

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

**HAMILTON COUNTY BOARD
OF EDUCATION, et al.,**)
)
)
Plaintiffs,)
)
)
v.)
)
**WILLIAM HASLAM, in his official
capacity as the GOVERNOR OF
TENNESSEE, et al.,**)
)
)
Defendants.)

Case No. 15-355-I

**DEFENDANTS' REPLY BRIEF IN SUPPORT OF
MOTION TO DISMISS**

The Plaintiffs have responded to the Defendants' Motion to Dismiss with a lengthy memorandum which fails to adequately address the legal arguments set forth in the Defendants' Memorandum in Support of their Motion to Dismiss. The Plaintiffs' Response therefore still fails to state a claim upon which relief can be granted by this Court. The Plaintiffs continue to repeat the sweeping assertion made in their Complaint that they "lack sufficient funds to operate their school systems." This is followed by anecdotal evidence from Hamilton County and Grundy County demonstrating that the Plaintiff school boards are indeed operating their schools and educating their children, although they would prefer to have more state funds in doing so, and often have to make difficult choices in allocating the resources they have.

Count I -- Adequacy

The Plaintiffs fail to address the legal arguments presented in the Defendants' Motion to Dismiss. For example, as to the Plaintiffs' adequacy of funding argument, the Defendants' Motion to Dismiss points out that the *Small Schools* cases did not address adequacy of funding and did not require any specific statewide level of funding, except insofar as it related to the inadequate funding of some small school districts caused by the unequal distribution of education funds under the laws that existed when *Small Schools I* was filed. In response, the Plaintiffs offer scattered anecdotal evidence that, when seen in its strongest light, only demonstrates that the Hamilton County school board does not have all of the funding it would like to have, and therefore has to make difficult choice regarding the use of its funding. None of the Plaintiffs' anecdotal claims comes remotely close to even suggesting that the Plaintiff school boards are "unable to educate their students" or "cannot provide adequate educational opportunities" to their students.

The Plaintiff school boards need more, and newer, computers (*Plaintiffs' Response*, p. 7-8); Hamilton County, which has made the "strategic decision" to put more of its local funds into teachers' salaries has, as a result, fewer local funds to devote to other educational purposes (*Id.* p. 5, 21-22); Grundy County teachers may be attracted to the higher salaries available in counties such as Hamilton County (partially, no doubt, as a result of their co-plaintiff Hamilton County School Board's "strategic decision" to raise those salaries with local funds). (*Id.* p. 4-5, 21-22). Moreover, the Plaintiffs' Response fails to even offer a *single example* of any kind indicating a "failure to provide a free public education" in the Plaintiff school systems of Bradley County, McMinn County, Marion County, Coffee County, or Polk County.

It is to be expected that every plaintiff school board would be able to offer examples of difficulties they face in managing their schools and making their funding stretch to cover every

educational need. Every local governmental body faces these challenges. Budgets invariably require State and local governments to prioritize. But the *Small Schools* cases do not mandate a level of funding that makes operating county schools an easy task. As pointed out in the Defendants' Motion to Dismiss, the *Small Schools* case do not mandate *any* particular level of funding.

The essential issues in this case are quality and equality of education. The issue is not . . . equality of funding.

Small Schools I, 851 S.W.2d 139, 156 (Tenn. 1993).

It is not the business of the courts to decide how salaries are funded or at what level teachers should be compensated, for it is the legislature who "speaks for the people on matters of public policy" such as these... The critical point, however, is that the educational funding structure be geared toward achieving equality in educational opportunity for students, not necessarily 'sameness' in teacher compensation.

Small Schools III, 91 S.W.3d 232, 242-43 (Tenn. 2002) (quoting *Van Tran v. State*, 66 S.W.3d 790, 804 (Tenn. 2001)).

Plaintiff Hamilton County school board also argues that the extensive list of fees that the board itself has authorized in connection with various classes and school activities demonstrates the lack of adequate State education funding. While such fees may demonstrate another approach used by local school boards to help stretch their budgeted dollars, they certainly do not prove that Hamilton County is unable to provide a free public education to its school children. In fact, a specific statute, Tenn. Code Ann. § 49-2-110(c) provides that fees cannot be required as a condition for attending school or taking a specific class:

The school shall not require any student to pay a fee to the school for any purpose, except as authorized by the board of education, and no fees or tuitions shall be required of any student as a condition to attending the public school or using its equipment while receiving educational training.

Fees can therefore be requested of parents by schools, but they cannot be required as a condition of attendance without running afoul of the “free education” provision of the Tennessee constitution.

Contrary to the Plaintiffs’ assertion, the *Small Schools* cases did not hold that the constitutional requirement for the State to provide a free public education is a “fundamental right” that triggers strict scrutiny. In *Small Schools I*, the Court reviewed school funding cases from a number of other states, and even noted that some states’ courts had indeed held that, under their state constitutions, education was a fundamental right. *Small Schools I*, at 151. The Tennessee Court stopped short, however, of adopting a similar holding, stating instead:

The certain conclusion is that Article XI, Section 12 of the Tennessee Constitution guarantees to the school children of this state the right to a free public education. Because, as discussed below, the plaintiffs are entitled to relief under the equal protection provisions of the state constitution, the precise level of education mandated by Article XI, Section 12, and the extent, if any, to which the system does not comport with the education clause need not be determined at this time.

Id. at 151-52. Thus, the Court clearly held that the Tennessee constitution requires that the State provide a free public education in compliance with the language of Article XI, section 12, but did not adopt a constitutional reading that would have required Tennessee Courts to subject every education provision in the Tennessee Code to strict scrutiny.

Count II – Equal Protection

With regard to the Plaintiffs’ equal protection claims, the Plaintiffs again fail to confront the deficiencies identified by the Defendants’ Motion to Dismiss. The Plaintiff school boards do not explain how these seven (7) boards, comprised of both large and small school systems, can state a coherent equal protection case. Indeed, the Plaintiffs’ Response to the Defendants’ Motion to Dismiss complains, on behalf of one plaintiff school board — Grundy County — that another

plaintiff school board — Hamilton County — pays its teachers more because of additional local funds, thus attracting teachers from Grundy County. The Plaintiffs are therefore unable to allege that they are being treated significantly differently than any other school system. This marks a significant distinction from the Plaintiff school systems in the *Small Schools* litigation, where the proof showed that some small systems were receiving vastly different treatment compared to the largest systems. Thus, it is clear that all seven boards are attempting to state a claim of *adequacy* of funding, not unequal funding. However, because the *Small Schools* cases address equality of educational opportunity¹ rather than adequacy of funding, the Plaintiffs attempt to force the square peg of their adequacy claim into the round hole of the *Small Schools*' equal protection holdings.

Similarly, the Plaintiffs continue to claim that strict scrutiny is the applicable standard in this case. As discussed above, *Small Schools I* never finds education a “fundamental right,” requiring strict scrutiny. Nor do the *Small Schools* cases apply strict scrutiny. The most recent *Small Schools* case affirmatively states, “In our view, ***no rational basis*** exists for structuring a basic education funding system consisting entirely of cost-driven components except for teacher salaries.” *Small Schools III*, 91 S.W.3d 232, 243 (Tenn. 2002) (emphasis added). And the first *Small Schools* case adopted the holding of the Arkansas Supreme Court in *Dupree v. Alma School Dist. No. 30*, 279 Ark. 340, 651 S.W.2d 90 (1983), quoting a lengthy excerpt that concluded with language that was emphasized in bold by the Tennessee Court:

Consequently, **even without deciding whether the right to a public education is fundamental**, we can find no constitutional basis for the present system, as it has no rational bearing on the educational needs of the districts.

¹ See, e.g., the Court’s statement in *Small Schools III*, 91 S.W.3d 232, 238 (Tenn. 2002): “The main issue throughout these appeals since 1988 has been whether the legislature has complied with its constitutional obligation to maintain and support a system of public schools that affords substantially equal educational opportunities to all students in this state.”

Small Schools I, at 155 (quoting *Dupree*, 651 S.W.2d at 93). Subsequently, the Court held that the proof “fails to satisfy even the “rational basis” test applied in equal protection cases. *Small Schools I*, at 156. The Court never even suggests that strict scrutiny, or even “heightened scrutiny” is an appropriate standard of review. It is apparent that the Tennessee Supreme Court sought in the *Small Schools* cases to require the State to comply with the constitutional requirement of a free public education that provides substantially equal educational opportunities, while at the same time affording the General Assembly the opportunity and discretion to fashion the method for doing so within its extensive “legislative prerogative.” *Small Schools I*, at 156. Adopting the “fundamental right/strict scrutiny” analysis to state educational matters would have subjected every legislative education enactment to the most exacting standard of review. The Supreme Court clearly intended to avoid a holding that would have made Tennessee courts, in effect, permanent monitors over every funding and policy decision affecting education.

Count III – Tenn. Code Ann. § 49-1-102(a)

Plaintiffs’ Response argues that Tenn. Code Ann. § 49-1-102(a) must be read “in conformity with the constitutional dictate that the General Assembly ‘shall provide’ for a system of free public schools in this State.” (*Plaintiffs’ Response*, p. 29). They argue the State must fully fund the BEP in order for to it to be in compliance with both the State Constitution and Tenn. Code Ann. § 49-1-102(a). However, as the *Small Schools* cases make abundantly clear, the Tennessee Constitution does not require any specific level of funding. What it requires is “substantially equal educational opportunities to the school children of Tennessee,” and Plaintiffs fail to sufficiently allege that the failure to fully fund the BEP is depriving students in the 7 plaintiff systems of substantially equal educational opportunities. *Small Schools I*, at 156.

Plaintiffs further argue that this Court is to ignore every section of Chapter 3 of Title 49 of the Tennessee Code Annotated that explicitly provides education funding is subject to legislative appropriations made available each year. These are some of the same statutes that both make up the BEP and that Plaintiffs contend work as constitutional mandates. They include Tenn. Code Ann. § 49-3-307,² which the Plaintiffs cite as an example of one of the statutes the State has violated by failing to fund the classroom component at 75% and failing to fully fund teachers' health insurance.³ Yet, in the very same statute, section (b) states, notwithstanding any other law to the contrary:

[T]he changes in the components or factors of the BEP implemented under Chapter 369 of the Public Acts of 2007 shall be phased in, in accordance with the funding as made available each fiscal year through the general appropriations act.

