupil Amount Expended	\$8,473, plus restricted funds	\$8,485, plus restricted funds

CONCLUSION

To provide commensurate funding, in our opinion, FCPS must provide an additional \$12.00 per pupil to MMCI, plus any restricted funds to which MMCI is entitled.

Edward L. Root
President

Dunbar Brooks
Vice President

Lelia T. Allen

JoAnn T. Bell

J. Henry Butta

Beverly A. Cooper

Calvin D. Disney

Richard L. Goodall

Joshua L. Michael

Karabelle Pizzigati

Maria C. Torres-Queral

David F. Tufaro

May 24, 2006

EXHIBIT 5



Maryland State Board of Education

200 W. BALTIMORE STREET / BALTIMORE, MARYLAND 21201-2595 / (410) 767-0467

MEMORANDUM

October 24, 2018

TO: Dr. Sonja B. Santelises
Tammy L. Turner, Esq.
Marla Y. Johnson, Esq.
Steven F. Barley, Esq.
Michael A. Burns, Esq.
Maree F. Sneed, Esq.
Amanda L. Costley, Esq.
Joel D. Buckman, Esq.
Jessica Raba, Esq.
Christopher S. Gunderson, Esq.

FROM: Michelle L. Phillips *MLP*
Administrative Officer
Maryland State Department of Education

SUBJECT: In Re: Baltimore City Public Charter Schools Mandatory Fees

Enclosed is a copy of **Opinion No. 18-32** for the above named case which was rendered by the Maryland State Board of Education at its October meeting.

Enclosure

cc: State Board File



IN RE: BALTIMORE CITY
PUBLIC CHARTER
SCHOOLS MANDATORY
FEES

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION
Opinion No. 18-32

OPINION

INTRODUCTION

Twelve charter schools in Baltimore City filed a Petition for Declaratory Ruling asking the State Board to invalidate a \$125 per student mandatory fee for school police services. The Baltimore City Board of School Commissioners (“local board”) responded to the Petition. The charter schools replied and the local board filed a surrepley. The charter school filed a response to the surrepley.

FACTUAL BACKGROUND

In a letter of May 3, 2017, Baltimore City Schools announced its intent to impose a mandatory per pupil fee for school police services in the 2017-2018 school year. (Response, Ex. C). The CEO explained that the mandatory fee was necessary due to the “unprecedented fiscal situation” City Schools is entering for the next several years. *Id.* The school system intends to impose that fee in the current 2018-2019 school year as well. (Surrepley at 8).

Baltimore City Schools calculated the fee based on its actual expenditures for school police in FY 2017, not on its FY 18 or FY 19 adopted budget.

	<u>FY17 Actual</u>	<u>FY18 Adopted</u>	<u>FY19 Adopted</u>
Administration	\$2,737,934	\$3,046,630	\$3,827,356
School Police	\$11,184,556	\$6,872,830	\$6,945,086
Instructional Leadership	\$1,917,933	\$848,639	\$781,142
Total	\$15,840,423	\$10,768,099	\$11,553,584

(Charter School Reply at 7 and Ex. 1).

Based on the FY 17 actual expenditures, Baltimore City Schools calculated the fee at \$125 per student for each year going forward.

The charter schools assert that this mandatory fee is illegal. They seek a declaration to that effect.

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.01.05.05E.

LEGAL ANALYSIS

Funding of charter schools in Baltimore City has become a contentious issue, but there are legal rules that determine, not only the amount of funding, but also the limits on a school system's ability to unilaterally impose fees for services.

A. Funding

A charter school is entitled to receive funding "commensurate" with the funding the other schools in the system receive. Md. Educ. Art. §9-109. In 2005, the State Board set forth a formula that school systems could use to calculate commensurate funding.

It did so in response to three appeals concerning how a local school system calculated funding for charter schools. The State Board established, through a declaratory ruling, the following formula: 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 School Commissioners*, Revised MSBE Op. No. 05-17. The Court of Appeals ruled that the State Board had the authority to establish that formula as guidance to all 24 school systems. *Baltimore City Bd. of School Commissioners v. City Neighbors Charter School, et al.*, 400 Md. 324 (2007). The chart below illustrates the formula.

CHARTER SCHOOL COMMENSURATE FUNDING ADJUSTED PER PUPIL AMOUNT FORMULA

Total Operating Budget	
Minus – Debt Service	
Minus – Adult Education	
Total Adjusted Operating Budget	
Divided by September 30 Enrollment =	
Per Pupil Amount	
Minus 2% Administrative Costs Deduction Per Pupil	
Minus Restricted State or Federal Funding	
Minus Cost of Buy Backs from School System =	
Adjusted Per Pupil Amount	

B. 2% Administrative Costs

The charter schools seek a declaration that the 2% administrative fee covers school police services. An administrative fee, as it was envisioned, would cover general administration costs related to the internal central office operations such as human resources, data collection, support services, and certain reporting functions. *See, e.g., City Neighbors*, Revised MSBE Op. No. 05-17 at 4; *aff'd*, 400 Md. at 337. School police services are not, in our view, a part of the typical central office support services or administrative functions. Therefore, they are not covered by the 2% administrative fee.

In the commensurate funding formula, the cost of school police services falls, not under the administrative costs category, but in one of the categories within the Total Operating Budget. Here the Total Operating Budget for FY 18 included \$6,872,830 in the School Police category. Likewise, the FY 19 Total Operating Budget contained \$6,945,086 for School Police. That amount becomes part of the amount used to calculate the per pupil amount. In that way, the charter school per pupil payment includes dollars the charter school can use to pay for school police services.

