



Lillian M. Lowery, Ed.D.
State Superintendent of Schools

200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • MarylandPublicSchools.org

December 17, 2012

The Honorable Martin O'Malley
Governor
100 State Circle
Annapolis, MD 21401

The Honorable Thomas V. Miller, Jr.
President of the Senate
Office of the President
State House
Annapolis, MD 21401

The Honorable Michael E. Busch
Speaker of the House
Office of the Speaker
State House
Annapolis, MD 21401

Dear Governor O'Malley, President Miller and Speaker Busch:

Pursuant to Education Article Section 5-202 (d), the Maryland State Department of Education (MSDE) is required to prepare an annual report for local Maintenance of Effort (MOE).

The attached report summarizes the MOE requirements for fiscal year 2013, and reflects that all 24 local school systems have met the MOE requirement. Should you need additional information regarding MOE, please contact Stephen Brooks, Deputy State Superintendent for Finance at 410-767-0011 or by email at steve.brooks@msde.state.md.us. Of course you may always contact me directly.

Sincerely,

Lillian M. Lowery, Ed.D.
State Superintendent of Schools

Attachment

c: Stephen Brooks
Renee Spence

Maintenance of Effort
In Maryland Local School Systems
Per Education Article Section 5-202 (d)
Fiscal Year 2013

December 31, 2012

Maryland State Department of Education

Pursuant to Education Article 5-202(d)(13) The Maryland State Department of Education is submitting this report regarding local Maintenance of Effort (MOE) to local public school systems for fiscal year 2013. The statute requires that:

On or before December 31 of each year the Department shall report to the Governor and, in accordance with § 2-1246 of the State Government Article, the General Assembly, on all waiver requests, maintenance of effort calculations made by the Department and the county, the Department's decisions regarding waiver requests, the Department's certification of whether a county has met the requirement, and any other information relating to a county's request for a waiver and the Department's maintenance of effort decisions.

The Department reports that all 24 jurisdictions have now met the MOE requirement for FY 2013. This document provides responses on each of the required reporting items below:

Maintenance of Effort Waiver Requests

Under the authority of the Education Article section 5-202 (d), the Maryland State Board of Education implemented procedures to process local governments' requests for waivers from the State's Maintenance of Effort requirements for fiscal year 2013. These procedures were updated in accordance with the revisions to the process per SB848 of the 2012 regular legislative session. On April 11, 2012, the State Board of Education issued a public release memorandum to County Executives/Administrators, Local Educational Agencies, and Interested Parties regarding the submission timeline and content of the MOE waivers request (see Exhibit 1).

On April 16, 2012, the State Board of Education received formal MOE waiver requests from two jurisdictions: Kent County and Wicomico County. Full documentation of these requests and associated filings can be found at the following website:

<http://www.marylandpublicschools.org/MSDE/stateboard/2013+Maintenance+of+Effort>

Kent County Waiver Request and Resolution

The Kent County Commissioners, citing grounds of "Impeded Ability," requested a waiver of \$860,171 below the calculated State Maintenance of Effort requirement of \$16,988,283.

On April 27, 2012, the Executive Director of the State Board of Education sent the Notice of Public Hearing to the County Commissioners of Kent County, Kent County Board of Education, Kent County Education Association, and Kent County Educational Support Personnel announcing the hearing was to be held on May 22, 2012. The notice specified the procedures to be followed by the hearing parties.

On May 9, 2012 the County Administrator of Kent County informed the State Board of Education that Kent County withdrew the waiver request due to the fact that the County Commissioners had approved the payment of maintenance of effort to Kent County Public Schools for the fiscal year 2013.

Wicomico County Waiver Request and Resolution

On April 16, 2012, the Wicomico County Executive submitted an “Agreed On” request for rebasing waiver of \$6,892,121 from its fiscal year 2011 base of \$43,196,862.

