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August 30, 2007

Opinion No. 07-131

Charter Schools

QUESTIONS

1. Under the Tennessee Public Charter Schools Act of 2002, Tenn. Code Ann. §§ 49-13-101 *et seq.*, to what extent may the chartering authority require the sponsor of an independent charter school, organized as a 501(c)(3) entity with a separate governing body, to retain legal and fiscal responsibilities for the operation and governance of the charter school?

2. Under the Tennessee Public Charter Schools Act and the federal Individuals With Disabilities Education Act (hereinafter the "IDEA"), 20 U.S.C. §§ 1400 et seq., may a chartering authority impose on a charter school conditions on the administration of the charter school's special education program that include: (1) "In order to ensure that the LRE [least restrictive environment] requirements are met, the maximum percentage of students identified as eligible under IDEA shall not exceed twice the average of students identified as eligible under IDEA in the local school system."; (2) "The determination of the amount of staff, the amount of related service providers, materials, supplementary aids and services, related aids and services, the specific staff shall be determined by the local school system as the final determination of staff and services."; (3) "In the event the procedures determined by the local school system have not been followed [by the charter school], then the local school system shall determine that the charter school has not complied with the provisions of the contract."; and (4) "The charter school shall annually provide $750 per pupil (both special education and regular education) to the local school system. These funds shall provide legal counsel and administrative support for these issues (complaint, due process, law suits, OCR). These funds shall be deducted from the first installment from the local school system to the charter school."

3. Under the Tennessee Public Charter Schools Act, may a charter that was awarded by operation of the state charter school law be extended one more school year when the charter school is unable to open due to the failure of the chartering authority and the sponsor to come to terms on a charter agreement?

OPINIONS

1. There is no statutory provision which would authorize a chartering authority to require the sponsor of an independent charter school, organized as a 501(c)(3) entity with a separate governing body, to retain legal and fiscal responsibilities for the operation and governance of the charter school.

2. No. A chartering authority is bound by the charter agreement and cannot subsequently impose conditions on the administration of a charter school's special education program.

3. No. The term of a charter agreement is five years, and there is no statute authorizing an extension of a charter.

ANALYSIS

1. Question 1 asks whether a chartering authority can require the sponsor of an independent charter school to retain legal and fiscal responsibilities for the operation and governance of the charter school. There is no statutory provision authorizing such a requirement. The Tennessee Public Charter Schools Act defines "sponsor" as the entity which files the application in support of the establishment of a charter school. *See* Tenn. Code Ann. § 49-13-104(7). According to the Tennessee Public Charter Schools Act, part of the application should contain the names and addresses of the members of the "governing body". *See* Tenn. Code Ann. § 49-13-107. The "governing body" is "the organized group of persons who will operate a public charter school by deciding matters including, but not limited to, budgeting, curriculum and other operating procedures for the public charter school and by overseeing management and administration of a public charter school." *See* Tenn. Code Ann. § 49-13-104(3).

2. Question 2 asks whether a chartering authority can impose certain conditions on the administration of the charter school's special education program under the Tennessee Public Charter Schools Act. It is our understanding from the information provided that the application of the charter school in question was approved by operation of law when the local educational agency failed to either approve or deny the application within sixty days as provided in Tenn. Code Ann. § 49-13-108. [1] Thus, the charter application, which must contain proposals on the management and administration of the charter school, automatically became the charter as provided in Tenn. Code Ann. § 49-13-110. *See also* Tenn. Code Ann. § 49-13-107.

There is no statute which provides the authority for a chartering authority to impose conditions on administration of a charter school that has already become chartered. In regard to special education services, the Tennessee Public Charter Schools Act states, "A public charter

[1] Question 2 does not request an opinion on the application process itself or on what potential negotiations may take place between the sponsor of a charter school and the local educational agency during the application process.

school shall provide special education services . . . and . . . be subject to all federal and state laws . . . prohibiting discrimination on the basis of disability, . . . or the need for special education services." *See* Tenn. Code Ann. § 49-13-111(a)(4) and (b).

