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Opinion No. 04-073

Charter Schools: Application/Denial Procedure for Type II Charter Schools

QUESTIONS

1. How does the Tennessee Public Charter School Act (the “Act”) apply to a Type 2 school and the Local Education Agency (“LEA”) policy?
2. Since the statute gives the LEA final authority to create policy regarding the Type 2 schools, must the LEA adhere to its policy?
3. If Type 2 schools are required to follow the same provisions as a Type 1 School, why are Type 2 Schools not allowed to appeal to the State Board of Education?

OPINIONS

1. The Act requires Type 2 schools to be established via agreement with the LEA.
2. The Act does not require LEA adherence to any specific policies for Type 2 schools.
3. The Act currently provides appeals to the Department of Education only for applicants for Type 1 charter schools. The legislature may amend the Act to provide appeals for denials of applications for Type 2 and 3 charter schools.

ANALYSIS

The Tennessee Public Charter School Act (the “Act”) authorized three types of charter schools: Type 1 for students “in schools failing to make adequate yearly progress, as defined by the state’s accountability system;” Type 2 to meet the needs of students eligible for special education services; and Type 3 schools created in concert with a state public higher education teacher training institution to meet the needs of a broad range of students.¹

1. The Act and LEA policy affect Type 2 schools because Type 2 and Type 3 schools may be established only via agreement with the LEA. An LEA has the sole discretion to grant or

¹Tenn. Code Ann. § 49-13-106(a)(1)-(2); *see also* Op. Tenn. Atty. Gen. 03-083 (July 2, 2003).

deny a charter school application for any legal, non-discriminatory reason.² “Public charter schools applications designed to address these needs must be based on an agreement with the LEA and are not subject to appeal to the state board of education.”³ Therefore, though Type 2 and Type 3 charter school applications follow the process outlined in Tenn. Code Ann. § 49-13-107, the appeal process outlined in Tenn. Code Ann. § 49-13-108 is only available to Type 1 applicants.⁴

2. The statute does not require LEA adherence to any specific policies for Type 2 schools. The Act prohibits LEAs from waiving, among others, “regulatory or statutory requirements related to” civil rights and student due process.⁵ However, the only specific regulation of LEAs’ actions on charter school applications apply only to Type 1 charter schools.⁶

3. The statutory scheme for charter schools was created by the General Assembly. The General Assembly may amend the Act to provide the same appeals process to the Department of Education for each type of charter school applicant. Two currently pending bills would allow any charter school applicant — including a Type 2 or Type 3 applicant — to appeal an LEA’s denial to the state Department of Education.⁷

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²Op. Tenn. Att’y Gen. 04-039 (March 12, 2004).

³Tenn. Code Ann. § 49-13-106(a)(2)

⁴Tenn. Code Ann. § 49-13-108 states: “The provisions of this section shall apply only to applications for new charter schools under § 49-13-106(b)(1)(C).” Tenn. Code Ann. § 49-13-106(b)(1)(C) refers to schools “created for the purpose stated in subdivision (a)(1)” — Type 1 schools for students from schools failing to made adequate progress.

⁵Tenn. Code Ann. § 49-13-105.

⁶Tenn. Code Ann. § 49-13-108. LEAs must provide written grounds for denial of applications for Type 1 charter schools and may not deny an application because doing so might “exceed the maximum number of public charter schools provided for in § 49-13-106.” Tenn. Code Ann. § 49-13-108(2).

⁷HB2632 (SB2585), 103d Gen. Assem., Reg. Sess. (Tn. 2004), for example, would make the appeal process outlined in Tenn Code Ann. §49-13-108 “apply to all charter schools authorized under Section 49-13-106.” HB3380 (SB3216) would expand the purposes for which charter schools may be created and would also make the appeal process available for all charter school applicants.

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