



BILL HASLAM
GOVERNOR

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

CANDICE MCQUEEN
COMMISSIONER

September 1, 2017

Anna Shepherd, Chair
Metro Nashville Board of Public Education
2601 Bransford Avenue
Nashville, TN 37204

Dear Ms. Shepherd:

I appreciate the opportunity we had to meet earlier this week to discuss the Department of Education's request for Metro Nashville Public Schools (MNPS) to provide the Achievement School District (ASD) with the contact information of students eligible to attend Priority schools in compliance with Chapter 307 of the Public Acts of 2017 (PC 307). I have been encouraged by Dr. Joseph's proactive communication and acknowledgement of the importance of creating a collaborative relationship between MNPS and the department on this topic as well as others. Additionally, I was optimistic about our constructive dialogue regarding the ways MNPS could meet the requirements of PC 307 and dispel any misunderstandings about the law. I still believe the options we spoke about are worth further exploration and have followed up directly with Dr. Joseph since our meeting. I let Dr. Joseph know that we have requested an attorney general's opinion to provide further clarity on the law. Also, as noted in our conversation, if MNPS needs additional time to communicate further with parents about their right to opt out of sharing student contact information, we can discuss next steps and a timeline.

I was disappointed to be handed a pre-prepared letter as you left our meeting with a bulleted list of requirements that were not discussed in our meeting that would need to be met before you would consider sharing contact information. While I thought our conversation had resulted in some options for consideration, I will also attempt to address additional items noted in your letter.

First, your letter affirms that the MNPS board's Governance Committee voted on August 22 to refuse to provide the ASD the contact information of students eligible to attend ASD schools. Let me reiterate that this position continues to be in violation of PC 307. You state in your letter that you have been advised by your attorney that MNPS has discretion under the federal law to determine whether to release the requested information to the ASD and to decide under what conditions it can be used if released. The department respectfully disagrees with MNPS's interpretation of PC 307. The department's position is that implementing PC 307 is not a violation of the Family Educational Rights and Privacy Act (FERPA) and school districts do not have the discretion to choose whether to comply. Again, as discussed in our meeting and in a follow-up with Dr. Joseph, we desire complete clarity on this issue and have requested an opinion on the matter from the attorney general.

Additionally, your letter states that MNPS believes the legislative intent for PC 307 dictates that the student contact information cannot be used for marketing and recruitment by charter school operators and authorizers. Stating that chartering authorities or charter schools are using student contact information for marketing purposes is misleading. The ASD has requested the contact information of students eligible to attend the ASD in an effort to provide parents with all public school options available to their children. The contact information will not be used for commercial purposes, such as to sell yearbooks, school photographs, or class rings, but rather to provide parents of students in Priority schools information about additional educational opportunities for their children.

Furthermore, the process by which courts interpret legislation is well settled in Tennessee. When the statutory language is clear and unambiguous, courts apply the plain meaning of the statute and do not look to the history of the legislation or other sources to discern its meaning. It is the department's position that the language in Section 20 of PC 307 is clear and unambiguous, and it contains no prohibition against chartering authorities or charter schools using the student contact information for marketing and recruitment, as suggested in your letter.

As you are aware, enrollment in a public charter school is based on parental choice. In order to make an informed choice, parents need to know the options available to them, which is why PC 307 states that the purpose of providing the student contact information is "to effectuate § 49-13-113," the provision of law regarding the enrollment of students into public charter schools.

The department agrees that all educational agencies have a legal and moral obligation to protect the confidentiality of student information and honor a parent's wishes when they do not want their child's contact information shared. The last sentence in Section 20 of PC 307 requires each chartering authority and charter school receiving student contact information to adopt and implement a policy allowing parents to decline to receive further information. Additionally, we have reviewed the MNPS student handbook on your website and have noted that it contains the proper notice to parents regarding their right to protect their child's contact information, known as "directory information," required by FERPA and PC 307:

If you do not want MNPS to disclose any or all of the types of information designated below as directory information from your child's education records without your prior written consent, you must notify the MNPS Family Information Center either in writing or by completing a consent revocation form, available at the MNPS Family Information Center, by September 1, 2017. MNPS has designated the following information as directory information:

- » *Student's name*
- » *Address*
- » *Telephone listing*
- » *Photograph*
- » *Date and place of birth*
- » *Major field of study*
- » *Dates of attendance*
- » *Participation in officially recognized activities and sports*
- » *Weight and height of members of athletic teams*
- » *Degrees, honors and awards received*
- » *The most recent educational agency or institution attended*

As I stated earlier, I have agreed to allow MNPS a reasonable amount of additional time to communicate further with parents about their right to ask that their child's contact information not be shared as noted in the handbook information above.

In your letter, you go on to note that you would be willing to propose a coordinated effort to inform ASD families of choice options if I would agree to several terms. I continue to be open to discussion on how we can collectively comply with the law. While the additional requests made in your letter do not relate to implementing PC 307, I am happy to address each of them below.

- **Request for the state to implement a moratorium on ASD expansion.**—Since 2011, state law has required all schools identified on the Priority list to receive an intervention. Currently, the following intervention models are available, subject to approval by the commissioner: a.) turnaround through a district-led intervention or other school improvement process; b.) school turnaround under the governance of an LEA innovation zone; or c.) placement in the ASD. Additionally, the federal Every Student Succeeds Act (ESSA) requires states to intervene with Priority schools that have not improved. Under Tennessee's ESSA plan, the district will have first opportunity to improve schools new to the Priority list, meaning placement in the ASD will not occur unless a school fails to improve. Placing a moratorium on the ASD is not an option; however, if MNPS is successful in improving their

lowest performing schools, they will not be eligible for placement in the ASD, and schools new to the Priority list are not eligible for ASD.

- **Request for the state to financially subsidize schools that lose students to the ASD and engage in discussion about a new fiscal impact component in the Basic Education Program (BEP) formula.**—BEP funding follows students to the public schools providing their education, whether that is a public charter school or a traditional public school in another district. The attorney general has opined that charter schools do not impose undue financial burdens on local school districts. For your convenience, here is a link to the opinion:
<http://www.tn.gov/assets/entities/attorneygeneral/opinions/op13-072.pdf>

Also, PC 307 now establishes an authorizer fee to be paid by charter schools to the chartering authority. This will result in approximately \$1,000,000 for MNPS to help cover any authorizing costs associated with the district's charter schools.

Finally, I appreciate your offer to extend an invitation to the ASD to participate in MNPS's annual First Choice Festival and will let them know to expect an invitation. I want to stress the critical importance of building a collaborative partnership between the ASD and MNPS. The ASD is serving students in the MNPS community, and each school placed in the ASD will return to MNPS. Turnaround work is extremely challenging, but it can transform the lives and futures of our students and positively impact communities for years to come. I hope that we can remain focused and work collaboratively on the ultimate goal of improving the lives of our students.

Sincerely,



Dr. Candice McQueen
Commissioner