Question 2 also asks whether a chartering authority can impose certain conditions on the administration of the charter school's special education program under the federal Individuals With Disabilities Education Act (hereinafter IDEA), 20 U.S.C. §§ 1400 *et seq*. The case of *Mata v. Elsie Whitlow Stokes Community Freedom P.C.S.*, 2007 WL 1521047 (D.D.C.) provides a concise summary of the IDEA:

> The IDEA seeks to "ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living." *See* 20 U.S.C. § 1400(d)(1)(A). As a condition of receiving funds under the Act, the IDEA requires that school districts adopt procedures to ensure appropriate educational placement of special needs students. *See* 20 U.S.C. § 1413. Parents who object to their child's individualized education programs are entitled to an impartial due process hearing, see 20 U.S.C. §§ 1415(b)(6), (f)(1), at which they have "a right to be accompanied and advised by counsel." 20 U.S.C. § 1415(h)(1).

As the *Mata* case explains, the IDEA provides a mechanism by which State and local governments receive federal funding for the implementation of special education services. *See* 20 U.S.C. §§ 1412 and 1413. "A local educational agency is eligible for assistance under [the IDEA] for a fiscal year if such agency submits a plan that provides assurances to the State educational agency that the local educational agency meets [IDEA requirements]." *See* 20 U.S.C. § 1413. A "local education agency" under the IDEA is "a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools." *See* 20 U.S.C. § 1401(19).

Under the Tennessee Public Charter Schools Act, the local education agency is essentially the chartering authority. *Compare* Tenn. Code § 49-13-104(2) and 20 U.S.C. § 1401(19). Thus, the chartering authority has the responsibility under the IDEA to assure that all schools under its supervision comply with the IDEA.

The conclusion to be drawn from a review of both statutes is that the Tennessee Public Charter Schools Act contemplates that a sponsor of a charter school would address special education services in the application. The local educational agency has the power to deny an application which does not adequately address special education services. Once the application is approved, the charter school would then provide special education services as stated in its charter. The local education agency would fund the charter school in accordance with federal

and state law but retain its supervisory powers including the power to revoke the charter pursuant to Tenn. Code Ann. § 49-13-122.[2]

3. Question 3 asks whether a charter can be extended one more school year when the charter school is unable to open due to the failure of the chartering authority and the sponsor to come to terms on a charter agreement. Based upon the information provided in the opinion request, it is understood that the sponsor filed a charter application in accordance with Tenn. Code Ann. § 49-13-107. The local board of education failed to act upon the application within sixty days as provided in Tenn. Code Ann. § 49-13-108. Thus, the charter application was deemed approved. *See* Tenn. Code Ann. § 49-13-108. However, the charter school did not open its first year. Thus, you now ask whether a charter school's charter can be extended one year once its application has been approved due to failure of the charter school to open the first year of the charter.

There is no statutory authority permitting such an extension. Pursuant to the Tennessee Public Charter Schools Act, the term of a charter is five years. *See* Tenn. Code Ann. § 49-13-121(a). The Tennessee Public Charter Schools Act has no provision either automatically extending the charter because the charter school fails to open or permitting the school to apply for an extension of its charter.

Once a five year charter expires, the Tennessee Public Charter Schools Act provides for renewal of the charter through an application process similar to the process by which the charter school was created. *See* Tenn. Code Ann. § 49-13-121. Thus, even though the charter school in question may only be open for four years, it would be permitted to file for renewal.

It is worth noting that the Tennessee Public Charter Schools Act has a waiver provision which permits a sponsor to apply "for a waiver of any state board rule or statute that inhibits or hinders the proposed charter school's ability to meet its goals or comply with its mission statement." *See* Tenn. Code Ann. § 49-13-105. However, this waiver provision applies to "proposed" charter schools as opposed to charter schools that have not opened during the first year of the charter.

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[2]The four secondary questions contained in Question 2 are not specifically addressed because they are rendered moot by our response to the primary question of whether the local educational agency has authority to impose any conditions on a charter school after the charter application is approved.

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