Request for Guidance on Appeals

Public Comment to State Board of Education at the Feb. 28, 2012 meeting

President DeGraffenreidt and members of the State Board of Education:

I am Stephen Bounds, Director of Legal & Policy Services for the Maryland Association of Boards of Education, and I am here today on behalf of local boards to request Guidance on Appeals to the State Board in light of troubling language in several of your recent opinions.

Local boards of education must rely on the provisions of the Annotated Code of Maryland and COMAR in exercising their quasi-judicial role in conducting appeals and the decisions of a county board are legally considered to be final. In fact, one of the only grounds for the State Board to overturn a local decision is that Maryland law, including COMAR, was not followed.

> **This past December, the State Board permitted an improperly filed appeal to be considered based upon the opinion's stated desire to make a future modification to the provisions of COMAR regarding the approved means of appeal transmittal.**

Local boards are not free to ignore the laws of Maryland even when they might disagree with them. We request guidance on which provisions of COMAR pertaining to appeals are to be followed and which ones ignored?

> **Additionally in December, the State Board overturned a student discipline case in which the State Board substituted its fact finding for that of the local board.**

The State Board also questioned the efficacy of appellants representing themselves and went so far as to suggest a Constitutional violation of Due Process rights for the failure of the school system to provide some undefined assistance to a pro se appellant. By so doing the State Board seemingly purports to create some right under the U.S. Constitution that has never before been suggested in education law. The local school board is now arguably subject to liability for damages as a direct result of this new phantom and undefined Constitutional right. We request guidance as to which pro se student discipline cases now require the provision of representation to the appellant and which do not?

> **Finally, a January opinion of the State Board permitted the delinquent filing of an appeal by a full ten days; expressly without legal grounds permitting such a late filing.**

While the local board was affirmed, after again considering the merits of a final local decision, the precedent that time limits are now optional for appellants has seemingly been set. It is ironic that this occurs at the same time that the State Board is in the process of shortening time limits for local board action in order to expedite appeals. We request guidance as to which appeal time requirements are to be followed and which are not?

Several weeks ago an emergency meeting of Maryland school law attorneys was held to discuss these opinions and the concerns raised today are shared by the majority of the school law attorneys.

We would welcome a dialogue with the State Board, its counsel, or anyone else designated, to explain to local boards how they are to carry out their quasi-judicial roles when the rules that they must follow are seemingly being ignored and even changed or created on a case by case basis in recent State Board opinions. Thank you in advance for taking these concerns as seriously as do local boards.