

STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION	No. I05-002 (R04-037)
by	Re: AIMS testing and special education
TERRY GODDARD ATTORNEY GENERAL	
February 9, 2005	

To: The Honorable Tom Horne
Superintendent of Public Instruction

Questions Presented

You have asked the following questions concerning the requirement that public school students pass Arizona's Instrument to Measure Standards ("AIMS") in order to graduate from high school:

1. Whether Arizona Administrative Code ("A.A.C.") R7-2-302(6), which mandates that school districts develop both a course of study and graduation requirements for all students placed in special education programs, conflicts with Arizona Revised Statutes ("A.R.S.") § 15-701.01(A)(3); and
2. Whether A.A.C. R7-2-302(6) allows school districts to reference special education placement on student transcripts.

Summary Answers

1. The State Board of Education's requirement in A.A.C. R7-2-302(6) that school districts develop graduation requirements for students enrolled in special education programs is consistent with A.R.S. § 15-701.01(A)(3) and the laws governing special education. This rule permits school districts, through individual education programs, to implement the AIMS test in a

manner consistent with the Individuals with Disabilities Education Act. This gives the school districts, through individual education programs, the authority to exempt special education students from passing the AIMS test in order to graduate.

2. School districts may reference a student's special education placement on that student's transcript subject to the confidentiality requirements under the Family Education Rights and Privacy Act of 1974 (as amended) and the Individuals with Disabilities Education Act.¹

Analysis

I. A.A.C. R7-2-206 Complies with Statutory Authority.

A. The Statute and Rule Governing High School Graduation Requirements.

Section 15-701.01(A), A.R.S., requires the State Board of Education to establish requirements regarding high school graduation. Specifically, the statute requires that the State Board:

1. Prescribe a minimum course of study, as defined in section 15-101² and incorporating the academic standards adopted by the state board of education, for the graduation of pupils from high school.
2. Prescribe competency requirements for the graduation of pupils from high school incorporating the academic standards in at least the areas of reading, writing, mathematics, science and social studies.
3. Develop and adopt competency tests for the graduation of pupils from high school in at least the areas of reading, writing and mathematics and shall establish passing scores for each such test.

The State Board has adopted a rule, A.A.C. R7-2-302, that sets forth the minimum competency requirements for graduation from public high schools in Arizona. That rule

¹ This Opinion does not address your third question, which asked whether the State Board could adopt a rule to require an endorsement on a student's diploma indicating the student's proficiency level on the AIMS test. This question is not answered here because Attorney General Opinions answer questions concerning existing statutes and agency rules rather than possible statutory or rule changes.

² A "course of study" is "a list of required and optional subjects to be taught in the schools." A.R.S. § 15-101(9).

“prescribes the minimum course of study and competency requirements” for high school graduation and also requires:

receipt of a passing score on the reading, mathematics, and writing portions of the AIMS (Arizona's Instrument to Measure Standards) assessment for the graduation of pupils from high school or issuance of a high school diploma, effective for the graduation class of 2006.

A.A.C. R7-2-302.³

A.A.C. R7-2-302 has a specific provision addressing students placed in special education programs. In A.A.C. R7-2-302(6), the State Board assigned local school district governing boards the responsibility of developing and approving graduation requirements for students in special education programs:

The local governing board of each school district shall be responsible for developing a course of study and graduation requirements for all students placed in special education programs in accordance with A.R.S. Title 15, Chapter 7, Article 4 and A.A.C. R7-2-401 et seq. Students placed in special education classes, 9-12, are eligible to receive a high school diploma upon completion of graduation requirements, but reference to special education placement may be placed on the student's transcript or permanent file.

This rule refers to the State laws and regulations (A.R.S. §§ 15-761 to –774; A.A.C. R.7-2-401 to –408) which require that the State comply with federal laws governing special education.

B. Federal Requirements Concerning Special Education.

The federal Individuals with Disabilities Education Act (“IDEA”) “ensure[s] that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and

³ In addition to the AIMS test, the State Board has adopted alternate assessments that are to be used to assess students with significant cognitive disabilities. *See* Arizona’s Instrument to Measure Standards—Alternate (AIMS-A), <http://www.ade.state.az.us/ess/aims-a/>.

prepare them for employment and independent living.” 34 C.F.R. § 300.1(a). To meet the “unique needs” of students, the IDEA requires individual education programs (IEPs) for students with disabilities. *See* 34 C.F.R. § 300.346.⁴

