



STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>THOMAS C. HORNE ATTORNEY GENERAL</p> <p>July 11, 2013</p>	<p>No. I13-002 (R13-007)</p> <p>Re: Financial Treatment of Charter School Pupils at a District-sponsored Charter School</p>
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To: Linda L. Good, Esq.
Staff Attorney
Higley Unified School District No. 60

You have submitted to the Attorney General's Office for review an opinion that you prepared for the Higley Unified School District ("District") regarding the impact of opening district-sponsored charter schools on the calculations of the District's adjustment for growth in student count pursuant to Arizona Revised Statutes ("A.R.S.") § 15-948. That statute provides for certain adjustments in budgeting capacity based on an increase in student population; it is known as the "Rapid Growth" provision. Your opinion recognizes that the District would not be eligible for Rapid Growth monies for new students attending the District's non-charter schools, based on how the Arizona Department of Education ("Department") would determine the District's eligibility for Rapid Growth monies. But you concluded that there was an alternative way to interpret the Rapid Growth statute so that the District retained eligibility for Rapid Growth monies for the students new to the District schools. You also concluded that A.R.S. §

15-185(E) had no impact on the District-sponsored charter schools because they are subject to A.R.S. § 15-185(D).

Pursuant to A.R.S. § 15-253(B), this Opinion revises your opinion as follows. First, we clarify that the Department's process of calculating the District's eligibility for Rapid Growth monies complies with the statute. This conclusion moots your alternative analysis of the Department's Rapid Growth process, so we decline to address that alternative analysis. Finally, we clarify that the District's charter schools are subject to the reduction described in A.R.S. § 15-185(D) for the first year of operation because of the application of A.R.S. § 15-185(E).

Questions Presented

1. Does A.R.S. § 15-183(A)(4) require that a school district's charter-school pupils be excluded from the calculation of the district's growth in student count?
2. How is double funding avoided if a school district's charter-school pupils are included in the district's student count?
3. What is the impact of A.R.S. § 15-185(E) on a new school that a school district opens as a charter school?

Summary Answer

1. If a district sponsors a charter school that it elects to fund as a charter school—thus availing itself of the additional assistance and current funding available pursuant to A.R.S. § 15-185(A)(3)—then the students who attend the charter school must be excluded from the Rapid Growth calculation under A.R.S. § 15-185(A)(4).
2. Under the interpretation of the statute outlined here, it is not necessary to reach this question.

3. If a District opens a new charter school that serves a student population that had previously been served at a district school, then A.R.S. § 15-185(E) requires a reduction of the District's base support level equal to the sum of the base support level and additional assistance received in the current year for those pupils that were at the District in the prior year and are now enrolled at the District's charter school.

Background

Analysis of the question you present requires an understanding of the following Arizona school finance concepts, their interrelationship, and the effect of a district's decision to sponsor a charter school:

1. How the district's base support level funding is determined;
2. The purpose and calculation of the district's base revenue control limit,
3. How the Rapid Growth provisions function to allow school districts with a sudden influx of students to be fully funded; and
4. Calculation of funding for district-sponsored charter schools.

A district's base support level funding is determined by multiplying its student count by a legislatively determined dollar amount. A.R.S. § 15-943.¹ "Student Count" is defined as the average daily membership "for the fiscal year before the current year, except that for the purpose of budget preparation student count means average daily membership . . . for the current year." A.R.S. § 15-901(A)(13). Average daily membership ("ADM") is the number of enrolled full-time and fractional students in the district. A.R.S. § 15-901(A)(1). Thus the Student Count and ADM are essential components in determining the amount of funding that a district will receive. A district's base support level funding is in turn one component of its revenue control limit. That

¹ Although the calculation of a district's base support level is more complicated than is described here, further details are not relevant to the questions presented.

limit is a spending limit: it is the maximum amount that the district may spend for most of its day-to-day operations. A.R.S. §§ 15-947(C), 15-905(E).²

A district is eligible for Rapid Growth monies if it is educating more pupils in the current school year than it educated the prior school year. A.R.S. § 15-948. Rapid Growth allows a district to increase its revenue control limit and district support level³ for the current year to account for the growth in its student body, thus allowing the district to receive and expend additional monies. Rapid Growth is necessary because traditional district schools are funded based on the prior year's Student Count. Without such an adjustment, a district that experiences a significant influx of new students might not be funded adequately.

