MONTGOMERY COUNTY BOARD OF EDUCATION
850 Hungerford Drive ♦ Rockville, Maryland 20850

April 17, 2009

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

Dear Mr. DeGraffenreidt:

This letter transmits a resolution of the Montgomery County Board of Education adopted unanimously at its meeting of April 14, 2009, regarding the Maintenance of Effort (MOE) waiver request that was submitted to you on March 31, 2009, pursuant to Section 5-202(d)(7) of the Annotated Code of Maryland, Education Article, by Montgomery County Executive Isiah Leggett and Montgomery County Council President Phil Andrews.

Sincerely,

Shirley Brandman, President
Montgomery County Board of Education

SB:vnb

Enclosure

Copy to:
Mr. Leggett
Mr. Andrews
Members of the Montgomery County Council
Members of the Board of Education
Members of the Montgomery County Legislative Delegation

Phone 301-279-3617 ♦ Fax 301-279-3860 ♦ boe@mcpsmd.org ♦ www.montgomeryschoolsmd.org

MONTGOMERY COUNTY BOARD OF EDUCATION
Rockville, Maryland

April 14, 2009

MEMORANDUM

To: Members of the Board of Education

From: Shirley Brandman, President
Patricia B. O'Neill, Vice President

Subject: FY 2010 Maintenance of Effort Waiver

On March 31, 2009, Montgomery County Executive Isiah Leggett and Montgomery County Council President Phil Andrews requested a waiver of the Maintenance of Effort (MOE) requirement for FY 2010 from the Maryland State Board of Education. Pursuant to Section 5-202(d)(7) of the Annotated Code of Maryland, Education Article, this request stated that the county's fiscal condition prevents it from funding the MOE requirement without seriously impairing other county services as defined under Section 5-202(d)(1-6) (attachment A). Pursuant to the State Board of Education procedures, the local education agency was required to submit a position by April 10, 2009. Since the full Board had not had an opportunity to take a formal position on the County's waiver application prior to this deadline, on April 7, 2009, Board leadership submitted a letter indicating that we would recommend support under specified conditions (attachment B). Because the Maryland State Board of Education has scheduled a public hearing on the Montgomery County request at its meeting on April 27, 2009, it is important that the Montgomery County Board of Education state its position on the county's waiver request prior to the public hearing. The following resolution is therefore recommended for Board approval.

WHEREAS, Montgomery County requested a waiver of the Maintenance of Effort (MOE) requirement of a local contribution of $1,529,554,447, Pursuant to Section 5-202(d)(7) of the Annotated Code of Maryland, Education Article, in a letter to the president of the Maryland State Board of Education on March 31, 2009, because the county's fiscal condition prevents it from funding the MOE requirement without seriously impairing other county services; and

WHEREAS, The Maryland State Board of Education has scheduled a public hearing on the Montgomery County request on April 27, 2009; and

WHEREAS, MCPS staff has received information about the county's economy and revenue projections, as outlined in the county's waiver request, and has worked closely with county staff to review economic and revenue data, and

WHEREAS, Additional state and federal aid and MCPS savings for FY 2009 make it possible to fund all the educational programs requested by the Board while permitting a waiver of MOE for local contribution; now therefore be it

Resolved, That the Board of Education supports the Montgomery County request for a waiver of the Maintenance of Effort (MOE) requirement only for FY 2010 if the following conditions are met and included in the State Board of Education's waiver grant:

1. With the possible exception of pre-funding of retirees health insurance, as explained in the attached letter, the budget recommended by the County Executive on March 17, 2009, is supported and fully funded by the County Council. This total amount of $2,128,410,168, including $1,975,499,903 in the tax-supported Current Fund, preserves our budget and avoids the waiver causing any further cuts to an already reduced budget.

2. The Board receives support and full funding for the plan submitted to the county executive and County Council for use of the additional Title I and *Individuals with Disabilities Education Act* (IDEA) funds that we have been allocated as part of the federal stimulus funding. There will be no attempt to use these funds to supplant local funds that have been used to support these programs this year.

This is a one-year waiver. For FY 2011, the required level of appropriation by the county shall be based on the local appropriation for FY 2009; and be it further

Resolved, That the president of the Board of Education be authorized to submit this resolution to the Maryland State Board of Education; and be it further

Resolved, That a copy of this resolution be sent to the county executive and the County Council.

SB:PLO:sz

Attachments

Article- Education

§5–202.

(d) (1) To be eligible to receive the State share of the foundation program:

(i) The county governing body shall levy an annual tax sufficient to provide an amount of revenue for elementary and secondary public education purposes equal to the local share of the foundation program; and

(ii) The county governing body shall appropriate local funds to the school operating budget in an amount no less than the product of the county's full–time equivalent enrollment for the current fiscal year and the local appropriation on a per pupil basis for the prior fiscal year.

