

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

The State of Tennessee, on the relation of
THE METROPOLITAN GOVERNMENT)
OF NASHVILLE & DAVIDSON COUNTY,)
Petitioner,)
vs.)
THE STATE OF TENNESSEE &)
THE TENNESSEE GENERAL ASSEMBLY,)
Respondents.)

No. _____

PETITION FOR WRIT OF MANDAMUS

Summary

The Metropolitan Government of Nashville and Davidson County brings this petition for writ of mandamus requiring the State of Tennessee to fulfill its constitutional obligation to fully fund the Basic Education Program (BEP). The Tennessee Constitution requires the General Assembly to establish a system of free public education – and to fully fund it.

The BEP is the General Assembly’s own assessment of the elements necessary to provide Tennessee’s children with an education that meets the requirements of the Tennessee Constitution. The Tennessee Supreme Court has held that full funding is an integral part of the BEP. Full funding of the BEP is an area of implementation that cannot, under the Constitution, be made contingent upon funding through the general appropriations act. However, the General Assembly has not fully funded the BEP.

In particular, the General Assembly has set, by law, the BEP funding for English Language Learners (ELL) at a ratio of 1:20 teachers and 1:200 translators. TENN. CODE ANN. § 49-3-307(a)(7). Despite this statute, the Department of Education is providing the Metropolitan Government with funding for Fiscal Year 2017 at a ratio of 1:25 for teachers and 1:250 for

translators. Because Metro Nashville Public Schools have the largest number of ELL students in the state, the underfunding of this BEP element has a significant impact on its budget.

This lawsuit requests a mandate requiring the Tennessee General Assembly to fulfill its constitutional obligation and fully fund the BEP.

PARTIES

1. Plaintiff Metropolitan Government is a consolidated city and county government formed by the City of Nashville and Davidson County and incorporated pursuant to TENN. CODE ANN. §§ 7-1-101 *et seq.* The Metropolitan Government is responsible for adopting a budget for its local schools. TENN. CODE ANN. §§ 49-2-101 *et seq.*
2. The Metropolitan Board of Public Education is the entity responsible for administering the school system within the area of the Metropolitan Government. Metropolitan Charter Article 9, TENN. CODE ANN. §§ 49-2-201 *et seq.*
3. The Tennessee Constitution makes the Tennessee General Assembly, on behalf of the State of Tennessee, responsible for the maintenance and support of a system of free public schools in Tennessee. TENNESSEE CONSTITUTION, Article XI, Section 12.

JURISDICTION & VENUE

4. This Court has jurisdiction pursuant to TENN. CODE ANN. §§ 16-11-102 and 29-25-101.
5. Venue in this Court is proper pursuant to TENN. CODE ANN. §§ 4-4-104 and 20-4-101.

FACTS & LAW

I. THE GENERAL ASSEMBLY HAS THE CONSTITUTIONAL RESPONSIBILITY TO ESTABLISH *AND SUPPORT* PUBLIC EDUCATION IN TENNESSEE.

6. The Tennessee Constitution places responsibility for education with the General Assembly:

The State of Tennessee recognizes the inherent value of education and encourages its support. The General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools. The General Assembly may establish and support such postsecondary educational institutions, including public institutions of higher learning, as it determines.

Article XI, Section 12.

7. In *Tennessee Small School Systems v. McWherter*, 851 S.W.2d 139 (Tenn. 1993) (*Small Schools I*), the Supreme Court determined that it had the duty to make sure that this special responsibility was met: “[I]t is our duty to consider the question of whether the legislature, in establishing the educational funding system has ‘disregarded, transgressed and defeated, either directly or indirectly,’ the provisions of the Tennessee Constitution.” *Id.* at 148 (quoting *Biggs v. Beeler*).
8. *Small Schools I* also held that the education clause embodied an enforceable standard: “that the General Assembly shall maintain and support a system of free public schools that provides, at least, the opportunity to acquire general knowledge, develop the powers of reasoning and judgment, and generally prepare students intellectually for a mature life....This is an enforceable standard for assessing the educational opportunities provided in the several districts throughout the state.” *Id.* at 150-51.

II. THE GENERAL ASSEMBLY DOES NOT HAVE THE OPTION TO FUND THE BEP IN STAGES, OR TO MAKE AVAILABLE ONLY PARTIAL FUNDING FOR ANY PARTICULAR FISCAL YEAR.

