



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

August 6, 2021

Jamie F. Lee, Esq.
Attorney for Cleveland School District
Post Office Box 1209
Cleveland, Mississippi 38732

Re: Tuition-based 3K and After-School Program

Dear Ms. Lee:

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

Background

According to your request, the Cleveland School District (the “District”) is interested in housing a tuition-based 3K program within one or more of its magnet elementary schools. Students would be chosen by lottery, but the program would be generally available to any of the District’s three-year-old children. Additionally, the District would ensure that the children would not be of age to qualify for the Early Learning Collaborative. You also ask about the feasibility of an after-school program for students 3K-6th grade, which also would be tuition-based and staffed by certified teachers. In a subsequent telephone conversation, you stated that the District currently operates a 3K program at one of its magnet elementary schools, but tuition payments have been suspended pending the outcome of this opinion.

Questions Presented

1. May the District fund and operate an early childhood tuition-based program for three-year-olds pursuant to Mississippi Code Annotated Section 37-7-301(zz) as long as the program does not conflict with the Early Learning Collaborative Act of 2013?
2. The early childhood program would be tuition based; however, if tuition does not cover the entire cost of the program, what other funds might the District utilize to make up for any shortfall?
3. Specifically, how would the Attorney General define “any source of revenue” under the above referenced statute?

4. When the District is considering the cost of the 3K program, would those costs necessarily include salaries and benefits of teachers, a rental fee for the class, lights, water, etc.?
5. May the District charge tuition for an after-school program that would be open to any child in the District, Pre-K through 6th grades?
6. If tuition is insufficient to cover all after-school program costs, what other revenue/funds may the District use to operate the program?
7. Will the District's costs to cover the after-school program necessarily include salaries and benefits of teachers, and a rental for the class, lights, water, etc.?

Brief Response

1. Yes. The language of Section 37-7-301(zz) is clear that the school board of a district is authorized to fund and operate an early childhood education program. There does not appear to be a prohibition on charging tuition for such a program.
2. Your second question is too broad to address by official opinion. However, for your guidance, Section 37-7-301(zz) authorizes the school board "to fund and operate voluntary early childhood education programs ... and to use any source of revenue for such early childhood education programs." The statute is silent as to the meaning of "any source of revenue." We recommend you contact the Mississippi Department of Education ("MDE") and/or Technical Assistance Division of the Office of the State Auditor for guidance on this question.
3. See Response to Question 2.
4. The statute does not enumerate specific costs of early childhood programs but does authorize the board "to *fund* and *operate*" said programs. Miss. Code Ann. § 37-7-301(zz) (emphasis added). Whether any specific expenditure is incurred to "operate" the early childhood education program is a question of fact that this office cannot address.
5. Yes. Section 37-7-339 allows districts to charge a reasonable fee for after-school programs, and there is no prohibition against including a tuition-based after-school program for pre-kindergarten students.
6. Your sixth question is too broad to address by official opinion. However, for your guidance, the applicable statute states that the board may expend funds available from sources other than the adequate education program. Miss. Code Ann. § 37-7-339(2). For further guidance, we recommend you contact the MDE and/or the Technical Assistance Division of the Office of the State Auditor.
7. The plain language of Section 37-7-301(zz) provides that the board is authorized "to *fund* and *operate*" the program. Miss. Code Ann. § 37-7-301(zz) (emphasis added). Whether

any specific expenditure is incurred to “operate” the after-school program is a question of fact that this office cannot address.

Applicable Law and Discussion

Pursuant to the authority granted to this office in Section 7-5-25, official opinions of the Attorney General are limited to questions of law for future guidance of those officials entitled to receive them and can neither ratify nor invalidate past action. Therefore, to the extent your request requires this office to make determinations that exceed the limitations established in Section 7-5-25, we decline to respond with an official opinion but provide the following for future guidance. Your request also includes questions regarding the utilization of CARES Act¹ funding. However, this office is not authorized to interpret or opine on federal law by official opinion.

With respect to your first question, Section 37-7-301 vests the school board of all school districts with certain powers and duties. Two different subparts speak to early childhood education programs. Section 37-7-301(ss) authorizes boards to implement voluntary prekindergarten programs in conjunction with the Early Learning Collaborative Act of 2013 (“ELCA”),² which utilizes a variety of funding sources and a partnership with one or more providers of early childhood education. Alternatively, Section 37-7-301(zz) authorizes boards to fund and operate early childhood programs that do not conflict with the ELCA. Specifically, Subsection (zz) authorizes boards:

[t]o fund and operate early childhood education programs, defined as programs for children less than five (5) years of age on or before September 1, and to use any source of revenue for such early childhood education programs. Such programs shall not conflict with the Early Learning Collaborative Act of 2013.

