

EDUCATION - PUBLIC SCHOOLS - SCOPE OF "MAINTENANCE OF  
EFFORT" FUNDING REQUIREMENTS - CONSEQUENCE OF  
FAILURE TO MEET REQUIREMENTS

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March 6, 1991

*The Honorable Charles I. Ecker  
County Executive of Howard County*

You have requested our opinion on the "maintenance of effort" requirements of §5-202(b)(3)(ii) of the Education Article ("ED" Article). Specifically, you ask:

1. What categories of local expenditures are to be considered in determining the "highest local appropriation to the school operating budget," the key element in calculating a county's maintenance of effort amount?

2. How is the amount of the reduction in State aid calculated, if a county is not able to meet its maintenance of effort funding requirement?

For the reasons stated below, we conclude as follows:

1. All local expenditures that are related to the on-going educational functions of the public school system must be included in calculating the "highest local appropriation to the school operating budget" under ED §5-202(b)(3)(ii).

2. If a county is not able to meet its maintenance of effort funding requirements, that jurisdiction will not receive any increase in State aid under ED §5-202 - that is, the county forfeits whatever increment would otherwise be due in the current fiscal year above the amount that the county received in the prior fiscal year.

## I

## Background

The State's public school system is primarily financed by a combination of State and local tax revenues.<sup>1</sup> ED §5-201 provides (with certain exceptions) that all State funds appropriated by the General Assembly for the support of the public schools shall be included in the General State School Fund. The statute also directs payment from the Fund for a number of specified public school expenses, including the State's share of "basic current expenses as provided in ED §5-202 of this subtitle." ED §5-201(c)(11).

Under ED §5-202, the State's share of basic current expenses for each fiscal year from 1985 through 1990 was equal to the product of the full-time equivalent enrollment and a specified dollar amount.<sup>2</sup> Beginning with fiscal year 1991, the State's share is equal to the product of the full-time equivalent enrollment and a formula using the "average statewide per pupil expenditure." The statute specifically lists certain items to be included and certain items to be excluded in calculating the average statewide per pupil expenditure.<sup>3</sup> If the State aid for public

<sup>1</sup> The State's share is approximately 40%; the local government's, 55%. Federal aid is minimal, presently constituting approximately 5% of the total.

<sup>2</sup> The terms "basic current expenses" and "full-time equivalent enrollment" are defined in ED §5-202(a)(3) and (7). See Part IIB below for a further discussion of "basic current expenses."

<sup>3</sup> ED §5-202(b)(2)(i) provides that the statewide aggregate of expenditures for basic current expenses shall:

1. Exclude disbursements for food subsidy programs and food service, employer contributions to teachers' retirement and social security paid by the State, student body activities, community services, pupil transportation, adult education, school construction, and debt service;
2. Include disbursements for instruction, kindergarten through grade 12, pupil personnel services, health services, operation of plant, maintenance of plant administration, and fixed charges, including teachers' retirement and teachers' social security contributions paid by the subdivisions; and

(continued...)

elementary and secondary education exceeds 31.5% of the projected general funds of the State in any fiscal year, the statute requires legislative affirmation that the additional State aid is within the State's fiscal resources.<sup>4</sup>

Prior to 1984, to be eligible to receive the State's share of basic current expenses, a county was only required to provide an amount of revenue equal to the product of the wealth of the county and a local contribution rate statutorily determined for each fiscal year. See ED §5-202(b)(4). In 1984, the General Assembly amended the public school funding law by adding a local government maintenance of effort requirement and by providing a sanction for failure to comply with the maintenance of effort provision. Chapter 85, Laws of Maryland 1984, *codified at* ED §§5-202(b)(3)(ii) and 5-205(b).

In an opinion accompanying your request, the County Solicitor explained that, in previous years, appropriations by Howard County to the board of education far exceeded the amount needed to satisfy each year's maintenance of effort requirement. Opinion of the County Solicitor No. 91-02, at 2 (February 21, 1991). That opinion also noted that previously no attempt was made to determine whether all or part of the total appropriation in the Howard County budget was for categories of expenses contemplated by the maintenance of effort requirements.<sup>5</sup>

<sup>3</sup> (...continued)

<sup>3</sup>. Be reduced by the following revenues to the subdivisions: State drivers' education aid, compensatory education funds, State handicapped education aid, all federal aid except that for adult education, food subsidy, school construction, youth services, multiservice centers and any other aid not applicable to the expenditure categories noted in subparagraph 2. of this subparagraph.

