

FREDERICK CLASSICAL
CHARTER SCHOOL, INC.
(FREDERICK CLASSICAL
CHARTER, II),

Appellant

v.

FREDERICK COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Opinion No. 19-08

OPINION

INTRODUCTION

In October 2013, Frederick Classical Charter School, Inc. (“Frederick Classical”) appealed the decision of the Frederick County Board of Education (local board) concerning the level of commensurate funding allocated for the 2013-14 school year. On May 24, 2014, the State Board affirmed the decision of the local board. Appellant appealed to the Courts of Maryland. On July 14, 2017, the Court of Appeals reversed the State Board’s decision and remanded the case for further proceedings consistent with that opinion.

On December 5, 2017, the State Board issued an amended decision in which it concluded, consistent with the decision of the Court of Appeals, that the local board should have included transportation funds in calculating the commensurate funding owed to Appellant. Upon remand, the parties failed to agree on the amount of money owed for previous years. In response, the State Board issued a second decision on August 28, 2018 in which it required the local board to use budgeted amounts rather than actual expenditures, allowed the local board to deduct money allocated for special education transportation, prohibited the local board from deducting the cost of transporting general education high school students to athletics and other programs, and denied a request for prejudgment interest. *See Frederick Classical Charter School v. Frederick County Bd. of Educ. (Frederick Classical Charter II)*, MSBE Op. No. 18-27 (2018).

Appellant has requested that the State Board reconsider its decision solely on the issue of special education transportation funds.

FACTUAL BACKGROUND

The local board approved Appellant’s application for a charter in 2011 and the parties executed a charter agreement in 2012. Frederick Classical began operating in 2013. On December 14, 2016, the local board renewed Appellant’s charter for eight years.

Maryland law requires that local boards disburse funds to public charter schools in an amount that is “commensurate with the amount disbursed to other public schools in the local jurisdiction.” Md. Code, Educ. § 9-109(a). In Frederick County Public Schools (“FCPS”), the school system calculates this amount as a Per Pupil Allocation (“PPA”). On June 26, 2013, Frederick County Public Schools (“FCPS”) sent Appellant the PPA for the 2014 fiscal year, along with documents describing how FCPS calculated that figure, to assist with the preparation of the budget for Frederick Classical. In a letter accompanying its budget, Appellant stated that it objected to FCPS’s calculation of the PPA because it did not include transportation funds. Because Appellant was not providing transportation to students, the local board maintained that its allocation formula, which did not include transportation funds, was lawful.

On May 24, 2014, the State Board affirmed the decision of the local board. Appellant appealed to the Circuit Court for Frederick County, which affirmed the State Board’s decision, as did the Court of Special Appeals.

On July 14, 2017, the Court of Appeals reversed the State Board’s decision and remanded the case for further proceedings. *Frederick Classical Charter School, Inc. v. Frederick County Bd. of Educ.*, 454 Md. 330 (2017). The Court held that the State Board (1) applied the incorrect standard of review in deciding the appeal; (2) incorrectly determined that Appellant was not entitled to transportation funds because it did not provide transportation services; and (3) incorrectly found that Appellant had agreed not to receive transportation funds in its Charter Agreement. *Id.* at 420. The Court remanded the case for the State Board to apply the correct standard of review and render a decision as to Appellant’s claims consistent with the Court’s holdings. *Id.* at 422.

On December 5, 2017, the State Board issued its amended decision in which it determined that the local board improperly withheld transportation funds from its calculation of the PPA. The State Board remanded the case to the local board because the record did not include how much money had been earmarked for transportation in prior years’ budgets and what Appellant’s enrollment had been for the 2015 fiscal year forward.

On January 22, 2018, the local board estimated that Appellant should receive approximately \$588,534.93 for previous years based on its revised application of the commensurate funding formula to include transportation funds. Appellant requested time to analyze the figures and, ultimately, disagreed with how the local board arrived at its calculations.

On June 12, 2018, the State Board ordered the parties to submit simultaneous petitions for declaratory ruling. On August 28, 2018, the State Board issued a decision in which we required the local board to use budgeted amounts rather than actual expenditures, allowed the local board to deduct money allocated for special education transportation, prohibited the local board from deducting the cost of transporting general education high school students to athletics and other programs, and denied a request for prejudgment interest. See *Frederick Classical Charter School v. Frederick County Bd. of Educ. (Frederick Classical Charter II)*, MSBE Op. No. 18-27 (2018). This request for reconsideration followed.

STANDARD OF REVIEW

A party aggrieved by the decision of the State Board may file a request for reconsideration. COMAR 13A.01.05.10A. A decision may not be disturbed “unless there is sufficient indication in the request that (1) the decision resulted from a mistake or error of law; or (2) new facts material to the issues have been discovered or have occurred subsequent to the decision.” COMAR 13A.01.05.10D. The State Board may, in its discretion, abrogate, change, or modify the original decision. COMAR 13A.01.05.10G.

This case concerns the interpretation of Md. Code, Educ. §9-109 as it applies to the calculation of commensurate funds for a local charter school. In such a case, 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; *see also Frederick Classical*, 454 Md. at 371-77.

