



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2016-028

July 14, 2016

The Honorable Julie Mayberry
State Representative
3022 East Woodson Lateral Road
Hensley, AR 72065-9169

Dear Representative Mayberry:

You have requested my opinion regarding the relationship between Ark. Code Ann. § 6-18-706 and the Arkansas Department of Education's *Rules Governing the Standards for Accreditation of Arkansas Public Schools and School Districts* ("Standards for Accreditation"). It will be helpful prior to setting out your questions to first summarize some background information.

BACKGROUND

Section 6-18-706 outlines the role of school nurses in the context of the "health status and educational achievement of the children of [the state of Arkansas]."¹

The statute provides that, beginning with the 2004-2005 school year, and "**effective only upon the availability of state funds,**"² school districts shall meet certain school nurse-to-student ratios. Specifically, districts are required to have "no fewer than the full-time equivalent of one (1) school nurse per seven hundred fifty (750) students or the proportionate ratio thereof."³ If a district has a "high concentration of children with disabling conditions as determined by the State

¹ Ark. Code Ann. § 6-18-706(a) (Repl. 2013). This statute is part of a subchapter of the Code—Ark. Code Ann. § 6-18-701 *et seq.*—that addresses matters related to healthcare in public schools.

² *Id.* at § 6-18-706(e)(1) (emphasis added).

³ *Id.* at § 6-18-706(c)(1).

Board of Education, the ratio of school nurses to students should be one (1) to four hundred (400) in those schools so designated.”⁴ Finally, in school districts that “provide[] a center for profoundly disabled students, the ratio should be one (1) school nurse per one hundred twenty-five (125) students at that center.”⁵

The State Board of Education and the Arkansas Department of Education (ADE) are responsible for ensuring compliance with Ark. Code Ann. § 6-18-701 *et seq.* Under its authority to administer education statutes,⁶ the ADE has promulgated the Standards for Accreditation.⁷ These standards require that “[e]ach school district shall have a health services program under the direction of a licensed nurse.”⁸ These standards, which all public schools are required to meet,⁹ also provide that a “school or school district will be placed in probationary status for failing to employ a ... nurse.”¹⁰

QUESTIONS

In light of the above, you pose the following questions, which I have paraphrased:

- (1) Is it a requirement that a school district maintain the ratio of one (1) school nurse per seven hundred fifty (750) students?
- (2) If a school district does not have one (1) school nurse per seven hundred fifty (750) students, is the school district in violation of Ark. Code Ann. § 6-18-706?

⁴ *Id.* at § 6-18-706(c)(2).

⁵ *Id.* at § 6-18-706(c)(3).

⁶ *See* Ark. Code Ann. § 6-15-202(f)(41) (Supp. 2015) (authorizing the Education Commissioner to require that superintendents file written statements ensuring compliance with, *inter alia*, section 6-18-701 *et seq.*). The Commissioner administers the ADE, and is employed by the State Board, subject to confirmation by the Governor. Ark. Code Ann. § 6-11-102(a)(1) (Supp. 2015).

⁷ Available at http://www.arkansased.gov/public/userfiles/rules/Current/FINAL_Standards_for_Accreditation.pdf (last visited June 29, 2016).

⁸ Standards for Accreditation at 16.03.1.

⁹ Ark. Code Ann. § 6-15-202(b)(1).

¹⁰ Standards for Accreditation at 24.08.

- (3) Under § 24.08 of the Standards for Accreditation, if a school district does not have one (1) school nurse per seven hundred fifty (750) students, must the school district be placed in probationary status?
- (4) Is it a requirement that a school district that has a high concentration of children with disabling conditions maintain the ratio of one (1) school nurse per four hundred (400) students?
- (5) If a school district that has a high concentration of children with disabling conditions does not have one (1) school nurse per four hundred (400) students, is the school district in violation of Ark. Code Ann. § 6-18-706?
- (6) Does Ark. Code Ann. § 6-18-706(c)(2) require the State Board of Education to determine which school districts have a high concentration of children with disabling conditions?
- (7) Does Ark. Code Ann. § 6-18-706(c)(2) require the State Board of Education to designate which schools have a high concentration of children with disabling conditions?
- (8) Is it a requirement that a school district that provides a center for profoundly disabled students maintain the ratio of one (1) school nurse per one hundred twenty-five (125) students at the center?
- (9) If a school district that provides a center for profoundly disabled students does not have one (1) school nurse per one hundred twenty-five (125) students at the center, is the school district in violation of Ark. Code Ann. § 6-18-706?

