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Opinion No. 03-083

Charter Schools: Student Eligibility to Enroll; Employee Insurance

QUESTIONS

1. Who is eligible to attend a charter school established pursuant to Tenn. Code Ann. § 49-13-106(a)(1)? Is a student who does not attend a school failing to make adequate yearly progress, as defined by the state's accountability system, eligible to attend such charter school?
2. Under the provisions of the charter school legislation, who is the local education agency that is responsible for providing special education services to children in charter schools and who is the local education agency responsible for the administration of state tests?
3. Must the chartering authority allow all employees of charter schools, both certificated and non-certificated, to participate in the insurance plan of the chartering authority in the same manner as the chartering authority's own employees?

OPINIONS

1. Students eligible to enroll in a charter school formed under Tenn. Code Ann. § 49-13-106(a)(1) are students who come from failing schools. A student from a school that is not failing may not enroll at this type of charter school.
2. The local education agency (LEA) is the LEA in the district where the charter school is located. The LEA does not have to provide special education services. The Act charges the charter school with that responsibility. The LEA continues to be responsible for the testing.
3. Teachers must participate in the state insurance plan. The Act does not mention other employees, but presumably the LEA may provide employee insurance because the Act authorizes the LEA to provide the insurance that is included in the charter school agreement.

ANALYSIS

The Tennessee Public Charter Schools Act, Tenn. Code Ann. §§ 49-13-101, *et seq.*, provides

for the creation¹ of three types of charter schools:

- (1) Type 1: a school for students who come from schools failing to make adequate yearly progress, as defined by the state's accountability system, Tenn. Code Ann. § 49-13-106(a)(1);
- (2) Type 2: a school to meet the needs of students eligible for special education services, Tenn. Code Ann. § 49-13-106(a)(2); and
- (3) Type 3: a school working in concert with a state public higher education teacher training institution, Tenn. Code Ann. § 49-13-106(a)(2).

You asked which students a Type 1 charter school may enroll. Tenn. Code Ann. § 49-13-106(a)(1) states in pertinent part as follows:

[Public charter schools may be formed to:] Provide alternatives for students in schools failing to make adequate yearly progress, as defined by the state's accountability system;

You want to know whether a Type 1 charter school may enroll students who do not come from failing schools. The statute defines which students may enroll at a Type 1 charter school by the words, "for students in schools failing to make adequate yearly progress, as defined by the state's accountability system." We understand that some argue that this definition should be read broadly to include other categories of students, as the Act does, for example, for Type 3 charter schools. Type 3 charter schools may enroll not only students from failing schools but also failing students (presumably from any school) and students eligible for free or reduced price school lunch programs. This argument is not supported by the Act.

The rule of statutory construction *expressio unius est exclusio alterius* (the expression of one thing is the exclusion of another) applies here. Where the legislature includes particular language in one section of a statute but omits it in another section of the same act, it is generally presumed that the legislature acted purposefully concerning the subjects included and excluded. See, e.g., *City of Knoxville v. Brown*, 195 Tenn. 501, 510, 260 S.W.2d 264, 267 (Tenn. 1953). Had the General Assembly wished, it could have made student enrollment eligibility the same for Types 1 and 3 charter schools. Because it did not, we conclude that to be eligible to enroll in a new Type 1 charter school, the student must have been enrolled in a failing school.

The statute allocates certain educational functions to the new charter school and some functions remain with the local education agency (LEA). An LEA is "any county, city, or special school district, unified school district, school district of any metropolitan form of government or any other school system established by law . . ." Tenn. Code Ann. § 49-3-302 and § 49-13-104(5). For the purposes of the charter school Act, the LEA is the "chartering authority," the local education

¹ We understand that the questions you pose are set in the context of newly created charter schools and not the conversion of an existing school into a charter school.

board that has the authority to approve or deny a charter school application. *See* Tenn. Code Ann. § 49-13-104(2); *see also* Tenn. Code Ann. § 49-13-107, -108, 49-13-110(c)(1); 49-13-111(d). It is this agency that normally would be responsible for the administration of state tests. *See* Tenn. Code Ann. §§ 49-1-601, *et seq.* The Act does not amend the latter statute nor state that administration of tests must be done by the charter school. Thus, we believe that the LEA continues to be responsible for the testing. On the other hand, the Act requires the charter school to provide special education services. Tenn. Code Ann. § 49-13-111(a)(4).

The Act also requires charter school “teachers”² to participate in the group insurance plans in the same manner as teachers of the LEA. Tenn. Code Ann. § 49-13-119. The term “teachers” is defined in Tenn. Code Ann. § 8-34-101(46) and, among others, includes helping teachers, librarians, principals, supervisor and any director of public schools. The Act contains no such mandatory provision for employees outside the “teacher” category. Presumably, the LEA could provide insurance for charter school employees other than “teachers,” but no provision of the Act requires them to do so. *See* Tenn. Code Ann. § 49-113-112(c) (The LEA “may provide liability or other forms of insurance pursuant to the charter agreement.”)

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² As defined in Tenn. Code Ann. § 8-34-101(46), "Teacher" means:

- (A) Any person employed in a public school as a teacher, helping teacher, librarian, principal or supervisor, and includes any superintendent of public schools, or administrative officer of a department of education, or of any educational institution supported in whole or in part by and under the control of the state; or
- (B) Any person employed in a public school as a teacher, librarian, principal, superintendent or chief administrative officer of a public school system, a supervisor of teachers, or any other position whereby the state requires the employee to be certificated as a teacher, or licensed as a nurse or physical therapist, in the public schools or of any educational institution supported in whole or in part by and under the control of the state. "Teacher" also includes any person employed in a public school as a reserve officer training corps (ROTC) instructor

Requested by:

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