



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert R. Corbin

February 6, 1987

Mr. John T. Hestand  
Pinal County Office  
P.O. Box 1421  
Florence, Arizona 85232

I87-026 (R86-168)

Dear Mr. Hestand:

Pursuant to A.R.S. § 15-253(B) this office has reviewed your November 5, 1986 letter to Mr. Tom McAndrews of the Mammoth - San Manuel Unified School District No. 8. We concur with your conclusions regarding admission and charging tuition of students, with the following revisions:

At page 4 of your opinion, you state:

The Mammoth-San Manuel Unified School District is bordered by another school district. This school district does not maintain school buildings or teachers of its own but, rather, transports all of its students (both common school and high school) to the Mammoth-San Manuel Schools. The District may, but is not required to, accept these students. If your district does accept these students it may charge tuition. You are not bound by the dictates of A.R.S. 15-824(D)(1) and may charge tuition for each student sent from that district rather than charging for the number accepted in the previous year.

(Emphasis added). We disagree with your statement that the district is not required to accept certain students and believe that A.R.S. § 15-824(A)(2) requires the district to accept high school students from a district that does not offer high school

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curriculum. We think that the analysis appearing on page 1 of your opinion, in which you discuss students who do not live within the boundaries of a union high school district, is applicable in this situation as well. You correctly stated:

A.R.S. 15-824(A) deals with the District's obligation to accept high school students from such a district. It states:

A. The governing board of a school district shall admit pupils from another school district or area as follows:

\* \* \*

2. To a high school without the presentation of such certificate [certificate of educational convenience], if the pupil is a resident of a common school district within this state which has neither a high school nor a school in which high school subjects are taught. The school membership of such pupils is deemed, for the purpose of determining student count and for apportionment of state aid, to be enrollment in the school district of the pupil's residence.

Therefore, the Mammoth-San Manuel Unified School District has no option but to accept these students (subject, of course, to legitimate exclusions from school such as suspensions or expulsions).

Additionally, we disagree with your statement that the district is not bound by the dictates of A.R.S. § 15-824(D)(1). If the district charges tuition for the common and high school students from the bordering Arizona school district without buildings or teachers, it must comply with A.R.S. § 15-824(D)(1) and (2) as amended by Laws 1986 (2nd Reg. Sess.) Ch. 387, § 1, which provides as follows:

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D. Except as provided in section 15-823 and this section, tuition shall be charged for all pupils attending school in a school district other than that of their residence and shall be determined and paid in the following manner:

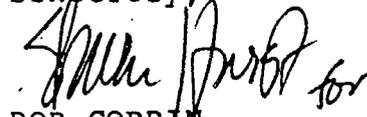
1. The number of high school pupils for which tuition may be charged to a common school district which is not within a high school district is equal to the average daily membership in the district of attendance from the common school district for the prior fiscal year, except for the first year in which a common school district not within a high school district stops teaching high school subjects, the district of attendance may charge tuition for the number of pupils which is equal to the average daily membership for high school pupils in the common school district for the prior fiscal year. This number may be adjusted if the common school district increases its revenue control limit and district support level or recomputes its revenue control limit as provided in section 15-948.

2. The tuition for pupils attending school in a school district other than that of their residence, except pupils provided for by section 15-825, subsections B and D and any pupils included in the definition of handicapped child in section 15-761, shall not exceed the cost per student count of the school district attended, as determined for the current school year. The school district of attendance shall not include in the cost per student count a charge for transportation if no transportation is provided, and the charge for transportation shall not exceed the actual costs of providing transportation for the pupils served, as prescribed in the uniform system of financial records. The

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school district of attendance shall provide the school district of residence with the final tuition charge for the current year and with an estimate of the budget year's tuition charge by May 1 of the current year. The school district of residence shall pay at least one-fourth of the total amount of the estimated tuition by September 30, December 31 and March 31, and it shall pay the remaining amount it owes after adjustments are made by June 30.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bob Corbin for".

