

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>By</p> <p>TERRY GODDARD ATTORNEY GENERAL</p> <p>March 27, 2006</p>	<p>No. I06-001 (R06-001)</p> <p>Re: Certificates of Educational Convenience and Tuition Requirements</p>
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To: Anne Carl
Deputy Cochise County Attorney

Pursuant to Arizona Revised Statutes (“A.R.S.”) § 15-253, you submitted for review an opinion prepared for the Superintendent of the Willcox Unified School District (“Willcox”). This Office modifies your opinion regarding tuition requirements for students who have been issued certificates of educational convenience by the county school superintendent.¹

¹ We concur with your analysis and conclusion regarding tuition requirements for students from Bonita Elementary School District who attend high school in the Willcox Unified School District but do not have CECs. Tuition is clearly required for these students pursuant to A.R.S. § 15-824(A)(2).

Question Presented

Is a common school district required to pay tuition for students who reside within the common school district's boundaries and have been issued a certificate of educational convenience ("CEC") pursuant to A.R.S. § 15-825(A) to attend high school in another district within Arizona?

Summary Answer

If a student has a CEC issued pursuant to A.R.S. § 15-825(A) the school district of residence is not required to pay tuition to the school district within this State where the student actually attends school. Instead, the school district of attendance should include the student in its student count pursuant to A.R.S. § 15-825(A)(2). Because the student is included in the student count of the school district of attendance, the school district where the student resides should not include the student in its student count and should not receive state funding for the student.

Background

Currently, there are no high schools that serve the students who reside in the Bonita Elementary School District No. 16 ("Bonita") in Graham County. As a result, students who reside in Bonita attend high schools located in other school districts. Some students from Bonita attend high school in Willcox, which is in Cochise County.

Although students from Bonita have attended Willcox High School for some time, a dispute has arisen recently over tuition payments. According to the information submitted to this Office, in the past Bonita paid tuition to Willcox for students who

resided in Bonita and attended Willcox High School. Recently, however, Bonita has not paid tuition to Willcox. Bonita bases its refusal to pay tuition on the fact that six of the seven students currently attending Willcox High School have been identified on a CEC by the Graham County School Superintendent pursuant to A.R.S. § 15-825(A).

A student may apply for a CEC under A.R.S. § 15-825(A) if he or she “is precluded by distance and a lack of adequate transportation facilities from attending a school in the school district or county of the pupil’s residence or who resides in unorganized territory.” A.R.S. § 15-825(A). A county school superintendent may issue the student a CEC “[i]f it appears . . . that it is not feasible for the pupil to attend a school in the school district or county of residence.” *Id.* The CEC may authorize the student “to attend a school in an adjoining school district or county, whether within or without this state.” *Id.* If the CEC authorizes the student to attend school in another state, the student is considered to be enrolled in the school district of the student’s residence. A.R.S. § 15-825(A)(1). In other circumstances, the enrollment of a student who receives a CEC under A.R.S. § 15-825(A) is “deemed for the purpose of determining student count to be enrolled in the school district of actual attendance.” A.R.S. § 15-825(A)(2). The student count, or average daily membership, is used to determine the amount of State aid that a school district receives. *See* A.R.S. §§ 15-902, -941 to -980.

School districts are generally required to admit all students within their boundaries. *See Magyar ex rel. Magyar v. Tucson Unified Sch. Dist.*, 958 F. Supp. 1423 (D. Ariz. 1997). A school district is also required to admit: (1) a student who has a CEC; or (2) “without presentation of [a] . . . certificate,” a student who “is a resident of a

common school district within this state which is not within a high school district and which does not offer instruction in the pupil's grade." A.R.S. § 15-824(A)(2).

In addition, school districts must establish policies and implement "an open enrollment policy without charging tuition." A.R.S. § 15-816.01(A). Tuition may be charged to nonresident pupils "only when tuition is authorized under § 15-764, subsection C, § 15-797, subsection C, § 15-823, subsection A, § 15-824, subsection A or § 15-825." *Id.*

Analysis

Bonita is not required to pay tuition to Willcox for students who have CECs issued by the Graham County School Superintendent. This conclusion is supported by A.R.S. §§ 15-824 and -825.

Under Section 15-825(A)(2), a student with a CEC is included in the student count of the district where the student attends school. As a result, the district where the student attends school should receive the State funding for the student who has a CEC issued pursuant to A.R.S. § 15-825(A).² Because Willcox, rather than Bonita, should receive the State funding for the students with CECs, there is no need for Bonita to pay tuition to Willcox for these students. In addition, nothing in A.R.S. § 15-825 authorizes tuition payments for students who have CECs issued pursuant to A.R.S. § 15-825(A). In contrast, A.R.S. § 15-825(D) specifically addresses certain tuition requirements for CECs issued pursuant to A.R.S. § 15-825(B).

