

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by TERRY GODDARD ATTORNEY GENERAL July 20, 2004	No. I04-006 (R04-010) Re: Charter Schools Operated by For-profit Organizations
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TO: The Honorable Tom Horne
Superintendent of Public Instruction

Questions Presented

You have asked the following questions concerning charter schools:

1. Is a charter school operated by a for-profit organization (or a for-profit charter operator and its charter school) considered a public local educational agency (LEA) under Arizona law?
2. Does a charter school operated by a for-profit organization (or a for-profit charter operator and its charter school) meet the federal definition of a “local educational agency,” as set forth in Section 9101 (26) of the Elementary and Secondary Education Act (codified at 20 U.S.C. § 7801 (26)) and Section 602(15) of the Individuals with Disabilities Education Act (codified at 20 U.S.C. § 1401 (15))? In answering this question, you asked this Office to

consider the definition of “elementary school” and “secondary school” set forth in Sections 9101 (18) and (38) of Title I of the Elementary and Secondary Education Act (20 U.S.C. § 7801 (18) and (38)), Sections 602(5) and (23) of the Individuals with Disabilities Education Act (20 U.S.C. § 1401(5) and (23)) and Arizona laws relating to non-profit institutions or schools to the extent it is pertinent to the analysis.

Summary Answer

1. Because all Arizona charter schools are public schools and are mandated to comply with all federal and state laws relating to the education of children with disabilities in the same manner as school districts, all charter schools, including those operated by for-profit organizations, function as LEAs under Arizona law.
2. Because Arizona charter schools, including those operated by for-profit organizations, function as LEAs under state law, they meet the federal definition of a “local educational agency” as set forth in Section 9101 (26) of Title I of the Elementary and Secondary Education Act and Section 602(15) of the Individuals with Disabilities Education Act.

Background

The United States Department of Education’s Office of Inspector General issued an audit report of twenty Arizona charter schools. The audit concluded that private for-profit entities that operate charter schools are not public entities and, as a result, are not eligible to receive funds under Title I of the Elementary and Secondary Education Act and the Individuals with Disabilities

Education Act. Officials within the United States Department of Education have requested additional information from the Arizona Department of Education to aid in their resolution of the issues raised in the audit report concerning charter schools.

Analysis

A. All Charter Schools Function As LEAs under State Law.

1. Charter Schools.

The Legislature established charter schools to improve pupil achievement and to give parents and pupils additional academic choices. A.R.S. § 15-181(A). All Arizona charter schools are "public schools," regardless of whether they are operated by public bodies, private persons, or private organizations. A.R.S. §§ 15-101(3), -181(A). Arizona's charter school laws do not differentiate between for-profit and nonprofit private organizations that apply to establish a charter school. A.R.S. § 15-183(B). Charter schools are established by contract between a sponsor (which may be a school district governing board, the State Board of Education, or the State Board for Charter Schools) and a public body, private person, or private organization. A.R.S. §§ 15-101(3), -183(B). The charter school sponsor provides initial authorization for a charter school, has continuing oversight responsibility, and has sole control of whether to renew a school's charter. A.R.S. § 15-183(R). The Legislature mandates the general components of the charter, school operation, school accountability, school financial requirements, and responsibilities of the charter school governing body. A.R.S. § 15-183(E). All charter schools may contract, sue and be sued, and hold property. A.R.S. § 15-183(H), (T). Thus, charter schools are distinct legal entities, with legal responsibilities independent of their public or private operators. Ariz. Att'y Gen. Op. No. I00-005;

Cf. Jarvis v. Hammons, 32 Ariz. 124, 129, 256 P. 362, 364, *on reh'g*, 32 Ariz. 318, 257 P. 985 (1927) (concluding that school districts are distinct legal entities).

While Arizona charter schools are exempt from some state educational laws and rules, all charter schools must “compl[y] with all federal and state laws relating to the education of children with disabilities in the same manner as a school district.” A.R.S. § 15-183(E)(5), (7). Further, charter schools are precluded from limiting admission based on disabling conditions. A.R.S. § 15-184(B). Like district schools, charter schools receive state funding based on a formula prescribed by statute. *See* A.R.S. § 15-185. District and charter schools receive the same base amount for each student, multiplied by a weighted amount that is determined by the student’s disability. *See* A.R.S. § 15-943. Under state and federal law, charter schools have the same responsibilities as school districts do to educate children with disabilities. Ariz. Att’y Gen. Op. No. I96-011 (in the context of providing special education, charter schools are home school districts for qualifying children pursuant to the mandate in A.R.S. §15-183(E)(7)). Both must develop policies and procedures for providing special education to all such children within their jurisdiction. A.R.S. § 15-763(A); 20 U.S.C. §§ 1412 and 1413.

