



Maryland State Board of Education

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MEMORANDUM

October 24, 2018

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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 surreply. The charter school filed a response to the surreply.

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. (Surreply 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

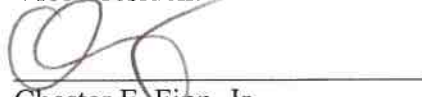
for SY 2017-2018 be retained or recovered by Baltimore City Schools for services rendered. For SY 2018-2019, collecting a payment of \$125 per student this early in the school year would not be equitable to the charter schools who apparently want to go elsewhere to obtain those services going forward.

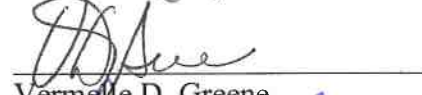
CONCLUSION

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.



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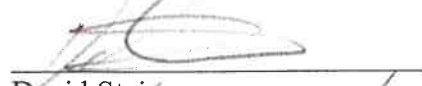

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October 23, 2018