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OFFICE OF THE
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Opinion No. 05-186

Procedures Governing Amendments to the BEP Equalization Formula Pursuant to Tenn. Code Ann § 49-3-356

QUESTION

Must changes made to the formula adopted by the State Board of Education for equalization purposes, pursuant to Tenn. Code Ann. § 49-3-356, be submitted to the House and Senate Education committees for review and recommendation and approval by resolution of those bodies?

OPINION

Yes.

ANALYSIS

State law provides that the Tennessee Board of Education has the primary responsibility for devising the policies, formulas, and guidelines that comprise the BEP.¹ Tenn. Code Ann. § 49-3-351(a), however, requires legislative approval of any “amendment or revision to the components of the formula of the Tennessee BEP (Basic Education Program)”:

State funds appropriated for the BEP, kindergarten through grade twelve (K-12), shall be allocated pursuant to the formula devised by the state board of education pursuant to § 49-1-302. The programs funded through this formula are the "Tennessee Basic Education Program."

The formula shall also include increased funding for inclusion of a capital outlay component and cost of operations adjustments. This requirement shall be implemented the first year of the Tennessee BEP.

The Tennessee BEP shall include requirements prescribed by state law, regulations, rules, and other required costs.

¹See Tenn. Code Ann. § 49-1-302 (a).

Before any subsequent amendment or revision to the components of the formula of the Tennessee BEP shall become effective, it shall be submitted to the senate and house education committees for review and recommendation, and shall be approved by resolutions of the senate and house of representatives, but such approval shall be on the complete plan or revision and shall not be subject to amendment of the plan or revision. (Emphasis added).

Tenn. Code Ann. § 49-3-356 states that one of the responsibilities of the State Board of Education with regard to the BEP is to adopt a formula for the distribution of the locally raised revenues that is “equalized” to accommodate, and account for, the differences in local jurisdictions’ abilities to raise local funds:

The state shall provide seventy-five percent (75%) of the funds generated by the Tennessee BEP formula in the classroom components and fifty percent (50%) in the nonclassroom components as defined by the state board. Every local government shall appropriate funds sufficient to fund the local share of the BEP. No LEA shall commence the fall term until its share of the BEP has been included in the budget approved by the local legislative body. **From the local portion of such revenues, there shall be a distribution of funds for equalization purposes pursuant to a formula adopted by the state board, as approved by the commissioners of education and finance and administration.** It is the intent of the general assembly to provide funding on a fair and equitable basis by recognizing the differences in the ability of local jurisdictions to raise local revenues. (Emphasis added).

Your question asks whether changes made by the State Board of Education to the equalization formula pursuant to Tenn. Code Ann. § 49-3-356 must be submitted for legislative approval as set forth in Tenn. Code Ann. § 49-3-351(a). Or, put another way, does a change made to the equalization formula pursuant to Tenn. Code Ann. § 49-3-356 constitute an “amendment or revision to [one of] the components of the formula of the Tennessee BEP” pursuant to Tenn. Code Ann. § 49-3-351(a). This Office is of the opinion that the answer is in the affirmative.

Tennessee education statutes addressing the various components of the BEP make clear that the equalization formula for equitable distribution of locally raised revenues among the various Local Education Agencies (LEAs) is a fundamental and essential component of the BEP. Tenn. Code Ann. § 49-1-302(a)(4) states that one of the duties of the State Board of Education is to:

(4)(A) Develop and adopt policies, formulas, and guidelines for the fair and equitable distribution and use of public funds among

public schools and for the funding of all requirements of state laws, regulations and other required expenses, and to regulate expenditures of state appropriations for public education, kindergarten through grade twelve (K-12). Such policies, formulas and guidelines may be changed as often as necessary, but not more often than once per appropriation period, and shall not be considered rules subject to promulgation under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. Such policies, formulas and guidelines as are adopted by the board shall consider and include provisions for current operation and maintenance, textbooks, school food services, pupil transportation, vocational and technical education, number of programs of pupils served, measurable pupil improvement, reduction of pupil dropouts, teacher training, experience and certification, pupil-teacher ratio, substitute teacher reimbursement, requirements prescribed by state laws, rules, regulations or other required costs, and inflation; and may include other elements deemed by the board to be necessary. [. . .].

(B)The board shall establish a review committee for the Tennessee basic education program (BEP). [. . .]. **The BEP review committee shall meet at least four times a year and shall regularly review the BEP components, as well as identify needed revisions, additions, or deletions to the formula.** The committee shall annually review the BEP instructional positions component, taking into consideration factors including, but not limited to, **total instructional salary disparity among LEAs, differences in benefits and other compensation among local education agencies,** inflation, and instructional salaries in states in the southeast and other regions. The committee shall prepare an annual report on the BEP and shall provide such report, on or before November 1 of each year, to the governor, the state board of education, and the select oversight committee on education. **This report shall include recommendations on needed revisions, additions, and deletions to the formula as well as an analysis of instructional salary disparity among LEAs.** (Emphasis added).

The quoted portions of Tenn. Code Ann. § 49-1-302(a)(4) demonstrate that the equalization of funding among the LEAs is a fundamental component of the success of the BEP. This component can be traced directly to the Tennessee Supreme Court’s two “Small Schools” cases² that prompted

²*Tennessee Small School Systems v. McWherter*, 851 S.W.2d 139 (Tenn. 1993)(“Small Schools I”), and *Tennessee Small School Systems v. McWherter*, 894 S.W.2d 734 (Tenn. 1995)(“Small Schools II”).

the creation of the BEP. For example, in Small Schools I, among the primary critiques of the then-existing educational funding scheme was that it (1) failed to link the funding formula to changes in the actual costs of delivering programs and services at the local level, and that (2) it failed to ensure substantially equal educational opportunities to students across the state.³ The equalization formula addressed in Tenn. Code Ann. § 49-3-356 relates directly to both issues.

In a previous opinion letter, Op. Tenn. Att’y Gen. 95-29 (April 5, 1995)(copy attached), this Office opined that the State Board of Education may not put into effect **any** changes to the components of the BEP, including revisions within a component, without submitting them to the Senate and House Education Committees for review and recommendation.⁴ Insofar as the equalization formula addressed by Tenn. Code Ann. § 49-3-356 is an essential component of the BEP, our current opinion that amendments or revisions to the equalization formula must be submitted to the House and Senate Education committees for review and recommendation and approval by resolution of those bodies pursuant to Tenn. Code Ann. § 49-3-351(a) is consistent with that prior opinion.

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³See Small Schools I, 851 S.W.2d at 146 and 155.

⁴Emphasis in original.

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