<sup>4</sup> If a joint resolution is not enacted, the statute provides that the per pupil amount for basic current expenses in which the State shall share for the next fiscal year shall be the lesser of the per pupil amount for basic current expenses as provided in the statutory formula or an amount equal to 108 percent of the prior year's per pupil amount for basic current expenses. ED §5-202(b)(2)(iv).

<sup>5</sup> Each year every local board of education is required to submit a certification statement to the Maryland State Department of Education verifying the amount of local funds appropriated for the public schools. The total amount

(continued...)

This year, however, Howard County, like many other jurisdictions, is entering the budget preparation process facing a shortfall in the estimated revenues for the current fiscal year and projecting a further decline in revenues for the upcoming fiscal year. Accordingly, hard choices about resource allocation must be made. In order to prepare the proposed county budget as a whole, you need to determine the amount of the minimum funding required by State law.

## II

### A County's Maintenance of Effort Requirements

#### A. Introduction

The county maintenance of effort requirements for public school funding are found in ED §5-202(b)(3)(ii):

1. The county governing body shall appropriate local funds to the school operating budget in an amount no less than the greater of the product of the full-time equivalent enrollment used in calculating the current expense aid for the current fiscal year and the local appropriation on a per pupil basis for the prior fiscal year or the highest local appropriation to the school operating budget in the prior fiscal year.

2. For purposes of this paragraph, 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 full-time equivalent enrollment used to calculate the current expense aid for the county for the prior fiscal year. For example, the calculation of the current expense aid for fiscal year 1985 shall be based on the highest local appropriation for the school operating budget for

<sup>5</sup> (... continued)

appropriated to the public school budget (less an amount for debt service for bond-financed capital projects) has been traditionally used on the certification statement submitted by the Howard County Board of Education.

a county for fiscal year 1984. 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.<sup>6</sup>

The recent history of Howard County's spending for its public schools illustrates the working of this statutory ratchet. In fiscal year 1990, the county appropriated \$120,730,700 in operating funds to the school board. This figure became the baseline for fiscal year 1991 - the appropriation could not fall below the prior year's actual appropriation. But because school enrollment in Howard County continued to grow, the alternative calculation in ED §5-202(b)(3)(ii) yielded a higher number, \$126,198,766. Therefore, Howard County, its board of education, and the State Superintendent all assumed that the county would satisfy its maintenance of effort requirements if it appropriated at least \$126,198,766 of operating funds in fiscal year 1991.

In reality, Howard County chose to be more generous to its public schools than the minimum required by ED §5-202(b)(3)(ii). The county in fact appropriated \$140,467,110 in operating funds. The question, then, is whether this amount is necessarily the baseline for fiscal year 1992, or whether some elements of this appropriation may permissibly be excluded when the county's maintenance of effort requirement for fiscal year 1992 is calculated.

#### B. Meaning of "School Operating Budget"

The beginning point of statutory construction is the language of the statute itself. See *Brodsky v. Brodsky*, 319 Md. 92, 98, 570 A.2d 1235 (1990). "The initial inquiry must be an examination of the language used, because what the legislature has written in an effort to achieve a goal is a natural ingredient of analysis to determine that goal." *ANA Towing v. Prince George's Co.*, 314 Md. 711, 715, 552 A.2d 1295 (1989) (quoting *Kaczorowski v. City of Baltimore*, 309 Md. 505, 513, 525 A.2d 628 (1987)). To be sure, if one suspects that the statutory language does not accurately convey the General Assembly's objective, one may look to legislative history and other relevant sources, but often the language itself is sufficiently expressive of the legislative purpose or goal. See, e.g., *Davis v. State*, 319 Md. 56, 61, 570 A.2d 855 (1990).

<sup>6</sup> The statute contains an additional requirement that applied only to the 1987-88 and 1988-89 school years. ED §5-202(b)(3)(iii).

Here, the General Assembly has used the term "school operating budget" as a referent for calculating the county's maintenance of effort amount. We find it instructive that the word "operating" was inserted by amendment and that the bill passed the General Assembly in the amended form. Chapter 85, Laws of Maryland 1984.

On the face of it, the General Assembly evidently intended the term "school operating budget" to have its plain and ordinary meaning – the expenditures for the on-going educational functions of the public school system, as distinct from capital expenditures. The term is used in this sense elsewhere in the Education Article. See ED §§12-105(a)(2) and 16-401(a) through (d).

