

STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL OPINION	No. I04-002 (R04-008)
By	Re: Calculation of Student Count by a Joint Technological Education District
TERRY GODDARD ATTORNEY GENERAL	
May 24, 2004	

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To: A. Dean Pickett, Esq.  
Brandon J. Kavanagh, Esq.  
Mangum, Wall, Stoops & Warden, P.L.L.C.

**Question Presented**

You have asked whether a Joint Technological Education District (“JTED”), formed under Arizona Revised Statute (“A.R.S.”) § 15-392, is required to cap its student count for high school pupils attending classes and programs at a facility leased and operated by the JTED, but owned by the same member school district where the pupils are enrolled.

**Summary Answer**

A JTED is required to cap its student count pursuant to A.R.S. § 15-393(D)(3) when a course or program is provided in a facility that is *both* owned and operated by a school district in which its pupils are enrolled.

## **Background**

Pursuant to A.R.S. § 15-253(B), you submitted for review an opinion that you prepared for the Governing Board of the Northern Arizona Vocational Institute of Technology (“NAVIT”). This Office concurs with your conclusion regarding the “cap” on student count for purposes of A.R.S. § 15-393(D)(3) and issues this Opinion to provide guidance to others concerning this subject.

In 1990, the Legislature approved Senate Bill (SB) 1491, which, among other acts, created Joint Vocational and Technical Education Districts. 1990 Ariz. Sess. Laws, ch. 248, § 1 (codified as A.R.S. §§ 15-391 through -396). The following year, the Legislature enacted SB 1264 and changed the designation of the Districts to Joint Technological Education Districts (“JTED”). 1991 Ariz. Sess. Laws, ch. 154, § 4.

To form a JTED, school districts desiring to participate must submit a plan to the voters of their district. A.R.S. § 15-392(B). Once approved, the joint district is managed and controlled by a duly elected JTED governing board. A.R.S. § 15-393(A).

Funding for a JTED is similar to state financing of school districts. *See* A.R.S. § 15-393(C). An important component of JTED funding is the calculation of the “student count” of the joint district. *See* A.R.S. § 15-393(D). For purposes of student enrollment, a pupil may be considered a “full-time student” or a “fractional part-time student.” A.R.S. §§ 15-901(A)(1)(a)-(b).

The information provided to this Office indicates that NAVIT students cannot complete their entire high school curriculum by attending a NAVIT program, but must also take high school classes at participating members’ high school facilities. A NAVIT student therefore falls under the definition of “fractional student.” A high school “fractional student” is:

a part-time student who is enrolled in less than four subjects that count toward graduation as defined by the state board of education in a recognized high school and who is taught in less than twenty instructional hours per week prorated for any week with fewer than five school days. A part-time high school student shall be counted as one-fourth, one-half or three-fourths of a full-time student if the student is enrolled in an instructional program that is at least one-fourth, one-half or three-fourths of a full-time instructional program.

A.R.S. § 15-901(A)(2)(a)(ii).

Besides a name change for JTED, the Legislature included in SB 1264, additional provisions regarding student count. 1991 Ariz. Sess. Laws, ch. 154, § 4 (codified as A.R.S. §§ 15-393(D)(3)-(4)). That particular statute, A.R.S. § 15-393(D)(3), was later amended and presently reads as follows:

If a career and technological education and vocational education course or program provided pursuant to this article *is provided in a facility owned and operated by a school district in which a pupil is enrolled*, the sum of the daily attendance, as provided in section 15-901, subsection A, paragraph 6, for that pupil in both the school district and joint technological education district shall not exceed 1.250 and the sum of the fractional student enrollment, as provided in section 15-901, subsection A, paragraph 2, subdivision (a), shall not exceed 1.250 for the courses taken in the school district and the facility. The school district and the joint district shall determine the apportionment of the daily attendance and fractional student enrollment for that pupil between the school district and the joint district.