As we understand it, in the past, charter schools received school police services from the school system at no charge. (*See* Motion at 8; Surreply at 5). Baltimore City Schools is not seeking to be reimbursed for those past services. Baltimore City Schools seeks reimbursement going forward by imposing a mandatory fee of \$125 per pupil.

The charter schools argue that Section 7.5 of the Charter Agreement establishes the intent of both parties that those services were to be provided at no cost to the charter school. Section 7.5 of the Agreement states that Baltimore City Schools “will provide access to the Baltimore School Police Force at the school in the same manner provided to other similar schools in the school system.” (Response, Ex. G). While there is history that the services were provided for free, in our view, that provision addresses the “manner” in which the service will be provided, not payment or non-payment terms.

Here, the financial circumstances experienced by Baltimore City Schools have changed the circumstances under which the school police service was provided at no cost. Whether those changed circumstances allow Baltimore City Schools to impose a mandatory fee is the next question we address.

C. Legality of a Mandatory Fee

It has been a precept in Maryland’s charter school law, established by decisions of this Board and by the Courts of Maryland, that mandatory services must not be “forced on charter schools at the whim of [local school] boards.” *City Neighbors*, 400 Md. 324, 356 (2007). The State Board reinforced that precept in 2006 in *Monocacy Montessori, Inc. v. Frederick County Bd. of Educ.*, MSBE Op. No. 06-17 (2006). In that case the State Board “encourage[d] school systems to negotiate fairly over the provision of in-kind services. They should not be announced as an edict which the charter school must live without complaint.” *Id.* at 11.

And just last year, the Court of Appeals addressed the issue of charges for mandatory or compulsory services at some length in *Frederick Classical Charter School, Inc. v. Frederick County Bd. of Educ.*, 454 Md. 330 (2017). The Court encouraged the State Board to “closely

review” local charter school funding allocations specifically to determine “whether withholdings for ‘in-kind’ services are solely for those services that the charter school has, in fact, requested that the local school board provide and that the local board is in fact providing those services to the charter school.” *Id.* at 395. We undertake that review here.

It is a fact that the charter schools accepted and used the school police services at no charge to them in the past. It appears that both parties by their actions agreed to that no-charge arrangement. It is a fact that in 2017 Baltimore City Schools decided it now needed to be paid for those services.

Baltimore City Schools points to Section 7.10 of the Charter Agreement as authority for its imposition of a fee. That provision states:

FEE FOR SERVICE: As services set forth in this Article or elsewhere are identified beyond the scope of this Article or the administrative fee paid by the School Operator, the School System will work in good faith with the School and the School Operator to offer those services on a “fee for services” basis.

(Response, Ex. G). That provision, however, does not authorize a mandatory fee for any service. It calls for good faith discussions.

Baltimore City Schools asserts that over the course of four months it “engaged in good faith discussions” with the charter schools. Those discussions, however, concluded without an agreement. During those discussions, the charter schools adhered to their view, *inter alia*, that the cost of the school police services was included in the 2% administrative fee. But, we have concluded earlier in this opinion that school police services are not covered by the administrative fee. After those discussions broke down, Baltimore City Schools asserted that it could unilaterally impose a \$125 per pupil fee for school police services. We conclude that it cannot legally do so in the face of the prohibition on a school system imposing a service on a charter school and in the face of the requirement that the parties negotiate in good faith over the price of that service.

In the future, if a school system offers a service for a fee, the charter school may decide whether to accept or reject the service offered. If the charter school agrees to accept the service for a fee, the parties may then negotiate in good faith about the fee to be charged. If those negotiations reach an impasse, the school system cannot unilaterally impose a mandatory fee. Of course, the school system need not provide the service, and the charter school may purchase the service elsewhere.

D. Remedy

There remains the question of remedy. Baltimore City Schools asks that it be allowed to keep the payments it has received to date. The charter schools want the money they paid to be returned to them.

Even though Baltimore City Schools had no legal authority to impose the mandatory fee, the fact of the matter is it did provide and the charter schools accepted school police services in SY 2017-2018. It is a matter of equity, in our view, that the payments to Baltimore City Schools

for SY 2017-2018 be retained or recovered by Baltimore City Schools for services rendered. For SY 2018-2019, collecting a payment of \$125 per student this early in the school year would not be equitable to the charter schools who apparently want to go elsewhere to obtain those services going forward.

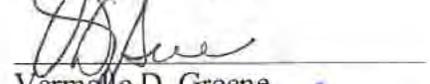
CONCLUSION

For the reasons stated herein, this Board declares that the 2% administrative fee does not cover school police services. Further, this Board declares that the imposition of a mandatory fee for the school police service is illegal. This Board directs the parties to resolve the payment issue in conformance with this Opinion.


Justin M. Hartings
President


Stephanie R. Iszard
Vice-President


Chester E. Finn, Jr.

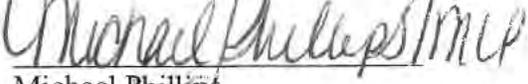

Vernelle D. Greene

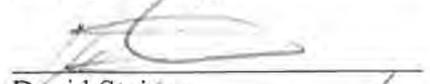

Michele Jenkins-Guyton

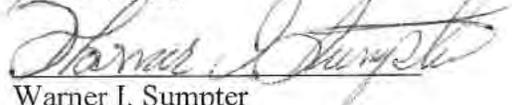

Jean C. Halle


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Michael Phillips


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Warner I. Sumpter

October 23, 2018