STATE OF TENNESSEE

OFFICE OF THE ATTORNEY GENERAL

January 5, 2017

Opinion No. 17-01

Authority of a Priority School to Add Additional Grades

Question 1

Assume the Achievement School District (ASD) has assigned Jones School, a priority school serving grades five through eight, to the ASD. May Jones School subsequently add grades other than grades five through eight to those that the school serves?

Opinion 1

No. Once a school has been placed in the Achievement School District the school itself may not add grades because it has no independent control over its operations while it is in the ASD.

Question 2

Does the answer to question 1 depend on whether Jones School is directly operated by the ASD or the commissioner has contracted with an individual or individuals, a governmental entity, or nonprofit entity to manage the day-to-day operation of Jones School?

Opinion 2

No. Once a school has been placed in the Achievement School District the school itself may not add grades because it has no independent control over its operations while it is in the ASD.

Question 3

Does the answer to question 1 depend on whether the performance of Jones School has improved while it has been assigned to the ASD or Jones School remains a priority school?

Opinion 3

No. Once a school has been placed in the Achievement School District the school itself may not add grades because it has no independent control over its operations while it is in the ASD.

Question 4

Does the answer to question 1 depend on whether Jones School seeks to add grade nine to those grades it serves and the local education agency's high school that Jones School's students will attend for grade nine is or is not a priority school?

Opinion 4

No. Once a school has been placed in the Achievement School District the school itself may not add grades because it has no independent control over its operations while it is in the ASD.

Question 5

Does Rule 0520-14-03-.01[1] of the Rules of the State Board of Education in any way affect your answer to question 1?

Opinion 5

No.

ANALYSIS

The Achievement School District ("ASD") is an organizational unit of the Tennessee Department of Education that is administered by the commissioner of education. Tenn. Code Ann. § 49-1-614(a). The ASD was created by Tennessee's First to the Top Act of 2010 as a way to improve the state's lowest performing schools. The ASD is primarily comprised of priority schools, i.e., those schools with academic achievement levels ranking in the bottom five percent in the state. Tenn. Code Ann. § 49-1-602(b)(2). When intervention by the State Board of Education is necessary to improve academic achievement levels, the commissioner may place a priority school within the jurisdiction of the ASD. See Tenn. Code Ann. §§ 49-1-602(b)(2)(C), -614(c).

[1] The letter requesting this opinion referred to "Rule 0120-14-03-.01" of the Rules of the State Board of Education. However, we assume that the intended reference was Rule 0520-14-03-.01 since there is no "Rule 0120-14-03-.01" in the Rules of the State Board of Education and since the Board's rules are in 0520.

The commissioner is authorized to provide oversight for the operation of priority schools within the jurisdiction of the ASD. Tenn. Code Ann. § 49-1-614(a). The commissioner has "the authority to directly operate . . . any or all schools placed in the ASD, including, but not limited to, providing direct services to students." *Id.*, § 49-1-614(b). Alternatively, the commissioner may contract with third parties to operate and manage the schools. *Id.* Either way, the schools themselves have no independent decision-making authority over their operations while they are in the ASD. Since a school within the ASD has no independent decision-making authority, it follows that a school may not itself add grades after it has been placed in the ASD.

State Board of Education Rule 0520-14-03-.01 does not change the analysis or affect Opinion 1. Rule 0520-14-03-.01 does not alter the fact that a priority school cannot add grade levels without permission from the commissioner. Rule 0520-14-03-.01(1)(b), which applies only to charter schools, provides for the automatic waiver of "all education statutes and rules of the state board or department of education, except those listed in T.C.A. § 49-13-105 or included by reference" when a charter school is approved. But the scope of the waiver is limited to statutes and rules that inhibit or hinder the charter school's ability "to meet its goals or comply with its proposed mission." Tenn. Code Ann. § 49-13-105(b). Thus, the automatic waiver would not extend to a waiver of the commissioner's authority "to directly operate . . . any or all schools placed in the ASD," Tenn. Code Ann. § 49-1-614(b), since the very purpose of ASD placement and commissioner oversight is to restore—not hinder—a school's ability to meet its goals and fulfill its mission.

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