

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

March 10, 2026

Opinion No. 26-003

Interpretation of the Physical-Activity Requirements from Tenn. Code Ann. § 49-6-1021

Question 1

Does the term “elementary school students” in Tenn. Code Ann. § 49-6-1021 include students in grades K-5 when those grades are housed within the same building, even if the building also hosts higher grade levels such as in a K-8 school?

Opinion 1

It depends. Although Tenn. Code Ann. § 49-6-1021 does not define what constitutes an elementary school student for purposes of its substantive requirements, we think a court facing this issue would likely rely on the definitional framework within Tenn. Code Ann. § 49-6-301. Under that statute, “elementary schools” serve “any combination of kindergarten through grade six,” Tenn. Code Ann. § 49-6-301(a), whereas “middle schools” are “designed to serve grades five through eight (5-8) only, or any combination of grades five through eight.” Tenn. Code Ann. § 49-6-301(b). When applying these definitional concepts to the context of a K-8 school, we think students in grades K-4 would clearly be considered elementary school students, whereas the classification of fifth-grade students would depend on how the local school board classified them. Thus, although fifth-grade students in a K-8 school might be considered elementary school students for purposes of Tenn. Code Ann. § 49-6-1021 in certain situations, we do not think that conclusion is always mandated absent further direction from the General Assembly.

Question 2

For purposes of compliance with Tenn. Code Ann. § 49-6-1021, how should “elementary school” be defined or determined?

Opinion 2

See response to Question 1.

Question 3

With respect to the physical-activity requirements for elementary school students in Tenn. Code Ann. § 49-6-1021, may a school withhold unstructured recess as punishment or replace it with a disciplinary walking activity?

Opinion 3

No.

ANALYSIS

Under Tenn. Code Ann. § 49-6-1021, the General Assembly has mandated that each local education agency (“LEA”) integrate “physical activity” requirements into public education. For “elementary school students,” each LEA is required to integrate “a minimum of forty (40) minutes of physical activity per full school day.” Tenn. Code Ann. § 49-6-1021(a)(1). But for “middle and high school students,” the statute mandates only “a minimum of ninety (90) minutes of physical activity per full school week.” Tenn. Code Ann. § 49-6-1021(a)(2).

1-2. The first two questions seek guidance on the meaning of “elementary school” under Tenn. Code Ann. § 49-6-1021, including how students in grades K-5 should be classified when they are housed in a building that also hosts higher grade levels, such as in a K-8 school.

As to the broader issue of how “elementary school” should be understood in this context, the text of Tenn. Code Ann. § 49-6-1021 does not itself provide an answer. The statute simply indicates that an LEA’s responsibility toward elementary school students differs from its obligation to middle and high school students; it does not directly define what constitutes an elementary school student. In another portion of Title 49, however, the General Assembly has provided that “elementary schools” are schools that serve “any combination of kindergarten through grade six.” Tenn. Code Ann. § 49-6-301(a).¹ And in turn, it has further defined “middle schools” as schools “designed to serve grades five through eight (5-8) only, or any combination of grades five through eight.” Tenn. Code Ann. § 49-6-301(b). In our view, a court interpreting Tenn. Code Ann. § 49-6-1021 would likely rely on this definitional framework from Tenn. Code Ann. § 49-6-301 to guide its analysis. After all, to provide for a harmonious operation of the laws, courts will construe statutes relating to the same subject or sharing a common purpose together. *Carver v. Citizen Utils. Co.*, 954 S.W.2d 34, 35 (Tenn. 1997). And here, Tenn. Code Ann. §§ 49-6-301 and -1021 both concern the regulation of public education. *See generally Falls v. Goins*, 673 S.W.3d 173, 181 (Tenn. 2023) (noting that courts have “rather broad discretion” in determining what is required for statutes to relate to the same subject matter).

The flexibility of the term “elementary schools” under Tenn. Code Ann. § 49-6-301 is consistent with the legislative history associated with Tenn. Code Ann. § 49-6-1021 as it relates to grade level composition. Namely, although the General Assembly had acted in 2016 to impose requirements under Tenn. Code Ann. § 49-6-1021 based on grade level, *see* 2016 Tenn. Pub. Acts, ch. 669, the shift to the present-day “elementary,” “middle,” and “high” school classifications the following year, *see* 2017 Tenn. Pub. Acts, ch. 99, appears to have been animated by the lack of uniformity in school composition. As one legislator noted on this subject, some schools have K-6 grades, some have K-5, and some middle schools “go down to fifth grade.” *House Subcomm. on Educ. Instruction & Programs*, 110th Gen. Assem. (Feb. 15, 2017) (statements of Rep. Kane).

