



Maryland Charter Schools – Eligibility for Exemptions from Local Policy § 9-104.1

Guidance to Local School Systems and Public Charter Schools

Contents

| | |
|--|----------|
| Introduction..... | 2 |
| Eligibility Provisions of § 9-104.1 | 2 |
| Eligible Schools..... | 2 |
| Eligibility Criteria | 2 |
| Local Policy Exemptions for Eligible Public Charter Schools (§ 9-104.1 (e), (f),(g)) | 3 |
| Provisions of § 904.1 Related to Staffing | 4 |
| Eligibility Implementation Process | 4 |
| Other Considerations..... | 5 |
| Appendices..... | 7 |
| Appendix 1: Maryland’s Charter Law..... | 7 |
| Appendix 2: Maryland State Board of Education Policy on Charter Schools..... | 19 |
| Appendix 3: Advice of Counsel, September 16, 2016..... | 22 |

Introduction

In the 2015 session of the Maryland General Assembly, several provisions were added to the charter school law (Annotated Code of Maryland, Education Article § 9-101 *et seq.*). One amendment creates a category of charter schools called “eligible charter schools.” An “eligible charter school” is a charter school that has operated for at least five years, and has a history of student academic achievement and sound fiscal management (Md. Educ. Art. § 9-104.1).

The law directs the Maryland State Board of Education to create standards and criteria by which the local board of education will assess a charter school to determine if it is an “eligible charter school.” These schools are eligible to receive certain exemptions from local policies.

Maryland State Board of Education provides this guidance to local boards of education and public charter school operators in implementing this provision (Md. Educ. Art. § 9-104.1).

Eligibility Provisions of § 9-104.1

Eligible Schools

The Maryland Charter Law (Md. Educ. Art. § 9-101, *et seq.*) directs the Maryland State Board of Education (Board) to determine measures by which a Maryland charter school meets “eligibility” to negotiate exemptions from certain policies of local school systems.

The law states in § 9-104.1 (a) that an “eligible public charter school” means a public charter school that has been in existence for at least 5 years and demonstrates to the public chartering authority a history of:

- (1) Sound fiscal management; and
- (2) Student achievement that exceeds the average in the local school system in which the public charter school is located on:
 - (i) Statewide assessments; and
 - (ii) Other measures developed by the State Board.”

Eligibility Criteria

The State Board has established the following standards and criteria to determine if a public charter school is an “eligible” charter school.

1. The charter school has been in operation at least 5 years, or is in its fifth year of operation.
2. The charter school has submitted an annual independent audit.
 - a. The auditor’s report offers unqualified opinions and any management points were resolved by the subsequent audit.
 - b. Statements of cash flow indicate good performance on short term liquidity measures.
3. The student achievement data shows that proficiency, as defined by the Maryland State Board of Education, and/or the charter school’s overall student growth percentile

exceeds that of the local school system for the All Students group in the most recent year for which data is available. “Exceeds” means exceed, by any amount, the combined proficiency or growth in Reading and Math for all grades;

4. The charter school is in one of the top 2 of the 3 levels determined by the State’s indicator of progress. ¹
5. For schools serving grades nine through twelve, the cohort graduation rate exceeds that of the local school system for the All Students group, in the most recent year for which data is available.
6. The charter school is not identified for comprehensive school support and improvement, or targeted support and improvement, nor as a Priority or Focus school under the State’s accountability system.
7. The charter school has no significant compliance issues in serving students with disabilities as reported by the local board.
 - a. The charter school has taken prompt and appropriate steps to address any shortcomings identified through monitoring activities.

Local Policy Exemptions for Eligible Public Charter Schools (§ 9-104.1 (e), (f),(g))

Pursuant to Education Article § 9-104.1, the law provides that the eligible charter school may be exempt from the following local school system policies, if both parties mutually agree:

§ 9-104.1 (e):

- 1) Textbook, instructional program, curriculum, professional development, and scheduling requirements;
- 2) A requirement to establish a school community council;
- 3) Except for Title I schools, a requirement to establish a school improvement plan;
- 4) Except for schools with a school activity fund, a requirement to provide school activity fund disclosure statements; and
- 5) Except for Prekindergarten classes, class size or staffing ratios.

The statute also provides that,

§9-104.1 (f):

A public chartering authority and an eligible public charter school may jointly develop and mutually agree to a communication process and supervision methodology that flows among the county board, the operator, and the administration of the eligible public charter school.

¹ The Every Student Succeeds Act requires the State to create a progress indicator that will place schools in at least 3 levels. The progress indicator will incorporate student growth and data for student groups. The State’s progress indicator will take into account that schools with overall excellent academic performance may have less evidence of growth. This component of the accountability plan will also apply to charter schools seeking “eligibility” under this provision.

The statute also provides that,

The exemptions listed above may be granted “if an eligible charter school and public chartering authority mutually agree to an alternative means by which the eligible charter school will satisfy the intent of the policies of the public chartering authority (§9-104.1 (e)).”

Provisions of § 904.1 Related to Staffing

§ 9-104.1 (g):

- 1) An eligible public charter school may not be assigned a principal without the written consent of the operator of the eligible public charter school.
- 2) (i) Staff members shall be assigned or transferred to an eligible public charter school if the staff member expresses in writing that the staff member wants to work in that eligible public charter school and the eligible public charter school requests in writing that the staff member be assigned or transferred to the eligible public charter school, provided there is an existing vacancy.
 - (ii) A transfer authorized under subparagraph (i) of this paragraph shall take place as designated by the agreement of the local bargaining unit in the local school system.

A charter school that has been deemed an eligible charter school by the local board can prevent the forced placement of a principal in the public charter school by the local board. Under the law, the local school system cannot assign a principal to an eligible charter school “without the written consent of the eligible charter school” (§ 9-104.1 (g)(1)). The authority to hire or fire a principal remains with the superintendent and local board (Md. Educ. Art. § 4-103).