SUMMARY RESPONSE

The ratio requirements set out in Ark. Code Ann. § 6-18-706 are only triggered upon the “availability of state funds.” In my opinion, funding is not currently “available,” as contemplated by section 6-18-706. I therefore must conclude that the answer to all of your questions is “no.”

DISCUSSION

In my opinion, the resolution of your questions turns on the proper construction of Ark. Code Ann. § 6-18-706(e)(1)-(2):

(1) The provisions of this section shall be effective only upon the availability of state funds.

(2) Available funds shall be distributed to school districts based on the previous year's three-quarter average daily membership.

A. The Meaning of “Availability” Under Ark. Code Ann. § 6-18-706

The following principles of statutory interpretation guide me when construing any statute:

The first rule in considering the meaning and effect of a statute is to construe it just as it reads, giving the words their ordinary meaning and usually accepted meaning in common language. [The courts] construe the statute so that no word is left void, superfluous, or insignificant; and meaning and effect are given to every word in the statute if possible. When the language of the statute is plain and unambiguous, there is no need to resort to rules of statutory construction. When the meaning is not clear, [the courts] look to the language of the statute, the subject matter, the object to be accomplished, the purpose to be served, the remedy provided, the legislative history, and other appropriate means that shed light on the subject.¹¹

It is well-established that in construing statutes, the Arkansas Supreme Court “look[s] to the language under discussion in the context of the statute as a whole.”¹² Moreover, the General Assembly is presumed to “possess[] the full knowledge of the constitutional scope of its powers, [and] full knowledge of prior legislation on the same subject....”¹³

¹¹ *MacSteel Div. of Quanex v. Arkansas Okla. Gas Corp.*, 363 Ark. 22, 30, 210 S.W.3d 878, 882-883 (2005) (internal citations omitted).

¹² *Green v. Mills*, 339 Ark. 200, 205, 4 S.W.3d 493, 496 (1999) (internal citations omitted).

¹³ *R.N. v. J.M.*, 347 Ark. 203, 211, 61 S.W.3d 149, 153 (2001) (internal citation omitted).

When there are two or more statutes relating to the same subject, they are to be regarded as *in pari materia* (absent strong indication to the contrary), and are “construed together and made to stand if they are capable of being reconciled.”¹⁴

Here, subsection 6-18-706(e)(1) states that “[t]he provisions of this section shall be effective only upon the availability of state funds.” Your questions turn on the meaning of this contingency. What does the General Assembly mean when it says the school nurse-to-student ratios in section 6-18-706 only apply if state funds are “available?”

It seems evident to me based on a plain reading of subsection 6-18-706(e) that “availability of state funds” for school nurses must be analyzed in reference to the education funding statutes. My opinion is bolstered by long-standing principles of statutory construction. Because courts construe provisions of a statute as a whole, we must consider subsection 6-18-706(e)(2) when interpreting subsection 6-18-706(e)(1)’s reference to the “availability of state funds.” Subsection (e)(2) states that “[a]vailable funds shall be distributed to school districts based on the previous year’s three-quarter **average daily membership**.” (Emphasis added). The operative phrase here is “average daily membership.” “Average daily membership” (“ADM”) is a technical term under the Public School Funding Act of 2013.¹⁵ It describes a means of calculating the amount of funding schools receive in a given year.¹⁶ The reference to ADM in subsection 6-18-706(e)(2) indicates that the phrase “availability of state funds” in subsection 6-18-706(e)(1) should be analyzed in light of how school funding operates under the education funding statutes. When section 6-18-706 is read *in pari materia* with the funding statutes, I believe it becomes clear that the state funds are not currently available to meet the school nurse-to-student ratios under this statute.

¹⁴ *Glaze v. State*, 2011 Ark. 464, *8, 385 S.W.3d 203, 209 (internal citation omitted).

¹⁵ Ark. Code Ann. § 6-20-2301 *et seq.* (Repl. 2013 and Supp. 2015).

¹⁶ For the definition of ADM, *see* Ark. Code Ann. § 6-20-2303(3)(A) (Supp. 2015). *See also* Ark. Code Ann. § 6-20-2305(2)(A)-(B) (Supp. 2015) (providing the means of calculating a type of education funding known as “foundation funding,” which uses ADM as a component of calculating the yearly amount of funding schools receive.).