BOB CORBIN

Attorney General

BC:JGF:gm

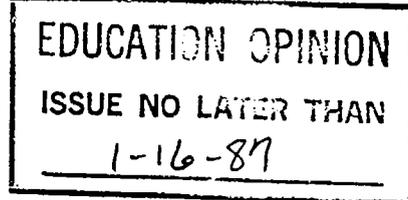
LAW OFFICES OF

**JOHN T. HESTAND**

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November 5, 1986



Mr. Tom McAndrews  
Director, Adaptive Education  
Mammoth-San Manuel Public Schools  
P. O. Box 406  
San Manuel, Arizona 85631

R86- 168

Martin  
11-18-86

Dear Mr. Andrews:

The Mammoth-San Manuel Unified School District has a number of students who attend the Mammoth-San Manuel Schools but whose district of residence is in a different school district. The District wishes to know which students it is required to accept, which students it may accept or refuse at its option, and the terms and conditions it may place on acceptance of the students it does accept.

The Mammoth-San Manuel Unified School District is bordered by a common school district which is not within the boundary of a union high school district and which does not have a high school nor a school in which high school courses are taught. A.R.S. 15-824(A) deals with the District's obligation to accept high school students from such a district. It states:

A. The governing board of a school district shall admit pupils from another school district or area as follows:

\* \* \*

2. To a high school without the presentation of such certificate [certificate of educational convenience], if the pupil is a resident of a common school district within this state which has neither a high school nor a school in which high school subjects are taught. The school membership of such pupils is deemed, for the purpose of determining student count and for apportionment of state aid, to be enrollment in the school district of the pupil's residence.

Therefore, the Mammoth-San Manuel Unified School District has no option but to accept these students (subject, of course, to legitimate exclusions from school such as suspensions or expulsions). As the statutes note, the high school students from a common school district are considered to be students of the common school district for purposes of determining student count and state aid. The statute goes on to provide the method by which a receiving District with a high school receives compensation for educating the high school students of the common school. At A.R.S. 15-824(D) it states, in pertinent part:

D. Except as provided in §15-823 and this section, tuition shall be charged for all pupils attending school in a school district other than that of their residence and shall be determined and paid in the following manner:

1. The number of high school pupils for which tuition may be charged to a common school district which is not within a high school district is equal to the average daily membership in the district of attendance from the common school district for the prior fiscal year, except for the first year in which a common school district not within a high school district stops teaching high school subjects, the district of attendance may charge tuition for the number of pupils which is equal to the average daily membership for high school pupils in the common school district for the prior fiscal year. This number may be adjusted if the common school district recomputes its revenue control limit as provided in §15-948.

2. The tuition for pupils attending school in a school district other than that of their residence, except pupils provided for by §15-825, subsections B and D and any pupils included in the definition of handicapped child in §15-761, shall not exceed the cost per student count of the school district attended, as determined for the current school year. The school district of attendance shall not include in the cost per student count a charge for transportation if no transportation is provided, and the charge for transportation shall not exceed the actual costs of providing transportation for the pupils served, as prescribed in the uniform system of financial records. The school district of attendance shall provide the school district of residence with the final tuition charge for the current year and with an estimate of the budget year's tuition charge by May 2 of the current year. The school district of residence shall pay at least one-fourth of the total amount of the estimated tuition by September 30, December 31 and March 31, and it shall pay the remaining amount it owes after adjustments are made by June 30.

\* \* \*

4. Tuition for pupils included in the definition of handicapped child in §15-761 shall not exceed the actual cost of the school attended for each such pupil, as determined for the current school year.

As the statute explains, the number of students for which you can charge the neighboring district tuition this year is equal to the average daily membership of high school students from that common school who attended your District's high school last year. This was evidently done to allow the district of residence to budget for tuition cost in the upcoming school year.