(2) Except as provided in paragraph (3) of this subsection, for purposes of this subsection, the local appropriation on a per pupil basis for the prior fiscal year for a county is derived by dividing the county's highest local appropriation to its school operating budget for the prior fiscal year by the county's full–time equivalent enrollment for the prior fiscal year. For example, the calculation of the foundation aid for fiscal year 2003 shall be based on the highest local appropriation for the school operating budget for a county for fiscal year 2002. Program shifts between a county operating budget and a county school operating budget may not be used to artificially satisfy the requirements of this paragraph.

(3) For purposes of this subsection, for fiscal year 1997 and each subsequent fiscal year, the calculation of the county's highest local appropriation to its school operating budget for the prior fiscal year shall exclude:

(i) A nonrecurring cost that is supplemental to the regular school operating budget, if the exclusion qualifies under regulations adopted by the State Board; and

(ii) A cost of a program that has been shifted from the county school operating budget to the county operating budget.

(4) The county board must present satisfactory evidence to the county government that any appropriation under paragraph (3)(i) of this subsection is used only for the purpose designated by the county government in its request for approval.

(5) Any appropriation that is not excluded under paragraph (3)(i) of this subsection as a qualifying nonrecurring cost shall be included in calculating the county's highest local appropriation to its school operating budget.

(6) Qualifying nonrecurring costs, as defined in regulations adopted by the State Board, shall include but are not limited to:

(i) Computer laboratories;

(ii) Technology enhancement;

(iii) New instructional program start–up costs; and

(iv) Books other than classroom textbooks.

(7) (i) The provisions of this subsection do not apply to a county if the county is granted a temporary waiver or partial waiver from the provisions by the State Board of Education based on a determination that the county's fiscal condition significantly impedes the county's ability to fund the maintenance of effort requirement.

(ii) After a public hearing, the State Board of Education may grant a waiver under this paragraph in accordance with its regulations.

(iii) In order to qualify for the waiver under this paragraph for a fiscal year, a county shall make a request for a waiver to the State Board of Education by April 1 of the prior fiscal year.

(iv) The State Board of Education shall inform the county whether the waiver for a fiscal year is approved or denied in whole or in part by May 15 of the prior fiscal year.

MONTGOMERY COUNTY BOARD OF EDUCATION
850 Hungerford Drive • Rockville, Maryland 20850

April 7, 2009

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

Dear Mr. DeGraffenreidt:

This letter is the Montgomery County Board of Education's response to the Maintenance of Effort (MOE) waiver request that was submitted to you on March 31, 2009. Pursuant to Section 5-202(d)(7) of the Annotated Code of Maryland, Education Article, Montgomery County Executive Isiah Leggett and Montgomery County Council President Phil Andrews have requested a waiver from the State's MOE requirement, as defined under Section 5-202(d)(1)-(6). The basis for their request is that the county's fiscal condition prevents it from funding the MOE requirement without seriously impairing other county services. The Board has not taken a formal position because it will not have had an opportunity to meet prior to the April 10, 2009, deadline for submitting a response. However, we recognize that the unprecedented economic difficulties faced by the county, state, and nation have required the county to request this waiver.

The *American Recovery and Reinvestment Act of 2009* (ARRA) has provided the state with $26.2 million that otherwise would have been reduced from the state aid due to Montgomery County. Compared to FY 2009, Montgomery County Public Schools (MCPS) expects to receive in FY 2010 approximately $71 million in additional state aid. This is $27 million more than was anticipated when the Board of Education adopted its FY 2010 budget request. MCPS also expects to receive $24.2 million in state aid it was shortchanged by error in FY 2009. These additional revenues allow the Board's requested budget to be funded even if the MOE waiver is approved. However, if final action on the budget by the General Assembly reduces the amount of state aid for MCPS, the requested waiver amount must be reduced by a similar amount.

Montgomery County has informed the Board of Education that because of the serious economic downturn, it faces a budget shortfall of almost $600 million. MCPS staff has received information about the county economy and revenue projections, as outlined in the county's waiver request, and has worked closely with county staff to review economic and revenue data.

Discussions were held by MCPS staff, county executive staff, and the County Council prior to March 31, 2009, regarding the need for the waiver and the content of the letter requesting the waiver. Although the Board of Education was not able to take a formal position on this waiver

request, we are recommending support of this request as long as a number of important conditions are met. This conditional support was communicated to Mr. Leggett and Mr. Andrews. The following conditions were shared with them, and it was made clear that our support is contingent on these conditions being agreed to by the Maryland State Board of Education:

1. With the possible exception of pre-funding of retirees health insurance, as explained below, the budget recommended by the County Executive on March 17, 2009, is supported and fully funded by the County Council. This total amount of $2,128,410,168, including $1,975,499,903 in the tax-supported Current Fund, preserves our budget and avoids the waiver causing any further cuts to an already reduced budget.

