



Jack R. Smith, Ph.D.  
Interim State Superintendent of Schools

200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • [msde.maryland.gov](http://msde.maryland.gov)

December 31, 2015

The Honorable Larry Hogan  
State House  
100 State Circle  
Annapolis, MD 21401

The Honorable Thomas V. Miller, Jr.  
H-107 State House  
100 State Circle  
Annapolis, MD 21401

The Honorable Michael E. Busch  
H-101 State House  
100 State Circle  
Annapolis, MD 21401

RE: Mandated Report (MSAR #9232)

Dear Governor Hogan, President Miller and Speaker Busch:

Pursuant to Section 5-202 (d) of the Education Article, the Maryland State Department of Education (MSDE) prepares an annual report on local Maintenance of Effort (MOE) on or before December 31 of each year. The report is submitted to the Governor and the General Assembly and specifies whether the 24 local jurisdictions have met the MOE requirement.

The attached report pertains to the MOE requirements for fiscal year 2016. Should you need additional information regarding MOE, please contact Kristy Michel, Deputy Superintendent for Finance and Administration at 410-767-0011 or by email at [Kristy.michel@maryland.gov](mailto:Kristy.michel@maryland.gov).

Sincerely,



Jack R. Smith, Ph.D.  
Interim State Superintendent of Schools

Attachment

c: Kristy Michel  
Amanda Conn

**Maintenance of Effort**

**In Maryland Local School Systems Per  
Education Article Section 5-202 (d)  
Fiscal Year 2016  
Mandated Report (MSAR #9232)**

**December 31, 2015**

**Maryland State Department of Education**

Pursuant to 5-202(d)(13) of the Education Article, the Maryland State Department of Education (MSDE) is submitting this report regarding the Maintenance of Effort (MOE) required of local jurisdictions to the 24 local school systems for fiscal year 2016.

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.”

#### **Maintenance of Effort Calculations Made by the Department and the Counties**

The department’s initial review indicated that all 24 jurisdictions were in compliance with MOE requirements, as shown in Exhibit 2. Exhibit 2 also reflects the timing of MOE certification form submissions by jurisdiction. Exhibit 3 shows the compilation of the MOE certification forms.

#### **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), the State Superintendent shall notify the county of such noncompliance.

The Department initially determined that Montgomery County was in compliance. However, further review revealed that it was not. On July 31, 2015, the State Superintendent of Schools sent notice to the Montgomery County Executive that the county had failed to meet its full Maintenance of Effort (MOE) funding requirement. The county had underfunded the Montgomery County Public Schools System (MCPS) by \$1,482,786. In order to rectify the noncompliance, Montgomery County could either appropriate the additional \$1,482,786 or submit an MOE waiver.

On August 12, 2015, Montgomery County filed an appeal; see Exhibit 4. This appeal was based on the rationale that MSDE is impeded from reversing its prior rulings regarding the County's compliance for FY 2016 by applying a new interpretation of §5-202 retroactively, because the County already had adopted its FY 2016 budget. On September 17, 2015, MCPS filed its response to the County's appeal and did not take a position on the issue. No request for an MOE waiver was filed.

On September 22, 2015, the Maryland State Board of Education ordered that in view of statements from the local board and to encourage collaborative resolution of the FY 2016 MOE issue, they declined to order Montgomery County to appropriate an additional \$1.4 million for FY 2016. The State Board directed that the county shall not subtract \$1.4 million from the FY 2016 highest local appropriation of \$1,476,855,309 when calculating the FY 2017 MOE base amount.

The full document of order no. OR15-07 is included as Exhibit 5.

### **Summary**

Twenty Three of the jurisdictions have met the required MOE funding level for FY 2016.

There was one jurisdiction-Montgomery County-that was not in compliance, and the county filed an appeal for its Non-Compliance determination. The State Board decision resolved the issue.

