

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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Opinion No. 04-123

Adjustments in Basic Education Program funds based on transfer of school or annexation of school by another LEA.

QUESTIONS

1. The Memphis City Board of Education (“City Board”) and the Shelby County Board of Education (“County Board”) executed a joint construction and operation agreement for a high school in Cordova in June of 1996, providing that said school would be operated for seven (7) years by the County Board and thereafter would pass to and be financed, operated, maintained and staffed by the City Board. If this transfer was effective at the end of the 2003-2004 school year, does Tenn. Code Ann. § 49-3-317 require the City Board to receive the Fiscal Year 2004-2005 Basic Education (“BEP”) funds for the students currently attending Cordova High School who shall be the responsibility of the City Board to educate in the 2004-2005 school year?

2. If a school operated by the County Board has been annexed into the City of Memphis and the responsibility to educate those students transfers to the City Board, does Tenn. Code Ann. § 49-3-317 require that the BEP funding for the next school year be adjusted to reflect the shift of students from the County Board to the City Board?

OPINIONS

1. No. The City is not required to receive those funds, but Tenn. Code Ann. § 49-3-317 grants the Commissioner authority to determine which LEA should receive the BEP funds in such a situation.

2. No. *See* Question 1.

ANALYSIS

The Commissioner of Education¹ distributes BEP funds to each Local Education Agency (“LEA”) according to the prior year’s Average Daily Membership (“ADM”) in each LEA.² Even

¹Tenn. Code Ann. § 49-3-354.

²Tenn. Code Ann. § 49-3-351(d).

though BEP funding is based on an LEA's prior year ADM, funding is distributed to pay for the *current* year's expenditures. The BEP does not reimburse LEAs for the cost of educating the previous year's students. The BEP provides LEAs the funds necessary to educate the students currently enrolled. Funds are distributed "periodically throughout the school year."³ "No LEA shall use state funds to supplant total local *current* operating funds."⁴ Only if an LEA experiences a significant increase in enrollment from one year to the next is an exception made and the BEP calculated on the current year's total membership.⁵

Tenn. Code Ann. § 49-3-317(c) grants the Commissioner the authority to adjust the distribution of BEP funds when students shift from one LEA to another after the beginning of the previous school term:

(c)(1) If, as of July 1 of any school year, there has been a change since the beginning of the previous school term in the boundaries of an LEA or, pursuant to § 49-2-106, the creation or reactivation of an LEA, involving the shift of students from one (1) LEA to another, then, in the distribution of state education funds, the commissioner shall determine, on the basis of information submitted to the commissioner by the appropriate boards, the ADM of students residing in such affected area, involved in such shift.

(2) The commissioner shall make such adjustments in the ADM as may be necessary to effectuate an equitable distribution and division of funds as between the LEAs operating a system of public schools therein; and such adjusted ADM shall be used in making the apportionment and distribution of state education funds.⁶

Tenn. Code Ann. § 49-3-317 contemplates the type of situation outlined in your request: a move of a significant number of students from one LEA to another because of school closings, openings or other reasons. In the situation you outlined, an LEA has assumed responsibility for educating all the students in a high school for which it did not have responsibility the previous year. If the Commissioner did not adjust the current year's BEP distribution, the City would be forced to operate without enough money to educate these new students. Meanwhile, the County would receive

³Tenn. Code Ann. § 49-3-354(a). BEP funds are distributed monthly from August through April of each school year. Tenn. Code Ann. § 49-3-314(b).

⁴Tenn. Code Ann. § 49-3-314(c)(1) (emphasis added).

⁵Tenn. Code Ann. § 49-3-351(d) states that when the current year's ADM, FTEADM (Full time equivalent average daily membership) and I&S (identified and served special education students) exceeds the prior year's total by more than two percent (2%), "then that LEA's allocation of state funds shall be calculated on the basis of the current year ADM, FTEADM, and I&S less the first two percent (2%) by which it exceeds the prior year ADM, FTEADM, and I&S."

⁶Tenn. Code Ann. § 49-3-317.

a significant amount of BEP funds meant to pay for educating students no longer attending its schools. The plain language of Tenn. Code Ann. § 49-3-317 grants the Commissioner the authority to adjust the distribution of BEP funds in these kinds of situations.⁷

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⁷When interpreting statutes, interpreters should avoid any “forced or subtle construction” that might artificially limit or extend the meaning of the language. *Tuggle v. Allright Parking Sys., Inc.*, 922 S.W.2d 105, 107 (Tenn. 1996). Where the statutory language is plain, clear, and unambiguous, one must avoid any interpretation or construction that departs from the words of the statute. *Tuggle*, 922 S.W.2d at 107.