

April 8, 2009

James H. DeGraffenreidt, Jr.  
President  
Maryland State Board of Education  
200 West Baltimore Street  
Baltimore, MD 21201

Dear Mr. DeGraffenreidt:

In accordance with the procedures established by the Maryland State Board of Education on March 25, 2009, pursuant to Section 5-202 of the *Education Article* of the Annotated Code of Maryland and COMAR 13A.02.05.04, the Board of Education of Anne Arundel County hereby files its OPPOSITION to the March 31, 2009, request for a waiver from the State's Maintenance of Effort (MOE) requirement in Anne Arundel County. Our Board of Education, meeting in public session on April 1, 2009, by official recorded vote, authorized the filing of this OPPOSITION. (See Attachment A)

#### Threshold Issue

As a threshold issue, the Maryland State Board of Education must decide if the filing by Anne Arundel County, signed as it was by County Executive John Leopold and County Council Chairman Edward Reilly, was without authority and, therefore, should not be considered. We submit, for the following reasons, that the County's request should be dismissed as being *ultra vires*.

Chairman Reilly had no authority to affix his signature in his capacity as Chairman of the County Council, inasmuch as the County Council neither met prior to March 29, 2009, to authorize its filing by a majority vote, nor has a majority of the Council membership subsequently taken this matter up in public session or ratified the action of its Chairman. To the contrary, we have reason to believe from our conversations with individual council members that a majority of the Council is in opposition to this request for a waiver.

Whether or not Chairman Reilly is possessed of authority to add his signature to that of the County Executive is not of mere academic interest. Our County Council is a co-equal branch of government under our County Charter when it comes to the funding of the school board's budget. Any request for a waiver of the MOE requirement spelled out in Section 5-202(d)(1)-(6) of the *Education Article* must be supported by the Anne Arundel County Council for it to be considered by the State Board of Education.

COMAR 13A.02.05.02.B.(1) defines “county”, as that term is used throughout the regulations as to which entity would be requesting the waiver, as the “county governing body and includes the Mayor and City Council of Baltimore City.” Before turning to our local law to provide further guidance to how to construe “county governing body,” we call your attention to the section of the *Education Article* immediately preceding the section as to MOE.

Interestingly, Section 5-201(e), pertaining to the General State School Fund, as codified in the Annotated Code of Maryland, has in its header the phrase “funds considered levied by *governing body*.” (Emphasis supplied) In using the same terminology employed by the Maryland State Board of Education in COMAR, the General Assembly speaks in Section 5-201(e) to the “county council, board of county commissioners, or the Mayor and City Council of Baltimore.” This is consistent with the language of Section 5-105 of the *Education Article* which, similarly, recognizes a pre-eminent role for county commissioners and county councils when it comes to the transfer of funds between budget categories.

In like fashion, the Charter of Anne Arundel County, in Section 709 thereof (Attachment B), vests in the County Council the authority “to decrease or delete any items in the budget [proposed by the County Executive] except those items required by the general laws of this State and except any provision for debt service on obligations then outstanding or for estimated cash deficits.” Further along in Section 709, it states: “The adoption of the budget shall be by the affirmative vote of not less than four members of the County Council on an ordinance known as the Annual Budget and Appropriation Ordinance of Anne Arundel County.”

Thus, County Executive Leopold and Council Chairman Reilly are acting *ultra vires* to submit this request for a waiver of MOE – a statutory requirement informing the manner in which the county’s budget is to be constructed and approved – absent the concurrence of the co-equal legislative branch of the County Government that appropriates the funds to the school board. Accordingly, this request should be forthwith dismissed.

### **The County’s Request is Without Merit**

Assuming that the Maryland State Board of Education does consider the request, or that the action of Chairman Reilly is subsequently ratified in a legal manner by a majority of the County Council after the filing of this OPPOSITION, we respectfully request that the Maryland State Board of Education deny the request, finding that the County has failed to meet its burden of proof by a preponderance of the evidence, pursuant to COMAR 13A.02.05.04.C.(3). In support thereof, we contend that:

1. County Executive Leopold, while arguing that he lacks the funds to meet the MOE requirements – a minimum of only \$2 million by his own admission – has refused to seek an infusion of funds from taxpayers (individual and corporate) having the financial wherewithal to provide additional revenue to the county’s coffers.

