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October 2, 1996

The Honorable Lisa Graham Keegan
Superintendent of Public Instruction
1535 West Jefferson St.
Phoenix, Arizona 85007

Re: I96-011 (R96-024)

Dear Superintendent Keegan:

You have asked whether, in the context of providing special education, the definition of "home school district" in A.R.S. § 15-761(9) encompasses a county accommodation school that temporarily provides special education to children incarcerated at a correctional facility or hospitalized at the Arizona State Hospital ("ASH"). You have also asked whether a charter school should be considered a "home school district" in this context. We conclude that a county accommodation school that temporarily provides special education at these facilities is a home school district, if the child is a ward of the State because a specific person does not have legal custody ("a qualifying child"). In the context of providing special education, charter schools qualify as home school districts, pursuant to A.R.S. § 15-183(E)(7), if the charter school was the public school that the child last attended and the child is a qualifying child.

1. **An Accommodation School That Contracts to Provide Special Education to Children Living at a State Correctional Facility or the Arizona State Hospital Is a "School District," and Thus, Pursuant to A.R.S. § 15-761(9), Qualifies as a "Home School District."**

Generally, school districts must provide special education to all eligible children, residing within the district who are between the ages of three and twenty-two. A.R.S. §§ 15-763 and 15-764(A)(1). "Special education" includes adjusting environmental factors, modifying the course of study, and adapting teaching methods, materials, and techniques to educate disabled students if these accommodations are necessary for the children to receive educational benefit. A.R.S. § 15-761(30). When a child receiving special education is incarcerated in a state or county facility or hospitalized at the ASH, these entities, rather than a school district, assume responsibility for the special education of the child. A.R.S. § 15-765(A).

Your letter indicates that some correctional facilities and the ASH contract with county accommodation schools to provide special education to children in their care rather than provide those services directly.¹ When children are ready to be released from incarceration or the ASH, the issue of who must assume responsibility for continuing special education arises.

Pursuant to legislative mandate, a child's "home school district" has significant responsibility to fill this void. A "home school district" means:

The school district in which the person resides who has legal custody of the child, as provided in [A.R.S.] § 15-824, subsection B. If the child is a ward of the state and a specific person does not have legal custody of the child, the home school district is the district that the child last attended or, if the child has not previously attended a public school in this state, the school district within which the child currently resides.

A.R.S. § 15-761(9). Pursuant to legislative mandate, the home school district assumes certain responsibilities when a state placing agency,² such as the Department of Juvenile Corrections or the Department of Health Services (the agency that oversees the ASH), places a child in a private residential facility. A.R.S. §§ 15-765(E), 15-1183(B), 15-1184(B), 15-1185(A)-(C). For example, when the state placing agency initially places a child in a private residential facility, the home school district is responsible for conducting a comprehensive evaluation of the child's capabilities and limitations or reviewing the educational placement of a pupil who was previously determined to be eligible for special education. A.R.S. §§ 15-765(E), 15-1183(B). When a child is placed in a private residential facility, the home school district must also review the child's educational progress and develop a plan to integrate the child into a public school when it is educationally appropriate. A.R.S. § 15-1185(A)

The problem identified in your letter is that once the temporary special education provided by the county accommodation school to qualifying children who are incarcerated or hospitalized at the ASH cease, as a result of discharge from those facilities, there is no consensus as to which school district or accommodation school bears the legal responsibilities established for home school districts in Title 15 of the Arizona Revised Statutes.

The fundamental goal of statutory interpretation is to determine the Legislature's intent. *Automatic Registering Machine Co. v. Pima County*, 36 Ariz. 367, 370-71, 285 P. 1034, 1035 (1930). In determining intent, we look to the language of the statute before we

¹ An "accommodation school" is a school that "is operated through the county board of supervisors and the county school superintendent and which the county school superintendent administers to serve a military reservation or territory which is not included within the boundaries of a school district." A.R.S. § 15-101(1). Pursuant to A.R.S. § 15-764(F), the county school superintendent may establish special education programs in county accommodation schools under the superintendent's jurisdiction.

² A "state placing agency" means the Department of Juvenile Corrections, the Department of Economic Security, the Department of Health Services, or the Administrative Offices of the Court. A.R.S. § 15-1181(11).

resort to other sources. *Janson v. Christensen*, 167 Ariz. 470, 471, 808 P.2d 1222, 1223 (1991). Thus, we begin our analysis with the definition of "home school district" found in A.R.S. § 15-761(9).