A.R.S. § 15-393(D)(3) (emphasis added).<sup>1</sup>

### **Analysis**

The definition of “fractional student” under A.R.S. § 15-901(A)(2)(a)(ii) allows a student who attends a high school facility part-time and a JTED part-time to be counted for attendance purposes in an amount greater than a whole. Thus, if a student took three classes at the member high school, the student would be counted as a three-fourths student. If the same student took

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<sup>1</sup>Before 2000, the statute set forth a formula by which a joint district and a school district calculated student enrollment. See 2000 Ariz. Sess. Laws, ch. 342, § 2. In 2002, the term “vocational and technological course or program” was changed to its current name. See 2002 Ariz. Sess. Laws, 2d ch. 89, § 5.

two classes at a JTED, the student would be counted as a one-half student for JTED purposes. This one student would be counted for state funding purposes as a 1.250 student. A student who took three classes at a JTED and three classes in the high school facility would be counted as 1.500.

The statute in question caps the student count at 1.250 per pupil if a JTED provides a program in a “facility owned and operated by a school district in which [this] pupil is enrolled.” A.R.S. § 15-393(D)(3). The issue is whether a JTED must comply with the cap when it does *not* own and operate a facility, but does lease and operate a school that is owned by a member district.

The Legislature, when enacting a statute, “is presumed to mean what it says.” *Homebuilders Ass’n. v. Scottsdale*, 186 Ariz. 642, 649, 925 P.2d 1359, 1366 (App. 1996). Words in a statute are assigned their “natural and obvious meanings unless stating otherwise.” *State v. Johnson*, 171 Ariz. 39, 41, 827 P.2d 1134, 1136 (App. 1992). The obvious meaning of the word “and,” as used in the phrase “owned and operated” in A.R.S. § 15-393(D)(3), is that two conditions must be satisfied for the student count cap to apply: NAVIT must (1) own and (2) operate the facility where it provides its programs.

The Arizona Supreme Court has acknowledged that “[i]t is a well-established rule that a court may in the interpretation of statutes, where ambiguity exists or the statute can not otherwise be harmonized, give effect to the legislative intent by interchanging the words ‘or’ and ‘and’.” *Shumway v. Farley*, 68 Ariz. 159, 165, 203 P.2d 507, 511 (1949). The statute at issue, A.R.S. § 15-393(D)(3), however, is clear and unambiguous on its face.

Neither the statutory text nor the legislative history supports exchanging the word “and” for “or” in this statute. The Fact Sheet to SB 1264 stated that the amendments to the bill

established “student count limitations if a joint technological district course or program is provided in a facility owned by a school district in which a pupil is enrolled. The total student count for a pupil enrolled in both the joint district and the school district cannot exceed 1.250.” The SB 1264 Fact Sheet also disclosed that the amendments adopted by the House of Representatives revised “the student count limitation for a school district if a joint district course or program is using the district’s facility. The facility has to be owned and operated by the school district before the limitation is to occur.” *Ariz. State Senate, Final Rev. Fact Sheet for S.B. 1264, 40<sup>th</sup> Leg., 1<sup>st</sup> Reg. Sess., at 4 (1991); see also 1991 Ariz. Sess. Laws, ch. 154, § 4.* The legislative history of A.R.S. § 15-393(D)(3) supports the premise that “and” should be given its ordinary meaning.

Under A.R.S. § 15-393(D)(3) a member school district must own *and* operate a facility used by a JTED in order for the statute’s constraints to apply.<sup>2</sup>

### **Conclusion**

A course or program provided by a JTED must be held in a facility that is owned by a member school district and also operated by that member school district in order for the cap in student count under A.R.S. § 15-393(D)(3) to apply.

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Attorney General

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<sup>2</sup> Although this Office concurs with your interpretation of the meaning of “and” as used in A.R.S. § 15-393(D)(3), this Opinion expresses no conclusion on the fact-specific issue of whether a particular facility is owned and operated by a school district.