Tenn. Code Ann. § 49-3-307(b). This paragraph is just as much a part of the BEP as paragraph (a), yet the Plaintiffs repeatedly claim that paragraph (a) is constitutionally mandated by the Small Schools cases, while willfully ignoring the existence of section (b). The language of (b), furthermore, is perfectly complimentary to that found in the current iteration of Tenn. Code Ann. § 49-3-351(b), which sets forth the funding procedure for the BEP. Subsection (b) provides that “the only procedure for the funding of the BEP . . . shall be as provided in the formula prescribed in this section, *and to the extent that funds are*

² This section was added pursuant to various changes that were enacted with the BEP in 2007. As a result of these changes, the current K-12 educational funding scheme is now known as BEP 2.0. *See* 2007 Public Chapter 369, SECTION 3 (copy attached)

³ Plaintiffs repeatedly conflate the “classroom component” with the “instructional positions component.” Prior to 2007, the “instructional positions component” was a separate and distinct component of the BEP. *See* T.C.A. § 49-3-356 (2006) (providing for funding of 65% of the instructional component and 75% of the classroom component) (copy attached). In 2007, the General Assembly effectively combined the two such that the “instructional position component” was subsumed by the “classroom component.” *See* T.C.A. § 49-3-307(a)(1). In doing so, the legislature raised the funding percentage of the instructional position component from 65% up to 75%. When Plaintiffs allege that the classroom component is only being funded at 70%, they are mistaken. As evidenced by the 2014 Education Blue Book attached as Exhibit 1, the classroom component is being funded at 75%. It is only the instructional position component that is being funded at 70%.

appropriated for that purpose by the general assembly.” T.C.A. § 49-3-351(b) (emphasis added). This same language has also appeared in prior versions of the BEP that, with the exception of the teacher salary component, were approved by the Supreme Court in *Small Schools I* and *II*. See Tenn. Code Ann. § 49-3-351(b) (2002) (copy attached); Tenn. Code Ann. § 49-3-351 (1996) (copy attached). Thus, a system of funding that is contingent on funds being appropriated has been approved by the Tennessee Supreme Court, and the current funding of the BEP complies with all constitutional and statutory requirements because current funding conforms to current appropriations.

Implementation of BEP 2.0 was further intended to be phased in over time pursuant to Tenn. Code Ann. § 49-3-307(b). It was Chapter 369 of the Public Acts of 2007 that increased the funding for the instructional positions from 65% to 75% and created the requirement that the State pay 50% of medical insurance premiums. As discussed below, the General Assembly is phasing in the funding of these components as evidenced by its commitment to a recurring educational funding increase in excess of \$172 million in this year alone. Included in this commitment is money sufficient to fund eleven months of health insurance, additional salary equalization, BEP inflation growth, and over \$97 million to increase teacher salaries.⁴ This is evidence of the State’s intent to continue the implementation of BEP 2.0.

⁴ It appears that the overarching thrust of Plaintiffs’ Complaint is that the General Assembly is only funding 70% of the instructional positions and has failed to implement T.C.A. § 39-3-307(a)(2), which provides that the State is to fund 75% of the instructional positions. However, § 39-3-307(a)(3) sets forth the amount that is to be funded for instructional positions is \$38,000 and that this figure is to be “adjusted in subsequent fiscal years in accordance with the general appropriations act.” In accordance with § (a)(3), the General Assembly has appropriated over \$97 million to raise the figure to \$42,065. See 2015 Public Chapter 427, SECTION 11, Item 1(b) (a copy of the relevant portions of this Chapter is attached). Under the current appropriations, the State is funding 70% of \$42,065 for each instructional position generated under the BEP. So while funding the instructional positions at 75% has not been phased in yet, it is clear that the legislature is taking steps to phase in the provisions of BEP 2.0.

Moreover, in *Small Schools II*, the Supreme Court expressly upheld the legislature's decision to implement equalization incrementally. It held that "the substantial improvement in educational opportunities throughout the State under the BEP can best be accomplished incrementally and only if complete equalization of funding is accomplished incrementally also." *Small Schools II*, at 738. This is precisely what the General Assembly has chosen to do once again. It is neither statutorily nor constitutionally required to fully fund every component of the BEP immediately. It is constitutionally permissible for the legislature to phase in the funding over time, and this is precisely what the General Assembly is doing. Accordingly, Plaintiffs' claim must be dismissed.

In addition, the Supreme Court made clear that the BEP in its original form and details, is not sacrosanct. In *Small Schools II* the Court recognized that the BEP can be adjusted and modified without court intervention:

The formula whereby the component parts of the program are determined is reviewed annually by a BEP review board, which includes the Commissioner of Education, the Commissioner of Finance and Administration, representatives of various local school systems, representatives of professional education organizations, and other members designated by the State Board of Education. After review by the Board of Education, the BEP formula may be adjusted to reflect changes whereby the system can be improved. However, the components of the plan approved by the Board of Education for fiscal year 1992-93 cannot be changed without the approval of the Commissioner of Education and the Commissioner of Finance and Administration, and the revised formula must be approved by resolutions of the Senate and the House of Representatives before any change can become effective.

The Plaintiffs' arguments suggesting that the BEP is not subject to adjustment and modification from year to year are therefore simply erroneous.

Count IV – Article II, section 24 of the Tennessee Constitution

With regard to the Plaintiffs’ “unfunded mandates” claim under Article II, section 24 of the Tennessee constitution, the Defendants argued in their Motion to Dismiss that this constitutional provision has been construed to apply to only laws of general application that directly or expressly require counties and cities to make expenditures. *Swafford v. City of Chattanooga*, 743 S.W.2d 174, 178 (Tenn. Ct. App. 1987) (holding that raising the liability limits under the Governmental Tort Liability Act does not directly require increased local government expenditures). The Defendants also relied upon *Knox County v. City of Knoxville*, 1987 WL 31640 at *6, affirmed and modified on other grounds, *Knox County v. City of Knoxville*, 786 S.W.2d 936 (Tenn. 1990). In this case, a state statute required that, if a school system is abolished or transferred to another system, the rights of teachers in the abolished or transferred system were not to be diminished. The Court first held that the statute imposes only “indirect and speculative” costs which do not trigger Article II, section 24. *Id.* at *6. The Court then held that, even if Article II, section 24 was applicable, its terms would be satisfied because the State provides additional ADA [Average Daily Attendance] funds to the county as a result of the addition of new students from the now-abolished City school system. “The constitution mandates only that there be a state share; it does not mandate the size or proportion of that share.” *Id.*

In this case, the programs complained of by the Plaintiff school boards are the adoption of increased academic standards and accountability measures for local school boards. (Complaint, at ¶¶ 38-40). They do not *directly or expressly* impose additional expenditures on local school boards. Even if this were the case, the State’s share of educational funding would, under the *Knox County* holding, satisfy Article II, section 24. The Plaintiffs’ Response suggesting that the *Knox County* case supports their position relies upon a garbled reading of the case that ignores the actual holding

and focuses upon irrelevant facts. The Plaintiffs' claim under Article II, section 24 is therefore without merit.

Recent Education Funding Legislation

In footnotes 4 and 5 of the Plaintiffs' Response to the Defendants' Motion to Dismiss, the Plaintiffs grudgingly acknowledge that, in the most recent legislative session, the General Assembly appropriated an additional 97.6 million dollars to the salary component of the BEP⁵, and an additional 29.27 million to fund an additional 11th month of teacher health insurance. These funding increases, which are recurring funds that will continue in future years, are dismissed by the Plaintiffs as insignificant. In fact, the most recent General Assembly also approved an additional 6 million⁶ dollars in salary equity funds. These funds will be distributed on a *pro rata* basis to those systems whose average teachers' salaries are on the lower end of the scale. Of the seven Plaintiff school boards, Grundy, Marion and Coffee Counties will receive a portion of these salary equity funds to increase their average teachers' salaries. The remaining four Plaintiff school districts do not qualify for teacher equity funds. Local governments have the option of increasing teacher salaries further by adding funding from local revenues.⁷ The Legislature further approved in excess of 40 million dollars in new recurring funds for "BEP Growth," which includes inflationary increases and increases to accommodate additional student enrollment statewide.

⁵ In doing so, the legislature raised the dollar value of the BEP instructional positions component from \$38,000 to \$42,065. *See* 2015 Public Chapter 427, SECTION 11, Item 1(b). This is the largest teacher compensation increase in the last several years.

⁶ This is in addition to 8.5 million dollars in recurring salary equity funding approved in the previous legislative session for fiscal year 2015, for a total of 14.5 million dollars in recurring salary equity funding. *See* 2015 Public Chapter 427, SECTION 11, Item 9.

⁷ On page 5 of the Plaintiffs' Response, Hamilton County states it has made the "strategic decision" to supplement teacher salaries in this way.

These funding increases are also responsive to the recommendations made by the BEP Review Committee in their most recent annual report, the relevant portions of which are attached as Ex. 2.⁸ While the Committee's Report does not carry the binding constitutional significance the Plaintiffs seek to assign it, the recent funding increases clearly demonstrate that the Legislature and the Administration are not ignoring the Committee's recommendations.

The Law Requires Substantial Equality of Educational Opportunity, Not Equality of Funding

Article XI, section 12 of the Tennessee constitution and the *Small Schools* cases require the State to provide an appropriate free public education to Tennessee students. Neither the constitution nor the *Small Schools* cases require a specific number of education dollars, a specific level of teacher salary, or a specific funding mechanism. In response to *Small Schools I*, however, the General Assembly enacted, and the Tennessee Supreme Court approved (with some modifications addressed in *Small Schools II and III*), the BEP program. The individual provisions of the BEP were not thereby set in stone, however. Over the intervening years numerous amendments, adjustments, and enhancements have been made to different aspects of the BEP, and in 2007 major changes were implemented, resulting in what is known as "BEP 2.0." See 2007 Tenn. Pub. Acts 369.⁹

In an effort to state a claim under Article XI, section 12 of the Tennessee constitution and the *Small Schools* cases, the Plaintiffs make the sweeping claim that "the State has failed to establish a system of free public education that provides substantially equal educational opportunities across the State." (*e.g.*, *Plaintiffs' Response*, p. 12). As supporting examples of this

⁸ Defendants have attached the first 7 pages of Executive Summary of the Report. The full report can be found at https://www.tn.gov/assets/entities/sbe/attachments/FINAL_BEP_November_1_2014_Report.pdf at pp. 4-7.

⁹ As noted above, it was then that the Legislature increased the percentage of funding for the instructional positions from 65% to 75%, among other adjustments. See Tenn. Code Ann. § 49-3-307(a).

claim, the Plaintiffs describe difficulties faced by the Hamilton and Grundy County school boards. Hamilton County, we are told, has made the “strategic decision” to pay its teachers more than “most of the other Plaintiffs.” (*Plaintiffs’ Response*, p. 22) As a result of this strategic decision, Hamilton County has less money to purchase instructional supplies for the classroom.

Respectfully, local school boards have always had to make this kind of funding choice, and will always have to in the future, regardless of the contours of BEP funding. Funding the instructional component of the BEP at 75% will not eliminate differences between teacher pay from county to county for the simple reason that each county makes its own decisions regarding how much in local funding to add to teachers’ salaries. Grundy County will almost certainly never have the revenue-producing capacity of Hamilton County. Consequently, while the BEP reduces the gap between teacher salaries in Grundy and Hamilton Counties, there will always be a gap. The *Small Schools* cases expressly recognize this fact. *See e.g., Small Schools III*, at 242-43.

