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State Superintendent of Schools

TO: Members of the State Board of Education
FROM: Karen B. Salmon, Ph.D.
DATE: July 23, 2019
SUBJECT: Charter School Closures as a Result of Non-Renewals of the Charter

PURPOSE:

To present for discussion: Should a charter school whose charter is not renewed be closed before an appeal to the State Board is decided?

BACKGROUND:

Non-renewals of charter schools usually occur at a January or February local board meeting. Closure is then set for June, but closure activities begin immediately. Teachers, students, and staff are notified so that they can find new placements. The school is effectively “closed” once the non-renewal decision is issued.

The timeline from the local board decision to the issuance of the State Board decision is about six (6) months, but if the case is sent to the Office of Administrative Hearings (OAH) the timeline is eight (8) months. For example, the timeline in a recent non-renewal charter school appeal is:

| | |
|-----------------------|-----------------------|
| Local Board Decision | 2/7/19 |
| Appeal | 2/12/19 |
| OAH Referral | 3/20/19 |
| OAH Hearing | 5/8 & 5/9/18 |
| Proposed Decision | 6/7/19 |
| Exceptions | 7/22/19 |
| Responses | 8/7/19 |
| State Board Oral | August/September 2019 |
| Argument and Decision | |

EXECUTIVE SUMMARY:

A number of ways were considered to condense the timeline, but given the regulations governing the timing of filings, full briefing of the case can take 70 to 90 days. It was concluded that even squeezing the timeline wouldn't solve the problem because once the decision not to renew is made, closure activities begin almost immediately at the school. Even an expedited decision of the State Board in three to four months from a February local board decision would not save the school from the closure activities. That sets the school on a path of not being able to reestablish the school due to loss of staff and students.

We offer two possible ways to deal with this issue.

A. Require the Local Board to Make the Non-Renewal Decision Earlier

The State Board could adopt a regulation setting the time period within which a non-renewal decision must be made. For example, if a charter school is up for renewal at the end of the 2019-2020 school year (SY), and the local board made the non-renewal decision by April or May 2019, that would give the State Board sufficient time to decide the appeal by December 2019 or January 2020. If the State Board affirms the local board's decision, closure activities can begin with sufficient time for staff and students to find new placements. If the State Board reverses the local board's decision, the school stays open and functioning.

This approach would require the local school system to initiate its renewal reviews at least twelve (12) months prior to the year of the anticipated renewal decision, which is much earlier than it does now. For example, when a charter school is up for renewal at the end of the 2019-2020 SY, the renewal evaluation would need to begin early in the 2018-2019 SY so that a local board decision could be issued no later than April/May 2019 (in the 2018-2019 SY). The appeal would be filed in June/July 2019 and decided by December 2019/January 2020 (in the 2019-2020 SY).

For a five-year charter, under the current schedules, the school system would be reviewing four years of performance data and three years of data to determine growth. Moving the decision on renewal or nonrenewal earlier in the five-year cycle would result in only three years of performance data and two years of growth data. For a new school, that may not be enough time or data to make a fair appraisal.

B. Automatically Stay the Local Board's Decision to Close the Charter School

To avoid imposing early renewal decisions on a local board, the State Board could adopt a regulation that will automatically stay a local board's decision to not renew the charter school until the State Board issues a decision on appeal.

In the past, charter schools have requested the State Superintendent to use the authority under COMAR 13A.01.02.01(B) to stay a non-renewal decision. The Superintendent's authority under that regulation allows a 60-day stay. The time period for a stay would not have covered the time period the State Board needs to decide these cases. For that reason, and others, no stay was ever granted. If the State Board adopted a regulation governing stays in charter school cases, that problem could be addressed.

If the Board issued a regulation that stayed the non-renewal decision for a year, the local school system would make the decision in the 5th year of the charter. The local school system could keep its current decision timeline and know that if there is a closure decision, the school will have one final year (a year 6 for a 5-year term) for appeal and/or closure activities.

C. Issues to Consider

- If the charter school is not performing well, should it be allowed to stay open during the pendency of an appeal?
- If the school is kept open during the appeal based on a stay, what is the latest date that the State Board can decide the case in order to give students and teachers time to find new placements? Based on the attached lottery schedule, it appears a December or January decision would allow time to find new placements.
- If charter schools get special rules for delaying closure until a decision of the State Board is issued, why wouldn't any school subject to closure receive the same consideration? (See attached School Closure regulations)

ACTION:

This topic is presented for discussion purposes only.

