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Opinion No. 13-34

Distribution of Basic Education Program Funds to Charter Schools

QUESTION

Under Tennessee law, a local education agency ("LEA") receives Basic Education Program ("BEP") funding for the current year based on the LEA's prior year total student enrollment, with the opportunity to receive additional BEP funding if the LEA has a certain growth in its total student enrollment in the current year. If an LEA experiences a drop in total enrollment for the current year, must the LEA pass through funds on a per-pupil basis to charter schools within the LEA based on the number of students that are attending the charter schools during the current year?

OPINION

Yes. The LEA must pass through funds on a per-pupil basis to charter schools within the LEA based on the students that attend the charter schools during the year the LEA funds are distributed.

ANALYSIS

The Department of Education provides BEP funds to school districts pursuant to a formula devised by the Tennessee Board of Education and in accordance with the funding procedure set forth in Tenn. Code Ann. § 49-3-351. This procedure takes into consideration a school's Average Daily Membership, or ADM, which term is defined at Tenn. Code Ann. § 49-3-301(2) as "the sum of the total number of days enrolled divided by the number of days school is in session during this period as provided in the rules and regulations of the state board." *See* Tenn. Code Ann. § 49-3-351(d).

The intent of Tenn. Code Ann. § 49-3-351(d), which governs the calculation of the amount of BEP funding distributed annually to each LEA, is to provide funding for the current year to the LEA based primarily on the LEA's prior year ADM with the opportunity for additional funds for an LEA if the LEA experiences a defined level of growth in ADM during the current year. This provision, however, evidences no intent or process whereby an LEA would forfeit any BEP funding for the current year if the current year ADM is less than the prior year ADM on which current year funding is based. *See* Tenn. Code Ann. § 49-3-351(d). As Tenn. Code Ann. § 49-3-351(d) specifically states:

> Notwithstanding any other section or law to the contrary, the BEP of every LEA will be calculated on the basis of prior year ADM, or FTEADM, or identified and served special education students (I&S), with the following exceptions: if the LEA's current year ADM, FTEADM, and I&S, taken as a whole, exceeds by more than two percent (2%) the prior year's ADM, FTEADM, and I&S, taken as a whole, then that LEA's allocation of state funds shall be calculated on the basis of the current year's ADM, FTEADM, and I&S less the first two percent (2%) by which it exceeds the prior year's ADM, FTEADM, and I&S. The increased amount so calculated shall be distributed to the extent funds are appropriated for that specific purpose. If the funds appropriated for that purpose are insufficient to provide for the LEA's increased allocations, the commissioner shall apply a pro rata reduction to the increased amount each LEA is otherwise eligible to receive. If the funds appropriated for that purpose exceed the amount required to fund growth in excess of two percent (2%), then that percentage may be lowered to a percentage that may ensure that all funds appropriated are allocated and disbursed to LEAs. An estimated fifty percent (50%) of the appropriated amount shall be distributed to such an eligible LEA by February 1, with the remainder, subject to any adjustment of numbers by the department of education that may affect the remaining amount, to be distributed by the following June 30. In calculating the allocations under the BEP formula, the commissioner, with the approval of the state board of education and the commissioner of finance and administration, shall establish definitions of ADM, FTEADM, and I&S, which will be used to determine each LEA's BEP funding. It is the legislative intent that the definitions so established approximate as closely as possible full year ADM, FTEADM, and I&S.

Annual funding allocations for the current year for charter schools within an LEA are based on 100% of State and local funds received by the LEA. Tenn. Code Ann. § 49-13-112(b)(1). Student enrollments used in funding allocations for charter schools are to be for the same period used in allocating State funds to the LEA under the BEP. Tenn. Code Ann. § 49-13-112(b)(2). Initial BEP allocations to charter schools are based on the prior year's ADM, Tenn. Comp. R. & Regs. 0520-14-01-.03(1), and, for new charter schools or charter schools adding a new grade, projected enrollment. Tenn. Comp. R. & Regs. 0520-14-01-.03(1)(g).

As previously mentioned, the Department of Education makes adjustments to BEP allocations to an LEA based on current-year enrollment to recognize enrollment growth. *See* Tenn. Code Ann. §§ 49-3-351(d), -354(o). Under certain circumstances the funds allocated may be upwardly adjusted (referred to as "growth funds") to ensure that the appropriate BEP payment was made to the LEA. Tenn. Code Ann. § 49-3-351(d). These growth funds are distributed on February 1 and June 30, based on enrollment information provided to the Department of Education by the LEA. *Id.* Thus, by the end of the school year, an LEA receives BEP funds for all students enrolled to the extent that funds have been appropriated by the General Assembly for that purpose. *Id.* This includes students new to the LEA, whether they are enrolled in a school

managed by the LEA or in a charter school authorized by the LEA. Tenn. Comp. R. & Regs. 0520-14-01.03(1)(e).[1]

The question posed concerns the following factual scenario. An LEA receives BEP funding based on the prior year's ADM but experiences a total decrease in enrollment during the current year, resulting in an actual ADM lower than the prior year's ADM. While such an LEA would not receive growth funds due to its declining enrollment, the LEA would receive BEP funding for the total number of students enrolled in the prior year and, because of the actual decrease in enrollment for the current year, would receive funding for students in excess of the amount that would have been received if BEP funding were adjusted based on ADM in the current year. *See* Tenn. Code Ann. § 49-3-351(d). However, unlike the LEA, the student enrollment at the charter schools located within the LEA, whose students are a subset of the LEA's total student population, increased from the prior year to the current year. At issue is whether the LEA must pass through the per-pupil BEP funds to the charter schools to cover all of the students enrolled in those schools during the current year.

Where excess BEP funds are paid to the LEA because the original projected amount was overstated due to the use of forecasted data that did not meet expectations and the excess funds remain with the LEA, Tenn. Code Ann. § 49-13-112 provides that the LEA is obligated to pass through a per-pupil portion of the total BEP funds received for the charter schools for their ADM for the current school year. *See* Tenn. Code Ann. § 49-13-112 ("(a) A local board of education shall allocate to the charter school an amount *equal to the per student state and local funds received* by the LEA. . . . (b)(1) *Allocations shall be based on one hundred percent (100%) of state and local funds received* by the LEA") (emphasis added). The statutory language indicates a clear legislative intent that all funds provided to the LEA must be passed through to charter schools within that LEA on a current per-pupil basis. *See. e.g. Garrison v. Bickford*, 377 S.W.3d 659, 773 (Tenn. 2012) (stating the general rule of statutory construction that courts must ascertain and give effect to legislative intent by applying the plain meaning of the words used in a statute). Thus, the General Assembly intended to require full pass-through of all BEP funds actually received by an LEA to charter schools on a per-pupil basis in the pertinent school year.

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[1] Tenn. Comp. R. & Regs. 0520-14-01.03(1)(e) provides:

> If students are new to the LEA and enroll first in a public charter school, their enrollment would not be reflected in the BEP formula used to determine the initial distributions to the LEA. But their enrollment would be reflected in the growth funds distributed in February and June. Thus, as the LEA receives increased funding in subsequent distributions to reflect the increased ADM, the LEA must allocate the funds for those students to the public charter schools they attend. LEAs can determine the amount to allocate by determining pro-rata shares of growth money based on the current district-wide ADM, and then divide the growth money by that figure to determine the amount to allocate to the public charter schools for each student.

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