Similarly, Hamilton County complains because some of its schools in its wealthier areas perform better than schools in its poorer areas. But these kinds of problems *within* local school districts are largely to be addressed by the local school board. The Tennessee constitution does not guarantee that local school boards will not have to make difficult choices regarding how to spend its available dollars. Again, regardless of the levels at which the BEP is funded from year to year, these are problems that local school boards will always have to confront. These are simply further examples of the “strategic decisions” discussed by the Plaintiffs in Hamilton County.

Consequently, the Plaintiffs cannot credibly allege, much less demonstrate, that they are “unable to educate their students,” or that the State has failed to create a system of free public education. Aside from the huge changes in state educational funding since the BEP was first enacted, there have been numerous enhancements completely independent of the funding aspects

of the BEP that help ensure that Tennessee students receive a quality education. For example, the State now maintains an extensive database that tracks school district, school, teacher, and student performance on an annual basis, known as the “State Report Card.” See <http://www.tn.gov/education/topic/report-card>.

In order to ensure equitable access to quality educational options for all Tennessee students, the legislature enabled the State to hold districts’ accountable through several mechanisms. In *Small Schools I*, 851 S.W.2d. at 156, the Court noted the “relative indifference” to education demonstrated by some local school systems, which the Court found to be a contributing factor to the inequalities in educational opportunities. See also, *Small Schools II*, 894 S.W.2d at 736. In response, Tennessee law establishes three levels of focused accountability. See Tenn. Code Ann. § 49-1-602. “Reward schools” are those in the top 5% in the State based on student proficiency or student academic growth. To address underperforming schools that local school boards might otherwise permit to languish, there are now specific measures available to address these situations.

“Focus schools” are those with the largest achievement gaps between subgroups of students in a school (e.g., poor and non-poor, or all students and students with disabilities). “Priority schools” are those in the bottom five percent in student achievement. See <https://www.tn.gov/education/article/2014-school-accountability>.

Tenn. Code Ann. § 49-1-602 makes schools that fall into the bottom five percent in overall achievement subject to one of three required interventions:

- Turnaround by the local education agency (LEA) through one of the school improvement grant (SIG) intervention models or another LEA-led process, subject to approval by the commissioner,
- Turnaround within an LEA innovation zone (charter school-like autonomy in district operated schools, permitting local districts to employ innovative methods) or

- Removal of the school from the jurisdiction of the LEA and placement into the Achievement School District (ASD) for a minimum of five years. *See* T.C.A. § 49-1-614(k).

Placement of a school into the ASD essentially reconstitutes the school since it will be run by a new entity. The ASD may directly operate the school, and thereby employ staff. Or, the ASD may authorize public charter schools, or contract with other non-profit entities, to run the school and employ staff. *See* T.C.A. §§ 49-1-614 and 49-13-106(a)(2).

The Achievement School District is "an organizational unit of the Department of Education," given the same authority and autonomy as local education agencies (LEAs). Thus, it has the flexibility to meet the needs of students in the lowest performing schools, and then return those schools to the oversight of the LEAs. LEAs are also given flexibility and additional funding to turn around schools through innovation zones or school improvement grant models. *See* <https://www.tn.gov/education/news/16242> for more information.

There is therefore an entire array of programs that demonstrate that the State of Tennessee does indeed provide a "free public education that educates its students." Many of these programs discussed above, as well as others such as Charter Schools, were neither a part of the original BEP nor contemplated by the *Smalls Schools* cases. They represent new and additional efforts to improve education in Tennessee.

This is further apparent from a review of the BEP Review Committee's 2014 Annual Report — the document to which the Plaintiffs erroneously ascribe the force of law. If public education was indeed in the desperate and unconstitutionally inadequate condition alleged by the Plaintiffs, the BEP review committee would be expected to state as much in their Report. Instead, the 2014 Report recommends (1) funding an additional 2 months of insurance premiums for LEA employees and teachers, (2) improving teacher compensation and increasing the BEP salary

component accordingly, and (3) a number of BEP Formula improvements such as continuing to phase in BEP 2.0, reducing by 2 to 3 students the class size ratios used to generate instructional positions in grades 7 – 12, and establishing new BEP components for professional development and mentoring. Ex. 1. In the most recent legislative session, the General Assembly enacted, as noted above, legislation increasing the salary component of the BEP by nearly 100 million dollars (the largest such increase in over a decade), additional salary equity funding which increases the annual salary equity fund to 14.5 million dollars, and funding of an additional 11th month of insurance premiums.

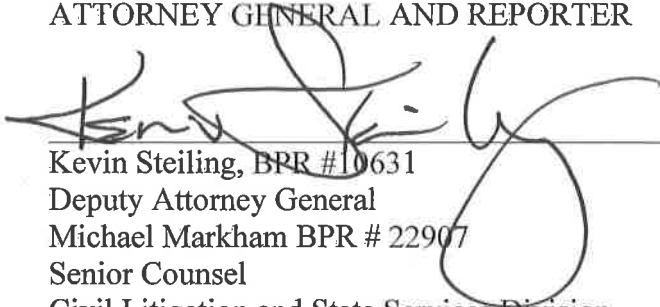
Finally, the depth of information contained in the State Report Card discussed above (p. 14) demonstrates that State K–12 education is making progress annually in terms of academic achievement, test scores, ACT scores, and improving the performance of those schools in the bottom 5%.

Public education will always present challenges on both the local and the state level. There is always more work to be done and more effort required to stretch the available education dollars. However, the conditions that gave rise to the *Small Schools* litigation no longer exist. Consequently, the Plaintiffs' conclusory allegations that they cannot educate their students, and that the State has failed to establish a free system of public education simply ring hollow. The inadequacy of the Plaintiffs' own examples of educational difficulties do not rise to the necessary level to state a constitutional claim, and their legal theories are without merit.

Accordingly, the Defendants respectfully request that this action be dismissed in its entirety.

Respectfully submitted,

HERBERT H. SLATERY III
ATTORNEY GENERAL AND REPORTER

A handwritten signature in black ink, appearing to read "Kevin Steiling", is written over a horizontal line. The signature is stylized and cursive.


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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and exact copy of the foregoing has been forwarded via fax, electronic mail, and Federal Express overnight delivery service, to

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on this 5th day of August, 2015.



Kevin Steiling
Deputy Attorney General
Civil Litigation and State Services Division

PUBLIC CHAPTER NO. 369

HOUSE BILL NO. 2293

By Representatives Winningham, Odom, Hackworth, Towns, Brown, Fincher, Curt Cobb, Coleman, Pitts, Vaughn, Dunn, Harry Brooks, Dean, Curtis Johnson, McCormick, Shaw, Bone, Favors, Briley, Moore, Bibb, Rinks, Sontany, Bass, Eldridge, Gilmore, Pruitt, Williams, Roach, McDaniel, Ford, Hood

Substituted for: Senate Bill No. 2177

By Senators Kyle, Woodson, Watson, Norris

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

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

SECTION 1. Tennessee Code Annotated, Section 49-3-354, is amended by deleting the second sentence in subsection (b).

SECTION 2. Tennessee Code Annotated, Section 49-3-356, is amended by deleting the language and punctuation “, sixty-five percent (65%) in the instructional positions component” in the first sentence

SECTION 3. Tennessee Code Annotated, Title 49, Chapter 3, Part 3, is amended by adding the following language as a new, appropriately designated section:

§49-3-3__.

(a) Notwithstanding the provisions of §49-3-351, §49-1-302 or any other law or rule to the contrary, effective with fiscal year 2007-2008, the Tennessee BEP shall be calculated using the following criteria:

(1) BEP appropriations to LEAs for the 2006-2007 school year plus appropriations to LEAs generated for annual BEP component costs adjustments based on the 2006-2007 school year shall constitute a base amount of funding;

(2) The state shall provide seventy five percent (75%) of the funds generated for instructional positions within the classroom component;

(3) The dollar value of the BEP instructional positions component shall be thirty-eight thousand dollars (\$38,000) for fiscal year 2007-2008, and shall be adjusted in subsequent fiscal years in accordance with the provisions of the general appropriations act;

(4) The "cost differential factor" (CDF) shall be eliminated from the formula;

(5) The formula shall provide one hundred percent (100%) funding for at-risk students in grades K-12. "At-risk student" means a student who is eligible for free or reduced price lunch pursuant to 42 U.S.C. §§ 1751-1769;

(6) 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;

(7) 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 state wide 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 such local jurisdiction that result in payments in lieu of taxes being made to the local jurisdiction;

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

(9) No LEA's measurement of ability to raise local revenue shall be adjusted more than forty percent (40%) within the BEP formula in any single year; and

(10) The formula shall provide fifty percent (50%) funding for medical insurance premiums for instructional positions.

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

SECTION 4. This act shall take effect July 1, 2007, the public welfare requiring it.

PASSED: May 31, 2007



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES



RON RAMSEY
SPEAKER OF THE SENATE

APPROVED this 7th day of June 2007



PHIL BREDESEN, GOVERNOR

§ 49-3-355

Library References

Schools ⇨19(1).
 Westlaw Topic No. 345.
 C.J.S. Schools and School Districts §§ 7, 9.

§ 49-3-356. **Basic education programs; state and local funds**

The state shall provide seventy-five percent (75%) of the funds generated by the Tennessee BEP formula in the classroom components, sixty-five percent (65%) in the instructional positions component and fifty percent (50%) in the nonclassroom components as defined by the state board. Every local government shall appropriate funds sufficient to fund the local share of the BEP. No LEA shall commence the fall term until its share of the BEP has been included in the budget approved by the local legislative body. From the local portion of such revenues, there shall be a distribution of funds for equalization purposes pursuant to a formula adopted by the state board, as approved by the commissioners of education and finance and administration. 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. 1992 Pub.Acts, c. 535, § 3. Amended by 2004 Pub.Acts, c. 670, § 1, eff. May 14, 2004.

Historical and Statutory Notes

2004 Pub.Acts, c. 670, § 9, provides:
 "In reviewing the basic education program for fiscal year 2005-2006, the BEP review committee is requested to give special consideration to costs of enhanced services to address the

needs of at-risk children, the cost of educating English language learners (including teachers, translators and related professions) and the development and implementation of a system-level fiscal capacity model."

Law Review and Journal Commentaries

School Finance Litigation: An Urban Perspective. Ernest G. Kelly, Jr., 61 Tenn. L. Rev. 471 (1994).
 School Finance Litigation: A Rural Perspective: The Magna Carta of Public Education in Tennessee. Lewis R. Donelson, 61 Tenn. L. Rev. 445 (1994).
 School Finance Litigation: The State's Perspective. Charles W. Burson and Jane W. Young, 61 Tenn. L. Rev. 457 (1994).

Library References

Counties ⇨162.
 Municipal Corporations ⇨889.1.
 Schools ⇨19(1).
 Westlaw Topic Nos. 104, 268, 345.
 C.J.S. Counties § 199.
 C.J.S. Municipal Corporations § 1628.
 C.J.S. Schools and School Districts §§ 7, 9.