As noted earlier, if a child is a ward of the State and a specific person does not have legal custody, the home school district is the district that the child last attended or, if the child has not previously attended a public school in this State, the school district within which the child currently resides. A.R.S. §§ 15-761(9), 15-1181(3).³ The Legislature defined "school district" as "a political subdivision of this State with geographic boundaries organized for the purpose of the administration, support and maintenance of the public schools or an accommodation school." A.R.S. § 15-101(18) (emphasis added). Thus, when a qualifying child is ready to move away from the correctional institution or the ASH, an accommodation school under contract with a correctional institution or the ASH to provide special education to the qualifying child is the "home school district" because the child satisfies the criteria in A.R.S. § 15-761(9) and the accommodation school was the district that the child last attended.

2. The Legislature Established Charter Schools as Public Schools and Mandated That They Comply with All Federal and State Laws Relating to the Education of Children with Disabilities in the Same Manner as School Districts, Evincing Legislative Intent That Charter Schools Are "Home School Districts" Pursuant to A.R.S. § 15-761(9).

Charter schools are "public schools" and are established by contract between a sponsor (which may be a school district governing board, the State Board of Education, or the State Board for Charter Schools) and a public body, private person, or private organization. A.R.S. §§ 15-101(3), 15-183(B). Charter schools were established to provide both a learning environment to improve pupil achievement and to give parents and pupils additional academic choices. A.R.S. § 15-181(A). Generally, charter schools are required to enroll all eligible pupils, unless the number of applicants exceeds a charter school's capacity. A.R.S. § 15-184(A).

The Legislature required that the charter of each charter school ensure that the school, among other things, complies with federal, state, and local statutes and rules relating to health, safety, civil rights, and insurance; provides a comprehensive program of instruction; designs a method to measure pupil progress toward the pupil outcomes adopted by the State Board of Education; and complies with all federal and state laws relating to the education of children with disabilities in the same manner as a school district. A.R.S. §§ 15-183(E)(1), (3) and (7).

Under the current statutory scheme relating to home school districts and charter schools, it is not entirely clear whether a charter school falls within the definition of a home school district. Because the definition of "home school district" has a school district as its focus, we must determine whether the Legislature intended a charter school to be treated as a school district for purposes of A.R.S. §§ 15-761(9) and 15-1181(3).

³ In the legislation that authorizes State education voucher funds for private placements, "home school district" has the same meaning as in A.R.S. § 15-761(9). A.R.S. § 15-1181(3).

The term "school district" normally applies to political subdivisions, with geographic boundaries, organized to administer, support, and maintain the public schools and accommodation schools. A.R.S. § 15-101(18). A literal interpretation of that definition would tend to exclude charter schools from the ambit of a "home school district" because charter schools neither have the distinguishing characteristics of a school district nor are they accommodation schools. However, statutes are not interpreted in a vacuum and legal relationships mandated by one statute cannot be ignored in interpreting another. *See Hughes v. Industrial Comm'n*, 113 Ariz. 517, 520, 558 P.2d 11, 14 (1976). We look beyond the literal meaning of the statutory language and view the system of related statutes, even when the statutes were enacted at different times and contain no reference to one another. *State ex rel. Larson v. Farley*, 106 Ariz. 119, 122, 471 P.2d 731, 734 (1970). By construing the interrelated statutes together we can best effect legislative intent in this complex area of education where financial and service demands can be formidable and needless gaps in education may occur if school districts and charter schools disagree about which school is responsible to act as the "home school district." We are also mindful of the legislative directive that statutes be liberally construed to effect their objects and to promote justice. A.R.S. § 1-211(B). From this perspective, we determine for the following reasons that the Legislature intended charter schools to undertake the responsibilities of a "home school district" for qualifying children.

First, A.R.S. § 15-183(E)(7) mandates that charter schools "[comply] with all federal and state laws relating to the education of children with disabilities in the same manner as a school district." (Emphasis added.) Because the Legislature imposed on each individual charter school the responsibilities of a school district, a charter school has a more onerous burden than would an individual public school. As we concluded in Section I above, a school district is mandated to perform the functions of a home school district. Therefore, the Legislature appears to have intended charter schools to educate children with disabilities according to the state law established for school districts, including functioning as a home school district for qualifying children. *See Wareing v. Falk*, 182 Ariz. 495, 500, 897 P.2d 1381, 1386 (App. 1995) (the Legislature is presumed to know existing law when it enacts a statute).

