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ATTORNEY GENERAL

February 21, 1997

Ms. Janis S. Merrill
Udall, Shumway, Blackhurst, Allen & Lyons, P.C.
30 West First Street
Mesa, AZ 85201-6654

Re: I97-002 (R96-051)

Dear Janis:

Pursuant to Arizona Revised Statutes Annotated ("A.R.S.") § 15-253(B), we revise your December 23, 1996 opinion to the Assistant Superintendent of Business Services at the Mesa Unified School District regarding the determination of student count for State funding purposes. We agree with your observation that the Basic State Aid formula for equalizing funding among school districts ("State funding formula") is complex. We also agree with many of the principles articulated in your opinion. We are concerned, however, that the broad statements in your opinion could be misinterpreted by school districts as they calculate their student counts. Therefore, to assist school districts in applying the student count requirements for State funding, we revise your opinion by issuing this formal opinion.

With respect to the question whether school districts may include in their student count students who are not physically in class, but participate in district field trips, work study, or independent study, we conclude that, based on the current State funding scheme, a school district may not include a student in its student count unless the student meets all applicable requirements in A.R.S. §§ 15-901(A) or 15-902, including physical attendance *at* the school (except for the homebound or hospitalized). Thus, school districts may include students in their student count for field trips and cooperative work study programs, but only if the student actually attends the school -- that is, is physically present for a portion of the day, the field trip or work study program is part of the student's course of study, and the requirements of A.R.S. § 15-901(A)(2)(a) or (b) are met concerning the age limits for students and enrollment in an instructional program that satisfies the statutory instructional time criteria. In addition, high school students must meet the instructional program standards in A.R.S. § 15-901(A)(2)(c) (as modified for part-time students in A.R.S. § 15-901(A)(2)(a)). If the school district uses the student count formula in A.R.S. § 15-902, students must also satisfy the criteria for "daily attendance" in A.R.S. § 15-901(A)(6).

The materials sent to us did not contain sufficient information from which we could ascertain precisely what a "district sponsored independent study" would encompass and, therefore, we defer an analysis of the statutory criteria in A.R.S. §§ 15-901 and -902 concerning student count enrollment in an independent study until we have the facts on which to base an opinion.

Regarding the second question -- whether school districts may include in their student count students enrolled in courses taught over the Internet, educational TV, or similar instructional programs -- your opinion does not provide us with sufficient facts to determine whether students enrolled in these activities would meet the criteria in A.R.S. § 15-901(A)(1), (2)(a) through (c) and -901(A)(6) and, therefore, we are unable to answer the question.

Analysis

The primary rule of statutory construction is to find and give effect to legislative intent. *Mail Boxes v. Industrial Comm'n*, 181 Ariz. 119, 121, 888 P.2d 777, 779 (1995). To determine such intent, we first review the statutory language at issue here. *Calmat v. State ex rel. Miller*, 176 Ariz. 190, 193, 859 P.2d 1323, 1326 (1993).

A. Statutory Parameters for Student Count.

Student count, whether based on the definition in A.R.S. § 15-901(A)(14) that computes the average daily membership for the prior fiscal year ("prior year funding") or the student count formula in A.R.S. § 15-902 ("current year funding"), generally allows school districts to receive State funding only for students who actually attend the school. As we noted in Arizona Attorney General Opinion I96-013, "average daily membership," as defined in A.R.S. § 15-901(A)(2), reflects total enrollment at a school minus withdrawals. Withdrawals include both students formally withdrawn from the school and students absent for ten consecutive days. *Id.* The effective date of withdrawal is retroactive to the last day of "actual attendance of a student." *Id.* (emphasis added). Section 15-902, A.R.S., actually requires school districts to compare "average daily membership" and "average daily attendance" and adjust their student count calculations if the average daily membership exceeds the average daily attendance by a given percentage. "Average daily attendance" means "actual average daily attendance" A.R.S. § 15-901(A)(1) (emphasis added). Had the Legislature wished to spend State funds on children who merely participated in a school district's instructional program, it would have eliminated the requirement of actual attendance.