An "operating budget" is a broadly inclusive term, as the General Assembly surely knew when it used the term in ED §5-202(b)(3)(ii). One good working definition comes from the Department of Fiscal Services' handbook for legislators: "[t]he ongoing costs of running the state government which apply to all expense and outlays for a fiscal year, with the exception of capital outlays and non-budgeted funds ...." *The Budgetary Process* 8 (1986). Cf. *Powell v. City and County of San Francisco*, 62 Cal. App. 2d 291, 144 P.2d 617, 621 (1944) (defining the term "operating expenses" in a city charter broadly). The State's own budgetary process is organized in terms of an inclusive operating budget and a separate capital budget. See, e.g., *State Government Serving the People – Budget Highlights Fiscal Year 1992* at 10 (1991).<sup>7</sup>

We cannot find an indication that the General Assembly was using the term "school operating budget" in a special or narrow sense. To the contrary, the admonition in ED §5-202(b)(3)(ii)<sup>2</sup> that "[p]rogram shifts between a county operating budget and a county school operating budget may not be used to artificially satisfy the requirements of this paragraph" reflects the General Assembly's understanding of the realities of the budgetary process and the breadth of an operating budget.

In her opinion, the County Solicitor concluded that the term "highest local appropriation to the school operating budget" should be construed to reflect only those elements constituting "basic current expenses." This latter term is defined as follows in ED §5-202(a)(3):

<sup>7</sup> "The operating budget for the State of Maryland for fiscal year 1992 exceeds eleven billion, five hundred million dollars... Maryland's capital budget is \$815,544,451...."

"Basic current expenses" means the expenditures made by a county from State and county revenue for public elementary and secondary education exclusive of:

- (i) Payments for debt service, capital outlay, and transportation of students;
- (ii) State aid for handicapped children ...;
- (iii) State aid for driver education ...; and
- (iv) State aid for food services.

While we understand the County Solicitor's argument that, on policy grounds, this limitation ought to be imported into the undefined term "highest local appropriation to the school operating budget," we have difficulty seeing that the General Assembly in fact made that choice. In the very section that incorporates the maintenance of effort requirement, the General Assembly repeatedly used the term "basic current expenses." See ED §5-202(b)(1) (characterizing State share); (b)(2) (defining "average statewide per pupil expenditure"); (b)(3) (describing State share); (b)(5) (describing State share); (e) (calculating compensatory education funds); and (f) (describing vocational-technical set-asides). Indeed, the term is used once in the maintenance of effort provision itself. See ED §5-202(b)(3)(ii)<sup>2</sup>.

In short, it would have been a simple matter for the General Assembly to phrase the maintenance of effort requirements in terms of a county's "highest local appropriation for basic current expenses." But it did not do so, despite its focus on the details of the wording of this particular term.

### C. Reasonable Exclusions From The School Operating Budget

At the same time, we agree with the County Solicitor that a county's compliance with its maintenance of effort requirements need not be determined solely by reference to the number of dollars in the prior year's appropriation. A county complies with its maintenance of effort requirements, in our view, even if it excludes items that, for one or another reason, were part of that appropriation but were not really for public school operating needs.

For example, some categories of expenses normally considered capital in nature might nevertheless be placed in the operating budget because of certain technical requirements in the local budget process or for other reasons. The County Solicitor's opinion indicated that, pursuant to charter requirements, Howard County must include start-up costs to equip a new library in a new school in the county's operating budget, even though such costs are not recurring expenses. In our view, such one-time costs can fairly be viewed as capital expenditures that may be excluded when calculating the local maintenance of effort amount.

The County Solicitor also suggested that transportation costs for both public and private school students should be excluded from the school operating budget for calculation of the local maintenance of effort. This suggestion follows from the fact that pupil transportation is excluded from the calculation of the State share of basic current expenses. ED §5-202(a)(3)(i).<sup>8</sup>

As discussed in Part IIB above, it is our view that the General Assembly intended the county's maintenance of effort amount to be calculated on the basis of all of the operating expenditures for the public school system. In *McCarthy v. Board of Education of Anne Arundel County*, 280 Md. 634, 649, 374 A.2d 1135 (1977), the Court of Appeals found that the transportation of public school students is "an integral part of education as we know it today." Furthermore, "[s]tudent transportation" is a specified subcategory of a county board of education's annual school budget. ED §5-101(c)(2)(vii). Accordingly, we conclude that any amounts for transporting public school children included in the county's appropriation for the school operating budget must be counted for purposes of the maintenance of effort requirements.