LEGAL ANALYSIS

Appellant asks the State Board to reconsider only the special education transportation issue and raises three main arguments. We set forth below, in full, our analysis of that issue in our most recent decision in this case:

In *Frederick Classical*, the Court of Appeals concluded that transportation funding must be included in the total school system budget used to calculate the per pupil allocation:

[W]hen calculating a charter school’s per-pupil allocation of commensurate funds, a local school board generally must include in that calculation funds budgeted for any of the services expressly identified in the declaratory rulings – including funds for transportation services. However, a local school board is not required to include funds for services that have detailed eligibility requirements under state and federal law when the charter school does not meet those eligibility requirements. For transportation, there are no such eligibility requirements for general education students, and a local school board must therefore include the funds budgeted for that service when calculating a charter school’s per-pupil allocation, regardless of whether a charter school provides transportation services to its general student population.

454 Md. at 392.

In our remand decision, we applied this approach and determined that the local board should have included transportation funds as part of its PPA to Appellant. *Frederick Classical Charter School*, MSBE Op. No. 17-41. The parties’ dispute now centers on to what extent money allocated for the transportation of special education students should be included in the overall budget used to calculate the PPA for Appellant.

The Court of Appeals explained that “a local school board is not required to include funds for services that have detailed eligibility requirements under state and federal law when the charter school does not meet those eligibility requirements.” *Frederick Classical*, 454 Md. at 392. The Court recognized that there are no such eligibility requirements for the transportation of *general education* students, but that “for disabled students who are entitled to transportation . . . a charter school must elect to actually provide transportation services to disabled students in order to receive its proportional share of county funding for the transportation of disabled students.” *Id.* at 390-91.

The local school system owns 426 school buses, out of which about 104 are “utilized specially and exclusively for transporting special education students to special education programs within the School System and to non-public schools.” In total, about 1,022 special education students receive transportation from the local school system. (Local Board’s Petition, Pellegrino Affidavit). By contrast, only three students who qualified for special education transportation services attended Frederick Classical Charter School during the five years in question. (Appellant Petition). To the extent that Appellant provided transportation for those special education students (and the record is unclear on this point), Appellant should receive its proportional share of special education transportation funding.

Under the commensurate funding formula, as explained by the Court of Appeals, the local board did not have to include the amount it budgeted for the transportation of special education students as part of its total transportation budget unless the charter school elected to provide special education transportation services.

Frederick Classical Charter II, MSBE Op. No. 18-27.

First, Appellant argues that the State Board misinterpreted the Court of Appeals decision and improperly relied on *dicta*. Appellant maintains that, read in context, the Court of Appeals decision mandates that Appellant receive special education transportation funds, even if it has no special education students, so long as it “has met the legal eligibility requirements for ensuring that its special education students who need transportation receive it.”

In our view, Appellant has not met its burden to show that our previous decision resulted from legal error. Our decision relied on the plain language of *Frederick Classical*, specifically the Court’s statement that “for disabled students who are entitled to transportation . . . a charter school must elect to actually provide transportation services to disabled students in order to receive its proportional share of county funding for the transportation of disabled students.” 454 Md. at 390-91.

Second, Appellant argues that the local board forced Appellant to receive special education transportation services from the county rather than allowing Appellant to arrange those services independently. Appellant maintains that it has had to pay unreasonable amounts to the county for transportation of disabled students in prior years. Although raised by Appellant, this issue was not a primary focus of the petitions for declaratory ruling nor was it necessary for us to

reach this issue in order to decide the case. Because we have recently considered this issue in another charter school case, however, we shall exercise our discretion to address it now.

Last year, we held that a local school system could not impose a mandatory fee for school police services, but instead had to negotiate with the charter school to determine whether the charter school would accept or reject those services. *In Re: Baltimore City Public Charter Schools Mandatory Fees*, MSBE Op. No. 18-32 (2018). Applying principles of equity, we declined to refund the cost of past services to charter schools because the school system had already provided (and the charter schools had accepted) those services. *Id.* A similar result applies here. In the future, Appellant should have the choice to either provide or arrange special education transportation on its own or accept those services from the local school system. The local board does not need to reimburse Appellant for past services that Appellant has already received. We modify our prior decision to include this analysis. *See* COMAR 13A.01.05.10G.

Finally, Appellant argues that if the local board is allowed to withhold special education transportation funds, it should only be able to withhold *direct* special education transportation costs and not withhold *indirect* special education costs (such as a portion of the salaries for supervisors and mechanics) from the total amount of transportation funds owed to Appellant. The local board argues that indirect costs are an integral part of special education transportation funds because those costs cover necessary components of the special education transportation service.

The Court of Appeals did not address indirect costs in its decision, nor did we explicitly discuss those costs. By approving the local board's special education transportation calculations, however, we implicitly gave our approval to the local board's approach. In our view, special education transportation consists of direct and indirect costs, both of which are necessary in order to provide those services to eligible students. The local board therefore did not err by withholding both direct and indirect special education transportation funds from the total amount of transportation funds owed to Appellant. We modify our prior decision to include this analysis. *See* COMAR 13A.01.05.10G.

CONCLUSION

We modify our previous decision to include additional legal analysis regarding the provision of special education transportation services and indirect costs. We otherwise deny the request for reconsideration because there is no indication that the State Board's decision resulted from a mistake or error of law or that new facts material to the issues have been discovered or have occurred subsequent to the decision.

Signatures on File:

Justin M. Hartings
President

Stephanie R. Iszard
Vice-President

Chester E. Finn, Jr.

Vermelle D. Greene

Jean C. Halle

Rose Maria Li

Joan Mele-McCarthy

Michael Phillips

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Warner I. Sumpter

February 26, 2019