Notes of Decisions

Construction and application 1
 Local funding 2

1. Construction and application

The State Board of Education must seek review and approval by the House and Senate education committees before putting into effect any changes to the components of the Board of Education, including changes to the formula adopted for equalization purposes. Op.Atty.Gen. No. 05-186, Dec. 22, 2005.

2. Local funding

Proposed Voluntary Pre-K Act of 2005 is not subject to legal challenge because some counties may be approved to participate while other are not. Op.Atty.Gen. No. 05-070, May 3, 2005.
 If the legislature does not appropriate funding for the Voluntary Pre-K program a local educational agency may discontinue the program for lack of funding. Op.Atty.Gen. No. 05-070, May 3, 2005.

A city must continue to provide funding for its school system at least to the same annual level it currently provides; if the city reduces or eliminates its level of funding, it would be in viola-

tion of the law and the county would have to accept responsibility for the students. Op. Atty. Gen. No. 05-021, March 10, 2005.

§ 49-3-357. Education trust fund of 1992

There is hereby created the education trust fund of 1992. The commissioner of finance and administration is authorized and directed to deposit in this fund all revenues earmarked and allocated specifically and exclusively for educational purposes under this part, §§ 57-4-306, 67-4-1025, 67-6-103, and any other statute providing for the collection of state taxes allocated for educational purposes. All expenditures from this fund shall only be made upon appropriations for educational purposes duly enacted by the general assembly. Educational purposes shall include, but not be limited to, payment of principal and interest on general obligation bonds authorized to fund capital projects for institutions of higher education. Any unencumbered funds and any unexpended balances of the fund remaining at the end of any fiscal year shall not revert to the general fund of the state, but shall be carried forward until expended for educational purposes pursuant to appropriations duly enacted by the general assembly.

1992 Pub. Acts, c. 535, § 3.

Library References

Schools ⇄ 16.1, 19(1).
Westlaw Topic No. 345.
C.J.S. Schools and School Districts §§ 7, 9.

§ 49-3-358. Basic education program; account

(a) There is hereby established within the education trust fund of 1992, created by this part, a special revenue account to be known as the "basic education program account."

(b) All appropriations from the education trust fund of 1992, and such other appropriations as may be provided by law, will be credited to the basic education program account. Such appropriations will be credited to the account on the fifteenth day of the second month of each quarter or on such other schedule approved by the commissioners of education and finance and administration.

(c) The principal and interest of the basic education program account, and any part thereof, will be subject to payment under the provisions of this chapter. The commissioner shall administer the basic education program account and is authorized to make disbursements from the account in accordance with the provisions of § 9-4-601.

(d) Money in the basic education program account shall be invested by the state treasurer for the benefit of the account pursuant to § 9-4-603. Interest accruing on investments and deposits to the account shall be returned to the account and become part of the account.

(2) The upgrading of the professional personnel of the SEA and LEA. [Acts 1977, ch. 289, § 16; T.C.A., § 49-620.]

49-3-322. Contracts — Small businesses — Minority owned businesses. — (a) Notwithstanding any provision of the law to the contrary, an LEA may set aside an amount not to exceed ten percent (10%) of the total amount of funds allocated for the procurement of personal property and services for the purpose of entering into contracts with small businesses and minority owned businesses. Such contracts shall be competitively bid among small businesses and minority owned businesses.

(b) For the purposes of this section, "small businesses" and "minority owned businesses" mean a business which is solely owned, or at least fifty-one percent (51%) of the outstanding stock of which is owned, by a person who is impeded from normal entry into the economic mainstream because of past practices of discrimination based on race, religion, ethnic background, sex or service in the armed forces during the Vietnam War; provided, that it is not the policy of the state to encourage employment outside the home of mothers of minor children. [Acts 1987, ch. 354, § 1; 1989, ch. 375, § 1.]

Cross-References. Contracts, small businesses, minority owned businesses, § 49-8-114.
Law Reviews. The Future of Affirmative

Action in Tennessee (M. Jill Austin and Lara Womack), 35 No. 7 Tenn. B.J. 12 (1999).

49-3-323. [Repealed.]

Compiler's Notes. Former § 49-3-323 (Acts 1991, ch. 505, § 1), concerning expenditure of funds, was repealed by Acts 1991, ch. 505, § 4.

49-3-324. Loan for transportation services. — In any fiscal year in which an LEA is unable to operate, or to continue to operate, transportation services with available funds, the LEA may request a loan from any county or municipal fund that has sufficient anticipated end of year fund balance to finance the loan during the fiscal year, or from the state, in an amount adequate to operate transportation services for the school year. Any such loan must be approved by the county legislative body if a county board of education makes the request, or the municipal legislative body if a municipal board of education makes the request, and the director of local finance, office of the comptroller of the treasury, in either case. The loan shall be with interest at the formula rate pursuant to § 47-14-105. The loan, both principal and interest, shall be repaid from the school operating funds of the LEA in the next fiscal year. If the state makes the loan and principal and interest is not repaid by the end of the fiscal year in which repayment is due, then the state shall withhold the amount due from state-shared revenue which would otherwise be distributed to the county, municipality, or special school district. [Acts 1992, ch. 927, § 1.]

49-3-325 — 49-3-350. [Reserved.]

49-3-351. Basic education program — Funding procedure. —
(a) State funds appropriated for the BEP, kindergarten through grade twelve

(K-12), shall be allocated pursuant to the formula devised by the state board of education pursuant to § 49-1-302. The programs funded through this formula are the "Tennessee Basic Education Program."

The formula shall also include increased funding for inclusion of a capital outlay component and cost of operations adjustments. This requirement shall be implemented the first year of the Tennessee BEP.

The Tennessee BEP shall include requirements prescribed by state law, regulations, rules, and other required costs.

Before any subsequent amendment or revision to the components of the formula of the Tennessee BEP shall become effective, it shall be submitted to the senate and house education committees for review and recommendation, and shall be approved by resolutions of the senate and house of representatives, but such approval shall be on the complete plan or revision and shall not be subject to amendment of the plan or revision.

(b) Notwithstanding any other law to the contrary, except for direct appropriations in support of the career ladder program, compiled in chapter 5, part 50 of this title, the only procedure for the funding of the BEP, kindergarten through grade twelve (K-12), shall be as provided in the formula prescribed in this section, and to the extent that funds are appropriated for such purpose by the general assembly.

(c) All funds generated for the BEP shall be spent on BEP components; provided, that those funds that cannot be spent prior to the beginning of the 1994-1995 school year shall be available for distribution to local school systems for the purpose of classroom construction and/or twenty-first century classroom technology to meet the maximum class size requirements of this title.

(d) Notwithstanding any other section or law to the contrary, the BEP of every LEA will be calculated on the basis of prior year ADM, or FTEADM, or identified and served special education students (I&S), with the following exceptions: if the LEA's current year ADM, FTEADM, and I&S, taken as a whole, exceeds by more than two percent (2%) the prior year's ADM, FTEADM, and I&S, taken as a whole, then that LEA's allocation of state funds shall be calculated on the basis of the current year ADM, FTEADM, and I&S less the first two percent (2%) by which it exceeds the prior year ADM, FTEADM, and I&S. The increased amount so calculated shall be distributed to the extent funds are appropriated for that specific purpose. If the funds appropriated for that purpose are insufficient to provide for the LEA's increased allocations, the commissioner shall apply a pro rata reduction to the increased amount each LEA is otherwise eligible to receive. If the funds appropriated for that purpose exceed the amount required to fund growth in excess of two percent (2%), then that percentage may be lowered to such percentage as may ensure that all funds appropriated are allocated and disbursed to LEAs. In calculating the allocations under the BEP formula, the commissioner, with the approval of the state board of education and the commissioner of finance and administration, shall establish definitions of ADM, FTEADM, and I&S, which will be used to determine each LEA's BEP funding. It is the legislative intent that the definitions so established approximate as closely as possible full year ADM, FTEADM, and I&S. [Acts 1992, ch. 535, § 3; 1996, ch. 981, §§ 1, 2; 1998, ch. 936, § 1; 1999, ch. 360, § 1.]

Section to Section References. This section is referred to in § 49-3-366.

Law Reviews. School Finance Litigation: An Urban Perspective (Ernest G. Kelly Jr.), 61 Tenn. L. Rev. 471 (1994).

Attorney General Opinions. Cost differential factor, revision, OAG 96-081 (5/2/96).

Constitutionality of prohibitions against using basic education program appropriations for teacher salary increases, OAG 96-137 (11/22/96).

Local education agency funding of raises for local school employees, OAG 99-130 (6/30/99).

If state basic education program (BEP) funds are insufficient, the commissioner of education may reduce each school system's funding by applying a pro rata reduction based on average daily membership; however, the statute does not authorize the commissioner to delay BEP funding, OAG 01-112 (7/12/01).

49-3-352. Dedicated education fund. — (a) There is hereby established within the general fund of each LEA a special revenue account to be known as the "dedicated education fund."

(b) All appropriations from all sources to fund public education will be deposited in this account. Money in the dedicated education fund shall be invested as provided by law.

(c) Any fund balance remaining unexpended at the end of a fiscal year in the general fund of the local public education system shall be carried forward into the subsequent fiscal year. Such fund balance shall be available to offset shortfalls of budgeted revenues or, subject to the provisions of § 49-2-301(f)(23), shall be available to meet unforeseen increases in operating expenses. The accumulated fund balance in excess of three percent (3%) of the budgeted annual operating expenses for the current fiscal year may be budgeted and expended for nonrecurring purposes but shall not be used to satisfy appropriation requirements for recurring annual operating expenses. [Acts 1992, ch. 535, § 3.]

49-3-353. Conditions for receiving basic education program funds. — (a) In order for any local public school system to receive Tennessee BEP funds, such system shall meet the conditions and requirements set out in this section. In order to enforce the same, the commissioner may, in the commissioner's discretion, withhold a portion or all of the Tennessee BEP funds that the system is otherwise eligible to receive.

(b) Every local public school system shall meet the requirements of state law as to the operation of such system and of the rules, regulations, and minimum standards of the state board for the operation of schools. [Acts 1992, ch. 535, § 3.]

Attorney General Opinions. Responsibility to withhold funds from non-complying local education agencies, OAG 98-0157 (8/17/98).

49-3-354. Distribution of basic education program funds. — (a) Tennessee BEP funds shall be distributed by the commissioner periodically throughout the school year according to a schedule established by the commissioners of education and finance and administration, subject to all restrictions prescribed by law.

(b) BEP funds that are earned in classroom components, which include pupil contact and classroom support as defined by the state board, must be spent in the classroom.

services for the purpose of entering into contracts with small businesses and minority owned businesses. Such contracts shall be competitively bid among small businesses and minority owned businesses.

(b) For the purposes of this section, "small businesses" and "minority owned businesses" mean a business which is solely owned, or at least fifty-one percent (51%) of the outstanding stock of which is owned, by a person who is impeded from normal entry into the economic mainstream because of past practices of discrimination based on race, religion, ethnic background, sex or service in the armed forces during the Viet Nam War; provided, that it is not the policy of the state to encourage employment outside the home of mothers of minor children. [Acts 1987, ch. 354, § 1; 1989, ch. 375, § 1.]

