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THE SENATE OF MARYLAND
EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS COMMITTEE

July 20, 2005

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Patterson Park Public Charter School, Inc. and Lincoln Public Charter School

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Prince George's County Board of Education

Valerie V. Cloutier, Esq., Principal Counsel
State Board of Education

RE: Recent Opinions of the Maryland State Board of Education Regarding Charter Schools

Ladies and Gentlemen:

The Senate Education, Health, and Environmental Affairs (EHE) Committee studied and debated the charter school issue for numerous years before the Public Charter School Act of 2003 (Senate Bill 75) was finally enacted. As members of the Senate EHE Committee in 2003, we were instrumental in developing the final version of the legislation that established the Public Charter School Law. We strongly disagree with several aspects of the State Board of Education's recent Opinions (05-17, 05-18, and 05-19) regarding charter schools and believe State law has been interpreted contrary to legislative intent.

It has come to our attention that the local boards of education have appealed the State Board's Opinions to the circuit courts. Via this correspondence, we are seeking to share our concerns and supporting information with all the parties to the legal suits. The charter school appeals to the State Board and subsequent State Board Opinions address two main issues: funding and status of employees. We believe the State Board has misinterpreted State law and legislative intent in regard to both of these issues.

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JA FYI - from Leslie Mansfield
- Kara

Shaka to Desam

Funding

The Public Charter School Law is set forth in Title 9 of the Education Article and was enacted as Chapter 358, Acts of 2003 (Senate Bill 75). Section 9-109 (a) of the Education Article states:

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

As originally introduced during the 2003 legislative session, Senate Bill 75 did not include any provisions related to funding. During consideration of the legislation, the Administration offered an amendment that would have required a county board to fund students "at the same rate as students enrolled in other public schools in the school district." That language, however, was not adopted. Instead, the Senate EHE Committee adopted an amendment to Senate Bill 75, which was ultimately enacted as law, that required a county board to "disburse an amount of.....money for elementary, middle, and secondary students that is commensurate with" the amount provided to other public schools in the county. (bold for emphasis) By adopting this specific language rather than the Administration's proposed language, the Committee was differentiating in the law between the amount of money to be provided for elementary, middle and secondary students. (see EHE amendment No. 7, Administration amendment No. 9)

The State Board's decision, however, provides for no such differentiation. The State Board adopted a funding formula based on a systemwide average per pupil amount that makes no distinction between elementary, middle, and secondary school levels. We believe this is clearly contrary to legislative intent.

The State Board notes in the Opinion that the Fiscal Note to Senate Bill 75 used average per pupil expenditures to estimate the fiscal impact of the legislation. "While not controlling, we believe the General Assembly considered the average per pupil analysis provided in the Fiscal Note in enacting Section 9-109." (Opinion No. 05-17, p. 5). The Fiscal Note is not a legal interpretation of the bill, but rather provides an estimate of the fiscal impact of a bill as a tool for legislators in deciding whether to pass legislation. As such, it is not appropriate for the State Board to divine legislative intent from the Fiscal Note while overlooking the language of the law itself.

In addition, the State Board's initial Opinion did not provide for any costs associated with the central office or other administrative functions to be deducted from the amount provided to a charter school. The issue of "backing out" administrative costs from funding provided for charter schools was discussed during Senate work sessions on Senate Bill 75. The law's reference to an amount for charter schools "commensurate with the amount disbursed to other public schools" was purposely worded to only include funds given to other public schools and to exclude administrative and overhead costs

retained at the central office. Although the State Board's Revised Opinion issued May 25, 2005, adjusts the charter school per pupil amount by 2 percent for central office costs, it is not clear to us at this time if that is the appropriate amount.

Status of Employees and Waiver Authority

Two charter schools, Patterson Park and Lincoln, requested that the State Board allow charter school employees other than full-time classroom teachers to be employees of the charter school rather than the school system, i.e. waive the requirement in Section 9-108(a) that all charter school employees be public school system employees. While not acting on the waiver request, the State Board decided that requesting a waiver from this requirement of law is permissible and directed the charter schools to submit a request in accordance with the procedures set forth in the State Board's proposed regulations on waivers for charter schools, which are still in the promulgation process and subject to legislative review by the Joint Committee on Administrative, Executive, and Legislative Review (see COMAR 13A.01.01.03).

