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TO: Members of the State Board of Education
FROM: Lillian M. Lowery, Ed.D. *Lillian M. Lowery*
DATE: February 24, 2015
SUBJECT: COMAR 13A.02.05 (AMEND)
Maintenance of Effort
PERMISSION TO PUBLISH

PURPOSE:

The purpose of this action is to request that the State Board grant permission to publish amended regulations concerning maintenance of effort (MOE).

HISTORICAL BACKGROUND:

The MOE law was established in 1984 and requires each county (including Baltimore City) to provide, on a per pupil basis, at least as much funding to public education as was provided in the prior fiscal year. In 1996 the MOE law was amended to allow local jurisdictions to apply to the State Board of Education for a one-year waiver from MOE. Chapter 6 of the 2012 legislative session altered the maintenance of effort law. The new law requires counties to apply for a waiver, alters the MOE penalty, creates two new types of waiver requests, and refines the MOE process. The proposed changes will update the MOE regulations so that the regulations are in line with statute. The regulations will also set forth the procedures and calculations for the MOE escalator that went into effect on July 1, 2014.

EXECUTIVE SUMMARY:

Proposed modifications and additions to MOE regulations include the following:

- Altering the timeline for the MOE process to conform to deadlines in State law. This includes the date by which local jurisdictions must submit a request to the State Board and the date by which the Board must notify the local jurisdiction of its decision.
- Defining the three different types of waiver requests. These include the impeded ability waiver request, rebasing waiver request, and the agreed upon waiver request.



- Updating the criteria the State Board must consider when evaluating each of the three types of maintenance of effort requests. The proposed changes align with the criteria outlined in statute.
- Defining education effort.
- Establishing procedures and calculations for the MOE escalator that went into effect on July 1, 2014.

ACTION:

I request permission to publish amendments to COMAR 13A.02.05 with the following TENTATIVE timelines:

Maryland Register Issue Date: 4/17/15
30- day open comment period ends: 4/17 – 5/18/15
Adoption: 6/23/15

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) *"Agreed on Waiver" means a waiver based on an agreement to reduce recurring costs pursuant to Education Article §5-202(d)(9);*

[(1)] (2) *"County" means the county governing body and includes the Mayor and City Council of Baltimore City.*

[(2)] (3) *"Department" means the State Department of Education.*

(4) *"Education effort" means a county's appropriation to the local school system divided by the county's wealth, as defined in §5-202(a)(14) of the Education Article.*

(5) *"Five-Year moving average of education effort" means the simple average of a county's education effort for the five preceding years.*

[(3)] (6) *"Highest local appropriation" means the total amount of a county's appropriation to the school operating budget for a fiscal year and includes all items related to the ongoing education function of the public schools.*

(7) *"Impeded ability waiver" means a waiver for a fiscal year pursuant to Education Article §5-202(d)(8).*

[(4)] (8) *"Local board" means the local board of education and includes the [New] Board of School Commissioners of Baltimore City.*

(9) *"Local Wealth Per Pupil" means a county's wealth divided by the county's full-time equivalent enrollment.*

(10) *"Rebasing Waiver" means a waiver to rebase maintenance of effort permanently pursuant to Education Article §5-202(d)(10).*

(11) *"Statewide five-year moving average of education effort" means the simple average of the five-year moving average of education effort for the 24 local school systems.*

[(5)] (12) *"Supplemental" means expenditures that are in excess of the original appropriation to the regular school operating budget.*

.03 Nonrecurring Cost Exclusion

A. Calculation

(1) The calculation of the county's highest local appropriation to its school operating budget for the prior fiscal year shall exclude a qualifying nonrecurring cost that is supplemental to the regular school operating budget in accordance with the format developed by the Department.

(2) Qualifying nonrecurring costs shall be limited to:

(a) Costs to establish new computer laboratories that include the cost for equipment, furniture, wiring, hardware, software, space renovations, and the initial up-front cost for staff development, and training but not ongoing costs as maintenance, staff salaries, staff development, and training;

(b) Costs for new technology that include the cost for equipment, furniture, wiring, hardware, software, space renovations, and the initial up-front cost for staff development, and training but not ongoing costs such as maintenance, staff salaries, staff development, and training;

(c) New instructional program start-up costs that include the cost for equipment, furniture, wiring, hardware, software, space renovations, textbooks, manipulatives, staff development, and training;

(d) Books other than classroom textbooks to establish a new library collection and new books required in new and renovated schools;

(e) Capital items with a useful life of 5 years or more that include the cost to acquire fixed assets other than land and buildings; and

(f) Other unique one-time costs that the local board and county mutually agree to be one-time expenditures.

