



# Attorney General

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Robert R. Corbin

September 12, 1988

Ms. C. Diane Bishop  
Superintendent of Public Instruction  
Arizona Department of Education  
1535 West Jefferson  
Phoenix, Arizona 85007

Re: I88-095 (R88-072)

Dear Ms. Bishop:

You ask whether a school district may charge fees for seventh and eighth grade courses and for high school courses offered outside the standard school day as part of its community school program. You also ask whether a school district may impose, as a condition of kindergarten admission, a requirement that a child's parents submit a kindergarten readiness evaluation for which a fee is charged.

We conclude that school districts may offer seventh and eighth grade and high school courses in a community school and charge a fee for those courses, as long as the district also offers all classes necessary for a common school or high school education during the standard day. We also conclude that school districts do not have authority to require a private evaluation for which a fee is charged as a condition of kindergarten admission.

A.R.S. § 15-1142 allows school districts to establish community school programs:

The governing board of any school district may:

1. Establish and operate a community school program in any school in its school district.

2. Budget and expend from the maintenance and operation section of the budget, as defined in § 15-903, to employ a qualified director necessary for each school or combination of schools engaged in community school programs.

3. Expend community school monies for operation of a community school program.

4. Establish tuition and fee charges for community school programs.

(Emphasis added.)

A community school program serves the purposes of academic and skill development for all citizens, supplies remedial and supplemental education and provides facilities for the dissemination of a variety of community related services, including extended day resource programs. A.R.S. § 15-1141(3). Therefore, school districts have statutory authority to charge fees for classes offered in the community school as part of an extended day program.

You specifically ask whether charging fees for seventh and eighth grade classes would violate the mandate in the Arizona Constitution to provide a system of free common schools. The pertinent sections of article XI of the Arizona Constitution read as follows:

Section 1. The Legislature shall enact such laws and shall provide for the establishment and maintenance of a general and uniform public school system, which system shall include kindergarten schools, common schools, high schools, normal schools, industrial schools, and a university . . . .

. . . .

Section 6. The University and all other State educational institutions shall be open to students of both sexes, and the instruction furnished shall be as nearly free as possible.

The Legislature shall provide for a system of common schools by which a free school shall be established and maintained in every school district for at least six months in each year, which school shall be open to all pupils between the ages of six and twenty-one years.

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In Carpio v. Tucson High School Dist. No. 1 of Pima County, 111 Ariz. 127, 128, 524 P.2d 948, 949 (1974), the Arizona Supreme Court recognized common schools as grades one through eight and high schools as grades nine through twelve; it noted that a basic education extended to a uniform free, common school system open six months a year to all persons between the ages of six and twenty-one. Carpio, 111 Ariz. at 130, 524 P.2d at 951. See also Shofstall v. Hollins, 110 Ariz. 88, 90, 515 P.2d 590, 592 (1973) (the Arizona Constitution assures to every child between the ages of six and twenty-one the fundamental right to a basic education).

The Arizona Constitution's free common school provision includes seventh and eighth graders. Nevertheless, as long as a school district offers free of charge all the classes necessary for common school basic education<sup>1/</sup> for at least six months of each year to all pupils between the ages of six and twenty-one, the free common school provision has been met.

As a result, we conclude that it is permissible to establish a community school program that offers and charges fees for courses that are the same or comparable to courses taught during the school district's standard day.

You next ask whether a school district may charge fees for high school courses offered as part of a community school program.

Unlike the free common school provision, the Arizona Constitution provides that instruction in high school shall be furnished "as nearly free as possible." Ariz. Const. art. XI, § 6. Furthermore, the Arizona Supreme Court construed the words "as nearly free as possible" as not requiring either free instruction or free textbooks at the high school level. Carpio, 111 Ariz. at 128-129, 524 P.2d at 949-950.

Consequently, fees for high school courses offered through a community school program do not violate the Arizona Constitution's "as nearly free as possible" high school provision.

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<sup>1/</sup> The free common school basic education includes the eight courses required to be taught in all common schools by rule of the Arizona State Board of Education. See A.A.C. R7-2-301(A).

