

CROSSWAY COMMUNITY, INC.,

Appellant

v.

MONTGOMERY COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 11-34

OPINION

INTRODUCTION

Crossway Community, Inc. (Crossway) is a nonprofit organization that has been operating in Montgomery County for approximately 20 years. In addition to several other programs, Crossway operates the Crossway Montessori Children's Program on its Kensington campus, an early intervention center for children ages 3 months to 6 years. Crossway seeks to establish a charter school, the Community Montessori Charter School, which will be an expansion of Crossway's existing Montessori program to encompass pre-K through grade 6.

In its pursuit of establishing a charter school, Crossway asked the State Board for waivers of State law. Initially, Crossway requested three waivers. Montgomery County Board of Education (local board) filed a response to that request. Thereafter, Crossway modified its waiver request, altering two of the requests and dropping one request in its entirety.¹

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(E).

LEGAL ANALYSIS

In considering these waiver requests, we are guided by the parameters of the charter school law, Md. Code Ann., Educ. §9-101 *et seq.*, which, when read as a whole, sets both opportunities and limits. By law, charter schools in Maryland are public schools, not independent entities. We must consider that fact when we consider a request for a waiver of a State law that governs how public schools operate in this State.

¹Crossway no longer seeks a waiver of §4-205(i) and §4-111(a)(1) of the Education Article which concern the superintendent's and local board's authority to determine curriculum guides and courses of study.

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

Waiver Request - Practices for Hiring Principals, Teachers, and Other Certificated and Noncertificated Personnel

Crossway originally requested that the State Board grant a waiver of §4-103(a) of the Education Article to give Crossway final decision making authority to hire principals, teachers, and other certificated and non-certificated personnel. Recognizing that the waiver request would have been denied by the State Board because it conflicted with the ultimate authority of the superintendent and local board to make such appointments, Crossway modified its waiver request.

In its modified waiver request, Crossway asks that it be permitted to participate in the recruitment and interview process for principals, teachers, and other certificated and noncertificated employees. Crossway states as follows:

That, in coordination with representatives of MCPS and in accordance with OHR [Office of Human Resources] practice and procedures, Crossway be afforded a right to conduct a preliminary search of prospective appointees to the position of principals, teachers, and the certificated and noncertificated personnel and to recommend one or more of such prospective appointees to the Superintendent who, together with the [local board],² shall make the final decision.

Crossway states that it would work closely with the school system to develop a feasible procedure for Crossway’s involvement in the search and recommendation process. It suggests, for example, forming an interview committee that includes, among others, Crossway representatives who would interview candidates from a list of qualified applicants as determined by OHR . Upon completion of interviews, the committee would forward recommendations to OHR for further review with an ultimate decision being made by the superintendent and local board.

Crossway has clarified that it is not asking to limit the superintendent and local board’s ultimate authority to hire which would require a waiver of State law. Rather, Crossway seeks

²Crossway’s modified request states that the ultimate decision on appointments would be made by the superintendent “together with the State Board”. We assume, as did the local board, this is an inadvertent error since the authority to make such appointments is vested in the county board and not the State Board.

merely to participate in the recruitment and interview process for school personnel. As such, no waiver is necessary here.

We note, however, that Crossway's participation in the recruitment and hiring process would be permissible under our Charter School Policy. As we stated in *Mountain Maryland Pub. Charter Sch. v. Allegany County Pub. Schs.*, MSBE Op. No. 11-12 (2011), "[w]e encourage local school systems to allow charter schools to interview and recruit applicants. They would then recommend their selected applicants to the superintendent who can approve or disapprove the applicant for recommendation to [the] local board."

Waiver Request - Education Article §9-102(3), Open Enrollment

In its original waiver request, Crossway sought a waiver of the open enrollment requirement, §9-102(3) of the Education Article, to give priority enrollment in the charter school to (1) children of founders; (2) income eligible children of parents who are receiving services and are in residence at Crossway Community, Inc.; and (3) income eligible students residing in the Montgomery Blair, Albert Einstein, John F. Kennedy, Northwood and Wheaton cluster areas.