² The analysis in this opinion applies only to CECs issued pursuant to A.R.S. § 15-824(A) for a student to attend schools within this state. Students who attend out-of-state schools are included in the student count of the district of residence. A.R.S. § 15-825(A)(1).

Section 15-824(A) also supports the conclusion that no tuition is required for students attending schools within this State who have CECs issued pursuant to A.R.S. § 15-825(A). Section 15-824(A) establishes when a district must accept students from other school districts. This statute requires that districts accept students who do not have CECs and reside in a common school district that does not have a high school. A.R.S. § 15-824(A)(2). For these students, tuition is expressly required. *Id.*; *Ruth Fisher Elem. Sch. Dist. v. Buckeye Union High Sch. Dist.*, 202 Ariz. 107, 112, 41 P.3d 645, 650 (2002). In addition, these students are included in the student count of the district of residence. *Id.* The statute also requires that districts accept students with CECs but does not authorize tuition charges for these students. A.R.S. § 15-824(A)(1). Because there is no statute authorizing tuition for students with CECs issued pursuant to A.R.S. § 15-825 (A) who attend school within this State and because the district that the students attend should receive any State funding for students with these CECs, Bonita is not required to pay tuition to Willcox for students with CECs.

The holding in *Ruth Fisher Elem. Sch. Dist. v. Buckeye Union High Sch. Dist.*, 202 Ariz. 107, 41 P.3d 645 (2002) does not support a different conclusion. *Ruth Fisher* addressed whether students in a common school district that did not have a high school had the option of attending high school as either an open enrollment student under A.R.S. § 15-816.01 or under the provisions of A.R.S. § 15-824(A)(2). The high school encouraged students to enroll under the open enrollment statutes (which do not require tuition payments), even though the high school district was required to accept the students under A.R.S. § 15-824(A)(2) (which requires tuition payments). *Ruth Fisher*,

202 Ariz. at 109, 41 P.3d at 647. The common school district brought an action against the high school district to compel that district to admit common school district students as tuition students under A.R.S. § 15-824(A)(2) rather than as open enrollment students under A.R.S. § 15-816.01. The Court held that the open enrollment statute did not apply to the students who had to enroll in other districts under A.R.S. § 15-824. *Id.* at 112, 41 P.3d at 650. The Court’s holding does not answer the question of funding for students who have CECs issued under A.R.S. § 15-825(A). By its terms, section 15-824(A)(2) applies only when a student has no CEC.³

There is language in *Ruth Fisher* referring to tuition payments that are required when a student has a CEC: “Section 15-824(E) deals not only with tuition for residents of common school districts that are not within high school districts but also provides for other situations, such as where students attend school out of their districts under certificates of educational convenience.” *Ruth Fisher*, 202 Ariz. at 111, 41 P.3d at 649. This language does not mean that tuition is required for the CECs at issue here. Section 15-824(E) specifically refers to tuition required in § 15-825(D), which applies only to CECs issued under A.R.S. § 15-825(B). Nothing in A.R.S. § 15-824(E) supports imposing tuition on CECs issued under A.R.S. § 15-825(A).⁴

³ Section 15-824(A)(2) provides in part: “For three hundred fifty or fewer pupils, to a high school without the presentation of such certificate, if the pupil is a resident of a common school district within this state which is not within a high school district and which does not offer instruction in the pupil’s grade.” “Such certificate” is a certificate of educational convenience. A.R.S. § 15-824(A)(1).

⁴ It is not clear why CECs are necessary in the situation addressed in this Opinion, since the students must be admitted at the high school of their choice. *See Ruth Fisher*, 202 Ariz. at 110, 41 P.3d at 648. In *Ruth Fisher*, the high school was encouraging the Ruth Fisher students to attend as open enrollment students. The court in *Ruth Fisher* “[did] not believe the legislature wished to produce such an awkward situation by allowing high school students who do not reside in high school districts or unified school districts the choice of being either tuition students or open enrollment

Consequently, any students attending Willcox on a CEC issued pursuant to A.R.S. § 15-825(A) are included in the Willcox student count. Bonita does not pay tuition to Willcox for these children or include them in its student count. Rather, Willcox will receive State funding for these students by including them in their student count.

Conclusion

No tuition payments are required for students who attend another school district within this State subject to a CEC issued pursuant to A.R.S. § 15-825(A).

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students.” *Id.* at 112, 41 P.3d at 650. In contrast, here the county school superintendent, not a student, decides whether to issue the CEC.