



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

November 10, 2020

Dr. Lisa Karmacharya
Executive Director
Mississippi Charter School Authorizer Board
239 Lamar Street, Suite 207
Jackson, Mississippi 39201

Re: Calculation of 3% Per-Pupil Allocation from Charter Schools Pursuant to
Section 37-28-11

Dear Dr. Karmacharya:

The Office of the Attorney General has received your request for an official opinion.

Background Facts

In your request, you provide:

Mississippi Code Annotated, Section 37-28-11 provides that in order for the Board to cover the costs of overseeing charter schools in accordance with the Mississippi Charter Schools Act of 2013, the Authorizer “shall receive **three percent (3%) of annual per-pupil allocations** received by a charter school from state and local funds for each charter school it authorizes.” The calculation or formula to determine the “annual per-pupil allocation” received by a charter school from its portion of state funds is **not defined** in the Act. However, Mississippi Code Annotated, Section 37-28-55 provides:

(1)(a) The State Department of Education shall make payments to charter schools for ***each student in average daily attendance at the charter school equal to the state share of the adequate education program payments for each student in average daily attendance at the school district in which the charter school is located.*** In calculating the local contribution for purposes of determining the state share of the adequate education program payments, the department shall deduct the pro rata local contribution of the school district in which the student resides, to be determined as provided in Section 37-151-7(2)(a).

(b) Payments made pursuant to this subsection by the State Department of Education must be made at the same time and in the same manner as adequate education program payments are made to school districts under Sections 37-151-101 and 37-151-103. Amounts payable to a charter school must be determined by the State Department of Education. Amounts payable to a charter school over its charter term must be based on the enrollment projections set forth over the term of the charter contract. Such projections must be reconciled with the average daily attendance using months two (2) and three (3) ADA for the current year for which adequate education program funds are being appropriated and any necessary adjustments must be made to payments during the school's following year of operation.

(Emphasis added.) The Mississippi Adequate Education Program (“MAEP”) is the formula established by the Legislature to provide adequate operation funding levels for each school district to meet the accountability scale of “Successful” as established by the State Board of Education regardless of the school district’s geographic location. The MAEP funding formula for the adequate education program payments has been outlined by the Mississippi Department of Education and is as follows:

(Average Daily Attendance + High Growth) x Base Student Cost +
At-Risk – Local Contribution + Hold Harmless Guarantee = MAEP
Formula Allocation

MAEP Formula Allocation + Add-On Programs = Total MAEP
District Funding

As shown above and as provided in the statutes, there are several costs that are included in determining the **total** MAEP District Funding received by a charter school, including, per capita funds, 1% sales tax funds, educational enhancement funds referenced in Mississippi Code Annotated, Section 37-61-33 and at-risk pupil adjustments and add-on programs as set forth in Section 37-151-7(1)(d) and (e). However, the only amount dictated by Section 37-28-11 to be paid to the Authorizer by a charter school is 3% of the per-pupil allocation, not 3% of the total MAEP District funding.

For the reason stated above, it is the belief of the Authorizer that the allocation from a charter school would simply be 3% of the student base cost determined by the Mississippi Department of Education when calculating the total MAEP Funding and that education enhancement funds would be a separate allocation to a charter school that is included in the **total** MAEP funding amount to a charter school but not in the per-pupil allocation. Limiting the allocation from the charter schools to the Authorizer to 3% of the base student cost and not including educational enhancement funds, such as the 1% sales tax or per capita funds would allow a charter school to keep more of its funding to operate its school and serve its student population.

The Authorizer requests an official opinion from the Attorney General as to whether educational enhancement funds, 1% sales tax or per capita funds should be included when calculating the 3% of annual per-pupil allocation that is invoiced and received by the Authorizer from a charter school for the cost of overseeing charter schools pursuant to the Mississippi Charter Schools Act of 2013 or whether the allocation from the charter schools should be only 3% of the base student cost as determined pursuant to the MAEP formula.

Issues Presented

You ask “whether educational enhancement funds, 1% sales tax or per capita funds should be included when calculating the 3% of annual per-pupil allocation that is invoiced and received by the Authorizer from a charter school for the cost of overseeing charter schools pursuant to the Mississippi Charter Schools Act of 2013 or whether the allocation from the charter schools should be only 3% of the base student cost as determined pursuant to the MAEP formula.

Brief Response

The 3% of annual per-pupil allocation invoiced and received by the Authorizer from a charter school should be calculated based on the funds received by the charter school in accordance with Section 37-28-55. Thus, if educational enhancement funds, 1% sales tax or per capita funds are included in the calculation of payments to charter schools pursuant to Section 37-28-55, they should be also included when calculating the 3% of annual per-pupil allocation that is invoiced and received by the Authorizer from a charter school for the cost of overseeing charter schools pursuant to Section 37-28-11.

Applicable Law and Discussion

Section 37-28-55 requires the State Department of Education to “make payments to charter schools for *each student in average daily attendance* at the charter school equal to the state share of the adequate education program payments for each student in average daily attendance at the school district in which the charter school is located.” Miss. Code Ann. § 37-28-55 (emphasis added.) This statute also requires the local school district to pay “the charter school an amount for *each student enrolled in the charter school* equal to the ad valorem tax receipts and in-lieu payments received per pupil for the support of the local school district in which the student resides.” *Id.* (emphasis added). The funds received by charter schools from the State Department of Education and the local school districts are referred to differently within Section 37-28-55; however, they are both calculated based upon the number of individual students attending charter schools.

Section 37-28-55(1)(a) provides that “(i)n calculating the local contribution for purposes of determining the state share of the adequate education program payments, the department shall deduct the pro rata local contribution of the school district in which the student resides, to be determined as provided in Section 37-151-7(2)(a).”¹ Taxes levied for the retirement of the local

¹ Section 37-151-7(2)(a) provides, in relevant part:

The local contribution amount for school districts in which there is located one or more charter schools will be calculated using the following methodology: using the adequate education program twenty-eight (28) mill value, or the twenty-seven percent (27%) cap

school district's debt and taxes levied for the support of vocational-technical educational programs are specifically excluded from the calculation of the per pupil payment. Miss. Code Ann. § 37-28-55(2)–(3). Section 37-28-55 does not provide any further exclusions for the calculation of payments to charter schools from the State Department of Education and local school districts. Pursuant to Section 37-28-11, “the authorizer shall receive three percent (3%) of annual per-pupil allocations received by a charter school from state and local funds for each charter school it authorizes.”

It is the opinion of this office that the three percent of annual per-pupil allocations to be paid to the Authorizer by a charter school should be calculated based on the money received by the charter schools from the State Department of Education and local school districts pursuant to Section 37-28-55. Thus, if educational enhancement funds, 1% sales tax or per capita funds are included in the calculation of payments to charter schools pursuant to Section 37-28-55, they should be also included when calculating the 3% of annual per-pupil allocation pursuant to Section 37-28-11.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Beebe Garrard*

Beebe Garrard
Special Assistant Attorney General

OFFICIAL OPINION

amount (whichever is less) for each school district in which a charter school is located, an average per pupil amount will be calculated. This average per pupil amount will be multiplied times the number of students attending the charter school in that school district. The sum becomes the charter school's local contribution to the adequate education program.