

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

July 14, 2015

Opinion No. 15-58

Uniform Grading Policy and HOPE Scholarship Eligibility

Question

Are private secondary schools as defined in Tennessee Code Annotated § 49-4-902(10)(B) required to use the state Uniform Grading Policy as set forth in Tenn. Code Ann. § 49-4-902(41) for purposes of establishing student eligibility for the HOPE scholarship?

Opinion

No. It appears that the Legislature intended that HOPE scholarship eligibility may be determined either through the use of the State uniform grading scale or another grading method that permits a determination of the mathematical equivalence to grades on the uniform scale.

ANALYSIS

This question arises from an apparent inconsistency between the language of Tenn. Code Ann. § 49-4-902(10)(B) and Tenn. Code Ann. § 49-4-902(41) regarding the use of grades on a 4.0 scale to determine eligibility for HOPE scholarships.

Tennessee Code Annotated § 49-4-907 addresses general eligibility requirements for HOPE scholarships as follows:

To be eligible for a Tennessee HOPE scholarship as an entering freshman, a student who graduated from an *eligible high school* after December 1, 2003, upon having completed curriculum requirements of the high school for graduation, shall:

- (1) Meet the requirements of §§ 49-4-904 and 49-4-905;
- (2) Be admitted to and enroll in an eligible postsecondary institution no later than sixteen (16) months after graduation from high school; and
- (3)(A) *Achieve a final overall weighted high school grade point average of at least 3.0; or*
 - (B) Attain a composite ACT score of at least 21 on any single ACT test date or a combined SAT score of at least 980 on any single SAT test date.

(Emphasis added.)

Tennessee Code Annotated § 49-4-902(10) defines “eligible high school” to mean:

(A) A Tennessee public secondary school,

(B) *A private secondary school that is located in this state and is approved by the state board of education as a Category 1, 2 or 3 secondary school in accordance with the applicable rules and regulations,*

(C) A secondary school operated by the United States department of defense on a military base that is located in whole or in part in this state,

(D) An out-of-state boarding school attended by a bona fide Tennessee resident that is accredited by:

(i) A regional accrediting association; or

(ii) A member of the National Association of Independent Schools Commission on Accreditation; . . .

(Emphasis added.)

Tenn. Code Ann. § 49-4-902(41) defines “weighted grade point average” to mean a

. . . grade point average on a 4.0 scale calculated with additional points awarded for advanced placement, honors or other similar courses, according to the uniform system of weighting of courses adopted by the state board of education, under § 49-1-302(a)(17); . . .

(Emphasis added.)

While private secondary schools are “eligible high schools” for purposes of HOPE scholarship eligibility, many private secondary schools employ a grading scale other than a 4.0 grading scale. In light of the statutory language quoted above, this leads to the question of whether graduates of private high schools that employ a different grading scale than a 4.0 scale are eligible for HOPE scholarships.

Chapter 0520-07-02 of the Rules of the State Board of Education govern the “Non-Public School Approval Process.” These rules set forth numerous requirements and conditions that must be met by the various types of private schools¹ before they gain State approval to operate, but there is no requirement under current Tennessee statutes, rules, or regulations that private schools

¹ The six categories of non-public schools are: I – schools approved individually by the State Department of Education; II – schools that belong to an agency whose accreditation process is approved by the State Board of Education; III – schools which are regionally accredited; IV – schools which are “church related” and exempt from regulations according to Tenn. Code Ann. § 49-50-801; V – all other schools, except home schools; and VI – international schools affiliated with a Tennessee public university acting as an agency whose accreditation process is approved by the State Board of Education. Tenn. Comp. R & Regs. 0520-07-02-.01

employ a 4.0 grading scale, or any particular grading scale.² Nevertheless, the statutes that govern eligibility for HOPE scholarships broadly encompass graduates from non-public high schools as well as home-schooled students, graduates of Tennessee high schools that are not “eligible high schools,” and students who have obtained a GED,³ students who graduate from out-of-state schools while their parents are serving in the military,⁴ students who graduate from high school in a foreign nation while their parents are serving as religious workers,⁵ and other “non-traditional” students.⁶

Additionally, the General Assembly has established that gifted students in public or private high schools are eligible to enroll in college credit courses and receive college credit if they have “a grade point average equivalent to three point two (3.2) on a four point zero (4.0) maximum basis[.]” Tenn. Code Ann. § 49-6-3111(a) (emphasis added). This language recognizes that (1) there may be differences in grading systems employed by public and private high schools, and (2) grades can be mathematically converted to their equivalents on a 4.0 scale.

