



**STATE OF ARIZONA**

**OFFICE OF THE ATTORNEY GENERAL**

<p>ATTORNEY GENERAL OPINION</p> <p>By</p> <p>MARK BRNOVICH ATTORNEY GENERAL</p> <p>January 4, 2019</p>	<p>No. I19-001 (R18-012)</p> <p>Re: Charter School Student Data</p>
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To: The Honorable Diane Douglas  
Arizona Superintendent of Public Instruction

**Questions Presented**

1. Does the Arizona State Board for Charter Schools (“Charter Board”) have the ability to authorize the Arizona Department of Education (“ADE”) to update a charter school’s student-level data after the charter school closes?
2. Does ADE have the independent authority to update a charter school’s student-level data when necessary after the charter school closes?

**Summary Answers**

1. Yes. If necessary, the entity that sponsors and supervises a charter school can authorize ADE, through the Superintendent of Public Instruction (the “Superintendent”), to update student-level data of a charter school it sponsors that abruptly closed and cannot appropriately manage its student-level data. This authority would extend to the Charter Board if it is the supervising entity of the charter school that abruptly closed.

2. It is not necessary to answer this question because, as discussed below, a charter school’s supervisory entity can authorize ADE to update that charter school’s student-level data when a charter school it sponsors abruptly closes and cannot appropriately manage its student-level data.

### **Background**

As described in the request for this opinion,<sup>1</sup> an Arizona charter school abruptly closed on January 25, 2018—in the middle of the school year. It ceased all instruction and business operations routinely conducted at the school, including managing student-level data.<sup>2</sup> Students enrolled in the school were forced to seek enrollment at other district or charter schools. Although these new schools allowed the displaced students to attend their schools, they were unable to properly enroll the new students into the Arizona Education Learning and Accountability System (“AELAS”)<sup>3</sup> because the closed charter school failed to withdraw the students from its enrollment roster. This failure by the closed charter school has caused varying data management problems related to school financing, school accountability, and federal program management including special education, Title I,<sup>4</sup> and English language programs. Due

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<sup>1</sup> The facts described herein are derived from the opinion request.

<sup>2</sup> “[S]tudent level data’ means all data elements that are compiled and submitted for each student in this state and that are necessary for the completion of the statutory requirements of [ADE] and [the State Board] relating to the calculation of funding for public education, the determination of student academic progress as measured by student testing programs in this state, state and federal reporting requirements and other duties prescribed to [ADE] or [the State Board]. Student-level data does not include data elements related to student behavior, discipline, criminal history, medical history, religious affiliation, personal physical descriptors or family information not authorized by the parent or guardian of the pupil or otherwise required by law.” A.R.S. § 15-1042(J).

<sup>3</sup> The Arizona Education Data Standards system (“AzEDS”) currently operates within AELAS as the program primarily used for student enrollment and attendance data. For the purposes of continuity, AELAS will be used in this Opinion to refer to any current or future iteration of the student data system. ADE previously used the Student Accountability Information System (“SAIS”) established by A.R.S. § 15-1041 for data management purposes. SAIS has since been statutorily incorporated into AELAS. A.R.S. § 15-249(B)(2).

<sup>4</sup> Title I, Part A of the Elementary and Secondary Education Act (commonly referred to as “Title I”) provides financial assistance to schools with high numbers or high percentages of children from low-income families.

to the timing of the school's closure, the inability to properly enroll students did not directly affect per pupil funding for the students of the closed charter school during the previous school year,<sup>5</sup> but continuing data management issues could affect funding for the current 2017-2018 school year because these students' attendance cannot be properly managed, and attendance data is the primary means of calculating the per pupil funding provided to school districts and charter schools. *See* A.R.S. § 15-901.

This Opinion answers questions relating to whether ADE, under authority provided to it by the Charter Board, can update the student-level data of students who attended a closed charter school so they can properly enroll at other schools.

