

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

August 30, 2016

Opinion No. 16-34

Non-Structured Physical Activity for Students

Question

Do the guidelines for “classroom activity breaks” in the Tennessee Department of Education’s June 8, 2016, and June 23, 2016 memoranda comply with the requirements of Tenn. Code Ann. § 49-6-1021?

Opinion

To the extent that the guidelines authorize physical activities for “classroom activity breaks” that are structured, the guidelines do not comply with the “non-structured physical activity” requirements of Tenn. Code Ann. § 49-6-1021.

ANALYSIS

Tenn. Code Ann. § 49-6-1021 requires local educational agencies (“LEAs”) to “integrate” certain amounts of “non-structured physical activity” into school days for students in grades K-6. Tenn. Code Ann. § 49-6-1021(a)(1)-(2). “Non-structured physical activity” is defined as a “temporary withdrawal or cessation from usual school work or sedentary activities during which an opportunity for rigorous physical activity is provided.” Tenn. Code Ann. § 49-6-1021(b).

The Tennessee Department of Education (“Department”) issued memoranda on June 8, 2016, and June 23, 2016, that set forth “guidelines for implementation” of Tenn. Code Ann. § 49-6-1021. According to these memoranda, the requirement to integrate “non-structured physical activity” may be satisfied by “any type of classroom physical activity breaks, such as Go Noodle, Fit Wizard, Take 10!, SPARK, Energizing Brain Breaks, Chair Yoga, Fuel up to Play 60 Classroom Activity Breaks, Action for Health [sic] Kids Brain Breaks, Active Academics, Adventure to Fitness, Move to Learn, Take a Break!, Brain and Body Boost, Minds in Bloom, Read and Ride programs, Action Based Learning Labs, bike desks, etc.” (June 8, 2016, and June 23, 2016 Memoranda). The Department concludes that these physical activity breaks are sufficient “as long as the activity provides the opportunity for rigorous activity and meets the number of minutes required for physical activity breaks.” (June 23, 2016 Memorandum.)

Whether the programs identified by the Department comply with Tenn. Code Ann. § 49-6-1021 depends on the meaning of the phrase “non-structured physical activity” and on the nature of the specified programs. By its plain language the statute requires that the prescribed amount of physical activity be “non-structured,” but the statutory definition of “non-structured physical activity” appears at first blush to include *any* physical activity, whether structured or non-

structured. *See* Tenn. Code Ann. § 49-6-1021(b) (defining “non-structured physical activity” as “a temporary withdrawal or cessation from usual school work or sedentary activities during which an opportunity for rigorous physical activity is provided.”).

Thus, the statutory definition is arguably in tension with the statutory phrase that it defines. And, indeed, in issuing its guidelines, the Department appears to have focused on the definition and to have read that definition broadly to include both non-structured and structured physical activity. But when read in light of the applicable rules of statutory construction, the definition cannot reasonably be interpreted to include structured physical activity.

When interpreting a statute, courts will “assign a statute the full effect of the legislative intent without restricting or expanding the intended scope of the statute.” *State v. Dycus*, 456 S.W.3d 918, 924 (Tenn. 2015) (citations omitted). Although legislative intent is generally ascertained by the plain language of a statute, a court is not constrained to apply a statute in a manner that would violate the “obvious intent” of the legislature. *State v. Marshall*, 319 S.W.3d 558, 561 (Tenn. 2010). Courts “are required to interpret all statutes in a way that makes sense rather than nonsense.” *Powell v. Cmty. Health Sys., Inc.*, 312 S.W.3d 496, 508 (Tenn. 2010) (citations omitted). A court “will not apply a particular interpretation to a statute if that interpretation would yield an absurd result.” *State v. Flemming*, 19 S.W.3d 195, 197 (Tenn. 2000) (citing *State v. Legg*, 9 S.W.3d 111, 116 (Tenn. 1999)). If statutes or parts of a statute appear to be in tension, a court will adopt a reasonable construction that avoids statutory conflict and provides for harmonious operation of the law. *Cronin v. Howe*, 906 S.W.2d 910, 912 (Tenn. 1995). Every word in a statute has meaning and purpose, and each word should be given its full effect, and dictionary definitions may be referenced and relied upon when a word is not defined by the statute. *See, e.g., State v. White*, 362 S.W. 3d 559, 566 (Tenn. 2012); *State v. Clark*, 355 S.W.3d 590, 593 (Tenn. Crim. App. 2011).

