

BALTIMORE CITY BOARD OF
SCHOOL COMMISSIONERS,

Appellant

v.

AFYA BALTIMORE, INC., et al.

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 16-04

OPINION

INTRODUCTION

This matter concerns the charter school funding dispute between the Baltimore City Board of School Commissioners (local board) and eleven charter school operators.¹ The local board has filed a Petition for Declaratory Ruling requesting that the State Board declare that the local board's application of the State charter school funding formula complies with §9-109(a) of the Education Article and has resulted in the charter schools receiving commensurate funding under the law.

FACTUAL BACKGROUND

The local board filed its Petition for Declaratory Ruling with the State Board on November 9, 2015.

Prior to the local board filing the Petition, however, the charter school operators filed separate breach of contract actions against the local board in the Circuit Court for Baltimore City claiming that the local board failed to provide funding commensurate with public schools in the jurisdiction, as required by their charter school contracts. (*See* Petition, Ex. B, Sample Complaint). The funding requirement in the contracts essentially mimics the commensurate funding requirement in State law. Those actions were consolidated in Baltimore City Circuit Court Case No. 24-C-15-005507.

On the same day that the local board filed its Petition with the State Board, it filed motions to dismiss the Circuit Court complaints based on lack of jurisdiction. Its main argument in each motion was that the State Board has "primary jurisdiction" to evaluate the local board's compliance with the contracts with regard to the commensurate funding requirement. The charter school operators opposed the local board's motions.

¹ The charter school operators are as follows: Afya Baltimore, Inc., Baltimore Montessori, Inc., City Neighbors Charter School, Inc., City Neighbors Hamilton, Inc., City Neighbors High School, Inc., Creative City Public Charter School Foundation, Inc., The Empowerment Center, Inc., Experiential Environmental Education, Inc., KIPP Baltimore, Inc. Patterson Park Public Charter School, Inc. and Southwest Baltimore Charter School, Inc.

Meanwhile, in the State Board case, the charter school operators filed a motion to dismiss the local board's Petition. The local board filed an opposition to the motion and the charter school operators replied.

Because the Circuit Court case was pending and a hearing in the Circuit Court on the Motion to Dismiss was already scheduled, we requested that the parties inform us of the Circuit Court's decision on the Motion to Dismiss and address whether this case should proceed before the State Board.

On January 8, 2016, a motions hearing took place before the Circuit Court during which the parties made various arguments regarding what type of jurisdiction the two forums have over the funding issue. The Circuit Court judge ruled from the bench and denied the local board's motion to dismiss the charter schools' complaint, rejecting the legal argument that the State Board has primary jurisdiction over the matter. The judge found that the Circuit Court had jurisdiction to proceed and did not grant the local board's request to stay the matter.

ANALYSIS

The arguments raised in the underlying dispute are not addressed herein. Rather, the issue here is whether the appeal should be stayed, dismissed, or proceed for review. Moreover, whether or not the Circuit Court correctly ruled on the jurisdiction of the State Board is not an issue here. Even if the State Board has concurrent jurisdiction with the Circuit Court over the issues raised, the Circuit Court has already asserted its jurisdiction on the consolidated proceeding before it and has elected to move forward rather than impose a stay.

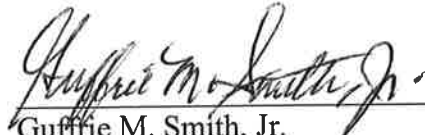
One of the central tenets of the legal process is the conservation of judicial (and quasi-judicial) resources. As we recognized when we stayed the State Board proceedings in *Montgomery Soccer, Inc. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 15-14 (2015) while the corresponding court case proceeded, “[i]nstituting a parallel and simultaneous proceeding here while the circuit court also hears this case would be contrary to that tenet.” It is our view in this matter as well that it does not serve the interests of judicial economy to proceed further.

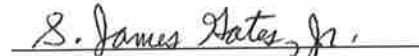
The decision remaining is whether to stay or to dismiss the Petition for Declaratory Ruling. Having reviewed the Petition, we find that it fails to present any facts concerning the funding formula that the Baltimore City Public School System (BCPSS) actually used to fund the charter schools. Yet, BCPSS asks that we declare that its funding formula complies with §9-109(a) of the Education Article and has resulted in commensurate funding. The Petition is, in essence, a request for evidentiary hearing at which time BCPSS states that it will present the facts and the formula it used.

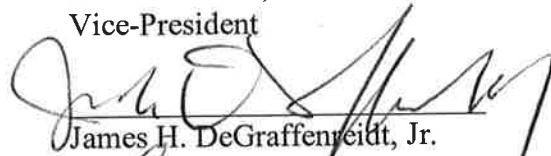
A request for a declaratory judgment must present a “justiciable controversy, rather than abstract, hypothetical, or contingent questions.” *Miller v. Augusta Mut. Ins. Co.*, 157 F. App'x. 632, 637 (4th Cir. 2005). The Petition filed here presents no concrete facts from which we could declare the law. Therefore, we will dismiss the Petition without prejudice.


CONCLUSION


For the reasons stated herein, we dismiss the Petition for Declaratory Ruling without prejudice.



Guffie M. Smith, Jr.
President


S. James Gates, Jr.
Vice-President

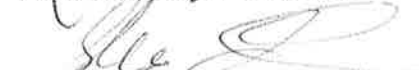

James H. DeGraffenreidt, Jr.



Linda Eberhart

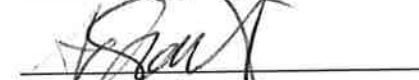

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February 23, 2016