On April 27, 2012, the Executive Director of the State Board of Education sent the Notice of Public Hearing to the Wicomico County Council, The Wicomico County Board of Education and Superintendent, the Wicomico County Education Association, and the Wicomico County Association of Public School Administrators announcing that the hearing was to be held on May 22, 2012. The notice specified the procedures to be followed by the hearing parties.

On May 22, 2012, the County Executive of Wicomico County informed the State Board of Education that Wicomico County was withdrawing the waiver request, indicating that recent actions taken by the Maryland Legislature during the Special Session make a waiver of Wicomico MOE obligations unnecessary.

Decisions on Maintenance of Effort Waivers

As noted above, both counties that filed for a waiver of MOE for FY 2013 subsequently withdrew the waiver request. Therefore, no State Board decisions regarding waiver of MOE were necessary.

Maintenance of Effort Calculations Made by the Department and the County

The Department received Maintenance of Effort certification forms from all jurisdictions. The timing of the submissions varied. Exhibit 2 reflects the timing of MOE certification form submission by jurisdiction.

The Budget Reconciliation and Financing Act of 2012 (BRFA) enacted a phased-in shift of funding for the Teachers' Retirement/Pension system. Concurrent with this shift, Section 18 of the BRFA required counties to provide additional Maintenance of Effort to local school systems in the amounts specified in the bill. The Department incorporated these required amounts into the calculation process and certification form for FY 2013 MOE. Exhibit 3 reflects the results of the Department's review of the submitted forms.

To meet the required total MOE level, Baltimore City required a supplemental appropriation in addition to the original budget appropriation. On November 12, 2012 the Baltimore City Public School System submitted its certification for MOE, including the necessary supplemental appropriation of \$12,922,862.

MSDE's Certification of Counties' Maintenance of Effort

In accordance with Education Article Section 5-213(c), if the State Superintendent of Schools finds that a county is not complying with the maintenance of local effort provisions of § 5-202(d)(1)(ii) of this subtitle, the State Superintendent shall notify the county of such noncompliance.

Based upon the Department's reviews of the County Budget documents and MOE Certification Documents, two initial notices of noncompliance were made: one for Anne Arundel County and one for Kent County.

Anne Arundel County

On July 9, 2012, based upon documents submitted by Anne Arundel County and the Anne Arundel County Public School System, the Superintendent of Schools issued a Notice of Non-Compliance with Maintenance of Effort to the Anne Arundel County Executive. The letter noted that in accordance with statute, the county had 15 days to dispute the finding.

On July 23, 2012, Anne Arundel County appealed to the State Board of Education on the grounds that:

1. The Maintenance of Effort Amount for FY 2013 was \$573,070,503;
2. The Maintenance of Effort and Pension Costs were two separate funding requirements; and
3. The required teacher pension amount of \$11,493,684 was appropriated to the Local Board of Education.

The State Board of Education, in Opinion No. 12-37 dated August 28, 2012¹, found that Anne Arundel County had not met the FY 2013 MOE target, with a shortfall of \$5,005,412. The local school board was directed to notify the State Board if Anne Arundel County failed to appropriate the full MOE amount within 60 days.

On October 15, 2012, the Anne Arundel County Council appropriated the additional required funding to the school system operating budget. On November 7, 2012 Anne Arundel County Public Schools submitted to the State Board a certified MOE form totaling \$584,579,700.

Kent County

On July 9, 2012, based upon documents filed by Kent County and the Kent County Public School System, the State Superintendent of Schools issued a Notice of Non-Compliance with Maintenance of Effort to the President of the Kent County Board of County Commissioners. The letter noted that in accordance with statute, the county had 15 days to dispute the finding.

In a letter dated July 23, 2012, the President of the Board of Education of Kent County advised the Department that the prior certification form had been filed in error and included a revised form. The letter requested that the previously filed MOE Certification Statement be amended and replaced by the revised statement.

On July 31, 2012, based on the review of the revised MOE Certification and associated calculations, the Department rescinded the notice of noncompliance issued on July 9, 2012.

