

IN THE MATTER OF
MONARCH ACADEMY
PUBLIC CHARTER
SCHOOL

ORDER OF THE
STATE
SUPERINTENDENT
OF SCHOOLS
ORDER NO.: 19-01

ORDER

On February 7, 2019, Monarch Academy Public Charter School ("Monarch") requested a stay of the Baltimore City Board of School Commissioners' ("local board") decision not to renew Monarch's charter. The local board opposed the request. By March 1, 2019, the parties had fully briefed and responded to the request for stay. Pursuant to COMAR 13A.01.02.01, the State Superintendent has the authority "to order a stay, not to exceed 60 days in duration, of any action taken by any local board of education, provided, however, that the stay be issued within five (5) days of the date notice of the action is received by the State Board from the local board."

Granting a stay, just like granting a preliminary injunction, involves the "exercise of a very far reaching power to be [used] only sparingly and in limited circumstances." *See In Re Microsoft Corp. Antitrust Litigation*, 333 F.3d 517, 524 (4th Cir. 2003). When courts exercise that power, they carefully consider four factors: (1) the likelihood of success on merits; (2) the balance of convenience which requires the balancing of harms; (3) the likelihood of irreparable harm to the plaintiff if the stay is denied; and (4) the public interest. *Lerner v. Lerner*, 306 Md. 771, 783-85 (1986); *DMF Leasing, Inc. v. Budget Rent-a-Car of Maryland, Inc.*, 161 Md. App. 640, 648 (2005).

Three times in the past, advocates for schools have requested the State Superintendent to grant a stay of the local board's decision to close a school. In all three cases, the State Superintendent denied the request. *See In the Matter of Potomac Public Charter School*, Order 07-02; *Eudaimonia Foundation Corp. v. Baltimore City Board of School Commissioners*, Order 16-01; *Elizabeth Galadia v. Carroll County Board of Education*, Order 16-02. (All Orders are attached here).

In the *Eudaimonia* case and the *Galadia* case, the State Superintendent denied the 60-day stay because "A 60 day stay would not accomplish the purpose the individuals seek to accomplish here. It would not stop the closure process for a sufficient period of time while [the cases are] being resolved."

In the *Potomac Charter School* case, the State Superintendent reviewed all the factors to be considered in granting a stay. Applying that same analysis here, it is my view that the likelihood of success on the merits factor may very well be in equipoise between the parties but the standard of review may tip the balance in favor of the local board.

In considering whether harm to the *Monarch* would be irreparable, I am guided by the *Potomac Charter* decision which stated:

In considering the factor of irreparable harm, I recognize that if the request for stay is denied, the charter school might have to close its doors for all or part of the upcoming school year. That harm is not irreparable, in my view. Irreparable harm occurs if the result of denying the injunctive relief would be the destruction of an ongoing business. See *DMF Leasing, Inc. v. Budget Rent-a-Car*, 161 Md. App. at 645-646 citing *Semmes Motors, Inc. v. Ford Motors Co.*, 429 F.2d 1197, 205 (2nd Cir. 1970).

In this case, even if the stay is denied, if the charter school is successful on appeal, it can reopen its doors, receive funding...and continue its mission. While there may be disruption in the ongoing operation of the charter school, that disruption is not irreparable harm.

Just in *Potomac Charter*, I am convinced that greater harm would be done by granting the stay than would result from its refusal. The local board points out that planning for closure involves where students and staff will be placed next school year. It involves many steps in the closure process. Granting the 60-day stay merely slows down the process and impairs a smooth transition for students and staff.

CONCLUSION

For all these reasons, I deny the request for 60-day stay of the local board's decision not to renew *Monarch Academy's* Charter.



Dr. Karen B. Salmon
State Superintendent of Schools
March 12, 2019

IN THE MATTER OF

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POTOMAC PUBLIC

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CHARTER SCHOOL

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Order of State Superintendent
07-02

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Request For Stay

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ORDER

On July 3, 2007, the Potomac Public Charter School (Charter School) requested a stay of the decision of the Prince George's County School Board (local board) to revoke its charter to operate a public charter school. On July 6, 2007, the local board opposed that request.