When interpreting statutes, the role of the interpreting court is “to ascertain and give effect to the legislative intent.” *Sharp v. Richardson*, 937 S.W.2d 846, 850 (Tenn. 1996). In construing statutes relating to the same subject matter, a court has a duty to avoid a construction that will place statutes in conflict and to resolve such conflicts, whenever possible, so as to provide a harmonious interpretation of the laws. *Id.* In the absence of ambiguity, legislative intent is derived from the face of a statute, and the interpreting court should not depart from the “natural and ordinary” meaning of the statute’s language. *Hawkins v. Case Management Incorporated*, 165 S.W.3d 296, 300 (Tenn. 2004). Statutes relating to the same subject should be interpreted *in pari materia*, i.e., construed together and in such a way that they are in harmony rather than in conflict. *See Cronin v. Howe*, 906 S.W.2d 910, 912 (Tenn. 1995); *Wilson v. Johnson Cnty.*, 879 S.W.2d 807, 809 (Tenn. 1994).

Applying these principles of statutory construction, it appears that the General Assembly, in defining such a broad spectrum of students eligible for HOPE scholarships, did not intend that Tennessee private school students be rendered ineligible based upon their schools’ use of grading scales other than the 4.0 scale. For example, in extending eligibility to students who are Tennessee citizens but are not graduates from “eligible high schools,” the General Assembly did not base the criteria on the school’s use of a uniform grading scale but rather on its operation by the United States government or its accreditation by a recognized accrediting association, both regional and foreign.⁷ The approved regional accrediting associations do not include use of a uniform 4.0

² Tenn. Code Ann. § 49-1-302(a)(17) provides that a uniform grading system should be adopted and implemented by all Tennessee public schools. There is no such requirement applicable to private schools, however.

³ Tenn. Code Ann. §§ 49-4-905(b), 908.

⁴ Tenn. Code Ann. §§ 49-4-926, 928.

⁵ Tenn. Code Ann. § 49-4-934.

⁶ Tenn. Code Ann. § 49-4-931. *See also* Tenn. Code Ann. §§ 49-4-935; 942.

⁷ Tenn. Code Ann. §§ 49-4-926, 934; *see also* Tenn. Comp. R. & Reg. 1640-01-19-.05(5)-(6) (2010).

grading scale as a criterion in their standards of accreditation.⁸ By extending eligibility to schools recognized by accrediting associations, uniformity in academic standards can be obtained without rendering students ineligible simply because the institution they attend uses a system of grading other than a 4.0 scale.

Of the four types of eligible high schools, only Tennessee public secondary schools are certain to employ the uniform grading system as set forth in Tenn. Code Ann. §§ 49-1-302(a)(17) and 49-6-407. But HOPE scholarships are available to students from a wide variety of non-eligible high schools, and there is no requirement that Tennessee private schools use the uniform grading system in order for their students to be eligible for HOPE scholarships. Moreover, weighted grade point averages under Tenn. Code Ann. § 49-4-902(41) may be obtained by determining the mathematical equivalence of grades from another system to those on the uniform scale. Thus, it appears that the General Assembly did not intend for Tennessee private school students to be rendered ineligible for HOPE scholarships based upon their schools' use of grading scales other than the 4.0 scale; rather the General Assembly intended that HOPE scholarship eligibility may be determined either through the use of the State uniform grading scale or another grading method that permits a determination of the mathematical equivalence to grades on the uniform scale.

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⁸ Tenn. Code Ann. § 49-4-902(29). *See, e.g.*, New England Assoc. of Schools and Colleges, Standards & Indicators (Feb. 2014), <https://cis.neasc.org/standards-policies/standards-indicators>; Middle States Assoc. of Colleges and Schools, Standards of Accreditation (2014), [http://www.msa-cess.org/Customized/Uploads/ByDate/2015/April_2015/April_23rd_2015/Standards%20for%20Accreditation%20for%20Schools%20\(2014\)69218.pdf](http://www.msa-cess.org/Customized/Uploads/ByDate/2015/April_2015/April_23rd_2015/Standards%20for%20Accreditation%20for%20Schools%20(2014)69218.pdf).