Some may question the reasons supporting the legislative choice of requiring that individual charter schools assume special education responsibilities heretofore shouldered by entire school districts. It is beyond debate that the costs and responsibilities of providing special education and evaluation for some children with special needs can be onerous for an entire district let alone one charter school. We can only surmise that because the Legislature established charter schools to expand educational choices for parents and children, it determined that the options for children with special needs should not be limited because of their disability and that the best avenue to accomplish this goal was to have each charter school assume the role of a school district for children requiring special education under its care. Additionally, the Legislature may not have wanted to shift the burden to school districts to expend staff and resources for students who chose the educational option of charter schools. In any event, the legislature clearly stated its intent that charter schools comply with "all federal and state laws relating to the education of children with disabilities in the same manner as a school district." A.R.S. § 15-183(E)(7) (emphasis added).

Second, the definition of "home school district" supports the proposition that a charter school should be treated as a school district. If a qualifying child attended public school prior to incarceration or hospitalization at the ASH, the Legislature required the district responsible for the operation of the public school that the child last attended to assume responsibility as the home school district. A.R.S. § 15-761(9). Although charter

schools have no district to look toward to respond to these demands, their legal responsibilities under A.R.S. § 15-183(E)(7) are no different from school district responsibilities. They are public schools and, pursuant to A.R.S. § 15-183(E)(7), have the same responsibilities under state and federal law to educate children with disabilities as do school districts.

Finally, sound policy reasons also support this view. In enrolling in a charter school, parents and students have made an educational choice previously not available in the public school system. This choice should be respected. If a child attended a charter school and received special education, the charter school is most familiar with the child's individual education program ("IEP"). The IEP is a statement of a disabled child's present education level, future educational goals, expected future educational services to be provided, and the extent to which the child will be able to participate in regular education programs. See 20 U.S.C. § 1401(a)(20). Requiring a school district to undertake the responsibilities of a home school district without knowledge of the child's existence, needs, or abilities may undermine the opportunity of these children to receive services that are guaranteed by law.⁴

Thus, we conclude that, through the mandate in A.R.S. § 15-183(E)(7), the Legislature intended that charter schools operate as a full partner in our public school system and comply with all state and federal laws to educate children with disabilities in the same manner as a school district, including acting as a home school district if the conditions in A.R.S. § 15-761(9) are met.

However, under the current definition of "home school district," we believe that charter schools will be called upon infrequently to act as the home school district. For example, using one of the scenarios identified in your letter, a charter school would be a "home school district" only if a child (1) was a ward of the State with no specific person having legal custody, (2) attended the charter school immediately prior to hospitalization at the ASH, and (3) received special education from someone other than a school district or accommodation school while at the ASH. We understand that the Arizona Department of Education provides training and support for school districts, accommodation schools, and charter schools on special education issues and would act as a resource should charter schools, which may be unfamiliar with special education requirements, have questions about or need assistance in undertaking their statutory responsibilities. Furthermore, charter schools may wish to organize to share special education resources, services, and expertise and thereby, as a group, broaden the base from which they provide special education.

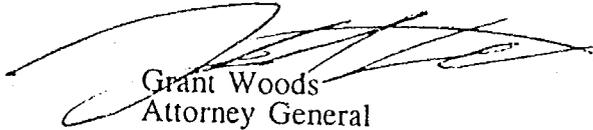
⁴ Public schools must provide all children with disabilities with a free appropriate public education ("FAPE"), which means special education and related services that (1) are provided at public expense, under public supervision and direction, and without charge, (2) meet the standards of the state educational agency, (3) include an appropriate preschool, elementary, or secondary school education in the state involved, and (4) are provided in conformity with the individualized education program required under section 20 U.S.C. § 1414(a)(5). 20 U.S.C. § 1401(a)(18).

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Conclusion

Accommodation schools that temporarily provide special education to qualifying children incarcerated at a correctional facility or hospitalized at the ASH are home school districts and bear the responsibilities established by the Legislature for home school districts. In the context of providing special education, charter schools are home school districts for qualifying children pursuant to the mandate in A.R.S. § 15-183(E)(7).

Sincerely,



Grant Woods
Attorney General