Applying these rules of statutory construction, we must assume that the Legislature used the word “non-structured” intentionally and we must give that word meaning and effect within the context of the statute. The ordinary meaning of “non” is the “absence of,” and the ordinary meaning of “structured” is “the quality of being organized.” *New Oxford American Dictionary*, 3rd ed. (2010). Accordingly, the adjective “non-structured” in the context of the statute limits the noun it modifies—“activity”—to activity that is not organized activity. Thus, “non-structured physical activity” means physical activity that takes place in the absence of a definite pattern of organization.

An interpretation that reads the statutory definition to allow for organized physical activity as well as physical activity without a pattern of organization effectively and impermissibly reads “non-structured” out of the statute. It fails to give the word “non-structured” any meaning or purpose, ignores the legislative intent, reads the two parts of the statute to result in a conflict, and produces a nonsensical result, namely that a statute requiring non-structured physical activity simultaneously wipes out that requirement. But the two portions of the statute can be read in harmony to avoid that absurd result. The statutory definition of “non-structured physical activity” refers to “a temporary withdrawal or cessation from usual school work.” “Usual school work” is commonly understood to mean an organized, structured program of instruction or activity. Thus, a temporary withdrawal or cessation from school work means a break from organized, structured activity—i.e., non-structured activity.

This reading of the statute is buttressed by the distinction Tenn. Code Ann. § 49-6-1021 draws between “non-structured physical activity” and “physical activity.” Tennessee Code Annotated § 49-6-1021(a)(3) directs each LEA to integrate for students in grades 7-12 a minimum of 90 minutes of “physical activity” each week. That “physical activity” is not circumscribed by any adjective. Consequently, students in grades 7-12, unlike those in grades K-6, may be directed to engage in structured physical activity.

Finally, it appears from the professional literature that “structured” and “non-structured” physical activities are distinct pedagogical concepts, each thought to advance a different objective. For example, non-structured recess is thought to promote communication, negotiation, problem solving, and social skills, while periods of structured physical activity are thought to enhance physical well-being and to be especially helpful to students combating obesity. Robert Murray & Catherine Ramstetter, *The Crucial Role of Recess in School*, 131 Am. Acad. Of Pediatrics 184-85 (Jan. 2013). It stands to reason that, in light of these different approaches and their perceived goals, the Legislature intended grade K-6 students to engage in physical activity—and thereby to achieve objectives—different from that of grade 7-12 students.

While this Office is not in a position to evaluate the intricacies or actual implementation of each program included in the Department’s guidelines, to the extent that a program involves organized, regulated, adult-controlled activity, that program would not constitute “non-structured physical activity.” Based solely on a cursory look, it appears that the classroom physical activity breaks recommended by the Department may not all meet the statutory requirement for “non-structured physical activity.” For example, Play 60 Classroom Activity Breaks suggests that teachers instruct and lead students in certain coordinated exercises, such as “sit[ting] up straight, keeping their ankles together to do leg lifts by extending their legs to a 180-degree angle for 20 repetitions.” See <https://www.fueluptoplay60.com/playbooks/current-seasons-playbook/in-class-physical-activity-breaks>. GoNoodle likewise appears to be a program of structured, teacher-led or teacher-coached physical activity, some of which may be tied to, or integrated with, core academic instruction (as opposed to a cessation of normal school work). See <https://www.gonoodle.com/plus-for-schools/>.

In sum, students in grades K-6 should be afforded an opportunity to engage in physical activities that are non-structured, i.e., activities that do not follow a definite pattern of organization. To the extent that the programs suggested by the Department are structured rather than non-structured, they do not satisfy the requirements of Tenn. Code Ann. § 49-6-1021.

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