

CARROLL CREEK MONTESSORI
PUBLIC CHARTER SCHOOL

Appellant

v.

FREDERICK COUNTY PUBLIC SCHOOLS,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 11-06

OPINION

INTRODUCTION

The Carroll Creek Montessori Public Charter School (charter school) has requested a waiver of Section 9-102(3) of Education Article, the open enrollment provision of the charter school law. Frederick County Public Schools (local school system) supports the waiver request.

STANDARD OF REVIEW

In making waiver decisions, the State Board exercises its independent judgment in the record before it to explain and interpret education law. COMAR 13A.01.05.05(E).

LEGAL ANALYSIS

Maryland's public charter school law calls for an open enrollment process. If more students seek to enroll than there are spaces available, students will be admitted on the basis of a lottery. Md. Educ. Code. Ann. § 9-102(3). The charter school seeks a waiver of that provision of the law to allow it to admit the following students on a priority basis: children of the founders; children of the charter school employees; siblings of admitted students, and native Spanish-speaking children.

In interpreting Maryland's charter school law, we are guided by the United States Department of Education's (USDE) interpretation of the federal charter school law which also calls for open enrollment and requires admission by lottery if more students apply than can be accommodated. 20 U.S.C. § 7221, *et. seq.*

In Non-Regulatory Guidance, issued July 2004, USDE advised that, even if a school is over-subscribed, the following applicants can be exempted from the lottery: children of founders; children of employees; and siblings of students already admitted. *See* July 2004 Non-Regulatory Guidance, Question C-4 at 12. We believe that guidance informs the proper interpretation of Maryland's charter school law. Therefore, no waiver of the Section 9-102(3) is necessary to admit those students on a priority basis.

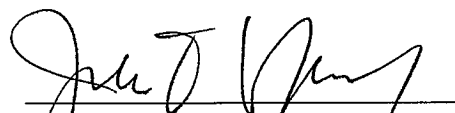
The charter school also wishes to admit students from native Spanish-speaking families to fill up to 50% of the available spaces in the dual language program. If the charter school is over-subscribed, they request a waiver from the lottery requirement for this group of students in order to give such students priority admission.


Legal barriers prevent granting this request. Specifically, the Maryland Court of Appeals has ruled that although the State Board may waive certain education laws and regulations for charter schools, the State Board does not have the power to waive the actual provisions of the charter school law itself. *See Patterson Park Pub. Charter School v. Baltimore Teacher's Union*, 399 Md. 174, 199-200 (2007). Therefore, only if the charter school law grants the Board specific authority to waive the open enrollment provision for this specific population of students can a waiver be granted. The charter school law currently gives the State Board authority to waive open enrollment for only one specific class of students - - children on a military base served by a charter school on that base. *See Md. Educ. Code. Ann. § 9-102.1*. Because there is no specific authority in the charter school law to waive open enrollment to admit native Spanish-speaking children, we must deny that request.

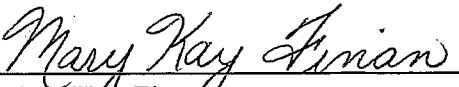
We point out, however, as USDE has advised, a charter school may conduct special and additional recruitment efforts directed at groups that might otherwise have limited opportunities to participate in charter school programs. July 2004 Non-Regulatory Guidance, Question C-4 and C-5 at 12-13. The charter school here may wish to direct specific recruitment efforts to native Spanish-speaking families.

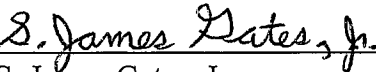
CONCLUSION

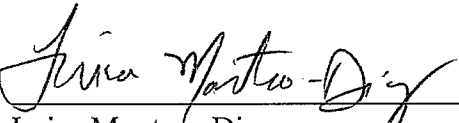
For all the reasons stated, the request for waiver of Section 9-102(3) to admit native Spanish-speaking students on a priority basis must be denied. No waiver is necessary, however, to admit children of founders, employers, and siblings of students on a priority basis.



James H. DeGraffenreidt, Jr.
President

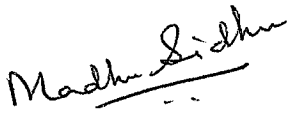

Charlene M. Dukes
Vice President



Mary Kay Finan


S. James Gates, Jr.

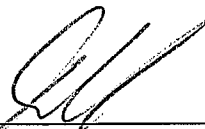

Luisa Montero-Diaz

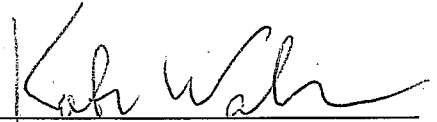

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January 25, 2011