## Maryland State Department of Education

### Summary of Fiscal Year 2016 Maintenance of Effort Compliance Review

Local Education Agency	Received complete submission	Compliance Determination letter Date	Compliance Status
Allegany	6/4/2015	6/16/2015	Approved
Anne Arundel	7/8/2015	7/9/2015	Approved
Baltimore City	8/3/2015	8/6/2015	Approved
Baltimore	7/2/15	7/16/2015	Approved
Calvert	6/16/2015	6/17/2015	Approved
Caroline	8/31/2015	9/14/2015	Approved
Carroll	6/12/2015	6/16/2015	Approved
Cecil	6/24/2015	7/9/2015	Approved
Charles	6/29/2015	7/6/2015	Approved
Dorchester	6/26/2015	7/9/2015	Approved
Frederick	12/1/2015	12/1/2015	Approved
Garrett	6/30/2015	7/9/2015	Approved
Harford	8/19/2015	9/14/2015	Approved
Howard	6/9/2015	6/10/2015	Approved
Kent	7/13/2015	7/20/2015	Approved
Montgomery	5/26/2015	6/1/2015	Approved
Prince George's	7/7/2015	8/11/2015	Approved
Queen Anne's	6/18/2015	6/19/2015	Approved
St. Mary's	5/28/2015	6/1/2015	Approved
Somerset	9/11/2015	9/14/2015	Approved
Talbot	8/3/2015	8/4/2015	Approved
Washington	8/3/2015	8/4/2015	Approved
Wicomico	6/24/2015	9/9/2015	Approved
Worcester	7/2/2015	7/6/2015	Approved

## Maryland State Department of Education

## Compilation of Maintenance of Effort Certification for Fiscal Year 2016

Local Education Agency	Minimum 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 2016	Certified Net Local Appropriation	Difference
Allegheny	\$ 17,801,298	\$ 27,634,732	\$ 2,202,813	\$ 29,837,545	\$ 29,837,545	\$ -
Anne Arundel	\$ 328,860,950	\$ 596,028,955	\$ 18,693,986	\$ 614,722,941	\$ 619,825,900	\$ 5,102,959
Baltimore City	\$ 161,944,445	\$ 237,511,237	\$ 17,900,753	\$ 255,411,990	\$ 255,412,181	\$ 191
Baltimore	\$ 357,008,617	\$ 715,560,884	\$ 24,843,168	\$ 740,404,052	\$ 742,194,866	\$ 1,790,814
Calvert	\$ 51,903,013	\$ 110,121,742	\$ 4,754,380	\$ 114,876,122	\$ 114,876,122	\$ -
Caroline	\$ 10,725,972	\$ 12,583,543	\$ 1,181,637	\$ 13,765,180	\$ 13,765,180	\$ -
Carroll	\$ 83,310,163	\$ 159,056,596	\$ 6,701,824	\$ 165,758,420	\$ 176,008,200	\$ 10,249,780
Cecil	\$ 40,865,080	\$ 71,387,123	\$ 3,943,745	\$ 75,330,868	\$ 79,750,778	\$ 4,419,910
Charles	\$ 70,311,114	\$ 155,601,143	\$ 6,590,694	\$ 162,191,837	\$ 166,121,100	\$ 3,929,263
Dorchester	\$ 11,455,553	\$ 18,031,011	\$ 932,325	\$ 18,963,336	\$ 18,963,336	\$ -
Frederick	\$ 116,983,033	\$ 224,089,126	\$ 9,858,314	\$ 233,947,440	\$ 238,147,440	\$ 4,200,000
Garrett	\$ 16,105,515	\$ 25,381,780	\$ 954,652	\$ 26,336,432	\$ 26,590,600	\$ 254,168
Harford	\$ 119,044,206	\$ 214,355,267	\$ 8,803,344	\$ 223,158,611	\$ 228,208,971	\$ 5,050,360
Howard	\$ 203,231,140	\$ 517,376,531	\$ 17,283,545	\$ 534,660,076	\$ 537,428,387	\$ 2,768,311
Kent	\$ 11,081,156	\$ 16,405,352	\$ 532,542	\$ 16,937,894	\$ 16,937,894	\$ -
Montgomery *	\$ 711,846,233	\$ 1,463,274,812	\$ 44,356,785	\$ 1,507,631,597	\$ 1,507,631,597	\$ -
Prince George's	\$ 326,926,331	\$ 564,085,892	\$ 29,631,799	\$ 593,717,691	\$ 606,821,800	\$ 13,104,109
Queen Anne's	\$ 30,160,183	\$ 49,771,979	\$ 1,763,314	\$ 51,535,293	\$ 52,850,293	\$ 1,315,000
St. Mary's	\$ 52,420,718	\$ 87,534,896	\$ 4,014,805	\$ 91,549,701	\$ 96,026,941	\$ 4,477,240
Somerset	\$ 5,599,392	\$ 8,782,191	\$ 609,676	\$ 9,391,867	\$ 9,395,088	\$ 3,221
Talbot	\$ 30,718,044	\$ 35,128,767	\$ 943,073	\$ 36,071,840	\$ 36,119,040	\$ 47,200
Washington	\$ 53,262,798	\$ 90,002,262	\$ 4,841,754	\$ 94,844,016	\$ 94,844,030	\$ 14
Wicomico	\$ 27,611,048	\$ 38,067,637	\$ 3,239,009	\$ 41,306,646	\$ 41,306,646	\$ -
Worcester	\$ 49,672,128	\$ 75,973,472	\$ 1,952,488	\$ 77,925,960	\$ 78,718,960	\$ 793,000

