

IN THE MATTER OF  
TALBOT COUNTY  
COUNCIL AND TALBOT  
COUNTY BOARD OF  
EDUCATION:  
MAINTENANCE OF  
EFFORT APPEAL

BEFORE THE  
MARYLAND  
STATE BOARD  
OF EDUCATION

Opinion No. 19-31

## OPINION

### INTRODUCTION

Talbot County Council and the Talbot County Board of Education (Appellants) jointly appeal a determination of the State Superintendent denying a request that certain costs be deemed “non-recurring” cost exclusions in calculating the amount of the Talbot County Council’s appropriation to the Talbot County Public School system in FY 2020. The State Superintendent responded to the appeal and the Appellants replied.

### EXPLANATION OF HIGHEST LOCAL APPROPRIATION AND NON-RECURRING COST

By law, each fiscal year every county government is required to meet a funding target for its school system. That funding target is called Maintenance of Effort (MOE). Ed. Art. §5-202(d)(2). It is calculated starting with the county’s “highest local appropriation” to the school system’s operating budget *in the prior fiscal year. Id.* That is essentially the target amount the County must meet when it appropriates funds in the current fiscal year for the school system. Sometimes, because of one-time costs, the county government will need to appropriate funds in excess of the funding target. The County can request that MSDE approve these one-time costs as “nonrecurring costs” so that such costs are not included in the final highest local appropriation MOE calculation. Ed. Art. 5-202(d)(3).

### FACTUAL BACKGROUND

This case is about whether certain costs included in the Talbot County Council’s FY 2020 budget for the school system are “nonrecurring costs” and thus not included in the highest local appropriation MOE calculation. Nonrecurring costs are one-time expenditures limited to:

- (a) Costs to establish new computer laboratories that include the cost for equipment, furniture, wiring, hardware, software, space renovations, and the initial up-front cost for staff development, and training but not ongoing costs such as maintenance, staff salaries, staff development, and training;
- (b) Costs for new technology that include the cost for equipment, furniture, wiring, hardware, software, space renovations, and the initial up-front cost for staff development, and training but not ongoing costs such as maintenance, staff salaries, staff development, and training;

- (c) New instructional program start-up costs that include the cost for equipment, furniture, wiring, hardware, software, space renovations, textbooks, manipulatives, staff development, and training;
- (d) Books other than classroom textbooks to establish a new library collection and new books required in new and renovated schools;
- (e) Capital items with a useful life of 5 years or more that include the cost to acquire fixed assets other than land and buildings; and
- (f) Other unique one-time costs that the local board and county mutually agree to be one-time expenditures.

COMAR 13A.02.05.03(2).

The Talbot County Council sought to exclude the following as nonrecurring costs in calculating its highest local appropriation for FY 2020:

Books – New Calculus Textbooks	\$11,200
Books – New Biology Textbooks	\$52,000
Capital Item – Additional custodial equipment – for increased enrollment	\$14,000
Capital Item – Additional classroom furniture – for increased enrollment	\$15,970
Capital Item – Upgrade parking lot – Easton High School	\$175,000
Capital Item – New Cafeteria sound system to improve security	\$12,000
Capital Item – New Auditorium sound system to improve security	\$35,000
Capital Item – Additional security cameras – St. Michaels High School	\$14,000
Capital Item – New tile floors – St. Michaels High School	\$6,000
Capital Item – Upgrade parking lot – St. Michaels High School	\$60,000
Capital Item – New tile floors – White Marsh Elementary	\$7,500

The State Superintendent denied the request to classify those costs as “nonrecurring” costs. This appeal ensued.

STANDARD OF REVIEW

The State Board exercises its independent judgment on the record before it in the explanation and interpretation of the public school laws and State Board regulations. COMAR 13A.01.05.06E.

LEGAL ANALYSIS

The types of costs sought to be excluded as nonrecurring costs can be divided into several categories: (1) Books; (2) Equipment; (3) Parking Lots; (4) Floors. Each is addressed herein. As a general rule, we begin with the proposition that nonrecurring costs must be unique one-time costs. *See, e.g.*, COMAR 13A.02.05.03(2)(f). And, except for “capital items,” all the specific nonrecurring cost examples listed in the regulation are for *new* initiatives such as *new* laboratories, *new* technology, *new* instructional programs, and *new* libraries. *See* COMAR 13A.02.05.03(2). With those general principles in mind, we turn to the specific requests.

## *Books*

### Calculus and Biology Textbooks

Appellants assert that the calculus and biology textbook cost is a nonrecurring cost because, under COMAR 13A.02.05.03(2)(c), purchases for a “new instructional program” are appropriate nonrecurring costs. Also they assert that the Board and County “mutually agree” that the textbook purchase is a one-time cost.

The Appellants argue that the new textbooks are for a “new instructional program” because new State Standards related to calculus and biology have been adopted. They state that “these books would not be purchased if the standard did not change... [and] it is the requirement to purchase new books to replace books that are still capable of use that the Board and Council agree is a one-time expenditure to meet the specific new state standard.” (Appeal at 4).