9. In Tennessee, the State must provide an “*excellent* education program.” *Tennessee Small Sch. Sys. v. McWherter*, 894 S.W.2d 734, 738 (Tenn. 1995)(*Small Schools II*)(emphasis added). Education is a unique area of governance where the State simply does not have the option to provide only partial funding. A failure to appropriate funding for the BEP is simply not permissible. The Supreme Court has held that funding is an essential part of the General Assembly’s duty under Article XI, Section 12 of the Tennessee Constitution.
10. In *Small Schools II*, the Court found that the education funding mechanism set up by the General Assembly – the BEP– “addresses both constitutional mandates imposed upon the State—the obligation to maintain and support a system of free public schools and the obligation that that system afford substantially equal educational opportunities.” *Id.* at 738.
11. The *Small Schools II* Court approved the BEP formula, modified by the Court’s decree to include equalization of teacher salaries, so long as the BEP was *fully funded*:

The BEP is designed to accomplish two significant objectives—provide an excellent education program for all K thru 12 students throughout the State and provide substantially equal educational opportunities for those students. Under the BEP, neither objective will be accomplished immediately, but both objectives are scheduled to be accomplished no later than fiscal year 1997–98. Adequate funding is essential to the development of an excellent education program, and immediate equalization of funding would not necessarily insure immediate equalization of educational opportunities or a more excellent program.

The essentials of the provision of the plan relating to funding are that funding determined by the costs of implementing the BEP will be provided in full beginning with fiscal year 1997–98; and that, prior to that time, an increased amount of funding will be made available to each local system each year according to the equalization formula set forth in the plan, which favors those systems in greater need of additional resources. The essentials

of the governance provisions of the BEP are mandatory performance standards; local management within established principles; performance audits that objectively measure results; public disclosure by each local system of objectives, strategies, and results; removal from office of local officials unwilling or unable to effectively manage a local system; and final responsibility upon the State officials for an effective educational system throughout the State. Each of these factors relating to funding and governance is an integral part of the plan and each is indispensable to its success. Consequently, none of the factors can be compromised without destroying the integrity and effectiveness of the plan.

The source of funding for the plan addresses the discretion of the legislature. The Court's approval of the plan, as modified, as a means to accomplish the constitutional mandate is not conditioned upon any particular source of revenue. The inadequacy of particular sources of revenue would not justify modification of the education program or the funding schedule.

Id. at 738-39 (emphasis added).

III. THE STATE HAS ACKNOWLEDGED THAT THE GENERAL ASSEMBLY FAILS TO FULLY FUND THE BEP.

12. The BEP was amended under Chapter 1020 of the Public Acts of 2016.
13. Exhibit A is a true and correct copy of Chapter 1020 of the Public Acts of 2016.
14. The General Assembly did not fully fund this revised BEP formula.
15. The General Assembly unconstitutionally attempted to give itself discretion in funding in the BEP, by stating that “Notwithstanding §§49-1-302, 49-3-351, and any other law to the contrary, the changes in components or factors of the BEP implemented by this act shall be implemented in accordance with funding as made available through the general appropriations act.” TENN. CODE ANN. § 49-3-307(b)(emphasis added).
16. The revised BEP statute states that funding for the teacher to student ratio for English language learner (ELL) students shall be provided at a ratio of one to twenty (1:20) and

one to two hundred (1:200) for teacher and translators, respectively. TENN. CODE ANN. § 49-3-307(a)(7).

17. Despite this statute, the Tennessee Department of Education informed the Metropolitan Government that it is providing funding for ELL students in Fiscal Year 17 at a ratio of 1:25 for teachers and 1:250 for translators.
18. The Metropolitan Government Director of Law inquired into the reason for this shortfall.
19. A true and correct copy of the letter dated 6/1/16 from Jon Cooper to Maryanne Durski, inquiring into the reason for this shortfall, is attached as Exhibit B.
20. The Department of Education responded by informing the Metropolitan Government that the reason for the discrepancy was that the money to fully fund the BEP had not been appropriated by the General Assembly.
21. A true and correct copy of the letter dated 6/3/16 from Maryann Durski to Jon Cooper, informing the Metropolitan Government that the money to fully fund the BEP had not been appropriated, is attached as Exhibit C.
22. The Department of Education has informed the Directors of Schools in Tennessee that the Final BEP FY 17 allocation will only fund ELL at a ratio of 1:25 teachers and 1:250 translators.
23. A true and correct copy of the 7/8/16 memorandum informing the Directors of the Final BEP FY 17 allocation is attached as Exhibit D.

IV. THE ATTORNEY GENERAL HAS RECOGNIZED THAT AN APPROPRIATIONS BILL CANNOT OVERRIDE A GENERAL LAW AND THAT THE BEP MUST BE FULLY FUNDED.

24. In 01-112, the Attorney General informed the General Assembly that it could not amend the BEP formula by failing to appropriate sufficient funding, and could not fail to fund the BEP:

It has been suggested that the phrase “subject to all restrictions prescribed by law,” found in Tenn. Code Ann. § 49-3-354(a), is a basis for the Commissioner's authority not to distribute BEP funds. The implication is that this statutory provision, combined with the appropriations bill section quoted above, which directs that BEP funds not be distributed, is legal authority for the Commissioner not to supply BEP funding to local school systems. The appropriations bill cannot amend or establish general law, without running afoul of Tenn. Const. Art. II, § 17. See Op. Tenn. Atty. Gen. No. 83-251 (May 12, 1983); see also Tenn. Code Ann. § 9-4-5108(c) (“The appropriation bill shall not contain any provisions of general legislation.”).

