

**STATE OF TENNESSEE**  
OFFICE OF THE  
**ATTORNEY GENERAL**  
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NASHVILLE, TENNESSEE 37243-0497

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Opinion No. 03-105

Local Education Agency's refusal to enroll child in Department of Children's Services custody who has been suspended or expelled from another Local Education Agency.

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**QUESTIONS**

1. May a local education agency (LEA) refuse to enroll a child who is in the custody of the Department of Children's Services (DCS) if that child has been suspended or expelled from another LEA?
2. May a local education agency (LEA) refuse to enroll a child who is in the custody of the Department of Children's Services (DCS) if that child has been expelled from another LEA for a "zero tolerance" offense defined by Tenn. Code Ann. § 49-6-3401(g)?

**OPINIONS**

1. No. The local education agency may not refuse to enroll a child in DCS custody if the child has been suspended or expelled from another LEA, unless the child was expelled less than one year previously for one of the "zero tolerance" offenses outlined in Tenn. Code Ann. § 49-6-3401(g).
2. Yes. If the child in DCS custody was expelled less than one year previously for a "zero tolerance" offense specified in Tenn. Code Ann. § 49-6-3401(g), the LEA may refuse to enroll the child.

**ANALYSIS**

Tenn. Code Ann. § 49-6-3401(f) states, in part,

Nothing in this title shall require an LEA to enroll a student who is under suspension and/or expelled in an LEA either in Tennessee or another state. . . . Any LEA which accepts enrollment of a student from another LEA may dismiss such student if it is determined subsequent to enrollment that the student had been suspended or expelled by the other LEA.

This same provision also states, however, "Nothing in this subsection shall affect children in state

custody or their enrollment in any LEA.”<sup>1</sup> Children in DCS custody therefore may not be refused enrollment for committing an offense at the child’s previous school.

However, the very next statutory provision, subsection (g) of Tenn. Code Ann. § 49-6-3041, states:

Notwithstanding the foregoing or any other law to the contrary, a pupil determined to have brought to school or to be in unauthorized possession on school property of a “firearm”, as defined in 18 U.S.C. § 921, shall be expelled for a period of not less than one (1) calendar year, except that the director may modify this expulsion on a case-by-case basis.

The subsection also requires a minimum one year expulsion for battery upon a teacher, principal administrator or any other school employee or school resource officer, or for possession of controlled substances or “legend drugs”.<sup>2</sup>

A basic principle of statutory construction requires the interpreter to ascertain and give effect to the intention and purpose of the legislature. The interpreter should analyze the natural and ordinary meaning of the language “read in the context of the entire statute.”<sup>3</sup> Interpreters should avoid any “forced or subtle construction” that might artificially limit or extend the meaning of the

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<sup>1</sup>The complete subsection of Tenn. Code Ann. § 49-6-3401(f) states as follows:

(f) Nothing in this title shall require an LEA to enroll a student who is under suspension and/or expelled in an LEA either in Tennessee or another state. The director of schools for the school system in which the suspended student requests enrollment shall make a recommendation to the local board of education to approve or deny the request. Such recommendation shall occur only after investigation of the facts surrounding the suspension from the former school system. If the recommendation is to deny admission, and if the local board approves the director of schools' recommendation, the director of schools shall, on behalf of the board of education, notify the commissioner of the decision. **Nothing in this subsection shall affect children in state custody or their enrollment in any LEA.** Any LEA which accepts enrollment of a student from another LEA may dismiss such student if it is determined subsequent to enrollment that the student had been suspended or expelled by the other LEA. (emphasis added).

<sup>2</sup>Tenn. Code Ann. § 49-6-3401(g) states as follows:

(g) **Notwithstanding the foregoing or any other law to the contrary**, a pupil determined to have brought to school or to be in unauthorized possession on school property of a “firearm”, as defined in 18 U.S.C. § 921, shall be expelled for a period of not less than one (1) calendar year, except that the director may modify this expulsion on a case-by-case basis. In addition to the other provisions of this part, a student committing battery upon any teacher, principal, administrator, any other employee of an LEA, or school resource officer, or unlawfully possessing any drug including any “controlled substance” as defined in §§ 39-17-403 through 39-17-415, or “legend drug” as defined by § 53-10-101, shall be expelled for a period of not less than one (1) calendar year, except that the director may modify this expulsion on a case-by-case basis. For purposes of this subsection, “expelled” means removed from the pupil's regular school program at the location where the violation occurred or removed from school attendance altogether, as determined by the school official. Nothing in this section shall be construed to prohibit the assignment of such students to an alternative school. Disciplinary policies and procedures for all other student offenses, including terms of suspensions and expulsions, shall be determined by local board of education policy. (emphasis added).

<sup>3</sup>*Nat'l Gas Distribs., Inc. v. State*, 804 S.W.2d 66, 67 (Tenn. 1991).

language.<sup>4</sup> Where the statutory language is plain, clear, and unambiguous, one must avoid any interpretation or construction that departs from the words of the statute.<sup>5</sup>

Because of the clear exception in Tenn. Code Ann. § 49-6-3401(f), an LEA may not refuse to enroll a child in DCS custody if that child has been suspended or expelled from another LEA.

The exception in subsection (f) does not apply to subsection (g). Statutory exceptions are strictly construed to avoid over application.<sup>6</sup>

Since the exception in Tenn. Code Ann. § 49-6-3401(f) does not apply to subsection (g), all children expelled for the specific “zero tolerance” offenses described in that subsection may be refused enrollment in another LEA for one calendar year following their expulsion. This mandatory one year expulsion applies regardless of whether a student is in DCS custody. An LEA may therefore refuse to enroll a child in DCS custody within one calendar year of the child’s expulsion or suspension from another LEA, but only if the expulsion or suspension was for one of the “zero tolerance” offenses specified and defined in Tenn. Code Ann. § 49-6-3401(g).<sup>7</sup>

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<sup>4</sup>*Tuggle v. Allright Parking Sys., Inc.*, 922 S.W.2d 105, 107 (Tenn. 1996); *see also Nat’l Gas Distribs.*, 804 S.W.2d at 67; *Worrall v. Kroger Co.*, 545 S.W.2d 736, 738 (Tenn. 1977).

<sup>5</sup>*Tuggle*, 922 S.W.2d at 107.

<sup>6</sup>*Exxon Corp. v. Metro. Gov’t of Nashville*, 72 S.W.3d 638, 642 (Tenn. 2002); *Carter v. Jett*, 370 S.W.2d 576, 581 (Tenn. Ct. App. 1963).

<sup>7</sup>Local boards of education may create their own “zero tolerance” offenses. Tenn. Code Ann. § 49-6-3401(g) (“Disciplinary policies and procedures for all other student offenses, including terms of suspensions and expulsions, shall be determined by local board of education policy.”); Tenn. Code Ann. 49-6-4012 (“The governing body of each local education agency shall be responsible for formulating a code of acceptable behavior and discipline to apply to the students in each school operated by such local education agency.”). Except for the offenses outlined in Tenn. Code Ann. § 49-6-3401(g), no “zero tolerance” offenses may “necessarily result in a presumptive one (1) calendar year expulsion.” Tenn. Code Ann. § 49-6-4216(b)(1).

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