

MONARCH ACADEMY  
PUBLIC CHARTER  
SCHOOL,

Appellant,

v.

BALTIMORE CITY BOARD  
OF SCHOOL  
COMMISSIONERS

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 20-30

## OPINION

### INTRODUCTION

Monarch Academy Public Charter School (“Monarch”) appeals the decision of the Baltimore City Board of School Commissioners (“local board”) not to renew Monarch’s school charter. We referred the matter to the Office of Administrative Hearings (“OAH”) where an Administrative Law Judge (“ALJ”) issued a Proposed Decision recommending that the State Board uphold the non-renewal decision. Monarch filed Exceptions to the ALJ’S Proposed Decision and the local board responded. After holding oral argument on the Exceptions, we remanded to OAH for further proceedings. The ALJ issued a Proposed Decision on Remand, recommending that the State Board uphold the non-renewal decision, to which Monarch filed Exceptions and the local board responded.

### FACTUAL BACKGROUND

The procedural posture of this case is complex. On January 8, 2019, the Baltimore City Board of School Commissioners (local board) voted not to renew Monarch’s charter, and on February 7, 2019, the local board issued a written decision. Monarch appealed the non-renewal decision on February 12, 2019 to the State Board, and on March 20, 2019, we transmitted the appeal to the Maryland Office of Administrative Hearings (“OAH”) to conduct a hearing and issue proposed Findings of Fact, Conclusions of Law and Recommendations.

After an Administrative Law Judge (“ALJ”) conducted a two day hearing, she issued a Proposed Decision recommending that the State Board affirm the local board’s decision not to renew Monarch’s charter. Monarch filed Exceptions to the ALJ’s proposed decision and the local board responded. The State Board heard oral argument on the exceptions on September 24, 2019 but determined that it needed additional information before issuing a final decision. *See* MSBE Order No. OR 19-17 (2019).

On October 22, 2019, the Board remanded the case to OAH for the purpose of taking testimony and receiving documentary evidence on the following matters:

- (1) The role that Baltimore City Public Schools (BCPS) has defined for charter schools in the context of all other schools in the school system. For example, is it the role of a charter school to “improve” or “enhance” BCPS performance as Christopher Wohn testified. If so, please explain.
- (2) The notice *Monarch* had of the renewal criteria. Specifically, what was the renewal criteria that governed the *Monarch Academy* renewal? When was it established? When was it provided to *Monarch*? Also, please identify where in the renewal criteria it requires the charter school to be above the 50<sup>th</sup> percentile of all BCPS schools in terms of achievement as testified by Christopher Wohn. Explain the basis and rationale for establishing that criteria.
- (3) The schools in *Monarch*’s economic disadvantage group. Please identify the comparison schools, set forth the data that was considered for each school, and explain the analysis that was done to develop the achievement comparison.

*Id.*

The ALJ conducted a hearing on the remand on January 17, 2020 and issued a Proposed Decision on Remand on February 25, 2020. The full factual background is set forth in the ALJ’s Proposed Decision on Remand at pp. 4 – 17. We have set forth below some information from the record. Appellant filed exceptions to the ALJ’s Proposed Decision on Remand and the local board responded. The State Board heard oral argument on the exceptions on July 28, 2020.

The local board’s Public Charter School Policy – IHB, adopted June 2011, informs charter operators that renewal is based on the evaluation of multiple factors including student academic achievement as measured by performance on State assessments, such as PARCC. Policy IHB puts charter schools on notice of the high level of importance of the student academic achievement criteria by stating that it counts towards at least 50% of the renewal score. It also sets forth the other criteria that include school climate, financial management and governance (Board Ex. 11). Monarch served students from Kindergarten through 8<sup>th</sup> grade. Monarch received its charter in 2014, which was renewed in 2016 for three years. The charter was due for renewal during the 2018-2019 school year.

On July 1, 2016, Monarch received notice of the renewal criteria with its 2016 Renewal Charter School Agreement. The Agreement provided that the renewal criteria included a review of: student achievement based on State assessment scores on absolute student achievement, student achievement trend, and student achievement growth. Student achievement would be given 50% weight in Monarch’s renewal score. School climate, fiscal management and governance were the other criteria. (Finding of Fact 47).

On June 22, 2018, the local board gave Monarch notice of the renewal rubric including the percentages required for the rating of Highly Effective, Effective, Developing, and Not Effective for absolute student achievement, student achievement trend, student achievement growth. Absolute student achievement was based on the mean scale score for the PARCC statewide assessment for 2018. Student achievement trend was based on the mean scale score on the PARCC assessment from 2015-2018. Student achievement growth was based on the mean

scale score on the PARCC for 2015-2018. (Finding of Fact 48). The renewal rubric provided that a charter school would be rated Not Effective if the students scored below 50th percentile of all the schools in the district based on grade band and rate of economic disadvantage. A charter school would rate Not Effective in student achievement trend and student achievement growth if it scored below the 50th percentile of all BCPS schools based on grade band. (Finding of Fact 50).

On August 20, 2018, the local board gave Monarch notice of the final renewal data tables including PARCC results, the SER ratings, and data related to attendance, chronic absences, and suspensions. (Finding of Fact 52).

BCPS calculated Monarch's economic disadvantage rate to be 62.2%, compared to BCPS schools in the 60%-70% range. (Finding of Fact 58).

This chart reflects the schools in Monarch's economic disadvantage group and their economic disadvantage ratings.

School (Elementary)	Economic Disadvantage Rate
Hilton Elementary	66.1%
George Washington Elementary	68.8%
Wolfe Street Academy	66.0%
Commodore John Rodgers Elementary/Middle	62.4%
Charles Carroll Barrister Elementary	64.9%
Montebello Elementary/Middle	69.1%
Waverly Elementary/Middle	63.9%
Barclay Elementary/Middle	68.1%
Dr. Nathan A. Pitts-Ashburton Elementary/Middle	61.2%
Gwynns Falls Elementary	67.3%
Liberty Elementary	61.3%
Edgewood Elementary	66.7%
Windsor Hills Elementary/Middle	65.5%
Lyndhurst Elementary	68.2%
Rognel Heights Elementary	67.6%
Moravia Park Elementary	62.1%
Walter P. Carter Elementary/Middle	65.0%
Dr. Carter Godwin Woodson Elementary/Middle	69.8%
Furley Elementary	69.2%
Curtis Bay Elementary/Middle	66.9%
Hazelwood Elementary/Middle	61.9%
Gradenville Elementary	61.5%
Govans Elementary	62.2%
Morrell Park Elementary/Middle	62.5%
Arlington Elementary/Middle	63.5%
Highlandtown Elementary/Middle	62.0%
Beechfield Elementary/Middle	62.1%
Calvin M. Rodwell Elementary	63.9%
New Song Academy	63.6%
Southwest Baltimore Charter	61.6%

School (Middle)	Economic Disadvantage Rate
Stadium School	62.8%
Commodore John Rodgers Elementary/Middle	62.4%
Montebello Elementary/Middle	69.1%
Waverly Elementary/Middle	63.9%
Barclay Elementary/Middle	68.1%
Dr. Nathan A. Pitts-Ashburton Elementary/Middle	61.2%
Windsor Hills Elementary/Middle	65.5%
Lyndhurst Elementary	68.2%
Rognel Heights Elementary	67.6%
Walter P. Carter Elementary/Middle	65.0%
Dr. Carter Godwin Woodson Elementary/Middle	69.8%
Curtis Bay Elementary/Middle	66.9%
Hazelwood Elementary/Middle	61.9%
Morrell Park Elementary/Middle	62.5%
Arlington Elementary/Middle	63.5%
Highlandtown Elementary/Middle	62.0%
Beechfield Elementary/Middle	62.1%
New Song Academy	63.6%
ConneXions: A Community Based Art School	63.2%
Southwest Baltimore Charter	61.6%
KASA (Knowledge and Success Academy)	68.4%
Joseph C. Briscoe Academy	66.7%
Bluford Drew Johnson STEM Academy West	68.3%
Vanguard Collegiate Middle	66.9%
National Academy Foundation	61.9%
Academy for College and Career Exploration	66.1%

(Board Ex. 3 at 14). Monarch received the following percentage rankings on the PARCC average mean score for Absolute Student Achievement compared to the other schools within its economic disadvantage group:

Subject and Grade Band	Percentage Rank in Educational Disadvantage Group
Math-grades 3-5	19.4 (Not Effective)
English-grades 3-5	22.6 (Not Effective)
Math-grades 6-8	40.7 (Not Effective)
English-grades 6-8	63.0 (Developing)

(*Id.* at 3).

The Baltimore City Public Schools (“BCPS”) Office of New Initiatives (“ONI”) evaluated the charter school for renewal. The areas of review were: (1) Academic Success

(50%); (2) School Climate (25%); and (3) Financial Management and Governance Practices (25%). Monarch's results were as follows:<sup>1</sup>

Category 1: Is the School an Academic Success?		
Absolute Student Achievement	PARCC average mean score SY 18 Math (grades 3-5) English (grades 3-5) Math (grades 6-8) English (grades 6-8)	Not Effective Not Effective Not Effective Developing
Student Achievement Trend	PARCC average mean score SY 15-18 Math (grades 3-5) English (grades 3-5) Math (grades 6-8) English (grades 6-8)	Not Effective Not Effective Not Effective Not Effective
Student Achievement Growth	PARCC average mean score SY 15-18 Math (grades 3-5) English (grades 3-5) Math (grades 6-8) English (grades 6-8)	Not Effective Not Effective Developing Not Effective
Fidelity to Charter	Extent to which school has implemented its mission, delivered high quality programming, gathered data, addressed challenges evident in the data	Developing
Overall Rating		Not Effective

Category 2: Does the School have a Strong Climate?		
Highly Effective Instruction	SER score	Effective
Talented People	SER score	Developing
Vision and Engagement	SER score	Effective
Parent, Staff, Student Satisfaction	Staff survey Student survey Parent survey	Not Effective Developing Effective
Cohort Retention	Cohort retention rating	Developing
Attendance, Chronic Absence	School has implemented effective strategies to keep student attendance high and chronic absences low, or led to significant decrease in chronic absence	Not Effective
Suspensions	School has implemented effective strategies that keep suspension low or led to a significant decrease	Developing

<sup>1</sup> For Category 1, a “Highly Effective” rating is scoring in the 80<sup>th</sup> percentile or above; an “Effective” rating is in the 65<sup>th</sup> to 79<sup>th</sup> percentile; a “Developing” rating is in the 50<sup>th</sup> to 64<sup>th</sup> percentile; and a “not Effective” rating is below the 50<sup>th</sup> percentile. (T. 5/9/19 at 358-359; Board Ex. 1).

Programming for Students with Disabilities	School has shown trajectory of growth, is aware of its data and responsibilities, does not have gaps or had decreased gaps in data related to performance, consistently implemented processes, interventions, and strategies to support student outcomes	Not Effective
Climate Overall Rating		Developing

Category 3: Has the School Followed Sufficient Financial Management and Governance Practices?		
Audit Content, Internal Control	School's independent auditor reports offer unqualified opinions and no management points, statement of cash flow and ratio of assets to liabilities indicate the operator has strong performance on short term liquidity measures	Meets Expectations
Operator Capacity	School has operated effectively, consistently met state, federal district reporting requirements and obligation, no Notice of Concern or Reprimand	Effective
Strategic Leadership/Governance	SER score	Effective
Overall Rating		Effective

On January 8, 2019, the local board approved the BCPS Final Renewal Report, which set forth the summary of findings of the review process and the recommendation to not renew Monarch's charter. On February 7, 2019, the local board issued a written decision on the non-renewal.

#### STANDARD OF REVIEW

For decisions of the local board involving a local policy, the local board's decision is considered *prima facie* correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06A; *See also Northwood Appold Community Academy Pub. Charter Sch. v. Baltimore City Bd. of Sch. Comm'rs.*, MSBE Op. No. 14-04 (2014). A decision may be arbitrary or unreasonable if it is contrary to sound educational policy or a reasoning mind could not have reasonably reached the same conclusion as the local board. COMAR 13A.01.05.06B. A decision may be illegal if it is one or more of the following: (1) unconstitutional; (2) exceeds the statutory authority or jurisdiction of the local board; (3) misconstrues the law; (4) results from unlawful procedure; (5) is an abuse of discretionary powers; or (6) is affected by any other error of law. COMAR 13A.01.05.06C.

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.01.05.06E.

The State Board transferred this case to OAH for proposed findings of fact and conclusions of law by an ALJ. In such cases, the State Board may affirm, reverse, modify or remand the ALJ's proposed decision. The State Board's final decision, however, must identify and state reasons for any changes, modifications or amendments to the proposed decision. *See* Md. Code Ann., State Gov't §10-216. In reviewing the ALJ's proposed decision, the State Board must give deference to the ALJ's demeanor based credibility findings unless there are strong reasons present that support rejecting such assessments. *See Dept. of Health & Mental Hygiene v. Anderson*, 100 Md. App. 283, 302-303 (1994).

## LEGAL ANALYSIS

Monarch filed exceptions to the ALJ's Proposed Decision and the Proposed Decision on Remand. In its Exceptions on the Proposed Decision on Remand, Monarch renewed the prior exceptions and added additional ones. We address them below:

### EXCEPTIONS TO PROPOSED DECISION (Issued 6/7/19)

Monarch identifies 14 specific exceptions to the ALJ's "findings of fact," numerous unnumbered exceptions to the "discussion and summaries of testimony and evidence" and numerous unnumbered exceptions to the "legal analysis" section of the Proposed Decision. The basis given for many of these exceptions is that the ALJ should have cited and relied upon additional testimony and documentary evidence that was part of the record. This is essentially an argument that the ALJ should have given more weight to certain evidence. "Hearing officers are not required to give equal weight to all of the evidence." *Hoover v. Montgomery County Bd. of Educ.*, MSBE Op. No. 19-03, *citing Karp v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 15-39 (2015). As the fact finder, it is the ALJ's job to sort through conflicting evidence and reach factual conclusions based on the weight the ALJ assigns to that evidence. It is also not necessary for them to cite to every piece of evidence or testimony given in a decision. An ALJ's failure to agree with an Appellant's view of the evidence does not mean the decision is arbitrary, unreasonable, or illegal. *Id.*

#### Exceptions 1 and 5 (Findings of Fact 10 and 19) and Exceptions to the Use of PARCC to Measure Student Achievement

BCPS uses the PARCC<sup>2</sup> assessment to evaluate student achievement in the renewal review process to determine if the school is successful academically in the ratings for (1) Absolute Student Achievement, (2) Student Achievement Trend and (3) Student Achievement Growth. Out of the three classifications, BCPS gives the most weight to Student Achievement Growth in its evaluation. BCPS determines if the charter school is "Developing," "Meets Standards," is "Effective," or is "Highly Effective" in each area for math and English in grades 3 – 5 and 6 – 8.

BCPS found Monarch to be overall "Not Effective" in the Category of academic success based on the "Not Effective" ratings in 10 out of the 12 PARCC measures used in the process. This means that Monarch was in the bottom half of comparison schools on these 10 measures,

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<sup>2</sup> The PARCC is now called the Maryland Comprehensive Assessment Program ("MCAP"). (T. 5/9/19 at 447).

and it ranked on or near the bottom of the school system in several measures. (See Letter to Monarch Families, 1/9/19). On the Absolute Student Achievement classification, when compared to schools with similar levels of economically disadvantaged students, Monarch scored in the 41<sup>st</sup> percentile or lower in three of the four measures.

Monarch's Exceptions dispute the use of the PARCC test as the measure of student achievement in the renewal process. Specifically, Monarch maintains that the ALJ should have included information from Monarch's expert witness on academic assessments, Dr. Schuh, who opined that BCPS's assessment of Student Achievement Growth and Absolute Student Achievement were unreliable and could not be used to estimate accurately whether students really improved. (T. 5/9/19 at 304-305; Monarch Ex. 20, Report of Schuh).

The ALJ heard the testimony and reviewed the evidence. She determined, however, that Dr. Schuh's witness testimony in this area was inadequate. Thus, she gave more weight to the testimony of the local board's witnesses. She stated that Dr. Schuh misstated facts, lacked necessary information to form an opinion and that he gave "insufficient" testimony to prove that ONI was unreasonable. (Proposed Decision at 26-28). The ALJ relied heavily on the testimony of Christopher Wohn,<sup>3</sup> Director of Research Services, and Ms. Alvarez. Contrary to Monarch's claim, the fact that Mr. Wohn was not qualified as an expert witness does not negate the ALJ's reliance on his testimony. The PARCC assessment was used because that is what has been used in Maryland as an accountability assessment and it is used in the other BCPS schools, making it easy to use for comparison purposes. (T. 5/9/19 at 366).

The ALJ provides a variety of reasons for not giving as much weight to Dr. Schuh's testimony, including his opinion on the economic disadvantage group ranking method, as is her prerogative. Monarch has simply not established that the local board's reliance on the PARCC scores in the evaluation process renders the local board's decision to non-renew arbitrary or unreasonable.

*Exceptions 2, 3, 4, and 6 (Findings of Fact 15, 16, 17 and 22) and Exceptions to School Effectiveness Review (SER) Team Analysis*

The SER Team conducts the school effectiveness review, which is the evaluation of the school climate category of the renewal process. Monarch's exceptions take issue with the findings related to the School Effectiveness Review. Monarch argues that when viewing various actions by the SER Team as a whole, the actions of the SER Team undermined the validity of the survey methodology and did not permit a fair evaluation of the school.

The ALJ reviewed all of the testimony and evidence presented to her during the hearing and made findings based on what she found material, reliable and instructive to the case. The facts raised by Monarch either were disputed at the hearing or are not material to the appeal. Again, this is a situation in which Monarch disagrees with the weight the ALJ attached to the evidence in the case.

*Exceptions 7, 8, 9, 10, 11 and 12 (Findings of Fact 28 — 39) and Exception to Special Education Analysis*

The SER Team found that Monarch was "Not Effective" in Programming for Students with Disabilities. This measure evaluates whether the school is exhibiting a trajectory for growth

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<sup>3</sup> Mr. Wohn's last name is incorrectly spelled in the transcript and Proposed Decision as Juan.

for students with disabilities, is aware of its data for this subgroup, and has effectively and consistently implemented processes, interventions, and strategies to support student outcomes in this area. The measure is rated by looking at the totality of special education programming at the school, including achievement and climate data for students with disabilities, the school's practices, including information in the renewal application, and compliance with State, federal, and district requirements.

Monarch takes exception to the factual findings that relate to Monarch's special education programming rating and the ALJ's analysis in this area. Essentially, Monarch maintains that the analysis of special education overlooks the fact that it reached out to BCPS for help and received insufficient technical support to help Monarch resolve its issues.

Again, the ALJ weighed the evidence and did not find the evidence presented by Monarch to overcome the "Not Effective" rating with regard to special education programming. While BCPS provides technical support to the charter schools, it is ultimately the charter operator's responsibility to make sure they are compliant with special education requirements. The ALJ determined that any technical assistance shortcomings on BCPS's part that were raised by Monarch were not sufficient to affect the final determination. In the end, Monarch was responsible for ensuring compliance with special education requirements and was not effective at doing so.

Monarch also takes issue with the timing of the special education audit performed by the BCPS Office of Special Education Monitoring and Compliance ("OSEMC"). OSEMC issued the compliance review audit report on September 19, 2018. The audit was part of the renewal consideration even though it was conducted after Monarch had submitted its renewal application. The report noted as follows:

- IEP Team Process (applicable to 10/10 students) – 50% compliant
- Referral and Assessment (applicable to 1/10 students) – 0% compliant
- Initial Evaluation (applicable to 1/10 students) – 0% compliant
- Reevaluation (applicable to 5/10 students) – 20% compliant
- Development of IEP (applicable to 10/10 students) – 80% compliant
- LRE Determination (applicable to 5/10 students) – 100% compliant
- Extended School Year (applicable to 5/10 students) – 100% compliant
- Secondary Transition (applicable to 2/10 students) – 0% compliant

The ALJ found that Monarch failed to prove that the timing of the special education audit was unfair or adversely affected the final renewal report in a manner to render it arbitrary or unreasonable. This is supported by the record.

#### *Exception 13 (Findings of Fact 42)*

Monarch takes exception to the fact that, on November 20, 2018, it was given four minutes to address the local board regarding ONI's recommendation not to renew Monarch's charter. Monarch maintains that there was no time for a meaningful response and this denied Monarch a full, fair, open and realistic vehicle to present argument. Ms. Alvarez testified that due to the number of schools seeking to address the board, each of the schools was allotted four minutes. Monarch was also allowed to submit a written response to ONI's recommendation not to renew its charter, which it did on December 7, 2018.

### Exceptions Regarding Absenteeism and Suspension Rate

The absenteeism and suspension rates are areas of the non-renewal evaluation that concern the school climate. Monarch received a “Not Effective” rating in the Attendance and Chronic Absence area and a “Developing” rating in the Suspension area. Monarch maintains that there could have been error in the calculation of the absenteeism rate based on withdrawals in the first month of school and possible duplicates because of double counts for homeroom and classroom rather than just homeroom. The ALJ found that Monarch provided no concrete examples of any errors. Monarch has not demonstrated that any change to the absenteeism rating would affect the non-renewal decision given that it is just one measure of the school climate evaluation. With regard to the suspension data, the majority of suspensions related to three emotionally disabled students. We agree with the ALJ that this information does not make reliance on the suspension data impermissible.

### Remaining Exceptions Regarding Testimony and Evidence

There are several other exceptions in which Monarch believes that the ALJ should have cited to additional testimony or evidence to add to the factual findings and summaries of the testimony. Again, this simply comes down to the fact that the ALJ does not have to cite to every single page of testimony or piece of evidence and that the ALJ makes determinations regarding the weight of the evidence. Monarch’s disagreement with the ALJ’s choices does not render the decision arbitrary or unreasonable.

### Do the School Closing Procedures Apply to the Non-renewal of a Public Charter School?

Monarch takes exception to the ALJ’s determination that the local board was not required to apply the school closing factors set forth in COMAR 13A.02.09.01. We exercise our independent judgment on this question to interpret the public school laws and State Board regulations. COMAR 13A.01.05.06E.