¹ The full State Board opinion is available through the legal opinions link at the following website:
<http://www.marylandpublicschools.org/MSDE/stateboard/overview.htm>

Summary

There were two jurisdictions that initially filed for waivers of MOE for FY 2013. Both rescinded their requests; therefore, no waiver decisions were necessary. Two jurisdictions were initially found to be noncompliant with MOE provisions for FY 2013. One (Kent County) filed a revised MOE Certification Form documenting the requisite funding level. The other (Anne Arundel County) subsequently funded the school system at the required MOE level after the State Board of Education made a final determination of noncompliance. Therefore, all 24 jurisdictions have met the required MOE funding level for FY 2013.



Maryland State Board of Education

200 W. BALTIMORE STREET / BALTIMORE, MARYLAND 21201-2595 / (410) 767-0467

TO: County Executives/Administrators
Local Education Agencies
Interested Parties

FROM: Anthony South, Executive Director, Maryland State Board of Education
Anthony South

DATE: April 11, 2012

SUBJECT: Submitting Maintenance of Effort (MOE) Waiver Requests: Timeline and Content of Waiver Request

The Maryland State Board of Education will accept briefs and responses to FY 2013 Maintenance of Effort Waiver Requests in accordance with the following schedule and requirements.

Timeline:

April 16	Counties Submit Waiver Requests
April 23	Local School Systems and Interested Parties Respond
May 2	State Superintendent's Preliminary Assessment Submitted to the State Board of Education
TBD	Public Hearing
May 22	State Board of Education Issues Decisions

Content of Waiver Request Applications:

There are three types of waivers:

- "Impeded Ability" Waiver — Waiver Because County's Ability to Meet MOE Is Impeded.
- "Agreed On" Waiver — Waiver Based On Agreement Between County and County Board To Reduce Recurring Costs.
- "Rebasing" Waiver — Waiver to Rebase Because County's Ability to Meet MOE Is Permanently Impeded.

There are different criteria for each waiver type.

- "Agreed On" Waiver Application

The State Board urges counties to utilize this waiver option. This Waiver Application must not exceed 5 pages. The Application must explain:



- (1) the amount of the waiver requested;
- (2) the recurring costs that will be reduced by line item; and
- (3) why funding will remain adequate even with the waiver.

If the county and county board agree on a reduction in recurring costs, the statute mandates that the State Board approve this type of waiver if: (1) the amount of the Agreed On waiver does not exceed the entire amount of the reduction in recurring costs or (2) if the amount of the Agreed On waiver does not reduce the county's education appropriation¹ below the local share of the foundation program. If the reduction in recurring costs includes reduction in personnel or personnel costs, the county must provide proof that the amount of the waiver request was mutually agreed on by the county, county board, and the exclusive employee representative. The application should address those issues.

- **“Impeded Ability” Waiver Application**

This Waiver Application should not exceed 10 pages of argument plus exhibits explaining clearly and concisely the effect that some or all of the following factors will have on the county's ability to fully fund MOE in the relevant fiscal year:

- (1) 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;
- (2) A county's tax base;
- (3) Rate of inflation relative to growth of student population in a county;
- (4) Maintenance of effort requirement to a county's statutory ability to raise revenues;
- (5) A county's history of exceeding the required maintenance of effort amount;
- (6) An agreement between a county and a county board that a waiver should be granted;
- (7) Significant reductions in State Aid to a county and municipalities of the county for the fiscal year for which a waiver is requested;
- (8) The number of waivers a county has received in the past 5 years; and
- (9) The history of compensation adjustment for employees of the county board and county government.
- (10) The county must explain in its application, if granted the requested waiver, how and why education funding will remain adequate.

¹“Education Appropriation” includes any money redirected to a county board under §5-213 or 5-213.1 of Education Article.

- **“Rebasing” Waiver**

A very limited number of counties will be eligible to apply for this type of waiver. A county is eligible to request a Rebasing Waiver if the county has:

- (1) Been granted an “Impeded Ability” waiver; and
- (2) A required county education appropriation for the waiver year² that exceeds 100% of the statewide 5-year moving average³ of education effort⁴ times a county’s local wealth.