¹ The same provision also provides that, “[f]or purposes of federal funding,” elementary schools are “schools serving any combination of pre-kindergarten through grade six.” Tenn. Code Ann. § 49-6-301(a).

The same representative stated that the General Assembly “probably should’ve caught this last year,” and in reference to the 2017 proposal, he indicated that whether a fifth-grade class is in a middle or elementary school will affect statutory obligations. *Id.* (statements of Rep. Kane). He further added, “Most middle schools don’t have playground areas. It’s not designed for that.” *Id.* (statement of Rep. Kane).

To be sure, these direct remarks appeared to contemplate that a given school’s grade composition could lend itself to a single characterization for the school at large: that is, all grades in a school could be considered “elementary” or all grades could be considered “middle.” And the operation of a K-8 school presents a different wrinkle when juxtaposed against the framework of Tenn. Code Ann. § 49-6-301.² Still, these remarks reveal an intent that the identity of an “elementary school student” for purposes of Tenn. Code Ann. § 49-6-1021 is not, at least in all instances, to be rigidly determined by grade level alone.

And although a K-8 school, as an entity, escapes singular characterization as an “elementary” or “middle” school when measured against Tenn. Code Ann. § 49-6-301’s definitions, we still think a court would rely on those definitional concepts in determining who is an “elementary school student” within a K-8 school for purposes of Tenn. Code Ann. § 49-6-1021’s requirements. Mapping those concepts onto the context of a K-8 school in relation to the specific question raised, then, we think students in grades K-4 would clearly be considered elementary school students. But for fifth-grade students in a K-8 school, we think their classification status under Tenn. Code Ann. § 49-6-1021 would ultimately depend on how the local school board classified them.³ After all, Tennessee law recognizes that a fifth-grade student can either be in “elementary” or “middle” school. *See* Tenn. Code Ann. § 49-6-301. And so, while fifth-grade students in a K-8 school might be considered elementary school students for purposes of Tenn. Code Ann. § 49-6-1021, we do not think that conclusion is always mandated absent further direction from the General Assembly.

3. In view of the physical-activity requirements pertaining to elementary school students contained in Tenn. Code Ann. § 49-6-1021, the request’s final question asks whether a school may withhold unstructured recess as punishment or replace it with a disciplinary walking activity. Put simply, it may not.

Under the statute, physical activity “may include walking, jumping rope, playing volleyball, or other forms of physical activity that promote fitness and well-being.” Tenn. Code Ann. § 49-6-1021(b)(1). The statute contains several qualifications pertaining to what is necessary to satisfy the physical-activity requirements for elementary school students. Among other things, physical activity for these students “[m]ust include unstructured play outside, unless weather conditions negatively impact reasonable execution of physical activity outside.” Tenn. Code Ann.

² Although not all the grades in a K-8 school cleanly fit within the concept of an “elementary school” as currently defined in Tenn. Code Ann. § 49-6-301, this has not always been the case. In fact, before a 2012 legislative amendment redefined the meaning of “elementary schools,” *see* 2012 Tenn. Pub. Acts, ch. 551, “elementary schools” were understood to serve any combination of kindergarten through grade eight.

³ In connection with our thought on this, we note that the Tennessee State Board of Education’s “Middle Grades Policy,” No. 2.102, states that middle grades “include grades five through eight (5-8) or any combination of grades five through eight (5-8) as determined by the local school board.”

§ 49-6-1021(b)(2)(A). And of further relevance here, the statute specifically states that these students “shall not be withheld from participating in physical activity as a form of punishment.” Tenn. Code Ann. § 49-6-1021(b)(2)(B). This latter prohibition alone would clearly be violated if unstructured play for elementary school students was withheld as punishment or otherwise redirected into disciplinary walking activity. And with that understanding in view, we are compelled to answer the question posed in the negative.⁴

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⁴ As we understand it, the request’s final question is narrowly interested in the use of discipline with respect to elementary school students. But to the extent the question’s focus is in fact broader, we note for the sake of completeness that the “unstructured play outside” requirement of Tenn. Code Ann. § 49-6-1021(b)(2)(A) does not apply to middle and high school students. Nor does the prohibition in Tenn. Code Ann. § 49-6-1021(b)(2)(B).