Cross-References. Contracts, small businesses, minority owned businesses, § 49-8-114.

49-3-323. [Repealed.]

Compiler's Notes. Former § 49-3-323 (Acts 1991, ch. 505, § 1), concerning expenditure of funds, was repealed by Acts 1991, ch. 505, § 4.

49-3-324. Loan for transportation services. — In any fiscal year in which a local education agency is unable to operate, or to continue to operate, transportation services with available funds, the local education agency may request a loan from any county or municipal fund that has sufficient anticipated end of year fund balance to finance the loan during the fiscal year, or from the state, in an amount adequate to operate transportation services for the school year. Any such loan must be approved by the county legislative body if a county board of education makes the request, or the municipal legislative body if a municipal board of education makes the request, and the director of local finance, office of the comptroller of the treasury, in either case. The loan shall be with interest at the formula rate pursuant to § 47-14-105. The loan, both principal and interest, shall be repaid from the school operating funds of the local education agency in the next fiscal year. If the state makes the loan and principal and interest is not repaid by the end of the fiscal year in which repayment is due, then the state shall withhold the amount due from state-shared revenue which would otherwise be distributed to the county, municipality, or special school district. [Acts 1992, ch. 927, § 1.]

49-3-325 — 49-3-350. [Reserved.]

49-3-351. Basic education program — Funding procedure. — (a) State funds appropriated for the basic education program (BEP), kindergarten (K) through grade twelve (12), shall be allocated pursuant to the formula devised by the state board of education pursuant to § 49-1-302. The programs funded through this formula are the "Tennessee Basic Education Program."

The formula shall also include increased funding for inclusion of a capital outlay component and cost of operations adjustments. This requirement shall be implemented the first year of the Tennessee basic education program.

The Tennessee basic education program shall include requirements prescribed by state law, regulations, rules, and other required costs.

Before any subsequent amendment or revision to the components of the formula of the Tennessee basic education program shall become effective, it shall be submitted to the senate and house education committees for review and recommendation, and shall be approved by resolutions of the senate and house of representatives, but such approval shall be on the complete plan or revision and shall not be subject to amendment of the plan or revision.

(b) Notwithstanding any other law to the contrary, except for direct appropriations in support of the career ladder program, compiled in chapter 5, part 50 of this title, the only procedure for the funding of the basic education program kindergarten (K) through grade twelve (12) shall be as provided in the formula prescribed in this section, and to the extent that funds are appropriated for such purpose by the general assembly.

(c) All funds generated for the basic education program shall be spent on basic education program components; provided, that those funds that cannot be spent prior to the beginning of the 1994-1995 school year shall be available for distribution to local school systems for the purpose of classroom construction and/or twenty-first century classroom technology to meet the maximum class size requirements of this title.

(d) Notwithstanding any other section or law to the contrary, the basic education program of every local education agency will be calculated on the basis of prior year average daily membership (ADM), or full-time equivalent average daily membership (FTEADM), or identified and served special education (I&S), as appropriate, unless the LEA's current year ADM, FTEADM, or I&S changes from the prior year by more than two percent (2%), in which case, the current year ADM, FTEADM, or I&S will be used. In calculating the allocations under the basic education program formula, the commissioner of education, with the approval of the state board of education and the commissioner of finance and administration, shall establish definitions of ADMs, FTEADM, and I & S, which will be used to determine each LEA's basic education program funding. It is the legislative intent that the definitions so established approximate as closely as possible full year ADMs, FTEADM, and I and S. [Acts 1992, ch. 535, § 3; 1996, ch. 981, §§ 1, 2.]

Section to Section References. This section is referred to in § 49-3-366.

An Urban Perspective (Ernest G. Kelly Jr.), 61 Tenn. L. Rev. 471 (1994).

Law Reviews. School Finance Litigation:

49-3-352. Dedicated education fund. — (a) There is hereby established within the general fund of each local education agency a special revenue account to be known as the "dedicated education fund."

(b) All appropriations from all sources to fund public education will be deposited in this account. Money in the dedicated education fund shall be invested as provided by law.

(c) Any fund balance remaining unexpended at the end of a fiscal year in the general fund of the local public education system shall be carried forward into the subsequent fiscal year. Such fund balance shall be available to offset shortfalls of budgeted revenues or, subject to the provisions of § 49-2-

PUBLIC CHAPTER NO. 254

PUBLIC CHAPTER NO. 254

HOUSE BILL NO. 1285

By Representative Durham

Substituted for: Senate Bill No. 819

By Senator Kelsey

AN ACT to amend Tennessee Code Annotated, Title 29, Chapter 26, Part 1, relative to healthcare liability actions.

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

29-26-101 SECTION 1. Tennessee Code Annotated, Section 29-26-101(a), is amended by adding the following as new subdivisions:

(3) "Licensee" means a health care provider licensed, authorized, certified, registered, or regulated under title 33, 63, or 68 that is legally responsible for all health care services provided;

(4) "Management company" means an individual or entity that contracts with, or receives a fee from, a licensee to provide any of the following services to or for a licensee:

(A) Directly hiring or firing the administrator or other managing employees of the licensee;

(B) Directly controlling or having control over the staffing levels at the licensee;

(C) Directly controlling the budget and expenditures of the licensee; or

(D) Directly implementing and enforcing the policies and procedures of the licensee; and

(5) "Passive investor" means an individual or entity that has an ownership interest in a licensee but does not directly participate in the day-to-day decision making or operations of the licensee.

29-26-102 SECTION 2. Tennessee Code Annotated, Title 29, Chapter 26, Part 1, is amended by adding the following as a new section:

29-26-102.

(a) Except as provided in this section, a health care liability action against a licensee may be brought only against the licensee, the licensee's management company, the licensee's managing employees, or an individual caregiver who provided direct health care services, whether an employee or independent contractor. A passive investor shall not be liable under this part. A health care liability action against any other individual or entity may be brought only pursuant to subsection (b).

(b) A cause of action may not be asserted against an individual or entity other than the licensee, the licensee's management company, the licensee's managing employees, or an individual caregiver who provided direct health care services, whether an employee or independent contractor, unless, after a hearing on a motion for leave to amend, the court or arbitrator determines that there is sufficient evidence in the record or proffered by the claimant to establish a reasonable showing that:

(1) The individual or entity owed a duty of reasonable care to the claimant and that the individual or entity breached that duty; and

(2) The breach of that duty is a legal cause of loss, injury, death, or damage to the claimant.

PUBLIC CHAPTER NO. 427

PUBLIC CHAPTER NO. 427

HOUSE BILL NO. 1374

By Representatives Sargent, McCormick

Substituted for: Senate Bill No. 1399

By Senators Norris, McNally

AN ACT to make appropriations for the purpose of defraying the expenses of the state government for the fiscal years beginning July 1, 2014, and July 1, 2015, in the administration, operation and maintenance of the legislative, executive and judicial branches of the various departments, institutions, offices and agencies of the state; for certain state aid and obligations; for capital outlay, for the service of the public debt, for emergency and contingency; to repeal certain appropriations and any acts inconsistent herewith; to provide provisional continuing appropriations; and to establish certain provisions, limitations and restrictions under which appropriations may be obligated and expended. This act makes appropriations for the purposes described above for the fiscal years beginning July 1, 2014, and July 1, 2015.

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

SECTION 1. That appropriations hereinafter set out are hereby made for the purpose of defraying the expenses of state government for the fiscal year beginning July 1, 2015, in the administration, operation and maintenance of the legislative, executive and judicial branches of the various departments, institutions, offices and agencies of the state, and for certain state aid and obligations and for capital outlay, for the service of the public debt, and for emergency and contingency, all according to the following schedule:

		<u>2015-2016</u>
I. LEGISLATIVE		
1.	Legislature	
	1.1 General Assembly Support Services	8,474,800.00
	1.2 House of Representatives	18,221,300.00
	1.3 State Senate	10,231,000.00
	1.4 Legislative Administration Services	4,564,600.00
	1.5 Tennessee Code Commission	68,900.00
	Total Legislature	41,560,600.00
	2. Fiscal Review Committee	1,478,800.00
	Total Title I	43,039,400.00
II. JUDICIAL		
	1. Appellate and Trial Courts	62,081,100.00
	2. Supreme Court Buildings	2,577,400.00
	3. Child Support Referees	810,200.00
	4. Guardian Ad Litem	6,047,500.00
	5. Indigent Defendants' Counsel	30,463,000.00
	6. Civil Legal Representation Fund	3,327,900.00
	7. Court Interpreter Services	2,441,900.00
	8. Verbatim Transcripts	3,927,100.00
	9. Tennessee State Law Libraries	74,500.00
	10. Council of Juvenile and Family Court Judges	60,300.00
	11. Judicial Conference	223,700.00
	12. Judicial Programs and Commissions	410,100.00
	13. State Court Clerks' Conference	260,100.00
	14. Administrative Office of the Courts	8,480,700.00
	15. Appellate Court Clerks	673,800.00
	16. Board of Court Reporting	172,300.00
	17. Board of Law Examiners	753,900.00
	18. Board of Professional Responsibility	3,480,500.00
	19. Tennessee Lawyers Assistance Program	469,700.00
	20. Continuing Legal Education	880,800.00
	21. Client Protection Fund	208,500.00

PUBLIC CHAPTER NO. 427 (cont'd)

Item 18. Within the amount appropriated in Section 1, Title III-17, and in Section 4, Title III-17, for Temporary Assistance to Needy Families, the Commissioner of Human Services shall establish by rule or regulation, pursuant to the provisions of Tennessee Code Annotated, Section 71-3-105, to be effective July 1, 2015, the standard of need for each family size in the Families First program; provided, the maximum grant for each family size will remain at the Fiscal Year 2014-2015 established level; and, provided further, that the Commissioner of Human Services, in consultation with the Commissioner of Finance and Administration, may by rule to be effective on July 1, 2015, establish certain categories of Families First recipients to whom an additional grant differential for the family size up to a maximum of fifty dollars (\$50.00) per family may be paid.

Item 19. The appropriations to the Department of Revenue under Section 1, Title III-18, provide for all the activities of the department and include amounts in lieu of percentages allowed by law on collection of certain taxes and revenues; such percentages shall be covered into and made a part of the general fund. Appropriations also include amounts for motor vehicle registration and any other activities which may be administered by the Department of Revenue.

Item 20. No funds appropriated by the provisions of this act for any cultural, specialty earmarked, new specialty earmarked, and collegiate license plate shall be allocated by the Department of Finance and Administration to the Department of Revenue until such plate has met all statutory requirements for issuance, as provided in Tennessee Code Annotated, Title 55, Chapter 4.