However, the County Solicitor's opinion indicated that the Howard County Board of Education's 1991 operating budget included an appropriation for the costs of transportation for parochial school students. Since those costs are not necessary costs for public education,

<sup>8</sup> ED §5-203 is a separate statutory provision for State grants to provide transportation services for public school students and handicapped children for whom transportation is to be provided under ED §8-412. Because there is a separate statutory scheme for State grants for public school transportation, the General Assembly naturally excluded it in the calculation of the State aid for basic current expenses, to avoid double payment.

we believe that they may be excluded from the calculation of local maintenance of effort.

Finally, the County Solicitor noted that the Howard County school operating budget also includes appropriations for costs attributable to the use of public school facilities by community groups. So long as these costs are not for uses related to the curriculum or to the on-going educational functions of the public school system, we believe that they too may be excluded from the maintenance of effort calculation.

#### D. Summary

In our view, the term "highest local appropriation to the school operating budget" includes all items fairly related to the on-going educational functions of the public schools, including transportation of public school students. The total amount of a county's appropriation to the school operating budget in the prior fiscal year can be presumed to be the baseline for the maintenance of effort requirements.

However, a county may show that some items in the operating budget are in reality either one-time capital costs or are unrelated to public school activities. In that event, the State Superintendent may accept the county's compliance with the maintenance of effort provision even though the exclusion of these items lowers the amount of the county's required appropriation.

### III

#### Reduction of State Aid For Failure to Meet Maintenance of Effort Requirements

When the General Assembly enacted the maintenance of effort requirements in 1984, it also enacted ED §5-205, which addresses the reduction in State aid if a county fails to comply. The statute provides that upon certification by the State Superintendent of Schools that a county has not complied with the maintenance of effort provisions of ED §5-202, the State Comptroller "shall suspend, until notification of compliance is received, payment of any funds due the county for the current fiscal year, as provided under §5-202 of this article which are appropriated in the General State School Fund, to the extent that the State's aid due the county in the current fiscal year under that section in

the Fund exceeds the amount which the county received in the prior fiscal year." ED §5-205(b)(3).

The statutory language is straightforward. If a local government does not meet its maintenance of effort requirements, it will not receive the increase in State aid that it would have received had it complied with those requirements.

#### IV

#### Conclusion

In summary, it is our opinion that local expenditures to the school operating budget for the on-going educational functions of the public school system must be included in determining the "highest local appropriation to the school operating budget" under ED §5-202(b)(3)(ii). If a county is not able to meet the maintenance of effort funding requirements, the county will not receive the increase in State aid that it would have received under ED §5-202 had it met those requirements.

I. Joseph Curran, Jr.  
*Attorney General*

Jack Schwartz  
*Chief Counsel*  
*Opinions & Advice*

Valerie V. Cloutier  
*Assistant Attorney General*

#### *Editor's Note:*

The "maintenance of effort" provision has been significantly amended since this opinion, particularly by Chapter 175 (House Bill 7) of the Laws of Maryland 1996.

EDUCATION - PUBLIC SCHOOLS - HEALTH - TORTS - STUDENT VISITS  
TO HEALTH DEPARTMENT WITHOUT PARENTAL CONSENT OR  
NOTICE - CONDOM DISTRIBUTION

May 23, 1991

*Dr. Joseph L. Shilling*  
*State Superintendent of Schools*

You have requested our opinion on a series of questions posed by Talbot County school officials regarding the provision of health services to public school students during the school day. Three of these inquiries concern student visits to the local health department during school hours:

1. Under what circumstances may a minor visit the health department during school hours to seek treatment or advice about medical problems for which parental consent is not required?
  2. Would school staff be held liable for *not* informing parents about known health department visits for this purpose by their child during the school day?
  3. Would school staff be held liable for *not* informing parents about the reasons for such health department visits, if known?
- Your last question addresses an in-school health service:
4. Under what circumstances may a school nurse make condoms available to students?

For the reasons stated below, we conclude as follows:

1. State law permits a minor to consent to treatment, and therefore to choose a provider of treatment, for certain medical conditions identified in §20-102 of the Health-General Article ("HG" Article). If the minor seeks treatment or advice about these conditions from the local health department, State law imposes no preconditions on such visits. However, school authorities may require the minor to conform to