Pursuant to COMAR 13A.01.02.01, The State Superintendent has the authority "to order a stay, not to exceed 60 days in duration, of any action taken by any local board of education, provided, however, that the stay be issued within five (5) days of the date notice of the action is received by the State Board from the local board." Granting a stay, just like granting a preliminary injunction, involves "the exercise of a very far reaching power to be [used] only sparingly and in limited circumstances." See *In Re Microsoft Corp. Antitrust Litigation*, 333 F.3d 517, 524 (4th Cir. 2003). When courts exercise that power, they carefully consider four factors: (1) the likelihood of success on the merits; (2) the balance of convenience which requires the balancing of harms; (3) the likelihood of irreparable harm to the plaintiff if the stay is denied; and (4) the public interest. *Lerner v. Lerner*, 306 Md. 771, 783-85 (1986); *DMF Leasing, Inc. v. Budget Rent-a-Car of Maryland, Inc.*, 161 Md. App. 640, 648 (2005).

Factual Background

The charter school opened for the 2006-2007 school year after receiving its charter on April 20, 2006. On March 20, 2007, the local board placed the charter school on a 90-day probation pending revocation based on a series of financial, governance and operational problems. The local board requested a Remediation Plan which the charter school submitted almost 60 days later, on May 10, 2007. One month later, on June 7, 2007, the local board voted in Executive Session to revoke the school's charter. The charter school was informed of the decision by letter of June 11, 2007.

On June 15, 2007, the Circuit Court for Prince George's County issued a 10-day temporary restraining order preventing the local board from taking any action to impede the operation of the charter school until a preliminary injunction hearing could be held. On June 28, 2007, the court held a preliminary injunction hearing and ordered that the TRO should remain in effect until July 11, 2007. The court determined that the issues in this case, including the request for injunctive relief, were more properly within the jurisdiction of the State Board.

On July 3, 2007, the charter school filed its Request for Stay.

Legal Analysis

A. Likelihood of Success on the Merits

The Charter school argues that the local board's decision to revoke the charter is arbitrary, unreasonable and illegal for numerous of reasons. The local board asserts it had ample grounds to revoke the school's charter.

At this juncture in the proceedings, based on the filings before me, I view the merits of the case, at least, as equal on both sides. I must consider, however, the standard of review that the State Board will apply when it decides this case on the merits. Under that standard of review, "Decisions

of a local board involving . . . a controversy or dispute regarding the rules and regulations of the local board shall be 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.01.05.05(A). The presumption of correctness of a local board's decision tips the likelihood of success factor away from the plaintiff.

B. Balance of Convenience

In considering the "balance of convenience" factor, I must determine whether greater harm would be done by granting the stay than would result from its refusal. I consider the education of students to be of paramount importance in this matter. If a stay were granted, as the local board points out, the local board would be precluded from taking any action that would impair the continued functioning of the school including notifying students and staff of their options for the new school year.

The local board states:

The local Board must be allowed to take immediate actions to implement its Dissolution Plan, even while this matter is pending on appeal before the State Board. The local Board must immediately notify parents and students at PPCS of its decision to revoke the Charter. Parents must be given this information immediately in order to allow them to consider options for their children's enrollment in the students' home-based school or some other charter school program offered by the school system. The Board must immediately collect student records, verify student enrollment in proper boundary schools and arrange for transfer of student records to new schools. PPCS currently has over 130 students enrolled at its school. A delay of this process by a stay or injunction would prevent the local Board from properly managing the student reassignment process and ensuring all students' enrollment and placement in other schools or programs by the start of the 2007-2008 school year. The Board must also be allowed to act immediately to reasonably ensure that the student record transfer process occurs in an orderly and timely fashion.

See July 6, 2007 Letter from Roger Thomas to Dr. Grasmick.

If notification and enrollment efforts were blocked by a stay, it is my view, that there would likely be interruptions in the education of some or all of the 130 students of the charter school. I weigh that consequence heavily in this analysis.

