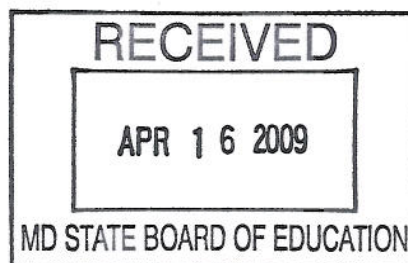


County Executive John R. Leopold

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Jonathan A. Hodgson
County Attorney



April 9, 2009

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

Re: Maintenance of Effort

Dear Mr. DeGraffenreidt:

I am in receipt of a copy of the letter sent to you by Superintendent Maxwell of the Anne Arundel County Public Schools. In his letter, Superintendent Maxwell asked that the State Board of Education "dismiss" the request for a waiver of the "maintenance of effort" funding requirement submitted by Anne Arundel County on the basis that the request was not approved by some type of formal action taken by the Anne Arundel County Council. Please note that the County does not agree with Superintendent Maxwell's analysis of the law.

Section 5-202(d)(7)(iii) refers to a request for a waiver made by "a county." As pointed out by Superintendent Maxell, elsewhere in the Education Article there are references to budgetary actions taken by a county's "governing body." *See, e.g.*, Education Article, § 5-103(c)(2). An important rule of statutory construction is that, when the General Assembly uses differing terms, the difference is presumed to be deliberate, and to convey a distinction in meaning. *See Bethlehem Steel Company v. Ruff*, 203 Md. 387, 394 (1953). Consequently, the proper conclusion is the exact opposite of the one urged by Superintendent Maxwell: The necessary inference is that the General Assembly did *not* require that a waiver request be submitted by a county's "governing body."

Anne Arundel County is a chartered "home rule" County. In Anne Arundel County, other than sitting as the County Board of Health, the County Council performs only legislative functions on behalf of the County. The County Executive carries out all executive and administrative actions on behalf of County government. There is nothing in the statute that

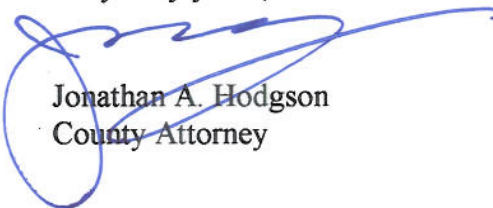
Mr. DeGraffenreidt, Jr
April 9, 2009
Page 2 of 2

suggests that a waiver request is some type of public local law that must be enacted by the County Council. It is simply a request.

Moreover, under the Executive Budget system adopted by the Anne Arundel County Charter, it is the County Executive who is responsible for preparing the County budget and submitting it to the County Council for approval. Therefore, it is perfectly reasonable that it be the County Executive who takes the action necessary to determine the level of funding that must be included in the County budget for the Anne Arundel County Public Schools. It is worth noting here that the County Council has express authority to restore to the Board of Education any money that it believes the Executive's budget has improperly eliminated. Education Article § 5-102(c)(3).

Accordingly, the waiver from Maintenance of Effort that has been requested by Anne Arundel County should be assessed on its merits. I ask that you accept the representation by both the County Executive and the Chairman of the Anne Arundel County Council that "Anne Arundel County" indeed has requested a waiver of the maintenance of effort funding requirement for the next fiscal year. Thank you very much for your consideration of my letter.

Very truly yours,



Jonathan A. Hodgson
County Attorney

Cc: John R. Leopold, County Executive
Dr. Nancy Grasmick
Members, Anne Arundel County Board of Education