By prohibiting distribution of BEP funding under SB 1914/HB 1943, Section 54, Item 1, the General Assembly has attempted to amend the statutes discussed above, to direct the Commissioner of Education to act contrary to statutory requirements that he disburse BEP funding. This the General Assembly cannot do without violating the constitution. Furthermore, if the General Assembly chose not to fund the BEP sufficiently, it would eliminate a factor the Tennessee Supreme Court considered essential to the BEP's constitutionality. About the BEP, the Supreme Court said, “Adequate funding is essential ... [Each factor] relating to funding ... is an integral part of the plan and ... indispensable to its success. [No factor] can be compromised without destroying the integrity and effectiveness of the plan.” *Small Schools II*, 894 S.W.2d at 738. Failing to fully fund the BEP would likely subject the State to added litigation.

TENN. OP. ATTY. GEN. NO. 01-112 (July 12, 2001) (emphasis added).

25. A true and correct copy of Attorney General Opinion 01-112 is attached as Exhibit E.

V. MANDAMUS IS APPROPRIATE IN THIS CASE.

26. The object of a writ of mandamus is to compel government officials to perform an act which they have the legal duty to perform. *Bradley v. State ex rel. Haggard*, 222 Tenn. 535, 540, 438 S.W.2d 738 (1969) (mandamus was proper method to compel the local legislative body – the quarterly court -- to perform constitutional duty to reapportion on a one man-one vote basis).
27. Mandamus is appropriate to require a legislative body to appropriate funds, when there is a legal obligation to appropriate the funds. *Jones v. Mankin*, 1989 WL 44924, at *3-*4 (Tenn. Ct. App. 1989) *on reh'g*, 1989 WL 57735 (Tenn. Ct. App. 1989) (a legislative body may be compelled by writ of mandamus to appropriate required funds. “Writs of mandamus enforce rights that are imposed by law.”); *also State ex rel. Campbelle v. Hobbs*, 174 Tenn. 215, 124 S.W.2d 699, 700 (1939)(mandamus was appropriate to require a state board to issue a certificate to a certified public accountant.)
28. An example of a case where courts issued a mandamus requiring that a legislative body provide funding for a statutory obligation is *State ex rel. Witcher v. Bilbrey*. In *Witcher*, the Court of Appeals granted a mandamus requiring the Macon County Commissioners provide funding to compensate a special judge. 878 S.W.2d 567, 569 (Tenn. Ct. App. 1994).
29. Similarly, in *State ex rel. Ledbetter v. Duncan*, the Supreme Court upheld a writ of mandamus ordering that the local legislative body appropriate funding for the salaries of sheriff’s deputies, as required by state law:

Having found that T.C.A., § 8–24–103(b), requires the county commission to fund the salaries of deputies as set by the criminal court, it follows that that duty may be properly enforced through the issuance of a writ of mandamus ... The Chancellor's issuance of the writ of mandamus was

simply the enforcement of that directive to the counties, not the unconstitutional exercise of the power to tax.

In his order the Chancellor did not order the defendants to raise taxes to pay the deputies' salaries. He left the method of raising the funds to the discretion of the defendants. While the county may obtain the money by raising taxes, alternative means are available by which it could obtain the funds. For example, defendants may decrease appropriations in other areas, use unbudgeted funds, if any, which are on hand, or borrow money, within their discretion.

702 S.W.2d 163, 165 (Tenn. 1985) (emphasis added).

30. An example of a case involving a court mandating that a legislative body provide funding for school purposes is *State ex rel. Harned v. Meador*, 284 S.W. 890 (Tenn. 1926). In that case, the Macon County legislative body refused to levy taxes to fund a four-year high school as required by State law. The Supreme Court upheld the issuance of a writ of mandamus to compel the local legislative body to levy a tax or by other lawful means provide funds for a county high school.
31. The *Harned* Court recognized that the legislative body retained discretion as to the means of providing the funding, but *not the provision of the funding itself*:

The writ [of mandamus] awarded by the chancellor accomplishes the purpose of setting in motion the representatives of the county, public officials clothed with exclusive power to provide for the erection of the school building, and to provide means by which the county may contribute its share toward the maintenance of the school, and the writ [of mandamus] leaves to the court a free exercise of judgment and discretion as to the manner and means of performance.

Id. at 892 (bracketed text added).

32. Similarly in *Lamb v. State ex rel. Kisabeth*, the Supreme Court upheld a mandamus issued requiring the legislative body for Cocke County, Tennessee (the “quarterly court”), issue bonds for high school and elementary school purposes in compliance with a referendum that the court had previously ordered and in which referendum there was a

favorable vote for the issuance of these school bonds. 207 Tenn. 159, 164-65, 338 S.W.2d 584, 587 (1960).