Attachment I – COMAR 13A.02.09 Closing of Schools

Attachment II – Timeline for Renewal of Charter Schools

Title 13A
STATE BOARD OF EDUCATION

Subtitle 02 LOCAL SCHOOL ADMINISTRATION

Chapter 09 Closing of Schools

Authority: Education Article, §§2-205, 4-101, 4-119, and 4-205, Annotated Code of Maryland

.01 Adoption of Procedures to Govern School Closings.

A. Each local board of education shall establish procedures to be used in making decisions on school closings.

B. The procedures shall ensure, at a minimum, that consideration is given to the impact of the proposed closing on the following factors:

- (1) Student enrollment trends;
- (2) Age or condition of school buildings;
- (3) Transportation;
- (4) Educational programs;
- (5) Racial composition of student body;
- (6) Financial considerations;
- (7) Student relocation;

(8) Impact on community in geographic attendance area for school proposed to be closed and school, or schools, to which students will be relocating.

C. The procedures shall provide, at a minimum, for the following requirements:

(1) A public hearing to permit concerned citizens an opportunity to submit their views orally or to submit written testimony or data on a proposed school closing. This includes the following:

(a) The public hearing shall take place before any final decision by a local board of education to close a school;

(b) Time limits on the submission of oral or written testimony and data shall be clearly defined in the notification of the public meeting.

(2) Adequate notice to parents and guardians of students in attendance at all schools that are being considered for closure by the local board of education. The following apply:

(a) In addition to any regular means of notification used by a local school system, written notification of all schools that are under consideration for closing shall be advertised in at least two newspapers having general circulation in the geographic attendance area for the school or schools proposed to be closed, and the school or schools to which students will be relocating;

(b) The newspaper notification shall include the procedures that will be followed by the local board of education in making its final decision;

(c) The newspaper notification shall appear at least 2 weeks in advance of any public hearings held by the local school system on a proposed school closing.

D. The final decision of a local board of education to close a school shall be announced at a public session and shall be in writing. The following apply:

(1) The final decision shall include the rationale for the school closing and address the impact of the proposed closing on the factors set forth in Regulation .01B;

(2) There shall be notification of the final decision of the local board of education to the community in the geographic attendance area of the school proposed to be closed and school or schools to which students will be relocating;

(3) The final decision shall include notification of the right to appeal to the State Board of Education as set forth in Regulation .03.

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13A.02.09.02

.02 Date of Decision.

Except in emergency circumstances, the decision to close a school shall be announced at least 90 days before the date the school is scheduled to be closed but not later than April 30 of any school year. An emergency circumstance is one where the decision to close a school because of unforeseen circumstances cannot be announced at least 90 days before the date a school is scheduled to close or before April 30 of any school year.

.03 Appeal to State Board of Education.

A. An appeal to the State Board of Education may be submitted in writing within 30 days after the decision of a local board of education.

B. The State Board of Education will uphold the decision of the local board of education to close and consolidate a school unless the facts presented indicate its decision was arbitrary and unreasonable or illegal.

Administrative History

Effective date: August 2, 1982 (9:15 Md. R. 1516)

Regulations .01 and .03 amended effective August 26, 1985 (12:17 Md. R. 1707); January 15, 1989 (15:27 Md. R. 3131)

Timing of renewals and lotteries for charter schools
June 2019

| County | Renewal | Enrollment lotteries |
|------------------------|---|---|
| Anne Arundel County | In last year of contract: September School submits application Site visit Other reviews February Board decision | November Student applications due January Lotteries |
| Baltimore City | Penultimate Year of Contract: Spring Site visit Last year of contract: Fall School submits application January Board decisions | January Middle and High School Choice applications due (may include charters) February Student applications due Lotteries (2 nd week) March Middle and high school choice decisions April Accept/decline placements (Choice) |
| Baltimore County | Last year of contract: September School submits application December /January Board decisions | January Student applications available March Lottery |
| Frederick County | Last year of contract: September School submits application December Board decisions | January Student applications available February Student applications due March Lottery |
| Prince George's County | Last year of contract: September School submits letter of intent to request renewal November School submits application May Board decisions | December Student applications available January/February Lotteries |