In addition, the local board argues persuasively that granting a stay would have a negative impact on the teachers and staff of the charter school. The local board states:

The Board must be allowed to take immediate actions to notify PPCS's teachers and staff of the revocation of the school's Charter and to facilitate teachers' and staff's transfers to other assignments in the school system. The Charter School Statute provides that employees of a public charter school "are public school employees, as defined in § 6-401(d) and § 6-501(f) of this Article," in the county in which the public charter school is located. See Md. Ann. Code, Educ. Art. § 9-108(a)(1) and (2). Because teachers and other employees of the public charter school are employees of PGCPSS, the local Board must immediately notify teachers and staff at PPCS of the Charter revocation. Those teachers and staff must also receive immediate information on placement and transfer options of the upcoming 2007-2008 school year.

Id.

I must look at this issue with a practical eye. Specifically, given that the Emergency Appeal was not filed until July 3, 2007 and considering that the local board's response to the appeal is due on July 30, 2007, it is clear to me that this case will not be ready for the State Board's review until, at the earliest, the August 28, 2007 Board meeting.¹ The first day of school for teachers is August 13, 2007. The new school year begins on August 20, 2007. The 130 students of this charter school and teachers and staff must know, prior to that date, where they will be attending school. Prince George's County School System needs the time to plan to accommodate those students, teachers and staff. If a stay were entered, the students at issue would face uncertainty about their enrollment in school as of August 20. If a stay were entered and the charter school lost its appeal, student education would be disrupted at the start of the school year. Both possibilities are unacceptable to

¹In July, the State Board meets on July 24 and 25.

me.

If a stay is denied, and the charter school wins the appeal, it can open its door to all students who wish to attend. That may not occur immediately and there may be financial harm to the charter school, but that harm does not outweigh the harm to 130 students whose enrollment in school might be delayed or disrupted by a stay.

C. Irreparable Harm

In considering the factor of irreparable harm, I recognize that if the request for stay is denied, the charter school might have to close its doors for all or part of the upcoming school year. That harm is not irreparable, in my view. Irreparable harm occurs if the result of denying the injunctive relief would be the destruction of an ongoing business. *See DMF Leasing, Inc. v. Budget Rent-a-Car*, 161 Md. App. at 645-646 citing *Semmes Motors Inc. v. Ford Motors Co.*, 429 F.2d 1197, 205 (2nd Cir. 1970).

In this case, even if the stay is denied, if the charter school is successful on appeal, it can re-open its doors, receive funding from Prince George's County School System, and continue its mission. While there may be disruption in the ongoing operation of the charter school, that disruption is not irreparable harm.

D. Public Interest

I recognize that this charter school has done good work in raising the MSA scores of its students, particularly in reading. But, it is in the public interest that teachers and students have predictability concerning school enrollment in the upcoming school year. Granting a stay and, thus, precluding the local board from planning the enrollment and class assignment process for the charter school's students and teachers, in my view, would not be in the best interest of the students, the

teachers and the school system.

Conclusion

For all the reasons stated, I deny the request for stay filed by the Potomac Public Charter School.

July 11, 2007
Date

Nancy S. Grasmick ^{ESK}
Dr. Nancy S. Grasmick

ELIZABETH GALAIDA, ET AL.

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ORDER OF STATE

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SUPERINTENDENT

v.

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OF SCHOOLS

CARROLL COUNTY BOARD
OF EDUCATION

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ORDER NO. 16-02

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ORDER

On March 30, 2016, several individuals filed with the State Board of Education a motion to stay the decision of the Carroll County Board of Education (local board) to close New Windsor Middle School. These individuals are some of the same individuals that are appellants in the consolidated State Board appeals concerning the closing decision, which involved two other schools and several other appellants. The individuals maintain that they will suffer irreparable harm absent the stay because students "will be forced into other schools that cannot accommodate them, provide fewer services and opportunities, will disrupt their extracurricular activities and separate them from their peers and teachers, and require major changes to families' transportation and childcare plans and schedules." They argue that if the closing decision is reversed after students begin attending their new schools, the result will be "turmoil." They request that the stay remain in effect until its appeal of the closure decision to the State Board is resolved.

