

IN RE: ANNE ARUNDEL COUNTY
MAINTENANCE OF EFFORT

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Opinion No. 12-13

OPINION

INTRODUCTION

On December 13, 2011, pursuant to Md. Educ. Code Ann. §5-213(b), the Interim State Superintendent of Schools notified Anne Arundel County (County) that it had not complied with fiscal year 2012 maintenance of effort (MOE) requirements. On January 10, 2012, the County disputed that finding and requested an appeal to the State Board. Subsequently, after a preliminary review of the documents the County submitted with its appeal, the State Board sent the County a series of follow-up questions. The County responded on February 15, 2012. On February 23, 2012, the Anne Arundel County Public Schools (ACPS) filed an opposition to the County's MOE appeal. On February 24, 2012, the Teacher's Association of Anne Arundel County concurred with the position taken by ACPS.

FACTUAL BACKGROUND

In November 2011, the Superintendent of ACPS submitted an MOE certification form to MSDE. It stated that the actual MOE target for FY 2012 was \$568,068,888 but that the County had only appropriated \$556,105,600. The County states in its MOE appeal, however, that it actually appropriated \$609,972,000 to the school system in FY 2012. It explains that \$53,866,400 of the appropriation is for debt service attributed to the school system and thus includable in the MOE calculation.

STANDARD OF REVIEW

In a case in which the State Board is asked to declare the intent and meaning of an education law, the State Board exercises its independent judgment on the record before it in the explanation and interpretation of the public school laws and State Board regulations. COMAR 13A.01.05.05(D).

LEGAL ANALYSIS

The issue in this case is a purely legal one - - whether the inclusion of debt service in the MOE calculation meets the requirements of Maryland law. The MOE statute describes how to calculate the MOE level each year. In particular, “it specifies that the ‘local appropriation on a per pupil basis for the prior fiscal year’ is to be computed by dividing the county’s highest local appropriation to the school operating budget for the prior fiscal year by the county’s full-time equivalent enrollment for that year. ED §5-202(d)(2). The statute excludes ‘non-recurring costs’ from the formula for computing the required local funding; also, it bars the shifting of programs between the county and local board budgets ‘to artificially satisfy’ the MOE requirement. ED §5-202(d)(2)-(5).” 94 Op. Att’y Gen. 177, 181-182 (2009).

The Attorney General has opined that “an appropriation of local funds in the school operating budget for recurring debt service payments for public school construction may be counted toward satisfaction of a county’s MOE target.” *Id.* at 196-197. Noting, however, that MOE cannot be based on an “artificial shifting” of expenses between the County and local board budgets, the Attorney General reviewed how MOE would be calculated when debt service appeared in the MOE appropriation for the first time. He called for an “apples to apples” comparison of the appropriation from one fiscal year to the next. Thus:

In order to assess accurately whether a county has met [the MOE] obligation, the computation must include one of the following adjustments: (1) the debt service appropriation for the current fiscal year must be excluded from the comparison; or (2) an equivalent portion of the appropriation for school debt service in the prior county budget must be included as part of the “highest local appropriation to [the] school operation budget for the prior fiscal year” in the computation of the target MOE level. Otherwise, the computation does not accurately assess changes in county support, as intended by the MOE law.

In our opinion, the inclusion of an appropriation for debt service in [a] Fiscal Year . . . budget 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 year . . .

Id. at 198.

In purporting to follow the “apples to apples” comparison described in the Attorney General’s Opinion, the County adjusted the FY 2011 MOE amount by adding \$41,481,100 to the MOE target. That amount represented debt service attributed to the school system in that year. (County Response to Board Question #3, Letter of February 15, 2012). The County did not, however, appropriate those dollars retroactively or otherwise to the school system. We point out

that the Attorney General's Opinion specifically calls for an actual appropriation. It precludes using an appropriation for debt service in calculating MOE in one fiscal year, unless "the same expense – and appropriation" were "part of the computation of the highest local appropriation for the school operating budget for the prior fiscal year." 94 Op. Att'y Gen. at 198.

In our view, the Attorney General did not condone an artificial manipulation of the prior year's MOE calculation, as occurred here, in order for a County to count debt service toward MOE in the first year that it is included in the school system's appropriation.

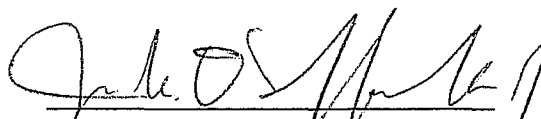
Moreover, as the school system points out, the Attorney General's Opinion repeatedly refers to an appropriation to the "school operating budget." The County's appropriation of debt service is to the "School Construction Fund," which is part of the school system's capital budget. As the Attorney General has explained, the "school operating budget" includes "all expenditures for the on-going educational functions of the public school system, as distinct from capital expenditures." *Id.* at 195, citing 76 Op. Att'y Gen. 153, 159-61 (1991).

We point out that SB 848, which recently passed as emergency legislation, and was signed into law on April 10, 2012, specifically excludes debt service for school construction from the MOE calculation. We did not rely on that legislation in coming to our decision today, however. If we had, the result would be the same.

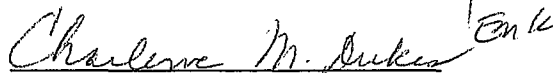
Finally, as to the several requests for a hearing, we point out that the issue before us is solely one of law, the parties have submitted full briefs on the issue, and additional argument, in our view, is neither necessary nor required by law.

CONCLUSION

For all the reasons set forth herein, we deny the County's appeal and find that it did not fully fund MOE for FY 2012, underfunding the school system by \$11,963,288.



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April 24, 2012