S T A T E O F T E N N E S S E E
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Opinion No. 03-130

Charter school eligibility for students assigned to a new school without a value added assessment; effect of charter school rejection on optional school eligibility.

QUESTIONS

1. Is it unconstitutional to deny enrollment in a "Type 1" Tennessee Public Charter School (Tenn. Code Ann. § 49-13-106(a)(1)) to the following:

   a. An applicant graduating from a high priority elementary school assigned to a new middle school that is without a value added assessment?
   b. An applicant whose parent/guardian is not satisfied with the applicant's progress?
   c. An applicant with a disciplinary problem?

2. Is it unconstitutional to deny a student the "right" to attend an "optional" (or "magnet") public school after being rejected for Charter School enrollment?

3. Could the above criteria and/or other options be considered for legislation to amend the Tennessee Public Charter School Act, Tenn. Code Ann. § 49-13-101 et seq.?

OPINIONS

1. No. 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 new middle school without value added assessment is not a failing school.

2. Students do not have a "right" to attend optional public schools. Tenn. Code Ann. § 49-6-3101 allows a local education agency (LEA) to determine eligibility and application guidelines for "optional" or "magnet" schools. Eligibility or ineligibility to attend a charter school does not affect a student's eligibility to attend an optional public school.

3. Yes. Charter schools were created through the legislative process and the law may be amended to allow enrollment of a broader range of applicants.

ANALYSIS

This Office has recently issued several opinions concerning the Tennessee Public Charter Schools Act of 2002 (Act).[1] In Op. Tenn. Atty. Gen. 03-083 (July 2, 2003), we outlined the Act's three distinct types of charter schools. Type 1 schools may be created for students from schools failing to make adequate yearly progress and Type 2 schools to meet the needs of students eligible for special education services.[2] Type 3 schools may be created in concert with a state public higher education teacher training institution to meet the needs of a broad range of students.[3]

The only students eligible to enroll in Type 1 schools are students who come from failing schools.[4] As we noted in an earlier opinion, "Students eligible to enroll in a charter school formed under Tenn. Code Ann. § 49-13-106(a)(1) [*i.e.*, Type 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."[5] A new middle school without value added assessment is not a failing school. Therefore students assigned to such a new school are not students coming from a school failing to make adequate yearly progress, regardless of whether or not the elementary school they graduated from was a failing school.

The primary rule in interpreting a statute is to ascertain and to give the fullest possible effect to the General Assembly's intention and purpose as reflected in the statute's language. Courts avoid construing a statute in a way that goes beyond or unduly restricts the statute's intended purpose.[6]

The courts assume that, when the General Assembly passed the statute, it chose its words deliberately and meant what it said. Thus, the search for a statute's purpose and effect begins with the statute's words. Courts give the words their natural and ordinary meaning unless their context requires otherwise. They also look at the words in context, within the same provision and as a part of the whole.[7] The interpretation must make sense and fit with the entire statute and the

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[1]Op. Tenn. Atty. Gen. 03-46 (April 17, 2003); Op. Tenn. Atty. Gen. 03-083 (July 2, 2003); Op. Tenn. Atty. Gen. 03-090 (July 24, 2003); Op. Tenn. Atty. Gen. 03-105 (Aug. 21, 2003).

[2]Tenn Code Ann. § 49-13-106(a)(1)-(2).

[3]Tenn Code Ann. § 49-13-106(a)(2). At least seventy-five percent (75%) of students in Type 3 schools must be either failing to make adequate yearly progress themselves, come from a failing school or be eligible for free or reduced price school lunch programs. The Act does not contain specific enrollment limitations for the other twenty-five percent (25%) of students in Type 3 charter schools. *See* Op. Tenn. Atty. Gen. 03-46 (April 17, 2003).

[4]Tenn. Code Ann. §49-13-106(a)(1).

[5]Op. Tenn. Atty. Gen. 03-083 (July 2, 2003)

[6]*See State v. Medicine Bird Black Bear White Eagle*, 63 S.W.3d 734, 754-55 (Tenn. App. 2001).

[7]*Id.*

statute's general purpose.[8]

Reading the statute in a way that labels new schools as "failing" before any assessment has been done would not seem to make sense. If a new school was labeled "failing" without any value added assessment, eighth grade students reassigned from both failing and non-failing schools would then be eligible for enrollment in a Type 1 charter school. Such a reading contradicts the language of Tenn Code Ann. § 49-13-106(a)(1) which creates Type 1 charter schools as "alternatives for students in schools failing to make adequate yearly progress." Allowing students reassigned to a new school would make eligibility for enrollment in a Type 1 charter school — at least for that group of students — dependent upon school construction, rather than school performance. New school construction does not, according to the statute, establish eligibility for Type 1, 2 or 3 charter schools.

Interpreting the Act to grant Type 1 charter school eligibility to students assigned to a new school does not fit the general purpose of the Act. Charter schools were created to "improve learning for all students," "close the achievement gap between high and low students," "provide options for parents to meet educational needs of students in low performing schools," and to "encourage the use of different and innovative teaching methods . . . in exchange for greater responsibility for student performance."[9] The Act's purpose was not to get as many students into charter schools as possible, but to provide charter schools as an alternative to attending failing schools. Students faced with attending a new middle school or attending a charter school are not in the same difficult situation as students faced with attending a failing middle school or a charter school.

Type 1 charter schools may not enroll students based on a parent's or guardian's dissatisfaction with the applicant's progress. The Act also does not make disciplinary problems a basis of eligibility for Type 1 charter school enrollment. Type 1 charter schools may only admit students who come from failing schools, i.e., those students who, if not admitted to the charter school, would remain enrolled in a failing school.

Eligibility or ineligibility to attend a charter school does not affect a student's eligibility to attend an optional public school. Students do not have a "right" to attend optional public schools. Tenn. Code Ann. § 49-6-3101 allows LEAs to determine eligibility and application guidelines for "optional" or "magnet"schools.

Finally, charter schools were created by the legislature and the legislature may amend the Act to allow enrollment of a broader range of applicants.

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[8] *Id.*

[9] Tenn. Code Ann. § 49-13-102(a).

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