S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
425 Fifth Avenue North
NASHVILLE, TENNESSEE 37243-0497

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Opinion No. 02-056

Break-the-mold schools as authorized by Tenn. Code Ann. § 49-3-365.

QUESTION

Does the Commissioner of the Department of Education have the authority to grant "break-the-mold" status to a school as provided in Tenn. Code Ann. § 49-3-365, in the absence of "federal implementation of such schools" and "federal program guidelines?"

OPINION

No.

ANALYSIS

"Break-the-mold" schools are authorized by Tenn. Code Ann. § 49-3-365. This statute provides as follows:

> **49-3-365. Break-the-mold schools.**
>
> (a) In addition to basic education program funds otherwise available under this chapter, there is hereby authorized an additional fund for the purpose of establishing "break-the-mold" schools, ***contingent upon federal implementation of such schools***. Such additional fund shall be subject to annual appropriation and may be supplemented or provided exclusively by federal funds appropriated for this purpose.
>
> (b) ***Break-the-mold schools shall be public schools established in conformance with any federal program guidelines so as to be eligible to participate in the federal program***. In addition, they shall achieve geographical, socioeconomic, and urban-rural diversity. Any such school, with local board approval, shall be entitled to all financial and support services available to other schools under the jurisdiction of the local board of education, including,

> but not limited to, teacher salary supplements, textbooks, pupil transportation, maintenance, and operation; however, the break-the-mold school shall not be subject to the rules and regulations or policies of either the state board of education or the local board of education.
>
> (c) ***Each break-the-mold school shall be approved by the commissioner of education*** according to a plan submitted on behalf of the school. This plan shall specify the management and governance of the school, its location, program descriptions, outcome objectives and reporting, admission policies, financial audits, assumption of liability, and insurance coverage. Such school may be discontinued by the commissioner for failure to meet its approved plan, including pupil performance standards, or for failure to meet generally accepted standards of fiscal management or for violation of law.
>
> (d) The local board of education shall assist, where it is able, in providing space and facilities either within existing schools or in surplus space or buildings.
>
> (Emphasis added)

The plain language of Tenn. Code Ann. § 49-3-365 provides that the funding and establishment of "break-the-mold" schools is intended to be "contingent upon federal implementation of such schools."[1] Moreover, the statute explicitly mandates that "[b]reak-the-mold schools shall be public schools established in conformance with any federal program guidelines so as to be eligible to participate in the federal program."[2]

The clear thrust of this language is that the Legislature intended to authorize the Commissioner of the Department of Education to take advantage of any federal programs that might fund and establish "break-the-mold" schools. To this end, Tenn. Code Ann. § 49-3-365(a) authorizes additional state funds that might be required for the purpose of establishing such schools, provided that federal implementation of such schools first takes place. The statute therefore does not authorize the approval or creation of "break-the-mold" schools that are funded solely with State funds.

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[1]Tenn. Code Ann. § 49-3-365(a).

[2]*See* Tenn. Code Ann. § 49-3-365(b). "Break-the-mold schools ***shall*** be public schools established in conformance with any federal program guidelines so as to be eligible to participate in the federal program." (Emphasis added). It is a general rule of law that the word "shall" is ordinarily construed as being mandatory when used in constitutions or statutes. *West Tenn. Motor Express, Inc. v. Public Service Comm.*, 514 S.W.2d 742, 746 (Tenn. 1974).

One of the most basic principles of statutory construction requires the interpreter to ascertain and give effect to the intention and purpose of the legislature. That intent and purpose is to be ascertained primarily from the natural and ordinary meaning of the language used, eschewing any forced or subtle constructions that might artificially limit or extend the meaning of the language.[3] Where the statutory language is plain, clear, and unambiguous, one must avoid any interpretation or construction that departs from the words of the statute. [4]

Based upon these well-established principles of statutory interpretation, it is the opinion of this Office that the Commissioner of the Department of Education is without authority to grant "break-the-mold" status to a school as provided in Tenn. Code Ann. § 49-3-365, in the absence of "federal implementation of such schools" and "federal program guidelines."

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

KEVIN STEILING
Deputy Attorney General

Requested by:

Commissioner Faye P. Taylor
Tennessee Department of Education
6th Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243-0375

[3]*See, e.g., Tuggle v. Allright Parking Systems, Inc.*, 922 S.W.2d 105, 107 (Tenn. 1996); *National Gas Distributors, Inc. v. State*, 804 S.W.2d 66, 67 (Tenn. 1991); *Worrall v. Kroger Co.*, 545 S.W.2d 736, 738 (Tenn. 1977).

[4]*Tuggle v. Allright Parking Systems, Inc.*, 922 S.W.2d at 107.