An eligible charter school has been given some limited autonomy over staffing decisions. If there is a teacher vacancy in an eligible charter school and a current teacher in the school system agrees to the placement, then the superintendent must approve that transfer (§ 9-104.1 (g)(2)). In each local school system, the collective bargaining agreement may include provisions governing teacher or administrator placement and transfer. These provisions take precedence (§ 9-104.1 (h)).

The concept of mutual consent in teacher and staff assignment should be honored to the extent possible in each local school system. Charter schools should be able to identify qualified candidates for teaching and other staff positions from within and from outside the school system.

Eligibility Implementation Process

Local school board authorizers conduct a full review of the public charter school every three, four or five years. The renewal processes in place include quantitative and qualitative data on academic achievement and climate, review of financial statements and audits, and site visits. During this process the charter school operator can request designation as an “eligible” charter school and request the exemptions provided for in the law (§ 9-104.1 (e) through (g)). Negotiated exemptions from local policy should be included in renewal contracts or as amendments to existing contracts.

The eligibility criteria presented in this document are for purposes of determining “eligibility” under Education Article § 9-104.1. The criteria should not replace existing renewal rubric of the local school board.

The local school system may wish to set a different time frame for consideration of eligibility and any exemptions. This is at the discretion of the local school board. However, there should be an opportunity for charter schools to request eligibility at least once a year.

Whenever the determination of eligibility takes place, any negotiated exemptions shall be considered an addendum to the charter contract and shall remain for the term of the charter contract. Local school systems should automatically renew the exemptions when the contract is renewed.

The local board will respond to the request of the charter school by reviewing academic achievement data and making a determination on the other eligibility criteria (page 2).

Annually, the local board will provide to MSDE, whether any public charter schools have requested to be determined “eligible”, decisions of the local board, data the board used to make its determination, and a description of any exemptions granted. MSDE will maintain records of this process, so the outcomes can be shared with all public charter schools, local school systems, the public, and the Maryland State Board of Education.

If the local board denies the charter school application to be determined “eligible”, the charter school can appeal this decision to the State Board of Education (§ 9-104.1 (d)).

A local school board should not read these provisions (§ 9-104.1(a) through (f)) as intending that a charter school that is yet to open should not have control over textbooks, instructional program, curriculum, professional development, and scheduling requirements (§ 9-104.1 (e) through (g)). Neither should the local school system withdraw control over these aspects of operations, if an operating charter school does not meet the criteria listed here.

Other Considerations

The amendments to the charter law also include a provision expressly allowing any public charter school to seek a waiver “from a county board from policies that are policies of the county board; and the State Board for policies that are policies of the State Board (§ 9-106 (b)(1)).” The law does not set any limitation on when a charter school can seek a waiver of any local or State policy. This provision applies to all public charter schools, during the application process and throughout the term of the contract.

The Board commends the local school board authorizers for ensuring that charter schools are currently operating with autonomies and waivers to local policy negotiated in the charter approval process and codified in the charter contract. The Board encourages local school boards and public charter schools to work together to identify opportunities to increase operational autonomy while maintaining accountability for student outcomes.

MSDE will provide technical assistance to charter school operators and local school systems to support the development of waivers and the negotiated agreements that meet the intent of the waived policy or regulation.

Appendices

Appendix 1: Maryland's Charter Law

EDUCATION
DIVISION II. ELEMENTARY AND SECONDARY EDUCATION
TITLE 9. MARYLAND PUBLIC CHARTER SCHOOL PROGRAM

Md. EDUCATION Code Ann. § 9-101 (2016)

§ 9-101. Maryland Public Charter School Program

(a) Established. -- There is a Maryland Public Charter School Program.

(b) Purpose. -- The general purpose of the Program is to establish an alternative means within the existing public school system in order to provide innovative learning opportunities and creative educational approaches to improve the education of students.

§ 9-102. "Public school charter" defined

In this title, "public charter school" means a public school that:

- (1) Is nonsectarian in all its programs, policies, and operations;
- (2) Is a school to which parents choose to send their children;
- (3) Except as provided in §§ 9-102.1, 9-102.2, and 9-102.3 of this title, is open to all students on a space-available basis and admits students on a lottery basis if more students apply than can be accommodated;
- (4) Is a new public school or a conversion of an existing public school;
- (5) Provides a program of elementary or secondary education or both;
- (6) Operates in pursuit of a specific set of educational objectives;
- (7) Is tuition-free;
- (8) Is subject to federal and State laws prohibiting discrimination;
- (9) Is in compliance with all applicable health and safety laws;
- (10) Is in compliance with § 9-107 of this title;
- (11) Operates under the supervision of the public chartering authority from which its charter is granted and in accordance with its charter and, except as provided in §§ 9-104.1

and 9-106 of this title, the provisions of law and regulation governing other public schools;

(12) Requires students to be physically present on school premises for a period of time substantially similar to that which other public school students spend on school premises; and

(13) Is created in accordance with this title and the appropriate county board policy.

§ 9-102.1. Waiver from § 9-102(3)

(a) Grounds. -- The State Board may grant a waiver from § 9-102(3) of this title to a public charter school if the public charter school:

(1) Is located on property within a federal military base in the State; and

(2) Will admit students with parents who are not assigned to the base to at least 35% of its total available space as part of the initial cohort of students in a grade.

(b) Admission of students on lottery basis; maintenance of ratio of students. -- If a public charter school is granted a waiver under subsection (a) of this section, subject to the requirement set forth in subsection (a)(2) of this section, the public charter school shall:

(1) Admit all students on a lottery basis in accordance with § 9-102.2 of this title; and

(2) Take reasonable steps to maintain the 35% to 65% ratio intended as part of the initial cohort of students in a grade.

§ 9-102.2. Lottery -- Weighting and guaranteed placement.

(a) Weighting factors to student's lottery status. -- A public charter school may give greater weight to a student's lottery status as part of a lottery held under § 9-102(3) of this title and in accordance with an application submitted under § 9-104 of this title if the student is:

(1) Eligible for free or reduced price meals;

(2) A student with disabilities;

(3) A student with limited English proficiency;

(4) Homeless, as defined under the federal McKinney-Vento Homeless Assistance Act; or

(5) A sibling of a student currently enrolled in the public charter school for which the sibling is applying.

