

FREDERICK CLASSICAL
CHARTER SCHOOL, INC.,

Appellant

v.

FREDERICK COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 18-27

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. We remanded the case to the local board to determine the exact amount of money owed to Appellant for several previous years. The parties disagreed on how much money the local board owed to Appellant and requested that the State Board issue a declaratory ruling to resolve the dispute.

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”), this amount has been calculated 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. FCPS set the PPA at \$8,818.54, resulting in Appellant receiving approximately \$2.4 million for the 2014 fiscal year based on an enrollment of 280 students.

Appellant submitted its budget on August 14, 2013. In a letter accompanying the 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 consistent with Maryland law.

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. Finally, the Court ordered that if "the State Board determines that [Appellant] is entitled to additional funds in its per-pupil allocation for the 2014 Fiscal Year, or for other years during the term of the charter agreement, it shall issue an order calculating the exact amount of additional funds owed based upon [Appellant's] enrollment during the relevant years, and directing the Local Board to pay that amount." *Id.*

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. We encouraged the parties to work together to ensure that Appellant would receive the withheld funds in a timely manner.

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. The parties met on three occasions to discuss the matter and reach a mutual agreement, but they were unable to do so. On May 30 and June 1, 2018, the parties filed letters with the State Board explaining their respective positions and requesting guidance and direction on how to proceed.

On June 12, 2018, the State Board ordered that the parties submit simultaneous petitions for declaratory ruling. After being granted additional time to file their petitions, both parties filed separate petitions for declaratory ruling and responses to the petitions.

STANDARD OF REVIEW

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

Background on commensurate funding

The Charter School Program, which became law in 2003, requires that a local board “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.” Md. Code, Educ. §9-109. The law does not define the terms “commensurate” or “disbursed.”

On May 26, 2005, this Board issued three opinions explaining that the word “commensurate” meant “proportionate” and that “disbursed” meant “expended.” *City Neighbors Charter Sch. v. Baltimore City Bd. of Sch. Comm’rs*, MSBE Op. No. 05-17 (2005). This Board further stated that commensurate funding “includes funding for services for which students in the public charter schools are eligible such as free and reduced price meals, pre-kindergarten, special education, English-language learners, Perkins, Title I, and transportation.” *Id.*

In order to assist local school systems, this Board in the *City Neighbors* cases provided a formula designed to result in a proportionate amount. *Id.* The formula takes the annual school system operating budget (including all federal, State, and local funding) divided by the September 30 enrollment count for the previous year minus two percent for reasonable central office functions to arrive at the per pupil allocation. *Id.* In addition, the charter school may be responsible for reimbursing the school system for the cost of any services that the county provides. *Id.* The Court of Appeals upheld the State Board’s decisions in the *City Neighbors* cases, concluding that the State Board had discretion to interpret “commensurate” funding and that the board committed no legal error by using an average per pupil funding approach. *Baltimore City Bd. of Sch. Comm’rs v. City Neighbors Charter School*, 400 Md. 324, 356 (2007).

The Court of Appeals has recognized that the State Board may depart from its previous interpretation of commensurate funding as described in the *City Neighbors* cases. The Board may do so either through adjudicatory proceedings or through formal notice-and-comment rulemaking. *Frederick Classical*, 454 Md. at 411. To make such a change through the adjudicatory process, however, we must offer a rational explanation for the change and take into account the substantial reliance that various parties, including charter schools and local boards, have placed on our past decisions. *Id.* at 412. In this decision, we do not depart from our previous interpretation. Instead, we apply the *City Neighbors* formula as further interpreted by the Court of Appeals in this case.

Budgeted vs. actual expenditures

The first area of disagreement between the parties is whether the commensurate funding owed to Appellant for the 2014 fiscal year through the 2018 fiscal year should be calculated using the local board's budgeted figures or its actual expenditures. The local board argues that, because it was conducting a retrospective analysis, it was "far more reasonable and appropriate" to use actual expenditures rather than the budgeted amounts for prior years. Appellant, meanwhile, argues that the State Board's formula, as endorsed by the Court of Appeals, requires a local school system to use its total annual operating budget divided by the enrollment count for the previous year to arrive at the appropriate per pupil allocation and the correct level of commensurate funds.

Both sides rely on Md. Code, Educ. §9-109(a) to support their position. Section 9-109(a) states that a local board "shall disburse to a public charter school an amount . . . commensurate with the amount disbursed to other public schools." As stated previously, the State Board adopted a formula to determine commensurate funding that begins with a school system's annual operating budget, rather than actual expenditures. Indeed, to calculate the commensurate funding due a charter school for an upcoming school year, school systems do not and cannot use a formula based on actual expenditures prior to the start of a new fiscal year when budgeted figures are all that are available.