COMAR 13A.02.09.01 requires each local board to establish procedures to be used in making school closing decisions which, at a minimum, give consideration to the impact of the proposed closing on the following factors: (1) Student enrollment trends; (2) Age or condition of school buildings; (3) Transportation; (4) Educational programs; (5) Racial composition of student body; (6) Financial considerations; (7) Student relocation; and (8) Impact on community in geographic attendance area for school proposed to be closed and school, or schools, to which students will be relocating. The provision also sets forth procedural steps that the local board must take when closing a school.<sup>4</sup> These include notice to parents/guardians of students attending the school proposed for closure; a public hearing to permit concerned citizens an opportunity to submit their views on the proposed closure. COMAR 13A.02.09.01(C).

The ALJ concluded that the school closing factors in COMAR 13A.02.09.01 do not apply to the charter school’s non-renewal. We agree with the ALJ’s conclusion, but for different reasons. The ALJ made her determination based on the notion that §9-104.1 of the Education Article governs the manner in which a local board assesses a charter school for non-renewal. The ALJ’s reliance on §9-104.1 is mistaken. Section §9-104.1 sets forth standards a local board implements to assess whether a charter school can be designated an “eligible charter school” which then makes the charter school eligible to negotiate exceptions from certain policies of the local school system. The criteria set forth in §9-104.1 are not intended to replace the existing

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<sup>4</sup> Monarch has not raised an issue regarding the procedural aspects of the COMAR provision in this appeal.

charter school renewal rubric of the local board. (MSDE Guidance Document- *Maryland Charter Schools – Eligibility for Exemptions from Local Policy §9-104.1*, 12/6/16). Section 9-104.1 does not control in this situation

The school closing regulations set forth in COMAR 13A.02.09 are not applicable to the charter school renewal/non-renewal process because the manner and criteria by which a local board assesses if a charter school should be renewed has been left to the discretion of the local board under State law. Pursuant to §9-110 of the Education Article, each local board is required to develop a public charter school policy that includes guidelines and procedures regarding: (1) Evaluation of public charter schools; (2) Revocation of a charter; (3) Reporting requirements; and (4) Financial, programmatic, or compliance audits of public charter schools. Thus, the General Assembly has left it to the discretion of the local boards to determine the manner in which they are going to evaluate their charter schools, which is the primary aspect of determining whether to renew a charter.

In light of this, local boards of education, including the Baltimore City Board of School Commissioners, have developed detailed charter school policies that address the evaluation of a charter school in terms of the criteria considered in the charter renewal decision. The local board's Public Charter School Policy -- Policy IHB provides as follows with regard to renewal:

The initial term for a public charter school shall be five years. At the end of each contract term, the public charter school shall undergo the process of renewal. Through renewal, the school will be evaluated on multiple measures including but not limited to:

- (a) Student Achievement (performance on state assessments, growth measures/value added measures, unique indicators, and fidelity to charter). Student achievement measures will be at least 50% of the renewal score;
- (b) School Climate (attendance, suspensions, enrollment, graduation and dropout rate, student choice data, parent/teacher/student climate surveys);
- (c) Financial Management and Governance (annual audits, budget submission, grants management, and board documentation); and
- (d) Compliance/adherence with applicable federal, state, and local laws, rules, policies, and regulations.

When a local board decides not to renew a charter for a public charter school, the result of that action is a *de facto* closure of the school. There is no need to require a local board to also apply the school closing factors that are set forth in the school closing regulations. It is superfluous and strips from the local boards the discretion to set their own evaluation standards. Furthermore, the school closing factors are not particularly relevant in the charter school arena where the greatest concern is student performance and compliance with education requirements.

#### EXCEPTIONS OF PROPOSED DECISION ON REMAND (Issued 2/25/20)

##### Exception to Statement of Case and Issues

Monarch takes exception to the issues presented in the Issues section of the Proposed Decision on Remand. Monarch maintains they set forth the overarching issues on appeal and do

not include the specific issues on remand as noted in the Remand Order. (Exceptions at 3). Our remand was for very specific factual findings to be made as recognized and set forth by the ALJ in the Statement of the Case. (Proposed Decision on Remand at 2). We find that the ALJ made the related factual findings we requested. *Id.* at 12-17. Thus, we find no harm in the issues as set forth by the ALJ in the Issues section.

*Economic Disadvantage Group - Exceptions 6, 7 and 8 (Findings of Fact 54, 55, 56, and 58) and Exceptions to Discussion*

Monarch takes exception to the ALJ's Findings of Fact regarding the manner in which BCPS developed the economic disadvantage groups. Monarch argues that BCPS calculated Monarch's 62.2% economic disadvantage group too narrowly because it based the calculation only on poverty factors with no account for the trauma that students endure. Monarch also argues that the economic disadvantage rate was not a fair and appropriate measure because it does not include student neighborhood data. Monarch argues that the ALJ's discussion does not state how and when Monarch was provided with information about its economic disadvantage rating or group, the ability of Monarch to challenge the rating or group, or an analysis substantiating the equity in developing the groups. We will address each of its exceptions in turn.

*Monarch's economic disadvantage group and the data considered and analysis to develop the achievement comparison.*

BCPS generally develops economic disadvantage rates calculated by the school's direct certification rate plus students enrolled in Medicaid and students with low English proficiency as measured by the WIDA test. (Bd. Ex. 3).<sup>5</sup> Direct certification is the process conducted by local school systems to certify eligibility for free meals or free milk based on a student being a member a household receiving certain types of federal assistance under various governmental programs and students who scored below a 2.5 proficiency level on the WIDA assessment, which is an English-language proficiency assessment. (Proposed Decision on Remand at 15). *Id.* The reason for including Medicaid and low English proficiency students is to capture students from low-income households who might not be identified by direct certification alone. Because MSDE had not released Medicaid information for the 2017-2018 school year by August 20, 2018, the BCPS economic disadvantage rates represented the direct certification rate plus students with low English proficiency.

BCPS develops economic disadvantage groups to compare student academic performance only in the Absolute Student Achievement renewal category in order to compare charter schools to schools that match them in the number of economically disadvantaged students served in the school population. (Board Ex. 10 at 6-7). BCPS does this to put a control in place due to research linking socio-economic status and absolute performance on PARCC. (T. 1/17/20 at 31, 89-90). When compared to its economic disadvantage group, Monarch scored in the 41<sup>st</sup> percentile or lower in three of the measures. (Bd. Ex. 3 at 3).

The ALJ's findings explain BCPS's use of direct certification rates to develop Monarch's economic disadvantage groups. These findings are reasonable based on the record and simply state the way in which BCPS developed the ratings. Monarch clearly would have preferred a different methodology for development of the economic disadvantage group. The evidence in the record shows that the BCPS methodology used to develop the group came over a number of

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<sup>5</sup> WIDA means World-Class Instructional Design and Assessment.

years in consultation with Education Resource Strategies. (T. 1/17/20 at 100). BCPS provided rational reasons for the calculation of the economic disadvantage group, including its basis for considering WIDA assessment results and for excluding the Medicaid data. Monarch's disagreement with the calculation does not render it arbitrary, unreasonable or illegal.

Monarch argues that the ALJ's discussion does not state how and when Monarch was provided with information about its economic disadvantage rating or group, the ability of Monarch to challenge the rating or group, or an analysis substantiating the equity in developing the groups. BCPS provided Monarch final tables showing the schools in its economic disadvantage group on August 20, 2018. (Bd. Ex. 3). Our remand to OAH was for very specific reasons. The ALJ answered our charge with regard to our economic disadvantage group inquiry; to identify the comparison schools, to set forth the data that was considered for each school, and explain the analysis to develop the achievement comparison. The record in this case sets forth the methodology used to create those groups and addresses matters surrounding that topic. Monarch has challenged the economic disadvantage rating or group and the methodology used to establish them through this appeal. There is simply no basis for this exception.

*Role of Charter Schools and 50% Threshold – Exceptions 1 and 5 (Findings of Fact 46 and 53) and Exceptions to Discussion*

Monarch takes exception to the ALJ's Finding of Fact #46 and #53. Finding #46 states:

The role the Board has defined for charter schools to improve or enhance BCPS's performance is based on Maryland law and the Board policy. (Md. Code Ann., Educ. §§ 9-101(b) and 9-104.1 (2018); Policy IHB.) The statute and policy provide that the general purpose of the charter school program is to establish an alternative means within the existing public school system to provide innovative learning opportunities and creative educational approaches to improve the education of students. Also, student achievement must exceed the average in the local school system in which the public charter school is located on statewide assessments and on other measures developed by MSDE.

Finding #53 states:

The renewal criteria requiring a charter school to be above the 50th percentile of all BCPS schools in terms of achievement, (or schools in the charters school's economic disadvantage group for absolute performance), derives from Maryland law and Board policy.(Md. Code Ann., Educ. §§ 9-101(b) and 9-104.1; Policy IHB.) The basis and rationale for the criteria are founded on the statute which states student achievement must exceed the average in the local school system in which the public charter school is located on statewide assessments and on other measures developed by MSDE

Monarch also argues that the ALJ failed to offer a complete response to this Board's remand question regarding the role of charter schools and maintains that the explanation of the 50% threshold requirement was too simplistic. We disagree.

*The role that BCPS has defined for charter schools in the context of all other schools in the school system.*

Section 9-101(b) of the Education Article states that the general purpose of the Maryland Charter School Program “is to establish an alternative means within the existing public school system in order to provide innovative learning opportunities and create additional approaches to improve the education of students.” The local board’s Policy IHB – *Public Charter Schools* echoes this stating that the purpose is “[t]o provide parents and students an alternative means within the existing public school system for additional innovative learning opportunities and creative educational approaches to improve the education of students.” (Policy IHB at I).

BCPS maintains that the role of the charter school is to “improve” or enhance” BCPS performance based on the purpose of the charter school program to “create additional approaches to improve the education of students.” (T. 1/17/20 at 8-9, 12). From this purpose, BCPS developed its criteria for evaluating charter school renewal, as set forth in the section of the rubric that requires charter schools to score in the 50<sup>th</sup> percentile or above to achieve a rating other than “Not Effective” in the areas of Absolute Student Achievement, Student Achievement Trend, and Student Achievement Growth.<sup>6</sup>

Monarch argues that the terms “improve” and “enhance” are not defined by law or by the local board policy with regard to student achievement and provide no discernible criteria on the progress required to reasonably determine what constitutes improvement or enhancement. The lack of definition in the law and policy does not render BCPS’s position arbitrary or unreasonable as these terms have understandable ordinary meanings. In determining what the ordinary and commonly accepted meaning of a phrase or word is we often consult an appropriate dictionary for guidance, without losing sight of the context provided by the statute and the Legislature. *Baltimore Police Dep’t v. Brooks*, 2020 WL 4362254, at \*6 (Md. Ct. Spec. App. July 30, 2020). The ordinary meaning of the term “improve,” is “to enhance in value or quality: make better.” <https://www.merriam-webster.com/dictionary/improve>. The ordinary meaning of the term “enhance,” is “heighten, increase.” <https://www.merriam-webster.com/dictionary/enhance>.

BCPS, like other local boards of education, have developed detailed charter school policies that address the evaluation of a charter school in terms of the criteria considered in the charter renewal decision. The local board’s Policy IHB requires the evaluation of multiple measures including student Achievement (performance on state assessments, growth measures/value added measures, unique indicators, and fidelity to charter). In developing its charter renewal policy, BCPS looked to the language of the purpose statement in §9-101 (to “create additional approaches to improve the education of students”) and determined that the role of the charter school is to “improve” or “enhance” BCPS performance. (T. 1/17/20 at 14). In pursuit of the goal “to improve the education of students,” BCPS has established its academic achievement ratings that require charter schools to score in the 50<sup>th</sup> percentile or above to achieve a rating higher than “Not Effective.” (T. 1/17/20 at 25, 54).

Monarch argues that BCPS’s approach is not acceptable because it results in an unintended consequence in that innovative and creative schools such as Monarch would only succeed if they recruit students who can score well on a standardized test and it discourages mission-driven operators like the Children’s Guild from investing in charter schools that serve students in the most challenged neighborhoods. (Exceptions at 7-8). As explained by the local

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<sup>6</sup> As also set out in footnote 1, for Category 1, a “Highly Effective” rating is scoring in the 80<sup>th</sup> percentile or above; an “Effective” rating is in the 65<sup>th</sup> to 79<sup>th</sup> percentile; a “Developing” rating is in the 50<sup>th</sup> to 64<sup>th</sup> percentile; and a “not Effective” rating is below the 50<sup>th</sup> percentile. (T. 5/9/19 at 358-359, Board Ex. 1).

board, BCPS addresses the difficulty of rating students who are unable to excel on a standardized test in the evaluation process by comparing similarly situated students at different schools against each other through the economic disadvantage groups. In addition, the record reflects that BCPS does not calculate academic ratings in a way that only ranks current academic scores. BCPS also calculates the ratings to track improvement over time of individual students. A school with students from an underperforming population is still capable of being ranked “highly effective” if its students show individual growth throughout their years at school. According to Ms. Alvarez, BCPS has charter schools with high poverty populations that are meeting the standards. (T. 1/17/20 at 66-67). We find the local board’s position and the measures taken to achieve its goal to be reasonable and consistent with educational policy.

We find that the ALJ’s response was complete. Moreover, the record contains a full explanation of BCPS’s view of the role of charter schools, the basis for the ratings, how the rubric is used, what each measure signifies, and how it obtains the ratings. (T. 1/17/20 at 22-27). We agree with the ALJ that the section of the rubric that requires charter schools to score in the 50<sup>th</sup> percentile or above to achieve a rating other than Not Effective was not illegal, arbitrary or unreasonable.

We point out one error by the ALJ in her discussion of the 50% threshold on p. 33 of the Proposed Decision on Remand. In this discussion the ALJ improperly relies on §9-104.1 of the Education Article in stating that it “requires the Board to employ statewide assessments to determine if a school is eligible for charter.” As we noted earlier, §9-104.1 sets forth standards a local board implements to assess whether a charter school can be designated an “eligible charter school” which then makes the charter school eligible to negotiate exceptions from certain policies of the local school system. The criteria set forth in §9-104.1 are not intended to replace the existing renewal rubric of the local board. (MSDE Guidance Document- *Maryland Charter Schools – Eligibility for Exemptions from Local Policy* §9-104.1, 12/6/16). For the reasons stated herein, her reliance on this section does not change our conclusion that the local board’s decision is reasonable and not arbitrary.

*Notice of Renewal Criteria – Exceptions 2, 3 and 4 (Findings of Fact 46, 47 and 51) and Exceptions to Discussion*

Monarch takes exception to several of the ALJ’s Findings of Facts suggesting the addition of some language. We note the language Monarch wants added in italics as follows:

- “On July 1, 2016, Monarch received *initial* notice of the *anticipated* renewal criteria with its 2016 Renewal Charter School Agreement.”
- “On June 22, 2018, *following the end of the critical 2017-2018 renewal year*, Monarch received *updated and revised* notice of the renewal rubric, including percentages required for the rating of Highly Effective, Effective, Developing, and Not Effective. *At that time, Monarch did not receive the all important renewal data.*”
- “On July 27, 2018, Monarch received *preliminary* notice of the Renewal Data Tables.”

(Exceptions at 4).

We disagree with Monarch that the ALJ’s findings of facts need to be edited as it suggests. We find that the ALJ’s findings of fact are supported by the record and accurately reflects the timeline and what information BCPS disclosed to Monarch on each of the dates. We find no basis to add the language requested by Monarch.

*Notice to Monarch of the renewal criteria to be at or above the 50th percentile of all BCPS schools in terms of achievement.*

Monarch also takes exception to the ALJ's discussion regarding its notice of the renewal criteria. Monarch concedes that the dates outlined accurately reflect communication from BCPS to Monarch regarding renewal criteria. Monarch states that the dates do not completely reflect the actual notice received and maintains that the criteria was "ever-changing" and the associated data was sometimes unavailable or incomplete.

The State Board has looked closely at the fairness of the renewal evaluation process in this case, specifically related to notice of the renewal criteria and rubric as it relates to academic achievement. Much like the process for evaluating the initial charter school application, this Board expects a fair and open evaluation process for charter renewal. We expect local boards to develop clear guidelines for the renewal process, to explain the renewal process to all charter schools that will be subject to renewal, and to make the process as consistent and transparent as possible. This includes sharing the renewal criteria and rubric with charter schools rather than shrouding them in mystery.

As we stated in *Somerset Advocates for Educ. v. Somerset County Bd. of Educ.*, MSBE Op. No. 07-39 (Oct. 30, 2007), in the context of an initial charter application approval, we assess the evaluation process as a whole. Although the process for initial charter school approval is somewhat different from the charter renewal process, the analysis in *Somerset* provides us with useful guidance here. We look at the renewal evaluation process as a whole to determine if the process itself was so unfair that it resulted in an arbitrary decision. Our decision in *Somerset* concluding that withholding a scoring rubric in the evaluation of a charter school application was not arbitrary and unreasonable as long as the process as a whole is otherwise well-explained and fair to the applicant is similarly applicable in the renewal of a charter to operate the school.

In *Somerset County v. Somerset Advocates for Educ.*, 189 Md. App. 385, 401 (2009), the court explained that arbitrary is something done "'without adequate determining principle,' 'nonrational,' and 'willful and unreasoning action, without consideration and regard for facts and circumstances presented'; and the term 'arbitrary and capricious' as 'willful and unreasonable action without consideration or in disregard of facts or law or without determining principle.'" The court noted that our regulations define decisions of a county board as being "arbitrary" where "contrary to sound educational policy" and/or where a "reasoning mind could not have reasonably reached the conclusion the county board reached." *Id.*

The local board's Public Charter School Policy – IHB, adopted June 2011, informs charter operators that renewal is based on the evaluation of multiple factors including student academic achievement as measured by performance on State assessments, such as PARCC. (Board Ex. 11). Policy IHB puts charter schools on notice of the high level of importance of the student academic achievement criteria by stating that it counts towards at least 50% of the renewal score. *Id.* It also sets forth the other criteria that include school climate, financial management and governance. *Id.*

BCPS also includes the renewal criteria in its contracts with the charter school operators (T. 1/17/20 at 15). Monarch previously went through the renewal process during the 2015-2016 school year and BCPS provided the Renewal Framework to Monarch as part of its 2016 Renewal Charter School Agreement on July 1, 2016. (Board Ex. 12, Attach. 2). The Renewal Framework provided notice that student achievement, specifically performance on state assessments such as

PARCC to include achievement, trends and growth, was a factor for evaluating academic performance. (*Id.* at Attachment 2 at 1-2). It also advised that student achievement would be given 50% weight in the renewal score, with school climate, fiscal management and governance making up the remaining 50%. Thus, Monarch has been on notice for several years that BCPS evaluates academic performance on PARCC in the renewal process and that academic performance weighs very heavily in the evaluation.

The charter school contract and the Renewal Framework specifically state that BCPS reviews the framework annually with input from the charter school operators and that BCPS can make modifications. *Id.* BCPS publically discussed any subsequent changes to the renewal framework, and provided the data used to produce the ratings to operators at multiple times throughout the process as soon as the data became available. (T. 1/17/20 at 15-17).

On June 22, 2018, BCPS provided Monarch notice of the renewal rubric including the specific percentages required to achieve the ratings of Highly Effective, Effective, Developing, and Not Effective for absolute student achievement, student achievement trend, student achievement growth. (Board Ex. 1). This document sets forth the 50% threshold for the rating scale on academic achievement on PARCC in order to achieve a rating other than Not Effective on a particular grade band measure. On August 20, 2018, the local board gave Monarch notice of the final renewal data tables including PARCC results, the SER ratings, the schools in its economic disadvantage group and data related to attendance, chronic absences, and suspensions.

We have some concerns about the timing of notice of the rubric specifying the achievement rating scale. While we believe that the better practice is to inform charter schools of information such as this earlier in the renewal process, we cannot conclude that BCPS's action was so unfair or lacked transparency as to render the local board's decision arbitrary, unreasonable or illegal. As explained above, Monarch was on notice for years of the high level of consideration BCPS gave to academic achievement in the renewal process, specifically PARCC performance, and that it was the most heavily weighted criteria of the evaluation. Not knowing the exact percentages for PARCC performance for each specific rating until June 22, 2018 did not prejudice Monarch in this case. BCPS did not withhold the renewal criteria and Monarch was aware for several years that student achievement would count for 50% of its renewal evaluation score.

Monarch also maintains that the ALJ's Proposed Decision on Remand does not articulate the basis and rationale for requiring a charter school to be in the 50<sup>th</sup> percentile or above all BCPS schools in terms of achievement (or school in its economic disadvantage group), but simply notes that the requirement was contained within the renewal rubric. The basis for the 50% threshold for the ratings is related to BCPS's view of the role of charter schools to improve education of students, as we discussed above and as referenced in the ALJ's Proposed Decision on Remand. In her testimony, Ms. Alvarez explained that the notion of improving the education of students is embedded in the renewal process through the ratings and the weight placed on academic performance in the review. (T. 1/17/20 at 52-56). Because we have fully addressed the basis for the requirement in our discussion of the role of charter schools we need not address it further here.

## CONCLUSION

In our view, the record supports the conclusions reached by the ALJ. We do not find that the local board acted in an illegal, unreasonable, or arbitrary manner in deciding not to renew

Monarch's charter. We adopt the ALJ's Proposed Decision on Remand, except to the extent specified in this Opinion.

Signatures on File:

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Clarence C. Crawford  
President

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Jean C. Halle  
Vice-President

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Gail H. Bates

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Charles R. Dashiell, Jr.

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Susan J. Getty

---

Vermelle D. Greene

---

Rachel McCusker

---

Joan Mele-McCarthy

---

Lori Morrow

---

Warner I. Sumpter

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Holly C. Wilcox

Dissent:

Charter schools have come about due to the need for education alternatives to create competitive successful learning environments to aid our children in becoming academic winners. In my view, the result of eliminating the charter school is, in this case, that children may be placed in lesser performing similarly situated public schools. Such a result does not improve the opportunity for the children to become academic winners or provide a competitive educational

environment. I am concerned that a charter school that is academically similarly situated to a traditional public school is being held to a higher standard. If so, could this be construed as an admission that charter schools have a better chance of educating our children than the public schools? I pray not. I believe Monarch has demonstrated a cause for concern.