(b) Priorities to siblings. -- Notwithstanding § 9-102(3) of this title, a public charter school may give priority to the sibling of a student admitted through the lottery process or a currently enrolled student for any spaces in the school that become available throughout the school year.

(c) Geographic attendance area. --

(1) Subject to the approval of the public chartering authority and § 9-104 of this title, a public charter school may propose a geographic attendance area with a median income that is equal to or less than the median income of the county for the public charter school.

(2) Subject to paragraph (4) of this subsection, a public charter school may provide guaranteed placement through a lottery to students who live within the geographic attendance area for up to 35%, as proposed by the public charter school and approved by the public chartering authority, of the available space of the public charter school.

(3) Subject to paragraphs (2) and (4) of this subsection, the public charter school shall:

(i) Admit students on a lottery basis to its remaining available space; and

(ii) Take reasonable steps to maintain the ratio intended under paragraph (2) of this subsection as part of the initial cohort of students accepted through the lottery process.

(4) If a public charter school does not fill 100% of its available space under paragraphs (2) and (3) of this subsection, the public charter school may admit more than the percentage of students established under paragraph (2) of this subsection from the geographic attendance area established under this section.

(d) Priority to students previously attending public charter school. --

(1) Subject to the approval of the public chartering authority, paragraph (2) of this subsection, and § 9-104 of this title, a public charter school may provide guaranteed placement through a lottery to up to 35%, as proposed by the public charter school and approved by the public chartering authority, of the available space of the public charter school to students who attended a public charter school during the previous school year that is operated by the same operator.

(2) A public charter school shall qualify under paragraph (1) of this subsection if:

(i) The operator operates two or more public charter schools in the county; and

(ii) When combined, the public charter schools operated by the operator form an integrated multiyear academic program.

(3) Subject to paragraph (1) of this subsection, the public charter school shall:

(i) Admit students on a lottery basis to its remaining available space; and

(ii) Take reasonable steps to maintain the ratio intended under paragraph (1) of this subsection as part of the initial cohort of students accepted through the lottery process.

(4) If a public charter school does not fill 100% of its available space under paragraphs (1) and (3) of this subsection, the public charter school may admit more than the percentage of students established under paragraph (1) of this subsection.

§ 9-102.3. Waiver -- Converted public charter school providing guaranteed placement within geographic attendance area.

(a) In general. -- In accordance with § 9-104 of this title, a county board may grant a waiver from § 9-102(3) of this title to:

(1) A converted public charter school that:

(i) Subject to subsection (b) of this section, provides guaranteed placement through a lottery to students who live within the geographic attendance area established by the county board;

(ii) Is a low-performing school as identified by the county board;

(iii) Is above the county average rate for the percentage of students who are eligible for free and reduced price meals; and

(iv) Meets a strategic need of the local school system, as identified in the county board's public charter school policy developed under § 9-110 of this title, that shall include at least one of the following elements:

1. Serving a high-need population;
2. Increasing student performance;
3. Increasing enrollment; or
4. Increasing student diversity; or

(2) A converted public charter school that is seeking renewal of an existing charter contract that was granted under item (1) of this subsection.

(b) Lottery to fill available space. -- If a public charter school does not fill 100% of its available space under subsection (a)(1) of this section, the public charter school shall admit students on a lottery basis to its remaining available space.

§ 9-103. Public chartering authority

The public chartering authority for the granting of a charter shall be a county board of education.

§ 9-104. Public charter school -- Application

(a) In general. --

(1) An application to establish a public charter school shall be submitted to the county board of the county in which the charter school will be located.

(2) An application to establish a public charter school may be submitted to a county board by:

- (i) The staff of a public school;
- (ii) A parent or guardian of a student who attends a public school in the county;
- (iii) A nonsectarian nonprofit entity;
- (iv) A nonsectarian institution of higher education in the State; or
- (v) Any combination of persons specified in items (i) through (iv) of this paragraph.

(3) An application shall include:

(i) A plan to provide a rigorous program of instruction that includes an equivalent method for satisfying any requirements from which the public charter school operator intends to seek a waiver under § 9-106 of this title; and

(ii) A description of how a weighted lottery or the provision of guaranteed placement will be implemented under §§ 9-102.2 and 9-102.3 of this title.

(4) A public chartering authority may not grant a charter under this title to:

- (i) A private school;
- (ii) A parochial school;
- (iii) A home school; or
- (iv) A school that operates fully online.

(5) (i) Except as provided in subparagraph (ii) of this paragraph, the county board shall review the application and render a decision within 120 days of receipt of the application and in accordance with the application procedures adopted by the county board.

(ii) For a restructured school:

1. The county board shall review the application and render a decision within 30 days of receipt of the application;

2. The county board may apply to the State Board for an extension of up to 15 days from the time limit imposed under item 1 of this subparagraph;

3. If an extension is not granted, and 30 days have elapsed, the decision may be appealed to the State Board in accordance with § 4-205(c) of this article; and

4. If an extension has been granted, and 45 days have elapsed, the decision may be appealed to the State Board in accordance with § 4-205(c) of this article.

(6) (i) A public chartering authority may approve an application to operate a public charter school on a contingent basis subject to the conditions of subparagraph (ii) of this paragraph.

(ii) The contingent approval granted under subparagraph (i) of this paragraph may be contingent on:

1. A public charter school's ability to meet any timelines established by the public chartering authority for the securing of a facility; and

2. Final approval by the public chartering authority regarding the suitability of the facility secured by the public charter school.

(b) Application including specific geographic attendance area provision. --

(1) If an application to establish a public charter school includes a description of the implementation of a weighted lottery that gives priority to students in a specific geographic attendance area in accordance with § 9-102.2 or § 9-102.3 of this title, the public chartering authority may approve or reject this provision separately from the application as a whole.