2. Local Educational Agencies.

Arizona statutes and regulations governing special education services do not use the term “local educational agency” (LEA). *See* A.R.S. §§ 15-761 to 774. Instead, the relevant regulations use the term “public education agency” or “PEA,” which is defined as “a school district, charter school, accommodation school, state supported institution, or other political subdivision of the state

that is responsible for providing education to children with disabilities.” A.A.C. R7-2-401(B)(22)¹. Under these regulations, charter schools are PEAs that are obligated to comply with state and federal laws in providing education to children with disabilities. *See* A.A.C. R7-2-401(B)(22). State law plainly requires all charter schools, regardless of whether they are operated by a for-profit or non-profit organization, to comply with state and federal laws to educate children with disabilities in the same manner as a school district. Thus, all charter schools are PEAs and function as LEAs under state law.

B. A Charter School That a For-profit Organization Operates Meets the Federal Definition of a “Local Educational Agency.”

1. Individuals with Disabilities Education Act (IDEA).

The IDEA applies to each public school in the United States, including charter schools. In a state that accepts IDEA funds, LEAs must comply with the IDEA and make services available to students with disabilities in whatever geographic area the LEA covers. *See* 20 U.S.C. § 1411(a); 34 C.F.R. § 300.2. The IDEA defines an LEA as:

(A) [A] public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools.

¹The regulations also incorporate by reference the terms used in the Individuals with Disabilities Education Act (IDEA) 1997 Amendments (34 C.F.R. §§ 300.4 through 300.30, and 300.504 (2003)). A.A.C. R7-2-401(B).

(B) The term includes--

- (i) an educational service agency, as defined in paragraph (4),² and
- (ii) any other public institution or agency having administrative control and direction of a public elementary or secondary school.

20 U.S.C. § 1401(15)(A) and (B).

The regulations implementing the IDEA adopt the same definition of LEA, except they include language specifically addressing charter schools:

- (b) “any other public institution or agency having administrative control and direction of a public elementary or secondary school, *including a public charter school that is established as an LEA under State law.*”

34 C.F.R. § 300.18(b) (emphasis added).

Arizona charter schools are defined as public schools under state law. A.R.S. § 15-101(3). The Arizona Legislature established charter schools as public schools and mandated that they comply with all federal and state laws relating to the education of children with disabilities in the same manner as school districts. Because all charter schools, including those operated by for-profit organizations, function as “LEAs” under state law, charter schools operated by for-profit organizations meet the federal definition of a “local educational agency” as set forth Section 602(15) of the IDEA.

² The term “educational service agency:”

(A) means a regional public multiservice agency -

(i) authorized by State law to develop, manage, and provide services or programs to local educational agencies; and

(ii) recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary and secondary schools of the State; and

(B) includes any other public institution or agency having administrative control and direction over a public elementary or secondary school.

20 U.S.C. § 1401(4). *See also* 34 C.F.R. § 300.18.

2. The Elementary and Secondary Education Act (ESEA).

The ESEA defines an “LEA” as:

(A) In general

[A] public board of education or other public authority legally constituted within a State, for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary or secondary schools.

(B) Administrative control and direction

The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

20 U.S.C. § 7801 (26)(A) and (B).

The ESEA defines an elementary school as a “nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.” 20 U.S.C. § 7801 (18). The ESEA defines a secondary school as “a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under state law, except that the term does not include any education beyond grade 12.” 20 U.S.C. § 7801 (38). Under state law, Arizona charter schools are public schools established for the purposes of offering instruction to pupils in programs for preschool children with disabilities, kindergarten programs or any combination of grades one through twelve. A.R.S. § 15-101(3), (19). Charter schools must provide a comprehensive program of instruction for at least a kindergarten program or any grade between grades one and twelve and must comply with all federal and state laws relating to the education of children with disabilities in the same manner as a school district. A.R.S. § 15-183(E)(3), (7). Thus, Arizona’s charter schools

provide the elementary and secondary education required by state law. Although the ESEA refers to “nonprofit school,” it also specifically includes public charter schools providing elementary and secondary education as determined by state law. Because the definition applies to all public charter schools, Arizona charter schools operated by a for-profit organization meet the federal definition of “local educational agency” as set forth Section 9101 (26) of Title I of the Elementary and Secondary Education Act (20 U.S.C. § 7801 (26)(B)).

Conclusion

Charter schools, including those operated by for-profit organizations, are public schools that function as local educational agencies under Arizona law. In addition, charter schools that for-profit organizations operate meet the federal definition of local educational agencies as set forth in Section 9101 (26) of the Elementary and Secondary Education Act and Section 602(15) of the Individuals with Disabilities Education Act.

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