SECTION 11. Department of Education. The appropriations made by this act under Sections 1 and 4 to the Department of Education shall be subject to the following provisions, limitations, or restrictions:

Item 1. The appropriation made in Section 1, Title III-9, Item 2.1c, for the Basic Education Program (BEP), shall be administered pursuant to the provisions of the Education Improvement Act (Public Chapter No. 635 of the Public Acts of 1992) and Public Chapter No. 369 of the Public Acts of 2007. The BEP formula shall be calculated for the fiscal year using the following criteria:

(a) The state shall provide seventy percent (70%) of the funds generated for the instructional positions component;

(b) The dollar value of the BEP instructional positions component shall be forty-two thousand sixty-five dollars (\$42,065) as amended;

(c) The formula shall provide one hundred percent (100%) funding for at-risk students in grades K-12;

(d) The formula shall provide funding for English language learners at a ratio of one to thirty (1:30) and one to three hundred (1:300) for teachers to students and translators to students, respectively;

(e) Each local education agency (LEA) shall receive no less than a twenty-five percent (25%) state share in the non-classroom components;

(f) The cost differential factor shall be applied at a level of fifty percent (50%); and

(g) Local fiscal capacity shall be calculated by applying a weight of fifty percent (50%) of the current multiple regression analysis model and fifty percent (50%) of the model based on local jurisdictions' ability to raise revenue for education from local option sales tax and property tax as provided in Public Chapter 369 of 2007.

Item 2. From the appropriations made to the Department of Education under Section 1, Title III-9, of this act, the Department of Education is authorized to pay through disbursements to local education agencies (LEAs), the following amounts based on the Basic Education Program (BEP) formula, of participation in the basic accident and medical expense insurance plan, authorized by Tennessee Code Annotated, Title 9, Chapter 27, Part 3, by eligible employees of local education agencies:

PUBLIC CHAPTER NO. 427 (cont'd)

(a) For the benefit of eligible local education instructional employees and their dependents, an amount not to exceed forty-five percent (45%) of the total statewide cost;

(b) For the benefit of eligible local education support staff employees and their dependents, an amount not to exceed thirty percent (30%) of the total statewide cost.

Furthermore, local education agencies are required to contribute a portion of the premium for participation in the basic accident and medical expense insurance plan at the following levels:

(1) Pursuant to Tennessee Code Annotated, Section 8-27-303(j)(1), each local education agency shall pay on behalf of each instructional employee participating in the health insurance coverage authorized by Tennessee Code Annotated, Sections 8-27-302 and 303 a minimum of forty-five percent (45%) of the monthly premium for the coverage elected by the instructional employee.

(2) Pursuant to Tennessee Code Annotated, Section 8-27-303(j)(2), each local education agency shall pay on behalf of each support staff employee participating in the health insurance coverage authorized by Tennessee Code Annotated, Sections 8-27-302 and 303 a minimum of ten percent (10%) of the monthly premium for the coverage elected by the support staff employee.

The Local Education Insurance Committee shall determine a calendar year 2016 plan of benefits, related services, and monthly premiums for each of the health care options offered through the "basic plan" it authorizes pursuant to Section 8-27-302, Tennessee Code Annotated, which results, with reasonable certainty, in the provision of sufficient revenues to pay plan expenses and to provide for the funding of reserves for estimated incurred but unreported claims. The aggregate amount of funds obligated through the determination of the plans of benefits and the monthly premiums by the Local Education Insurance Committee shall not exceed the amount appropriated to the Department of Education, Basic Education Program's insurance component in this act. The monthly premiums shall be subject to the approval of the Commissioner of Finance and Administration pursuant to Tennessee Code Annotated, Section 4-3-1006.

For purposes of these appropriations, "base premium" means the lowest premium offered by the Local Education Insurance Plan, without regard to any surcharges added to the premium for participation in the standard plan, a higher-cost network, or other premium adjustments that incur cost-savings to the plan.

The Local Education Insurance Committee shall recognize the annualized rate and benefit adjustments intended to be effective on January 1, 2016, which are required so that the plan of benefits, on an annualized basis, shall not exceed the recurring amount appropriated to the Department of Education.

Item 3. From the appropriation made to the Department of Education under Section 1, Title III-9, of this act, for technology programs, there is hereby earmarked a sum sufficient for the expenditures of the Web Project.

Item 4. From the appropriation made in Section 1, Title III-9, Item 2.1c, Basic Education Program, an amount of \$10,000,000 is appropriated for the purpose of providing additional BEP funding for student enrollment growth on a current-year student basis, and such funds shall be distributed pursuant to Tennessee Code Annotated, Section 49-3-351(d), to the extent available.

Item 5. Under the provisions of Tennessee Code Annotated, Sections 49-3-357 and 49-3-358, pertaining to interest accruing on investments and deposits to the Education Trust Fund and the Basic Education Program, it is the legislative intent that only interest earnings be recognized and that no interest expense be charged to the fund and the program.

Item 6. The Department of Education shall submit to the Office of Legislative Budget Analysis the revised BEP funding formula for the ensuing fiscal year no later than February 1 of each year.

PUBLIC CHAPTER NO. 427 (cont'd)

Item 7. Local education agencies are required to report average daily membership (ADM) to the Department of Education on a scheduled basis. To the extent a local education agency fails to report accurate and timely ADM information to the department, the BEP payments for the subsequent fiscal year shall be based on the second prior year ADM figure, unless the late-reported ADM figures are lower than the second prior year.

Item 8. In the year ending June 30, 2015, from funds appropriated in Public Acts of 2014, Chapter 919, Section 1, Title III-9, Item 2.1c, Basic Education Program (BEP), any funds withheld pursuant to Tennessee Code Annotated, Section 49-3-353, hereby are authorized to be distributed by the Commissioner of Education to local education agencies (LEAs) in amounts that represent each LEA's share of the BEP relative to statewide BEP funding. Such distribution shall exclude any LEA in violation of Section 49-3-353. Such funds as may be distributed as provided in this item hereby are appropriated for such purpose. The provisions of this item shall be effective immediately, the public welfare requiring it.

Item 9. From the appropriation made in Section 1, Title III-9, Item 2.1c, Basic Education Program, an amount of \$14,500,000 is appropriated for the purpose of addressing teacher compensation disparity, and such funds shall be distributed pursuant to Tennessee Code Annotated, Section 49-1-302, to the extent available.

SECTION 12: Certain Legislation -- Appropriations and Provisions for Funding.

Item 1. It is the legislative intent to recognize a revenue loss from bills that result in no expenditure increase but forgo revenue which has not been collected previously.

Item 2. In addition to any other funds appropriated by the provisions of this act, there is hereby appropriated to the Department of Finance and Administration for distribution to the appropriate entities a sum sufficient to fund any bill on which the fiscal note indicates that the cost of implementation of the bill as enacted is not significant. It is the legislative intent that if funding is earmarked for implementation in such bills that the funds appropriated in this item be reduced accordingly.

Item 3. In addition to any other funds appropriated by the provisions of this act, if the fiscal note on any bill states that state revenues would be increased in an amount equal to or greater than state expenditures as a result of the enactment of such bill, then there is appropriated a sum sufficient from such increased revenue to the appropriate entity, as determined by the Commissioner of Finance and Administration, to implement such bill.

Item 4. The provisions of this item shall take effect upon becoming law, the public welfare requiring it. From the appropriations made in this act, there hereby is appropriated a sum sufficient for implementation of any legislation cited or otherwise described by category in this act or in the Budget Document transmitted by the Governor that has an effective date prior to July 1 of the current calendar year, provided that such legislation is funded in the Budget Document as submitted by the Governor or in the final legislative balancing schedules summarizing enacted amendments incorporated into this act or other appropriations acts of this legislative session and that the fiscal impact of implementing the legislation, as indicated in the final cumulative fiscal note of the Fiscal Review Committee on enacted legislation, is less than or equal to the amounts indicated in the Budget Document or the amendment balancing schedules. The final legislative balancing schedules may incorporate in summary form the amounts included in the amendment(s) submitted by the Governor, to the extent adopted, as indicated on the balancing schedule accompanying the Governor's recommended amendment(s).

Item 5. From funds available to any department, commission, board, agency, or other entity of state government, there is earmarked a sum sufficient to fund any bill or resolution, that becomes law or is adopted, respectively, for which the Commissioner of Finance and Administration or the entity's chief fiscal officer certifies in writing that the cost of implementation of the bill or resolution will be funded within existing appropriations of the entity, within the availability of revenues received by the entity, or within other existing budgetary resources. The certification shall include the source of funding to provide for such appropriations. It is the legislative intent that such funding be earmarked for implementation of any such bills or resolutions in the fiscal years ending June 30, 2015 and June 30, 2016. This item shall take effect upon becoming law, the public welfare requiring it.

PUBLIC CHAPTER NO. 427 (cont'd)

standardized reimbursement levels, and/or reduce, or limit, optional benefits in the TennCare Program as necessary to control program expenditures in the fiscal years ending June 30, 2015, and June 30, 2016.

Item 9. In the fiscal year ending June 30, 2015, there is hereby appropriated a sum sufficient from the TennCare reserve an amount not to exceed \$463,300 for the Department of Intellectual and Developmental Disabilities Clover Bottom Lawsuit Settlement Exit Plan. The Commissioner of Finance and Administration is further authorized to adjust federal aid and other departmental revenue estimates accordingly.

SECTION 49. Salary Policy for State and Higher Education Employees.

Item 1. Executive Branch Employees – Salary Pool.

(a) From the appropriation made in Section 1, Title III-22, Item 13, State Employees Salary Pool, it is the legislative intent to provide a pool of funds for executive branch employee salary increases effective January 1, 2016, and to adjust the appropriate salary ranges in a like manner. The salary increase is not applicable to employees in positions which come under the provisions of a statutorily mandated pay plan; provided, however, that employees who come under the provision of a statutorily mandated plan shall be paid in accordance with the provisions of such plan. The salary increases shall be according to the following provisions:

- (1) A portion of the pool of funds shall be used to adjust salary ranges.
- (2) A portion of the pool of funds shall be used to provide increased pay based on increased performance as measured by employee reviews.
- (3) A portion of the pool of funds shall be used to implement a salary market adjustment.

Item 2. Non-Executive Branch Employees, Other Employee Classes – Salary Increase.

(a) From the appropriation made in Section 1, Title III-22, Item 13, State Employees Salary Pool, it is the legislative intent to provide a 2.0 percent employee salary increase effective July 1, 2015, for employees in Section 1, Title I, Title II, Title III-1, Title III-9, Item 4, and Title III-10, Item 1, and to adjust the appropriate salary ranges in a like manner. The salary increase is not applicable to employees in positions which come under the provisions of a statutorily mandated pay plan; provided, however, that employees who come under the provision of a statutorily mandated plan shall be paid in accordance with the provisions of such plan.

Item 3. K-12 Education Teachers and Other Certified Staff – Salary Increase.

(a) From the appropriation made in Section 1, Title III-9, Item 2.1c, it is the legislative intent to provide a pool of funds for employee salary increases for teachers and other certified staff, effective July 1, 2015; provided, further, that said increases will be allocated according to the salary and compensation schedules of each Local Education Agency.