(2) A decision of a public chartering authority under paragraph (1) of this subsection may not be appealed to the State Board.

(c) Application including staffing model. --

(1) An application to establish a public charter school may include a staffing model, including provisions for staff recruitment, training, evaluation, and professional

development.

(2) A public charter school may submit a staffing model as provided in paragraph (1) of this subsection with a renewal application or with an amendment to an existing charter.

(d) Denial and appeal. --

(1) If the county board denies an application to establish a public charter school, the applicant may appeal the decision to the State Board, in accordance with § 4-205(c) of this article.

(2) The State Board shall render a decision within 120 days of the filing of an appeal under this subsection.

(3) If the county board denies an application to establish a public charter school and the State Board reverses the decision, the State Board shall remand the matter to the county board and may direct the county board to grant a charter and may, if necessary, mediate with the county board and the applicant to implement the charter.

§ 9-104.1. Public Charter School -- Assessments.

(a) "Eligible public charter school" defined. -- In this section, "eligible public charter school" means a public charter school that has been in existence for at least 5 years and demonstrates to the public chartering authority a history of:

(1) Sound fiscal management; and

(2) Student achievement that exceeds the average in the local school system in which the public charter school is located on:

(i) Statewide assessments; and

(ii) Other measures developed by the State Board.

(b) in general. -- The State Board shall develop standards and criteria by which an eligible public charter school shall be assessed by a public chartering authority.

(c) Submissions by school. --

(1) An eligible public charter school may submit to a public chartering authority:

(i) An application for renewal of an existing charter contract that incorporates the provisions of subsection (e) of this section; or

(ii) Subject to paragraph (2) of this subsection, an application for an addendum to an

existing charter contract that incorporates the provisions of subsection (e) of this section.

(2) An eligible public charter school may not submit an application under paragraph (1)(ii) of this subsection more than one time during the duration of an existing charter contract.

(d) Appeals. -- If the public chartering authority determines that a public charter school is not an eligible public charter school, the public charter school may appeal the decision to the State Board in accordance with § 4-205(c) of this article.

(e) Mutual agreement to alternative means for qualifying; exemptions. -- If an eligible public charter school and a public chartering authority mutually agree to an alternative means by which the eligible public charter school will satisfy the intent of the policies of the public chartering authority, an eligible public charter school is exempt from:

(1) Textbook, instructional program, curriculum, professional development, and scheduling requirements;

(2) A requirement to establish a school community council;

(3) Except for Title I schools, a requirement to establish a school improvement plan;

(4) Except for schools with a school activity fund, a requirement to provide school activity fund disclosure statements; and

(5) Except for prekindergarten classes, class size or staffing ratios.

(f) Mutual agreement for communication processes and supervision methodology. -- A public chartering authority and an eligible public charter school may jointly develop and mutually agree to a communication process and supervision methodology that flows among the county board, the operator, and the administration of the eligible public charter school.

(g) Consent required for assignment of principal; staffing. --

(1) An eligible public charter school may not be assigned a principal without the written consent of the operator of the eligible public charter school.

(2) (i) Staff members shall be assigned or transferred to an eligible public charter school if the staff member expresses in writing that the staff member wants to work in that eligible public charter school and the eligible public charter school requests in writing that the staff member be assigned or transferred to the eligible public charter school, provided there is an existing vacancy.

(ii) A transfer authorized under subparagraph (i) of this paragraph shall take place as designated by the agreement of the local bargaining unit in the local school system.

(h) Construction. -- Nothing in this section may be construed to take precedence over an

agreement of a local bargaining unit in a local school system.

(i) Provisions of title applicable. -- Except as otherwise provided in this section, an eligible public charter school is subject to the provisions of this title.

§ 9-105. Public charter school -- Professional staff

A member of the professional staff of a public charter school shall be subject to the same certification provisions established in regulations for the professional staff of other public schools.

§ 9-106. Public charter school -- Obligations and waiver

(a) In general. -- Subject to subsection (b) of this section, a public charter school shall comply with the provisions of law and regulation governing other public schools.

(b) Waiver -- Request. -- Subject to subsection (d) of this section, a public charter school may seek a waiver of the requirements under subsection (a) of this section from:

- (1) A county board for policies that are the policies of the county board; and
- (2) The State Board for policies that are the policies of the State Board.

(c) Waiver -- Denial. -- If a waiver is denied under this section, the county board or the State Board, as appropriate, shall provide the reason for the denial in writing to the public charter school.

(d) Waiver -- Exceptions. -- A waiver may not be granted from provisions of law or regulation relating to:

- (1) Audit requirements;
- (2) The measurement of student academic achievement, including all assessments required for other public schools and other assessments mutually agreed upon by the public chartering authority and the school; or
- (3) The health, safety, or civil rights of a student or an employee of the public charter school.

§ 9-107. Responsibilities of public chartering authority

(a) Granting charters. -- A public chartering authority may not grant a charter to a public charter school whose operation would be inconsistent with any public policy initiative, court order, or federal improvement plan governing special education that is applicable to the

State.

(b) Authorizing process and application. -- A public chartering authority shall ensure that the authorizing process for a public charter school and the charter application address the roles and responsibilities of the county board and the applicants and operators of the public charter school with respect to children with disabilities.

(c) Operators of school. -- The public chartering authority shall ensure that, prior to opening a public charter school, the operators of the school are informed of the human, fiscal, and organizational capacity needed to fulfill the school's responsibilities related to children with disabilities.

§ 9-108. Rights of employees of a public charter school

(a) In general. -- Employees of a public charter school:

- (1) Are public school employees, as defined in §§ 6-401(e) and 6-501(g) of this article;
- (2) Are employees of a public school employer, as defined in §§ 6-401(f) and 6-501(h) of this article, in the county in which the public charter school is located; and
- (3) Shall have the rights granted under Title 6, Subtitles 4 and 5 of this article.