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Shawn D. Bartley

Absent:  
Rose Maria Li

August 25, 2020

<b>MONARCH ACADEMY</b>	* <b>BEFORE MARY SHOCK,</b>
<b>PUBLIC CHARTER SCHOOL,</b>	* <b>AN ADMINISTRATIVE LAW JUDGE</b>
<b>APPELLANT</b>	* <b>OF THE MARYLAND OFFICE</b>
<b>v.</b>	* <b>OF ADMINISTRATIVE HEARINGS</b>
<b>BALTIMORE CITY BOARD OF</b>	*
<b>SCHOOL COMMISSIONERS</b>	* <b>OAH No.: MSDE-BE-12A-19-09171</b>

\*     \*     \*     \*     \*     \*     \*     \*     \*     \*     \*     \*

### **PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
UNDISPUTED FACTS  
FINDINGS OF FACT  
DISCUSSION  
CONCLUSIONS OF LAW  
PROPOSED ORDER

### **STATEMENT OF THE CASE**

On January 8, 2019, the Baltimore City Board of School Commissioners (Board) voted not to renew Monarch Academy Public Charter School's (Monarch) contract to operate a charter school. On February 7, 2019, the Board issued a written decision not to renew Monarch's charter. On February 12, 2019, Monarch appealed the Board's decision to the Maryland State Department of Education (MSDE). Md. Code Ann., Educ. § 9-104.1(d) (2018). On March 20, 2019, MSDE transmitted the case to the Office of Administrative Hearings (OAH) to conduct a hearing and issue proposed Findings of Fact, Conclusions of Law, and Recommendations. Code of Maryland Regulations (COMAR) 13A.01.05.07A.

On May 8 and 9, 2019, I held the hearing at the OAH in Hunt Valley, Maryland. Patricia Hennessy, Esquire, and Kimberly Neal, Esquire, represented Monarch. Amanda Costley, Esquire, represented the Board.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, MSDE hearing regulations, and OAH Rules of Procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); COMAR 13A.01.05; COMAR 28.02.01.

### **ISSUES**

1. Is the Board's decision to not renew Monarch's charter arbitrary or unreasonable because it is contrary to sound educational policy or a reasoning mind could not have reasonably reached the decision? COMAR 13A.01.05.06A and B.
2. Is the Board's decision not to renew Monarch's charter illegal because it resulted from unlawful procedure? COMAR 13A.01.05.06A and C(4).

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

Monarch offered the following exhibits:

Monarch 1	School Leader Orientation, School Effectiveness Review, undated
Monarch 2	Monarch School Effectiveness Review Schedule, May 14 to 16, 2018
Monarch 3	Monarch Visitor Log, May 14 to 17, 2018
Monarch 4	Affidavit, Kelly Spanoghe, Chief Organizational Learning Officer, The Children's Guild, undated, with Correction Action Plan, undated
Monarch 5	Transcript of Board Meeting, December 11, 2018
Monarch 6	Affidavit, Jenny Caddell Livelli, Director of Continuous Quality Improvement, The Children's Guild, undated
Monarch 7	School Effectiveness Review Protocol, 2017-2018
Monarch 8	Letter from the Board to Monarch Academy Community, November 13, 2018
Monarch 9	Letter from Monarch to Board, December 7, 2018
Monarch 10	Emails between Monarch and Office of New Initiatives, July 17, 2018
Monarch 11	School Effectiveness Review, May 14 to 16, 2018
Monarch 12	Email from Monarch to Baltimore City Public Schools, July 27, 2018
Monarch 13	Transcript of Board Meeting, January 8, 2019
Monarch 14	Map, Baltimore City, undated
Monarch 15	Map, Baltimore City, undated
Monarch 16	Email from Monarch to Office of New Initiatives, May 11, 2017
Monarch 17	Email from Monarch to Office of New Initiatives, June 1, 2017
Monarch 18	Renewal Report, November 13, 2018
Monarch 19	Alexander Schuh, Ph.D., <i>Curriculum Vitae</i>
Monarch 20	Alexander Schuh, Ph.D., Report, February 6, 2019
Monarch 21	Affidavit, Angela Alvarez, March 11, 2019
Monarch 22	Operator Renewal, Presentation to Operators, April 2018
Monarch 23	Memorandum, November 5, 2018

The Board offered the following exhibits:

- BD 1 Renewal Rubric, 2018-2019 School Year
- BD 2 Email from Office of New Initiatives to Monarch, July 27, 2018, with Renewal Data Tables
- BD 3 Email from Office of New Initiatives to Monarch, August 20, 2018, with Renewal Data Tables
- BD 4 Renewal Recommendation, November 13, 2018
- BD 5 Office of Special Education Monitoring and Compliance, Memorandum, Summary of School Based Special Education Compliance Review, September 19, 2018
- BD 6 Office of Special Education Monitoring and Compliance, Record Review, undated
- BD 7 Timeline of Special Education Support to Monarch, October 4, 2017 to January 9, 2019
- BD 8 Office of New Initiatives, Memorandum, December 21, 2018
- BD 9 Office of New Initiatives, Memorandum, January 2, 2019
- BD 10 Renewal Report, January 8, 2019

Testimony

The following individuals testified for Monarch:

- 1. Andrew Ross, Ph.D., President and Chief Executive Officer, The Children's Guild;
- 2. Kimberley Flowers, Board Chair, Monarch;
- 3. Kiara Hargrove, Principal, Monarch;
- 4. Jenny Caddell Livelli, Director of Continuous Quality Improvement, The Children's Guild;
- 5. Nakia Nicholson, Chief Academic Officer, The Children's Guild;
- 6. A. Duane Arbogast, Ed.D., Chief Innovation Officer, The Children's Guild; and
- 7. Alexander Schuh, Ph.D., Director of School Frontiers, LLC, accepted as an expert in academic assessments.

The following individuals testified for the Board:

- 1. Angela Alvarez, Executive Director, Office of New Initiatives, Baltimore City Public Schools (BCPS); and
- 2. Christopher Juan, Director, Research Services, BCPS.

**UNDISPUTED FACTS**

The parties stipulated to the following facts:

- 1. The Board held public hearings and meetings on November 13, 2018, December 11, 2018, and January 8, 2019.
- 2. The Board provided proper notice to Monarch of the public hearing dates.
- 3. The Board has the authority to close schools under its jurisdiction.

4. The Board's decision not to renew Monarch's charter was made at a public meeting on January 8, 2019.

5. The Board issued a written decision of its determination to not renew Monarch's charter on February 7, 2019.

6. The totality of the circumstances is controlling in any Board decision to close a school; no one factor outweighs any other.

### **FINDINGS OF FACT**

I find the following facts by a preponderance of the evidence:

#### Monarch Academy

1. Monarch is a public charter school in Baltimore City. The Children's Guild is Monarch's educational manager.

2. The Board granted Monarch a charter in 2014, and renewed the charter for three years in January 2016.

3. Monarch's charter was due for renewal during the 2018-2019 school year.

4. Monarch serves kindergarten to eighth grade and has a 2018-2019 enrollment of 985 students. (BD 10, p. 4.)<sup>1</sup> Monarch serves 118 students with educational disabilities.

(Monarch 9, p. 7.)

5. Monarch students live throughout Baltimore City. Monarch provides transportation for its students from hubs throughout the city.

#### Renewal Process

6. On April 19 and 25, 2018, the BCPS Office of New Initiatives (ONI) conducted meetings with charter operators to discuss possible changes to the renewal process for the

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<sup>1</sup> References to exhibits in the Findings of Fact are not the sole basis for the finding, but are included for the convenience of the reader.

upcoming year. At the meetings, ONI reviewed the components of renewal and discussed how the components would be measured.

7. For the 2018-2019 school year, ONI evaluated charter schools in three areas including Academic Success (50%), School Climate (25%), and Financial Management and Governance Practices (25%). The ratings in each area were Not Effective, Developing, Effective, and Highly Effective, except for Financial Management. The subcategory of Audit Content and Internal Controls has a rating scale of Meets Expectations, Developing, and Does Not Meet Expectations. (BD 10., p. 4.)

8. The Partnership for Assessment of Readiness for College and Careers (PARCC) is a Maryland statewide assessment.

9. PARCC scores students on Absolute Student Achievement, Student Achievement Trends, and Student Achievement Growth.

10. Of Absolute Student Achievement, Student Achievement Trends, and Student Achievement Growth, ONI gives the most weight to Student Achievement Growth.

11. ONI considers PARCC scores in mathematics and English for one year to determine Absolute Student Achievement. For the Absolute Student Achievement, ONI also compares schools to other schools with similar levels of economic disadvantage because performance on standardized testing is strongly correlated with economic disadvantage.

12. ONI considers PARCC scores for multiple years for Student Achievement Trends and Student Achievement Growth.

13. ONI considers the results of a School Effectiveness Review (SER) to assess a charter school's Climate and Financial Management and Governance.

14. ONI provided Monarch with SER protocols and a schedule for SER team review, to be conducted on May 14 to 16, 2018, for two and one-half days.

15. The SER schedule provided that the team would arrive at 7:40 a.m. The team did not arrive until between 8:00 and 8:25 a.m. The SER team was scheduled to begin the review at 8:30 a.m. (Monarch 2.)

16. The SER team did not observe Monarch's "Culture Card" meeting which occurs with teachers and staff before the school day begins.

17. During the SER, members of the team met with one teacher by himself. Other teachers met with the team in teacher focus groups.

18. ONI rated Monarch as follows in Category 1. Is the School an Academic Success?

Absolute Student Achievement	PARCC average mean score Math (grades 3-5) English (grades 3-5) Math (grades 6-8) English (grades 6-8)	Not Effective Not Effective Not Effective Developing
Student Achievement Trend	PARCC average mean score Math (grades 3-5) English (grades 3-5) Math (grades 6-8) English (grades 6-8)	Not Effective Not Effective Not Effective Not Effective
Student Achievement Growth	PARCC average mean score Math (grades 3-5) English (grades 3-5) Math (grades 6-8) English (grades 6-8)	Not Effective Not Effective Developing Not Effective
Fidelity to Charter	Extent to which school has implemented its mission, delivered high quality programming, gathered data, addressed challenges evident in the data	Developing
Overall Rating		Not Effective

19. On the Absolute Student Achievement measure, when compared to schools with similar levels of economic disadvantage, Monarch scored in the 41<sup>st</sup> percentile or lower in three of the four measures.

20. ONI rated Monarch as follows in Category 2. Does the School have a Strong Climate?

Highly Effective Instruction	SER score	Effective
Talented People	SER score	Developing
Vision and Engagement	SER score	Effective
Parent, Staff, Student Satisfaction	Staff survey Student survey Parent survey	Not Effective Developing Effective
Cohort Retention	Cohort retention rating	Developing
Attendance, Chronic Absence	School has implemented effective strategies to keep student attendance high and chronic absences low, or led to significant decrease in chronic absence	Not Effective
Suspensions	School has implemented effective strategies that keep suspension low or led to a significant decrease	Developing
Programming for Students with Disabilities	School has shown trajectory of growth, is aware of its data and responsibilities, does not have gaps or had decreased gaps in data related to performance, consistently implemented processes, interventions, and strategies to support student outcomes	Not Effective
Overall Rating		Developing

21. ONI rated Monarch as follows in Category 3. Has the School Followed Sufficient Financial Management and Governance Practices:

Audit Content, Internal Control	School's independent auditor reports offer unqualified opinions and no management points, statement of cash flow and ratio of assets to liabilities indicate the operator has strong performance on short term liquidity measures	Meets Expectations
Operator Capacity	School has operated effectively, consistently met state, federal district reporting requirements and obligation, no Notice of Concern or Reprimand	Effective
Strategic Leadership/Governance	SER score	Effective
Overall Rating		Effective

22. On July 27, 2018, ONI provided Monarch with a draft report of the SER.

Monarch had ten business days to note any factual errors and provide feedback. (Monarch 10.)

23. On July 27, 2018, ONI released preliminary Renewal Data Tables setting out the data the office would use for the renewal process. The tables addressed: Economic Disadvantage; PARCC data; graduation rates; college and career readiness; attendance; chronic absence; suspensions; school survey; and cohort retention rate. (BD 2.)

24. On August 20, 2018, ONI released final Renewal Data Tables, updating the information provided in the July 27, 2018 release.

#### Special Education

25. The SER team found Monarch Not Effective in Programming for Students with Disabilities based, in part, on PARCC scores. Monarch scored below the median on the assessment when compared to peers in other schools. Student short-term suspension rates were above the district average. The chronic absence rate for students in elementary grades was 57.3% compared to the 40.5% district-wide rate. (BD 10, p. 5.)

26. Monarch hired Special Education Coordinator, Ms. M.,<sup>2</sup> for the 2017-2018 school year. She required assistance and, on Monarch's request, the Children's Guild provided a staff member, Kelly Spanoghe, Chief Organizational Learning Officer, to assist.

27. When Ms. M. failed to properly organize files, verify special education enrollment online, and update records for student transitioning in and out of Monarch, Ms. Spanoghe developed a corrective action plan for Ms. M.

28. At all times relevant, Ms. Hargrove, Monarch's Principal, had access to BCPS special education online tools. The Children's Guild employee did not have access to the online tools.

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<sup>2</sup> I have used initials for confidentiality.

29. On October 5, 2017, Ms. Spanoghe and Darren Guild, BCPS's Development and Implementation Specialist, met with Ms. M. to review her job performance.

30. In January 2018, Jenny Caddell Livelli, Director of Continuous Quality Improvement for the Children's Guild, began working at Monarch to assist Ms. M.

31. On January 23, 2018, Ms. Livelli contacted Mr. Guild regarding the functions of long-term substitute special education teachers. On January 23, 2018, Mr. Guild conducted on-site professional development.

32. On February 2, 2018, Ms. Livelli asked Mr. Guild to provide training and requested supports.

33. On February 6, 2018, Ms. Livelli, Ms. Hargrove, and Mr. Guild met with Ms. M. to discuss her responsibilities.

34. Between March 13, 2018 and May 2, 2018, Mr. Guild missed meetings at Monarch.

35. On March 20, 2018, Ms. Livelli learned that Monarch was a "school of concern" based on its Individualized Education Program (IEP) tracking system. IEPs were left open beyond the prescribed timeline for meetings to occur. As a result, Ms. Hargrove contacted Debra Brooks, BCPS Director of Special Education, for support.

36. On April 18, 2018, Ms. Livelli contacted Mr. Guild regarding how to handle PARCC testing for special education students.

37. From May 1, 2018 through June 18, 2018, Ms. Livelli and Ms. Hargrove continued to contact Mr. Guild for support.

38. Mr. Guild communicated with Monarch during this time period on May 7, 21, and 31, 2018, and June 4, 14, and 29, 2018. On May 21, 2018, he conducted on-site professional development. (BD 7.)

39. On September 19, 2018, the BCPS Office of Special Education Monitoring and Compliance (OSEMC) conducted a compliance review at Monarch. The OSEM verified that Monarch had 100% of all special education student files on site.

40. The OSEM then reviewed ten randomly selected students and found (BD 5):

- a. IEP Team Process - Monarch was not compliant for five students. Statewide assessment data had to be included in the IEP. All IEP meeting invitations had to state the meeting purpose, and efforts to have parents attend IEP meetings had to be documented.
- b. Referral and Assessment – Monarch was not compliant for one student. A child find referral had to be completed for an initial IEP meeting. Prior written notice had to be completed for all IEP meetings.
- c. Initial Evaluation – Monarch was not compliant for one student. Assessments had to be completed, available, and reviewed at the evaluation meeting. The team was required to obtain parental consent before the implementation of the IEP.
- d. Reevaluation – Monarch was not complaint for four students. Monarch was required to conduct reevaluation meetings within three years of the previous eligibility determination. Meetings had to be held within 90 days of when the reevaluation process began. A specific learning disability (SLD) report had to be completed for children with a SLD at the reevaluation meeting.
- e. Development of IEP – Monarch was not compliant for six students. Monarch was required to review and revise IEP goals annually. Progress on IEP goals had to be marked quarterly. Indirect service documents had to be completed

and filed in the student records. The IEP had to include present levels of performance information. IEPs could not be revised through amendment.

f. Least Restrictive Environment Determination – Monarch was fully compliant.

g. Extended School Year – Monarch was fully compliant.

h. Secondary Transition – Monarch was compliant for the two students to which transition applied.

#### ONI Recommendation, Board Meetings

41. On November 5, 2018, ONI staff met with Monarch staff to share the final report and ONI's recommendation.

42. On November 13, 2018, ONI recommended the Board not renew Monarch's charter.

43. On December 7, 2018, Monarch provided a response to ONI's recommendation that the Board not renew its charter.

44. On December 11, 2018, a Monarch teacher, a parent, and a community member spoke to the Board.

45. On January 8, 2019, the Board voted not to renew Monarch's charter.

#### DISCUSSION

##### Standard of Review on Appeal to MSDE

On appeal of a local board's decision to MSDE, the local board's decision shall be considered *prima facie* correct. The MSDE may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06A. A decision may be arbitrary or unreasonable if it is contrary to sound educational policy, or a reasoning mind could not have reasonably reached the conclusion the local board or local

superintendent reached. COMAR 13A.01.05.06B. A decision may be illegal if it results from an unlawful procedure. COMAR 13A.01.05.06C(4).

#### Positions of the Parties

Monarch raises two issues on appeal. First, Monarch maintains the Board acted arbitrarily and unreasonably when it relied on a flawed, misinformed, and unsubstantiated Renewal Report authored by ONI. Second, Monarch argues the Board failed to follow required procedures in the renewal process.

With regard to the Renewal Report, Monarch challenges ONI's reliance on PARCC scores to determine student achievement and maintains Monarch students are making progress according to i-Ready assessments. Monarch argues nonrenewal based on PARCC scores ignores the school's safe and supportive environment and the school's positive effect on the community.

Monarch also contends the Renewal Report is flawed for a number of reasons. The SER team arrived at Monarch late and so failed to observe Culture Card, an important meeting staff holds each morning. The SER team met with a teacher alone, rather than in a focus group; the teacher was a disgruntled employee. Angela Alvarez, Executive Director of ONI, received a copy of the draft of the Renewal Report and was prejudiced against Monarch as a result. The Renewal Report appears to inaccurately track the school's absentee and suspension rates. OSEMC conducted a special education audit in September 2018, well after the May 2018 SER team review. Ms. M., Monarch's Special Education Coordinator, failed to adequately perform her job. Mr. Guild failed to respond to requests for support. Monarch experienced difficulty gaining access to BCPS's on-line special education tools. Monarch struggled to hire special education teachers. Finally, Monarch was only allowed four minutes to present its position to the Board.

The second issue Monarch raises on appeal relates to the renewal process. Monarch maintains that because nonrenewal has the same effect as closure or revocation, the Board was

required to comply with the school closure provisions set out in the Maryland regulations and the revocation procedures set out in Board policy COMAR 13A.02.09.01; Board Policy IHB III.K.5.

Citing the *Accardi* doctrine, Monarch argues that having failed to address these factors, the Board's decision is unlawful and must be reversed. *Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

For its part, the Board maintains the renewal process, including the SER team review of Monarch, was open, clear, and fair. All charter schools are assessed by the same standards and all must follow the same assessment process. Additionally, because PARCC is a State-mandated test, the Board's reliance on that assessment was not contrary to sound educational policy or unreasonable. The Board further contends Monarch is responsible for complying with special education law and BCPS provided Monarch proper support. Finally, the Board argues that because charter schools are assessed in accordance with the statute, the regulations and policy governing school closure are inapplicable.

For the reasons explained below, I find Monarch failed to prove the Board acted arbitrarily, unreasonably, or illegally in declining to renew Monarch's charter.

#### Statute and Policy

There is a Maryland Public Charter School Program. Md. Code Ann., Educ. §§ 9-101 to 9-112 (2018 & Supp. 2018). A public charter school is required to comply with the provisions of law and regulations governing other public schools. Md. Code Ann., Educ. § 9-106(a) (2018). The statute defines "public charter school," in part, as a public school that "[o]perates 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 the law and regulation governing other public schools." *Id.* § 9-102(11) (2018).

The exception set out in section 9-104.1 governs charter school assessments. The statute states in part:

- (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.

Md. Code Ann., Educ. § 9-104.1 (2018).

Although a public charter school shall comply with the law and regulations governing other public schools, a school may request a waiver from those rules except as follows:

- (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.

Md. Code Ann., Educ. § 9-106(d).

Finally, the Board’s Public Charter School policy related to the assessment and renewal process provides at Board Policy IHB III.K.2:

The initial term for a public charter school shall be five years. At the end of each contract term, the public charter school shall undergo the process of renewal. Through renewal, the school will be evaluated on multiple measures including but not limited to:

- a. Student Achievement (performance on state assessments, growth measures/value added measures, unique indicators, and fidelity to charter). Student achievement measure will be at least 50% of the renewal score;
- b. School Climate (attendance, suspensions, enrollment, graduation and dropout rate, student choice data, parent/teacher/student climate surveys);
- c. Financial Management and Governance (annual audits, budget submission, grants management, and board documentation); and
- d. Compliance/adherence with applicable federal, state, and local laws, rules, policies, and regulations.

### Monarch's Case

Monarch presented the testimony of Andrew Ross, Ph.D., President and Chief Executive Officer of the Children's Guild. Dr. Ross described the transformative education Monarch provides students in Baltimore City, many of whom have experienced traumatic events in their lives. Dr. Ross stated that the Children's Guild purchased and renovated an unused Coca-Cola building in Baltimore City and transformed the site into a state-of-the-art facility. He testified the Children's Guild is also renovating vacant homes in the neighborhood and the organization fought a liquor license renewal in the area. Dr. Ross stated Monarch has a behavioral support staff, fresh food and vegetables for the students, and seven to eight clubs.

Kimberley Flowers, Board Chair for Monarch, testified she was involved in the renewal process and met members of the SER team.