Notwithstanding having been granted authority by the General Assembly, Anne Arundel County has maintained a local personal income tax rate (commonly known as the "piggyback tax") at only 2.56% or .0256 (see Attachment C), the third lowest of the 24 jurisdictions of the State (see Attachment D). This is in stark contrast to a jurisdiction such as Montgomery County, also seeking a MOE waiver from the State, which has chosen, though, to impose a tax rate of 3.2% or .0320, the maximum authorized by the General Assembly. (See Attachment E) The result of failing to enact the higher piggyback tax, within the authority granted to Anne Arundel by the General Assembly, has been to deny approximately \$80 million of revenue that could be allocated each and every year to agencies of Anne Arundel County for the benefit of its citizens. Inasmuch as the school board receives approximately 48.1% of the county's annual budget, that amounts to approximately \$38.5 million that would be available to the students and staff of the school system were the County Executive willing to avail himself of this revenue source. It is somewhat disingenuous of the County to write (on page 4) that it does not want to raise the income tax "since it would impose an additional burden on working people during this difficult economic time" when, in fact, the County chose not to do so as well in more prosperous economic times.

Additionally, Mr. Leopold points with pride to the fact that Anne Arundel is one of only five counties in Maryland with a property tax cap. This property tax cap, in effect since 1993, provides that the amount of revenue that the county collects from property taxes cannot grow from one year to the next by more than the Consumer Price Index or 4.5 percent, whichever is lower, excluding new construction (see Attachment F). With the Consumer Price Index being lower than 4.5%, this is a significant amount of revenue that, again, the County Executive is content in not collecting, while at the same time requesting of the State Board of Education a waiver from a statutory obligation. There have been years when the County failed even to raise the maximum amount of revenue allowable under the cap. As one year is the predicate for the subsequent year, this lost funding in prior years is unrecoverable and compounded. One need not be in favor of raising either the piggyback tax or lifting the property tax cap to recognize the incongruity of the County Executive going forward with this waiver request under these factual circumstances.

2. Mr. Leopold, in his request for a waiver, alludes to many reductions made by the County Government and anticipated reductions from the State, while making several misrepresentations as to past actions of the school system – all without speaking to the reductions that the Anne Arundel County Public Schools has made and the State reductions that we are facing. To do otherwise is to fail to present a balanced picture to this State Board of Education prior to ruling on this waiver request. Before sharing in section 3 below an accurate picture of the fiscal challenges facing the school system, we will address herein the statements contained in the County's submission of March 31.

The County's submission outlines a number of actual and potential scenarios for revenue increases or expenditure decreases attributed to the County Government while not acknowledging many similar strategies employed on the part of Anne Arundel County Public Schools. As outlined below in Section 3, the school system has undertaken a host of significant and substantive reductions and adjustments in just the past two years and will do so again in the coming Fiscal Year 2010. Specifically, as itemized below, the school system has eliminated a significant number of positions, maintained a rolling hiring freeze, renegotiated fixed costs and contractual services downward, and reduced variable costs tremendously. Additionally, Anne Arundel County Public Schools is required to maintain a balanced budget and cannot maintain a revenue reserve fund, a rainy day fund, or an undesignated fund balance as the County Government has at its own disposal to balance its budget. The school system also has negligible self-generating revenue producing ability. As such, the school system does not have many of the same tools and mechanisms available to it to address its potential \$54.2 million budget shortfall as the County Government does.

The initial FY 2010 Operating Budget Request of \$977.4 million of the school system represents a reasonable 4.9% increase over our Approved FY 2009 Operating Budget of \$931.3 million. Anticipating funding and revenue reductions in the State, local, and restricted grant areas, a higher portion of the revenue required to balance our FY 2010 Operating Budget naturally transfers to the County Government. As outlined below, the school system has acknowledged that it must analyze its budget requests and expenditures to identify any and all possible cost savings. In this regard, we have entered negotiations with all four of our collective bargaining units to restructure or eliminate compensation increases for the next fiscal year.