(b) Collective bargaining agreement. -- If a collective bargaining agreement under Title 6, Subtitle 4 or Subtitle 5 of this article is already in existence in the county where a public charter school is located, the employee organization, public school employer, and the public charter school may mutually agree to negotiate amendments to the existing agreement to address the needs of the particular public charter school, including amendments to work days, work hours, school year, procedures for transfers that are consistent with the instructional mission of the school, and extra duty assignments.

§ 9-109. Disbursement of funds

A county board shall disburse to a public charter school an amount of county, State, and federal money for elementary, middle, and secondary students that is commensurate with the amount disbursed to other public schools in the local jurisdiction.

§ 9-110. Public charter school policy

(a) In general. --

- (1) Each county board shall develop a public charter school policy and provide it to the State Board.

(2) The policy required under paragraph (1) of this subsection shall include guidelines and procedures regarding:

- (i) Evaluation of public charter schools;
- (ii) Revocation of a charter;
- (iii) Reporting requirements; and
- (iv) Financial, programmatic, or compliance audits of public charter schools.

(3) The policy required under paragraph (1) of this subsection, including any updates or amendments made to the policy, shall be provided to the Department and made available on request and posted on the Web site of the county board.

(b) Contact person. --

(1) The Department shall designate a staff person to function as a contact person for the Maryland Public Charter School Program.

(2) The staff person designated as a contact person under paragraph (1) of this subsection shall:

(i) Provide technical assistance to the operator of a public charter school to help the school meet the requirements of federal and State laws, including 20 U.S.C. § 1400, et seq. and § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; and

(ii) Gather information from public charter schools in the State regarding innovative approaches to education and best practices taking place at public charter schools that may be shared with and disseminated to other public schools in the State.

(c) Report. -- The Department shall report annually by December 1 to the General Assembly in accordance with § 2-1246 of the State Government Article regarding:

(1) Any updates or amendments made to a public charter school policy under subsection (a) of this section; and

(2) Implementation of this title.

§ 9-111. Use of school site or building for public charter school

(a) In general. --

(1) If, with the approval of the State Superintendent, a county board determines that a school site or building no longer is needed for school purposes and after the county

commissioners or county council have provided the required notice under § 4-115 of this article, the county board shall inform the public charter schools in the county that the school site or building is available for occupation and use by a public charter school on the terms determined by the county board.

(2) Each county board:

(i) Shall establish a procedure to determine which public charter school may occupy and use an available school site or building if more than one public charter school notifies the county board of an interest in occupying and using a school site or building; and

(ii) May consider the utilization rate of surrounding school sites and buildings when authorizing a public charter school to occupy a school site or building.

(b) Prohibition of sale or transfer of school site or building. -- A public charter school that occupies or uses a school site or building under subsection (a) of this section may not sell, dispose of, or otherwise transfer the school site or building.

§ 9-112. Tax exemption

Any portion of a building or property occupied and used by a public charter school shall be exempt from property taxes under § 7-202 of the Tax - Property Article for the duration of the occupation and use of the building or property as a public charter school.

Appendix 2: Maryland State Board of Education Policy on Charter Schools

Maryland State Board of Education POLICY THE CHARTER SCHOOL PROGRAM

BACKGROUND:

The Maryland Public Charter School program was adopted into law by Maryland's General Assembly in 2003 through Title 9, §101-110 of the Education Article of the Code of Maryland. The general purpose of the program, as defined by law, is to establish an alternative means within the existing public school system in order to provide innovative learning opportunities and creative educational approaches to improve the education of students.

INTENT:

This policy is established to clearly define the obligations of charter schools and their authorizers. The State Board of Education recognizes that providing flexibility and autonomy in exchange for innovation, educational reform and high accountability is a key component of the Charter School concept.

PURPOSE:

Consistent with the intent of federal legislation and the Maryland Charter School Program law, this State Board declares that the purpose of the State's public charter schools are to:

- A. Improve student learning by creating high-quality public schools with high standards for student performance;
- B. Close achievement gaps between high-performing and low-performing groups of public students;
- C. Increase high-quality educational opportunities within the public education system for all Maryland students and their families;
- D. Create new professional opportunities for teachers, school administrators, and other school personnel that allows them to actively participate in the development of their schools;
- E. Encourage the use of different, high-quality models of teaching, governing, scheduling, or other aspects of schooling that meet a variety of student needs;
- F. Allow, through chartering, public school freedom and flexibility in exchange for exceptional levels of results-driven accountability;
- G. Provide parents, community members, and other non-profit entities with expanded opportunities for involvement in the design, development and management of public school models within the public education system; and
- H. Encourage the replication of successful public charter schools.

I. To achieve these purposes, the State Board encourages each County Board to:

Local Policies

1. Appoint a representative that serves the board in the role of Charter School Liaison and supports the Board in performing its authorizing responsibilities;

2. Adopt charter school policies that include guidelines related to the application process and its assessment, the process of performance contracting, the process for how charter school operators will be informed of requirements pertaining to children with disabilities, and how the funds will be disbursed to charter schools;
3. Adopt charter school policies and regulations acknowledging the purpose of charter schools and what differentiates them from other public schools. These policies will express a commitment to providing increased flexibilities which will enable charter schools to implement innovations in exchange for higher levels of accountability;
4. Submit their public charter school policies, along with any implementing regulations to the Maryland State Department of Education for review and comment prior to adoption by the County Board;
5. Ensure alignment of charter School policy definitions of commensurate funding with that of the State Board to guarantee that charter schools receive federal, State and local funding in an amount proportionate to the amount of funds expended for elementary, middle and secondary level students in other public schools in the same school system. Such funding includes funding for services for which students in the public charter schools are eligible such as free and reduced priced meals, pre-kindergarten, special education, English language learners, Perkins, Title I and transportation;

Charter School Applications

6. Submit a copy of their application, review process and assessment rubric to the State Department of Education for review and feedback, and re-submit these documents whenever there is a proposed change;
7. Post their most recent application, along with the description of their review process and assessment rubric on their website thereby making it available to charter school developers and the public;
8. Include an assurance statement in the application that will be signed by the developer of the charter school acknowledging and committing to accountability standards in exchange for local school system flexibilities and waivers from local school system policies, internal practices, processes and procedures that have the potential to impact a charter school's ability to implement innovative structures, programs and may impede the functions of the school's non-profit governing board to make decisions pertinent to the school's development and to ensure the implementation of the school's vision and mission;