The federal regulations for the IDEA specifically address students with special education needs and state and district assessments.⁵ 34 C.F.R. § 300.138(a). Under these regulations, students are required to take “general state and district-wide assessment programs, with appropriate accommodations and modifications in administration, if necessary,” unless the student’s IEP specifically calls for the student to take an alternate assessment. *Id.* Therefore, a student in special education must take the AIMS test unless that student’s IEP specifically indicates that the student will not participate in the exam and explains why the exam’s method of assessment is not appropriate for that particular student.⁶ *See* 34 C.F.R. § 300.347(a)(5)(A). Although federal law generally requires that students with IEPs take State assessments, such as the AIMS exam, it does not require that those students pass the exam before graduating. Part of providing an individualized education includes adopting an appropriate exit strategy for each student. 34 C.F.R. § 300.347 (b)(1)&(2). Whether a student’s exit strategy involves passing the State’s exit exam is a decision for that student’s IEP Team. *Id.* However, nothing in the IDEA mandates different graduation requirements for special education students. *See Special Sch. Dist. of St. Louis County (MO)*, 16 Educ. for the Handicapped L. Rep. 307, 308 (1989).⁷

⁴ An “individualized education program” or “IEP” is a ‘comprehensive statement of the educational needs of the disabled student and the “specially designed instruction and related services to be employed to meet those needs.” *Burlington Sch. Comm. v. Mass. Dep’t of Educ.*, 471 U.S. 359, 368 (1985); *see also* A.R.S. § 15-761(11) (defining IEP).

⁵ Students with disabilities are entitled to receive necessary accommodation during testing to make allowances for the effects of their disability. 34 C.F.R. § 300.138(a).

⁶ Federal law has changed in the past decade to ensure that all students are assessed. *See generally High School Exit Exams Meet IDEA – An examination of the History, Legal Ramifications, and Implications for Local School Administrators and Teachers*, 2004 BYU Educ. & L.J. 75.

⁷ This OCR letter to the Special School District of St. Louis County advised that a school district is not required to award a diploma to a disabled student who does not meet the requirements for such a diploma, “regardless of

C. A.A.C. R7-2-302(6) Does Not Conflict with A.R.S. § 15-701.01(A)(3) and the State and Federal Laws Concerning Special Education.

A.A.C. R7-2-302(6) is consistent with the relevant statutory directives. “[A] rule adopted by an administrative agency must be in accordance with the statutory authority vested in it, must be reasonable, and must be adequately related to the purpose of the act and neither arbitrary nor in contravention of any expressed statutory provision.” *Grove v. Ariz. Criminal Intelligence Sys. Agency (ACISA)*, 143 Ariz. 166, 169, 692 P.2d 1015, 1018 (App. 1984). In addition, an agency may not adopt an administrative rule that conflicts with a statute. *Ariz. Dep’t of Econ. Sec. v. Leonardo*, 200 Ariz. 74, 79-80, 22 P. 3d 513, 518-19 (App. 2001).

The express language of A.R.S. § 15-701.01(A)(3) mandates that the State Board develop and adopt tests to determine competency for graduation from high school. The statute authorizes the State Board to determine which “tests” are appropriate to assess a student’s proficiency and which scores students must achieve in order to graduate from high school.⁸ The State Board complied with this statutory mandate by promulgating A.A.C. R7-2-302.

Any analysis of a rule or statute regarding special education must be evaluated in light of the relevant federal requirements which emphasize individual education plans for special

whether the handicapped student has met the requirements of the IEP.” However, the OCR letter cautioned that the “district must notify parents in advance when successful completion of the IEP will not result in their child’s receipt of a regular diploma so that the parents may exercise their due process rights to challenge the school’s decision.” *Id.* at 308.

⁸ The legislative history of the statutes addressing competency test requirements is consistent with the conclusion that there is no statutory requirement that all students pass any specific test or tests to receive a diploma. In addition to amending A.R.S. § 15-701.01 to add the competency test requirement, in the same legislation, the Legislature amended A.R.S. § 15-341(A)(30) to require school district governing boards to administer the State Board prescribed competency tests. H.B. 2417, 42nd Leg., 2d Reg. Sess. (1996); 1996 Ariz. Sess. Laws, ch. 284, §15. The original version of House Bill 2417 also contained language that would restrict governing boards from awarding diplomas to students who did not receive a passing score on the required competency tests. *Id.* That language was deleted from the version of the bill that was ultimately enacted. Ariz. State Senate, Final Rev. Fact Sheet for H.B. 2417, 42nd Leg., 2d Reg. Sess. at 9 (1996); *Compare* Introduced version, H.B. 2417, 42nd Leg., 2d Reg. Sess., at § 12 (A.R.S. § 15-341(A)(31)) with 1996 Ariz. Sess. Laws, ch. 284, § 15 (A.R.S. § 15-341(A)(31) (indicating removal of requirement that governing board award diplomas only to those pupils receiving passing score on competency tests.)

education students. *See* 34 C.F.R. § 300.1 (describing purpose of the IDEA to provide individualized education for students with special education needs). Recognizing the need for additional flexibility for students in special education programs, the State Board delegated to the local governing board of each school district the task of developing a course of study and graduation requirements for all students placed in special education programs. A.A.C. R7-2-302(6). This approach ensures that the individual needs of students in special education programs are considered, as required by federal law. *See* 34 C.F.R. § 300.1 (purpose of the IDEA is to provide an individualized education for students with special education needs). Under this rule, school districts may exempt special education students from passing the AIMS test in order to graduate, if that is established in the IEP following the parameters established in federal law.