The application should address the following factors clearly and concisely.

- (1) Whether a county has submitted sufficient evidence that the factors for meeting the Impeded Ability waiver affect a county’s ongoing ability to meet the maintenance of effort requirement;
- (2) Whether a county is at its maximum taxing authority under the law;
- (3) Whether a county’s education appropriation is commensurate with a county’s wealth;
- (4) Whether a county’s history of exceeding the required maintenance of effort has made meeting the maintenance of effort requirement in future years unsustainable; and
- (5) Whether a county has received a Rebasing waiver in the past 5 years.

If a Rebasing waiver is granted, there are some restrictions on the amount of the Rebasing waiver. The amount is limited to the lesser of:

- (1) An amount that would result in a county’s education effort for the waiver year falling below certain level defined in the Statute; or
- (2) (a) For a county with a 5-year moving average for education effort that is less than or equal to 110% of the statewide 5-year moving average of education effort, 1% of the county’s required maintenance of effort requirement;
- (b) For a county with a 5-year moving average of education effort that is more than 110% and less than or equal to 120% of the statewide moving average of education effort, 2% of the county’s required maintenance of effort requirement; or
- (c) For a county with a 5-year moving average for education effort that is more than 120% of the 5-year moving statewide average of education effort, 3% of the county’s required maintenance of effort requirement.

² “Waiver Year” means the fiscal year for which a waiver from the maintenance of effort requirement is requested.

³ “5-Year Moving Average” means the average of the 5 years before the waiver year.

⁴ “Education Effort” means a county’s education appropriation divided by the county’s wealth.

The waiver application may not exceed 10 pages of argument, plus exhibits. The application must explain how the county meets the eligibility requirements; the effect some or all of the factors on the county's on-going ability to find MOE at the current level, and whether and how the amount of the waiver requested meets the restrictions set forth above.

How to File Briefs and Responses:

An electronic copy of each Brief/Response must be submitted to the Maryland State Board of Education no later than 5:00 p.m. on the due date set forth above. In addition to the electronic copy, five hard copies of each Brief/Response are to be mailed or hand delivered to the Maryland State Board of Education for receipt no later than 5:00 p.m. the day following the due date indicated above.

The electronic copy is to be sent to tsouth@msde.state.md.us.

Hard copies are to be addressed to:

Anthony South, Executive Director
Maryland State Board of Education
200 West Baltimore Street
Baltimore, Maryland 21201

If you have any questions, please e-mail tsouth@msde.state.md.us.

Maryland State Department of Education

Summary of Fiscal Year 2013 Maintenance of Effort Compliance Review

Local Education Agency	Received complete submission	Compliance Determination letter Date	Compliance Status
Allegany	7/10/2012	7/11/2012	Approved
Anne Arundel	6/21/2012	11/8/2012	Approved
Baltimore City	11/14/2012	11/14/2012	Approved
Baltimore	7/10/2012	7/16/2012	Approved
Calvert	6/25/2012	6/28/2012	Approved
Caroline	6/22/2012	6/25/2012	Approved
Carroll	7/12/2012	7/16/2012	Approved
Cecil	6/28/2012	6/28/2012	Approved
Charles	6/27/2012	6/28/2012	Approved
Dorchester	6/28/2012	6/28/2012	Approved
Frederick	6/20/2012	6/21/2012	Approved
Garrett	7/3/2012	7/9/2012	Approved
Harford	7/10/2012	7/12/2012	Approved
Howard	6/11/2012	6/20/2012	Approved
Kent	6/22/2012	7/31/2012	Approved
Montgomery	6/21/2012	6/22/2012	Approved
Prince George's	7/5/2012	7/9/2012	Approved
Queen Anne's	7/6/2012	7/9/2012	Approved
St. Mary's	7/30/2012	8/3/2012	Approved
Somerset	7/11/2012	7/11/2012	Approved
Talbot	6/15/2012	6/21/2012	Approved
Washington	6/21/2012	6/22/2012	Approved
Wicomico	7/9/2012	7/19/2012	Approved
Worcester	6/28/2012	6/28/2012	Approved