When a district sponsors a charter school, that district must be able to increase its revenue control limit and district support level to be able to accept and budget the additional charter school monies. A.R.S. § 15-185(A)(1) allows the district to properly budget and receive funding for the sponsored charter school. It states that the charter school "shall be included in the district's budget and financial assistance calculations pursuant to paragraph 3 of this subsection and chapter 9 of this title, except for chapter 9, article 4 of this title."⁴ However, the charter school law limits a district's access to Rapid Growth funding by providing: "If a school district uses the provisions of paragraph 3 of this section, the school district is not eligible to include those pupils in its student count for the purposes of computing an increase in its revenue control limit and district support level as provided in section 15-948." A.R.S. § 15-185(A)(4).

² A district's revenue control limit is calculated by adding its base revenue control limit and its transportation revenue control limit. A.R.S. § 15-901(12). The district's base revenue control limit is equal to the district's base support level as calculated in A.R.S. § 15-943. A.R.S. § 15-944(E).

³ The Rapid Growth provisions in A.R.S. §§ 15-948 and 15-185(A)(4) use the phrase "district support level" which is defined in A.R.S. § 15-901(A)(7) as the base support level plus the transportation support level. Transportation funding is irrelevant to the questions presented in this Opinion, so it is not discussed here.

⁴ Chapter 9, article 4 of title 15 concerns issues of capital funding that are not relevant to this Opinion.

You explain in your request that the District is constructing two new school facilities that will be its first middle schools to serve its seventh- and eighth-grade populations.⁵ The District is considering the fiscal implications of operating the two new schools as district-sponsored charter schools, rather than as traditional district schools. The District is concerned that operating the schools as charters would cause the District to lose its Rapid Growth funding pursuant to A.R.S. § 15-948.

Analysis

The issues presented by this Opinion involve the interplay between two school finance statutes that are administered by the Department—the Rapid Growth statute (A.R.S. § 15-948) and the Charter School funding statute for district-sponsored charters (A.R.S. § 15-185(A)). In particular, A.R.S. § 15-185(A)(4) provides that a school district “is not eligible to include those pupils in its student count . . . as provided in section 15-948.”

To provide clarity throughout the Opinion about how the various subsections of A.R.S. § 15-185 interact, we will use the example set forth in your opinion to guide the discussion.

Fiscal Year 2013		Fiscal Year 2014	
Students Attending All District Schools	10,000	Students Attending All District Schools	10,500
Non-Charter Schools	10,000	Non-charter Schools	9,800
		At District in 2013	9,500
		New to District in 2014	300
Charter Schools	0	Charter Schools	700
		At District in 2013	500
		New to District in 2014	200

⁵ Although not stated in your opinion, we understand that the District is reconfiguring its elementary schools from kindergarten-through-eighth-grade to kindergarten-through-sixth-grade schools, with the two new middle schools taking seventh- and eighth-grade students.

I. A.R.S. § 15-185(A)(4) Requires the Exclusion of All Charter-School Pupils from the Rapid Growth Calculation.

As discussed above, Rapid Growth allows a school district to receive additional funding during the current school year if it is educating more students in the current year than it did in the previous year. The adjustment set out in the Rapid Growth statute is important because district schools are funded on the previous year's Student Count.⁶ For most school districts, the Rapid Growth calculation is fairly straightforward pursuant to A.R.S. § 15-948:

1. determine the number of students that were attending district schools in the previous year;
2. determine the number of students attending district schools in the current year;
3. if the number of students in (2) is greater than (1), the district is eligible to calculate an increase in its revenue control limit and district support level.

A.R.S. § 15-948(A).⁷ Therefore, a district that does not sponsor any charter schools simply asks whether more students are attending this year than attended in the previous year. If so, then the

⁶ There is no need for Rapid Growth funding for charter schools because they are funded based on their current year student population, allowing them to receive current year growth funding through their Student Count.

⁷ The full text of the relevant portion of A.R.S. § 15-948 is:

A. Any school district . . . may determine if it is eligible to increase its revenue control limit and district support level for the current year due to growth in the student population as follows:

1. Determine the student count used for calculating the base support level for the current year [prior year's student population].
2. Determine the average daily membership or adjusted average daily membership, which is applicable, through the first one hundred days or two hundred days in session, as applicable, of the current year [current year's student population].
3. Subtract the amount determined in paragraph 1 of this subsection from the amount determined in paragraph 2 of this subsection.
4. If the amount determined in paragraph 2 of this subsection is greater than the amount determined in paragraph 1 of this subsection, the governing board of the

district may receive Rapid Growth and increase its revenue control limit and district support level.

