ANNE ARUNDEL
COUNTY PUBLIC SCHOOLS
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February 23, 2012

James H. DeGraffenreidt, Jr.
President
Maryland State Board of Education
200 West Baltimore Street
Baltimore, Maryland 21201-2595

Dear Mr. DeGraffenreidt:

INTRODUCTION

This is submitted in response to the letter of January 27, 2012, from Executive Director Anthony South, on behalf of the State Board of Education, requesting a formal written response "to the position taken by the County Executive and the County Budget Officer" in their letters of January 10, 2012, disputing Interim State Superintendent Sadusky's determination and finding that "Anne Arundel County is in non-compliance with the FY 2012 State Maintenance of Effort requirement."

With all due respect, the County Executive's and County Budget Officer's submission on January 10, 2012 is an unvarnished attempt to secure through "the back door" what they were not willing to seek through "the front door" when ultimately choosing not to submit to the State Board's authority initially. As this Board is aware, Mr. Leopold originally filed on March 31, 2011, a request for a waiver from the state's Maintenance of Effort (MOE) requirements. However, in the face of a public vote taken by the Anne Arundel County Board of Education to oppose that Request and a May 9, 2011, filing by me on behalf of the Board in opposition to the County Executive's filing, Mr. Leopold sent a letter the very next day (dated May 10, 2011) to you, withdrawing his Request. Please note that a threshold issue raised in our filing of May 9, 2011, was that, absent the concurrent approval of the County Council, Mr. Leopold was without authority to seek the waiver.

Now Mr. Leopold and Mr. Hammond, again, challenge the considered determination and finding of Dr. Sadusky, under the guise that they have now met MOE, in essence "to have their cake and eat it too." Still they pursue what is, in essence, an appeal from the Interim State Superintendent of Schools, without the authority and support of the County Council, which is a co-equal branch of government under State law and our County Charter as to funding the school board's budget. When the meaning of "governing body" in COMAR 13A.02.05.02B.(1) is juxtaposed next to its use in Section 5-201(e) of the Education Article, and one then references the authority of our County Council (as a co-equal branch of government) vis-à-vis the school system's budget in both Section 5-105 of the Education Article and Section 709 of the Anne Arundel County Charter (with a pre-eminent role as to the transfer of funds between categories), the insular nature of Mr. Leopold's and Mr. Hammond's views should be readily apparent.

In any event, assuming that the State Board of Education is considering this matter pursuant to its visitatorial authority under Section 2-205 of the Education Article, the burden of proof should rest squarely upon Mr. Leopold and Mr. Hammond, acting as they are on their own, to demonstrate that the Interim State Superintendent has not properly exercised his authority or has misconstrued the law. Failing to meet that burden, Dr. Sadusky's December 13, 2011, "Notice of Non-Compliance With Maintenance of Effort" should stand and the State Board should direct Mr. Leopold to take correct action forthwith to make the Anne Arundel County Board of Education whole for this violation of the law.

THE COUNTY HAS FAILED TO COMPLY WITH MOE

Turning to the substance of the County Executive's submission, it is difficult to figure out where to begin. This is because so much of his and Mr. Hammond's arguments are circular in nature, citing to an Attorney General's Opinion in the context of an action by our County Council and County Executive when enacting this year's budget, in which many of the facts belie their own arguments and ignore the very strictures of the law that the State Board must enforce. Permit me to explore their assertions in depth.

Of course, the Interim State Superintendent's Certification did not occur in a vacuum. Indeed, the MOE calculation takes into account budget figures in the context of enrollment numbers, neither of which can be overlooked as the law is interpreted. For the two years that form the basis of the calculation of Dr. Sadusky's Certification, our enrollment increased by 740 students. As a result, in drafting his budget for Fiscal Year 2012 for the Anne County Board of Education, the County Executive shortchanged the school system by the amount of $12M. By failing to meet MOE as certified by Dr. Sadusky, the Anne Arundel County Board of Education is facing a further penalty of $3.8M (the amount of the increase in State aid due AACPS), by operation of Section 5-213(b)(3)(ii) of the Education Article.