Kiara Hargrove, Monarch's Principal, corroborated Dr. Ross's testimony on the state-of-the-art facility, behavioral supports, and the school's involvement in the community. Ms. Hargrove also described the SER process. She stated Monarch received the School Leader Orientation material and a SER schedule. (Monarch 1 and 2.) She noted that the SER team was scheduled to arrive at Monarch at 7:40 a.m., but did not appear until between 8:00 and 8:45 a.m. As a result, the team missed Culture Card, a morning meeting of administrative staff and teachers to discuss the day. Ms. Hargrove stated Culture Card is an important process the SER team failed to observe. Ms. Hargrove also testified she was concerned when, on the second day of the review, the SER team met with a teacher individually rather than in a focus group and then requested the teacher's improvement plan.

Addressing Monarch's special education compliance, Ms. Hargrove noted that the OSEMC conducted the audit in September 2018, well after the May 2018 SER. She also related the difficulty Monarch had with Ms. M., Monarch's Special Education Coordinator for the 2017-2018

school year. Ms. Hargrove testified she initiated a corrective action plan for Ms. M. and contacted BCPS for support. The Children's Guild provided a staff member to assist Ms. M. but her performance failed to improve. On cross-examination, Ms. Hargrove acknowledged that Monarch is responsible for complying with special education regulations.

Jenny Livelli, Director of Continuous Quality Improvement for the Children's Guild, corroborated Ms. Hargrove's testimony concerning Monarch's experience with Ms. M. Ms. Livelli stated she was the Children's Guild staff member assigned to assist Ms. M. Ms. Livelli testified she had difficulty gaining access to BCPS website, including the Maryland on-line IEP. She also related difficulty with Mr. Guild. He cancelled some sessions with Monarch.

Ms. Livelli further testified that after receiving the Renewal Report she reviewed attendance at Monarch. She stated the BCPS system sometimes counted absences two times. (Monarch 9, pp. 8-9.)

On cross-examination, Ms. Livelli acknowledged that Ms. Hargrove had access to BCPS special education tools including the Maryland on-line IEP. She also stated Mr. Guild came to Monarch at least five times to train teachers and he responded to some of her emails and telephone calls.

Monarch entered affidavits from Ms. Livelli and Kelly Spanoghe, the Chief Organization Learning Officer for the Children's Guild. (Monarch 4 and 6.) Ms. Livelli writes that on February 6, 2018, Mr. Guild met with Ms. M. and Monarch staff about Ms. M.'s performance. (Monarch 6, p. 3.) On May 1, 2018, Mr. Guild met with Principal Hargrove and Ms. Livelli about Ms. M. (Monarch 6, p. 5.) Ms. Spanoghe states that she and Mr. Guild met with Ms. M. on October 5, 2017, to discuss Ms. M.'s performance. (Monarch 4, p. 3.)

Nakia Nicholson, Chief Academic Officer for the Children's Guild, testified she provides direct support to Ms. Hargrove and the Head of School. She stated BCPS identifies special

education teachers and staff for hire. She stated it is a challenge to fill special education teacher vacancies. She attends every BCPS talent fair, but she cannot find available candidates.

With regard to the draft Renewal Report, Ms. Nicholson noted that Ms. Alvarez received a copy of the draft. (Monarch 10.) She contends Ms. Alvarez was prejudiced as a result. She also stated the teacher the SER team spoke to one-on-one was a disgruntled employee. She raised the special education audit and stated Monarch did not have the opportunity to respond to the audit in the Renewal Report. With regard to PARCC scores and testing, Ms. Nicholson stated Monarch uses i-Ready, which the school administers three times a year. The i-Ready assessment provides a clearer picture of where students are performing because the assessment is not based on grade-level content, like PARCC. Instead, i-Ready shows where the students begin the school year and where they end. As a result, one is better able to monitor progress. Ms. Nicholson testified that Monarch students showed academic progress on the i-Ready. Finally, Ms. Nicholson stated that the suspensions documented in the record relate to three students who were all emotionally disabled.

On cross-examination, Ms. Nicholson acknowledged that the Children's Guild can conduct its own recruitment for special education teachers but cannot hire a candidate; BCPS must process and hire the applicant. She also acknowledged that it is the charter school operator's obligation to provide special education services and that when Ms. Livelli left Monarch, the school was still not in compliance with special education rules. She stated Ms. M. was the reason for the noncompliance.

Allan Duane Arbogast, Ed.D., Chief Innovation Officer for the Children's Guild, described the wide-ranging distribution of students Monarch serves. He stated when students enter Monarch most are two grade levels below their age-grade. Monarch administers i-Ready three times a year to gauge the progress of the students. The Children's Guild asked ONI if it

would use i-Ready scores to assess Monarch students' academic progress, but ONI refused. Dr. Arbogast further testified that if the Board closes Monarch, the students would return to low-rated tier-one and tier-two schools.

Finally, Alexander Schuh, Ph.D., testified for Monarch. He was accepted as an expert in academic assessments and measurements. Dr. Schuh reviewed Monarch's demographic data, PARCC scores, i-Ready results, and attendance data. Dr. Schuh testified the i-Ready can be used to assess academic growth. He looked at the number of students moving up or down grade levels in a year according to i-Ready scores. He saw more students finishing the year at grade level than started the year at grade level.

Dr. Schuh noted that Maryland uses PARCC as its statewide assessment to evaluate whether students are meeting common core standards. Dr. Schuh explained that a consortium of states use PARCC. The test was developed to assess student achievement across states. The strength of PARCC is that the test is based on previous tests and considerable statistics and theory stand behind the assessment. For example, math items are used and tested over the years and the writers know if everyone has answered the questions correctly or incorrectly. Also, the PARCC writers have run reliability tests to remove biases and to come as close to standards as possible.

Dr. Schuh stated the weakness of PARCC is that in gauging student achievement, the test is only administered one time a year. In Dr. Schuh's opinion, PARCC alone does not provide sufficient information for ONI to assess student achievement during a school year. Additionally, Dr. Schuh noted that PARCC relies on more language questions in math to the detriment of students for whom English is a second language and those with learning disabilities, like dyslexia. PARCC is also less reliable for low-income, disadvantaged students because factors such as special education needs and resources in the student's home, prevent a rise in grade level. At Monarch, many students scored low on PARCC, but the standard error is much more variable at

the extremes. Also, there is a larger error measurement for special education students. As a result, Dr. Schuh does not recommend relying on PARCC scores for high-stakes decision-making.

In Dr. Schuh's opinion ONI should not have relied on PARCC scores alone to determine academic achievement. Instead, in order to measure student achievement, ONI should have employed a second test, like i-Ready, to gain more information and in a different way.

Triangulating assessments results in more accurate information. In Dr. Schuh's opinion, relying on PARCC alone to determine student achievement is not fair.

Dr. Schuh also finds fault with ONI's designation of peer schools to which Monarch was compared because ONI only relies on an economic disadvantage percentage. That method ignores neighborhood, school size, percentage of students with disabilities, percentage of second language learners, and percentage of students from disadvantaged minority groups. Dr. Schuh recommends the "nearest neighbor approach," which considers the factors the economic disadvantage ignores. (Monarch 20, pp. 9-11).

With regard to Monarch's place in the economically disadvantaged rating, Dr. Schuh stated Monarch could have been placed in a different band and a different peer group. ONI did not take into consideration in rating economic disadvantage that some schools might accept gifted and talented students or that some schools, like those near Johns Hopkins Hospital, might be located in a community with better, stable jobs. The use of peer groups is not necessarily problematic, but with a narrow range of percentages, more schools move in and out of the group, so the rating is less reliable.

In his report, Dr. Schuh states the student achievement evaluation method was not transparent because the report is missing, for example, the formula for how ONI composed comparison groups, the actual percentage granted Academic Success, and the weight each section carries in the Academic Success category. (Monarch 20, p. 3.) On cross-examination,

however, Dr. Schuh acknowledged he did not see the Renewal Data Tables ONI used to arrive at its conclusions. (BD 2 and 3.) Further, he did not review the SER report.

Monarch offered into evidence the transcripts of the Board's meetings on December 11, 2018, and January 8, 2019. (Monarch 5 and 13.) At the December 11, 2018 meeting, Amy Lordan, a first grade teacher at Monarch, described her challenges teaching for BCPS; she felt alone and overwhelmed. Unlike BCPS, Ms. Lordan stated Monarch provided training, guidance, and support. She had an instructional coach, a mentor, and professional development sessions. (Monarch 5, pp. 50-54.) Linda Lomax, Healthy Neighborhood Coordinator for the Coldstream, Homestead, and Montebello neighborhood, also testified before the Board. She stated Monarch has helped to build the community. The school has only been around for several years and needs more time. (Monarch 5, pp. 193-195.) Tracey Brooks, a Monarch parent, told the Board her son entered Monarch for the third grade. He is now a freshman at the Baltimore School for the Arts and on the honor roll. Her daughter entered Monarch for the first grade last year and after struggling academically for a few years is now making progress on her IEP. Ms. Brooks stated that closing the state-of-the-art school would devastate her daughter. (Monarch 5, pp. 220-223.)

#### Board's Case

Angela Alvarez, Executive Director, ONI, explained the reasons behind the charter school renewal process. She stated charter schools are granted autonomy in exchange for a high level of accountability. In granting charters, BCPS is striving to move the student achievement mean for the entire district. Charter schools are designed to help the City move up and, as a result, they are expected to perform at a higher level.

Ms. Alvarez explained that ONI is responsible for ensuring charter schools are delivering on their contracts. She testified the renewal process begins in the penultimate year of the contract. The SER occurs in the spring and the special education audit occurs in the fall as the process

continues into the next year. She stated the process is the same for all charter schools; the process must be consistent. For the 2018-2019 renewals, ONI held an initial orientation session to obtain feedback about the previous renewal process. Then ONI held a second orientation session to review the process and answer questions. She did not believe Monarch attended the programs.

Ms. Alvarez stated ONI sent Monarch the orientation materials and SER protocols. The Board offered the sixty-four page School Effectiveness Review Protocol into the record. The document sets out in detail the SER process, including for example, the performance level rubric, focus group questions, and a glossary of terms. (Monarch 7.) ONI also provided Monarch with preliminary and final Renewal Data Tables and a draft SER report. (BD 2 and 3.) Monarch had the opportunity to submit additional information and a response to the draft. Monarch also had the opportunity to appeal the findings of Developing and Not Effective, but not Effective and above. Ms. Alvarez testified that on November 5, 2018, she met with Monarch staff to share the final report and ONI's recommendation that the Board not renew Monarch's charter.

Ms. Alvarez further testified that ONI employs quantitative and qualitative measures in its assessment of charter schools. She reviewed the measures required by Board Policy including Academic Success, Climate, and Financial Management and Governance Practices. Board Policy IHB III.K.2. PARCC is the quantitative measure of student achievement related to the Academic Success category. The Climate category is a qualitative measure and ONI considers the factors such as effectiveness of instruction, parent, staff, and student satisfaction, attendance, suspensions, and programing for special education students. Financial Management and Governance Practices is also a qualitative measure which considers cash flow, the ratio of assets to liabilities, the school's compliance with State and federal reporting requirements, and strategic leadership. (BD 2 and 3.)

Ms. Alvarez testified that in the renewal process ONI considers PARCC assessments. She noted that that PARCC is the statewide assessment Maryland uses to hold BCPS accountable. She stated i-Ready is not a statewide test and is not regulated; that is why ONI denied Monarch's request to use i-Ready scores. Ms. Alvarez testified that to determine Absolute Student Achievement, ONI considered PARCC data for one year, but contrary to Dr. Schuh's testimony that ONI only used one year of PARCC scores for the entire review, ONI used 2015 to 2018 scores for the Trend and Growth mean scale scores. Ms. Alvarez stated that of those subcategories, ONI gives the most weight to the Growth scores.

Ms. Alvarez stated the percentile rank for the ratings are: Highly Effective, 100% - 80%; Effective, 65% - 80%; Developing, 50% - 65%; and Not Effective, below 50%. (BD 1.) She noted that Dr. Schuh inaccurately writes in his report that the percentile rank scores are: Highly Effective, 100% - 90%; Effective, 89% - 75%; Developing, 74% - 50%; and Not Effective, below 50%. (Monarch 20, p. 9.)

Ms. Alvarez acknowledged that the SER team did not arrive at Monarch by 7:40 a.m. as planned. However, the review with Monarch staff was not scheduled to begin until 8:30 a.m. (Monarch 2.) The SER team was never scheduled to observe the Culture Card meeting.

With regard to parent, staff, and student satisfaction, Ms. Alvarez testified ONI relies on four years of surveys. ONI also looks at absences and suspensions and reviews the steps the school is taking to improve attendance. With regard to special education, Ms. Alvarez testified that part of the Board's contract with charter schools requires the operators to meet all special education requirements. Charter schools are permitted to recruit and select special education teachers, but BCPS must process and approve the hiring because staff is part of a collective bargaining agreement. Also, BCPS provides related service providers such as physical,

occupational, and speech/language therapists. Ms. Alvarez acknowledged that there is not a surplus of special education teachers in the area.

Ms. Alvarez testified that Mr. Guild is a specialist assigned to Monarch to provide special education support including, for example, technical support, training, and review of IEP implementation. She offered Mr. Guild's schedule of contacts with Monarch. (BD 7.) He attended team meetings, student observations, training, and professional development. He communicated with Monarch by email on issues ranging from case management plans, guidance on procedures for students entering from other districts, and guidance on consent for reevaluation procedures.

Further, Ms. Alvarez testified ONI submitted memoranda to the Board to answer member questions. (BD 8 and 9.) The first memorandum, dated December 21, 2018, states the Not Effective rating for special education relies on OSEMC 2018 audit, special education students' below district average on PARCC, and chronic absence rates for students with disabilities. (BD 8, pp. 10-15.) ONI submitted the second memorandum, dated January 2, 2019, because Monarch raised a 2016 OSEMC special education report to the Board. (BD 9.) The memorandum addresses the Board's questions about that report.

For the Financial Management and Governance Practices category, Ms. Alvarez testified ONI reviews three years of audits and determines if the school has submitted audits and how they have managed grants. ONI also looks at the practices of the charter school's board.

Ms. Alvarez explained why ONI recommended the Board not renew Monarch's charter. The school rated Not Effective in ten out of twelve categories. The school performance in special education was below the district's mean and had a 57.3% absence rate and a higher than average short-term suspension rate. For a five-year renewal of a charter, a charter school must achieve all Highly Effective and Effective ratings. For a three-year renewal Effective and Developing ratings are required. Any Not Effective rating results in the ONI recommendation that the Board

not renew the contract. Ms. Alvarez acknowledged there is a significant emotional impact on students, parents, teachers, staff, and the community when the Board declines to renew a charter. However, at the end of the day academic outcomes are what matter the most.

On cross-examination, Ms. Alvarez testified that Monarch had the opportunity to challenge the special education audit at any time before ONI submitted its recommendation to the Board. Monarch did submit a response to the Renewal Report. (Monarch 9.) With regard to Monarch's opportunity to present its position to the Board, Ms. Alvarez agreed that Monarch was only permitted four minutes to address the Board. However, many schools wish to address the Board and four minutes is the standard time allotted to all schools. With regard to Ms. M., Ms. Alvarez testified Monarch can dismiss an employee during the school year, but there is a process with which the school must comply. Finally, Ms. Alvarez stated she receives draft SER reports but does not review them; she uses them to determine what step the team is on in the assessment process.

Christopher Juan, Director of Research Services, testified for the Board. He has a medical degree from the University of Maryland. He testified that PARCC is a statewide assessment BCPS must use to track student performance. Because PARCC is administered in every school in Maryland and the test is monitored, PARCC provides a required comparison group. Mr. Juan explained that i-Ready does not offer such a strong comparison group and all charter schools do not use i-Ready. Mr. Juan further testified that for Absolute Student Achievement, ONI looks at economic disadvantage for a more fair comparison. He stated scores are highly correlated with poverty in Absolute Student Achievement but not so highly correlated in Trend and Growth. Growth measures individual student growth and is given the highest weight.

With regard to the economic disadvantage bands, Mr. Juan stated ONI relies on data showing the number of families receiving assistance such as Supplemental Nutrition Assistance Program benefits, Temporary Assistance for Needy Families, homelessness, and children in

foster care. Previously, ONI measured economic disadvantage based on the number of children receiving free lunches, but now all children receive lunch. As a result, ONI moved to employing other assistance programs. On cross-examination, Mr. Juan stated ONI did not use receipt of Medical Assistance in its analysis because BCPS did not have access to that data.

With regard to the “nearest neighbor approach” advocated by Dr. Schuh, Mr. Juan testified that approach is used for teacher and principal evaluations, not student achievement. He stated ONI has discussed changing that approach, but a review of the entire process is ongoing and ONI declined to switch when other changes were being made.

Mr. Juan testified there is no one way to assess school performance. Consequently, ONI uses a quantitative and qualitative methodology; a mixed methodology. The assessment relies on PARCC scores, absences, suspensions, and other factors. He acknowledged that relying on one year of PARCC scores is unfair. Therefore, ONI also relies on multiple years for Trend and Growth measures. He stated that in his report, Dr. Schuh inaccurately stated the percentile rank scores for the Highly Effective, Effective, Developing, and Non Effective categories. (Monarch 20, p. 9.) The percentile ranking is not unfair, but used by all counties in Maryland.

#### Analysis – Arbitrary or Unreasonable

##### PARCC Scores

As stated above, the Board’s decision is *prima facie* correct. Monarch must establish the Board’s decision to rely on PARCC scores is contrary to sound educational policy or that a reasoning mind could not have reached the same conclusion. Dr. Schuh’s opinion is insufficient to prove these points.

Dr. Schuh’s testimony that i-Ready shows student academic growth, does not mean ONI’s reliance on PARCC scores is contrary to sound education policy or unreasonable. Dr. Schuh acknowledged the strengths of PARCC, stating considerable statistics and theory stand behind the

test. He noted that the PARCC writers have run reliability tests to remove biases and to come as close to standards as possible. The weakness of PARCC is that in gauging student achievement, the test is only administered one time a year. PARCC alone does not provide sufficient information for ONI to assess student achievement during a school year. For that reason, in Dr. Schuh's opinion, PARCC scores are not recommended for high-stakes decision-making.

Dr. Schuh did not, however, adequately address the fact that the Academic Success category consists of four subcategories, Absolute Student Achievement, Student Achievement Trend, Student Achievement Growth, and Fidelity to Charter. ONI does not rely on PARCC for Fidelity to Charter. Dr. Schuh did not explain if the Fidelity to Charter subcategory had any effect on his opinion.

Additionally, the ONI renewal rubric defines the scores Monarch must attain on PARCC for each category: Highly Effective, 80% and above; Effective, 65% to 80%; Developing, 50% to 65%; and Not Effective, below 50%. (BD 1.) Dr. Schuh misstated these percentages in his report. He did not have the Renewal Data Tables when formulating his opinion of the reliability of ONI's assessment. He did not know that ONI relied on one year of PARCC scores only on Absolute Student achievement and multiple years for Student Achievement Trend and Growth. The ONI renewal rubric also defines the evidence ONI would consider in scoring every rating category including, for example, effective instruction, teacher, parent, and student surveys, attendance and suspensions, and strategic leadership and governance. (BD 1.) Monarch was on notice of the points or factors it would need to achieve for each finding of Highly Effective, Effective, and so on. Again, it is unclear whether or how this information might have changed Dr. Schuh's opinion.

Most importantly, the statute requires the Board to employ statewide assessments to determine if a school is eligible for a charter. The statute references statewide assessments in the

very definition of an “eligible charter school” and provides that a local district must measure student academic achievement using assessments required for other public schools. Md. Code Ann., Educ. §§ 9-104.1(a), 9-106(d)(2). Further, an eligible charter school is one where the students’ achievement exceeds the average in the local school system. Id. § 9-104.1(a)(2)(i). PARCC is Maryland’s statewide assessment; Monarch did not and could not contest this fact. The Board’s decision cannot be found unreasonable if it is relying on a test required by the State.

Further, Ms. Alvarez’s testimony and the exhibits in the record demonstrate that ONI implemented a multifaceted evaluation process. On April 19 and 25, 2018, ONI held meetings to discuss possible changes to the charter school renewal process for the following year. ONI held an orientation covering the renewal process, including discussion of the timeline, rubric, and application. On June 22, 2018, ONI sent an email to renewing charter schools with materials from the orientation session including the rubric and a proposed renewal application. The document sets out the data and metrics ONI would use in the renewal process. ONI provided Monarch with Renewal Data Tables on July 27, 2018 and August 20, 2018. In both communications, ONI listed other sources of data Monarch could use to write its application including, for example, school profiles, Maryland Report Card, and renewal reports from previous years. (BD 2 and 3.) On September 17, 2018, the OSEMC conducted a site visit at Monarch. On October 25 2018, ONI emailed Monarch a ratings report giving ratings for all measures used in the renewal rubric. Monarch had notice of the renewal process and that ONI’s assessment was based on much more than PARCC scores for one year.

#### Economic Disadvantage Rank

Dr. Schuh testified that using economic disadvantage rankings is not necessarily problematic but the ranking is volatile and less reliable when the bands are narrow. Dr. Schuh’s opinion on this point is insufficient to prove ONI’s ranking method was so inaccurate it resulted

in an unreliable renewal report on which the Board unreasonably relied. There is no evidence Dr. Schuh reviewed the list of schools in Monarch's rank or that he had any knowledge of those schools. He speculated that schools near John Hopkins Hospital may include more stable households which would then skew Monarch's place in a band with schools in that neighborhood. That testimony is not sufficiently concrete and, so, does not prove Monarch's rank was incorrect or resulted in an unreliable assessment of Monarch's Academic Success.

Moreover, ONI relied on the economic disadvantage rating only once for Absolute Student Achievement, not for Trend or Growth. Dr. Schuh did not state whether or how the use of the ranking only once affected his opinion. Monarch failed to prove ONI's economic disadvantage ranking resulted in a Board decision that is contrary to sound educational policy or unreasonable.