33. And in *Johnson v. State ex rel. Dulling*, the Supreme Court upheld a mandamus issued requiring the legislative body in Morgan County (the “board of commissioners”) to provide funds to be used in repairing or renovating county schools. *Johnson v. State ex rel. Dulling*, 583 S.W.2d 754 (Tenn. 1979).
34. The Supreme Court has held that the General Assembly has the duty to provide education by establishing a BEP formula and then *fully funding it*.
35. By failing to fully fund the BEP formula, the General Assembly is ignoring the unique status of education under the Tennessee Constitution and the Assembly’s non-delegable duty to fully fund the BEP.

VI. HARM TO THE METROPOLITAN GOVERNMENT - THE LOCAL GOVERNMENT’S SHARE OF EDUCATION FUNDING IS TO BE SET BY THE BEP FORMULA, NOT BY THE STATE’S FAILURE TO FUND THE BEP.

36. State law provides that the local share of the BEP is to be determined by each county’s relative ability to pay, or its “fiscal capacity.” TENN. CODE ANN. § 49-3-356 (“Every local government shall appropriate funds sufficient to fund the local share of the BEP...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.”).
37. The State’s failure to provide the statutory ratio of funding for ELL students is a particularly serious problem for the Metropolitan Government, because Metro Nashville Public Schools have the highest number of ELL students in the State of Tennessee.

38. Approximately 26% of the Metro Nashville Public School students come from a non-English language background.
39. Students in Metro Nashville Public Schools speak over 120 different languages.
40. The most common native languages are Spanish (over 16,000 students), Arabic (over 3,000 students), Kurdish (over 1,000 students), Somali (approximately 800 students), and Vietnamese (approximately 500 students).
41. Students in Metro Nashville Public Schools come from approximately 145 different countries. Over 900 students are refugees.
42. ELL students require additional resources and specialized teachers in order to make their education meaningful and allow them to acquire general knowledge, develop the powers of reasoning and judgment, and prepare them intellectually for a mature life. The ELL students must be provided a fully funded, “excellent education program” by the State. *Small Schools II* at 738.
43. Because the General Assembly does not fully fund the BEP, the budgets of the Metro Nashville Public Schools and Metropolitan Government are negatively affected by over \$3,000,000.
44. Additional education funding for Metro Nashville Public Schools would likely be used to provide additional services for ELL students (such as additional after school tutoring, professional development opportunities for ELL teachers, family and community literacy nights) and for all students (such as additional reading interventionists, literacy summer school, and textbooks).

PRAYER FOR RELIEF

THEREFORE, the Metropolitan Government asks the Court for the following relief:

45. Pursuant to TENN. CODE ANN. § 29-25-103, issue an alternative writ of mandamus requiring the Tennessee General Assembly to provide funding for ELL teachers and translators at a ratio of one to twenty (1:20) and one to two hundred (1:200), respectively. TENN. CODE ANN. § 49-3-307(a)(7) or show cause why it has not done so forthwith, and upon its failure to show cause, or upon a decision against it at the hearing, issue a peremptory writ of mandamus.
46. These writs should order the Tennessee General Assembly to appropriate, on an expedited basis, the funds necessary to fulfill its constitutional duty fund the BEP as herein described. The members of the General Assembly and any officers of the State of Tennessee who would need to take action in order to fully fund the BEP are ordered to take those actions.
47. Monitor implementation of the writ of mandamus and its resulting funding of the BEP as described herein on an ongoing basis.
48. Order any such further and general relief owed to the Metropolitan Government, as this Court deems appropriate.

Respectfully submitted,

THE DEPARTMENT OF LAW OF THE
METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY
JON COOPER, #23571
Director of Law

Lora Fox

J. Brooks Fox, #16096

Lora Barkenbus Fox, #17243

Catherine J. Pham, #28005

Metropolitan Attorneys

Metropolitan Courthouse, Suite 108

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(615) 862-6341

AFFIDAVIT

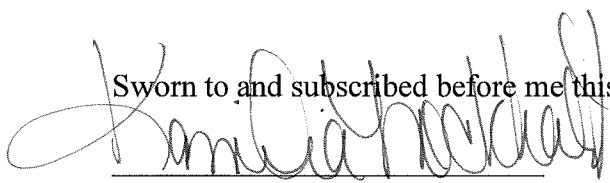
STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

I, Sharon Gentry, being duly sworn, state that I am competent to testify and that I am authorized to verify and affirm the facts set forth in the foregoing petition. I have read this petition, have personal knowledge regarding the allegations set forth herein, and affirm that the facts set forth herein are true and correct to the best of my knowledge and information.