When a district sponsors a charter school, however, its simple Rapid Growth calculation is complicated by A.R.S. § 15-185, which addresses Rapid Growth funding for districts with district-sponsored charter schools. In particular, A.R.S. § 15-185(A)(4) provides: “If a school district uses the provisions of paragraph 3 of this section, the school district is not eligible to include *those pupils* in its student count for the purposes of computing an increase in its revenue control limit and district support level as provided in section 15-948.” (Emphasis added.) Paragraph 3 of § 15-185(A) provides the option for district-sponsored charter schools to be funded as either traditional district schools or as charter schools.⁸ A district that “uses the provisions of paragraph 3” has opted to fund the school as a charter school, a decision that has several consequences. First, the paragraph allows the district to receive funding for the current year for the charter-school students who are new to the district. A.R.S. § 15-185(A)(3).⁹ In our example, the District would be able to increase its fiscal year 2013 Student Count by the 200 new students attending the charter school in fiscal year 2014 if it elects to fund the school as a charter

school district may compute an increase to its revenue control limit and district support level for the current year.

⁸ In addition to being funded in the current year, charter schools receive charter school additional assistance which the Legislature added to account for certain transportation and soft capital funds that are received by district schools, but for which charter schools are ineligible. A.R.S. § 15-185(B)(4). In recent years, charter school additional assistance has increased at a greater rate than the equivalent district-school funds, thus motivating school districts to explore this avenue to increase per-pupil funding. See Staff Memorandum from the Joint Legislative Budget Committee re: Charter Conversions (June 3, 2013), available at <http://www.azleg.gov/jlbc/m-charterconversions.pdf>.

⁹ The district can determine the Student Count for the charter-school students who were not previously enrolled in the district by using an estimated Student Count based on actual registration of students before the beginning of the school year. A.R.S. § 15-185(B)(2).

school.¹⁰ Further, the second sentence of A.R.S. § 15-185(A)(3)(a) provides that these 200 students would receive charter school additional assistance pursuant to A.R.S. § 15-185(B)(4). For fiscal years 2015 and beyond, all District charter-school students would be eligible for current year funding and charter school additional assistance.

Because A.R.S. § 15-185(A)(3) establishes the funding when a district elects to fund a school as a charter school, the Department has determined that “those pupils” described in A.R.S. § 15-185(A)(4) means all pupils who attend the charter school. Therefore, when a district makes a Rapid Growth calculation pursuant to A.R.S. § 15-948, the Department will exclude all charter-school pupils from the computation. Using your example, the Rapid Growth calculation would be as follows:

1. Student Count in fiscal year 2013 for District schools: 10,000
2. Average Daily Membership for fiscal year 2014 for District schools: 9,800
3. Because the fiscal year 2014 number is less than fiscal year 2013, the District is ineligible for Rapid Growth.

As the District is receiving current year funding for all the charter-school pupils who are new to the District and received funding this year also for the pupils who were in the District last year, the District has been funded for all of the pupils in the district-sponsored charter schools. Therefore, when the District determines its eligibility for Rapid Growth consistently with the Department’s interpretation of the statutes, the current year Student Count (referred to as “average daily membership” in the statute) includes only those 9,800 pupils currently attending the district schools, including the 300 new pupils attending the District schools. As the Student

¹⁰ The sponsoring district’s Student Count from the prior fiscal year, which formed the basis for the current year funding, already includes funding for any charter-school student who attended the sponsoring district the prior year. Therefore, the sponsoring district has received funding for all of the charter-school students for that first year of operation.

Count for the previous year included the 500 district students who are now attending the district-sponsored charter schools, in order for the District to be eligible for Rapid Growth, the Student Count for the current year in the District schools would have to increase by more than the number of pupils who transferred from a district school to the district-sponsored charter school.

We concur with the Department's interpretation of the Rapid Growth statute for district-sponsored charter schools to exclude charter-school pupils from the Rapid Growth calculation. Additionally, although the statute at issue may be susceptible of more than one interpretation, an agency's interpretation of the statute that administers it is entitled to deference. *See, e.g., Better Homes Constr., Inc. v. Goldwater*, 203 Ariz. 295, 299, 53 P.3d 1139, 1143 (App. 2002) (stating that the court accords great weight to an agency's interpretation of a statute); *Berry v. State Dep't of Corr.*, 145 Ariz. 12, 13, 699 P.2d 387, 388 (App. 1985) (stating that the "historical statutory construction placed upon a statute by an executive body administering the law will not be disturbed unless clearly erroneous"). Therefore, the District will not be able to include students who attend District-sponsored charter schools in its calculations for the purpose of determining its eligibility for Rapid Growth monies.

II. The Department's Interpretation of A.R.S. § 15-185(A)(4) Moots Any Alternative Analysis.

Because we concur with the Department's interpretation, it is not necessary to discuss the second question posed in your opinion regarding double funding in Rapid Growth.

III. The Reduction in A.R.S. § 15-185(E) Addresses a Particular Instance of Potential Double Funding that is Distinct From A.R.S. § 15-185(D).

