STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

March 13, 2017

Opinion No. 17-19

Authority of Achievement School District or Commissioner of the Tennessee Department of Education to Add Grades to "Priority" Schools

Question 1

May the Achievement School District ("ASD") or the Commissioner of the Tennessee Department of Education (the "Commissioner") authorize a school placed in the ASD to serve grades other than the grades the school served prior to its placement in the ASD?[1]

Opinion 1

The Commissioner has authority to manage, directly or indirectly, the day-to-day operations of any school or any grade configuration of any school that has been placed in the ASD as that school existed when it was assigned priority status. But there is nothing that gives the Commissioner or the ASD authority to allow an already under-performing school in the ASD to serve grades in addition to the ones it was serving when it was assigned priority status and placed in the ASD.

Question 2

Assume Jones School serves Grades 5-8 prior to its placement in the ASD. After Jones School is placed in the ASD, may the ASD or the Commissioner of the Tennessee Department of Education authorize Jones School to serve grades other than 5-8 through direct service or contract with a provider?

Opinion 2

After the Jones School has been placed in the ASD, the Commissioner has authority to manage, directly or indirectly, its day-to-day operations as that school existed when it was assigned priority status. But there is nothing that would give the Commissioner authority to allow the Jones School to serve grades in addition to grades 5 through 8, whether through direct service or contract with a provider, after the Jones School has been placed in the ASD.

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[1] This Office has previously opined that a "school" lacks the authority to add grades. See Tenn. Att'y Gen. Op. 16-50 (Dec. 30, 2016) and Tenn. Att'y Gen. Op. 17-01 (Jan. 5, 2017).

ANALYSIS

The 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).

The ASD is administered by the Commissioner of the Department of Education "for the purpose of providing oversight for the operation of schools assigned to or authorized by the ASD." Tenn. Code Ann. § 49-1-614(a). To accomplish that purpose, the Commissioner has "the authority to assign any school or grade configuration within a school to the ASD at any time such school is designated to be in priority status . . . ." Tenn. Code Ann. § 49-1-614(c). In other words, once a school has been designated a "priority" school, the Commissioner may assign to the ASD the entire school or any grade or group of grades existing within the school at the time the school is designated a "priority" school. And once the Commissioner places a "priority" school or a grade configuration existing within a "priority" school in the ASD, the Commissioner has "the authority to directly operate or contract with" a third party "to manage the day-to-day operations of any or all schools placed in the ASD, including, but not limited to, providing direct services to students." Tenn. Code Ann. § 49-1-614(b).

Thus, the Commissioner has authority to manage, directly or indirectly, the day-to-day operations of any school or any grade configuration of any school that has been placed in the ASD as that school existed when it was assigned priority status. But there is nothing that gives the Commissioner authority to expand the scope of the services beyond those that the school provided when it was assigned priority status and placed in the ASD. Accordingly, there is nothing that would authorize the Commissioner to allow an already under-performing school—a school that was placed in the ASD for the very purpose of improving the services it has been providing before it was designated a "priority" school—to serve grades in addition to the ones it was serving when it was assigned priority status.

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