Item 4. Higher Education Employees – Salary Pool.

(a) From the appropriations made in Section 1, Title III-10, Items 3 and 4, it is the legislative intent to provide a pool of funds for higher education employee salary increases effective July 1, 2015.

Item 5. Survey Portion of Commissioned Officer Pay Plan and Wildlife Resources Agency Pay Plan.

(a) It is the legislative intent to provide funding for a 2.0 percent salary increase for the survey portion of the commissioned officer pay plan in the Department of Safety and the Tennessee Law Enforcement Training Academy

PUBLIC CHAPTER NO. 427 (cont'd)

organizational structure through a voluntary separation plan to be developed by the respective department and agency heads, pursuant to their statutory authority.

Benefits included in this voluntary separation plan may include, but not be limited to, the following:

- (1) a base payment equal to four months of base salary;
- (2) five hundred dollars (\$500.00) per year of service;
- (3) a payment of accrued annual and compensatory leave balances;
- (4) extended health insurance benefits for a period of months to be determined, or a cash option to buy into COBRA health coverage, or a cash option equivalent to the extended health insurance benefit; and
- (5) college tuition assistance for 2 years to be capped at the average of the highest four-year public Tennessee college undergraduate level; provided, however, that such assistance shall only be provided for periods of actual attendance within a period of time to be determined by the Commissioner of Finance and Administration.

The department and agency heads shall submit a copy of the voluntary separation plan to the Speaker of the Senate, Speaker of the House of Representatives, the Chairs of the Finance, Ways and Means Committees of the Senate and House of Representatives, the Commissioner of Finance and Administration, and the Directors of the Office of Legislative Budget Analysis.

SECTION 58. Other Additions to Budget. In addition to the amounts appropriated in Sections 1 and 4 of this act, the following amounts are appropriated, and the Commissioner of Finance and Administration is authorized to allocate the appropriations to the appropriate organizational units and to adjust federal aid and other departmental revenues and position authorizations accordingly. Full-time (FT) and part-time (PT) position authorizations are estimated in the text of the following line items.

Item 1. General Fund and Education Fund Appropriations. The following appropriations are from the general fund and education fund, as applicable.

	<u>Recurring</u>	<u>Non-Recurring</u>
1. Court System -- New Judgeship in the 19 th Judicial District (2 FT) (SB 60 / HB 55)	\$ 297,100	\$ 24,800
2. Comptroller of the Treasury -- Property Tax Relief	0	7,000,000
3. TennCare -- TennCare Medical Services -- Restore 1% Provider Rate Reduction	0	18,173,000
4. TennCare -- TennCare Medical Services -- Restore Mental Health Case Management Reduction	5,240,300	5,240,700
5. Agriculture -- Transfer Livestock Animal Abuse Investigation from UT Extension Service	363,000	81,000
6. Economic and Community Development -- Film and TV Incentive Fund -- Grants	0	12,000,000
7. Economic and Community Development -- Business Development -- Oak Ridge Manufacturing Research Grant	0	3,000,000
8. Economic and Community Development -- Business Development -- Center for Advanced Manufacturing Research Grant	0	2,000,000
9. Economic and Community Development -- FastTrack -- Grant	10,000,000	0
10. Economic and Community Development -- FastTrack -- Training Grant	0	1,687,500
11. Education -- Basic Education Program -- 11 th Month of Group Health Insurance	29,270,000	0
12. Education -- Teachers and Leaders --	0	250,000

2013-2014 BEP Blue Book



Tennessee Basic Education Program BEP 2.0

State Board of Education
1st Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243-1050

Exhibit 1

This booklet lists the Basic Education Program (BEP) components and the cost specifications for each component. The components include both operating and capital outlay costs.

The BEP components serve as the basis for calculating the level of funding for each school system. These components represent the level of support necessary for our schools to succeed. While the components serve as the basis for calculating the level of BEP funding for each school system, the BEP does not prescribe specific levels of expenditures for individual components. Actual costs of the essential components are monitored and updated from year to year. Total costs are calculated by applying cost specifications to the schools' census data.

Equity adjustments (cost of operations adjustment and fiscal capacity adjustment) equalize responsibility among the local school systems based on variations in the cost of delivering services to students and in relative fiscal capacity.

STATE BOARD OF EDUCATION

Mr. Fielding Rolston, Chairman
Ms. Janet Ayers
Mr. Mike Edwards
Ms. Vernita Justice
Ms. Katie Mitchell, Student Member
Ms. Carolyn Pearre
Mr. Lonnie Roberts
Dr. Jean Anne Rogers
Dr. Valerie Rutledge
Ms. Teresa Sloyan
Dr. Melvin Wright, Sr.
Dr. Richard Rhoda, THEC, (ex officio)

Dr. Gary L. Nixon, Executive Director

INSTRUCTIONAL COMPONENTS (STATE SHARE = 70%)

COMPONENT	FUNDING LEVEL
REGULAR EDUCATION	1 per 20 ADM K-3 1 per 25 ADM 4-6 1 per 25 ADM 7-9 1 per 22.08 ADM 10-12
CAREER & TECHNICAL EDUCATION	1 per 16.67 career and technical education FTEADM
SPECIAL EDUCATION (number of students identified and served = I & S)	(Caseload Allocations) Option 1 91 Option 6 2 Option 2 73 Option 7 10 Option 3 46 Option 8 6 Option 4 25 Option 9 0 Option 5 15 Option 10 10
ELEMENTARY GUIDANCE	1 per 500 ADM K-6*
SECONDARY GUIDANCE	1 per 350 ADM 7-12 (including voc ed)*
ELEMENTARY ART	1 per 525 ADM K-6
ELEMENTARY MUSIC	1 per 525 ADM K-6
ELEMENTARY PHYSICAL EDUCATION	1 per 350 ADM K-4 1 per 265 ADM 5-6
ELEMENTARY LIBRARIANS (K-8)	.5 per school < 265 1 per school 265-439 1 per school 440-659 (+.5 assistant) 1 per school > 660 (+1 assistant)
SECONDARY LIBRARIANS (9-12)	.5 per school < 300 1 per school 300-999 2 per school 1,000-1,499 2 per school > 1,500 (+1 per add'l 750)
ELL INSTRUCTORS	1 per 30 ELL Students I&S
ELL TRANSLATORS	1 per 300 ELL Students I&S

INSTRUCTIONAL COMPONENTS (STATE SHARE = 70%)

COMPONENT	FUNDING LEVEL
PRINCIPALS	.5 per school < 225** 1 per school > 225
ASSISTANT PRINCIPALS ELEMENTARY	.5 per school 660-879 1 per school 880-1,099 1.5 per school 1,100-1,319 2 per school > 1,320
ASSISTANT PRINCIPALS SECONDARY	.5 per school 300-649 1 per school 650-999 1.5 per school 1,000-1,249 2 per school > 1,250 (+ 1 per add'l 250)
SYSTEM-WIDE INSTRUCTIONAL SUPERVISORS	1 per < 500 total ADM 2 per 500-999 total ADM 3 per 1,000-1,999 total ADM 3 per > 2,000 total ADM (+ 1 per add'l 1,000)
SPECIAL EDUCATION SUPERVISORS	1 per 750 special education I & S
VOCATIONAL EDUCATION SUPERVISORS	1 per 1,000 vocational education FTEADM
SPECIAL EDUCATION ASSESSMENT PERSONNEL	1 per 600 special education I & S
SOCIAL WORKERS	1 per 2,000 total ADM*
PSYCHOLOGISTS	1 per 2,500 total ADM*
SPECIAL EDUCATION EARLY INTERVENTION	Early intervention services for 3-year-old children with disabilities. Now allocated through count of special education I & S
STAFF BENEFITS AND INSURANCE	\$5,244.49 per BEP position for insurance; plus 7.65% of BEP salary for FICA. Add 8.88% of BEP salary per licensed position OR 10.30% of BEP salary per classified position for TCRS

CLASSROOM COMPONENTS (STATE SHARE = 75%)

COMPONENT	FUNDING LEVEL
K-12 AT-RISK CLASS SIZE REDUCTION	Based on 1:15 class size reduction for grades K-12, estimated at \$519.38 per identified at-risk ADM. Funded at 100% at-risk.
DUTY-FREE LUNCH	\$11.00 per total ADM
TEXTBOOKS	\$76.75 per total ADM
CLASSROOM MATERIALS & SUPPLIES (includes fee waiver)	\$ 74.50 per regular ADM \$157.75 per vocational education FTEADM \$ 36.50 per special education I & S \$35.75 per Academic exit exam (12 th grade) \$11.25 per Technical exit exam (1/4 voc ed)
INSTRUCTIONAL EQUIPMENT	\$64.25 per regular ADM \$99.75 per vocational education FTEADM \$13.25 per special education I & S
CLASSROOM RELATED TRAVEL	\$14.00 per regular ADM \$21.50 per vocational education FTEADM \$17.25 per special education I & S
CAREER & TECHNICAL CENTER TRANSPORTATION	For participating systems to transport students to career & technical center attended part of the day
TECHNOLOGY	\$TBD per total ADM (Approx. \$20.90) \$20 M distributed on ADM basis
NURSES	1 per 3,000 total ADM (min. + 1 per system)
INSTRUCTIONAL ASSISTANTS	1 per 75 ADM K-6
SPECIAL EDUCATION ASSISTANTS	1 per 60 special education I & S in Options 5,7,8
SUBSTITUTE TEACHERS	\$61.75 per total ADM
ALTERNATIVE SCHOOLS	\$3.43 per total ADM K-12 plus \$29.75 per ADM 7-12 (including voc ed)

NON-CLASSROOM COMPONENTS (STATE SHARE = 50%)

COMPONENT	FUNDING LEVEL
SUPERINTENDENT	1 per county***
SYSTEM SECRETARIAL SUPPORT	1 per system < 500 2 per system 500-1,250 3 per system 1,251-1,999
TECHNOLOGY COORDINATORS	1 per system with one additional for each 6,400 ADM
SCHOOL SECRETARIES	.5 per school < 225 1 per school 225-374 1 per 375 per school > 375
MAINTENANCE & OPERATIONS	100 square feet per total K-4 ADM 110 square feet per total 5-8 ADM 130 square feet per total 9-12 ADM Total sq ft x \$3.12/sq ft**** 1 custodian per 22,376 calculated sq ft
NON- INSTRUCTIONAL EQUIPMENT	\$18.75 per total ADM
PUPIL TRANSPORTATION	Allocated to systems that provide transportation. Formula established by Commissioner of Education. Based on number of pupils transported, miles transported, and density of pupils per route mile
STAFF BENEFITS AND INSURANCE	\$4,894.86 per BEP position for insurance; plus 7.65% of BEP salary for FICA. Add 8.88% of BEP salary per Superintendent and technology coordinator OR 10.30% of BEP salary per classified position for TCRS
CAPITAL OUTLAY	100 sq ft per total K-4 ADM x \$134/sq ft 110 sq ft per total 5-8 ADM x \$134/sq ft 130 sq ft per total 9-12 ADM x \$132/sq ft Add equipment (10% of sq ft cost) Add architect's fee (5% of sq ft cost) Add debt service (20 yrs @ 6.00%) Divide total by 40 yrs = annual amount

SALARIES USED IN BEP CALCULATIONS

Teachers and Other Licensed Personnel

The BEP allocation for salaries for each school system is based on:

The number of each type of position generated by the cost components

The current salary unit cost for instructional personnel = \$40,447

Average annual superintendent salary = \$96,800 per county

Other Personnel

Average annual library/instructional assistant salary = \$20,100

Average annual custodian salary = \$21,600

Average annual school secretary salary = \$28,300

Average annual system secretary salary = \$36,200

FOOTNOTES

* If a system within a county having more than one system does not have enough pupils to qualify for a position, the relevant county totals are used and each system receives a pro rata share based on its proportion of total relevant enrollment. If county totals are not sufficient to generate a position, the county is allocated one position and each system is allocated a pro rata share of the position based on its proportion of the relevant enrollment.