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You have raised the issue whether the availability of classes outside the standard day might "encourage students to participate in off-campus religious activities" during the day, thereby violating the Establishment of Religion Clauses of the United States and Arizona Constitutions.<sup>2</sup>

A.R.S. § 15-806(A) requires governing boards to adopt policies that may "permit a pupil to be excused from school attendance for religious purposes, including participation in religious exercises or religious instruction." The United States Supreme Court found that a similar New York City release

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<sup>2</sup>The First Amendment of the United States Constitution states in its pertinent part:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . .

Article II, § 12 of the Arizona Constitution secures liberty of conscience and states in its pertinent part:

No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or to the support of any religious establishment.

Article XX, Par. 1 of the Arizona Constitution also secures freedom of religion and states in its pertinent part:

Perfect toleration of religious sentiment shall be secured to every inhabitant of this state.

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time statute did not violate the United States Constitution's Establishment of Religion Clause.<sup>3/</sup> Zorach v. Clauson, 343 U.S. 306, 72 S.Ct. 679, 96 L.Ed.2d 954 (1952).

Students may wish to take advantage of the scheduling flexibility the community school offers for a variety of reasons, including the opportunity to pursue music instruction, athletics or early graduation, or to make up failed courses in order to graduate on time. Merely because it also allows some students to exercise their right to pursue religious instruction pursuant to A.R.S. § 15-806 while taking classes they might otherwise miss does not amount to an impermissible establishment of religion.

Finally, you ask whether a school district may impose conditions for early admission to kindergarten that require parents to pay the cost of an outside evaluator to test the readiness of the child.

A.R.S. § 15-703(B) requires each local governing board of a common or unified school district ("school district") to establish a kindergarten program, unless it files an exemption. If a kindergarten program is established, a child is eligible for admission if he or she is five years of age; a child is deemed five years of age if such age is reached prior to September 1 of the current year. A.R.S. § 15-821(B). The school district may admit children who have not reached the required age "if it is determined to be in the best interest of the children." A.R.S. § 15-821(C). Nevertheless, such children must reach the age of five by January 1 of the current school year. Id.

In determining whether underage children may be admitted to the first grade, school districts must base their "best interest of the children" determination upon one or more consultations with parents or guardians, the children, the teacher and the school principal. A.R.S. § 15-821(C). No consultations are required before the school districts determine whether early kindergarten admission is in the best interest of the children. Id.

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<sup>3/</sup> Arizona's approach to its Establishment of Religion Clause is the same as that of the United States Supreme Court in analyzing the First Amendment. See Community Council v. Jordan, 102 Ariz. 448, 432 P.2d 460 (1967).

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School districts have only the authority granted by statute. School District No. 69 of Maricopa County v. Altherr, 10 Ariz. App. 333, 338, 458 P.2d 537 (1969). Here they have authority to determine early kindergarten admission. A.R.S. § 15-821(C). While they may accept a private pre-kindergarten evaluation voluntarily submitted by a parent to demonstrate a child's readiness, school districts have no statutory authority to require parents to pay a fee for an outside evaluation to determine if early kindergarten admission is in the best interest of the underage child.

Therefore, we conclude that school districts may not impose the condition that parents pay the cost of an outside evaluation for early kindergarten admission.

Sincerely,



BOB CORBIN  
Attorney General

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C. DIANE BISHOP  
Superintendent



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May 13, 1988

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5/20/88

Honorable Robert K. Corbin  
Attorney General  
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RE: Request for Opinion

Dear Mr. Corbin:

Article XI, Constitution of Arizona, provides for the establishment of a public school system in this state. Section 1 of this Article directs the legislature to enact laws necessary for the establishment and maintenance of a general and uniform public school system. In Section 6, the word "free" is used in two instances referring to the availability of the public educational system, i.e., (1) "The University and all other State educational institutions shall be open to students of both sexes, and the instruction furnished shall be as nearly free as possible."; and (2) "The Legislature shall provide for a system of common schools by which a free school shall be established and maintained in every school district. . . . which school shall be open to all pupils between the ages of six and twenty-one years."

