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June 24, 2020

The Honorable Sarah K. Elfreth
Senate Chair, AELR Committee
103 James Senate Building
11 Bladen Street
Annapolis, MD 21401

The Honorable Samuel I. Rosenberg
House Chair, AELR Committee
365 House Office Building
6 Bladen Street
Annapolis, MD 21401

Dear Senator Elfreth and Delegate Rosenberg:

The Maryland Association of Boards of Education (MABE), representing Maryland's 24 local boards of education, requests your consideration of the following comments on regulations proposed by the Maryland State Department of Education (MSDE) and State Board of Education to govern the commensurate funding of public charter schools by local school systems. MABE requests that the AELR Committee agree to hold a hearing on the proposed regulations, COMAR 13A.19.01, and to vote to oppose the promulgation of the regulations.

First, the proposed regulations purport to reflect the clear direction provided in several State Board of Education decisions and case law. However, the guidance set forth in these decisions is much more nuanced, as reflected in the varying approaches now in place among the 5 school systems with charter schools. Second, the proposed regulations would result in a significant degree of disruption to the school finance systems in place in several of the systems with charter schools. The modifications to school-based funding allocations would be challenging and costly under any circumstances, but to impose a significant new set of funding standards on local school systems already struggling to meet unbudgeted COVID-19 related expenses would be even more so. Third, the proposed regulations do not align with the legislative intent expressed in the 2015 charter school legislation which did not address the funding framework established in case law, but call for an independent funding study which a year later made several recommendations not included in these regulations.

Again, the regulations before you would impose a substantial cost on school systems with charter schools, particularly school systems with negotiated charter agreements and funding allocations that do not conform to the rigid parameters being proposed. Following the initial passage of Maryland's first charter school law in 2003, MSDE and the State Board began to consider regulations to supplement the statutory framework. These efforts stalled, and instead the State Board issued a series of legal decisions in 2005 which form the basis of the charter school funding framework.

The commensurate funding model set forth in 2005 would be irrevocably harmed by the overly rigid requirements of the proposed regulations to mandate a uniform funding formula without preserving the flexibility embedded in the locally negotiated charter agreements and funding arrangements in the 5 jurisdictions with charter schools. Notwithstanding comprehensive charter school reform legislation passing 2015, no statutory provisions or amendments specifically warrant the adoption of the proposed regulations.

In 2005, the State Board issued a decision establishing a statewide funding model for determining charter schools' per-pupil funding allocation. The funding model, which continues to be applied by school systems today, provides that local school systems must calculate the districtwide average per-pupil funding overall by dividing their annual operating budget by total student enrollment. The model permits local school systems to then adjust their average per-pupil funding amount downward by 2 percent to cover the costs of central office administrative responsibilities conducted on behalf of charter schools. School systems then multiply their total adjusted per-pupil amount by a charter school's total enrollment to determine the overall funding for the charter school. In addition, charter schools must reimburse their local school system for personnel costs associated with the public school system employees working in the school as well as a proportionate amount of the cost of any other services or supplies requested from the district (*City Neighbors Charter School v. Baltimore Board of School Commissioners*, Revised MSBE Op. No. 05-17).

In 2015, the General Assembly responded to legislation introduced by Governor Hogan by passing comprehensive reforms to the charter school law first passed in 2003. However, the 2015 legislation did not substantially alter the longstanding charter school funding model established by the State Board in 2005. In this way, comprehensive charter school reforms were achieved, including much greater operational flexibility for established charter schools, without revisiting and disrupting the charter school funding provisions contained in dozens of approved charters.

The 2015 charter school legislation did, however, call for an independent study of charter school funding issues. (*Study of Funding Provided to Public Schools and Public Charter Schools in Maryland*, American Institutes for Research (Dec. 2016)). A central theme of the study is the nuanced nature of school system agreements with individual charter schools, and the variations in approaches to the funding of special education services, transportation services, English language learner services, in-kind services, among other areas. The study does not recommend eliminating such nuances. Instead, it focuses on the role of the Every Student Succeeds Act (ESSA) in mandating new and much more transparent school-based budget reports for all public schools, and the need for similar transparency regarding administrative and overhead expenditures by charter schools. The study was presented to the State Board in early 2017 as an informational report and never acted on. To be clear, the study's recommendations, which also call for much stricter financial reporting requirements for charter schools, are not reflected in the pending regulations.

Today, school systems continue to engage in good faith negotiations with charter school operators who have been granted charters through a rigorous review and approval processes. In each case, school systems provide these operators with commensurate funding within the parameters of the funding model adopted by the State Board.

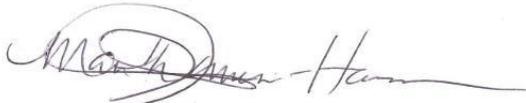
MABE supports the current funding framework because it achieves an appropriate balancing of the value of uniform state standards, the flexibility available to local school systems to apply these standards to individual charter agreements, and the State Board's judicial oversight and enforcement to ensure that interpretations by local school systems are not unreasonable, arbitrary, or illegal. This balance is critically important in the context of charter schools, schools which operate as public schools within distinct local school systems with considerable flexibility in crafting approaches to instruction. MABE believes this longstanding framework of state standards and local flexibility to interpret and apply those standards has contributed to the overall academic, operational, and fiscal success of Maryland's public charter schools.

In light of the objections and concerns outlined above, MABE requests that the Administrative, Executive and Legislative Review (AELR) Committee convene a hearing to discern whether the regulations conform with the legislative intent of the statute under which the regulations are proposed. MABE believes that the legal and policy arguments against the proposed regulations warrant a formal vote to oppose the adoption of the regulations in their current form.

MABE greatly appreciates the AELR Committee's role as the General Assembly's venue for overseeing the activities of State agencies as they relate to regulations, and being responsive to the concerns raised by the parties directly affected by proposed regulations.

Thank you for your consideration of this request. Please direct any questions or concerns regarding this matter to MABE's Director of Governmental Relations, John R. Woolums, Esq., at jwoolums@mabe.org or 410-841-5414.

Sincerely,



Martha James-Hassan
MABE President

Enc.:
Proposed Regulations (COMAR 13A.19.01)

Cc:
Local Board of Education Presidents/Chairs
Local Superintendents/CEOs
Brig. Gen. Warner Sumpter (Ret.), President, State Board of Education
The Honorable Adrienne Jones, House Speaker
The Honorable Bill Ferguson, Senate President
Frances Hughes Glendening, Executive Director, MABE
Mary Pat Fannon, Executive Director, PSSAM