*Isiah Leggett*  
*Pls file*



*DIANE, FY16, BENNY B, 8.24.15*

AUG 17 2015  
Exhibit 4

Isiah Leggett  
County Executive

Marc P. Hansen  
County Attorney

OFFICE OF THE COUNTY ATTORNEY

August 12, 2015



Lillian M. Lowery, Ed.D.  
State Superintendent of Schools  
Maryland Department of Education  
200 West Baltimore Street  
Baltimore, MD 21201

Re: FY-16 Maintenance of Effort Requirement for Montgomery County, Maryland

Dear Dr. Lowery:

In a letter dated July 31, 2015, to County Executive Isiah Leggett, you advised Montgomery County that it was not in compliance with the Fiscal Year 2016 Maintenance of Effort (MOE) requirement set forth in § 5-202 of the Education Article—despite the Department of Education (DOE) on at least three prior occasions having concluded that the County had met its MOE obligation for Fiscal Year 2016.

On behalf of Montgomery County I am appealing the *ex post facto* determination of noncompliance announced in your July 31<sup>st</sup> letter. This appeal is grounded on the basis that DOE is estopped from reversing its prior rulings regarding the County's compliance for Fiscal Year 2016 by applying its new interpretation of § 5-202 retroactively, because the County adopted its FY-16 budget in reliance on DOE's interpretation of an admittedly ambiguous law. See generally, *Permanent Financial Corp. v. Montgomery County*, 308 Md. 239 (1986).

In preparation for FY-16 budget deliberations by both the Montgomery County Board of Education (MCPS) and the County Council, County staff and MCPS staff discussed together the various possible implications of the approved nonrecurring costs on the MOE calculation for FY-16. Given the lack of clarity and differing interpretations of the law and regulations, County staff and MCPS staff agreed to seek clarification and advice from DOE before finalizing the FY-16 MOE appropriation requirement.

In December 2014, County staff spoke with DOE staff on the phone and subsequently confirmed via email the specific question of whether the \$1.48 million in FY-15 approved nonrecurring costs could be excluded from the FY-16 MOE calculation—even though MOE was not exceeded in FY-15. DOE staff confirmed verbally over the phone and again via written email that the nonrecurring costs should be excluded.

*31752*

Lillian M. Lowery, Ed.D.  
August 12, 2015  
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In February 2015, MCPS staff again spoke with DOE staff on the phone and in written email communication to confirm which FY-15 appropriation level, with or without nonrecurring costs, should be used in the calculation of the FY-16 MOE. DOE staff again confirmed that the FY-15 appropriation should be used without the nonrecurring costs, lowering the FY-15 appropriation amount used for the FY-16 calculation by \$1.48 million.

Finally, as your letter indicates, on June 1, 2015, DOE certified that the FY-16 appropriation satisfied the MOE requirement.