The County Government acknowledges that Anne Arundel County Public Schools cannot utilize its fund balance (if any) from year to year to fund the next fiscal year, absent County Government approval and appropriation authority. The "Undesignated fund balance per 6/30/08 financial statements (\$2.2 million)" reflected on page 3 of Mr. Leopold's submission is factually incorrect; County staff has since acknowledged to our Director of Budget and Finance that the correct figure is less than \$500,000.

Moreover, the County's assertions that reductions required to balance the FY 2010 Operating Budget can be made "without affecting the existing level of pay for all school employees", as stated at the top of page 4 of the County's submission, is untrue. Furloughs will likely be effectuated for all existing employees, directly and materially affecting the existing level of pay for all school employees. Also, there is no such thing as a "temporary reduction" in the number of teachers, as suggested by the County on page 4 of its submission. A reduction in force action results in a long lasting impact on FTE counts and our efforts to recruit and retain a highly qualified teaching force.

While the MOE requirement focuses on the Operating Budget, we would be derelict in not commenting on the Capital Budget. While the school system received approximately

\$139.8 million in combined State and County FY 2009 CIP funding and \$135.1 million in FY 2008 CIP funding, the County is tentatively proposing \$107 million in FY 2010 CIP funding. This does not square with the County's assertion on page 1 of its submission that "The FY 2010 Proposed CIP is expected to increase County funding by another \$13 million per year resulting in a 41% increase in the level of County funding over just a three year period of time." In fact, quite the opposite appears to be taking place.

Additionally, the County Government's statement on page 4 as to its bond rating is directly tied to the County's desire to maintain its AAA bond rating. While Anne Arundel County is one of only a few jurisdictions in the State to maintain such a rating, it is not required to do so. In fact, the County could potentially lower its reserve levels and significantly boost its CIP dollars available for public school construction if it would elect to lower its bond rating to the level of other Maryland jurisdictions. Given the favorable interest rate environment, the incremental interest rate increases on bond values may be negligible were the County to permit the school system to address its \$1.5 billion renovation/repair backlog and put a significant number of people back to work, thereby stimulating the economy.

The County Government makes the bare assertion that "Despite the State's action and our requested waiver, the presence of federal stimulus funds may still allow AACPS to have a larger budget in FY10 than in FY09." As shown below, and in Attachment G, Anne Arundel County Public Schools is projected to have an Operating Budget deficiency in FY 2010 with anticipated the full benefit of the \$22.8 million in federal stimulus funding, it would still leave the schools system in a deficit condition. Furthermore, stipulations on the stimulus funding emanating from the Federal Government or State Government likely will be quite constraining. Regulations that preclude the supplanting of existing funds, program/population targeted funding conditions, Federal maintenance of effort requirements, and an implicit desire to not increase out-year personnel obligations will severely impact and constrain our access to, and use of, any available federal stimulus funding.

We are in complete agreement with the County Government that Anne Arundel County Public Schools has an explicit desire to "keep highly qualified teachers", as stated on page 5. The cost of living increases and salary scale adjustments experienced over the prior three fiscal years were long overdue and needed because of how far behind our teacher compensation levels were in comparison to neighboring jurisdictions. This was directly attributed to a persistent pattern of under investing in public education by the County over a long period of years. Anne Arundel County Public Schools has made up some ground in this area and has no desire to backslide. Anne Arundel County Public Schools remains fully committed to recruiting and retaining a highly qualified and talented professional workforce as the key to our present and future academic successes.

3. Anne Arundel County Public Schools prides itself on efficiently and effectively running the business of the school system. While understanding the fiscal climate in which we find ourselves today, some context needs to be provided. As of September 30, 2008, Anne Arundel County Public Schools was responsible for educating 74,235 students in 119 operating school facilities. By almost any measure, we produce many of the State's highest performing students within the state that has recently been ranked the best in the nation by Education Week. We do so in a manner that provides the citizens and taxpayers of Anne Arundel County maximum value.