Mr. Leopold and Mr. Hammond rest their entire recalculation of the certification statement upon their reading of the Attorney General's Opinion of November 4, 2009 (94 OAG 177). We do not dispute the import of that Opinion but read it quite differently.

Mr. Hammond quotes that "an appropriation of local funds in the school operating funds for recurring debt service payments…may be counted toward satisfaction of a county's MOE target." (94 OAG 177, at 196). He goes on to cite "The shifting of debt service to the school board budget artificially satisfies the MOE requirement, unless a corresponding adjustment is made to the prior year's adjustment in computing the MOE target amount." (94 OAG 177, at 200). Between those two statements, Mr. Hammond applauds himself for following the Attorney General's advice to draw "an apples to apples" true comparison (94 OAG 177, at 198) by going back to making *a paper calculation-only* adjustment to the 2011 figure so as to compare it to what the county has now done to AACPS for the ***first*** time in 2012.

Before revisiting the above language, it is critical that the State Board understand the history as to the County's treatment of MOE vis-à-vis our school system's debt service:

- Prior to and through Fiscal Year 2010, the County consistently included the debt service for school buildings as an operating budget category, *but it was specifically excluded from the calculation for MOE.* Moreover, if actual debt service expenses for the year were under the approved budget, the difference did not fall to the fund balance but rather the appropriation was reduced, giving AACPS no true access to these funds for educational purposes.
- In Fiscal Year 2011, as the budget was proposed by County Executive Leopold and as it was enacted by the County Council, debt service continued to not be included in the County's calculation for MOE, and was even **removed** as an operating budget category in the school system's budget (appearing only in the County's capital budget).
- For Fiscal Year 2012 (the year in question), as he released his proposed budget for the school system, Mr. Leopold did not include debt service as an operating budget category but, for *the first time, included debt service as a category in the school system's capital budget*. Moreover, *for the **first time**, the County included debt service – in the amount of $53.8M – within its calculation for MOE.* **We are the only LEA to have debt service included in the MOE calculation made by its county.**
- Not until after the County withdrew its earlier MOE waiver request did the County Executive interpret the 2009 Attorney General's Opinion so as to revise the County's calculations for the Fiscal Year 2011 budget, as if debt service were counted toward MOE, in an effort to construct an "apples to apples" comparison to what was occurring for the first time in Fiscal Year 2012.
- Furthermore, at the time that Mr. Leopold presented his proposed Fiscal Year 2012 budget on April 15, 2011, we had submitted a fourth quarter transfer request for Fiscal Year 2011 to the County Council pursuant to Section 5-105 of the Education Article. As part of that process, the County had the opportunity to increase the operating budget to include debt service but did not.

I would now like to return to the language cited above from the Attorney General's Opinion. Simply saying "it is so" does not "make it so." Going through an exercise on paper to show a comparison is just that – an exercise. No money was transferred. Fiscal Year 2011 opened just like it closed, without any substantive or pertinent amendments made to the school district's budget by the County Council acting as the funding authority. Debt service never was reflected in Fiscal Year 2011's budget.

Mr. Leopold and Mr. Hammond have chosen to minimize that part of the quote above which is the essence of the Opinion rendered by the Attorney General, distinguishing among the actions of the three school districts in question. The Opinion states unequivocally on page 197 thereof, quoting the statute (Education Article, Section 5-202(d)(2)) that "[p]rogram shifts between a county

operating budget and a county school operating budget may not be used to artificially satisfy the [MOE] requirements…" On the next page, this section of the Opinion concludes, in regard to Montgomery and Prince George's counties, that "the inclusion of … debt service … for a local school system cannot be used to satisfy the MOE target if the same expense – and **appropriation** – were not a part of the computation of the highest local appropriation for the school operating budget for the prior fiscal year…" (94 OAG 177, at 198) (**emphasis added**). The "apples to apples" comparison does not belie the finding that there must have been an actual revision of the prior year's budget, which did not occur; otherwise all that is occurring would, indeed, be an ***artificial*** shifting, which the law precludes.