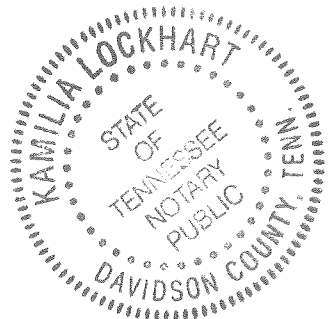
Sharon Gentry, Chair of Metropolitan Board of Education

Sworn to and subscribed before me this 1st day of September, 2016.



Notary Public

My commission expires: 3/10/19





State of Tennessee

PUBLIC CHAPTER NO. 1020

HOUSE BILL NO. 2574

By Representatives McCormick, Kevin Brooks, Smith, Rogers, Mark White

Substituted for: Senate Bill No. 2565

By Senators Norris, Gardenhire, Gresham, Haile, Bailey, Jackson

AN ACT to amend Tennessee Code Annotated, Title 49, Chapter 3, Part 3, relative to education finances.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 49-3-307, is amended by deleting the section in its entirety and substituting instead:

(a) Notwithstanding § 49-1-302, § 49-3-351, or any other law or rule to the contrary, effective with fiscal year 2016-2017, the Tennessee basic education program (BEP) shall be calculated using the following criteria:

(1)

(A)

(i) BEP appropriations to LEAs for the 2015-2016 school year, plus appropriations to LEAs generated for increases in the dollar value of instructional components based on the 2015-2016 school year shall constitute a minimum level of funding; however, any LEA on stability funding during the 2015-2016 school year shall have its minimum level of funding adjusted to reflect decreases in enrollment experienced in the 2014-2015 school year; and

(ii) Beginning with the 2017-2018 school year, the minimum level of funding identified pursuant to subdivision (a)(1)(A)(i) shall be adjusted to reflect decreases in enrollment;

(B) The department of education shall utilize enrollment numbers from an attendance month or months that maximize LEA budget planning and best represent yearly enrollment numbers to determine BEP funding allocations. Students graduating during the school year but prior to the identified attendance periods shall be included for funding purposes;

(2)

(A) The BEP shall include the following four (4) categories of components:

(i) Instructional salaries and wages;

(ii) Instructional benefits;

(iii) Classroom; and

(iv) Nonclassroom;

(B) The state shall provide seventy percent (70%) of the funds generated for components within the instructional salaries and wages category; seventy percent (70%) of the funds generated for components

EXHIBIT

tabbles

A

within the instructional benefits category; seventy-five percent (75%) of the funds generated for components within the classroom category; and fifty percent (50%) of the funds generated for components within the nonclassroom category;

(3) The dollar value of the BEP instructional salaries and wages position component shall be forty-four thousand four hundred thirty dollars (\$44,430) for fiscal year 2016-2017 and may be adjusted in subsequent fiscal years in accordance with the general appropriations act;

(4) The cost differential factor (CDF) shall be funded at twenty-five percent (25%) in fiscal year 2016-2017 and eliminated from the formula in subsequent years as increases are made to the instructional salary and wages component;

(5) The funds generated for medical insurance in the BEP shall be based on twelve (12) months of employment;

(6) The formula shall provide one hundred percent (100%) funding for at-risk students in kindergarten through grade twelve (K-12). "At-risk" funding allocations shall be determined by the department of education using appropriated funding and applicable direct certification eligibility guidelines pursuant to 42 U.S.C. §§ 1751-1769; however, at a minimum, the amount of funds representative of the at-risk component and generated statewide shall equal the amount generated statewide in the 2015-2016 school year with adjustments made for decreased enrollment;



(7) The formula shall provide funding for English language learner students at a ratio of one to twenty (1:20) and one to two hundred (1:200) for teachers and translators, respectively;

(8) The formula shall provide funding for special education personnel based on the level and extent of services provided and related to the student's individualized education program (IEP). The state board of education shall address the special education options and caseload allocations within the formula in a manner that provides a child with a disability a free and appropriate public education according to the unique needs of the child, as described in the child's IEP. To ensure the formula does not create a disincentive to placing the child in the least restrictive environment according to the individual student's needs, the 2015-2016 school year options and caseload allocations shall be condensed as follows with future revisions made pursuant to § 49-3-351:

(A) Option 1 (Option 1 in the 2015-2016 school year) = 91;

(B) Option 2 (Options 2 and 3 in the 2015-2016 school year) = 58.5;

(C) Option 3 (Options 4-6 in the 2015-2016 school year) = 16.5; and

(D) Option 4 (Options 7-10 in the 2015-2016 school year) = 8.5;

(9) The dollar value of the classroom technology component shall be forty million dollars (\$40,000,000), and may be adjusted in accordance with the general appropriations act;

(10)

(A) The formula shall recognize the ability of local jurisdictions to raise local revenues by measuring the ability to generate local revenues from property tax and local option sales tax. This calculation shall be based on applying the statewide average property tax rate for education and the statewide average local option sales tax rate for education to the respective tax bases of each local jurisdiction. No reduction shall be

made in any calculation of a local jurisdiction's ability to raise local revenues from property taxes for agreements entered into by the local jurisdiction that result in payments in lieu of taxes being made to the local jurisdiction;