The difficult choices being made this Spring are not the beginning point of our sound fiscal management practices and economic prudence. A look at these past two fiscal years demonstrates that Anne Arundel County Public Schools has made significant sacrifices to balance its budgets while maintaining the quality school system that our citizens and employer base demands. Examples of our fiscal austerity include:

**FY2008 – Actions taken when approving the Budget:**

- \$7M in transfers and adjustments (impacting 42% of accounts) to reallocate existing funding internally to cover increased costs for maintaining current programs
- \$3.9M reduction in the health care budget by reducing the health care fund balance
- \$2.5M salary reduction by enacting a rolling administration hiring freeze, holding 50 non-teaching positions vacant
- \$2.7M salary reduction by holding 50 teaching positions vacant
- \$0.4M salary reduction by reducing 20 computer lab technicians from full-time to part-time status
- \$1M reduction in professional development and curtailing substitutes for training activities
- \$0.5M reduction in school based "Materials of Instruction" allocation
- \$2.8M reduction in equipment, supplies, copier and other like accounts
- \$115K additional revenue realized due to increasing outdoor education fees

**FY2008 – Actions taken to balance the Budget mid-year:**

- \$0.2M reduction in substitute costs by eliminating coverage for meetings, field trips, and other controllable events
- \$0.5M reduction in professional development, consultants, contracted services, and equipment
- \$0.5M reduction in school-based "Materials of Instruction" allocation
- \$1M reduction in various administrative accounts
- Re-bidding prescription drug program to help control health care costs
- Through the collective bargaining process, reduced Board of Education's contribution toward employee health care premiums

**FY2009 – Actions taken when approving the Budget:**

- \$15M in transfers and adjustments (impacting 82% of accounts) to reallocate existing funding internally to cover increased costs for maintaining current programs
- \$0M increase in the health care budget by significantly reducing health care fund balance
- \$10.5M reduction by eliminating 130 permanent non-school based positions, 50 teaching positions, and 20 temporary positions
- \$1.1M further reduction in school-based “Materials of Instruction” allocation
- \$1M saved as a result of a 9% reduction in instructional stipends for curriculum writing and training
- \$8.5M saved as a result of a 15% reduction in instructional material budgets, a 50% reduction in instructional professional development, and a 99% reduction in instructional equipment/contracted service budgets
- \$2M saved as a result of a 44% reduction in non-school based equipment budgets, a 50% reduction in business related professional development, and a 77% reduction in business related contracted services

**FY2009 – Actions taken to balance the Budget mid-year:**

- \$1.7M reduction by continuing the rolling administration hiring freeze, holding 35 non-teaching positions vacant
- \$1M reduction in transportation budget due to decreased motor fuel costs
- \$1.7M reduction in equipment, supplies, consultants, and other non-school based accounts
- \$0.75M reduction by re-negotiating administrative fees on primary health care contracts
- Through the collective bargaining process, reduced Board of Education’s contribution toward employee health care premiums

Much like the County, Anne Arundel County Public Schools has been monitoring the ongoing fiscal developments in Washington, D.C., and in Annapolis. The American Recovery and Reinvestment Act of 2009, signed into law by President Obama on February 17, 2009, contains a number of Federal stimulus package items that may somewhat favorably impact upon Maryland, Anne Arundel County, and Anne Arundel County Public Schools. The final rules and regulations have not yet been issued by the U.S. Department of Education. Similarly, Governor O’Malley is continuing to work with the Legislature and other elected and appointed officials to manage the governance and distribution of both the Federal stimulus funding and State resources. As the General Assembly completes its work on the Budget Bill (HB100/SB165) and the Budget Reconciliation and Financing Act of 2009 (SB101/SB166) our school district stands to be

significantly impacted by further State reductions, to wit:

- After originally being advised that we would be held harmless as a result of a miscalculation in the wealth formula that caused Montgomery County to receive less revenue, our school system will receive \$5.1 million less in Fiscal Year 2010 than had already been budgeted.
- Notwithstanding that we initially pay for students in non-public special education placements, an amount equating to 300% of the per-pupil expenditure for non-disabled students, we will now see the remaining amount paid for these students shift to a 70/30 split among the state and local share from the current 80/20 split. This will result in an approximately \$1.3 million loss in revenue that we had budgeted for next fiscal year.
- Fiscal Year 2010 funding for the Aging Schools program will likely be eliminated, resulting in a loss of revenue to our school system of \$966,000.