In determining how much money Appellant should have received, we conclude that the local board would have used the budgeted amounts set forth in its operating budget for fiscal years 2014 through 2018 if the local board was calculating commensurate funding correctly in each of the years at issue. This approach best encompasses what information would have been available to the parties at the start of each fiscal year and makes Appellant whole for the funds it did not receive.

Special education transportation

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.

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.

Other transportation exclusions

The local board, however, did not merely exclude special education transportation funds from its total transportation budget when it calculated the revised PPA for Appellant. The local board also deducted the amount it spends on transporting high school students to athletic events, its Career and Technology Center, and a host of other "secondary music, social studies, and science" activities. The board reasoned that, because Appellant only enrolls students in grades K-8, any transportation funds used by high school students should be subtracted from the total transportation budget.

The Court of Appeals concluded that special education funding should be separate from general education transportation because special education transportation funding has "detailed eligibility requirements under state and federal law." 454 Md. at 392. By contrast, any detailed eligibility requirements for the transportation of general education high school students for the purposes stated by the local board would be set by the local board's policies, not dictated by state and federal law. The local board, therefore, erred by excluding these categories of funding from

its total transportation budget.

Interest

Finally, Appellant requests that the local board pay interest on the money owed for previous years. In Maryland, an “award of prejudgment interest is within the discretion of the finder of fact.” *Crystal v. W & Callahan, Inc.*, 328 Md. 318, 343 (1992). One of the factors courts have considered in awarding prejudgment interest is whether a debtor refused “to tender the amount concededly owed on a contract.” *Id.* (citing *I.W. Berman Properties v. Porter Bros.*, 276 Md. 1, 18 (1975)). In short, whether the State Board should award prejudgment interest in a commensurate funding dispute depends on the facts and circumstances of each individual case.

From the beginning of this case, there has never been an agreed-upon amount of commensurate funding owed to Appellant. The local board has continued to pay Appellant what it believed was the correct amount of commensurate funds each fiscal year, relying on previous decisions from the State Board. Indeed, we initially endorsed the local board’s calculations, as did the Circuit Court and the Court of Special Appeals. It was not until last year that the Court of Appeals ruled otherwise and clarified how the local board should have applied the commensurate funding formula. Given the unsettled nature of the law in this area and the circumstances of this case, we decline to award prejudgment interest.

Summary

The Court of Appeals ordered that if the State Board found that the Appellant was entitled to additional funds, it “shall issue an order calculating the exact amount of additional funds owed based upon [Appellant’s] enrollment during the relevant years, and directing the [local board] to pay that amount.” *Frederick Classical*, 454 Md. at 422. Again, we conclude that Appellant is entitled to additional funds, but we must return this case to the local board to revise its calculations in light of our declarations of law. We do so because we are unable to calculate a revised PPA based on the partial information provided by the parties in the record.

In returning this case to the local board, we provide the following directions to the parties on how to calculate the correct amount of commensurate funds owed to Appellant:

1. The local board shall use budgeted amounts rather than actual expenditures for all fiscal years.
2. The local board shall include all budgeted transportation funds, minus the amount of money allocated for the transportation of special education students. If Appellant provided its special education students with transportation, it is entitled to its proportional share of special education transportation funds for that service. If, going forward, the charter school elects to provide transportation to its special education students, it is entitled to its proportional share of special education transportation budget.
3. The local board may not deduct from the transportation budgeted amount the cost of transporting general education high school students to athletics and other high school

programs.

4. No prejudgment interest should be added to the amount of money owed to Appellant for previous years.

We direct the local board to calculate a revised PPA for Appellant for the 2014 fiscal year and each subsequent year based on the guidance in this opinion. The revised PPA should be used to calculate the amount of additional funding owed to Appellant for each fiscal year. The local board's calculations must be transparent and reflect how it determined the revised PPA and the additional funding owed. Once the local board has made its calculations, it shall provide Appellant with a chance to review and respond to the figures. The local board shall submit to the State Board its final calculations, along with any objections from Appellant, and the local board's response thereto within 45 days of the date of this decision. We encourage both parties to work together collaboratively to avoid any further delay in resolving this matter.

CONCLUSION

We direct the local board to revise its calculations in accordance with this opinion and to report to this Board within 45 days of the date of this decision.

Signatures on File:

Justin M. Hartings
President

Stephanie R. Iszard
Vice-President

Chester E. Finn, Jr.

Vermelle D. Greene

Michele Jenkins Guyton

Jean C. Halle

Rose Maria Li

Joan Mele-McCarthy

Michael Phillips

David Steiner

Warner I. Sumpter

August 28, 2018