(B) The formula shall also recognize the ability of local jurisdictions to raise local revenues as determined by the multiple regression analysis model developed by the Tennessee advisory commission on intergovernmental relations pursuant to § 4-10-104(10); and

(C) The formula shall equally weight the provisions of subdivisions (a)(10)(A) and (B);

(11) The formula shall be student-based such that each student entering or exiting an LEA shall impact generated funding; and

(12) Each LEA shall receive no less than a twenty-five percent (25%) state share in the nonclassroom components;

(b) Notwithstanding §§ 49-1-302, 49-3-351, and any other law to the contrary, the changes in components or factors of the BEP implemented by this act shall be implemented in accordance with funding as made available through the general appropriations act.

SECTION 2. Tennessee Code Annotated, Section 49-3-306(a)(2), is amended by deleting the subdivision in its entirety.

SECTION 3. Tennessee Code Annotated, Section 49-3-306(b)(4), is amended by deleting subdivisions (B) and (C) in their entireties and substituting instead:

(B)

(i) When funds are appropriated through the basic education program (BEP) funding formula for instructional salaries and wages, all such funds must be expended by an LEA on instructional salaries and wages; however, if an LEA's average licensed salary exceeds the statewide average salary, such funds may also be expended on instructional benefits.

(ii) The department of education shall make adjustments to each LEA's required expenditure pursuant to subdivision (b)(4)(B)(i) to account for any unfunded growth in the prior year and the loss of any instructional funding appropriated for the 2015-2016 school year.

(iii) For the purposes of subdivision (b)(4)(B)(i), the salary figure recognized by the BEP review committee to analyze salary disparity pursuant to § 49-1-302(a)(4)(B) shall be utilized.

(C) An LEA shall maintain its budgeted level of local funding for salaries and wages from the prior year, with exceptions made for loss of enrollment, and shall not utilize increases in state funding for instructional salaries and wages to offset local expenditures in these categories.

SECTION 4. Tennessee Code Annotated, Section 49-3-316, is amended by adding the following language as a new appropriately designated subsection:

As part of the requirements of subsection (a), the commissioner shall develop a standardized system of financial accounting and reporting whereby LEAs shall report revenue allocations at the school level, including schools authorized pursuant to the Tennessee Public Charter Schools Act of 2002, compiled in chapter 13 of this title.

SECTION 5. Tennessee Code Annotated, Section 49-3-366, is amended by deleting the section in its entirety.

HB 2574


SECTION 6. This act shall take effect upon becoming a law, the public welfare requiring it.

HOUSE BILL NO. 2574

PASSED: April 18, 2016



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES



RON RAMSEY
SPEAKER OF THE SENATE

APPROVED this 28th day of April 2016



BILL HASLAM, GOVERNOR



METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

MEGAN BARRY
MAYOR

JON COOPER
DIRECTOR OF LAW

DEPARTMENT OF LAW
METROPOLITAN COURTHOUSE, SUITE 108
P O BOX 196300
NASHVILLE, TENNESSEE 37219-6300
(615) 862-6341 • (615) 862-6352 FAX

June 1, 2016

Maryanne Durski
Executive Director, Office of Local Finance
Tennessee Department of Education
Ninth Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243-0375

Re: *FY17 May BEP Estimate*

Dear Ms. Durski:

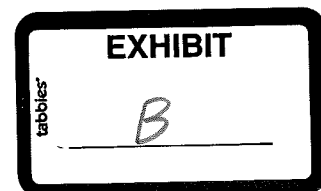
I am writing regarding the FY 17 May BEP Estimate provided to the Metropolitan Nashville Public Schools (MNPS) on May 19, 2016 (enclosed). Your memorandum states that the ELL funding ratios used for this estimate are 1:25 teachers and 1:250 translators. However, TENN. CODE ANN. § 49-3-307(a)(7), as amended this year, provides that funding shall be provided by the state at a ratio of 1:200 for teachers and 1:200 for translators. Would you please provide an explanation as to why the BEP funding estimates do not reflect the ratio set out in TENN. CODE ANN. § 49-3-307(a)(7)?

Because the Metropolitan Nashville Public Schools have the largest number of ELL students in the state, any underfunding of this BEP element is of great concern to us. I ask that you respond to this letter before the final BEP allocations in July or adjust the MNPS's funding upward to meet the funding ratios required by TENN. CODE ANN. § 49-3-307(a)(7).