As a result of the above, Attachment G, a projected FY 2010 revenue and expenditure based Budget Estimate, aligns the Board of Education's FY 2010 Budget Request against our present view of the situation should the Federal/State actions transpire as anticipated and were the MOE waiver granted. This Budget Estimate depicts a potential \$54,203,450 budgetary deficit for Anne Arundel County Public Schools. This \$54.2 million dollar reduction would force Anne Arundel County Public Schools to undertake draconian cuts to personnel and services at levels not seen in decades.

Of our FY 2010 \$977.4 million Operating Budget Request, \$766.6 million (or 80.4%) is tied to salaries, wages, and benefits, \$127.5 million (or 13.4%) is tied to fixed costs, and only \$58.7 million (6.2%) is tied to variable costs. With only \$58.7 million of variable costs remaining in areas such as equipment, professional development, supplies, contracts, and materials of instruction, a reduction of \$54.2 million would leave the school system without any of the tools or resources necessary to properly manage the school district or deliver instruction to our approximately 74,235 students. Recognizing the fiscal difficulties facing the State and the County, Anne Arundel County Public Schools is contemplating undertaking the following potential actions:

**FY2010 - Actions taken to Requested Budget:**

- \$16.3M in transfers and adjustments (impacting 80% of accounts) to reallocate existing funding internally to cover increased costs for maintaining current programs
- Request 0 new positions across the board in spite of projected enrollment growth and STEM/Performing Visual Arts programmatic magnet school expansions
- Request 0% increases across the board in all non-fixed, restricted or contractually obligated accounts (with the exception of utilities and transportation)
- Request only 4 critical supplemental budget items totaling \$3.6M (0.3% of budget)



**FY2010 - Actions under Preliminary Consideration:**

- \$1.7M salary reduction by eliminating 20 permanent non-school based positions
  - \$2.8M salary reduction by holding 50 teaching positions vacant
  - \$0.3 M further reduction in school-based “Materials of Instruction” allocation
  - \$5M reduction in professional development, consultants, contracted services, or equipment
  - \$25M savings accrued by imposing furlough days for all employees
  - \$17.8M salary reduction by eliminating all salary enhancements (COLA, steps and merit) through the collective bargaining process
4. In requesting a waiver from the requirement in Section 5-202 of the *Education Article*, Mr. Leopold asserts it would be unfair to disproportionately cut the budgets of other county agencies while funding the school system at the MOE level – even if only at a meager increase of \$2 million in comparison to our current budget of \$931.3 million. In making such an argument, the County Executive minimizes and misunderstands the legislative policy considerations behind enacting the statutory obligation for MOE, reaffirmed at the time the Thornton Commission recommended the Bridge to Excellence in Public Schools Act.

When it enacted the MOE requirement, the General Assembly deliberately chose to elevate funding for public education to a different level than funding for other local needs. The General Assembly did not dictate what the level of effort should be on the part of local government, only that it not be diminished from year to year on a per pupil basis.

The fact that local jurisdictions fund their local school districts at no less than 45% of their budgets from year to year is not inadvertent. School districts serve significant populations and numbers of students – with differentiated needs – in numerous buildings that must be heated, cooled, and equipped, requiring significant staffing and supplies.

Public education serves the broader needs of society for an informed, educated, and employable citizenry. Surveys and polls demonstrate that the general populace is more than willing to fund public education through their taxes to ensure a quality education for all children. Even a cursory glance at the number of bills introduced every year into the General Assembly that relate to education, public schools, and youth reflect the importance of public education in our society.