2. The Board receives support and full funding for the plan submitted to the county executive and County Council for use of the additional Title I and *Individuals with Disabilities Education Act* (IDEA) funds that we have been allocated as part of the federal stimulus funding. There will be no attempt to use these funds to supplant local funds that have been used to support these programs this year.

3. This is a one-year waiver. For FY 2011, the required level of appropriation by the county shall be based on the local appropriation for FY 2009.

The Board of Education's budget request for next year, FY 2010, contains an increase of only $64 million over FY 2009, excluding the additional federal stimulus funds for Title I and IDEA. In the county executive's recommendations for the MCPS FY 2010 Operating Budget, this amount was reduced by $24 million. We believe this reduction can be made because this action would reduce our contribution to health and retiree trust funds that were requested in anticipation of increases that will be needed in FY 2011, including the increase in the contributions to the Other Post-Employment Benefits (OPEB) Fund for health coverage for our retirees. This is not an easy decision to make. We have made progress over the past two years in complying with GASB 45 and beginning to phase-in contributions to pre-fund retirees' health insurance, but these are unusual times and difficult decisions have to be made. These reductions will not impact our educational programs. Therefore, our tax-supported budget increase would be only 2 percent, despite the fact that we will have 2,800 more students.

We were able to accomplish this because of the extraordinary commitment and contributions of our employees. Our unions agreed to renegotiate their agreements with the Board of Education, and our employees have agreed to forego their cost-of-living increases, which will save the school system $89 million in FY 2010. In addition to these reductions, we made $30 million of budget reductions and savings in next year's budget. Also, we saved $20 million this year as a result of a position freeze and comprehensive expenditure restrictions. These savings from FY 2009 will be available to fund next year's budget. These extraordinary contributions to

address the current fiscal crisis are in addition to more than $50 million of reductions in the FY 2009 Operating Budget that had to be made last spring.

Having made all of these significant reductions in our operating budget, it is not possible to make further cuts to our educational programs or to our employees next year. If the county executive and County Council decide to make further reductions of close to $20 million, as has been suggested in their increase in the waiver amount to $94 million, these additional reductions must only come from contributions to pre-fund OPEB for our retirees. Any further reductions cannot impact educational programs or our employees because of the serious effect such reductions would have on the children in our schools.

The Montgomery Board of Education took swift action to approve a plan for use of the federal stimulus funds for Title I and IDEA. Within a week of President Obama's signing into law the ARRA, we approved the use of these additional funds to address the needs of some of our students who are most impacted by poverty and our special education population. Included in this action was the restoration of $5 million of reductions that previously had been proposed for FY 2010. It is essential that these additional federal funds be used to help those students that ARRA was intended to support. This is a critical condition for our support of the waiver. This is an opportunity that we cannot lose because the county may want to use these funds for other purposes.

Finally, it is critical that this waiver be for one year only and that the base budget for the purposes of calculating maintenance of effort for FY 2011 is not the FY 2010 amount. MCPS, like other school systems in Maryland, has made tremendous progress during the past six years as a result of the additional state aid provided through Bridge to Excellence funding. Although we are fully aware of the difficult financial situation we face as a result of the economic downturn in the country, we cannot agree to lose the progress that has been made. Seven years ago, the debate was not whether the Thornton recommendations were the right thing to do for the students in Maryland, but rather what amount of funding was needed to help our schools succeed. This is why our support is contingent on this waiver being for one year only and the level of appropriation by the county for 2011 must be based on the local FY 2009 appropriation.

The one unanswered question remaining to be addressed has to do with the amount of the waiver being requested and the assurance that we will not lose any funds for our educational programs or our employees. We need to make certain that we all have the same understanding when the State Board of Education makes its decision.

It should be emphasized that our agreement with the MOE waiver request for this year should not be viewed as a precedent for future waivers. The current economic crisis and the resulting federal stimulus funds represent a unique combination of events that are unlikely to recur. The Board of Education believes that the MOE requirement is an important foundation for local

support for education. We are pleased that county leaders have reaffirmed the high priority of education for Montgomery County.

Understanding that our Board of Education has not had time to discuss and take a position on this request, we would recommend support of the county's request for the MOE waiver so long as the conditions described above are included in the action of the Maryland State Board of Education. On behalf of the Board of Education of Montgomery County, we reserve the right to supplement these comments following any additional consideration by the local Board. Please let us know if you have questions or need additional information.

Sincerely,

Shirley Brandman, President
Montgomery County Board of Education

Patricia O'Neill, Vice President
Montgomery County Board of Education

Jerry D. Weast, Ed.D., Superintendent of Schools
Secretary, Montgomery County Board of Education

SB:vnb

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