Additionally, the Legislature strictly limited payment for students who are enrolled at and receive instruction from the school district, but do not actually attend school, to the homebound or hospitalized. A.R.S. §§ 15-901(A)(6)(f), -901(B)(12). Because of this legislative restriction, we will not expand the authorization for State funding to those students who are enrolled in but do not attend the school. *Piper v. Bear Medical Systems, Inc.*, 180 Ariz. 170, 176, 883 P.2d 407, 413 (App. 1993) (when interpreting a statute that includes one or more items in a class, we may infer that the Legislature included all items that it intended to include).

Further, school districts must record membership, attendance, and absences for each day school is in session, certify these records, and forward them to the Arizona Department of Education ("Department"). A.R.S. § 15-902(I), (J). The Department determines average daily attendance and average daily membership based on these records. A.R.S. § 15-902(G). It would be difficult for school districts to actually record and certify daily attendance for each day school is in session for students who do not attend a district school.

Finally, noteworthy of legislative intent concerning attendance is the requirement in A.R.S. §§ 15-802 and -803 that students between the ages of six and sixteen attend school during the hours school is in session, except if excused. "School" means a "public institution established by a school district or by a county school superintendent where instruction is imparted." A.R.S. § 15-101(17).

B. Application of the Statutory Parameters for Student Count.

We realize the limitations of the actual attendance requirement and recognize that field trips and vocational and cooperative work study programs that are part of the school "course of study," A.R.S. § 15-101(6), should satisfy the attendance requirement of our State funding scheme even though the students are not actually present at the school for the entire school day. A less liberal interpretation of attendance might unreasonably restrict a school district governing board's options in adopting a course of study. See A.A.C. R7-2-301, R7-2-302, R7-2-302.03, R7-2-302.04. A more liberal interpretation could allow abuses of our State funding prerequisites by allowing a school district to obtain State funding for students who never actually attend the school.

We question the citation to *Wheeler v. Yuma School District No. One*, 156 Ariz. 102, 750 P.2d 860 (1988), to support the proposition that school attendance is connected to the instructional program rather than physical presence at the school. *Wheeler* involved whether a teacher's poor communication skills with parents encompassed inadequate "classroom performance," thus entitling the teacher to preliminary notice that the district would not renew the teacher's contract and an opportunity to cure the deficiency. A.R.S. §§ 15-536(B) and -538(A). The Arizona Supreme Court's analysis reflected its concern that teacher performance issues should not turn on geographical parameters, but that "[t]eachers whose instructional, disciplinary, or supervisory skills are deficient should be treated alike, whether their deficiency is first manifested in the classroom or on the playground." 156 Ariz. at 107, 750 P.2d at 865. The court based its holding on the proposition that communication with parents is an essential aspect of classroom performance. *Id.* at 108, 750 P.2d at 865. Although we agree with the general proposition that instruction is not limited to the traditional classroom environment, we see no connection with the holding in *Wheeler* and your conclusion that in determining student count it is not important where the instructional program is located because "attendance is logically connected to the instructional program, which may stray from the actual classroom environment." Opinion at 5-6. Review of the applicable legislation suggests that the Legislature intended that an instructional program would be conducted

at a school where the school district would take attendance.¹ School funding legislation was enacted against a back-drop of traditional schools, in which students received instruction from a teacher in a classroom at the school. Neither your opinion nor our research has provided us with clear evidence to persuade us that the Legislature had another concept of "attendance" in mind when it drafted these laws on school funding.