Be that as it may, the County has a far greater defect in its reasoning, whether referencing the Attorney General's Opinion or the budget adopted by the County Council, both of which are appended to its January 10, 2012, submission. Given the express language of the statute, we submit that this defect is fatal to its case.

In the language cited by Mr. Hammond from the Attorney General's Opinion, the first quote above speaks to "an appropriation of local funds in the school **operating** funds for recurring debt service payments…" (Emphasis added). That was not inadvertent on the part of the Attorney General. Not to our surprise, Mr. Hammond chose to gloss over the fact that the entire section of the Opinion in which this quotation appears addresses the critical distinction between the "basic current expense budget" a.k.a. "operating budget" governed by Section 5-101(b) Part I of the Education Article, and the "school construction fund" a.k.a. "capital budget" governed by Section 5-101(b) Part II.

That would not be important but for the fact that the MOE provisions of the Education Article clearly state that they only apply to the "school operating budget," not to the "capital budget." Stated again, MOE only applies to the operating budget. That is clear from a reading of this Attorney General's Opinion and another one to which it cites, rendered on March 6, 1991, in response to a request from the County Executive of Howard County (76 OAG 153). In the 1991 Opinion, the Attorney General traced the legislative history of the MOE provisions and noted that the term "operating" was inserted by amendment with "school operating budget" used as a referent for calculating the MOE amount when the 1984 law was passed.

Why is this significant? Because as pointed out earlier, debt service – the heart of this dispute – is not to be found in the operating budget but in the capital budget, for the first time this fiscal year. One need not look any further than the County's Annual Budget and Appropriation Ordinance (Bill 27-11), appended as one of Mr. Hammond's Exhibits, to see this.

Whereas one will not see Debt Service listed among the 14 categories listed for the Board of Education's Current Expense Fund on pp. 5-6 of Bill 27-11, one will see Debt Service listed at the bottom of p. 15 (in the amount of $53.8 million) amidst numerous Board of Education Capital

Improvement Program projects in Section 39, which starts on p.14 for the Capital Construction Fund. Again, nothing could be clearer. The County violated its application and, calculation of MOE when it chose not only to place debt service in the capital budget but simultaneously included it as part of MOE.

There are some who have argued that this is an academic argument, nothing but a political dispute between two governmental entities over "debt service" whose monies amount to no more than a paper transfer. Nothing could be further than the truth.

As the State Board is well aware, the failure of the County to meet MOE places at jeopardy our school system's increase in State education funding pursuant to Section 5-202 of the Education Article for Fiscal Year 2013, subjecting us to the penalty under Section 5-213 (b)(3)(ii) of the Education Article. Our desire to find that the County has shortchanged the school system is not, of course, to expose us to such penalty, so much as to clarify the law in the hope that the State Board, the State Legislature, and our County will fashion the appropriate remedies.

The County has also argued that debt service is an expense incurred by the County for interest accrued on bonds that it floats for school construction projects; accordingly, it is only appropriate that AACPS bear that freight, not the County. Such an argument is shortsighted.

The County benefits by the sale of bonds to its bondholders; the school system reaps none of those benefits. Moreover, when the tax rate is set by the County Council, the taxpayers of this County are supporting the funding of the entire budget, including this debt service. It is the taxpaying public which bears this freight ultimately through the tax rate that is set, not the County Executive or Budget Officer.

Moreover, once a school building is no longer needed for school purposes, financed as it may have been with construction bonds that may or may not have had debt service, those buildings must be reverted to the County pursuant to Section 4-115 of the Education Article, with the county benefitting from their ultimate sale, lease or disposition. Thus, it is only appropriate that debt service be a charge on the County's books.