Flexibilities for Charter Schools

9. Provides flexibility when applying the school system procedures to the charter school, particularly those that could impede or alter a charter school's ability to design and

implement innovative practices in school operations, educational program and school governance and address those flexibilities in the performance contracting process;

10. Reviews and considers a charter school's waiver requests to local policies and grants those that are reasonable;
11. Negotiates flexibilities in collective bargaining agreements that allow implementation of charter school innovations;

Performance Contract

12. Adopts and implements a performance contract contains the following:
 - a. Roles and responsibilities of both parties (County Board and Charter School Operator),
 - b. Performance Standards that the charter school must meet or exceed,
 - c. An evaluation process of public charter schools that includes the use of financial, program and compliance audits,
 - d. A renewal and revocation process,
 - e. Reporting requirements, and,
 - f. Descriptions of waivers and flexibilities provided to the charter school.

II. To achieve the purposes set forth here, the State Board encourages charter schools to:

Accountability

1. Commit to high levels of accountability that include:
 - a. Performance Standards that the charter school must meet or exceed, including clear demonstrations of increased academic growth for all students; and
 - b. Meeting or exceeding standards in operational areas as demonstrated through the use of financial, programmatic and compliance audits.

III. To achieve the purposes set forth here, the State Board directs MSDE to:

1. Provide training to County School Boards, Superintendents, Local School System Charter School Liaisons, and Charter School Developers, Operators, Governing Boards and Leaders to ensure an understanding of how to implement the Maryland Charter School Law and this policy to achieve the purpose and intent of the Charter School Program goals;
2. Provide technical assistance in problem solving issues that may impede the implementation of this policy; and
3. Ensure the development of understanding and commitment to the concept of charter schools within the department and their support of unique designs intended to promote educational reform through innovation. Ensure that these differences are recognized and taken into consideration in the development and design of program procedures and initiatives.

Appendix 3: Advice of Counsel, September 16, 2016

Office of the Attorney General
Maryland State Department of Education
200 St. Paul Place
Baltimore, Maryland 21202
(410) 576-6465

September 16, 2016

TO: Members of the State Board

FROM: Elizabeth Kameen, Principal Counsel

RE: Charter School Law Questions

At the State Board meeting on July 26, 2016, questions arose about the meaning and intent of a recent amendment to the charter school law, Md. Educ. Art. §9-104.1. That amendment creates a category of charter schools called “eligible public charter schools.” An “eligible charter school” is one that is at least 5 years old with a history of sound fiscal management and student achievement that exceeds the average in the local school system on assessments and on other measures developed by the State Board. *Id.* §9-104.1(a)(1)&(2). An “eligible public charter school” is eligible to receive certain flexibilities from local school systems.

The questions the State Board asked are set forth below with brief answers, followed by the legal basis for the answer.

- (1) Does the law mandate that a local board designate a charter school as an “eligible charter school”? No.
- (2) Does the law mandate that a local board grant an “eligible charter school” exemptions from local policies described in the law? No.
- (3) Does the law mandate that a local board provide the “eligible charter school” with certain autonomy in choosing staff? Yes.
- (4) Does the law advertently or inadvertently take away exemptions from local policies that charter schools now receive from local boards during the charter school application and negotiation process? Arguably, no.
- (5) What does the law direct the State Board to do? Establish certain measures and criteria to judge “eligibility”.

(1) Does the law mandate that a local board designate a charter school as an “eligible charter school”?

The law does not mandate that a local board designate a charter school as an eligible charter school. If a charter school requests to be designated as an “eligible charter school,” the law sets forth the standards that a local board must use to assess whether a charter school can be designated an “eligible” one. They are:

- A public charter school that has been in existence for at least 5 years and demonstrates to the public chartering authority a history of:
 - (1) Sound fiscal management; and
 - (2) Student achievement that exceeds the average in the local school system in which the public charter school is located on:
 - (i) Statewide assessments; and
 - (ii) Other measures developed by the State Board.

Md. Ed. Art. §9-104.1(a).

In addition, the State Board is directed by law to develop other standards and criteria for local boards to use to judge eligibility. *Id.* §9-104.1(b).

The local board may grant or deny a charter school “eligible” status. If it denies the charter school eligible status, the charter school may appeal that decision to the State Board. *Id.* §9-401.1(d). The State Board will determine whether the local board’s decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A.

(2) Does the law mandate that a local board grant an “eligible public charter school” exemptions from certain local policies?

The statute does not mandate that the local board approve exemptions from local policies. The exemptions from local policy that are available are:

- (1) Textbook, instructional program, curriculum, professional development, and scheduling requirements;
- (2) A requirement to establish a school community council;
- (3) Except for Title I schools, a requirement to establish a school improvement plan;
- (4) Except for schools with a school activity fund, a requirement to provide school-activity fund-disclosure statements; and
- (5) Except for prekindergarten classes, class size or staffing ratios.

Id. §9-104.1(e).

The law is conditional. It states that exemptions may be granted “if an eligible charter school and a public chartering authority *mutually agree* to an alternative means by which the eligible charter school will satisfy the intent of the policies of the public chartering authority.” *Id.*

§9-104.1(e) (emphasis added). The law also states that the eligible charter school and the public chartering authority “may jointly develop and mutually agree to a communication process and supervision methodology.” *Id.* §9-104.1(f).

In short, the law merely opens the door for the eligible charter school to ask the local board for the exemptions from local policies listed above provided that the parties come to some mutual agreement about how the charter school will “satisfy the intent” of those local policies. If there is no mutual agreement, it appears that there can be no exemptions. Thus, the exemption process requires good faith discussions on both sides.

(3) Does the law mandate a local board to provide the “eligible charter school” with certain autonomy in choosing staff?