Over a period of time, inquiries have been directed to the Department of Education regarding the appropriateness of a school district (the Mesa Unified School District has been specifically named) charging fees for classes offered at times before or after the "standard day" at both the elementary and secondary levels. These inquiries also questioned the appropriateness of a school district asking parents to provide school supplies and to pay the cost of evaluating the readiness of certain children to enter the first grade or Kindergarten. (A.R.S. 15-821, directs that all schools will admit a child to the first grade if that child has reached the age of six years prior to September 1 of the current school year. A child who has reached the age of five by the same date will be admitted to Kindergarten. Governing boards are given discretion to allow the admission of children who do not reach the ages heretofore stated by September 1, but do reach the required age by January 1 of the current year, if it is determined "to be in the best interest of the children.")

These issues prompted considerable interest on the part of the media. I have taken the liberty of attaching a number of representative articles which have appeared over the past few months.

In response to these inquiries, the Department asked the Mesa Unified School district to provide a listing of the type fees they charge and the basis for such charges.

The following descriptions have been excerpted from a letter sent to the Department of Education by Assistant Superintendent Frederic W. Skoglund:

"Fees for Optional Classes

The standard program of Mesa's secondary schools is defined as that curriculum which is offered through a six class period day. Every MPS student is offered the opportunity to take full advantage of the standard day. All curriculum offerings are available, and all credit requirements may be met during this time.

Some students choose to take additional classes for the purpose of accelerating their program of study or making up a credit deficiency. This is not a requirement of the district, and is completely at the discretion of the student. It has long been the practice of the district to offer such opportunities, and to charge a nominal fee for optional classes taken in addition to the standard program. A fee for the optional seventh class is consistent with fees charged by districts across the state for summer school and night school programs."

During the current year, the Governing Board of the Mesa Unified District approved expanding the "courses for a fee" program to the junior high levels, i.e., seventh and eighth grades.

By way of reference, A.R.S. 15-901 requires seventh- and eighth-grade student to be enrolled in school (on a daily basis) for a minimum of 360 minutes, not including lunch or recess periods.

The same statute defines a full-time high school student as a student who is enrolled in at least four subjects that count towards graduation.

The State Board of Education, in their Rule R7-2-302.02 requires a minimum of 20 credits for graduation from high school.

An additional and possibly related concern was brought to our attention (and reported in the press) during the limited inquiry conducted by the Department regarding this issue.

Would the availability of required courses "for a fee" at alternative times encourage students to participate in off-campus religious activities during the "standard day" (A.R.S. 15-806 directs governing boards of school districts to adopt policies governing the excuse of pupils for religious purposes)?

"Fees for Kindergarten Screening

This program was developed in an attempt to address the needs of parents whose children do not meet the September 1 birthday requirement, but feel that the child can benefit from entering school. It was deemed reasonable and responsible to have some appropriate measure of the child's potential for success. With that consideration, parents are requested to provide

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documentation, and the Gesell test of School Readiness is suggested as a reliable instrument.

It is the belief of those that developed the program that public school districts may not operate preschools, and may not use public funds for services directed toward children under five years of age."

The district furnished us a copy of the materials provided to parents requesting their child be considered for early entry into the Kindergarten program, which states in part that the testing will not be provided by the Mesa Public School. A copy of these items is attached.

The circumstances herein described have prompted the Department to request your formal opinion to the following questions:

1. May a school district impose conditions for admission to a Kindergarten program that require the payment of a charge, i.e., paying for the cost of an evaluation to determine the readiness of the child?
2. May a school district charge for courses it schedules outside of a "standard day" for seventh- and eighth-grade students, when the district has an obligation to provide all required courses (and any optional courses approved by the State Board of Education - see State Board Rule R7-2-301) to all students?
3. May a school district charge for courses it schedules outside of the "standard day" for high school students?

A timely response to these questions will be appreciated.

Sincerely,

*C. Diane Bishop*

C. Diane Bishop  
State Superintendent of Public Instruction

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Enclosures