



DEPARTMENT OF LAW  
OFFICE OF THE  
**Attorney General**  
STATE CAPITOL  
Phoenix, Arizona 85007

BOB CORBIN  
~~XXXXXXXXXXXXXXXXXXXX~~  
ATTORNEY GENERAL

January 9, 1979

Re: I79-2 (R78-337)

Mr. James H. Landis  
Deputy County Attorney  
Yavapai County Attorney's Office  
Yavapai County Courthouse  
Prescott, Arizona 86301

**LAW LIBRARY**  
**ARIZONA ATTORNEY GENERAL**

Dear Mr. Landis:

We have reviewed your November 20, 1978 opinion addressed to the Assistant Superintendent of the Prescott Unified School District No. 1 and concur with your conclusion that a child is entitled to attend school without payment of tuition in the district where the child resides with a natural or adoptive parent. We base this conclusion upon the definition of legal custody in A.R.S. § 15-449.B.1 as "Custody exercised by the natural or adoptive parents with whom a pupil resides." (Emphasis supplied). Subsection B.2 of the statute is inapplicable to the facts presented because it applies to guardians or custodians other than natural or adoptive parents. The determinative factor is that the children reside in the district with a natural parent; it does not matter that the arrangement is not being contested.

Sincerely,

*Bob Corbin*

BOB CORBIN  
Attorney General



OFFICE OF

## County Attorney

YAVAPAI COUNTY COURTHOUSE  
PRESCOTT, ARIZONA 86301  
445-7450 EXT. 208

November 21, 1978

CARL H. COAD  
DEPUTY

STEVEN B. JAYNES  
DEPUTY

HOWARD D. HINSON, JR.  
DEPUTY

WILLIAM J. PEARLMAN  
DEPUTY

JAMES H. LANDIS  
DEPUTY

BILLY L. HICKS  
COUNTY ATTORNEY

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ATTORNEY GENERAL  
PHOENIX, ARIZONA

R78-337

Dave Rich

Assistant Attorney General  
State Capitol Building  
Phoenix, AZ 85007

Re: Residency for School Admission

Dear Dave:

Enclosed please find a copy of our opinion concluding that students who reside with their natural mother in the district may attend school tuition free even though the non-resident father has court ordered custody. As I implied in the first paragraph, we did seem to agree upon this conclusion during an informal phone conversation last week. I realize, however, that the law in this area is less than clear.

I would appreciate your revision or review.

Very truly yours,

*James H. Landis*  
James H. Landis  
Deputy County Attorney

JHL:j

Enclosure



WELLY L. HICKS  
COUNTY ATTORNEY

OFFICE OF  
**County Attorney**

YAVAPAI COUNTY COURTHOUSE  
PRESCOTT, ARIZONA 86301  
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JAMES H. LANDIS  
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Dr. Robert L. Browne  
Assistant Superintendent  
P.O. Box 1231  
Prescott, AZ 86302

R 78-337

Re: Dahl Children

Dear Bob:

The policy of Prescott Unified School District No. 1 is to require that a student be in the "legal custody" of a resident of the district in order to qualify for tuition-free education. This policy was derived, in part, from our prior opinion to you dated September 6, 1977, concurred in by the Attorney General on December 16, 1977 (77-235 (R77-309)). After reviewing the law in this area and discussing the matter with the Attorney General's Office, we believe that those prior opinions do not apply to the circumstances in this case.

As I understand the facts, Mr. Dahl, the natural father, is a resident of Kingman, Arizona, and has legal custody of the children pursuant to a valid divorce decree. The natural mother now lives here in Prescott, Arizona. Both parents have decided that it would be better for the children to reside with the mother and attend school here in Prescott. Mr. Dahl was informed by the district that in order to obtain a tuition-free education for his children in the district, either he had to move to Prescott or transfer legal custody to the mother who does live in Prescott.

A.R.S. Section 15-302 as amended by Laws 1978, Chapter 93, §1 (See Attorney General Opinion 78-222) provides that:

"D. The governing board may admit children who do not reside in the district but who reside within the state upon such terms as it prescribes."

Dr. Robert L. Browne  
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If the child is a resident of the district, he must be admitted without condition (See A.R.S. §15-302(A)). Consequently, if it is determined that the Dahl children actually "reside" with their father who lives outside the district, then the district could condition admission upon payment of a reasonable tuition (Attorney General Opinion R75-592). If the children "reside" with their mother within the district, no tuition can be charged. Residency, then, is the key.

In School District No. 3 of Maricopa County v. Dailey (106 AZ 124, 471 P.2d 736 (1970)), the Supreme Court had occasion to discuss "residency" for purposes of tuition-free education. In that case, the Court stressed the "actual physical presence" of the child as a determinant of "residency". (106 AZ 124, 126-127). We note again that the Dahl children are physically present with their mother here in Prescott.

A.R.S. Section 15-449(B), entitled "Admission of pupils of other districts; tuition charges", defines residency as follows:

"The residence of the person having legal custody of the pupil shall be considered the residence of the pupil \* \* \*. For the purposes of this section 'legal custody' means:

"(1) Custody exercised by the natural or adoptive parents with whom a pupil resides.

"(2) Custody granted by order of a court of competent jurisdiction to a person or persons with whom a pupil resides."

It is clear from the wording of subsection (B) that "legal custody" is satisfied if either (B)(1) or (B)(2) applies. In this case, both (B)(1) and (B)(2) fit the facts: The natural mother has exercised custody and the father has a court order granting custody.

Here, however, both parents do not claim "legal custody" within the meaning of Section 15-449(B). By consent of the parents, the natural mother alone has exercised custody. Under circumstances such as these, "legal custody" belongs to the mother for purposes of school admission. The children, then are "residents" of Prescott and entitled to a tuition-free education.

OFFICE OF THE YAVAPAI COUNTY ATTORNEY

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If you have any further questions, please call me.  
Pursuant to A.R.S. Section 15-121(B), a copy of this opinion  
will be sent to the Attorney General for review.

Very truly yours,

JAMES H. LANDIS

James H. Landis  
Deputy County Attorney

JHL:j

cc:  
Gene Hunt, Superintendent  
Yavapai County Schools

Dave Rich  
Assistant Attorney General  
Office of the Attorney General  
1700 West Washington  
Phoenix, AZ 85007