Yes, the law mandates some staffing decision autonomy. First, the law states that local school systems cannot assign a principal to an eligible charter school “without the written consent of the eligible charter school.” *Id.* 9-104.1(g)(1). This is a significant change in the law. In all other circumstances, the local superintendent has the unilateral power to assign principals to their positions in school and transfer them as the needs of the schools require. Ed. Art. §6-201(b)(2). Thus, the new law gives eligible charter schools autonomy over the assignment of a principal.

I must point out, however, that the new charter school law does not transfer to the charter school the authority to hire or fire a principal. That authority remains with the superintendent and local board. *See* Ed. Art. §4-103. It does, however, protect the charter school from having to accept a principal that the superintendent has hired and wants to assign to the charter school.

Second, the law addresses the assignment and transfer of teachers and other staff to the eligible charter schools. The law expressly states that if there is a vacancy, and if a current school system staff member and the eligible charter school both request in writing that the superintendent transfer that staff person to the eligible charter school, the superintendent must approve and effectuate that transfer. Ed. Art. §9-104.1(g)(2).

The charter school law is silent, however, on whether an eligible charter school can refuse to accept a superintendent’s unilateral decision to transfer staff in or out of the eligible charter school. As I explained above, under another statute the superintendent has the unilateral power to transfer and assign staff based on the needs of the schools. Ed. Art. §6-201(b)(2). In light of that law, it is my view that the charter school statute could be interpreted to allow a superintendent to transfer a staff person in or out of an eligible charter school even if the charter school did not want to accept that staff person. In addition, all transfers are subject to the terms of the collective bargaining agreement. Any dispute about the terms of the collective bargaining agreement would need to be resolved by the Public School Labor Relations Board. Ed. Art. §6-401 *et seq.*

(4) Does the law advertently or inadvertently take away exemptions from local policies that charter schools now receive from local boards during the charter school application and negotiation process?

According to the information MSDE collected and set forth in an April 11, 2016 report to the State Board, “*Implementation of Flexibility Provisions...*,” the charter schools and the local school systems report that new charter school applicants usually negotiate exemptions in most of

the categories of exemptions contained in the law. (See attached Report). Thus, under the current practice, a charter school need not wait 5 years to become an “eligible charter school” to request exemptions from local policies. Therefore, the question is whether the law silently, but effectively, changes that current practice by precluding new charter schools from negotiating for and receiving exemptions from the local polices listed in the law.

When the law is silent on an issue, but questions arise about the implications of the express statutory language, the statutory construction principle of “by necessary implication” comes into play. Under the principal of “by necessary implication,” courts look to whether the implication in the “meaning of the law is one that is so strong in its probability that the contrary... cannot be reasonably supposed.” Singer & Singer, *Statutes and Statutory Construction* § 55.3 at 453 (7th Ed. 2012). As the Maryland Appellate Courts put it, we read a meaning into a statute only if it is “expressly stated or clearly implied.” See, e.g., *Blitz v Beth Isaac Adath Israel Congregation*, 115 Md. App. 460, 477 (1997) *rev'd on other grounds* 352 Md. 31 (1998); *Amalgamated Cas. Ins. Co. v. Helms*, 239 Md. 529, 535-36 (1965).

To determine whether the necessary, but silent, implication of this statute was to end the current practice and preclude local boards from granting any exemptions from local policy until a charter school was designated an “eligible charter school,” it is important to consider and effectuate the intent of the legislature when it crafted the law. See, e.g. *Stapleford v. Hyatt*, 330 Md. 388, 400 (1993) (Cardinal rule of statutory construction is to ascertain the intent of the legislature).

I have considered whether the intent of the legislature was to abrogate the practice of granting charter schools certain exemptions during the chartering process. That is certainly one reasonable interpretation of the statute. It is consistent with the principle of “*expressio unius*” which means that the legislature’s enumeration of one purpose, *i.e.*, to allow exemptions to eligible charter schools after the 5-year mark, ordinarily implies the exclusion of all others. *Office & Professional Employees Int’l. v. MTA*, 295 Md. 88, 96 (1982); *Vanderford v. Farmer’s Bank*, 105 Md. 164, 168 (1907).

Yet, it is also reasonable to interpret the silence in the statute as a recognition by the legislature that the current practice of negotiating exemptions to local policy during the chartering process was not to be abrogated by the “eligible charter school” provisions. The application of the principle of “*expression unius*” is not mandatory. That principle bows to the legislative intent. When there are two reasonable interpretations of a statute, it is appropriate to look further into the legislative history to discern the intent of the legislature.

A review of the amendments to the charter school bill that was introduced in 2015, SB 595, provides a strong indication that it was not the intent of the legislature to eliminate the current practice of negotiating exemptions to local policies during the chartering process. Specifically, when the legislature amended SB 595 to add the eligible charter school provision, it also amended the bill to add an express provision allowing *any* public charter school to seek a waiver “from a county board from policies that are policies of the county board.” Md. Ed. Art. §9-106(b)(1). There is no limitation in that part of the statute as to when a charter school could seek a waiver of local policies. There is no requirement that the charter school become an “eligible charter school” in order to ask for a waiver of local policies. In my view, the amendment allowing any charter school formally to request a waiver of local policy at any time

can indicate an intent to preserve the less formal practice of waiving policies by agreement during the chartering process.

If a charter school can negotiate waivers from local policies at any time in the charter process, one could question the purpose of the “eligible charter school” provision. There is almost no legislative history about the purpose. The Floor Report explaining the amendment states only that the “eligible charter school “designation” would give charter schools “expanded authority.” See *Senate Education, Health and Environmental Committee Floor Report*, SB 595. It does not explain what “expanded authority” was actually granted, but it may be reasonable to presume the expanded authority refers to the staffing decision autonomy granted in the provision, which is indeed an expansion of charter school authority over assignment of staff.