SER Team

With regard to missing the Culture Card meeting, Ms. Alvarez's testimony established that the SER team was not scheduled to attend that meeting. Although an important part of Monarch's program, missing that meeting does not result in an assessment so inadequate it can be deemed contrary to sound educational policy or unreasonable. Similarly, Monarch failed to show the team's meeting with a teacher one-on-one rather than in a focus group, affected the SER conclusion. The school Climate category considers staff satisfaction. (BD 10.) So, ONI could properly consider comments from even a disgruntled employee. Also, Ms. Alvarez testified ONI relies on four years of surveys, not just one teacher's input. Monarch failed to show how and if this one employee's report distorted the school's rating.

Additionally, Monarch failed to show Ms. Alvarez was prejudiced because she received a draft renewal report. Ms. Alvarez is a professional and in charge of ONI. She has been with ONI six years, three years as the Executive Director. She was a knowledgeable and straightforward witness. As the person responsible for managing the renewal process, she should see drafts and

final renewal reports; that is her job. Monarch failed to prove Ms. Alvarez was prejudiced against Monarch or had a motive to submit a deficient report to the Board.

#### Special Education

Moving to the special education rating, including the OSEMC audit and BCPS's support of Monarch, Monarch recognized that, in the end, it was responsible for compliance with the law. First, because, as Ms. Alvarez testified, the renewal process begins in the contract's penultimate year and continues into the following year, OSEMC did not improperly conduct the special education audit in the fall after the spring SER team review. Monarch failed to prove the timing of the audit was unfair or adversely affected the final renewal report such that the process resulted in a decision contrary to sound educational policy or unreasonable.

Second, Monarch did not present evidence to dispute Ms. Alvarez's testimony that Monarch could have submitted a response to the audit but did not do so. Third, although the Children's Guild employees did not have access to BCPS online special education tools, Ms. Livelli testified Ms. Hargrove was able to gain access.

Fourth, Monarch established that Ms. M.'s job performance was substandard and she contributed to the school's failure to fully comply with special education law and regulations. That deficiency, however, cannot be attributed to BCPS. Ms. Hargrove acknowledged that Monarch is responsible for special education compliance. Although Monarch would have to comply with a termination procedure, there is no evidence Monarch attempted to replace Ms. M. when her performance failed to improve. Additionally, Ms. Nicholson acknowledged that Monarch can recruit special education teachers.

Finally, although Mr. Guild might have missed some meetings with Monarch, the outline of his contacts with Monarch establishes that he worked with the school. (BD 7.) He met with Monarch staff several times and communicated with staff on numerous occasions. Both Ms.

Spanoghe and Ms. Livelli alleged minimal response from Mr. Guild, but only provided minimal specifics. They failed to present sufficient facts to establish the steps they maintain Mr. Guild was required to take and failed to take. Monarch's experience with Mr. Guild fails to prove ONI and then the Board impermissibly relied on the OSEMC audit and the Board's decision was unreasonable as a result.

#### Absenteeism and Suspension Rates

With regard to absences and suspensions, Monarch alleges in its response to the Renewal Report that within the first month of school, a high number of students withdraw from Monarch to attend other schools. If ONI included in its data students who were enrolled ten days or more, the absentee count might be high. Additionally, the data ONI relied on might have resulted in duplicative calculations. Absences might have been counted for both homeroom and classroom, when only one absence should be counted. However, Monarch was not sure if the error occurred and provided no concrete examples of any errors. (Monarch 9, p. 8.) Also, Ms. Nicholson stated the majority of suspensions relate to three emotionally disabled students. While, Ms. Nicholson's statement might be accurate, it fails to prove ONI impermissibly relied on the school's suspension data.

#### Address to the Board

Monarch also raised the issue of its opportunity to address the Board. The school was given four minutes. Monarch failed to present testimony to refute Ms. Alvarez's testimony that, due to the number of schools seeking to address the Board, all schools were allotted four minutes. Also, on December 7, 2018, Monarch submitted a written response to ONI's recommendation that the Board not renew its charter. (Monarch 9.) Monarch noted ONI found the teachers were providing effective instruction and the school was effective in holding a clear vision of high student achievement. Monarch understands data analysis and uses a complete

student learning data-cycle. (Monarch 9, p. 4.) Monarch provided the students' i-Ready scores indicating academic progress. (Monarch 9, p. 5.) Further, Monarch addressed its special education performance and compliance and raised the issue of BCPS's failure to provide sufficient support. (Monarch 9, pp. 6-8.) Monarch also addressed the absenteeism and suspension rate. (Monarch 9, p. 8.) The Board had Monarch's position on all issues to consider. Finally, on December 11, 2018, three members of the Monarch community, including a teacher, a community leader, and a parent, addressed the Board. (Monarch 5.)

The evidence demonstrates that ONI conducted a thorough renewal review, provided Monarch notice of all the procedures and data ONI would employ, and allowed Monarch the opportunity to respond to its findings. If there were any difficulties with the SER team, BCPS special education staff, or access to the district's online special education tools, Monarch failed to prove those complications caused a flawed, misinformed, and unsubstantiated Renewal Report, which, in turn resulted in a Board decision that was contrary to sound education policy or that a reasoning mind could not have reasonably reached. Consequently, Monarch failed to prove the Board's decision not to renew its charter was arbitrary or unreasonable.

#### Analysis - Illegality

As stated above, because nonrenewal has the same effect as closure or revocation, Monarch maintains the Board was required to comply with the school closure provisions set out in the Maryland regulations and the revocation procedures set out in Board policy. COMAR 13A.02.09.01; Board Policy IHB III.K.5. Conversely, the Board contends the regulation governing school closure is inapplicable because the statute specifically exempts the Board's assessment of charter schools from the laws and regulations governing other public schools.

Maryland regulations require that local boards consider certain factors when deciding to close a school. The rule states in part:

- A. Each local board of education shall establish procedures to be used in making decisions on school closings.
- B. The procedures shall ensure, at a minimum, that consideration is given to the impact of the proposed closing on the following factors:
  - (1) Student enrollment trends;
  - (2) Age or condition of school buildings;
  - (3) Transportation;
  - (4) Educational programs;
  - (5) Racial composition of student body;
  - (6) Financial considerations;
  - (7) Student relocation;
  - (8) Impact on community in geographic attendance area for school proposed to be closed and school, or schools, to which students will be relocating.

COMAR 13A.02.09.01.

Similarly, the Board's Public Charter School policy related to revocation of a charter provides, in part:

The Board may revoke a public charter school's charter prior to the end of the contract.

...

b. Prior to making a decision, the Board will receive a study from the CEO that includes the recommendation and rationale for school closings, as well as consideration of the impact of the proposed closing on the following factors:

- i. Student enrollment trends;
- ii. Educational program;
- iii. Racial composition of student body;
- iv. Financial considerations;
- v. Student relocation;
- vi. Impact on community in geographic attendance area for school proposed to be closed and school, or schools, to which students will be relocating.

Board Policy IHB III.K.5.

Under the *Accardi* doctrine, a government agency must observe the rules, regulations or procedures or the agency action will be invalidated. *Accardi v. Shaughnessy*, 347 U.S. 260 (1954);

*Pollock v. Patuxent Inst. Bd. of Review*, 374 Md. 463 (2003) (finding the *Accardi* doctrine is applicable in Maryland). Here, the Board observed the procedures required by law and policy.

As cited above, the statute provides that the laws and regulations governing public schools also govern charter schools. Md. Code Ann., Educ. § 9-106(a). The statute sets out exceptions, however, including as relevant here, the exception for charter school assessment. *Id.* §§ 9-102(11), 9-104.1. In accordance with the law, the Board is required to assess Monarch by employing the statute and policies respecting assessment specific to charter schools, not to public schools in general. The Board is not authorized under the law to apply rules governing public schools to charter schools when assessing whether a charter school is an eligible charter school.

The Maryland Court of Appeals addressed the statute in 2007. *Patterson Park Pub. Charter Sch., Inc. v. Balt. Teachers Union*, 399 Md. 174 (2007). At that time, the charter school statute, Title 9 of the Education Article, provided only an exception from section 9-106. In *Patterson Park*, the charter school requested a waiver from the requirement that public charter schools employees be BCPS employees and subject to collective bargaining agreements. The Court held that while MSDE was authorized to grant a waiver from other laws and regulations governing public schools, MSDE could not waive the provisions of Title 9 itself. *Id.* at 182.

The legislature amended the statute in 2015 to include section 9-104.1, governing assessments, but the same reasoning applies. The Board cannot grant Monarch a waiver from the assessment requirements of Title 9. The Board, therefore, is required to assess charter schools in accordance with Title 9, by determining if the school has demonstrated sound fiscal management and student achievement that exceeds the average in the local school system on statewide assessments and other measures developed by MSDE. *Id.* § 9-104.1(a). Consequently, the policies and procedures set out in Maryland regulations governing assessing schools for closure are inapplicable, as are the procedures set out in the Board's policy governing revocation of public

charters. Monarch failed to show the Board's decision was illegal because it resulted from an unlawful procedure. COMAR 13A.01.05.06C(4).

### **CONCLUSIONS OF LAW**

I conclude as a matter of law that Monarch failed to prove the Board's decision not to renew Monarch's charter was arbitrary or unreasonable because it was contrary to sound educational policy or a reasoning mind could not have reasonably reached the decision. COMAR 13A.01.05.06A and B.

I further conclude as a matter of law that Monarch failed to prove the Board's decision not to review Monarch's charter was illegal because it resulted from unlawful procedure. COMAR 13A.01.05.06A and C(4).

### **PROPOSED ORDER**

I PROPOSE that the Maryland State Department of Education AFFIRM the Baltimore City Board of School Commissioners' decision to not renew Monarch Academy Public Charter School's contract.

June 7, 2019

Date Decision Mailed

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Mary Shock  
Administrative Law Judge

MKS/cmg  
#179636

### **NOTICE OF RIGHT TO FILE EXCEPTIONS**

Any party adversely affected by this Proposed Decision has the right to file written exceptions within fifteen days of receipt of the decision; parties may file written responses to the exceptions within fifteen days of receipt of the exceptions. Both the exceptions and the responses shall be filed with the Maryland State Department of Education, Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201-2595, with a copy to the other party or parties. COMAR 13A.01.05.07F. The Office of Administrative Hearings is not a party to any review process.

**Copies Mailed To:**

Monarch Academy Public Charter School  
c/o Patricia Hennessy, Esquire  
Conrad O'Brien, Suite 3900  
1500 Market Street, West Tower  
Philadelphia, PA 19102

Kimberly Neal, Esquire  
The Children's Guild  
6802 McClean Boulevard  
Baltimore, MD 21234

Amanda Costley, Esquire  
Office of Legal Counsel  
Baltimore City Public Schools  
200 East North Avenue, Suite 208  
Baltimore, MD 21202

**MONARCH ACADEMY** \* **BEFORE MARY SHOCK,**  
**PUBLIC CHARTER SCHOOL,** \* **AN ADMINISTRATIVE LAW JUDGE**  
**APPELLANT** \* **OF THE MARYLAND OFFICE**  
v. \* **OF ADMINISTRATIVE HEARINGS**  
**BALTIMORE CITY BOARD OF** \*  
**SCHOOL COMMISSIONERS** \* **OAH No.: MSDE-BE-12A-19-09171**

\* \* \* \* \*

### **EXHIBIT LIST**

Monarch offered the following exhibits:

- |            |                                                                                                                                       |
|------------|---------------------------------------------------------------------------------------------------------------------------------------|
| Monarch 1  | School Leader Orientation, School Effectiveness Review, undated                                                                       |
| Monarch 2  | Monarch School Effectiveness Review Schedule, May 14 to 16, 2018                                                                      |
| Monarch 3  | Monarch Visitor Log, May 14 to 17, 2018                                                                                               |
| Monarch 4  | Affidavit, Kelly Spanoghe, Chief Organizational Learning Officer, The Children's Guild, undated, with Correction Action Plan, undated |
| Monarch 5  | Transcript of Board Meeting, December 11, 2018                                                                                        |
| Monarch 6  | Affidavit, Jenny Caddell Livelli, Director of Continuous Quality Improvement, The Children's Guild, undated                           |
| Monarch 7  | School Effectiveness Review Protocol, 2017-2018                                                                                       |
| Monarch 8  | Letter from the Board to Monarch Academy Community, November 13, 2018                                                                 |
| Monarch 9  | Letter from Monarch to Board, December 7, 2018                                                                                        |
| Monarch 10 | Emails between Monarch and Office of New Initiatives, July 17, 2018                                                                   |
| Monarch 11 | School Effectiveness Review, May 14 to 16, 2018                                                                                       |
| Monarch 12 | Email from Monarch to Baltimore City Public Schools, July 27, 2018                                                                    |
| Monarch 13 | Transcript of Board Meeting, January 8, 2019                                                                                          |
| Monarch 14 | Map, Baltimore City, undated                                                                                                          |
| Monarch 15 | Map, Baltimore City, undated                                                                                                          |
| Monarch 16 | Email from Monarch to Office of New Initiatives, May 11, 2017                                                                         |
| Monarch 17 | Email from Monarch to Office of New Initiatives, June 1, 2017                                                                         |
| Monarch 18 | Renewal Report, November 13, 2018                                                                                                     |
| Monarch 19 | Alexander Schuh, Ph.D., <i>Curriculum Vitae</i>                                                                                       |
| Monarch 20 | Alexander Schuh, Ph.D., Report, February 6, 2019                                                                                      |
| Monarch 21 | Affidavit, Angela Alvarez, March 11, 2019                                                                                             |
| Monarch 22 | Operator Renewal, Presentation to Operators, April 2018                                                                               |
| Monarch 23 | Memorandum, November 5, 2018                                                                                                          |

The Board offered the following exhibits:

- BD 1 Renewal Rubric, 2018-2019 School Year
- BD 2 Email from Office of New Initiatives to Monarch, July 27, 2018, with Renewal Data Tables
- BD 3 Email from Office of New Initiatives to Monarch, August 20, 2018, with Renewal Data Tables
- BD 4 Renewal Recommendation, November 13, 2018
- BD 5 Office of Special Education Monitoring and Compliance, Memorandum, Summary of School Based Special Education Compliance Review, September 19, 2018
- BD 6 Office of Special Education Monitoring and Compliance, Record Review, undated
- BD 7 Timeline of Special Education Support to Monarch, October 4, 2017 to January 9, 2019
- BD 8 Office of New Initiatives, Memorandum, December 21, 2018
- BD 9 Office of New Initiatives, Memorandum, January 2, 2019
- BD 10 Renewal Report, January 8, 2019

**MONARCH ACADEMY** \* **BEFORE MARY SHOCK,**  
**PUBLIC CHARTER SCHOOL,** \* **AN ADMINISTRATIVE LAW JUDGE**  
**APPELLANT** \* **OF THE MARYLAND OFFICE**  
v. \* **OF ADMINISTRATIVE HEARINGS**  
**BALTIMORE CITY BOARD OF** \*  
**SCHOOL COMMISSIONERS** \* **OAH No.: MSDE-BE-12A-19-38408**

\* \* \* \* \*

**PROPOSED DECISION ON REMAND**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
UNDISPUTED FACTS  
FINDINGS OF FACT  
FINDINGS OF FACT ON REMAND  
DISCUSSION  
CONCLUSIONS OF LAW  
PROPOSED ORDER

**STATEMENT OF THE CASE**

On January 8, 2019, the Baltimore City Board of School Commissioners (Board) voted not to renew Monarch Academy Public Charter School's (Monarch) contract to operate a charter school. On February 7, 2019, the Board issued a written decision not to renew Monarch's charter. On February 12, 2019, Monarch appealed the Board's decision to the Maryland State Department of Education (MSDE). Md. Code Ann., Educ. § 9-104.1(d) (2018). On March 20, 2019, MSDE transmitted the case to the Office of Administrative Hearings (OAH) to conduct a hearing and issue proposed Findings of Fact, Conclusions of Law, and Recommendations. Code of Maryland Regulations (COMAR) 13A.01.05.07A.

On May 8 and 9, 2019, I held the hearing at the OAH in Hunt Valley, Maryland. Patricia Hennessy, Esquire, and Kimberly Neal, Esquire, represented Monarch. Amanda Costley, Esquire, represented the Board.

On June 7, 2019, I issued a proposed decision. On October 22, 2019, MSDE remanded the case for the purpose of taking testimony and receiving documentary evidence on the following matters:

The role that the Baltimore City Public Schools (BCPS) has defined for charter schools in the context of all other schools in the school system. For example, is it the role of a charter school to “improve” or “enhance” BCPS performance as Christopher Wohn testified? If so, please explain.

The notice Monarch had of the renewal criteria. Specifically, what were the renewal criteria that governed the Monarch Academy renewal? When was it established? When was it provided to Monarch? Also, please identify where in the renewal criteria it requires the charter school to be above the 50<sup>th</sup> percentile of all BCPS schools in terms of achievement as testified by Christopher Wohn? Explain the basis and rationale for establishing that criteria.

The schools in Monarch’s economic disadvantage group. Please identify the comparison schools, set forth the data that was considered for each school, and explain the analysis that was done to develop the achievement comparison.

On January 17, 2020, I held a hearing on the remand at the OAH in Hunt Valley, Maryland, Ms. Neal represented Monarch. Ms. Costley represented the Board.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, MSDE hearing regulations, and OAH Rules of Procedure. Md. Code Ann., State Gov’t §§ 10-201 through 10-226 (2014 & Supp. 2019); COMAR 13A.01.05; COMAR 28.02.01.

## **ISSUES**

1. Is the Board’s decision to not renew Monarch’s charter arbitrary or unreasonable because it is contrary to sound educational policy or a reasoning mind could not have reasonably reached the decision? COMAR 13A.01.05.06A and B.

2. Is the Board's decision not to renew Monarch's charter illegal because it resulted from unlawful procedure? COMAR 13A.01.05.06A and C(4).

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

Monarch offered the following exhibits at the May 8 and 9, 2019 hearing:

Monarch 1	School Leader Orientation, School Effectiveness Review, undated
Monarch 2	Monarch School Effectiveness Review Schedule, May 14 to 16, 2018
Monarch 3	Monarch Visitor Log, May 14 to 17, 2018
Monarch 4	Affidavit, Kelly Spanoghe, Chief Organizational Learning Officer, The Children's Guild, undated, with Correction Action Plan, undated
Monarch 5	Transcript of Board Meeting, December 11, 2018
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Monarch 20	Alexander Schuh, Ph.D., Report, February 6, 2019
Monarch 21	Affidavit, Angela Alvarez, March 11, 2019
Monarch 22	Operator Renewal, Presentation to Operators, April 2018
Monarch 23	Memorandum, November 5, 2018

Monarch offered the following exhibits at the January 17, 2020 hearing:

Monarch 24	<i>Building a Portfolio of Schools</i> , BCPS, November 13, 2018
Monarch 25	District Profile, BCPS, Fall 2019

The Board offered the following exhibits at the May 8 and 9, 2019 hearing:

BD 1	Renewal Rubric, 2018-2019 School Year
BD 2	Email from Office of New Initiatives to Monarch, July 27, 2018, with Renewal Data Tables
BD 3	Email from Office of New Initiatives to Monarch, August 20, 2018, with Renewal Data Tables
BD 4	Renewal Recommendation, November 13, 2018

- BD 5 Office of Special Education Monitoring and Compliance, Memorandum, Summary of School Based Special Education Compliance Review, September 19, 2018
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- BD 8 Office of New Initiatives, Memorandum, December 21, 2018
- BD 9 Office of New Initiatives, Memorandum, January 2, 2019
- BD 10 Renewal Report, January 8, 2019

The Board offered the following exhibits at the January 17, 2020 hearing:

- BD 11 Board Policy, IHB, June 28, 2011, and Administrative Regulation, IHB – RA, November 13, 2012
- BD 12 Renewal Charter School Agreement, Monarch, July 1, 2016
- BD 13 Email from Trevor Roberts to School Operators and Principals with Renewal Rubric, June 22, 2018

#### Testimony

The following individuals testified for Monarch at the May 8 and 9, 2019 hearing:

1. Andrew Ross, Ph.D., President and Chief Executive Officer, The Children's Guild;
2. Kimberley Flowers, Board Chair, Monarch;
3. Kiara Hargrove, Principal, Monarch;
4. Jenny Caddell Livelli, Director of Continuous Quality Improvement, The Children's Guild;
5. Nakia Nicholson, Chief Academic Officer, The Children's Guild;
6. A. Duane Arbogast, Ed.D., Chief Innovation Officer, The Children's Guild; and
7. Alexander Schuh, Ph.D., Director of School Frontiers, LLC, accepted as an expert in academic assessments.

Monarch did not call any witnesses at the January 17, 2020 hearing.

The following individuals testified for the Board at the May 8 and 9, 2019 hearing, and at January 2020 hearing.

1. Angela Alvarez, Executive Director, Office of New Initiatives, BCPS; and
2. Christopher Wohn, Director, Research Services, BCPS.

#### **UNDISPUTED FACTS**

The parties stipulated to the following facts:

1. The Board held public hearings and meetings on November 13, 2018, December 11, 2018, and January 8, 2019.
2. The Board provided proper notice to Monarch of the public hearing dates.

3. The Board has the authority to close schools under its jurisdiction.

4. The Board's decision not to renew Monarch's charter was made at a public meeting on January 8, 2019.

5. The Board issued a written decision of is determination to not renew Monarch's charter on February 7, 2019.

6. The totality of the circumstances is controlling in any Board decision to close a school; no one factor outweighs any other.

### **FINDINGS OF FACT**

I find the following facts by a preponderance of the evidence:

#### Monarch Academy

1. Monarch is a public charter school in Baltimore City. The Children's Guild is Monarch's educational manager.

2. The Board granted Monarch a charter in 2014, and renewed the charter for three years in January 2016.

3. Monarch's charter was due for renewal during the 2018-2019 school year.

4. Monarch serves kindergarten to eighth grade and had a 2018-2019 enrollment of 985 students. (BD 10, p. 4.)<sup>1</sup> Monarch serves 118 students with educational disabilities. (Monarch 9, p. 7.)

5. Monarch students live throughout Baltimore City. Monarch provides transportation for its students from hubs throughout the city.

