

STATE OF TENNESSEE
OFFICE OF THE
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Opinion No. 04-039

Charter Schools: Eligibility for Enrollment in Type 1 Charter School; Approval of New Charter School Application

QUESTIONS

1. Is a student who attends a school failing to make adequate yearly progress, as defined by the state's accountability system, eligible to attend a charter school established pursuant to Tenn. Code Ann. § 49-13-106(a)(1)?

2. Does the Tennessee Public Charter School Act of 2002 (Act), Tenn. Code Ann. § 49-13-101, *et. seq.*, prohibit the approval of an application for a new charter school if an eligible student population does not exist at the time the charter school application is approved?

OPINIONS

1. Yes. Students eligible to enroll in a charter school formed under Tenn. Code Ann. § 49-13-106(a)(1) are students who come from failing schools.

2. No. However, the local board of education has the sole authority to approve applications and may deny applications if an eligible student population does not exist at the time the charter school application is submitted.

ANALYSIS

There are three different types of charter schools authorized by the Tennessee Public Charter Schools Act of 2002 (Act).¹ The only students eligible to enroll in the schools authorized by Tenn. Code Ann. § 49-13-106(a)(1) (Type 1) are students "in schools failing to make adequate yearly progress, as defined by the state's accountability system."² Though there are several bills currently

¹Tenn. Code Ann. § 49-13-101, *et. seq.*

²Type 2 schools may be formed to meet the needs of students eligible for special education services. Type 3 schools may be created in concert with a state public higher education teacher training institution to meet the needs of a broad range of students. Tenn. Code Ann. § 49-13-106(a)(2); Op. Tenn. Atty. Gen. 03-083 (July 2, 2003).

before the state legislature that would change the criteria for Type 1 schools,³ the current law limits Type 1 charter school eligibility to students from schools failing to make adequate yearly progress.

You also asked whether the Act prohibits the approval of an application for a new charter school if an eligible student population does not exist at the time the charter school application is approved. Tenn. Code Ann. § 49-13-108(1) gives local boards of education the authority to approve or deny applications to establish public charter schools.⁴ That authority is not limited by the statute.

Although the law does not list specific reasons for disapproving an application, Tenn. Code Ann. § 49-13-107 requires potential sponsors to list, among other things, the following information:

- An operating budget based on anticipated enrollment
- A timetable for commencing operations as a public charter school
- A description of the anticipated student enrollment
- The transportation plan for the pupils attending the charter school

Sponsors could not provide any of this information in the absence of a pool of students currently eligible to attend a charter school. Moreover, though the Act does not prohibit approving a new charter school application if an eligible student population does not exist at the time of the application, we find nothing in the Act to limit the discretion of local boards of education to decide that charter schools should not be approved in areas lacking an eligible student population.

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³HB2427 (SB2579), 103d Gen. Assem., Reg. Sess. (Tn. 2004), would make students in schools placed on probation eligible, rather than students in schools failing to make adequate yearly progress; HB2632 (SB2585) would make *students* failing to make adequate yearly progress eligible for charter schools formed under Tenn. Code Ann. § 49-13-106(a)(1); HB3380 (SB3216) would expand eligibility to many new categories of students, including those failing to make adequate yearly progress and students “categorized as ‘high-risk’ or ‘drop out.’”

⁴Sponsors denied approval may amend their application and, if their application is again disapproved, may appeal to the state board of education. If the state board of education determines that denying an application “was contrary to the best interests of the pupils, school district, or community, the state board shall remand such decision to the local board of education with written instructions for approval of the charter.” Tenn. Code Ann. § 49-13-108(3).

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Requested by:

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