Sincerely yours,

Jon Cooper
Director of Law, Metropolitan Government
(615) 862-6341

cc: Candice McQueen, Commissioner of Education
Chris Henson, Interim MNPS Director
Dr. Shawn Joseph, Incoming MNPS Director
Sharon Gentry, MNPS Board Chair





STATE OF TENNESSEE
DEPARTMENT OF EDUCATION
NINTH FLOOR, ANDREW JOHNSON TOWER
710 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243-0375

BILL HASLAM
GOVERNOR

CANDICE MCQUEEN
COMMISSIONER

MEMORANDUM

TO: Directors of schools
Finance directors

FROM: Maryanne Durski, executive director, office of local finance

SUBJECT: FY17 May Estimate

DATE: May 19, 2016

Enclosed is the FY17 May BEP Estimate. Please note the following information regarding this estimate:

1. ADMs used are months 2, 3, 6 and 7.
2. The estimate includes the increase in the BEP salary component from \$42,065 to \$44,430.
3. The estimate includes the additional medical insurance funding, representing the twelfth month of insurance premiums.
4. ELL funding ratios are 1:25 teachers and 1:250 translators.
5. Special education funding options have been condensed from ten to four.
6. Rounding has been removed from the calculation of positions.
7. The estimate includes the increase in technology funding statewide from \$20 million to \$40 million.
8. The estimate includes the new fiscal capacity indices for all counties.
9. Non-certified TCRS funding rate is now 8.53%.

I strongly encourage you to review your ADM numbers. Many districts are showing a decrease in regular, Career and Technical and/or Special Education ADMs. As these numbers are corrected in EIS and incorporated into the BEP formula, it is possible that all districts' funding will change between now and final allocations in July. The change can be positive or negative, so please treat this as an estimate only of your FY17 BEP funding.

In an effort to bring more fidelity to our ELL data, consolidated planning and monitoring conducted a thorough review and analysis of district English learner counts used to compile required reports at the federal level this academic year. The October 1 ELL child count was pulled again in April 2016 to align BEP and Title III allocations to the most recent data your district reported in EIS.

Finally, updated at-risk numbers will be available to us at the end of May. We will include those update numbers in the June estimate.

If you have any questions about any of the information provided, please contact your fiscal consultant or the Office of Local Finance.



STATE OF TENNESSEE
DEPARTMENT OF EDUCATION
NINTH FLOOR, ANDREW JOHNSON TOWER
710 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243-0375

BILL HASLAM
GOVERNOR

CANDICE MCQUEEN
COMMISSIONER

June 3, 2016

Jon Cooper, Esq.
Director of Law, Metropolitan Government
Department of Law
Metropolitan Courthouse, Suite 108
PO Box 196300
Nashville, TN 37219-6300

Dear Mr. Cooper,

Thank you for your letter dated June 1, 2016 regarding the FY17 May BEP estimate for Metropolitan Nashville Public Schools. You are correct that TCA 49-3-307(a)(7) provides funding ratios for ELL at 1:20 teachers and 1:200 translators. However, TCA 49-3-307(b) states that "the changes in components or factors of the BEP implemented by this act shall be implemented in accordance with funding as made available through the general appropriations act". The general appropriations act for FY17 provided sufficient funds to move the funding ratios to 1:25 and 1:250 respectively. These ratios will be reviewed against available funding in future years to determine when additional changes may be made in order to achieve the goal of funding ratios of 1:20 and 1:200.

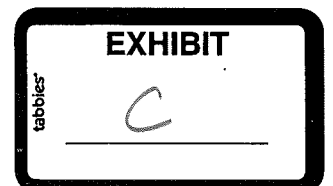
Please let me know if you have any additional questions.

Sincerely,

A handwritten signature in cursive script that reads "Maryanne Durski".

Maryanne Durski
Executive Director, Office of Local Finance

Cc: Candice McQueen, Commissioner of Education
Chris Henson, Interim MNPS Director
Dr. Shawn Joseph, Incoming MNPS Director
Sharon Gentry, MNPS Board Chair





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CANDICE MCQUEEN
COMMISSIONER

MEMORANDUM

TO: Directors of schools
Finance directors

FROM: Maryanne Durski, executive director, office of local finance

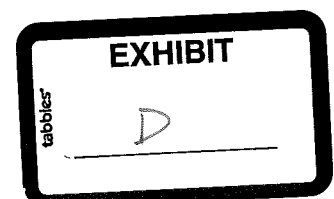
SUBJECT: FY17 July Final Allocations

DATE: July 8, 2016

Enclosed is the FY17 July Final BEP Allocation for your district. Please note the following information regarding the allocations:

1. ADMs used are months 2, 3, 6 and 7.
2. The allocations include the increase in the BEP salary component from \$42,065 to \$44,430.
3. The allocations include the additional medical insurance funding, representing the twelfth month of insurance premiums.
4. ELL funding ratios are 1:25 teachers and 1:250 translators.
5. Special education funding options have been condensed from ten to four.
6. Rounding has been removed from the calculation of positions.
7. The allocations include the increase in technology funding statewide from \$20 million to \$40 million.
8. The allocations include the new fiscal capacity indices for all counties.
9. Non-certified TCRS funding rate is 8.53% of salaries.