The legislative history does not make it absolutely clear whether the practice of negotiating exemptions from local policy during the initial chartering process would continue. In my view, however, because the intent of the legislature was to give eligible charter schools “expanded authority,” it would be inconsistent with that intent to interpret the express statutory language to have implicitly restricted the ability of a new charter school to negotiate exemptions from local policies during the chartering process.

Creating charter schools that are effective from the very beginning is a sound educational policy. As the Anne Arundel County Board of Education stated in its testimony on the bill, “negotiations around certain autonomies...[is] essential for charter schools to be effective.” Although it is not entirely free from doubt, if the legislature wanted to eliminate such negotiations early on in the chartering process, it is my view that they would have expressly done so in the statute. They did not.

(5) What does the law direct the State Board to do?

The law directs the State Board to do two things. First, develop measures by which student achievement in charter schools can be assessed in order for the charter school to be considered by the local board for eligible charter school status. *Id.* §9-104.1(a)(2)(ii). Second, the law directs the State Board to “develop other standards and criteria” that local boards must use to assess whether a charter school can be determined an “eligible charter school.” *Id.* §9-104.1(b).

I hope this memo is helpful in determining your course of action.

**Advice of Counsel
Not an Opinion of the Attorney General**

Appendix A: Current Practice for Flexibility Provisions

Local school systems with charter schools confirmed that the items listed in § 9-104.1 (e), (1) through (5) are operational autonomies that the state's charter schools are already provided. These aspects of school operations are included in the application and reviewed with the local school system before the application is approved.

For the personnel provisions, § 9-104.1 (g), local school systems and charter school operators report collaboration on principal and teacher staffing. However, the superintendent retains final authority on principal and teacher hiring. The new provisions would prevent a charter school from having a principal placed if it had no input into the hire; and could facilitate a teacher's transfer to charter school. In both cases, the local collective bargaining agreement would take precedence if teacher and principal assignment are negotiated as part of the contract.

The table below provides detail.

| Text of Education Article § 9-104.1 | Have now? | Summary of current practice from survey of local school system charter liaisons. |
|--|-----------|--|
| (e) If an eligible public charter school and a public chartering authority mutually agree to an alternative means by which the eligible public charter school will satisfy the intent of the policies of the public chartering authority, an eligible public charter school is exempt from: | | |
| (1) Textbook, instructional program, curriculum, | Yes | All counties with charter schools report that charter operators have control over this. In most cases, the charter contract includes a provision requiring school system approval of substantial changes to the program. |
| professional development, | Yes | Charter schools control professional development. There is some professional development related to compliance that all public schools including charters must participate in (e.g. special education.) |
| and scheduling requirements; | Yes? | The charter operator controls. If the charter seeks an extended day or other changes, that may require a side agreement with the union. Two liaisons stated that it is not clear what the law means. |
| (2) A requirement to establish a school community council; | Yes | The charter operator controls. Local school systems do not require a specific structure for parent and community engagement. |
| (3) Except for Title I schools, a requirement to establish a school improvement plan; | Yes/No | One county with charter schools requires an annual accountability update. The format is developed collaboratively and is part of the charter contract. Other counties do not require an annual plan. Title I schools that are charters submit the title I sections of the systems school improvement plan only. |
| (4) Except for schools with a school activity fund; a requirement to provide school activity fund disclosure statements; and | Yes | All charter schools submit an annual independent financial audit. If there is a school activity fund, disclosure statements are required. The law suggests that a school <u>without</u> a school activity fund must provide a disclosure statement. We are not aware of this being required of charter schools. |
| (5) Except for prekindergarten classes, class size or staffing ratios. | Yes | The charter operator controls. Class size targets/caps are part of charter application. |
| | | |

| | | |
|--|------------|--|
| <p>(f) A public chartering authority and an eligible public charter school may jointly develop and mutually agree to a communication process and supervision methodology that flows among the county board, the operator, and the administration of the eligible public charter school.</p> | <p>Yes</p> | <p>Charter Schools work with Local School Systems on this now. Lines of authority can be blurred because the principal is an employee of the district yet also reports to the nonprofit charter school board. The provision is vaguely stated and the stakeholder group found it impossible to offer guidance on implementation.</p> |
| <p>(g) (1) An eligible public charter school may not be assigned a principal without the written consent of the operator of the eligible public charter school.</p> | <p>No</p> | <p>The Superintendent has final approval for hiring and placement of principals. In practice, school systems do not force place a principal in a charter. In counties with charter schools, the charter operator may recruit and select the candidate and the school system hires him/her provided credential requirements are met. Often charters select from the district's pool of eligible candidates. In one county, the central office conducts principal interviews in collaboration with the charter operator.</p> |
| <p>(2) (i) Staff members shall be assigned or transferred to an eligible public charter school if the staff member expresses in writing that the staff member wants to work in that eligible public charter school and the eligible public charter school requests in writing that the staff member be assigned or transferred to the eligible public charter school, provided there is an existing vacancy. (ii) A transfer authorized under subparagraph (i) of this paragraph shall take place as designated by the agreement of the local bargaining unit in the local school system.</p> | <p>No</p> | <p>Practice varies. Counties with charter schools report that the charter operators recruit staff from within and from outside the district and that charter operators may depend on identifying qualified candidates from within the school system. Two counties reported that they may place restrictions on the charter hiring, e.g. in the event of a surplus. Rules for when a teacher can execute a voluntary transfer vary. (e.g. Baltimore City and Anne Arundel = 3 years). This is administrative, determined by the central office rather than by the union contract. In some cases this new provision would enable teachers to transfer to a charter school without being blocked by the administration. Power to assign teachers remains with the Superintendent/CEO and may be governed by contract.</p> |
| <p>(h) Nothing in this section may be construed to take precedence over an agreement of a local bargaining unit in a local school system.</p> | | <p>A principal may have transfer rights in the CBA (Collective Bargaining Agreement). In a RIF (reduction in force) situation, the CBA for teachers, principals and other staff, can give some rights, including a transfer right, that could "bump" an employee with fewer years of seniority. If there is such a provision in the CBA, the CBA trumps the statute.</p> |