Finally, we reject the proposition that the Legislature could not have meant that attendance occur at a particular place because school districts are not precluded from calculating instructional time for field trips (which occur off campus) but are prohibited from counting the time spent at lunch and recess as instruction time. Opinion at 5. A careful reading of A.R.S. § 15-901(A)(2)(a)(i) and (b)(i) indicates that lunch periods and recess periods may not be included as part of the *instructional* hours. We believe that as long as field trips, vocational programs, and cooperative work study programs are part of a school district's approved course of study, they would include instruction and thus are distinguishable from lunch and recess, notwithstanding their location off campus. In addition, we understand that a record of attendance is taken by school district employees for those students physically in attendance at field trips, vocational programs, and cooperative work study programs (in compliance with A.R.S. § 15-902(D)), which further supports the conclusion that school districts expect that these off-campus activities, which are part of a course of study, include instructional time.

C. Application of the Statutory Parameters to Specific Factual Situations.

Mesa Unified School District presented two questions involving specific types of activities, and inquired whether participating students may be counted in the school district's student count as a result of their enrollment and participation in these activities:

1. Can school districts count students who are not physically in class, but are participating in a district-sponsored activity, such as a field trip, independent study, or a cooperative work study program?
2. Can students be counted when enrolled in courses that are taught over the Internet, over educational TV, or similar instructional programs?

Based on that analysis in parts A and B above, a school district may count a student in its student count for field trips and cooperative work study programs if the student actually attends the school, the field trip or work study program is part of the student's course of study, and the

¹House Education Committee discussion on H.B. 2504 (A.R.S. § 15-901(A)(2)(a)) and proposed amendments that authorized school districts to receive State funding for part-time students recognized that attendance would occur at the school. *Arizona House of Representatives Committee on Education, Hearing on H.B. 2504*, 41st Arizona Legislature, 2nd Reg. Sess. (February 9, 1994).

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requirements of A.R.S. § 15-901(A)(2)(a) or (b) are met concerning the age limits for students and enrollment in an instructional program that satisfies the statutory instructional time criteria. In addition, high school students must meet the instructional program standards in A.R.S. § 15-901(A)(2)(c) (as modified for part-time students in A.R.S. § 15-901(A)(2)(a)). If the school district uses the student count formula in A.R.S. § 15-902, students must also satisfy the criteria for "daily attendance" in A.R.S. § 15-901(A)(6).

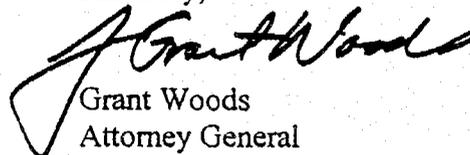
We were not provided sufficient information from which we could determine what a district-sponsored independent study would encompass and, therefore, will defer an analysis of whether enrollment in an independent study would meet the statutory criteria enabling a school district to count a student enrolled in an independent study in its student count until we have the facts on which to base a decision. We note, however, that along with the criteria for field trips and cooperative work study programs listed above, A.R.S. § 15-901(A)(2)(c) defines "full-time instructional programs" as subjects that are *taught*.

Your opinion does not provide us with sufficient facts to determine whether students enrolled in courses taught over the Internet, educational TV, or similar instructional programs would meet the criteria in A.R.S. § 15-901(A)(1), (2)(a) through (c) and -901(A)(6) and, therefore, we are unable to answer the question.

Conclusion

Arizona law does not allow a school district to include a student in its "student count" to obtain State funding unless the student meets all applicable requirements in A.R.S. §§ 15-901(A) or 15-902, including physical attendance at the school (except for the homebound or hospitalized). School districts may include students in their student count for field trips, cooperative work study programs, and other school activities if the student is actually present at the school, the activity is part of the student's course of study, and the requirements of A.R.S. § 15-901(A)(2)(a) or (b) are met concerning the age limits for students and enrollment in an instructional program that satisfies the statutory instructional time criteria. In addition, high school students must meet the instructional program standards in A.R.S. § 15-901(A)(2)(c) (as modified for part-time students in A.R.S. § 15-901(A)(2)(a)). If the school district uses the student count formula in A.R.S. § 15-902, students must also satisfy the criteria for "daily attendance" in A.R.S. § 15-901(A)(6).

Sincerely,



Grant Woods
Attorney General

c: Honorable Lisa Graham Keegan
Superintendent of Public Instruction