**Elementary schools < 100 are not allocated a principal.

***One superintendent is allocated for each county. If there is more than one school system in a county, each system receives a pro rata share based on its proportion of total county ADM.

****For purposes of calculating benefits and insurance: for maintenance add 60% of sq. ft. cost to salary allocation; for pupil transportation add 45% of amount to salary allocation. Apply calculated rate (insurance, FICA, TCRS) for classified personnel as specified to 50% of 45% of allocation, respectively.

2014 BEP Annual Report



**Basic Education Program
Review Committee
Annual Report**

November 1, 2014

**State Board of Education
1st Floor Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
615-741-2966 www.tn.gov/sbe**

Exhibit 2

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2014-2015 BEP Review Committee Members

Lyle Ailshie

Director of Schools
Kingsport City Schools

Harry Brooks

Chair, House Education Committee
Tennessee General Assembly

Denise Brown

Director of Schools
Unicoi County Schools

David Connor

Executive Director
Tennessee County Services Association

Dolores Gresham

Chair, Senate Education Committee
Tennessee General Assembly

Lee Harrell

Tennessee School Boards Association

Vincent Harvell

Director of Business Operations
Haywood County Schools

Chris Henson

Assistant Superintendent
Metro Nashville Public Schools

Dorsey Hopson

Director of Schools
Shelby County Schools

Kevin Huffman

Commissioner, Department of Education

Karen King

Assistant Superintendent
Sevier County Schools

Larry Martin

Commissioner
Department of Finance and
Administration

Wayne Miller

Executive Director
Tennessee Organization of School
Superintendents

Mitchell Moore

City Manager, City of Athens
Tennessee Municipal League

Rick Nicholson

Office of Legislative Budget Analysis

Gary Nixon

Executive Director
Tennessee State Board of Education

Don Odom

Director of Schools
Rutherford County Schools

Lynnise Roehrich-Patrick

Executive Director
Tennessee Advisory Commission on
Intergovernmental Relations (TACIR)

Michael Price

Director of Schools
Decatur County Schools

Larry Ridings

Tennessee School Systems for Equity

Fielding Rolston

Chairman, Tennessee State Board of
Education

Justin P. Wilson

Comptroller of the Treasury

Jim Wrye

Tennessee Education Association

Work of the Committee

Tennessee Code Annotated 49-1-302(4)(a) specifies that the State Board of Education shall establish a review committee for the Tennessee basic education program (BEP). This committee is directed to meet at least four times a year and regularly review the BEP components including the preparation of an annual report on or before November 1 of each year.

This report includes recommendations on needed revisions, additions, and deletions to the formula, as well as, an analysis of instructional salary disparity among local education agencies. This report considers total instructional salary disparity among local education agencies, differences in benefits and other compensation among local education agencies, inflation, and instructional salaries in the southeast and other regions.

BEP Committee Guiding Principle Statement

The BEP review committee recognizes the constitutional mandate as defined by the Tennessee Supreme Court that the General Assembly shall maintain and support a system of free public schools that provide, at least, the opportunity to acquire general knowledge, develop the powers of reasoning and judgment, and generally prepare students intellectually for a mature life. To this end, the committee's work shall be driven by this recognition.

BEP Committee Recommendation Process Diagram

The committee requested that a diagram be developed to document the process of the BEP committee's recommendations to better understand the scope and impact of the committee's work on policy.

BEP Committee Recommendation Pathway



Tenn. Code Ann. § 49-1-302

(4) (B) The board shall establish a review committee for the Tennessee basic education program (BEP). The committee shall include the executive director of the state board of education, the commissioner of education, the commissioner of finance and administration, the comptroller of the treasury, the director of the Tennessee advisory commission on intergovernmental relations, the chairs of the standing committees on education of the senate and house of representatives, and the director of the office of legislative budget analysis, or their designees. The board shall appoint at least one (1) member from each of the following groups: teachers, school boards, directors of schools, county governments, municipal governments that operate LEAs, finance directors of urban school systems, finance directors of suburban school systems and finance directors of rural school systems.

The BEP review committee shall meet at least four (4) times a year and shall regularly review the BEP components, as well as identify needed revisions, additions or deletions to the formula. The committee shall annually review the BEP instructional positions component, taking into consideration factors including, but not limited to, total instructional salary disparity among LEAs, differences in benefits and other compensation among LEAs, inflation, and instructional salaries in states in the southeast and other regions. The committee shall prepare an annual report on the BEP and shall provide the report on or before November 1 of each year, to the governor, the state board of education, the education committee of the senate and the education committee of the house of representatives. This report shall include recommendations on needed revisions, additions and deletions to the formula, as well as an analysis of instructional salary disparity among LEAs, including an analysis of disparity in benefits and other compensation among LEAs.

2014 Executive Summary

In the effort to improve essential components of the Basic Education Program (BEP),¹ the BEP Review Committee has performed a comprehensive review of the funding formula related to the following areas:

- Fiscal Update to Immediate Priority Recommendations
 1. Recommendation for Funding 12 Month Insurance Premiums
 2. Recommendation for Improving Teacher Compensation
- Fiscal Update to Extended Priority Recommendations
- 2014 BEP Committee Notable Action Items
- Salary Disparity Analysis
- State Salary Comparison (Southeast)
- Market Pay Discussion Continued from Last Year

Each year, on or before November 1, this committee submits a report to the Governor and the State Board of Education identifying funding formula needs. This 2014 edition of the report summarizes the findings of the committee and presents the immediate and extended priorities identified by the committee.

Recommendations of the Committee

BEP Formula Improvements

The 2014 BEP Review Committee has priority ranked the following two recommendations as a result of this year's meeting discussions:

BEP Formula Improvement #1

Recommendation for Funding 12 Month Insurance Premiums

The BEP Review Committee recommends that the full cost of 12 months of insurance premiums be incorporated into the BEP funding formula. The estimated cost of this recommendation is ~\$64.411 million.

The committee became aware that BEP insurance premiums are funded on 10 months vs. 12 months, based on a March 2011 letter from the Office of the Comptroller. This recommendation was ranked as formula improvement recommendation #1 in the 2012 and 2013 BEP Report.

¹ Tennessee Code Annotated 49-1-302 (4)(a)

The committee reiterates that school districts have always paid for 12 months of premiums.

BEP Formula Improvement #2

Recommendation for Improving Teacher Compensation

In an effort to meet the goal of becoming the fastest improving state in the nation in terms of student achievement, the BEP Review Committee recognizes the need to create an environment that is attractive to highly effective teachers.

Compensation is an integral component to creating this environment. Therefore, the BEP Review Committee reaffirms its support of Governor Haslam's goal of becoming the fastest improving state in teacher salaries during his time in office and increasing the BEP salary component² accordingly.

Additional BEP Formula Improvements Recommended in Previous Years as an extended priority.

Before implementation of BEP 2.0, the committee established priorities as recommended improvements to the funding formula.

A summary of the full cost for implementation is below. The appendix contains a system level breakdown for each recommendation.

The committee restates the need to implement immediate priorities from previous annual reports. These priorities are as follows:

- Continue phase-in of Public Chapter 369 of the 105th General Assembly (BEP 2.0).
- Reduce, by at least 2 to 3 students, the class size ratios used to generate instructional positions (including vocational positions) in grades 7 – 12. This reduction in class size ratios should apply only to the method used to generate funds in the BEP and should not impact existing minimum class size ratios as defined by the Education Improvement Act of 1992.
- Establish new BEP components for professional development and mentoring. It is recommended that teacher professional development be funded at 1 percent of instructional salaries. It is recommended that mentoring for new teachers and principals be funded at a ratio of 1 mentor per 12 professionals, assuming at least 1 mentor per school system.

² The BEP Review Committee wishes to note the discrepancy gap between the actual average salary paid by TN LEAs (\$50,116) and the amount funded in the BEP Instructional Salary Component (\$40,447).

- Reduce funding ratios for Nurses from 1:3,000 towards 1:1,500.
- Reduce funding ratios for Technology Coordinators from 1:6,400 towards 1:2,500.
- Increase funding for teacher materials and supplies from \$200 to \$300.
- In order to account for inflationary increases in the BEP formula, the existing \$20 million allocation for technology should be applied to the reduction of technology coordinator ratios per ADM.
- The BEP formula should incorporate funding for a new position in each local education agency, the instructional technology coordinator, to support the district wide implementation of technology in three key areas:
 - Improved student academic achievement through the use of instructional technology in elementary and secondary schools
 - Information, media, and ICT literacy of administrators, teachers and students
 - Effective integration of technology resources and systems through professional development and teacher training to establish research-based instructional models
- Create a new component for instructional technology within the classroom category

The following table represents the 2014 cost of increasing the salary component and prior recommendations from the committee.

Summary of Scenarios	
Estimated actual cost after stability and baseline calculations	
Component Change	State Cost
12 months' insurance	\$64,411,000
Decrease funding ratio for psychologists from 1:2,500 to 1:500	\$57,518,000
Decrease funding ratio for elementary counselors from 1:500 to 1:250	\$39,409,000
Decrease funding ratio for secondary counselors from 1:350 to 1:250	\$18,079,000
Decrease funding ratio for all counselors to 1:250	\$57,497,000
Raise Assistant Principal ratio to SACS standard	\$11,739,000

Reduce 7-12 ratios, including CTE, by 3 students	\$87,928,000
New BEP Component for Mentors (1:12 new professional positions)	\$17,670,000
Professional Development (1% of instructional salaries)	\$25,576,000
Reduce funding ratios for nurses from 1:3,000 to 1:1,500	\$12,194,000
Reduce funding ratios for Technology Coordinators from 1:6,400 to 1:3,200	\$4,150,000
Increase funding for teacher materials and supplies by \$100	\$6,336,000
Instructional Technology Coordinator (1 per LEA)	\$5,268,000
BEP 2.0 Fully Implemented	\$133,910,000
Capital Outlay Restored (done in FY14)	