

IN THE MATTER OF
MONTGOMERY COUNTY
MAINTENANCE OF EFFORT FY2016

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION
Order No. OR15-07

ORDER

On July 31, 2015, the State Superintendent of Schools sent notice to the Montgomery County Executive that the County had failed to meet its full Maintenance of Effort (MOE) funding requirement. The County had underfunded the Montgomery County Public School System (MCPS) by \$1,482,786.

As the State Superintendent explained,

In order to rectify the [MOE] noncompliance, Montgomery County can either appropriate an additional \$1,482,786 to MCPS, or submit an MOE waiver request to the State Board of Education for their review and consideration. Section 5-202 of the Education Article and COMAR 13A.02.05.04 sets forth the criteria for submitting different types of waiver requests and the factors the State Board shall consider in making its decision.

Should the County decide not to appropriate additional funds or request a waiver, the State Superintendent or the State Board of Education will notify the State Comptroller. Pursuant to 5-213 of the Education Article, the Comptroller shall intercept local income tax revenue from the county, in the amount by which the county failed to meet the MOE, and distribute the withheld funds directly to the county board of education.

The County appealed the Superintendent's finding of non-compliance. By law, the appeal is heard and decided by the State Board. Ed. Art. §5-202. The Montgomery County Board of Education filed its response to the appeal on September 17, 2015. No request for an MOE waiver was filed.

In Maryland, the State is required to fund school systems in an amount calculated according to a statutory formula. Md. Ed. Art. §§5-202; 5-207; 5-208; 5-209. Local governments also are required to fund their schools, and there is a statutory formula for calculating the amount. Md. Ed. Art. §5-202(d). This amount is called "Maintenance of Effort (MOE)."

For each fiscal year, MOE is calculated based on the "highest local appropriation" the county made to the school system in the preceding fiscal year. *Id.* Sometimes the local

appropriation in the preceding fiscal year includes an appropriation for “non-recurring costs.” Non-recurring costs are usually one-time expenditures for such things as new computer labs, major technology purchases, new instructional program start-up costs. COMAR 13A.02.05.03; Md. Ed. Art. §5-202(C)(3). The County can exclude those costs when the “highest local appropriation” is calculated in the next fiscal year because, if they were included in the fiscal year MOE calculation, they would artificially inflate the amount that the County needed to appropriate to meet its maintenance of effort obligation.

For the FY 2015 budget year, on March 31, 2014, Montgomery County submitted non-recurring cost requests to MSDE. MSDE approved some of those requests. On May 30, 2014, MSDE received Montgomery County’s budget certification for FY 2015. The certification included a total appropriation to the school system of \$1,476,855,309 with no additional appropriation for the previously approved non-recurring costs. At that time, MSDE staff contacted Montgomery County Public Schools to clarify whether the County appropriated funds to cover the non-recurring costs. MCPS informed MSDE staff that the County’s appropriation did in fact include funds for non-recurring costs. MSDE asked MCPS to submit a revised certification form to show the additional appropriation for non-recurring costs.

MSDE received the revised budget certification from Montgomery County Public Schools on June 9, 2014. The revised documents included the non-recurring costs appropriation. MSDE notified all parties that the Department approved the FY 2015 budget certification.

During the budget preparation for FY 2016, concerns regarding the FY 2015 MOE calculation were brought to MSDE’s attention. Thus, MSDE did a second review of the FY 2015 and FY 2016 MOE calculations for Montgomery County. As a result of the review, MSDE found that although the non-recurring cost appropriation was added to the revised FY 2015 budget certification, the base MOE appropriation to MCPS was reduced by the same amount. Consequently, the total appropriation did not change on the revised budget certification. Thus, Montgomery County’s FY 2015 appropriation to MCPS satisfied the MOE requirement of \$1,476,855,309 only because it combined both the base MOE amount and the non-recurring cost appropriation.

The non-recurring cost issue became relevant in the calculation of MOE for FY 2016. MSDE understands that Montgomery County began preparation of the FY 2016 budget before this issue was identified, and that in preparing the FY 2016 budget, the County assumed the FY 2015 approved non-recurring cost appropriation could be excluded from the FY 2016 MOE base calculation. However, for the reasons stated above, MSDE determined that the FY 2015 non-recurring cost appropriation could not be excluded from the highest local appropriation for the purpose of calculating the FY 2016 MOE requirement. As a result, Montgomery County’s FY 2016 appropriation to MCPS falls short of the required MOE in FY 2016 by \$1,482,786.

In its appeal, Montgomery County recounts verbal and e-mail exchanges with the Department when it sought clarification from the Department about including the non-recurring costs in the base MOE calculation. From the e-mails exchanged between the Department and the County it is apparent that MSDE approved the inclusion of the non-recurring cost amount to

meet the MOE target. That was a mistake. The County argues that it relied on the Department's approval when it appropriated its MOE amount in FY 2015 and FY 2016. It further argues that the Department's previous approval now estops the State Superintendent and this Board from ordering the County to fully fund the FY 2016 MOE amount.

In its response to the appeal, the local board did not take a position on this issue of whether the Department's mistaken advice would estop this Board from directing Montgomery County to fully fund MOE for FY 2016. The local board specifically requested if this Board did not direct the County to fund MOE fully for FY 2016, that it assure that such a decision would not reduce the MOE amount going forward.

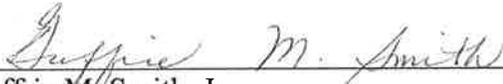
The local board also stated:

We also are hopeful that this issue for FY 2016 can be resolved between the Montgomery County Board, the County Council, and County Executive Isiah Leggett. We have been working collaboratively over the past several months to address our budgetary challenges and move beyond MOE issues so that we can continue to provide public school children in Montgomery County with the high quality instructional programs that our community expects and our children deserve. The County Board does not want this issue to impede the progress we have made. This is too important for all of our students.

In view of those statements from the local board and to encourage collaborative resolution of the FY 2016 MOE issue, we decline to order Montgomery County to appropriate an additional \$1.4 million for FY 2016. We direct that the County shall not subtract \$1.4 million from the FY 2016 highest local appropriation of \$1,476,855,309 when calculating the FY 2017 MOE base amount.

It is so ORDERED this 22nd day of September, 2016.

MARYLAND STATE BOARD OF EDUCATION

 EMK

Guffrie M. Smith, Jr.
President