The tuition which you can charge, varies according to whether the student is a regular education student or a handicapped child in need of special education. If the student is a regular education student your

tuition cost cannot exceed the cost per student count. As the district of attendance your District is obligated to provide the district of residence (the common school) with the final tuition charge for the current year and the estimate for the next budget year's tuition by May 1.

As amended in 1985, A.R.S. 15-824(E) explains the cost per student count which serve as the maximum tuition you could charge to the common school district which is sending students to your high school. It states:

E. For the purposes of this section, "costs per student count" means the sum of the following for the common or high school portion of the school district attended, whichever is applicable to the pupil involved, as prescribed in the uniform system of financial records:

1. The actual school district expenditures for the regular education program subsection of the maintenance and operation section of the budget divided by the school district's student count for the common or high school portion of the school district, whichever is applicable.

2. The actual school district expenditures for the major capital items and other capital items sections of the budget as provided in §§ 15-903 and 15-905 excluding expenditures for transportation equipment and buildings if no transportation is provided and expenditures for the acquisition of building sites, divided by the school district's student count for the common or high school portion of the school district, whichever is applicable.

3. The total amount of bond issues or portion of bond issues outstanding, including the total amount of interest of the bond issues or portion of the bond issues, issued by the school district for construction of a school building, excluding acquisition of a building site, amortized over a twenty year period, divided by the school district's student count for the common or high school portion of the school district, whichever is applicable.

4. The result obtained in paragraph 3 of this subsection shall not exceed:

- (a) One hundred fifty dollars if the pupil's school district of residence pays tuition for seven hundred fifty or fewer pupils to other school districts.

- (b) Two hundred dollars if the pupil's school district of residence pays tuition for one thousand or fewer, but more than seven hundred fifty, pupils to other school districts.

- (c) Actual cost per student count if the pupil's school district of residence pays tuition for more than one thousand pupils to other school districts.

The answer to the question of tuition charge differs if the student is a handicapped child or defined in A.R.S. 15-761. A.R.S. 15-761 defines a handicapped child as:

"a child of lawful school age who due to present physical, mental or emotional characteristics or a combination of such characteristics is not afforded the opportunity for all-around adjustment and progress in regular classroom instruction and who needs special instruction or special ancillary services, or both, to achieve at levels commensurate with his abilities."

Among the handicapping conditions listed are: educable mentally handicapped, hearing handicapped, homebound or hospitalized, learning disabled, multiple handicapped, physically handicapped, seriously emotionally handicapped, speech handicapped, trainable mentally handicapped and visually handicapped. The law recognized that handicapped students are often more expensive to educate than regular education students. Obviously it would be unfair to require a school district, which is not the district of residence, to accept a handicapped child and pay the increased cost of special education without compensation. To that end, A.R.S. 15-824(D)(4) states:

"Tuition for pupils included in the definition of handicapped child in (Section) 15-761 shall not exceed the actual cost of the school attended for each such pupil, as determined for the current school year."

When a high school student from the neighboring common school district meets the definition of a handicapped child, you may charge that common school tuition up to the actual cost of the education you provide to that child.

The Mammoth-San Manuel Unified School District is bordered by another school district. This school district does not maintain school buildings or teachers of its own but, rather, transports all of its students (both common school and high school) to the Mammoth-San Manuel Schools. The District may, but is not required to, accept these students. If your district does accept these students it may charge tuition. You are not bound by the dictates of A.R.S. 15-824(D)(1) and may charge tuition for each student sent from that district rather than charging for the number accepted in the previous year. Thus, if that district sent 20 students in the 1985-86 school year and 25 in the 1986-87 school year you may charge tuition for 25 in the 1986-87 school year.