In seeking clarification this winter, County staff and MCPS staff asked only for direct advice. County staff did not lobby or advocate for a specific outcome. The County was fully prepared to abide by the advice of DOE either to include or exclude the amount in question. The County's primary goal was to avoid exactly the predicament the State has thrown the County into at this point: a major funding discrepancy once the fiscal year is already underway and revenues are already committed and appropriated to other agencies and purposes.

We sought clarification twice during the budget process, in December and again in February, both at times when it would have been practical to implement any advice given. DOE gave us advice to exclude the nonrecurring cost amount, and the County relied on that advice in preparation of the County's budget for all agencies and departments. At this point, the \$1.48 million has been spent elsewhere in County Government. The time to appropriate the nonrecurring costs to MCPS was prior to the Council's final budget action, which was when we sought advice on whether to do so.

In light of these facts, I respectfully submit to you that DOE is now precluded from retroactively changing an interpretation of § 5-202 that had been arrived at in good faith by all parties.

Would you please advise me as to what process and on what timeline DOE will use in resolving this appeal? Also, please let me know if I can provide you with any additional information.

Sincerely yours,



Marc P. Hansen  
County Attorney

cc: Isiah Leggett, County Executive  
George Leventhal, President, County Council  
Timothy Firestine, Chief Administrative Officer  
Steve Farber, Council Administrator  
Melanie Wenger, Director, Office of Intergovernmental Relations  
Bonnie Kirkland, Assistant Chief Administrative Officer  
Essie McGuire, Sr. Legislative Analyst  
Larry Bowers, Montgomery County Public Schools Interim Superintendent  
Elizabeth M. Kameen, Maryland Office of the Attorney General

AUG 26 2015

IN THE MATTER OF  
MONTGOMERY COUNTY  
MAINTENANCE OF EFFORT FY2016

BEFORE THE  
MARYLAND  
STATE BOARD  
OF EDUCATION  
Order No. OR15-07

ORDER

On July 31, 2015, the State Superintendent of Schools sent notice to the Montgomery County Executive that the County had failed to meet its full Maintenance of Effort (MOE) funding requirement. The County had underfunded the Montgomery County Public School System (MCPS) by \$1,482,786.

As the State Superintendent explained,

In order to rectify the [MOE] noncompliance, Montgomery County can either appropriate an additional \$1,482,786 to MCPS, or submit an MOE waiver request to the State Board of Education for their review and consideration. Section 5-202 of the Education Article and COMAR 13A.02.05.04 sets forth the criteria for submitting different types of waiver requests and the factors the State Board shall consider in making its decision.

Should the County decide not to appropriate additional funds or request a waiver, the State Superintendent or the State Board of Education will notify the State Comptroller. Pursuant to 5-213 of the Education Article, the Comptroller shall intercept local income tax revenue from the county, in the amount by which the county failed to meet the MOE, and distribute the withheld funds directly to the county board of education.

The County appealed the Superintendent's finding of non-compliance. By law, the appeal is heard and decided by the State Board. Ed. Art. §5-202. The Montgomery County Board of Education filed its response to the appeal on September 17, 2015. No request for an MOE waiver was filed.

In Maryland, the State is required to fund school systems in an amount calculated according to a statutory formula. Md. Ed. Art. §§5-202; 5-207; 5-208; 5-209. Local governments also are required to fund their schools, and there is a statutory formula for calculating the amount. Md. Ed. Art. §5-202(d). This amount is called "Maintenance of Effort (MOE)."

For each fiscal year, MOE is calculated based on the "highest local appropriation" the county made to the school system in the preceding fiscal year. *Id.* Sometimes the local

appropriation in the preceding fiscal year includes an appropriation for "non-recurring costs." Non-recurring costs are usually one-time expenditures for such things as new computer labs, major technology purchases, new instructional program start-up costs. COMAR 13A.02.05.03; Md. Ed. Art. §5-202(C)(3). The County can exclude those costs when the "highest local appropriation" is calculated in the next fiscal year because, if they were included in the fiscal year MOE calculation, they would artificially inflate the amount that the County needed to appropriate to meet its maintenance of effort obligation.