The local board responded to the original waiver request, noting that no waiver for children of charter school founders was necessary.³ See *Seneca Creek Charter Sch. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 11-15 (2011); *Mountain Maryland Pub. Charter Sch. v. Allegany County Pub. Schs.*, MSBE Op. No. 11-12 (2011); *Carroll Creek Montessori Pub. Charter Sch. v. Frederick County Pub. Schs.*, MSBE Op. No. 11-06 (2011). The local board also explained that the other categories of students were not eligible for priority enrollment because, as the State Board has held, the charter school law allows waiver of the open enrollment requirement for only one specific class of students – children on a military base served by a charter school on that base. See *Carroll Creek Montessori Pub. Charter Sch. v. Frederick County Pub. Schs.*, MSBE Op. No. 11-06 (2011), citing *Patterson Park Public Charter Sch. v. Baltimore Teacher's Union*, 399 Md. 174 (2007).

Crossway has modified its request asking for priority enrollment for "one class of students" rather than "three categories of children" stating:

Crossway requests a waiver of Educ. §9-102(3) to allow it to grant admission priority to students whose parents are residents of the Crossway housing facilities.

It appears that Crossway misunderstands the State Board's holding in *Carroll Creek*. The State Board did not find that charter schools may select one class of students to be exempt from

³The total number of children of founders enrolled in the charter school must constitute a small percentage of the school's total enrollment. See *Seneca Creek Charter Sch. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 11-15 (2011)


the open enrollment requirement. Rather the State Board held that the only class of students for which it may waive the open enrollment requirement is children on a military base served by a charter school on that base. See Md. Code Ann., Educ. §9-102.1. The State Board does not have the power to waive the open enrollment requirement of §9-102(3) for any other category of students. See *Patterson Park Pub. Charter Sch. v. Baltimore Teacher's Union*, 399 Md. 174, 199-200 (2007) (State Board may waive certain education laws and regulations for charter schools but the provisions of Title 9 of the Education Article may not be waived). Because the charter school law does not authorize a waiver of the open enrollment requirement for students whose parents reside at the Crossway housing facilities, we deny the waiver request.⁴

The parties seek confirmation from the State Board that Crossway can focus its recruitment efforts on the class of students whose parents are residents of the Crossway housing facilities. In *Carroll Creek* we noted that the United States Department of Education's non-regulatory guidance advises that a charter school may conduct special and additional recruitment efforts directed at groups that might otherwise have limited opportunities to participate in the charter school's programs. See July 2004 Non-Regulatory Guidance, Question C-4 at 12-13. Although the parties have not provided much information regarding the students whose parents reside in the Crossway housing facilities, we presume that this is a group of low income students based on a statement in Crossway's original waiver request. As such, we believe that Crossway could direct recruitment efforts towards this category of students. If this assumption is not accurate, the parties will have to determine whether the category of students fits the profile.

CONCLUSION

For all the reasons stated herein, we hold that no waiver request is needed for Crossway to participate in the employee recruitment and interview process, and we deny Crossway's request to waive the open enrollment requirement to allow priority entry for students whose parents are residents of the Crossway housing facilities.


James H. DeGraffenreidt, Jr.
President


Charlene M. Dukes
Vice President

⁴Based on this same analysis we would have also denied Crossway's request to admit on a priority basis students residing in certain cluster areas.

Mary Kay Finan
Mary Kay Finan

S. James Gates, Jr.
S. James Gates, Jr.

Luisa Montero Diaz
Luisa Montero-Diaz

Sayed M. Naved
Sayed M. Naved

Madhu Sidhu
Madhu Sidhu

Guffie M. Smith, Jr.
Guffie M. Smith, Jr.

Donna Hill Staton
Donna Hill Staton

Ivan C.A. Walks
Ivan C.A. Walks

A handwritten signature in black ink, appearing to read "Kate Walsh", written over a horizontal line.

Kate Walsh

July 19, 2011