With this in mind, it is not surprising that the General Assembly enacted a Maintenance of Effort requirement for public school districts in Maryland – a requirement that should not be lightly set aside by the Maryland State Board of Education. Mr. Leopold, in essence, argues that the local school system share in the reductions he is imposing upon other local agencies but this is an insufficient argument; to accept it is to ignore the purposeful intent of the General Assembly to distinguish public education among other local functions.

In 2005, the then-superintendent of schools in Anne Arundel County established an independent task force comprised primarily of business leaders to review the school system's budget and ways in which the school district could be more efficient. One of the central findings of the task force at that time, which still rings true to this day, was that the Anne Arundel County Public Schools was underfunded relative to the school district benchmarked in the report. The March, 2005 Final Report of the Superintendent's Budget Task Force on page 4, read: "Over the past three years, Howard County has directed approximately 63.2% of their total budget to the school system, while Anne Arundel County has directed an average of 43.8% of their total budget over the same period [2002, 2003, 2004]. If the same funding formula was used for AACPS, the school system would receive an average of \$136M more in funding every year." (See Attachment H)

Rather than simply rely upon local community leaders, though, we would refer you to the 2007-2008 Fact Book published by the Maryland State Department of Education. A review of the Education Effort Index for 2008 (on page 23 of the Fact Book, Attachment I) reveals that Anne Arundel ranks 12<sup>th</sup> in the State among the local jurisdictions in education effort, calculated by dividing the local education appropriation by local wealth (4<sup>th</sup> in the State) and indexing to the State average. On pages 26-27 of the Fact Book (Attachment J), you will note that, due to the funding received from the County, Anne Arundel County Public Schools can only fund its schools at a per-pupil expenditure level that is 11<sup>th</sup> in the State, notwithstanding its inherent wealth as a county. Per pages 28-29 of the Fact Book (Attachment K), Anne Arundel County enjoys the 5<sup>th</sup> highest local wealth *per pupil* (based on adjusted real property assessment, public utility operating property, and net taxable income).

Clearly, our County has the ability to do more, but has chosen not to provide the effort to fund education at the level of many of our sister jurisdictions. This is further demonstrated by its failure to raise the necessary revenues by increasing the piggyback tax to the maximum level or to remove the property tax cap, both addressed earlier. Yet, the County comes before this State Board to request that it be exempted from a requirement the General Assembly intentionally established to fund public schools at a level that permits school districts to carry out their obligations from the year before and ensure quality education for its students.

### Conclusion

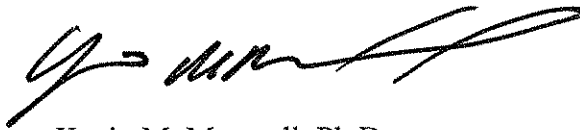
The Commission on Education Finance, Equity, and Excellence (better known as the Thornton Commission) concluded in its Report, on page 73 thereof, that "meeting adequacy goals... will require that counties continue to exceed maintenance of effort." The State's long-standing requirement of MOE, enacted for reason of sound policy considerations, is no less significant in these difficult fiscal times. Elected leaders must balance the needs of its most vulnerable citizens – disadvantaged students, disabled students, non-English speaking students – as well as its gifted and promising children with great potential to achieve – against the ability of

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its citizens, businesses, and property owners to fund government. Leadership means leading, not taking the path of least resistance to seek from this State Board of Education a waiver while leaving available revenues untapped.

For all of the foregoing reasons, we respectfully ask that the Maryland State Board of Education deny the request filed by the Anne Arundel County Government seeking a waiver from the Maintenance of Effort requirement. However, in the event that the State Board of Education sees fit to grant all or part of this waiver, we respectfully request, consistent with the language in Section 5-202 that speaks of this being a "temporary waiver" that, for Fiscal Year 2011, the MOE level of funding be established as the prior highest local appropriation.

Respectfully submitted,



Kevin M. Maxwell, Ph.D.  
Superintendent of Schools

KMM/djs  
Attachments A - K

Copies to: Dr. Nancy Grasmick  
Members, Anne Arundel County Board of Education  
County Executive John Leopold  
Members, Anne Arundel County Council