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October 14, 2014

The Honorable Susan W. Krebs  
1696 Springmount Drive  
Eldersburg, Maryland 21784

Dear Delegate Krebs:

You have asked for advice concerning whether a local board of education or superintendent of schools may choose to discontinue the use of the Common Core State Curriculum. It is my view that neither a local board of education nor a local superintendent of schools may take this action.

The State Board of Education has the power to “determine the elementary and secondary educational policies of this State.” ED § 2-205(b)(1). It also has the authority to adopt regulations for the administration of the public schools. ED § 2-205(c)(1). Moreover, with the advice of the State Superintendent, the State Board of Education “shall establish basic policy and guidelines for the program of instruction for the public schools.” ED § 2-205(h)(1). These provisions give the State Board of Education ample authority to adopt the Common Core State Standards, which it did in June 2010.<sup>1</sup>

Since the adoption of the Common Core State Standards, the State Board of Education has amended the regulations setting out the curriculum in the State to comply with those standards. *See e.g.*, COMAR 13A.04.14.01 as amended effective September 29, 2014 (41:19 Md. R. 1082) and COMAR 13A.04.12.01 as amended effective September 29, 2014 (41:19 Md. R. 1081). The amendments to these sections, which set out the curricula for English language arts/literacy and math respectively, each commence with the statement that “[e]ach local school system shall,” and require that the programs include the content standards included in the remainder of the regulations, each of which has been amended to reflect the Common Core State Standards.

The term ‘shall’ is presumed mandatory on the parties, denoting ‘an imperative obligation inconsistent with the exercise of discretion.’ ‘Shall’ and ‘must’ have been employed synonymously to foreclose discretion. The term ‘must’ imposes a positive absolute duty, and has been defined as ‘compulsion or obligation’ or ‘requirement or prerequisite.’ American Heritage Dictionary, 865 (1976).

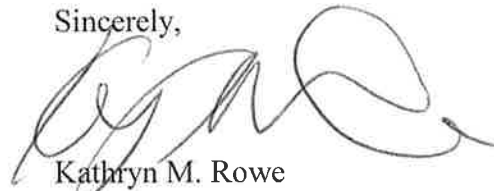
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<sup>1</sup> See the Maryland State Department of Education website, at <http://www.marylandpublicschools.org/msde/programs/ccss/>

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*Engineering Management Services v. Maryland State Highway Administration*, 375 Md. 211, 234 (2003), citing *Tranen v. Aziz*, 59 Md.App. 528, 534-35 (1984). The use of the term shall in the curriculum regulations indicates that the standards set therein are mandatory and that the local boards have no choice but to implement them. For that reason, it is my view that neither a local board of education nor a local superintendent of schools may refuse to implement them.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. M. Rowe', with a large, stylized flourish at the end.

Kathryn M. Rowe  
Assistant Attorney General

KMR/kmr  
krebs16.wpd