The tuition charge for the transporting district is similar to that charged to common school districts without a high school. As noted in A.R.S. 15-824(D)(2) the tuition may not exceed cost per student count for regular education students. As noted before, you can charge the district of residence for transportation, only if you actually provide transportation. The procedure for determining cost per student count is again found at A.R.S. 15-824(E). I would point out that the transporting district sends both common school and high school students and the formulas in 15-824(E) depend upon which group the child belongs to.

Similarly, the law recognizes that handicapped students from a transporting district can be more expensive to educate than regular education students, and it allows you to utilize the provisions of A.R.S. 15-824(D)(4) and charge the transporting district tuition not to exceed the actual cost of educating the handicapped child.

The Mammoth-San Manuel District also is occasionally requested to accept and educate a student whose parents/guardians reside in a neighboring unified school district. The statutory authorization for the acceptance of such students is found at A.R.S. 15-823 which states in pertinent part:

- A. The governing board may admit children who do not reside in the school district but who reside within this state upon such terms as it prescribes.
- B. Except as provided in subsections D, E and F, children of non-residents of this state may be admitted upon payment of a reasonable tuition fixed by the governing board.

The Mammoth-San Manuel School District may admit the students whose parents reside in a neighboring school district. Because there is no statutory obligation on the district of residence, the district of attendance may not require the district of residence to pay tuition. It may however charge tuition to the parents/guardians who wish to enroll their students in a district other than the one in which they reside.

It is not unusual for a district to accept as students, children who reside in a neighboring district, without any tuition charge, simply to increase the average daily attendance and consequently increase the amount of state aid which is received. This practice was approved as legal in Attorney General Opinion 81-029. For example, a district may accept a sixth grade student from a neighboring district. Because the student slips into an already established sixth grade, there is little or no increased cost and the increased state aid provides a net benefit to the District. In such a case, the receiving district has provided a net benefit with little or no detriment to its own taxpayers and the student of its residents.

The statute notes that a governing board "may" admit children who do not reside in the school district. Implicit in this is the right not to admit any out-of-district children and the right to admit some but not all out-of-school district children who request admittance. In Attorney General Opinion 85-092, the Attorney General concurred that a "local governing board may adopt a policy which denies admittance to non-resident students currently under suspension or revocation from another district after a case-by-case review of all facts."

That opinion went on to note the circumstances under which a school district must accept an out-of-district student. "We clarify to add that a local board must accept a non-resident student upon presentation of a certificate of educational convenience issued by the county school superintendent as well as a high school student if that

pupil is a resident of a common school district in Arizona which has neither a high school nor a school in which high school subjects are taught."

It is my opinion that a receiving school district could refuse to accept any out-of-district students, other than those listed by the Attorney General. The District could accept some and reject others if that decision were based on a legitimate non-discriminatory basis. Thus, the District could accept third graders because it has small third grade classes while, at the same time, refusing to accept fifth graders because the district's fifth grade classes were overcrowded. However, the District would not be able to and certainly would not want to, make its decision to admit or deny a student based upon a discriminatory basis. Federal law prohibits discrimination based upon race, national origin, gender, religion or handicapping condition.

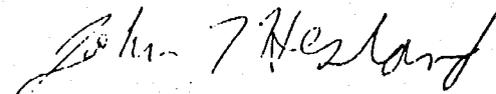
Thus, the district could refuse to accept any out-of-district students. It could refuse to accept any third grade students or any high school students. However, it could not refuse to accept a minority or handicapped child if it accepts otherwise similar non-minority or non-handicapped children.

However, just as the legislature allows a school district to charge greater tuition to a school district who sends a handicapped child, so may a district charge a greater tuition to an out-of-district parent who wishes to enroll a handicapped child in the district based upon the increased cost of educating the child. Thus, it would be legal to admit regular education students and charge no tuition while charging tuition, not to exceed the cost of education, for a handicapped child.

If you should have any questions, or if I can be of any assistance, please do not hesitate to contact me.

Sincerely,

LAW OFFICES OF JOHN T. HESTAND



John T. Hestand

JTH/sam