#### Renewal Process

6. On April 19 and 25, 2018, the BCPS' Office of New Initiatives (ONI) conducted meetings with charter operators to discuss possible changes to the renewal process for the

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<sup>1</sup> References to exhibits in the Findings of Fact are not the sole basis for the finding, but are included for the convenience of the reader.

upcoming year. At the meetings, ONI reviewed the components of renewal and discussed how the components would be measured.

7. For the 2018-2019 school year, ONI evaluated charter schools in three areas including Academic Success (50%), School Climate (25%), and Financial Management and Governance Practices (25%). The ratings in each area were Not Effective, Developing, Effective, and Highly Effective, except for Financial Management. The subcategory of Audit Content and Internal Controls has a rating scale of Meets Expectations, Developing, and Does Not Meet Expectations. (BD 10, p. 4.)

8. The Partnership for Assessment of Readiness for College and Careers (PARCC) is a Maryland statewide assessment.

9. PARCC scores students on Absolute Student Achievement, Student Achievement Trends, and Student Achievement Growth.

10. Of Absolute Student Achievement, Student Achievement Trends, and Student Achievement Growth, ONI gives the most weight to Student Achievement Growth.

11. ONI considers PARCC scores in mathematics and English for one year to determine Absolute Student Achievement. For the Absolute Student Achievement, ONI also compares schools to other schools with similar levels of economic disadvantage because performance on standardized testing is strongly correlated with economic disadvantage.

12. ONI considers PARCC scores for multiple years for Student Achievement Trends and Student Achievement Growth.

13. ONI considers the results of a School Effectiveness Review (SER) to assess a charter school's Climate and Financial Management and Governance.

14. ONI provided Monarch with SER protocols and a schedule for SER team review, to be conducted on May 14 to 16, 2018, for two and one-half days.

15. The SER schedule provided that the team would arrive at 7:40 a.m. The team did not arrive until between 8:00 and 8:25 a.m. The SER team was scheduled to begin the review at 8:30 a.m. (Monarch 2.)

16. The SER team did not observe Monarch's "Culture Card" meeting which occurs with teachers and staff before the school day begins.

17. During the SER, members of the team met with one teacher by himself. Other teachers met with the team in teacher focus groups.

18. ONI rated Monarch as follows in Category 1. Is the School an Academic Success?

Absolute Student Achievement	PARCC average mean score Math (grades 3-5) English (grades 3-5) Math (grades 6-8) English (grades 6-8)	Not Effective Not Effective Not Effective Developing
Student Achievement Trend	PARCC average mean score Math (grades 3-5) English (grades 3-5) Math (grades 6-8) English (grades 6-8)	Not Effective Not Effective Not Effective Not Effective
Student Achievement Growth	PARCC average mean score Math (grades 3-5) English (grades 3-5) Math (grades 6-8) English (grades 6-8)	Not Effective Not Effective Developing Not Effective
Fidelity to Charter	Extent to which school has implemented its mission, delivered high quality programming, gathered data, addressed challenges evident in the data	Developing
Overall Rating		Not Effective

19. On the Absolute Student Achievement measure, when compared to schools with similar levels of economic disadvantage, Monarch scored in the 41<sup>st</sup> percentile or lower in three of the four measures.

20. ONI rated Monarch as follows in Category 2. Does the School have a Strong Climate?

Highly Effective Instruction	SER score	Effective
Talented People	SER score	Developing
Vision and Engagement	SER score	Effective
Parent, Staff, Student Satisfaction	Staff survey Student survey Parent survey	Not Effective Developing Effective
Cohort Retention	Cohort retention rating	Developing
Attendance, Chronic Absence	School has implemented effective strategies to keep student attendance high and chronic absences low, or led to significant decrease in chronic absence	Not Effective
Suspensions	School has implemented effective strategies that keep suspension low or led to a significant decrease	Developing
Programming for Students with Disabilities	School has shown trajectory of growth, is aware of its data and responsibilities, does not have gaps or had decreased gaps in data related to performance, consistently implemented processes, interventions, and strategies to support student outcomes	Not Effective
Overall Rating		Developing

21. ONI rated Monarch as follows in Category 3. Has the School Followed Sufficient Financial Management and Governance Practices:

Audit Content, Internal Control	School's independent auditor reports offer unqualified opinions and no management points, statement of cash flow and ratio of assets to liabilities indicate the operator has strong performance on short term liquidity measures	Meets Expectations
Operator Capacity	School has operated effectively, consistently met state, federal district reporting requirements and obligation, no Notice of Concern or Reprimand	Effective
Strategic Leadership/Governance	SER score	Effective
Overall Rating		Effective

22. On July 27, 2018, ONI provided Monarch with a draft report of the SER.

Monarch had ten business days to note any factual errors and provide feedback. (Monarch 10.)

23. On July 27, 2018, ONI released preliminary Renewal Data Tables setting out the data the office would use for the renewal process. The tables addressed: Economic Disadvantage; PARCC data; graduation rates; college and career readiness; attendance; chronic absence; suspensions; school survey; and cohort retention rate. (BD 2.)

24. On August 20, 2018, ONI released final Renewal Data Tables, updating the information provided in the July 27, 2018 release.

#### Special Education

25. The SER team found Monarch Not Effective in Programming for Students with Disabilities based, in part, on PARCC scores. Monarch scored below the median on the assessment when compared to peers in other schools. Student short-term suspension rates were above the district average. The chronic absence rate for students in elementary grades was 57.3% compared to the 40.5% district-wide rate. (BD 10, p. 5.)

26. Monarch hired Special Education Coordinator, Ms. M.,<sup>2</sup> for the 2017-2018 school year. She required assistance and, on Monarch's request, the Children's Guild provided a staff member, Kelly Spanoghe, Chief Organizational Learning Officer, to assist.

27. When Ms. M. failed to properly organize files, verify special education enrollment online, and update records for student transitioning in and out of Monarch, Ms. Spanoghe developed a corrective action plan for Ms. M.

28. At all times relevant, Ms. Hargrove, Monarch's Principal, had access to the BCPS special education online tools. The Children's Guild employee did not have access to the online tools.

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<sup>2</sup> I have used initials for confidentiality.

29. On October 5, 2017, Ms. Spanoghe and Darren Guild, BCPS' Development and Implementation Specialist, met with Ms. M. to review her job performance.

30. In January 2018, Jenny Caddell Livelli, Director of Continuous Quality Improvement for the Children's Guild, began working at Monarch to assist Ms. M.

31. On January 23, 2018, Ms. Livelli contacted Mr. Guild regarding the functions of long-term substitute special education teachers. On January 23, 2018, Mr. Guild conducted on-site professional development.

32. On February 2, 2018, Ms. Livelli asked Mr. Guild to provide training and requested supports.

33. On February 6, 2018, Ms. Livelli, Ms. Hargrove, and Mr. Guild met with Ms. M. to discuss her responsibilities.

34. Between March 13, 2018 and May 2, 2018, Mr. Guild missed meetings at Monarch.

35. On March 20, 2018, Ms. Livelli learned that Monarch was a "school of concern" based on its Individualized Education Program (IEP) tracking system. IEPs were left open beyond the prescribed timeline for meetings to occur. As a result, Ms. Hargrove contacted Debra Brooks, BCPS Director of Special Education, for support.

36. On April 18, 2018, Ms. Livelli contacted Mr. Guild regarding how to handle PARCC testing for special education students.

37. From May 1, 2018 through June 18, 2018, Ms. Livelli and Ms. Hargrove continued to contact Mr. Guild for support.

38. Mr. Guild communicated with Monarch during this time period on May 7, 21, and 31, 2018, and June 4, 14, and 29, 2018. On May 21, 2018, he conducted on-site professional development. (BD 7.)

39. On September 19, 2018, the BCPS' Office of Special Education Monitoring and Compliance (OSEMC) conducted a compliance review at Monarch. The OSEMC verified that Monarch had 100% of all special education student files on site.

40. The OSEMC then reviewed ten randomly selected students and found (BD 5):

- a. IEP Team Process – Monarch was not compliant for five students. Statewide assessment data had to be included in the IEP. All IEP meeting invitations had to state the meeting purpose, and efforts to have parents attend IEP meetings had to be documented.
- b. Referral and Assessment – Monarch was not compliant for one student. A child find referral had to be completed for an initial IEP meeting. Prior written notice had to be completed for all IEP meetings.
- c. Initial Evaluation – Monarch was not compliant for one student. Assessments had to be completed, available, and reviewed at the evaluation meeting. The team was required to obtain parental consent before the implementation of the IEP.
- d. Reevaluation – Monarch was not complaint for four students. Monarch was required to conduct reevaluation meetings within three years of the previous eligibility determination. Meetings had to be held within 90 days of when the reevaluation process began. A specific learning disability (SLD) report had to be completed for children with a SLD at the reevaluation meeting.
- e. Development of IEP – Monarch was not compliant for six students. Monarch was required to review and revise IEP goals annually. Progress on IEP goals had to be marked quarterly. Indirect service documents had to be completed

and filed in the student records. The IEP had to include present levels of performance information. IEPs could not be revised through amendment.

f. Least Restrictive Environment Determination – Monarch was fully compliant.

g. Extended School Year – Monarch was fully compliant.

h. Secondary Transition – Monarch was compliant for the two students to which transition applied.

#### ONI Recommendation, Board Meetings

41. On November 5, 2018, ONI staff met with Monarch staff to share the final report and ONI's recommendation.

42. On November 13, 2018, ONI recommended the Board not renew Monarch's charter.

43. On December 7, 2018, Monarch provided a response to ONI's recommendation that the Board not renew its charter.

44. On December 11, 2018, a Monarch teacher, a parent, and a community member spoke to the Board.

45. On January 8, 2019, the Board voted not to renew Monarch's charter.

#### **FINDINGS OF FACT ON REMAND**

46. The role the Board has defined for charter schools to improve or enhance BCPS's performance is based on Maryland law and the Board policy. (Md. Code Ann., Educ. §§ 9-101(b) and 9-104.1 (2018); Policy IHB.) The statute and policy provide that the general purpose of the charter school program is to establish an alternative means within the existing public school system to provide innovative learning opportunities and creative educational approaches to improve the education of students. Also, student achievement must exceed the average in the

local school system in which the public charter school is located on statewide assessments and on other measures developed by MSDE.

47. On July 1, 2016, Monarch received notice of the renewal criteria with its 2016 Renewal Charter School Agreement. The agreement provided that the renewal criteria included a review of:

- a. Student Achievement: based on State assessment scores on Absolute Student Achievement, Student Achievement Trend, and Student Achievement Growth. Student achievement would be given a weight of 50% in Monarch's renewal score.
- b. School Climate: based on ratings from the SER, parent, teacher, and student surveys, the cohort retention rate, meaning the number of students who remain at the school two years after entry, chronic absences, suspensions, and effective academic programming for students with disabilities.
- c. Fiscal Management and Governance: based on auditor reports, operator capacity, meaning the operator's capacity to meet its obligations, and strategic leadership and governance based on the SER.

48. On June 22, 2018, Monarch received notice of the renewal rubric including the percentages required for the rating of Highly Effective, Effective, Developing, and Not Effective. The rubric listed the categories on which Monarch would be reviewed including:

- a. Absolute Student Achievement, the mean scale score on PARCC for 2018;
- b. Student Achievement Trend, the mean scale score on PARCC for 2015 to 2018;
- c. Student Achievement Growth, the mean scale score on PARCC for 2015 to 2018;

- d. Fidelity to charter and renewal application overall based on the SER, the renewal application, and the BCPS data system;
- e. Highly effective instruction, talented people, and vision and engagement based on the SER;
- f. Parent, teacher, and student satisfaction based on surveys and data provided by BCPS and Monarch;
- g. Cohort retention, chronic absences, and suspensions, based on BCPS data and the renewal application;
- h. Effective academic programming for students with disabilities based on the renewal application, MSDE monitoring, and OSEMC review;
- i. Audit content and internal controls based on BCPS data and the renewal application;
- j. Operator capacity based on BCPS data and the renewal application; and
- k. Strategic leadership and governance based on the SER.

49. On June 22, 2018, Monarch had notice that student achievement or academic success would be given a weight of 50% in Monarch's renewal score.

50. On June 22, 2018, Monarch had notice that on PARCC Absolute Student Achievement, a charter school would be rated Not Effective if the students scored below the 50<sup>th</sup> percentile of all the schools in the district based on grade band and rate of economic disadvantage. A charter school would rate Not Effective in Student Achievement Trend and Student Achievement Growth if it scored below the 50<sup>th</sup> percentile of all schools in BCPS based on grade band.

51. On July 27, 2018, Monarch received notice of Renewal Data Tables. The release contained data related to all BCPS schools and up-to-date data related to Monarch's enrollment,

school surveys, and cohort retention. Other data was historical because current data was not yet available. That data included PARCC results, the SER ratings, and data related to attendance, chronic absences, and suspensions.

52. On August 20, 2018, Monarch received notice of the final Renewal Data Tables, including up-to-date PARCC results, the SER ratings, and data related to attendance, chronic absences, and suspensions.

53. The renewal criteria requiring a charter school to be above the 50<sup>th</sup> percentile of all BCPS schools in terms of achievement, (or schools in the charter school's economic disadvantage group for absolute performance), derives from Maryland law and Board policy. (Md. Code Ann., Educ. §§ 9-101(b) and 9-104.1; Policy IHB.) The basis and rationale for the criteria are founded on the statute which states student achievement must exceed the average in the local school system in which the public charter school is located on statewide assessments and on other measures developed by MSDE.

54. ONI employed direct certification rates to develop Monarch's economic disadvantage groups. Direct certification is based on federal regulations and means determining if a child is eligible for free meals or free milk because a state has certified that the child is a member of a household receiving assistance under federal programs such as the Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF), or is a foster child, homeless child, migrant child, runaway child, or Head Start child.

55. To determine the economic disadvantage groups, ONI also considered students who took the WIDA assessment,<sup>3</sup> an English-language proficiency assessment. ONI counted students who scored below a proficiency level of 2.5 on the WIDA assessment. Families of

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<sup>3</sup> WIDA means World-Class Instructional Design and Assessment. <https://wida.wisc.edu>.

English-language learners may not apply or qualify for SNAP or TANF benefits but are economically disadvantaged.

56. To determine economic disadvantage groups, ONI also intended to include students enrolled in Medicaid, but by August 20, 2018, MSDE had not released Medicaid enrollment data.

57. The analysis ONI performed to develop the achievement comparison with other schools in Monarch's economically disadvantage group was to total the number of students who receive benefits under the federal law or fell below a proficiency level of 2.5 on the WIDA assessment, divide by the total number of students enrolled in Monarch, calculate a percentage rate, and compare Monarch to schools in the BCPS district within the same percentage range.

58. Monarch's economic disadvantage rate was 62.2%. Monarch was compared to BCPS schools in the 60%-70% range.

59. The comparison schools in Monarch's economic disadvantage group in English and mathematics, third to fifth grade were:

School	Economic Disadvantage Rate
Hilton Elementary	66.1%
George Washington Elementary	68.8%
Wolfe Street Academy	66.0%
Commodore John Rodgers Elementary/Middle	62.4%
Charles Carroll Barrister Elementary	64.9%
Montebello Elementary/Middle	69.1%
Waverly Elementary/Middle	63.9%
Barclay Elementary/Middle	68.1%
Dr. Nathan A. Pitts-Ashburton Elementary/Middle	61.2%
Gwynns Falls Elementary	67.3%
Liberty Elementary	61.3%
Edgewood Elementary	66.7%
Windsor Hills Elementary/Middle	65.5%
Lyndhurst Elementary	68.2%
Rognel Heights Elementary	67.6%
Moravia Park Elementary	62.1%
Walter P. Carter Elementary/Middle	65.0%
Dr. Carter Godwin Woodson Elementary/Middle	69.8%
Furley Elementary	69.2%
Curtis Bay Elementary/Middle	66.9%

Hazelwood Elementary/Middle	61.9%
Gradenville Elementary	61.5%
Govans Elementary	62.2%
Morrell Park Elementary/Middle	62.5%
Arlington Elementary/Middle	63.5%
Highlandtown Elementary/Middle	62.0%
Beechfield Elementary/Middle	62.1%
Calvin M. Rodwell Elementary	63.9%
New Song Academy	63.6%
Southwest Baltimore Charter	61.6%

60. The comparison schools in Monarch's economic disadvantage group in English and mathematics, sixth to eighth grade were:

School	Economic Disadvantage Rate
Stadium School	62.8%
Commodore John Rodgers Elementary/Middle	62.4%
Montebello Elementary/Middle	69.1%
Waverly Elementary/Middle	63.9%
Barclay Elementary/Middle	68.1%
Dr. Nathan A. Pitts-Ashburton Elementary/Middle	61.2%
Windsor Hills Elementary/Middle	65.5%
Lyndhurst Elementary	68.2%
Rognel Heights Elementary/Middle	67.6%
Walter P. Carter Elementary/Middle	65.0%
Dr. Carter Godwin Woodson Elementary/Middle	69.8%
Curtis Bay Elementary/Middle	66.9%
Hazelwood Elementary/Middle	61.9%
Morrell Park Elementary/Middle	62.5%
Arlington Elementary/Middle	63.5%
Highlandtown Elementary/Middle	62.0%
Beechfield Elementary/Middle	62.1%
New Song Academy	63.6%
ConneXions: A Community Based Arts School	63.2%
Southwest Baltimore Charter	61.6%
KASA (Knowledge and Success Academy)	68.4%
Joseph C. Briscoe Academy	66.7%
Bluford Drew Jemison STEM Academy West	68.3%
Vanguard Collegiate Middle	66.9%
National Academy Foundation	61.9%
Academy for College and Career Exploration	66.1%

## **DISCUSSION**

### **Standard of Review on Appeal to MSDE**

On appeal of a local board's decision to MSDE, the local board's decision shall be considered *prima facie* correct. MSDE may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06A. A decision may be arbitrary or unreasonable if it is contrary to sound educational policy, or a reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached. COMAR 13A.01.05.06B. A decision may be illegal if it results from an unlawful procedure. COMAR 13A.01.05.06C(4).

### **Positions of the Parties**

Monarch raises two issues on appeal. First, Monarch maintains the Board acted arbitrarily and unreasonably when it relied on a flawed, misinformed, and unsubstantiated Renewal Report authored by ONI. Second, Monarch argues the Board failed to follow required procedures in the renewal process.

With regard to the Renewal Report, Monarch challenges ONI's reliance on PARCC scores to determine student achievement and maintains Monarch students are making progress according to i-Ready assessments. Monarch argues nonrenewal based on PARCC scores ignores the school's safe and supportive environment and the school's positive effect on the community.

Monarch also contends the Renewal Report is flawed for a number of reasons. The SER team arrived at Monarch late and so failed to observe Culture Card, an important meeting staff holds each morning. The SER team met with a teacher alone, rather than in a focus group; the teacher was a disgruntled employee. Angela Alvarez, Executive Director of ONI, received a copy of the draft of the Renewal Report and was prejudiced against Monarch as a result. The Renewal Report appears to inaccurately track the school's absentee and suspension rates.

OSEMC conducted a special education audit in September 2018, well after the May 2018 SER team review. Ms. M., Monarch's Special Education Coordinator, failed to adequately perform her job. Mr. Guild failed to respond to requests for support. Monarch had a difficult time gaining access to BCPS's on-line special education tools. Monarch struggled to hire special education teachers. Finally, Monarch was only allowed four minutes to present its position to the Board.

The second issue Monarch raises on appeal relates to the renewal process. Monarch maintains that because nonrenewal has the same effect as closure or revocation, the Board was required to comply with the school closure provisions set out in the Maryland regulations and the revocation procedures set out in Board policy COMAR 13A.02.09.01; Board Policy IHB III.K.5. Citing the *Accardi* doctrine, Monarch argues that having failed to address these factors, the Board's decision is unlawful and must be reversed. *Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

For its part, the Board maintains the renewal process, including the SER team review of Monarch, was open, clear, and fair. All charter schools are assessed by the same standards and all must follow the same assessment process. Additionally, because PARCC is a State-mandated test, the Board's reliance on that assessment was not contrary to sound educational policy or unreasonable. The Board further contends Monarch is responsible for complying with special education law and BCPS provided Monarch proper support. Finally, the Board argues that because charter schools are assessed in accordance with the statute, the regulations and policy governing school closure are inapplicable.

For the reasons explained below, I find Monarch failed to prove the Board acted arbitrarily, unreasonably, or illegally in declining to renew Monarch's charter.

#### Statute and Policy

There is a Maryland Public Charter School Program. Md. Code Ann., Educ. §§ 9-101 to 9-112 (2018 & Supp. 2019). A public charter school is required to comply with the provisions of

law and regulations governing other public schools. Md. Code Ann., Educ. § 9-106(a) (2018). The statute defines “public charter school,” in part, as a public school that “[o]perates 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 the law and regulation governing other public schools.” *Id.* § 9-102(11) (2018).

The exception set out in section 9-104.1 governs charter school assessments. The statute states in part:

- (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.

Md. Code Ann., Educ. § 9-104.1 (2018).

Although a public charter school shall comply with the law and regulations governing other public schools, a school may request a waiver from those rules except as follows:

- (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.

Md. Code Ann., Educ. § 9-106(d).

Finally, the Board’s Public Charter School policy related to the assessment and renewal process provides at Board Policy IHB III.K.2:

The initial term for a public charter school shall be five years. At the end of each contract term, the public charter school shall undergo the process of renewal.

Through renewal, the school will be evaluated on multiple measures including but not limited to:

- a. Student Achievement (performance on state assessments, growth measures/value added measures, unique indicators, and fidelity to charter). Student achievement measure will be at least 50% of the renewal score;
- b. School Climate (attendance, suspensions, enrollment, graduation and dropout rate, student choice data, parent/teacher/student climate surveys);
- c. Financial Management and Governance (annual audits, budget submission, grants management, and board documentation); and
- d. Compliance/adherence with applicable federal, state, and local laws, rules, policies, and regulations.