Maryland State Department of Education

Compilation of Maintenance of Effort Certification for Fiscal Year 2013

Local Education Agency	Mimimun Share (local wealth x local contribution rate)	Maintenance of Effort Level- Preliminary Calculation	Additional MOE per SB 1301 Section 18	Required Maintenance of Effort Level for FY 2013	Certified Net Local Appropriation
Allegany	\$ 17,186,929	\$ 27,904,190	\$ 1,487,742	\$ 29,391,932	\$ 29,391,956
Anne Arundel	\$ 301,484,183	\$ 573,085,928	\$ 11,493,684	\$ 584,579,612	\$ 584,579,700
Baltimore City	\$ 156,077,929	\$ 230,303,320	\$ 12,922,862	\$ 243,226,182	\$ 245,600,534
Baltimore	\$ 348,653,122	\$ 673,280,196	\$ 15,755,802	\$ 689,035,998	\$ 689,036,196
Calvert	\$ 51,617,498	\$ 107,435,153	\$ 2,835,938	\$ 110,271,091	\$ 110,284,424
Caroline	\$ 11,096,567	\$ 12,412,353	\$ 793,934	\$ 13,206,287	\$ 13,206,304
Carroll	\$ 80,108,784	\$ 161,001,454	\$ 4,005,782	\$ 165,007,236	\$ 167,790,400
Cecil	\$ 40,787,536	\$ 66,670,296	\$ 2,459,819	\$ 69,130,115	\$ 69,615,833
Charles	\$ 69,206,689	\$ 145,143,797	\$ 3,936,516	\$ 149,080,313	\$ 153,957,200
Dorchester	\$ 11,769,444	\$ 17,306,775	\$ 656,543	\$ 17,963,318	\$ 17,963,318
Frederick	\$ 111,252,725	\$ 221,654,351	\$ 5,893,461	\$ 227,547,812	\$ 227,547,824
Garrett	\$ 16,683,571	\$ 23,999,519	\$ 664,714	\$ 24,664,233	\$ 26,023,714
Harford	\$ 112,265,124	\$ 213,356,719	\$ 5,529,741	\$ 218,886,460	\$ 219,821,368
Howard	\$ 186,168,899	\$ 465,687,294	\$ 9,821,066	\$ 475,508,360	\$ 475,508,360
Kent	\$ 10,869,743	\$ 16,996,611	\$ 366,147	\$ 17,362,758	\$ 17,362,758
Montgomery	\$ 662,389,454	\$ 1,392,245,850	\$ 27,227,553	\$ 1,419,473,403	\$ 1,419,513,701
Prince George's	\$ 332,363,875	\$ 522,586,803	\$ 19,554,579	\$ 542,141,382	\$ 566,146,400
Queen Anne's	\$ 30,663,653	\$ 43,644,304	\$ 1,105,527	\$ 44,749,831	\$ 44,860,051
St. Mary's	\$ 50,038,718	\$ 78,407,156	\$ 2,485,697	\$ 80,892,853	\$ 83,067,459
Somerset	\$ 6,105,464	\$ 8,549,274	\$ 480,124	\$ 9,029,398	\$ 9,104,448
Talbot	\$ 32,344,536	\$ 34,331,551	\$ 628,456	\$ 34,960,007	\$ 34,960,007
Washington	\$ 52,181,786	\$ 89,857,481	\$ 3,094,113	\$ 92,951,594	\$ 92,951,603
Wicomico	\$ 28,558,340	\$ 36,403,000	\$ 2,173,593	\$ 38,576,593	\$ 39,173,593
Worcester	\$ 54,791,013	\$ 71,088,385	\$ 1,271,561	\$ 72,359,946	\$ 73,623,044