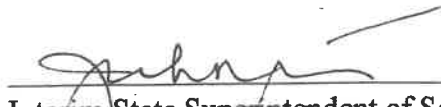
Pursuant to COMAR 13A.01.02.01B, the State Superintendent of Schools has the authority, either on the request of the President of the State Board or on his or her own motion, to order a stay of an action taken by a local board of education. The stay, however, may not exceed 60 days in duration. Thus, the State Board has forwarded the stay request to me for consideration.

On January 19, 2016, the State Board referred the appeal to the Office of Administrative Hearings (OAH), as required by COMAR 13A.01.0507(A)(1) for cases involving a school closing. The local board filed a Motion for Summary Affirmance at OAH. On April 11, 2016, the parties argued the Motion before Administrative Law Judge (ALJ), Harriet C. Helfand. Judge Helfand has not yet issued a ruling on the Motion. If the Judge grants the local board's Motion, the Appellants may file exceptions to the ALJ's decision and have oral argument before the State Board. If the ALJ denies the local board's Motion, the case will progress to a hearing at OAH which is scheduled to begin May 31, 2016 and last three weeks. Thus, the date for resolution of the State Board appeal is difficult to predict.

The regulation limits the time period of the stay to 60 days duration. A 60 day stay would not accomplish the purposes that the individuals seek to accomplish here. It would not stop the closure process for a sufficient period of time while this case is being resolved.

For this reason, I deny the request for stay.

April 20, 2016
Date


Interim State Superintendent of Schools
Jack R. Smith

EUDAIMONIA FOUNDATION
CORPORATION

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ORDER OF STATE

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SUPERINTENDENT

v.

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OF SCHOOLS

BALTIMORE CITY BOARD OF
SCHOOL COMMISSIONERS

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ORDER NO. 16-01

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ORDER

On April 11, 2016, Eudaimonia Foundation Corporation (Eudaimonia), operator of the Maryland Academy of Technology and Health Sciences (MATHS) public charter school, filed with the State Board of Education a Motion for Immediate Stay of the Baltimore City Board of School Commissioner's (local board) decision to non-renew MATHS' charter and close the school. Eudaimonia maintains that it will suffer irreparable harm absent the stay because MATHS will lose its facility lease where it has three Westinghouse quality labs that are essential to its PLTW-Biomedical Sciences Pathway program and will lose its core group of essential teachers, including its 5 trained and certified Pathways teachers. Eudaimonia argues that such losses will leave MATHS in the position of having to start the school anew if Eudaimonia were to succeed on the merits of its State Board appeal. Eudaimonia requests that the stay remain in effect until its appeal of the nonrenewal and closure decision to the State Board is resolved and, in the event the State Board affirms the local board's decision, until June 30, 2017.

Pursuant to COMAR 13A.01.02.01B, the State Superintendent of Schools has the authority, either on the request of the President of the State Board or on his or her own motion, to order a stay of an action taken by a local board of education. The stay, however, may not exceed 60 days in duration.

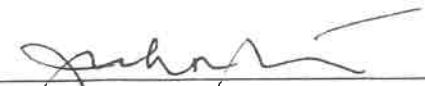
Thus, the State Board has forwarded the stay request to me for consideration. By order dated April 7, 2016, the State Board referred the appeal to the Office of Administrative Hearings for fact-finding and a proposed decision by an Administrative Law Judge. Such cases usually take some time to resolve. Although the State Board has requested that OAH expedite the case so that it can be resolved by June 30, 2016, OAH is under no legal obligation to do so. Thus the date for resolution of the State Board appeal is difficult to predict.

The regulation limits the time period of the stay to 60 days duration. A 60 day stay would not accomplish the purposes that Eudaimonia seeks to accomplish here. It would not stop the closure process for a sufficient period of time while this case is being resolved.

For this reason, I deny the request for stay.

April 26, 2016

Date



Interim State Superintendent of Schools
Jack R. Smith