B. “Availability” Under the School Funding Statutes

Education funding is divided into two principal categories: foundation funding and categorical funding.¹⁷ Ark. Code Ann. § 6-20-2305(b)(2)-(5) specifies four types of categorical funding where allocated monies are spent: alternative learning environments; English-language learners; national school lunch;¹⁸ and, professional development.¹⁹ None of the four types of categorical funding currently triggers the automatic “availability of state funds,” for purposes of section 6-18-706, as none specifically categorizes a source of funding for school nurses.

Subsection 6-20-2303(7) provides what is known as “foundation funding.” Foundation funding is “an amount of money specified by the General Assembly for each school year to be expended by school districts for the provision of an adequate education for each student[.]”²⁰ Unlike categorical funding, foundation funding is unrestricted.²¹ Schools have ample flexibility in spending their foundation funding aid, enabling them to meet their unique funding needs.

¹⁷ See *Lake View School Dist. No. 25 of Phillips County v. Huckabee*, 364 Ark. 398, 220 S.W.3d 645 (2005). I acknowledge other sources of education funding, such as (for example) isolated funding and growth funding. But the existence of these other types of funding does not affect my overall analysis.

¹⁸ The national school lunch state categorical funding, as outlined in Ark. Code Ann. § 6-20-2305(b)(4)(C)(i)(b)(4), does permit this type of categorical funding to be spent on school nurses. But this permitted expenditure is merely one among numerous others on which schools have discretion to spend their allocated national school lunch state categorical funding. The fact that school districts *may* use national school lunch funds for school nurses is therefore an insufficient basis to conclude that there is an “availability of state funds” to trigger the ratio requirements under section 6-18-706. My analysis on this point is supported by the fact that at the time section 6-18-706 was enacted, the legislature had already made clear that national school lunch funding could be used by the districts to pay a school nurse, among numerous other things. Accordingly, the conditional effectiveness provision of section 6-18-706 only makes sense if available state funds is understood to mean something other than (and in addition to) national school lunch funding.

¹⁹ See Ark. Code Ann. § 6-20-2305(b)(1)-(5).

²⁰ Ark. Code Ann. § 6-20-2303(7).

²¹ Compare Ark. Code Ann. § 6-20-2305(a)(2)(A)-(B) (stating the amount of foundation funding aid each school district shall receive each school year—and how the ADE shall disburse the foundation funding aid—but not directing how foundation funding is to be specifically allocated),

In my opinion, the mere existence of foundation funding does not mean that funds are “available” under subsection 6-18-706(e). To conclude otherwise would ignore the way foundation funding works under section 6-20-2305 and fail to read section 6-18-706 in harmony with these funding statutes. If the mere existence of foundation funding were sufficient to automatically trigger the ratio requirements of section 6-18-706, then the triggering provision would be superfluous, as there is always some foundation funding in each year.²² Reading section 6-18-706 in this way would also impliedly amend the foundation funding provisions—which currently do not specify how funds are to be allocated—contrary to established rules of statutory construction.²³ No school is required to spend foundation funding on school nurses. So we must conclude that foundation funding is not “available” so as to trigger the ratios under section 6-18-706.

To be clear, it is my opinion that section 6-18-706—which is very clear that it only becomes “effective ... upon the availability of state funds”—will not be effective unless and until the legislature adds school nurses as a separate funded category to the state’s categorical funding regime or otherwise allocates enough money specifically to school nursing through some other statute or direct allocation.²⁴

In light of this discussion, I will now turn to your specific questions.

with Ark. Code Ann. § 6-20-2305(b)(2)-(5) (specifying, as noted above, the precise categories on which schools must spend allocated funds).

²² See *MacSteel Div. of Quanex*, 363 Ark. at 30, 210 S.W. 3d at 882 (internal citation omitted) (stating that statutes will be construed “so that no word is left void, superfluous, or insignificant...”).

²³ Courts strongly disfavor repeals by implication, and therefore read statutes *in pari materia* harmoniously, if possible. *Glaze v. State*, 2011 Ark. 464, *8, 385 S.W.3d 203, 209 (internal citation omitted).