The State Superintendent disagreed because the revision of State Standards does not mean that the calculus and biology instructional programs are “new” instructional programs. We agree. Calculus and biology are part of the core existing math and science programs. They are not “new instructional programs” in the true sense of the term.

We point out that an agreement between the Board and Council that the textbook expenditure is a “one-time expenditure” does not make it so. The regulation that allows for such a mutual agreement requires that the expenditure actually be a “unique, one-time cost.” COMAR 13A.02.05.03(2)(f). Purchasing textbooks for an existing instructional program cannot meet the unique, one-time cost requirement no matter how mutually the Board and Council agree that it does.

### *Equipment and Furniture*

The Appellants argue that certain equipment and furniture costs are “capital items” excludable as nonrecurring costs. Those items are:

Additional custodial equipment: a floor scrubber/stripping machine, five back-pack vacuums with attachments, one carpet extractor, one floor burnisher, one low-speed floor machine, and three wet-vacs.

Additional classroom furniture: 115 new chairs and 50 new desks.

Cafeteria sound system: add-on to the main system.

Auditorium sound system: add-on to system

Additional security cameras: security cameras along the back side of St. Michael’s High School.

By regulation, “[c]apital items with a useful life of five years or more that include the cost of acquiring fixed assets other than land or buildings” are considered nonrecurring costs. COMAR 13A.02.05.03A(2)(e). The Appellants focus on the useful life of each of the items set forth above as the deciding factor asserting that each has 5 years or more of useful life. However,

when deciding what types of capital items fall into the nonrecurring cost category, this Board has looked not only to useful life, but to the definition of Capital Outlay contained in the Financial Reporting Manual for Maryland Public Schools. Capital Outlay includes expenditures for land, buildings and equipment, but the equipment referred to in the definition is “built in equipment.” *In the Matter of Board of County Commissioners of Frederick County*, MSBOE Op. 97-12 (1997), published 7 Opinion of MSBE (1997) at 611. That same definition is still used. *See* Financial Reporting Manual (Revised 2014) at 62. In the Frederick County case, to further refine the capital item requirement, the Board compared the Capital Outlay definition to the definition of Maintenance of Plant. That definition includes:

“Those activities that are concerned with preventive maintenance when such maintenance is on a regular schedule, repair maintenance for unpredictable circumstances, and minor modernizations and alterations to change the original condition or original function of equipment. Included are costs of bringing a building into compliance with changing code requirements relating to accessibility, safety, health, pollution, and fire code regulations. Examples are asbestos removal, blacktop replacement, floor finishes, roof repair and replacement, and repair and maintenance of fixed equipment. When the asset value of a building is increased, charge the expenditure to 215 – Capital Outlay. Include cost of repair/maintenance of movable equipment in 210 – Operation of Plant.”

*Id.*; Reporting Manual at 61.

Maintenance of Plant expenditures are usually not considered capital items. Considering those definitions, it is our view that the custodial equipment and the classroom furniture are not capital items because they are not built in, fixed assets. The add-ons to the sound system to serve the cafeteria and the auditorium are a closer call. Yet, in the prior State Board case, the Board seemed to conclude that add-ons to existing equipment were not nonrecurring costs. MSBOE Op. 97-12, published 7 Opinions of MSBE at 611. We will follow that precedent.

As to the security cameras for St. Michael’s High School, the State Superintendent responded that the denial was based on the fact that additional security cameras for St. Michael’s were approved as nonrecurring costs in FY 2019. The Appellants responded that the current request is for areas not covered in the FY 2019 request. It is our view that the additional security cameras are add-ons to the system. Thus, the \$14,000 cost of those security cameras is not an approvable nonrecurring cost.

### *Parking Lots*

The Appellants argue that repaving 2 parking lots fits the capital item exclusion. It appears to us that the repaving of the parking lots meets the definition of Maintenance of Plant because it is a repair or replacement not the addition of new parking spaces which would be a Capital Outlay. *See* 7 Opinions of MSBE at 611-612. Moreover the Financial Reporting Manual classifies black top replacement as a Maintenance of Plant item. *See* Reporting Manual at 61.

*Floors*

The Appellants argue that replacing carpeted areas in the schools with tile is a nonrecurring cost. For the reasons stated above, denying the request to approve the cost of repaving the parking lots, we deny the request to approve the cost of replacing carpet with tile floors.

CONCLUSION

For the reasons stated, we affirm the Superintendent's denial of the request to exclude certain nonrecurring costs from the calculation of highest local appropriation.

Signatures on File:

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Warner I. Sumpter  
President

\_\_\_\_\_  
Jean C. Halle  
Vice-President

\_\_\_\_\_  
Gail H. Bates

\_\_\_\_\_  
Clarence C. Crawford

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Vermelle D. Greene

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Justin M. Hartings

\_\_\_\_\_  
Joan Mele-McCarthy

\_\_\_\_\_  
Michael Phillips

\_\_\_\_\_  
David Steiner

Dissent:  
Rose Maria Li

September 24, 2019