



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

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ATTORNEY GENERAL

January 23, 1979

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ARIZONA ATTORNEY GENERAL

Mr. Jody N. Klein
Deputy County Attorney
Cochise County Attorney's Office
P.O. Drawer CA
Bisbee, Arizona 85603

Re: I79-21 (R78-295)

Dear Mr. Klein:

We have reviewed your October 3, 1978 opinion addressed to the Tombstone School District Superintendent concluding that the District is not responsible for providing transportation costs from Tombstone to the Arizona State School for the Deaf and Blind on a daily basis. We concur with your opinion.¹

Sincerely,

Bob Corbin
BOB CORBIN
Attorney General

BC:mm

¹In concurring with your opinion, we have not considered whether the State School is required to pay for the transportation cost under state or federal law.



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October 3, 1978

R 78-295

D. B. Forrest, Superintendent
P.O. Box 1000
Tombstone, Arizona 85638

Dear Mr. Forrest:

QUESTION: IS THE TOMBSTONE SCHOOL DISTRICT NO. 1 RESPONSIBLE FOR PROVIDING TRANSPORTATION COSTS FROM TOMBSTONE TO THE ARIZONA STATE SCHOOL FOR THE DEAF AND BLIND ON A DAILY BASIS?

ANSWER: NO. See Opinion below.

The Arizona State School for the Deaf and Blind (ASSDB) is a day school for students residing within a twenty-mile radius and a residential school for students living further away. The school receives average daily membership (ADM) funds, census fund monies, monies to cover the cost of residential students and transportation to and from school each week for students under twelve. The student involved is a resident of Tombstone School District No. 1 who has been accepted by ASSDB. Although the student qualifies for a residential status, and would be provided funds for weekly transportation visits to his home (round-trip fare by commercial rate is \$10.65 from Tucson to Tombstone), the child's parents choose not to admit the child as a resident, but instead drive the six-year old child a hundred and fifty miles round trip daily. The parents are now seeking reimbursement from Tombstone School District No. 1 at a rate of twelve cents per mile or approximately \$3,204 per year.

A.R.S. §15-1015(4) requires the governing board of each school district to "[p]rovide necessary transportation for handicapped children in connection with any program, class, or service." The 1978-79 Conditions and Standards (V page 37) for special education indicate that the responsibility for special educations lies within a state institution. Those same conditions and standards (II page 17) as it relates to the public schools sending students to private institutions, indicates that the public school district remains responsible for the educational program. We believe that under the circumstances, Tombstone School District No. 1 is not responsible for providing transportation costs for daily transportation of the student to ASSDB. In this connection, A.R.S. §15-1015(C) is dispositive. It states:

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"For the purposes of this section, handicapped children being furnished special education in rehabilitation, corrective or other state and county supported institutions shall be the responsibility of that institution or facility. Special education programs at such institutions or facility shall conform to the conditions and standards prescribed by the director of the division of special education."

That statute has the affect of restricting A.R.S. §15-1015(A)(4) to situations in which the school district either conducts its own program for special education or makes arrangements with other districts for the provision of such programs. It does not cover the situation where the responsibility is entirely transferred to a state institution such as ASSDB. This is consistent with the financial aspect of sending a child to ASSDB, since ASSDB makes provision for transportation of the child, receives the ADM credit for the students attending its institution and receives all state monies for defraying the cost of education of the child. Should the local school district be required to furnish transportation costs, it would receive no reimbursement from the state to defray the cost of the transportation since it receives no reimbursement from the state.

There is a second reason for denying the claim of the parents in this matter. Assuming that the local school district were required to provide transportation costs for the child to attend ASSDB, the school district would not have to provide transportation costs on a daily basis. A.R.S. §15-1015(A)(4) requires only "necessary" transportation of handicapped children in connection with any program, class or service. Since the child qualifies for a residential status at ASSDB, under which he may return to his home on weekends, transportation of the child on a daily basis is an unnecessary expenditure for the district. The situation does not reach the point of necessity, but instead reflects only the desire of the parents that the child live at and return to his home on a daily basis. Necessary transportation would under the circumstances be limited to providing transportation costs for the child on a weekly basis rather than a daily one. Since those transportation costs are presently borne by ASSDB, the District is relieved of even that responsibility.

In view of the above discussion, the school district has no alternative but to refuse to reimburse the parents of the student attending ASSDB for daily transportation expenses to that school.

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A copy of this opinion is being forwarded to the
Attorney General for his concurrence, revision or dissent.

Sincerely,

BEVERLY H. JENNEY
Cochise County Attorney

By:

Jody N. Klein
JODY N. KLEIN
Deputy County Attorney

JNK/cfl