²⁴ Because I do not believe that section 6-18-706 is ambiguous, my analysis need go no further. I will note, however, that this opinion is consistent with the administrative interpretation of section 6-18-706, as reflected in the ADE’s Standards for Accreditation. Under these standards, “[e]ach school district shall have a health services program under the direction of a licensed nurse.” See Standards for Accreditation at 16.03.1. Furthermore, the failure to employ “a ... nurse” will result in a school being placed in probationary status. See *Id.* at 24.08. Thus, it is clear under the Standards for Accreditation that there is no requirement that schools enact a specific school nurse-to-student ratio.

Question 1: Is it a requirement that a school district maintain the ratio of one (1) school nurse per seven hundred fifty (750) students?

No. The ratio of one school nurse per seven hundred fifty students is not a requirement under either section 6-18-706 or the Standards for Accreditation promulgated by the ADE. As stated above, there is currently no source of funding “available” so as to trigger the applicability of section 6-18-706. Moreover, the Standards for Accreditation as enforced by the ADE merely require schools and school districts to employ *a* school nurse.²⁵ The Standards for Accreditation do not currently reflect a requirement to maintain a certain ratio of school nurses to students.

Question 2: If a school district does not have one (1) school nurse per seven hundred fifty (750) students, is the school district in violation of Ark. Code Ann. § 6-18-706?

No. Because the ratios as stated under section 6-18-706 are not required, a school district is not in violation of this statute for failing to comply with the contemplated ratios. Because, due to the nature of the current funding structure, state funds are not currently available, the funding contingency of subsection 6-18-706(e)(1) prevents the enforcement of the nurse-to-student ratios as listed in this statute.

Question 3: Under §24.08 of the Standards for Accreditation, if a school district does not have one (1) school nurse per seven hundred fifty (750) students, must the school district be placed in probationary status?

No. The ratio requiring one school nurse per seven hundred fifty students is only specified under subsection 6-18-706(c)(1). Under § 24.08 of the Standards for Accreditation, “[a] school or school district will be placed in probationary status for failing to employ a ... nurse....” Under § 16.03.1 of the Standards for Accreditation, “[e]ach school district shall have a health services program under the direction of a licensed nurse.” A school district will not be placed in probationary status for failing to meet the ratio as described under subsection 6-18-706(c)(1), as no ratio is required under the Standards for Accreditation.

²⁵ *Id.* at 16.03.1.

Question 4: Is it a requirement that a school district that has a high concentration of children with disabling conditions maintain the ratio of one (1) school nurse per four hundred (400) students?

Please see my response to your first question.

Question 5: If a school district that has a high concentration of children with disabling conditions does not have one (1) school nurse per four hundred (400) students, is the school district in violation of Ark. Code Ann. § 6-18-706?

Please see my response to your second question.

Question 6: Does Ark. Code Ann. § 6-18-706(c)(2) require the State Board of Education to determine which school districts have a high concentration of children with disabling conditions?

No. Subsection 6-18-706(c)(2) states that “[i]n districts having a high concentration of children with disabling conditions as determined by the State Board of Education, the ratio of school nurses should be one (1) to four hundred (400) in those schools so designated.”

But the Board of Education does not have to determine or designate those school districts or schools that have a “high concentration of children with disabling conditions.” As previously discussed, subsection 6-18-706(e)(1) states that “[t]he provisions of this section shall be effective only upon the availability of state funds.” Subsection 6-18-706(c)(2) is therefore subject to this contingency. Because funding is not currently available, the ratios stated under section 6-18-706 are not currently enforceable. Therefore, the Board of Education is not required to determine or designate which school districts or schools have a “high concentration of children with disabling conditions.” To conclude otherwise presupposes that the ratios are currently enforceable.

Question 7: Does Ark. Code Ann. § 6-18-706(c)(2) require the State Board of Education to designate which schools have a high concentration of children with disabling conditions?

Please see my response to your sixth question.

Question 8: Is it a requirement that a school district that provides a center for profoundly disabled students maintain the ratio of one (1) school nurse per one hundred twenty-five (125) students at the center?

Please see my response to your first question.

Question 9: If a school district that provides a center for profoundly disabled students does not have one (1) school nurse per one hundred twenty-five (125) students at the center, is the school district in violation of Ark. Code Ann. § 6-18-706?

Please see my response to your second question.

Sincerely,



LESLIE RUTLEDGE
Attorney General