

**STATE OF ARIZONA**  
**OFFICE OF THE ATTORNEY GENERAL**

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<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>TERRY GODDARD ATTORNEY GENERAL</p> <p>July 25, 2003</p>	<p>No. I03-002 (R03-010)</p> <p>Re: Application of Proposition 203 to Charter Schools</p>
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TO: The Honorable Tom Horne  
Superintendent of Public Instruction

**Question Presented**

You have asked whether Proposition 203, which generally requires that children in Arizona's public schools be taught in English, applies to charter schools.

**Summary Answer**

Charter schools are not subject to the requirements of Proposition 203 unless a school's charter provides otherwise.

**Background**

In 1994, the Legislature authorized the establishment of charter public schools to serve as alternatives to traditional public schools. A.R.S. § 15-181(A). It intended these schools to create a learning environment that would improve pupil achievement and provide additional academic

choices.<sup>1</sup> *Id.* The schools operate pursuant to a charter contract (“charter”) that their sponsor authorizes. *See* A.R.S. §§ 15-101(3), -183. A private entity, private person, or public body may hold a charter. A.R.S. § 15-183(B). The Arizona State Board of Education, the Arizona State Board for Charter Schools, or a school district governing board may sponsor a charter school. A.R.S. § 15-183(C).

Charter schools are not operated within the oversight framework that governs traditional public schools. They must comply with the statutes that govern charter schools (A.R.S. §§ 15-181 through -189.03) and with the provisions of their charters. They are exempt from all statutes and rules relating to schools, school districts, and school district governing boards unless the statutes that govern charter schools or their own charters provide otherwise.<sup>2</sup> A.R.S. § 15-183(E)(5). They are governed by their sponsoring entities, which have oversight and administrative responsibility for them. A.R.S. § 15-183(R). A board that is authorized to sponsor charter schools has no legal authority over or responsibility for a charter school that a different board has sponsored. A.R.S. § 15-183(D). This provision does not, however, prevent the State Board of Education from fulfilling its duty to exercise general supervision over the entire public school system, including charter schools. *Id.*

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<sup>1</sup> Charter schools must provide a comprehensive program of instruction, but they may offer a curriculum that emphasizes a specific learning philosophy or style or certain subject areas such as mathematics, science, fine arts, performance arts or foreign language. A.R.S. § 15-183(E)(3). They are prohibited from excluding children based on their ethnicity, national origin, or proficiency in English. A.R.S. § 15-184(B).

<sup>2</sup> The statutes and regulations to which charter schools are subject include (1) all federal, state, and local health, safety, civil rights, and insurance requirements, A.R.S. § 15-183(E)(1); (2) all federal and state laws concerning the education of children with disabilities that are applicable to school districts, A.R.S. § 15-183(E)(7); and (3) the financial and electronic data submission requirements that apply to school districts, A.R.S. § 15-183(E)(6).

In November 2000, Arizona voters approved Proposition 203,<sup>3</sup> an initiative which generally requires that “all children in Arizona public schools shall be taught English by being taught in English and all children shall be placed in English language classrooms.” A.R.S. § 15-752. This Opinion addresses the application of Proposition 203 to charter schools.

### Analysis

The primary goal in interpreting an initiative is to effectuate the intent of the voters who adopted it. *Calik v. Congable*, 195 Ariz. 496, 498, 990 P.2d 1055, 1057 (1999). Charter schools are public schools. A.R.S. §§ 15-101(3), -181. Proposition 203 speaks in terms of children in all of Arizona’s public schools. *See* A.R.S. §§ 15-752 (stating that “all children in Arizona public schools” “shall be placed in English language classrooms” and “shall be taught English by being taught in English”); -754 (stating that “all Arizona school children” have the right to be provided with an English language public education at their local schools;<sup>4</sup> that “the parent or guardian of any Arizona school child” may sue to enforce Proposition 203; and that elected officials found liable for refusing to implement Proposition 203 will be barred from holding any position “anywhere within the Arizona public school system” for five years); -755 (stating that to ensure the educational progress “of *all* Arizona students,” a standardized test must be administered yearly “to *all* Arizona public schoolchildren” above first grade level) (emphases added). On its face, this broad language encompasses charter schools as well as traditional public schools.

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<sup>3</sup> Proposition 203 is codified as A.R.S. §§ 15-751 through -755.

<sup>4</sup> Proposition 203 does not define the term “local school.” It also uses the term in A.R.S. § 15-752, which explains how “local schools” will be encouraged to implement Proposition 203. Although other Arizona statutes refer to “local school” districts, none of them uses the term “local school” standing alone.

Those who enact statutes, however, are presumed to know the existing law. *State v. Garza Rodriguez*, 164 Ariz. 107, 111, 791 P.2d 633, 637 (1990). Therefore, Proposition 203's broad language must be read in the context of the statutory scheme that existed when the voters enacted it in 2000. *See Ariz. State Bd. of Dirs. for Junior Colleges v. Phoenix Union High Sch. Dist.*, 102 Ariz. 69, 72, 424 P.2d 819, 822 (1967) (stating that the court would not presume that the Legislature was unaware of an existing statute and would assume that the Legislature intended two statutes dealing with the same general subject matter to operate as a compatible whole).