If you have any questions about any of the information provided, please contact your fiscal consultant or the Office of Local Finance.



STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

July 12, 2001

Opinion No. 01-112

Delayed BEP Funding

QUESTIONS

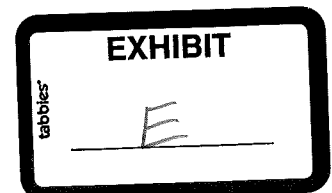
1. If the General Assembly appropriates funding for the Basic Education Program (BEP) and, in the appropriations bill, prohibits disbursement of the funding, has the General Assembly violated applicable constitutional or statutory law?
2. Does Tenn. Code Ann. § 49-3-351 give the Commissioner of Education the authority to delay BEP funding disbursement indefinitely?

OPINIONS

1. The State has a constitutional duty to provide for a system of free public education for all K-12 school children, and the Tennessee Supreme Court has found that the BEP meets this constitutional duty. If the failure to disburse BEP funding adversely affects the delivery of the BEP program to K - 12 students, then the failure to distribute could lead to a violation of the Tennessee Constitution Art. XI § 12. In addition, to the extent that Senate Bill 1914/House Bill 1943, Section 54, Item 1 (the appropriations bill) attempts to amend statutory substantive law, the provision could violate Tenn. Const. Art. II, § 17 and Tenn. Code Ann. § 9-4-5108(c).
2. Under Tenn. Code Ann. § 49-3-354, if state BEP funds are insufficient, the Commissioner may reduce each school system's funding by applying a pro rata reduction based on average daily membership. This statute does not authorize the Commissioner to delay BEP funding.

ANALYSIS

The FY2001-02 appropriations bill (SB 1914/HB 1943), Section 54, Item 1, states in relevant part:



Notwithstanding any provision of this act to the contrary, no funds appropriated by the provisions of this act for the Basic Education Program shall be disbursed.

The State has several obligations regarding K-12 public education. Article XI, § 12 of the Tennessee Constitution requires the State to provide for a system of free public education.¹ The Basic Education Program, fully funded, meets this constitutional obligation. *See Tennessee Small School Systems v. McWherter*, 894 S.W.2d 735, 738 (Tenn. 1995).

The BEP is the only procedure for funding public school education. Tenn. Code Ann. § 49-3-351(b). Under Tenn. Code Ann. § 49-3-354, the Commissioner of Education distributes the BEP funds appropriated by the General Assembly. This statute also gives the Commissioner authority to reduce BEP funding to each school system, on a pro rata basis, if state funds are not sufficient to fund the BEP fully. Tenn. Code Ann. § 49-3-354(e). The State's overall funding obligation is seventy-five per cent (75%) of the BEP classroom costs and fifty per cent (50%) of nonclassroom costs. Tenn. Code Ann. § 49-3-356. Under none of these statutes is the Commissioner authorized to delay or prohibit distribution of BEP funding.

It has been suggested that the phrase "subject to all restrictions prescribed by law," found in Tenn. Code Ann. § 49-3-354(a), is a basis for the Commissioner's authority not to distribute BEP funds. The implication is that this statutory provision, combined with the appropriations bill section quoted above, which directs that BEP funds not be distributed, is legal authority for the Commissioner not to supply BEP funding to local school systems. The appropriations bill cannot amend or establish general law, without running afoul of Tenn. Const. Art. II, § 17. *See Op. Tenn. Atty. Gen. No. 83-251* (May 12, 1983); *see also* Tenn. Code Ann. § 9-4-5108(c) ("The appropriation bill shall not contain any provisions of general legislation.").

By prohibiting distribution of BEP funding under SB 1914/HB 1943, Section 54, Item 1, the General Assembly has attempted to amend the statutes discussed above, to direct the Commissioner of Education to act contrary to statutory requirements that he disburse BEP funding. This the General Assembly cannot do without violating the constitution. Furthermore, if the General Assembly chose not to fund the BEP sufficiently, it would eliminate a factor the Tennessee Supreme Court considered essential to the BEP's constitutionality. About the BEP, the Supreme Court said, "Adequate funding is essential [Each factor] relating to funding . . . is an integral part of the plan and . . . indispensable to its

¹ The provision reads: "The State of Tennessee recognizes the inherent value of education and encourages its support. The General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools. The General Assembly may establish and support such postsecondary educational institutions, including public institutions of higher learning, as it determines."

success. [No factor] can be compromised without destroying the integrity and effectiveness of the plan.”
Small Schools II, 894 S.W.2d at 738.

Failing to fully fund the BEP would likely subject the State to added litigation.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

KATE EYLER
Deputy Attorney General

Requested by:

The Honorable Randy McNally
State Senator
Legislative Plaza
Nashville, TN 37243