If the District chooses to implement a 3K program at another magnet elementary school within the District, there is clear statutory authority to do so under Section 37-7-301(zz).

As to whether tuition is authorized under the statute, the statute does not speak specifically to sources of funding for a 3K program other than to state that boards may “fund and operate” such programs using “any source of revenue.” *Id.* The ELCA, however, does envision parent tuition as a source of local matching funds. Miss. Code Ann. § 37-21-51(3)(h)(iv). Using the funding language in the ELCA as a guide, we find no prohibition against charging tuition for a 3K program under Section 37-7-301(zz).³

¹ The MDE has issued guidelines on school districts’ use of CARES (Coronavirus Aid, Relief and Economic Security) Act funds. We recommend you contact MDE for any questions related to such funds.

² For purposes of the Early Learning Collaborative Act, prekindergarten children are “any children who have not entered kindergarten but will have obtained four (4) years of age on or before September 1 of a school year.” Miss. Code Ann. § 37-21-51(1)(a).

³ The Mississippi Constitution states, “The Legislature shall, by general law, provide for the establishment, maintenance and support of free public schools upon such conditions and limitations as the Legislature may prescribe.” MISS. CONST. art. VIII, § 201. Section 37-13-1 of the Mississippi Code echoes the constitution, stating: “There shall be maintained a uniform system of free public schools consisting of grades one through twelve” Based on the

Your second question is too broad to address by official opinion. See MS AG Op., *Barrett* at *1 (Aug. 29, 1984) (refusing to respond by official opinion on the basis that the question posed was overly broad); MS AG Op., *McCaughn* at *2 (Aug. 5, 2016) (same). However, for your guidance, Section 37-7-301(zz) authorizes the school board “to fund and operate voluntary early childhood education programs ... and to use any source of revenue for such early childhood education programs.” Turning to your third question, the statute is silent as to the meaning of “any source of revenue.” We recommend you contact the MDE and/or the Technical Assistance Division of the Office of the State Auditor for guidance on this question.

Your fourth question asks what would be included in the necessary costs of a 3K program. This question is too broad to address by official opinion. However, for your guidance, the statute does not enumerate specific costs but does authorize the board “to *fund* and *operate*” the program. Section 37-7-301(zz) (emphasis added).

Your fifth question asks whether the District may implement a tuition-based after-school program for any child in the district in 3K through 6th grade. As noted above, Section 37-7-301(zz) already provides the authority for fee-based voluntary programs for children less than five years of age and states that school boards are authorized: “[t]o fund and operate voluntary early childhood education programs, defined as programs for children less than five (5) years of age on or before September 1, and to use any source of revenue for such early childhood education programs.” Section 37-7-339(1) states that a school board may provide extended day and school year programs for kindergarten and/or school-age students “and may expend any funds for these purposes which are available from sources other than the adequate education program.” Boards, “in their discretion, may charge a reasonable fee for such programs.” *Id.*; see also MS AG Op., *Keith* at *1 (July 3, 2008) (opining that Section 37-7-339 “provides authority for a school district to implement an afterschool program for its students funded from funds available from sources other than the adequate education program and from reasonable fees paid by participants” but cautioning that the reasonable fees could not be more than the actual cost of the program). Based on the authority granted in Section 37-7-339 to provide fee-based extended day programs and the authority granted in 37-7-301(zz) authorizing programs for children less than 5 years of age, we are of the opinion that the District may implement an after-school program for 3K-6th grade and charge a reasonable fee in the form of parent tuition.

Your sixth question, regarding what other funds or revenue sources could be used if tuition is not sufficient for the after-school program, is too broad to address by opinion. For your guidance, the applicable statute states that boards may expend funds available from sources other than the adequate education program. Miss. Code Ann. § 37-7-339(2). For further guidance, again, we recommend you contact the MDE and Technical Assistance Division of the Office of the State Auditor.

In your seventh question, you ask what the costs of such an afterschool program would include, and we refer you to the plain language of Section 37-7-301(zz) that provides that the board is

facts provided by the District, it does not appear that the programs in question run afoul of these mandates, but we caution the District to be aware of any actions that may potentially violate these sections in the future.

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authorized “to fund and operate” the program. Whether any specific expenditure is incurred to “operate” the after-school program is a question of fact that this office cannot address.

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/ Misty Monroe*

Misty Monroe
Special Assistant Attorney General

OFFICIAL OPINION