In adopting A.A.C. R7-2-302(6), the State Board placed the decision of graduation competency in the hands of the local educational agencies responsible for providing an individualized education for students with special education needs. The rule establishes graduation requirements as required by A.R.S. § 15-701.01(A) in a manner that is compatible with the purpose and intent of the IDEA in that it enables school districts to further tailor their educational services to meet the unique needs of their special education students. Therefore, A.A.C. R7-2-302(6) is consistent with statutory authority.

II. Designating Special Education Status is Subject to Confidentiality Requirements of FERPA and IDEA.

A.A.C. R7-2-302(6) also allows school districts to reference students' special education status on their individual transcripts. The recording and maintenance of student educational records in Arizona is generally governed by A.R.S. § 15-141, which requires that all Arizona educational records be maintained, released, and disclosed in accordance with the policies and

procedures laid out in the Family Education Rights and Privacy Act of 1974 (“FERPA”). 20 U.S.C. § 1232g(b). FERPA states, in pertinent part:

No funds shall be made available under any applicable [federal] program to any educational agency or institution which has a policy or practice of permitting the release of education records . . . of students without the written consent of their parents to any individual, agency or organization.”

Id. at § 1232g(b)(1).

FERPA defines educational records as “those records, files, documents, and other materials which (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution.” 20 U.S.C. § 1232g (a)(4)(A); Student transcripts are education records and subject to FERPA because they contain information such as grades and test scores and are maintained by school districts. Under FERPA, information contained in the students' transcripts must remain confidential unless disclosure is authorized by the students' parents.⁹

The IDEA creates additional procedures to protect the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages. *See* 20 U.S.C. §§ 1412(a)(8); 1417(c); 34 C.F.R. §§ 300.572 to .577. The IDEA also requires school district personnel to notify the parents of special education students when personally identifiable information is no longer needed to educate the student, and then to destroy such information upon a parent’s request. *Id.*, 34 C.F.R. § 300.573. Information regarding the students name, address, grades, attendance record, classes attended, grade level completed and year completed,

⁹ Parental rights under FERPA transfer to the student once the student reaches the age of 18 or enrolls in a postsecondary institution. 20 U.S.C. § 1232g(d). Parental rights under IDEA may not transfer to the student at the age of 18 if the student is incompetent or lacks the ability to provide informed consent with respect to his or her educational program. *See* 34 C.F.R. § 300.517.

however, may be maintained without limitation. 34 C.F.R. § 300.573(b). These procedural requirements would apply to any information on the student transcripts.

There is no definitive guidance regarding how courses may be designated on a transcript. In 1996, the U.S. Department of Education's Office of Civil Rights ("OCR") issued an advice letter to Montana's State Director of Special Education Office of Public Instruction (the "Letter") discussing certain aspects of the issue. Letter to Runkel, 25 Individual with Disabilities Educ. L. Rep. 387 (Letter dated Sept. 30, 1996). The Letter acknowledged that "there is yet no definite standard[] enunciated in any court or OCR decision to indicate exactly what terms are permissible" on a student transcript. *Id.* at 389. However, the Letter cautioned that "if the course designation suggests that [such designation] only is used in special education programs involving students with disabilities . . . it may be a violation ." *Id.* Instead, labels used on a transcript should have "a more general connotation." *Id.* A.A.C. R7-2-302(6) plainly permits some designation regarding placements on student transcripts, and school district attorneys should consult federal guidance, such as the Letter, to determine how a particular placement may be referenced on a transcript.

Conclusion

A.A.C. R7-2-302(6), which permits school districts to establish graduation requirements for students in special education programs, is consistent with the requirements in A.R.S. § 15-701.01(A) and the requirements governing special education. Under this rule and federal laws governing special education, school districts may, through an IEPs, exempt special education students from passing the AIMS test in order to graduate from high school.

In addition, A.A.C. R7-2-302(6) permits school districts to identify a student's special education placement on that student's transcript; however, the transcripts are subject to confidentiality requirements under FERPA and IDEA.

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