#### Monarch's Case

Monarch presented the testimony of Andrew Ross, Ph.D., President and Chief Executive Officer of the Children's Guild. Dr. Ross described the transformative education Monarch provides students in Baltimore City, many of whom have experienced traumatic events in their lives. Dr. Ross stated that the Children's Guild purchased and renovated an unused Coca-Cola building in Baltimore City and transformed the site into a state-of-the-art facility. He testified the Children's Guild is also renovating vacant homes in the neighborhood and the organization fought a liquor license renewal in the area. Dr. Ross stated Monarch has a behavioral support staff, fresh food and vegetables for the students, and seven to eight clubs.

Kimberley Flowers, Board Chair for Monarch, testified she was involved in the renewal process and met members of the SER team.

Kiara Hargrove, Monarch's Principal, corroborated Dr. Ross's testimony on the state-of-the-art facility, behavioral supports, and the school's involvement in the community. Ms. Hargrove also described the SER process. She stated Monarch received the School Leader Orientation material and a SER schedule. (Monarch 1 and 2.) She noted that the SER team was scheduled to arrive at Monarch at 7:40 a.m., but did not appear until between 8:00 and 8:45 a.m. As a result, the team missed Culture Card, a morning meeting of administrative staff and teachers to discuss the day. Ms. Hargrove stated Culture Card is an important process the SER team failed to observe. Ms.

Hargrove also testified she was concerned when, on the second day of the review, the SER team met with a teacher individually rather than in a focus group and then requested the teacher's improvement plan.

Addressing Monarch's special education compliance, Ms. Hargrove noted that the OSEMC conducted the audit in September 2018, well after the May 2018 SER. She also related the difficulty Monarch had with Ms. M., Monarch's Special Education Coordinator for the 2017-2018 school year. Ms. Hargrove testified she initiated a corrective action plan for Ms. M. and contacted BCPS for support. The Children's Guild provided a staff member to assist Ms. M. but her performance failed to improve. On cross-examination, Ms. Hargrove acknowledged that Monarch is responsible for complying with special education regulations.

Jenny Livelli, Director of Continuous Quality Improvement for the Children's Guild, corroborated Ms. Hargrove's testimony concerning Monarch's experience with Ms. M. Ms. Livelli stated she was the Children's Guild staff member assigned to assist Ms. M. Ms. Livelli testified she had difficulty gaining access to BCPS website, including the Maryland on-line IEP. She also related difficulty with Mr. Guild. He cancelled some sessions with Monarch.

Ms. Livelli further testified that after receiving the Renewal Report she reviewed attendance at Monarch. She stated the BCPS system sometimes counted absences two times. (Monarch 9, pp. 8-9.)

On cross-examination, Ms. Livelli acknowledged that Ms. Hargrove had access to BCPS special education tools including the Maryland on-line IEP. She also stated Mr. Guild came to Monarch at least five times to train teachers and he responded to some of her emails and telephone calls.

Monarch entered affidavits from Ms. Livelli and Kelly Spanoghe, the Chief Organization Learning Officer for the Children's Guild. (Monarch 4 and 6.) Ms. Livelli writes that on

February 6, 2018, Mr. Guild met with Ms. M. and Monarch staff about Ms. M.'s performance. (Monarch 6, p. 3.) On May 1, 2018, Mr. Guild met with Principal Hargrove and Ms. Livelli about Ms. M. (Monarch 6, p. 5.) Ms. Spanoghe states that she and Mr. Guild met with Ms. M. on October 5, 2017, to discuss Ms. M.'s performance. (Monarch 4, p. 3.)

Nakia Nicholson, Chief Academic Officer for the Children's Guild, testified she provides direct support to Ms. Hargrove and the Head of School. She stated that BCPS identifies special education teachers and staff for hire. She stated it is a challenge to fill special education teacher vacancies. She attends every BCPS' talent fair, but she cannot find available candidates.

With regard to the draft Renewal Report, Ms. Nicholson noted that Ms. Alvarez received a copy of the draft. (Monarch 10.) She contends Ms. Alvarez was prejudiced as a result. She also stated the teacher the SER team spoke to one-on-one was a disgruntled employee. She raised the special education audit and stated Monarch did not have the opportunity to respond to the audit in the Renewal Report. With regard to PARCC scores and testing, Ms. Nicholson stated Monarch uses i-Ready, which the school administers three times a year. The i-Ready assessment provides a clearer picture of where students are performing because the assessment is not based on grade-level content, like PARCC. Instead, i-Ready shows where the students begin the school year and where they end. As a result, one is better able to monitor progress. Ms. Nicholson testified that Monarch students showed academic progress on the i-Ready. Finally, Ms. Nicholson stated that the suspensions documented in the record relate to three students who were all emotionally disabled.

On cross-examination, Ms. Nicholson acknowledged that the Children's Guild can conduct its own recruitment for special education teachers but cannot hire a candidate; BCPS must process and hire the applicant. She also acknowledged that it is the charter school operator's obligation to provide special education services and that when Ms. Livelli left

Monarch, the school was still not in compliance with special education rules. She stated Ms. M. was the reason for the noncompliance.

Allan Duane Arbogast, Ed.D., Chief Innovation Officer for the Children's Guild, described the wide-ranging distribution of students Monarch serves. He stated when students enter Monarch most are two grade levels below their age-grade. Monarch administers i-Ready three times a year to gauge the progress of the students. The Children's Guild asked ONI if it would use i-Ready scores to assess Monarch students' academic progress, but ONI refused. Dr. Arbogast further testified that if the Board closes Monarch, the students would return to low-rated tier-one and tier-two schools.

Finally, Alexander Schuh, Ph.D., testified for Monarch. He was accepted as an expert in academic assessments and measurements. Dr. Schuh reviewed Monarch's demographic data, PARCC scores, i-Ready results, and attendance data. Dr. Schuh testified the i-Ready can be used to assess academic growth. He looked at the number of students moving up or down grade levels in a year according to i-Ready scores. He saw more students finishing the year at grade level than started the year at grade level.

Dr. Schuh noted that Maryland uses PARCC as its statewide assessment to evaluate whether students are meeting common core standards. Dr. Schuh explained that a consortium of states use PARCC. The test was developed to assess student achievement across states. The strength of PARCC is that the test is based on previous tests and considerable statistics and theory stand behind the assessment. For example, math items are used and tested over the years and the writers know if everyone has answered the questions correctly or incorrectly. Also, the PARCC writers have run reliability tests to remove biases and to come as close to standards as possible.

Dr. Schuh stated the weakness of PARCC for gauging student achievement is that the test is only administered one time a year. In Dr. Schuh's opinion, PARCC alone does not provide

sufficient information for ONI to assess student achievement during a school year. Additionally, Dr. Schuh noted that PARCC relies on more language questions in math to the detriment of students for whom English is a second language and those with learning disabilities, like dyslexia. PARCC is also less reliable for low-income, disadvantaged students because factors such as special education needs and resources in the student's home prevent a rise in grade level. At Monarch, many students scored low on PARCC, but the standard error is much more variable at the extremes. Also, there is a larger error measurement for special education students. As a result, Dr. Schuh does not recommend relying on PARCC scores for high-stakes decision-making.

In Dr. Schuh's opinion ONI should not have relied on PARCC scores alone to determine academic achievement. Instead, in order to measure student achievement, ONI should have employed a second test, like i-Ready, to gain more information and in a different way. Triangulating assessments results in more accurate information. In Dr. Schuh's opinion, relying on PARCC alone to determine student achievement is not fair.

Dr. Schuh also finds fault with ONI's designation of peer schools to which Monarch was compared because ONI only relies on an economic disadvantage percentage. That method ignores neighborhood, school size, percentage of students with disabilities, percentage of second language learners, and percentage of students from disadvantaged minority groups. Dr. Schuh recommends the "nearest neighbor approach," which considers the factors the economic disadvantage ignores. (Monarch 20, pp. 9-11.)

With regard to Monarch's place in the economically disadvantaged rating, Dr. Schuh stated Monarch could have been placed in a different band and a different peer group. ONI did not take into consideration in rating economic disadvantage that some schools might accept gifted and talented students or that some schools, like those near Johns Hopkins Hospital, might be located in a community with better, stable jobs. The use of peer groups is not necessarily

problematic, but with a narrow range of percentages, more schools move in and out of the group, so the rating is less reliable.

In his report, Dr. Schuh states the student achievement evaluation method was not transparent because the report is missing, for example, the formula for how ONI composed comparison groups, the actual percentage granted Academic Success, and the weight each section carries in the Academic Success category. (Monarch 20, p. 3.) On cross-examination, however, Dr. Schuh acknowledged he did not see the Renewal Data Tables ONI used to arrive at its conclusions. (BD 2 and 3.) Further, he did not review the SER report.

Monarch offered into evidence the transcripts of the Board's meetings on December 11, 2018, and January 8, 2019. (Monarch 5 and 13.) At the December 11, 2018 meeting, Amy Lordan, a first grade teacher at Monarch, described her challenges teaching for BCPS; she felt alone and overwhelmed. Unlike BCPS, Ms. Lordan stated Monarch provided training, guidance, and support. She had an instructional coach, a mentor, and professional development sessions. (Monarch 5, pp. 50-54.) Linda Lomax, Healthy Neighborhood Coordinator for the Coldstream, Homestead, and Montebello neighborhood, also testified before the Board. She stated Monarch has helped to build the community. The school has only been around for several years and needs more time. (Monarch 5, pp. 193-195.) Tracey Brooks, a Monarch parent, told the Board her son entered Monarch for the third grade. He is now a freshman at the Baltimore School for the Arts and on the honor roll. Her daughter entered Monarch for the first grade last year and after struggling academically for a few years is now making progress on her IEP. Ms. Brooks stated that closing the state-of-the-art school would devastate her daughter. (Monarch 5, pp. 220-223.)

#### Board's Case

Angela Alvarez, Executive Director, ONI, explained the reasons behind the charter school renewal process. She stated charter schools are granted autonomy in exchange for a high

level of accountability. In granting charters, BCPS is striving to move the student achievement mean for the entire district. Charter schools are designed to help the City move up and, as a result, they are expected to perform at a higher level.

Ms. Alvarez explained that ONI is responsible for ensuring charter schools are delivering on their contracts. She testified the renewal process begins in the penultimate year of the contract. The SER occurs in the spring and the special education audit occurs in the fall as the process continues into the next year. She stated the process is the same for all charter schools; the process must be consistent. For the 2018-2019 renewals, ONI held an initial orientation session to obtain feedback about the previous renewal process. Then ONI held a second orientation session to review the process and answer questions. She did not believe Monarch attended the programs.

Ms. Alvarez stated ONI sent Monarch the orientation materials and SER protocols. The Board offered the sixty-four page School Effectiveness Review Protocol into the record. The document sets out in detail the SER process, including for example, the performance level rubric, focus group questions, and a glossary of terms. (Monarch 7.) ONI also provided Monarch with preliminary and final Renewal Data Tables and a draft SER report. (BD 2 and 3.) Monarch had the opportunity to submit additional information and a response to the draft. Monarch also had the opportunity to appeal the findings of Developing and Not Effective, but not Effective and above. Ms. Alvarez testified that on November 5, 2018, she met with Monarch staff to share the final report and ONI's recommendation that the Board not renew Monarch's charter.

Ms. Alvarez further testified that ONI employs quantitative and qualitative measures in its assessment of charter schools. She reviewed the measures required by Board Policy including Academic Success, Climate, and Financial Management and Governance Practices. Board Policy IHB III.K.2. PARCC is the quantitative measure of student achievement related to the Academic Success category. The Climate category is a qualitative measure and ONI considers the factors

such as effectiveness of instruction, parent, staff, and student satisfaction, attendance, suspensions, and programming for special education students. Financial Management and Governance Practices is also a qualitative measure which considers cash flow, the ratio of assets to liabilities, the school's compliance with State and federal reporting requirements, and strategic leadership. (BD 2 and 3.)

Ms. Alvarez testified that in the renewal process ONI considers PARCC assessments. She noted that that PARCC is the statewide assessment Maryland uses to hold BCPS accountable. She stated i-Ready is not a statewide test and is not regulated; that is why ONI denied Monarch's request to use i-Ready scores. Ms. Alvarez testified that to determine Absolute Student Achievement, ONI considered PARCC data for one year, but contrary to Dr. Schuh's testimony that ONI only used one year of PARCC scores for the entire review, ONI used 2015 to 2018 scores for the Trend and Growth mean scale scores. Ms. Alvarez stated that of those subcategories, ONI gives the most weight to the Growth scores.

Ms. Alvarez stated the percentile rank for the ratings are: Highly Effective, 100% - 80%; Effective, 65% - 80%; Developing, 50% - 65%; and Not Effective, below 50%. (BD 1.) She noted that Dr. Schuh inaccurately writes in his report that the percentile rank scores are: Highly Effective, 100% - 90%; Effective, 89% - 75%; Developing, 74% - 50%; and Not Effective, below 50%. (Monarch 20, p. 9.)

Ms. Alvarez acknowledged that the SER team did not arrive at Monarch by 7:40 a.m. as planned. However, the review with Monarch staff was not scheduled to begin until 8:30 a.m. (Monarch 2.) The SER team was never scheduled to observe the Culture Card meeting.

With regard to parent, staff, and student satisfaction, Ms. Alvarez testified ONI relies on four years of surveys. ONI also looks at absences and suspensions and reviews the steps the school is taking to improve attendance. With regard to special education, Ms. Alvarez testified

that part of the Board's contract with charter schools requires the operators to meet all special education requirements. Charter schools are permitted to recruit and select special education teachers, but BCPS must process and approve the hiring because staff is part of a collective bargaining agreement. Also, BCPS provides related service providers such as physical, occupational, and speech/language therapists. Ms. Alvarez acknowledged that there is not a surplus of special education teachers in the area.

Ms. Alvarez testified that Mr. Guild is a specialist assigned to Monarch to provide special education support including, for example, technical support, training, and review of IEP implementation. She offered Mr. Guild's schedule of contacts with Monarch. (BD 7.) He attended team meetings, student observations, training, and professional development. He communicated with Monarch by email on issues ranging from case management plans, guidance on procedures for students entering from other districts, and guidance on consent for reevaluation procedures.

Further, Ms. Alvarez testified ONI submitted memoranda to the Board to answer member questions. (BD 8 and 9.) The first memorandum, dated December 21, 2018, states the Not Effective rating for special education relies on OSEMC 2018 audit, special education students' below district average on PARCC, and chronic absence rates for students with disabilities. (BD 8, pp. 10-15.) ONI submitted the second memorandum, dated January 2, 2019, because Monarch raised a 2016 OSEMC special education report to the Board. (BD 9.) The memorandum addresses the Board's questions about that report.

For the Financial Management and Governance Practices category, Ms. Alvarez testified ONI reviews three years of audits and determines if the school has submitted audits and how they have managed grants. ONI also looks at the practices of the charter school's board.

Ms. Alvarez explained why ONI recommended the Board not renew Monarch's charter. The school rated Not Effective in ten out of twelve categories. The school performance in special

education was below the district's mean and had a 57.3% absence rate and a higher than average short-term suspension rate. For a five-year renewal of a charter, a charter school must achieve all Highly Effective and Effective ratings. For a three-year renewal, Effective and Developing ratings are required. Any Not Effective rating results in the ONI recommendation that the Board not renew the contract. Ms. Alvarez acknowledged there is a significant emotional impact on students, parents, teachers, staff, and the community when the Board declines to renew a charter. However, at the end of the day, academic outcomes are what matter the most.

On cross-examination, Ms. Alvarez testified that Monarch had the opportunity to challenge the special education audit at any time before ONI submitted its recommendation to the Board. Monarch did submit a response to the Renewal Report. (Monarch 9.) Regarding Monarch's opportunity to present its position to the Board, Ms. Alvarez agreed that Monarch was only permitted four minutes to address the Board. However, many schools wish to address the Board and four minutes is the standard time allotted to all schools. With regard to Ms. M., Ms. Alvarez testified Monarch can dismiss an employee during the school year, but there is a process with which the school must comply. Finally, Ms. Alvarez stated she receives draft SER reports but does not review them; she uses them to determine what step the team is on in the assessment process.

Christopher Wohn, Director of Research Services, testified for the Board. He has a medical degree from the University of Maryland. He testified that PARCC is a statewide assessment BCPS must use to track student performance. Because PARCC is administered in every school in Maryland and the test is monitored, PARCC provides a required comparison group. Mr. Wohn explained that i-Ready does not offer such a strong comparison group and all charter schools do not use i-Ready. Mr. Wohn further testified that for Absolute Student Achievement, ONI looks at economic disadvantage for a more fair comparison. He stated scores are highly correlated with

poverty in Absolute Student Achievement but not so highly correlated in Trend and Growth.

Growth measures individual student growth and is given the highest weight.

With regard to the economic disadvantage bands, Mr. Wohn stated ONI relies on data showing the number of families receiving assistance such as SNAP benefits, TANF, homelessness, and children in foster care. Previously, ONI measured economic disadvantage based on the number of children receiving free lunches, but now all children receive lunch. As a result, ONI moved to employing other assistance programs. On cross-examination, Mr. Wohn stated ONI did not use receipt of Medicaid in its analysis because BCPS did not have access to that data.

With regard to the “nearest neighbor approach” advocated by Dr. Schuh, Mr. Wohn testified that approach is used for teacher and principal evaluations, not student achievement. He stated ONI has discussed changing that approach, but a review of the entire process is ongoing and ONI declined to switch when other changes were being made.

Mr. Wohn testified there is no one way to assess school performance. Consequently, ONI uses a quantitative and qualitative methodology; a mixed methodology. The assessment relies on PARCC scores, absences, suspensions, and other factors. He acknowledged that relying on one year of PARCC scores is unfair. Therefore, ONI also relies on multiple years for on Trend and Growth measures. He stated that in his report, Dr. Schuh inaccurately stated the percentile rank scores for the Highly Effective, Effective, Developing, and Non Effective categories. (Monarch 20, p. 9.) The percentile ranking is not unfair, but used by all counties in Maryland.

#### Analysis – Arbitrary or Unreasonable

##### PARCC Scores

As stated above, the Board’s decision is *prima facie* correct. Monarch must establish the Board’s decision to rely on PARCC scores is contrary to sound educational policy or that a

reasoning mind could not have reached the same conclusion. Dr. Schuh's opinion is insufficient to prove these points.

Dr. Schuh's testimony that i-Ready shows student academic growth, does not mean ONI's reliance on PARCC scores is contrary to sound education policy or unreasonable. Dr. Schuh acknowledged the strengths of PARCC, stating considerable statistics and theory stand behind the test. He noted that the PARCC writers have run reliability tests to remove biases and to come as close to standards as possible. The weakness of PARCC is that in gauging student achievement, the test is only administered one time a year. PARCC alone does not provide sufficient information for ONI to assess student achievement during a school year. For that reason, in Dr. Schuh's opinion, PARCC scores are not recommended for high-stakes decision-making.

Dr. Schuh did not, however, adequately address the fact that the Academic Success category consists of four subcategories, Absolute Student Achievement, Student Achievement Trend, Student Achievement Growth, and Fidelity to Charter. ONI does not rely on PARCC for Fidelity to Charter. Dr. Schuh did not explain if the Fidelity to Charter subcategory had any effect on his opinion.

Additionally, the ONI renewal rubric defines the scores Monarch must attain on PARCC for each category: Highly Effective, 80% and above; Effective, 65% to 80%; Developing, 50% to 65%; and Not Effective, below 50%. (BD 1.) Dr. Schuh misstated these percentages in his report. He did not have the Renewal Data Tables when formulating his opinion of the reliability of ONI's assessment. He did not know that ONI relied on one year of PARCC scores only on Absolute Student achievement and multiple years for Student Achievement Trend and Growth. The ONI renewal rubric also defines the evidence ONI would consider in scoring every rating category including, for example, effective instruction, teacher, parent, and student surveys, attendance and suspensions, and strategic leadership and governance. (BD 1.) Monarch was on

notice of the points or factors it would need to achieve for each finding of Highly Effective, Effective, and so on. Again, it is unclear whether or how this information might have changed Dr. Schuh's opinion.

Most importantly, the statute requires the Board to employ statewide assessments to determine if a school is eligible for a charter. The statute references statewide assessments in the very definition of an "eligible charter school" and provides that a local district must measure student academic achievement using assessments required for other public schools. Md. Code Ann., Educ. §§ 9-104.1(a), 9-106(d)(2). Further, an eligible charter school is one where the students' achievement exceeds the average in the local school system. *Id.* § 9-104.1(a)(2)(i). PARCC is Maryland's statewide assessment; Monarch did not and could not contest this fact. The Board's decision cannot be found unreasonable if it is relying on a test required by the State.

Further, Ms. Alvarez's testimony and the exhibits in the record demonstrate that ONI implemented a multifaceted evaluation process. On April 19 and 25, 2018, ONI held meetings to discuss possible changes to the charter school renewal process for the following year. ONI held an orientation covering the renewal process, including discussion of the timeline, rubric, and application. On June 22, 2018, ONI sent an email to renewing charter schools with materials from the orientation session including the rubric and a proposed renewal application. The document sets out the data and metrics ONI would use in the renewal process. ONI provided Monarch with Renewal Data Tables on July 27, 2018 and August 20, 2018. In both communications, ONI listed other sources of data Monarch could use to write its application including, for example, school profiles, Maryland Report Card, and renewal reports from previous years. (BD 2 and 3.) On September 17, 2018, the OSEMC conducted a site visit at Monarch. On October 25 2018, ONI emailed Monarch a ratings report giving ratings for all

measures used in the renewal rubric. Monarch had notice of the renewal process and that ONI's assessment was based on much more than PARCC scores for one year.

#### Economic Disadvantage Rank

Dr. Schuh testified that using economic disadvantage rankings is not necessarily problematic, but the ranking is volatile and less reliable when the bands are narrow. Dr. Schuh's opinion on this point is insufficient to prove ONI's ranking method was so inaccurate it resulted in an unreliable renewal report on which the Board unreasonably relied. There is no evidence Dr. Schuh reviewed the list of schools in Monarch's rank or that he had any knowledge of those schools. He speculated that schools near John Hopkins Hospital may include more stable households which would then skew Monarch's place in a band with schools in that neighborhood. That testimony is not sufficiently concrete and, so, does not prove Monarch's rank was incorrect or resulted in an unreliable assessment of Monarch's Academic Success.

