



BOARD OF EDUCATION OF ANNE ARUNDEL COUNTY

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July 9, 2014

The Honorable Martin O'Malley  
Governor of Maryland  
State House  
Annapolis, Maryland 21401

*Re: Appointment of Anne Arundel County Board of Education Members*

Dear Governor O'Malley:

Among all of the Boards of Education in Maryland, the Board of Education of Anne Arundel County is unique in the manner by which its members are selected. Already one of the few remaining non-elected boards, the Anne Arundel Board members must be appointed by the Governor from a list submitted by a School Board Nominating Commission. As you know, as prescribed by Section 3-110 (b) of the Education Article, the Commission conducts public hearings and selects nominees to submit to the Governor; at least two nominees must be submitted for each vacancy.

This year, the terms of one adult Board member and the student member will expire. Because of the provisions of Section 10A of Article II of the Constitution of Maryland, a question has arisen as to how and when the adult member will be appointed to a new term. Section 10A says that "... a Governor may not appoint a person to an office in the Executive Branch of State Government during ... (t)he period between a primary election in which the Governor ... is ineligible to succeed himself and the inauguration of the next succeeding Governor ...." That would say that, this year, the appointment cannot be made between the primary election on June 24 and the next Governor's inauguration in January of 2015, a period of seven months.

Even at that point, the process is not complete. If the appointment cannot be made until January of 2015, the member may then only continue to serve if he or she receives the approval of the registered voters of the county at the next general election (which will not occur until November of 2016, nearly two and a half years from now).

While this constitutional provision theoretically may have been adopted to keep a "lame duck" Governor from appointing friends and political supporters to office while he/she is about to finish a term in office, that cannot be the case with regard to the Anne Arundel Board of Education because of the appointment process (which post-dates the Constitutional provision). Specifically, the process found in Section 3-110 (a)(2) of the Education Article states that appointments of non-student members can only be made "... from a list of nominees submitted by the School Board Nominating Commission of Anne Arundel County ...."

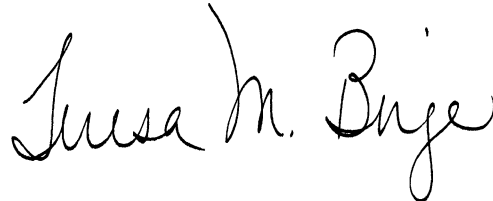
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The School Board Nominating Commission of Anne Arundel County has met and interviewed this year's candidates. It has forwarded a list of two names to your office for consideration. We are concerned, however, that your office may believe that Section 10A of Article II precludes you from making the appointment. We believe that, based on the uniqueness of the appointment process created for Anne Arundel County (alone among the twenty-four jurisdictions in Maryland), the provisions of Section 10A are inapplicable and we ask that you consider the factors we have raised and conclude that you should make the appointment to the Anne Arundel Board at your earliest convenience.

Even if you conclude that Section 10A applies in this instance, we would urge you to utilize your discretion and act consistent with the provisions of Section 10A(b), which allows the Governor to make an appointment in an emergency situation. Certainly, depriving the citizens of Anne Arundel County of the opportunity to vote on the retention issue until November of 2016 (two years after the fact) should constitute an "emergency" as envisioned by the statute.

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink that reads "Teresa M. Birge". The signature is written in a cursive style with a large, looped initial "T" and a distinct "M" and "B".

Teresa Milio Birge  
President

TMB/mec