We strongly object to this interpretation of the law and assure you that there are no provisions for collective bargaining waivers in the Public Charter School Act, as enacted by Chapter 358 of 2003. Section 9-106 of the Education Article allows charter schools to request a waiver from laws and regulations "**governing other public schools.**" (bold for emphasis) This section was added by EHE Committee amendment to Senate Bill 75. In considering the amendment, an Administration amendment was rejected that would have automatically exempted charter schools from most laws and regulations governing other public schools. (see Administration Amendment No. 10)

The key phrase to interpreting the law, in bold above, is "governing other public schools". Laws governing other public schools are not contained in Title 9 of the Education Article, since Title 9 only applies to public charter schools. The charter school law was intended to permit waivers from certain requirements applicable to regular public schools, not laws applicable only to charter schools. By way of example of this intent, the law specifies several requirements that cannot be waived in Section 9-106(c). These requirements are all located in other titles of the Education Article – not in the new Title 9 Public Charter School Program.

As part of the Committee amendment that added the waiver authority, the EHE Committee also adopted Section 9-108 related to charter school employees. Section 9-108(a) states that public charter school employees: (1) are public school employees, as defined in 6-401(d) and 6-501(f); (2) are employees of a public school employer; and (3) shall have collective bargaining rights granted under Title 6, Subtitles 4 and 5 of the Education Article. Section 9-108(b) further authorizes an employee organization and a charter school to mutually agree to negotiate amendments to existing collective bargaining agreements to address the needs of a charter school. This provision was included in the law to provide some flexibility in the collective bargaining agreement to address particular needs of charter schools. Clearly, the law would not have contained a

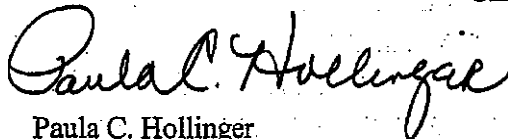
negotiation process if the charter schools could simply request a waiver from the collective bargaining requirement, as the State Board has interpreted the law.

Furthermore, amendments offered by the Maryland State Teachers Association and adopted in substantially similar form by the Committee clarified that both certificated and non-certificated charter school employees must be school system employees. (see MSTTA amendment) Again, it would be inconsistent for the General Assembly to specify so clearly that all charter school employees are subject to collective bargaining, while at the same time allowing that requirement to be waived

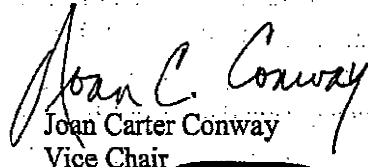
The fact that the Committee adopted sections 9-106 and 9-108 in the same committee amendment further supports the interpretation that the collective bargaining rights were not intended to be subject to waivers. Extending the State Board's reasoning, any provision of law in Title 9 would be subject to waiver including the restrictions on charter school applicants in Section 9-102, such as the requirement that a charter school be nonsectarian. We assure you that this was not the legislature's intent, and further, in this example, it would be unconstitutional to provide public funds to a sectarian school.

We trust that this information is helpful in clarifying the meaning of Senate Bill 75. Please use this document as appropriate during the legal proceedings.

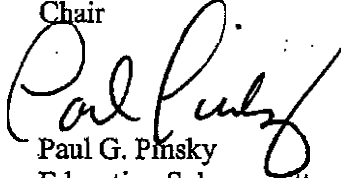
Sincerely,



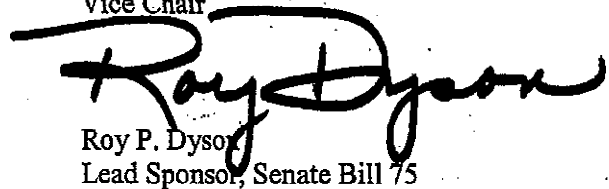
Paula C. Hollinger
Chair



Joan Carter Conway
Vice Chair



Paul G. Pinsky
Education Subcommittee Chair



Roy P. Dyson
Lead Sponsor, Senate Bill 75

Enclosures

cc: Thomas V. Mike Miller, Jr.
President of the Senate