Moreover, ONI relied on the economic disadvantage rating only once for Absolute Student Achievement, not for Trend or Growth. Dr. Schuh did not state whether or how the use of the ranking only once affected his opinion. Monarch failed to prove ONI's economic disadvantage ranking resulted in a Board decision that is contrary to sound educational policy or unreasonable.

#### SER Team

With regard to missing the Culture Card meeting, Ms. Alvarez's testimony established that the SER team was not scheduled to attend that meeting. Although an important part of Monarch's program, missing that meeting does not result in an assessment so inadequate it can be deemed contrary to sound educational policy or unreasonable. Similarly, Monarch failed to show the team's meeting with a teacher one-on-one rather than in a focus group, affected the SER conclusion. The school Climate category considers staff satisfaction. (BD 10.) So, ONI could properly consider comments from even a disgruntled employee. Also, Ms. Alvarez testified ONI

relies on four years of surveys, not just one teacher's input. Monarch failed to show how and if this one employee's report distorted the school's rating.

Additionally, Monarch failed to show Ms. Alvarez was prejudiced because she received a draft renewal report. Ms. Alvarez is a professional and in charge of ONI. She has been with ONI six years, three years as the Executive Director. She was a knowledgeable and straightforward witness. As the person responsible for managing the renewal process, she should see drafts and final renewal reports; that is her job. Monarch failed to prove Ms. Alvarez was prejudiced against Monarch or had a motive to submit a deficient report to the Board.

#### Special Education

Moving to the special education rating, including the OSEMC audit and BCPS' support of Monarch, Monarch recognized that, in the end, it was responsible for compliance with the law. First, because, as Ms. Alvarez testified, the renewal process begins in the contract's penultimate year and continues into the following year, OSEMC did not improperly conduct the special education audit in the fall after the spring SER team review. Monarch failed to prove the timing of the audit was unfair or adversely affected the final renewal report such that the process resulted in a decision contrary to sound educational policy or unreasonable.

Second, Monarch did not present evidence to dispute Ms. Alvarez's testimony that Monarch could have submitted a response to the audit but did not do so. Third, although the Children's Guild employees did not have access to BCPS online special education tools, Ms. Livelli testified Ms. Hargrove was able to gain access.

Fourth, Monarch established that Ms. M.'s job performance was substandard and she contributed to the school's failure to fully comply with special education law and regulations. That deficiency, however, cannot be attributed to BCPS. Ms. Hargrove acknowledged that Monarch is responsible for special education compliance. Although Monarch would have to

comply with a termination procedure, there is no evidence Monarch attempted to replace Ms. M. when her performance failed to improve. Additionally, Ms. Nicholson acknowledged that Monarch can recruit special education teachers.

Finally, although Mr. Guild might have missed some meetings with Monarch, the outline of his contacts with Monarch establishes that he worked with the school. (BD 7.) He met with Monarch staff several times and communicated with staff on numerous occasions. Both Ms. Spanoghe and Ms. Livelli alleged minimal response from Mr. Guild, but only provided minimal specifics. They failed to present sufficient facts to establish the steps they maintain Mr. Guild was required to take and failed to take. Monarch's experience with Mr. Guild fails to prove ONI and then the Board impermissibly relied on the OSEMC audit and the Board's decision was unreasonable as a result.

#### Absenteeism and Suspension Rates

With regard to absences and suspensions, Monarch alleges in its response to the Renewal Report that within the first month of school, a high number of students withdraw from Monarch to attend other schools. If ONI included in its data students who were enrolled ten days or more, the absentee count might be high. Additionally, the data ONI relied on might have resulted in duplicative calculations. Absences might have been counted for both homeroom and classroom, when only one absence should be counted. However, Monarch was not sure if the error occurred and provided no concrete examples of any errors. (Monarch 9, p. 8.) Also, Ms. Nicholson stated the majority of suspensions relate to three emotionally disabled students. While, Ms. Nicholson's statement might be accurate, it fails to prove ONI impermissibly relied on the school's suspension data.

### Address to the Board

Monarch also raised the issue of its opportunity to address the Board. The school was given four minutes. Monarch failed to present testimony to refute Ms. Alvarez's testimony that, due to the number of schools seeking to address the Board, all schools were allotted four minutes. Also, on December 7, 2018, Monarch submitted a written response to ONI's recommendation that the Board not renew its charter. (Monarch 9.) Monarch noted ONI found the teachers were providing effective instruction and the school was effective in holding a clear vision of high student achievement. Monarch understands data analysis and uses a complete student learning data-cycle. (Monarch 9, p. 4.) Monarch provided the students' i-Ready scores indicating academic progress. (Monarch 9, p. 5.) Further, Monarch addressed its special education performance and compliance and raised the issue of BCPS' failure to provide sufficient support. (Monarch 9, pp. 6-8.) Monarch also addressed the absenteeism and suspension rate. (Monarch 9, p. 8.) The Board had Monarch's position on all issues to consider. Finally, on December 11, 2018, three members of the Monarch community, including a teacher, a community leader, and a parent, addressed the Board. (Monarch 5.)

The evidence demonstrates that ONI conducted a thorough renewal review, provided Monarch notice of all the procedures and data ONI would employ, and allowed Monarch the opportunity to respond to its findings. If there were any difficulties with the SER team, BCPS special education staff, or access to the district's online special education tools, Monarch failed to prove those complications caused a flawed, misinformed, and unsubstantiated Renewal Report, which, in turn resulted in a Board decision that was contrary to sound education policy or that a reasoning mind could not have reasonably reached. Consequently, Monarch failed to prove the Board's decision not to renew its charter was arbitrary or unreasonable.

## Analysis - Illegality

As stated above, because nonrenewal has the same effect as closure or revocation, Monarch maintains the Board was required to comply with the school closure provisions set out in the Maryland regulations and the revocation procedures set out in Board policy. COMAR 13A.02.09.01; Board Policy IHB III.K.5. Conversely, the Board contends the regulation governing school closure is inapplicable because the statute specifically exempts the Board's assessment of charter schools from the laws and regulations governing other public schools.

Maryland regulations require that local boards consider certain factors when deciding to close a school. The rule states in part:

- A. Each local board of education shall establish procedures to be used in making decisions on school closings.
- B. The procedures shall ensure, at a minimum, that consideration is given to the impact of the proposed closing on the following factors:
  - (1) Student enrollment trends;
  - (2) Age or condition of school buildings;
  - (3) Transportation;
  - (4) Educational programs;
  - (5) Racial composition of student body;
  - (6) Financial considerations;
  - (7) Student relocation;
  - (8) Impact on community in geographic attendance area for school proposed to be closed and school, or schools, to which students will be relocating.

COMAR 13A.02.09.01.

Similarly, the Board's Public Charter School policy related to revocation of a charter provides, in part:

The Board may revoke a public charter school's charter prior to the end of the contract.

...

b. Prior to making a decision, the Board will receive a study from the CEO that includes the recommendation and rationale for school closings, as well as consideration of the impact of the proposed closing on the following factors:

- i. Student enrollment trends;
- ii. Educational program;

- iii. Racial composition of student body;
- iv. Financial considerations;
- v. Student relocation;
- vi. Impact on community in geographic attendance area for school proposed to be closed and school, or schools, to which students will be relocating.

Board Policy IHB III.K.5.

Under the *Accardi* doctrine, a government agency must observe the rules, regulations or procedures or the agency action will be invalidated. *Accardi v. Shaughnessy*, 347 U.S. 260 (1954); *Pollock v. Patuxent Inst. Bd. of Review*, 374 Md. 463 (2003) (finding the *Accardi* doctrine is applicable in Maryland). Here, the Board observed the procedures required by law and policy.

As cited above, the statute provides that the laws and regulations governing public schools also govern charter schools. Md. Code Ann., Educ. § 9-106(a). The statute sets out exceptions, however, including as relevant here, the exception for charter school assessment. *Id.* §§ 9-102(11), 9-104.1. In accordance with the law, the Board is required to assess Monarch by employing the statute and policies respecting assessment specific to charter schools, not to public schools in general. The Board is not authorized under the law to apply rules governing public schools to charter schools when assessing whether a charter school is an eligible charter school.

The Maryland Court of Appeals addressed the statute in 2007 in *Patterson Park Public Charter School, Inc. v. Baltimore Teachers Union*, 399 Md. 174 (2007). At that time, the charter school statute, Title 9 of the Education Article, provided only an exception from section 9-106. In *Patterson Park*, the charter school requested a waiver from the requirement that public charter schools employees be BCPS employees and subject to collective bargaining agreements. The Court held that while MSDE was authorized to grant a waiver from other laws and regulations governing public schools, MSDE could not waive the provisions of Title 9 itself. *Id.* at 182.

The legislature amended the statute in 2015 to include section 9-104.1, governing assessments, but the same reasoning applies. The Board cannot grant Monarch a waiver from the

assessment requirements of Title 9. The Board, therefore, is required to assess charter schools in accordance with Title 9, by determining if the school has demonstrated sound fiscal management and student achievement that exceeds the average in the local school system on statewide assessments and other measures developed by MSDE. *Id.* § 9-104.1(a). Consequently, the policies and procedures set out in Maryland regulations governing assessing schools for closure are inapplicable, as are the procedures set out in the Board's policy governing revocation of public charters. Monarch failed to show the Board's decision was illegal because it resulted from an unlawful procedure. COMAR 13A.01.05.06C(4).

#### Hearing on Remand

##### Role of Charter Schools

Ms. Alvarez testified that the role the Board has defined for charter schools to innovate and improve student achievement derives from the Maryland law and Board policy. Md. Code Ann., Educ. §§ 9-101(b) and 9-104.1; Policy IHB. Maryland adopted the charter school law with the idea that there were various ways to approach education with different organizations, parents, and others involved in developing a school and with the purpose of improving the quality of education. Charter schools provide innovative learning opportunities and so have a degree of autonomy. The schools must, therefore, improve or enhance the quality of education in the BCPS district as a whole by improving their students' outcomes.

In support of her position, Ms. Alvarez pointed to several provisions of the Board's policy. (BD 11, Policy IHB.) The policy states that the purpose of charter schools is to provide "additional innovative learning opportunities and creative educational approaches to improve the education of students." (*Id.* at IHB.I.) "The Board's mission and the Charter Law share a common purpose designed to improve student achievement." (*Id.* at IHB.III.A.) In exchange for autonomy and flexibility, "public charter schools accept higher levels of individual school accountability.

The Board expects public charter schools to use the autonomy and flexibility afforded to them as a means of developing instructional and operational strategies that can accelerate improvement in student achievement and school excellence.” (*Id.* at IHB.III.C.) Finally, public charter schools shall be evaluated on multiple measures including student achievement, which is performance on State assessments, growth measures or value added measures, unique indicators, and fidelity to charter. “Student achievement measures will be at least 50% of the renewal score.” (*Id.* at IHB.III.K.2.a.) Ms. Alvarez stated that Monarch was aware of the policy from the beginning of the charter process when the school originally applied for a charter.

On cross-examination, Ms. Alvarez testified that BCPS is a partner with charter schools because BCPS provides information, training, and support, while still respecting the charter school’s autonomy. She stated charter schools enhance BCPS by offering something more or something additional to what the district offers.

#### Notice of Renewal Criteria

Ms. Alvarez testified that every year at the conclusion of the renewal process, ONI debriefs participants and determines if changes are needed; it is an evolving process. ONI receives feedback from the public and from meetings with operators. ONI holds the debriefing sessions during March and April of the year, a public meeting in May, and an orientation in June.

Further, Ms. Alvarez stated that Monarch first received notice of the renewal criteria with its July 1, 2016 Renewal Charter School Agreement (Amended). A Renewal Framework was appended to the contract. (BD 12.) The renewal criteria provide that Monarch will be evaluated in three key areas: 1) student achievement (50%); 2) school climate; and 3) financial management and governance. Student achievement is based on: 1) student performance on the State assessment in the year prior to renewal; 2) the school’s progress overtime on the State assessment; and 3) the

increase in academic performance of individual students based on the State assessment or an alternative assessment approved by the designee of the CEO of the Board. (BD 12.)

On June 21, 2018, ONI held an orientation and provided a PowerPoint about the renewal process. (Monarch 21.) On June 22, 2018, the renewal rubric was sent to Monarch. (BD 13.) The rubric set out the measures governing Monarch's renewal and advised Monarch how the school would be scored. In terms of achievement, the rubric provides that a score below 50% on PARCC results in a Not Effective rating. That is where the renewal criteria provides, in terms of achievement, that Monarch as required to be above the 50<sup>th</sup> percentile of schools in its economic disadvantaged groups for Absolute Student Achievement, and above the 50<sup>th</sup> percentile of all BCPS schools in Trend and Growth.

On July 27, 2018, ONI released the first set of Renewal Data Tables setting out data for all BCPS schools and data specific to Monarch. The data related to enrollment, school surveys, and cohort retention. Other data was historical because current data was not yet available. That data included PARCC results, the SER ratings, and data related to attendance, chronic absences, and suspensions. (BD 2.) The email also included a link to other sources of data available to Monarch when writing its renewal application. The links included, for example, School Profiles and Maryland Report Card.

On August 20, 2018, ONI released the second and final set of Renewal Data Tables, and, again, links to sources of data. The up-to-date data included PARCC results, the SER ratings, and data related to attendance, chronic absences, and suspensions. (BD 3.)

Ms. Alvarez explained that the renewal rubric, distributed on June 22, 2018, requires a school to score above the 50<sup>th</sup> percentile on PARCC to achieve a rating above Not Effective. (BD 13.) When Monarch students scored 704 in mathematics, for example, the school scored better than only in the 19.4% of the BCPS students who took the test in Monarch's educational

disadvantage group, below the 50<sup>th</sup> percentile. (BD 3, p. 3.) When the average scale score on growth was -3, Monarch scored in the 28<sup>th</sup> percentile, again, below the 50<sup>th</sup> percentile. Such results do not accord with the statute which requires student achievement at a charter school to exceed the average in the local school system on statewide assessments.

#### Economic Disadvantage Group

The schools in Monarch's economic disadvantage group includes thirty schools for grades three to five and twenty-six schools for grades six to eight. In those schools, 60 to 70 percent of the students receive federal benefits or are foster, homeless, migrant, or runaway children, or have low English-language proficiency. (BD 3, pp. 14-16.)

Ms. Alvarez testified Absolute Performance on PARCC correlates to wealth. As a result, for the Absolute Performance measure only, BCPS compares schools with a similar percentage of economically disadvantaged students to one another. Because all students in BCPS receive free breakfast and lunch, ONI cannot use the number of students who receive free lunch as a measure. ONI, therefore, calculates a school's wealth based on the school's "direct certification" rate.

Federal regulations define direct certification:

*Direct certification* means determining a child is eligible for free meals or free milk, as applicable, based on documentation obtained directly from the appropriate State or local agency or individuals authorized to certify that the child is a member of a household receiving assistance under *SNAP*, as defined in this section; is a member of a household receiving assistance under [food distribution program for households on Indian reservation] or under the *TANF* program, as defined in this section; a *Foster* child, *Homeless* child, a *Migrant* child, a *Head Start* child and a *Runaway* child, as defined in this section.

7 C.F.R. § 245.2 (2018).

Like Ms. Alvarez, Mr. Wohn testified that the economic disadvantage groups are created and applied only to the Absolute Performance PARCC measure. Mr. Wohn stated ONI uses economic disadvantage groups because poverty correlates to student achievement. The groups are based on direct certification rates and on students who take the WIDA assessment, an

English-language proficiency assessment. Mr. Wohn stated ONI uses data related to English-language learners because those students' families generally do not apply for or receive SNAP or TANF, but those families are economically disadvantaged. Direct certification rates and WIDA results are the data considered for each school.

Mr. Wohn explained that to develop the achievement comparison, ONI totals the number of students who receive benefits under the federal law or fell below a proficiency level of 2.5 on the WIDA assessment, divides by the total number of students enrolled in the school, and then calculates a percentage rate. Monarch's rate was 62.2%, meaning 62.2% of their students were either directly certified or low English proficiency students. Monarch was then compared to schools in the 60-70% range.

Mr. Wohn testified that annually, by September 30<sup>th</sup> of the school year, schools provide enrollment data to the Board. That data includes information related to direct certification of the students. Monarch had access to that data through "Infinite Campus," a BCPS site. Mr. Wohn stated "economic disadvantage" is not defined by BCPS policy, but schools are aware of their direct certification rate. That information is available on the BCPS website and schools receive a report with the information. Funding is based on a school's direct certification rate and, so schools have access to that information.

Additionally, Mr. Wohn stated ONI does not rely on the student neighborhoods to determine economic disadvantage. Data on students' addresses is prone to error because students frequently move and, so, the information is hard to collect.

### **CONCLUSIONS OF LAW**

I conclude as a matter of law that Monarch failed to prove the Board's decision not to renew Monarch's charter was arbitrary or unreasonable because it was contrary to sound

educational policy or a reasoning mind could not have reasonably reached the decision. COMAR 13A.01.05.06A and B.

I further conclude as a matter of law that Monarch failed to prove the Board's decision not to review Monarch's charter was illegal because it resulted from unlawful procedure. COMAR 13A.01.05.06A and C(4).

### **PROPOSED ORDER**

I PROPOSE that the Maryland State Department of Education AFFIRM the Baltimore City Board of School Commissioners' decision to not renew Monarch Academy Public Charter School's contract.

February 25, 2020  
Date Decision Mailed

*Mary Shock*  
\_\_\_\_\_  
Mary Shock  
Administrative Law Judge

MKS/cmg  
#183575

### **NOTICE OF RIGHT TO FILE EXCEPTIONS**

Any party adversely affected by this Proposed Decision has the right to file written exceptions within fifteen days of receipt of the decision; parties may file written responses to the exceptions within fifteen days of receipt of the exceptions. Both the exceptions and the responses shall be filed with the Maryland State Department of Education, Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201-2595, with a copy to the other party or parties. COMAR 13A.01.05.07F. The Office of Administrative Hearings is not a party to any review process.

### **Copies Mailed To:**

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<b>MONARCH ACADEMY</b>	* <b>BEFORE MARY SHOCK,</b>
<b>PUBLIC CHARTER SCHOOL,</b>	* <b>AN ADMINISTRATIVE LAW JUDGE</b>
<b>APPELLANT</b>	* <b>OF THE MARYLAND OFFICE</b>
<b>v.</b>	* <b>OF ADMINISTRATIVE HEARINGS</b>
<b>BALTIMORE CITY BOARD OF</b>	*
<b>SCHOOL COMMISSIONERS</b>	* <b>OAH No.: MSDE-BE-12A-19-38408</b>

\*     \*     \*     \*     \*     \*     \*     \*     \*     \*     \*     \*

#### **FILE EXHIBIT LIST**

Monarch offered the following exhibits at the May 8 and 9, 2019 hearing:

Monarch 1	School Leader Orientation, School Effectiveness Review, undated
Monarch 2	Monarch School Effectiveness Review Schedule, May 14 to 16, 2018
Monarch 3	Monarch Visitor Log, May 14 to 17, 2018
Monarch 4	Affidavit, Kelly Spanoghe, Chief Organizational Learning Officer, The Children's Guild, undated, with Correction Action Plan, undated
Monarch 5	Transcript of Board Meeting, December 11, 2018
Monarch 6	Affidavit, Jenny Caddell Livelli, Director of Continuous Quality Improvement, The Children's Guild, undated
Monarch 7	School Effectiveness Review Protocol, 2017-2018
Monarch 8	Letter from the Board to Monarch Academy Community, November 13, 2018
Monarch 9	Letter from Monarch to Board, December 7, 2018
Monarch 10	Emails between Monarch and Office of New Initiatives, July 17, 2018
Monarch 11	School Effectiveness Review, May 14 to 16, 2018
Monarch 12	Email from Monarch to BCPS, July 27, 2018
Monarch 13	Transcript of Board Meeting, January 8, 2019
Monarch 14	Map, Baltimore City, undated
Monarch 15	Map, Baltimore City, undated
Monarch 16	Email from Monarch to Office of New Initiatives, May 11, 2017
Monarch 17	Email from Monarch to Office of New Initiatives, June 1, 2017
Monarch 18	Renewal Report, November 13, 2018
Monarch 19	Alexander Schuh, Ph.D., <i>Curriculum Vitae</i>
Monarch 20	Alexander Schuh, Ph.D., Report, February 6, 2019
Monarch 21	Affidavit, Angela Alvarez, March 11, 2019
Monarch 22	Operator Renewal, Presentation to Operators, April 2018
Monarch 23	Memorandum, November 5, 2018

Monarch offered the following exhibits at the January 17, 2020 hearing:

Monarch 24	<i>Building a Portfolio of Schools</i> , BCPS, November 13, 2018
Monarch 25	District Profile, BCPS, Fall 2019

The Board offered the following exhibits at the May 8 and 9, 2019 hearing:

- BD 1 Renewal Rubric, 2018-2019 School Year
- BD 2 Email from Office of New Initiatives to Monarch, July 27, 2018, with Renewal Data Tables
- BD 3 Email from Office of New Initiatives to Monarch, August 20, 2018, with Renewal Data Tables
- BD 4 Renewal Recommendation, November 13, 2018
- BD 5 Office of Special Education Monitoring and Compliance, Memorandum, Summary of School Based Special Education Compliance Review, September 19, 2018
- BD 6 Office of Special Education Monitoring and Compliance, Record Review, undated
- BD 7 Timeline of Special Education Support to Monarch, October 4, 2017 to January 9, 2019
- BD 8 Office of New Initiatives, Memorandum, December 21, 2018
- BD 9 Office of New Initiatives, Memorandum, January 2, 2019
- BD 10 Renewal Report, January 8, 2019

The Board offered the following exhibits at the January 17, 2020 hearing:

- BD 11 Board Policy, IHB, June 28, 2011, and Administrative Regulation, IHB – RA, November 13, 2012
- BD 12 Renewal Charter School Agreement, Monarch, July 1, 2016
- BD 13 Email from Trevor Roberts to School Operators and Principals with Renewal Rubric, June 22, 2018