Your opinion states that whether a school falls within the description in A.R.S. § 15-185(E) makes no difference because A.R.S. § 15-185(D) applies in all situations. While we agree that A.R.S. § 15-185(D) applies in all situations, we do not agree that A.R.S. § 15-185(E) is superfluous. Both statutes require a reduction in charter school funding where a charter school

has received funding from more than one source: as A.R.S. § 15-185(D) states, “it is not the intent of the charter school law to require taxpayers to pay twice to educate the same pupils.” But the reductions in the two sections apply to two different sources of funds. A.R.S. § 15-185(D) applies to grants and gifts received from a federal or state agency if the monies are intended for the basic maintenance and operation of the charter school, A.R.S. § 15-185(E) applies to base support level and additional assistance received in the current year for pupils who were attending the district school in the prior year. Neither basic state aid nor additional assistance is a “gift or grant” as specified in A.R.S. § 15-185(D). Further, the reduction in A.R.S. § 15-185(E) applies solely in the first year following the conversion of a district school to a charter school.¹¹

We agree with your conclusion that a *new* school that a district opens as a charter school does not fall within the description of schools subject to A.R.S. § 15-185(E). That section states: “If a charter school was a district public school in the prior year and is now being operated for or by the same school district and sponsored by . . . a school district governing board, the reduction in subsection D of this section applies.”

The primary goal of statutory construction is to find and give effect to the Legislature’s intent. *See Mail Boxes, Etc., U.S.A. v. Indus. Comm’n*, 181 Ariz. 119, 121, 888 P.2d 777, 779 (1995). The best and most reliable indicator of that intent is the statute’s own language. *Zamora v. Reinstein*, 185 Ariz. 272, 275, 915 P.2d 1227, 1230 (1996). “When the statute’s language is not clear, [courts] determine legislative intent by reading the statute as a whole, giving meaningful operation to all of its provisions, and by considering factors such as the statute’s context, subject matter, historical background, effects and consequences, and spirit and purpose.”

¹¹ The reference in subsection E to the reduction in subsection D appears to have been included to ensure that the treatment of a negative balance in A.R.S. § 15-185(D)(1)-(3) is applied without having to be repeated verbatim in subsection E.

Id. A statute's individual provisions must be considered in the context of the statute as a whole to achieve a consistent interpretation. *State v. Gaynor-Fonte*, 211 Ariz. 516, 518, 123 P.3d 1153, 1155 (App. 2005).

Subsection E of A.R.S. § 15-185 was added in 1999 to prevent double funding for students at a district-sponsored charter school if that school was a district school in the previous year. 1999 Ariz. Sess. Laws 1st Spec. Sess. ch. 4, § 2. Double funding would arise because in the current year the district would receive funding generated by the same students in both the prior year as district-school students and the current year as charter-school students. Such double funding would occur because, as noted above, district schools receive funding based on their prior year's student count, while charter schools are funded based on the current year's student count. A.R.S. §§ 15-185(B)(2), 15-901, 15-943. Paragraph 15 of the Senate Fact Sheet for SB1006 indicates that the intent of the provision was to prevent this "double funding of a charter school or its sponsoring district." Revised Fact Sheet for S.B. 1006 (April 1, 1999), *available at* <http://www.azleg.gov/legtext/44leg/1s/summary/s.1006ss1r.app.htm>.

As discussed earlier, the District is considering opening two new schools as charters to serve its seventh- and eighth-grade populations. If it does so, current District students in the sixth and seventh grades would have been attending the same district schools in fiscal year 2014, had the District not reconfigured its elementary schools from kindergarten-through-eighth-grade to kindergarten-through-sixth-grade. Although the middle schools are technically new schools and not a conversion of a school that was previously a district school, the schools here must be treated as converted schools to fulfill the intent of the statute and avoid double funding for District pupils for whom the District is already receiving funding based on their prior year enrollment at District schools.

We conclude that students who previously attended the District schools for sixth and seventh grades in fiscal year 2013 and will attend the charter school in fiscal year 2014 are subject to the A.R.S. § 15-185(E) reduction. For purposes of our example, the District would not be able to claim current year funding for the 500 students that were District-school students in fiscal year 2013, but are now attending the District charter school in fiscal year 2014.

Conclusion

For the foregoing reasons, we concur with the Department's interpretation of A.R.S. § 15-185(A)(4) to exclude all charter school pupils from a school district's Rapid Growth calculation. Because we conclude that the Department's approach should be upheld, we do not address your alternative proposal for interpreting the Rapid Growth formula for districts with district-sponsored charter schools. Further, we conclude that your opinion regarding A.R.S. § 15-185(E) is erroneous and that the provision requires the reduction of the district's state aid in the first year of operation of the district-sponsored charter school for all charter school students that were students in the district schools in the previous year.

Thomas C. Horne
Attorney General