For the FY 2015 budget year, on March 31, 2014, Montgomery County submitted non-recurring cost requests to MSDE. MSDE approved some of those requests. On May 30, 2014, MSDE received Montgomery County's budget certification for FY 2015. The certification included a total appropriation to the school system of \$1,476,855,309 with no additional appropriation for the previously approved non-recurring costs. At that time, MSDE staff contacted Montgomery County Public Schools to clarify whether the County appropriated funds to cover the non-recurring costs. MCPS informed MSDE staff that the County's appropriation did in fact include funds for non-recurring costs. MSDE asked MCPS to submit a revised certification form to show the additional appropriation for non-recurring costs.

MSDE received the revised budget certification from Montgomery County Public Schools on June 9, 2014. The revised documents included the non-recurring costs appropriation. MSDE notified all parties that the Department approved the FY 2015 budget certification.

During the budget preparation for FY 2016, concerns regarding the FY 2015 MOE calculation were brought to MSDE's attention. Thus, MSDE did a second review of the FY 2015 and FY 2016 MOE calculations for Montgomery County. As a result of the review, MSDE found that although the non-recurring cost appropriation was added to the revised FY 2015 budget certification, the base MOE appropriation to MCPS was reduced by the same amount. Consequently, the total appropriation did not change on the revised budget certification. Thus, Montgomery County's FY 2015 appropriation to MCPS satisfied the MOE requirement of \$1,476,855,309 only because it combined both the base MOE amount and the non-recurring cost appropriation.

The non-recurring cost issue became relevant in the calculation of MOE for FY 2016. MSDE understands that Montgomery County began preparation of the FY 2016 budget before this issue was identified, and that in preparing the FY 2016 budget, the County assumed the FY 2015 approved non-recurring cost appropriation could be excluded from the FY 2016 MOE base calculation. However, for the reasons stated above, MSDE determined that the FY 2015 non-recurring cost appropriation could not be excluded from the highest local appropriation for the purpose of calculating the FY 2016 MOE requirement. As a result, Montgomery County's FY 2016 appropriation to MCPS falls short of the required MOE in FY 2016 by \$1,482,786.

In its appeal, Montgomery County recounts verbal and e-mail exchanges with the Department when it sought clarification from the Department about including the non-recurring costs in the base MOE calculation. From the e-mails exchanged between the Department and the County it is apparent that MSDE approved the inclusion of the non-recurring cost amount to

meet the MOE target. That was a mistake. The County argues that it relied on the Department's approval when it appropriated its MOE amount in FY 2015 and FY 2016. It further argues that the Department's previous approval now estops the State Superintendent and this Board from ordering the County to fully fund the FY 2016 MOE amount.

In its response to the appeal, the local board did not take a position on this issue of whether the Department's mistaken advice would estop this Board from directing Montgomery County to fully fund MOE for FY 2016. The local board specifically requested if this Board did not direct the County to fund MOE fully for FY 2016, that it assure that such a decision would not reduce the MOE amount going forward.

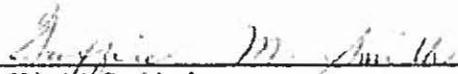
The local board also stated:

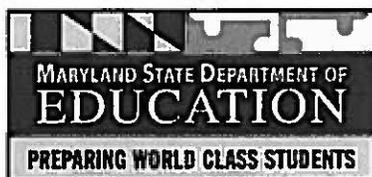
We also are hopeful that this issue for FY 2016 can be resolved between the Montgomery County Board, the County Council, and County Executive Isiah Leggett. We have been working collaboratively over the past several months to address our budgetary challenges and move beyond MOE issues so that we can continue to provide public school children in Montgomery County with the high quality instructional programs that our community expects and our children deserve. The County Board does not want this issue to impede the progress we have made. This is too important for all of our students.

In view of those statements from the local board and to encourage collaborative resolution of the FY 2016 MOE issue, we decline to order Montgomery County to appropriate an additional \$1.4 million for FY 2016. We direct that the County shall not subtract \$1.4 million from the FY 2016 highest local appropriation of \$1,476,855,309 when calculating the FY 2017 MOE base amount.

It is so ORDERED this 22<sup>nd</sup> day of September, 2016.

MARYLAND STATE BOARD OF EDUCATION

  
 \_\_\_\_\_  
 Guffrie M. Smith, Jr.  
 President



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