(3) An approved qualifying nonrecurring cost may not be included in the county's appropriation for purpose of satisfying the county's maintenance of effort requirement.

B. Procedure.

(1) [Beginning with fiscal year 1998,] The county shall submit to the Department between January 1 and March 31 of the prior fiscal year, a written request to exclude qualifying nonrecurring costs that are supplemental to the regular school operating budget. The request shall include an explanation of why the cost qualifies as nonrecurring. Before submitting the written request, the county shall confer with the local board. The county shall send a copy of the written request to the local board.

(2) The Department shall inform the local board of education and the county within 30 days from receipt of the written request, but no later than May 1 of the prior fiscal year, whether the qualifying nonrecurring costs are supplemental to the regular school operating budget are

approved for exclusion from the calculation of the county's highest local appropriation to its school operating budget.

(3) The county or the local board may appeal to the State Board within 15 days of the date of a decision to approve or reject a cost as nonrecurring cost.

(4) The county may decide to appropriate additional funds to its school operating budget during a fiscal year. The county shall obtain written approval from the Department to classify any additional appropriation as a nonrecurring cost.

(5) The provisions of this regulation do not apply to a county if the county is granted a waiver, in whole or in part, by the State Board of Education based on determination that the county's fiscal condition significantly impeded the county's ability to fund the maintenance of effort requirement.

.04 Waiver of Maintenance of Effort Requirement.

A[Procedure.] *Waiver Requests.*

(1) [Beginning with fiscal year 1998,] *In order to qualify for a maintenance of effort waiver, [for a fiscal year,] a county shall make a request for a waiver in writing to the State Board of Education [by April 1] by the earlier of April 20 or the seventh day following the end of the legislative session of the fiscal year prior to the waiver year. The county shall send to the local board of education a copy of the waiver request.*

[(2) The waiver request shall be in writing and shall be received by the Department between January 1 and March 31 of the prior fiscal year. The county shall send to the local board of education a copy of the waiver request.]

(2) There are three types of waiver requests:

(1) Impeded Ability Waiver;

(2) Agreed On Waiver,

(3) Rebasing Waiver.

(3) The State Board shall inform the county whether the waiver is approved or denied in whole or part 30 days after receipt of an application or May 20 of the fiscal year prior to the waiver year, whichever is earlier.

[(3) The written request shall include the following:

(a) The amount the county proposed to appropriate to its school operating budget and the amount the county is required to appropriate to meet the maintenance of effort requirement;

(b) Information detailing the county's projected fiscal condition for the fiscal year the waiver is being requested and the current fiscal year, as well as information regarding the county's revenue stream from property tax, income tax, other taxes, and other revenue streams;

(c) If applicable, information regarding statutory prohibitions for raising revenues;

(d) Copies of the county's three most recent audited financial statements;

(e) The county's projected expenditure plan for the fiscal year in which the waiver is requested, as well as the current fiscal year expenditure plan; and

(f) Additional information in support of the waiver request as the county considers necessary;

(4) The State Board may request additional information from the county as it considers necessary.]

B. Public Hearing.

(1) Upon receipt of the waiver request, the State Superintendent of Schools shall provide a preliminary assessment of the waiver request to the State Board.

[(1)] (2) Upon receipt of the waiver request, the State Board shall schedule a public hearing.

[(2)] (3) Notice of the public hearing shall include the time allotment for oral presentation.

[(3)] (4) The State Board may identify and call upon expert witnesses.

[C. Standard for Granting a Waiver.

(1) The State Board's decision on whether to approve or deny in whole or in part a waiver request shall be based on a determination that the county's fiscal condition significantly impedes the county's ability to fund the maintenance of effort requirement.