Arizona Revised Statutes § 15-183(E)(5) provides that charter schools are exempt from *all* statutes and rules that relate to schools, school districts, and school district governing boards unless the statutes that govern charter schools or the schools' charters provide otherwise. The Legislature enacted this statute in 1994. 1994 Ariz. Sess. Laws, 9th Spec. Sess., ch. 2, § 2. The statutes that govern charter schools appear in chapter 1, article 8 of title 15 (A.R.S. §§ 15-181 to -189.03). Proposition 203 did not mention charter schools, or amend the statutes governing charter schools to provide that Proposition 203 would apply to them. *See McCandless v. United States Assurance Co.*, 191 Ariz. 167, 174, 953 P.2d 911, 918 (App. 1997) (if the Legislature adds a statute to an existing statutory scheme without amending an existing statute that would impact the new statute, the court will presume that the Legislature intended the existing statute to impact the new one). Because A.R.S. § 15-183(E)(5) specifically exempts charter schools from the related statutes governing schools, Proposition 203 does not apply to charter schools.<sup>5</sup>

The specific language of Proposition 203 supports this conclusion. A.R.S. § 15-753(B)(3) refers to the "school principal" the "local superintendent of schools" and "local school districts."

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<sup>5</sup>This analysis applies to charter schools, as well as new charter school applicants.

It also refers to guidelines "established by and reviewed by the local governing board and . . . state board of education." This language refers to the infrastructure that governs traditional public schools, not charter schools. A.R.S. §§ 15-101(11) (defining the term "governing board" for purposes of title 15 as "a body organized for the government and management of the schools within a school district"); -501(6) (defining "superintendent" for purposes of chapter 5 of title 15, which deals with school employees, as "the superintendent of schools of a school district"); *see also* A.R.S. § 15-101(20) (defining a "school district" as "a political subdivision of this state with geographic boundaries organized for the purpose of the administration, support and maintenance of the public schools"). This language indicates that Proposition 203 focused on school districts rather than charter schools.<sup>6</sup>

The publicity pamphlet that addressed Proposition 203 also supports the conclusion that the Proposition does not apply to charter schools. *See Calik*, 195 Ariz. at 500, 990 P.2d at 1059 (recognizing that publicity pamphlets accompanying initiatives may provide some insight into voter intent). The fiscal analysis in the publicity pamphlet refers to school districts. Like Proposition 203 itself, however, the analysis did not mention charter schools.

Moreover, to impose Proposition 203 on charter schools without a clear statutory directive undermines the purposes of charter schools which "provide additional academic choices for parents

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<sup>6</sup> The language governing a study committee that the Legislature established as part of the State's effort to comply with *Flores v. Arizona*, 172 F. Supp. 2d 1225, 1238 (D. Ariz. 2000) assumes that Proposition 203 applies to charter schools. *See* 2002 Ariz. Sess. Laws 2nd Spec. Sess., ch. 9, § 6. For example, the study committee is to review a form "developed by the state board of education to be used by all school districts and charter schools. . . for parental waivers pursuant to § 15-753." *Id.* But the statutes regarding charter schools and Proposition 203, rather than language in session law creating a study committee, determine whether charter schools are subject to the requirements of Proposition 203. This Office previously noted the uncertainty regarding the application of Proposition 203 to charter schools because of the exemption in A.R.S. § 15-183(E)(5). *See* Ariz. Att'y Gen. Op. I01-006 n. 4. No subsequent statutory change has limited the exemption for charter schools to impose the requirements of Proposition 203 on all charter schools.

and pupils." A.R.S. § 15-181(1); *see also* A.R.S. § 15-183(E)(3) (the charter for each charter school must ensure that the school "provides a comprehensive program of instruction . . . except that a school may offer this curriculum with an emphasis on a specific learning philosophy or style or certain subject areas such as mathematics, science, fine arts, performance arts or foreign language."). Because school districts must comply with Proposition 203, children at the local public schools have the opportunity to be educated in English. For parents and children choosing charter schools, however, "the specific learning philosophy or style" may vary. A.R.S. § 15-183(E)(3).

A charter school's decision not to follow Proposition 203, however, limits the State funding available to that school for students who are English learners. The school finance formula governing State aid to public schools provides additional funding for English learners who "do not speak English or whose native language is not English, who are not currently able to perform ordinary classroom work in English *and* who are enrolled in an English language education program pursuant to §§ 15-751, 15-752 and 15-753." A.R.S. §§ 15-901(B)(8) (emphasis added); *see also* A.R.S. § 15-943 (calculation base level); -185 (charter school financing). Sections 15-751 through -753 are statutes enacted as part of Proposition 203. Consequently, charter schools that do not follow Proposition 203 are not eligible for additional state funding for English learners.

Even though charter schools need not follow the mandates of Proposition 203, they must comply with the federal requirements under the Equal Educational Opportunities Act that requires any public school to take "appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs." 20 U.S.C. § 1703(f). The Department of Education is responsible for monitoring charter schools and school districts to ensure compliance with the State and federal requirements governing English learners. A.R.S. § 15-756(B).

## **Conclusion**

Charter schools are not required to comply with Proposition 203 unless a school's charter provides otherwise.