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Robert E. Corbin

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ARIZONA ATTORNEY GENERAL

June 9, 1986

Ms. Janis Sandler
Udall, Shumway, Blackhurst,
Allens, Lyons & Davis, P.C.
30 West First Street
Mesa, Arizona 85210

Re: I86-064 (R86-057)

Dear Ms. Sandler:

This office has reviewed the opinions expressed in your April 22, 1986 letter to Dr. Chuck Essigs, Assistant Superintendent for Business Services, Mesa Public Schools, and concurs with your conclusions regarding the days high school classes must meet to qualify for 175 days in session.

Sincerely,

A handwritten signature in cursive script that reads "Bob Corbin".

BOB CORBIN
Attorney General

BC:TLM:pnw

886 - 057

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April 22, 1986

EDUCATION OPINION

ISSUE NO LATER THAN

6-27-86

Dr. Chuck Essigs
Assistant Superintendent
for Business Services
Mesa Public Schools
549 North Stapley Drive
Mesa, Arizona 85203

Re: High School Days in Session

Dear Dr. Essigs:

You have requested an opinion on the following
issue:

Must every high school class meet every
day in order for the day to qualify for
one of the 175 days in session?

Please see the body of this letter for our response.

It is our understanding of the facts that the District would like to schedule high school exam days, similar to those which will be encountered by the high school students when they enter college. One of the proposed ways of handling the matter is to schedule several one-half day sessions (four class periods), with approximately two extended periods during which individual subjects such as English and math will be examined, allowing the students the afternoons to study for the exams the next day. During this approximate two to three day period, some classes would not meet during that period, but the total of 120 hours annual instruction time would be met for each course.

This proposed plan is questioned because of a memo from the Arizona Department of Education dated February 3, 1986, from Eugene Dudo. The memo outlines two tests to be applied to determine if a "school day" qualifies as one of the required "175 days in session." (A.R.S. § 15-341 A.2). In the opinion of the Arizona Department of Education, unless all regularly scheduled classes are included in a "short day" schedule, it does not qualify as one of the 175 days in session. This

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opinion is apparently based on the Department's reading into A.R.S. § 15-341 A.2 a requirement which is not explicitly stated: that each regularly scheduled class meet each day. The statute states:

2. Maintain the schools established by it. Schools shall be maintained for the attendance of each pupil for a period of not less than 175 school days, or its equivalent as approved by the superintendent of public instruction for a school approved for extended school year operation by the state board of education, in each school year, . . .

No reference is made to each regularly scheduled class being held each day, but the Arizona Department of Education is apparently reading into that paragraph that each class must be available each day.

The memo dated February 3, 1986, does indicate that the Districts have discretion to lengthen, or shorten, the time scheduled for each class. Applying this discretion, the District could schedule larger blocks of time during these exam days for particular subjects. The other classes for the day could just meet long enough to have the students go into the classroom, have the teacher take attendance, and then dismiss them to the next class. As long as the minimum 120 hours of instruction a year is met (A.R.S. § 15-901 A.6.(b)), this proposed alternative of shortening the class schedules and lengthening certain ones, is acceptable, according to the memo.

One other option that may be available to the District and still comply with the tests set forth in the Arizona Department of Education's memorandum dated February 3, 1986, is to make out the next year's schedule, not scheduling certain classes for those two to three days. The 120 hours of instructional time must be met, but because a class was not scheduled for that particular day, on that particular day all of the "regularly scheduled classes" would be included. For each individual student, he/she will be attending all of the regularly scheduled classes in his/her schedule. Once the schedule is in place, the child must be able to attend, and changes should not be made.

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In our opinion, there is no rational basis to read into A.R.S. § 15-341.A.2 the requirement that each class must meet each day. This interpretation would allow the Districts very little flexibility and lead to scheduling which borders on the ridiculous.

The rules of construction of a statute require that the court should examine language used in the statute, context, subject matter, effects, consequences, spirit and reason of the law. Castregon v. Huerta, 119 Ariz. 343, 580 P.2d 1197 (1978); and if there are several possible interpretations of the statute, a court will adopt that interpretation which is reasonable and avoids contradictions or absurdities. Gortarez By and Through Gortarez v. Smitty's Super Valu, Inc., 140 Ariz. 97, 680 P.2d 807 (1984). The Arizona Department of Education has read into A.R.S. § 15-341 A.2 a requirement that each class must meet each day. In order to then meet this implied requirement, and yet allow flexibility in the length of the class day, it suggests that the District has discretion to lengthen or shorten the time scheduled for each subject, even to the point of merely having the students show up for roll call and then go on to another class. In our opinion, that interpretation leads to an absurd result which is unnecessary. As long as a class meets for instructional time of a total of 120 hours per year, it should not matter if that class does not meet on one particular day.

For instance, to show that flexibility should be allowed to further educational purposes, if a biology class wants to take a field trip to actually look at insects in a field, that may take more than the normally scheduled time for a class period, and those students would miss at least one or more classes for that particular day. So long as the classes missed would ultimately include 120 hours of instructional time, that flexibility should be allowed to ensure an optimum teaching environment. As another example, when assemblies are held, regularly scheduled classes are not meeting. These are examples of situations that currently exist and are apparently acceptable. Exam days in high school have an educational purpose to prepare students for the college environment, and should be allowed.

In our opinion, A.R.S. § 15-901 A.6(b) supports our interpretation allowing flexibility. The subsection cited

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deals with the definition of "daily attendance" for high schools, and states:

(b) For high schools, the attendance of high school pupils shall not be counted as a full day unless the pupil is actually and physically in attendance and enrolled in and carrying four subjects, each of which, if taught each school day for the minimum number of days required in a school year, would meet a minimum of 120 hours a year, or the equivalent, that count toward graduation as defined by the state board of education in a recognized high school except as provided in section 15-797. Attendance of a pupil carrying less than the load prescribed shall be prorated. (Emphasis added)

The use of the word "if" implies that each subject may not be taught each day for the minimum number of days required in the school year, but must meet a minimum of 120 hours a year. This supports our interpretation that allows a certain daily flexibility as long as the 120 hours per year requirement is met.

In conclusion, the District has three options available in scheduling high school exam days:

1. Have each class meet every single day, but during exam days, lengthen certain class periods, and severely shorten other class periods just long enough to take roll call.
2. A year in advance schedule individual classes, deleting certain classes from a particular day's schedule, but ensuring that that class will meet for the minimum amount of 120 hours that year. Every "scheduled" class then meets every day.
3. Have exam days wherein certain class periods are lengthened, for the purpose of giving exams, and others are not held that day so that students may go home and prepare for exams on the next day, but ensure that a total of 120 instructional hours is received for the year in each subject.

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This opinion is being sent to the Attorney General's
Office for its review pursuant to A.R.S. § 15-253.B.

Very truly yours,

UDALL, SHUMWAY, BLACKHURST,
ALLEN, LYONS & DAVIS, P.C.

Janis Sandler

Janis Sandler

JS:jw
cc: Dr. James K. Zaharis