(2) The State Board may consider the following;

(a) External environmental factors such as loss of a major business or industry;

(b) Tax bases;

(c) Rate of inflation relative to growth of student population; and

(d) Maintenance of effort requirement relative to the county's statutory ability to raise revenues.

(3) The county has the burden of proof by a preponderance of the evidence.

(4) The State Board shall issue its written decision to the county, with a copy to the local board, within 45 days from receipt of the written request, but no later than May 15.]

C. Standards for Granting Waivers.

(1) For an Impeded Ability Waiver for a fiscal year, the county must address whether the waiver request is contested, submit the amount of the waiver request and a full explanation of how each of the factors below impact and support the request for this waiver:

(a) External environmental factors such as a loss of a major employer or industry affecting a county or a broad economic downturn affecting more than one county;

(b) A county's tax base;

(c) Rate of inflation relative to growth of the student population in the county;

(d) Maintenance of effort requirement relative to the county's statutory ability to raise revenues;

(e) The county's history of exceeding the required maintenance of effort amount;

(f) An agreement between a county and a county board that a waiver should be granted.

(g) Significant reductions in State aid to the county and municipalities of the county for the fiscal year for which a waiver is requested;

(h) The number of waivers the county has received in the past 5 years;

(i) The history of compensation adjustments for employees of the county board and county government; and

(j) Other factors, upon request by the State Board.

(2) For an Agreed Upon Waiver based on an agreed-upon reduction in recurring costs, the county must submit:

(a) The amount of the agreed-upon reduction in recurring costs by line item in the local board's budget;

(b) The amount of the waiver request;

(c) A comparison of the requested appropriation level to the amount required by Education Article 5-202(d)(1)(i);

(d) The document that sets forth the mutual agreement between the county and the local board; and

(e) If the reduction in recurring costs includes reductions in personnel or personnel costs, the document that reflects the agreement of the exclusive employee representative.

(3) For a Rebasing Waiver to rebase maintenance of effort permanently, the county shall:

(a) Have obtained a waiver for a fiscal year under section C(1) of this regulation;

(b) Submit the amount requested to be permanently rebased;

(c) Demonstrate that the county education appropriation under Education Article §5-202(d)(1)(ii) for the waiver year exceeds 100% of the statewide 5-year moving average of education effort times a county's local wealth; and

(d) Submit a full explanation of whether and how:

- (i) The county is at its maximum taxing authority under the law;*
- (ii) The county's education appropriation is commensurate with the county's wealth;*
- (iii) The county's history of exceeding the required maintenance of effort has made meeting the maintenance of effort requirement in future years unsustainable;*
- (iv) The county has or has not received a rebasing waiver in the past 5 years; and*
- (v) The factors set forth in section C(1)(a-i) of this regulation affect the county's ongoing ability to meet the maintenance of effort requirement.*

.05 Additional Maintenance of Effort for Low-Effort Counties

A. Procedure

(1) In each fiscal year in which a county's prior year's education effort is below 100 percent of the statewide five-year moving average of education effort, the Department will designate the county as a low-effort county.

(2) The local board in a low-effort county shall adjust the maintenance of effort amount for the county by increasing the per pupil amount by the lesser of:

(a) A county's increase in local wealth per pupil between the fiscal year and current fiscal year;

(b) The statewide average increases in local wealth per pupil between the prior fiscal year and the current fiscal year; or

(c) 2.5 percent.

(3) If the number calculated pursuant to §A(2)(a) or (b) of this Regulation is a negative number, the adjustment to the maintenance of effort amount shall be zero.

B. Calculations.

(1) For the purpose of calculating the five-year moving average of education effort, the Department's calculation of wealth in each fiscal year included in the five-year period shall be based on the amount the Comptroller certifies as net taxable income based on tax returns filed on or before:

(a) September 1st for fiscal years 2015-2017; and

(b) November 1st for fiscal year 2018 and each fiscal year thereafter.

(2) To calculate a county's increase in local wealth per pupil, divide the current year's local wealth per pupil by the prior year's local wealth per pupil and subtract 1.

(3) To calculate the statewide average increase in local wealth per pupil, add together the 24 changes in local wealth per pupil as calculated in §B(2) of this Regulation and divide by 24.