MR. HAMMOND'S RESPONSES OF FEBRUARY 15, 2012

In response to a request of February 8, 2012 from the State Board President addressed to County Executive Leopold, Mr. Hammond answered seven specific questions pertinent to this dispute. Permit me briefly to comment upon Mr. Hammond's responses of February 15, 2012.

In responding to Question #1, Mr. Hammond is in agreement with AACPS as to the amount of debt service for Fiscal Year 2012. However, when reading Mr. Hammond's answers to Questions #1 and #2 in tandem as to the amount of the overall budget, he was not as precise. Although the

total of $609,972,000 is reflected as having been appropriated to the school system, only $556,105,600 was appropriated to the *unrestricted* operating budget for the school board's use. The remaining $53,866,400 (for debt service) was appropriated to the restricted capital budget. As stated previously, this is the first fiscal year in which the County not only has placed debt service in the project level restricted capital budget, but has counted it as a component of MOE. Moreover, Mr. Hammond's continued reference to the Attorney General's Opinion is misguided inasmuch as the Attorney General has reiterated the plain language of the statute that only operating budget funds may be utilized to calculate MOE.

As to Question #3, we concur with the figures cited by Mr. Hammond. As to Mr. Hammond's answers to Questions #4, #5, and #6, we are not in possession of the necessary information to either affirm or dispute the accuracy of what has been provided. Of course, insofar as the "apples to apples comparison" is concerned, we would again note that this is simply a paper exercise.

As to Question #7, our cursory review of the information attached to Mr. Hammond's submission of February 15, 2012, suggests that it is inaccurate insofar as the County seeks to convey that *no* deferred or advance debt service payments have been included in the amounts attributable to Fiscal Year 2011 or 2012. But one example would be General Obligation 20, issued on 04/08/10 [cited at page 7 of Attachment #6 to Mr. Hammond's submission, for FY 2011], which reflects only a **$40,000** principal payment on a $54,870,910 issue, whereas one can see by reviewing the reference to this same issuance in FY 2012 [cited at page 9 of Attachment #5] that the County made a principal payment of **$5,777,646** a year later. This is in contrast to General Obligation 31 issued on 04/20/11 [also cited at page 9 of Attachment #5 for FY2012] that references a $3,972,395 principal payment on a $78,663,687 issue. Without being privy to a similar document for Fiscal Year 2010, such practices may be indicative of variances in the County's accounting methodology for debt service from year to year.

CONCLUSION

Lest the County Executive minimize the significance of MOE, not only to his exemplary school system that serves as an economic engine of his County, but for all school districts in this State which has been recognized as having the best education system in the nation for the fourth consecutive year, it is noteworthy that the Attorney General opined that "by requiring a minimum level of local funding, it ensures that State policy decisions to improve public education through enhanced financial support are not defeated by local funding decisions." (94 OAG 177, at 184) We fear that Mr. Leopold's action, if not reversed, will have that very effect, to the detriment of our students who need more – not less – support, rather than "smoke and mirrors" that hide the movement of "debt service" in a budget only to artificially inflate the MOE calculation.

In summary, the County Executive and County Budget Officer have failed to meet their burden of proof to demonstrate that Dr. Sadusky's December 13, 2011 Certification of "Anne

Arundel County's Non-Compliance with Maintenance of Effort" was beyond his authority or otherwise violative of law. Rather, the State Board should find that:

- Anne Arundel County has artificially shifted programs in an illegal attempt to satisfy MOE, contrary to the Education Article.
- Anne Arundel County has included debt service within its calculation of MOE, notwithstanding that it chose to reflect it as part of the capital budget, contrary to the Education Article.
- Anne Arundel County has failed to meet MOE for Fiscal Year 2011 notwithstanding its pronouncements to the contrary.

Respectfully submitted,

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

KMM/djs
cc: Dr. Bernard Sadusky
Members, Anne Arundel County Board of Education
County Executive John Leopold
Members, Anne Arundel County Council
Anthony South
Stephen Brooks
P. Tyson Bennett
Alex Szachnowicz
George Margolies