### **Analysis**

The Arizona Constitution requires the Legislature to enact laws that “provide for the establishment and maintenance of a general and uniform public school system.” Ariz. Const. art. XI, § 1(A). Supervisory authority over the public school system is vested in the State Board of Education (the “State Board”), the Superintendent, and the county school superintendents. *Id.* at § 2. ADE administers policies set by the State Board. A.R.S. § 15-231(B)-(D).

In executing its charge to establish a uniform public school system, the Legislature provided for the establishment of charter schools. A.R.S. §§ 15-181 *et seq.* Various entities, including the Charter Board, may sponsor charter schools. A.R.S. § 15-183(C). Sponsoring entities have oversight and administrative responsibility for the charter schools they sponsor.

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Federal funds are currently allocated through statutory formulas that are based primarily on census poverty estimates and the cost of education in each state. ADE manages the distribution of these funds to public schools within the State. *See* 20 U.S.C. §§ 6301 *et seq.*

<sup>5</sup> Per pupil funding is based on the average daily membership over the first 100 days of the school year. A.R.S. § 15-901(A)(1) (defining “average daily membership”). Here, the charter school closed after the 100-day mark.

A.R.S. §§ 15-183(R), -182(E)(1) (specifically addressing the Charter Board’s general supervisory authority).

The Legislature also created a system of compulsory school attendance and open enrollment with varying exceptions and administrative requirements. *See* A.R.S. §§ 15-801 to -807, -184, -816, -821(A), -824. Administration of this system requires schools to report enrollment and attendance data on a regular basis. In order to manage data related to the educational and financial aspects of the state school system, the Legislature established AELAS “to collect, compile, maintain, and report student-level data for students attending public educational institutions.” A.R.S. § 15-249(A). The system is required to maintain student-level data to meet state and federal reporting requirements, and to comply with ADE’s and the State Board’s statutory obligations. A.R.S. §§ 15-249(B)(1), -1041.

Given these requirements, the Superintendent directs ADE’s operation of AELAS as the State’s public school data management system, which aids in the management of student-level data as part of a compulsory and open school system. A.R.S. § 15-249(A). The proper functioning and operation of this system requires schools to submit student-level data to ADE. *See generally* A.R.S. §§ 15-249, -1042. Importantly, A.R.S. § 15-1043(B) provides that “[s]tudent level data may not be updated unless the change is authorized by the school district, career technical education district or charter school.”

Courts interpret statutes by looking first to the plain language of the law as the best indicator of the Legislature’s intent. *Premier Physicians Grp, PLLC v. Navarro*, 240 Ariz. 193, 195, ¶ 9 (2016). Statutory provisions should be construed “in light of their place in the statutory scheme so they may be harmonious and consistent.” *Hosea v. City of Phoenix Fire Pension Bd.*, 224 Ariz. 245, 250, ¶ 23 (App. 2010) (internal quotations omitted). “[L]anguage will be given

its usual, ordinary meaning unless doing so creates an absurd result.” *State v. Aguilar*, 209 Ariz. 40, 47, ¶ 23 (2004). A result is absurd “if it is so irrational, unnatural, or inconvenient that it cannot be supposed to have been within the intention of persons with ordinary intelligence and discretion.” *See State v. Estrada*, 201 Ariz. 247, 251, ¶ 17 (2001) (internal quotations omitted); *Mendelsohn v. Super. Ct. in and for Maricopa Cty.*, 76 Ariz. 163, 169 (1953) (when construing statutes, courts must give them “a sensible construction,” and “avoid an absurd conclusion [.]”) The absurdity “principle is to be applied to override the literal terms of a statute only under *rare and exceptional circumstances*[.]” *Crooks v. Harrelson*, 282 U.S. 55, 60 (1930) (emphasis added).

**A. If necessary, the supervisory entity of a charter school may authorize ADE to correct a charter school’s student-level data when the charter school closes and fails to properly update its data.**

Sponsoring entities of charter schools have supervisory and administrative responsibility over charter schools that they sponsor. A.R.S. §§ 15-182(E)(1), -183(D), (R); Arizona Administrative Code (“A.A.C.”) R7-5-401 to -607 (applying solely to the Charter Board). Sponsoring entities are authorized to grant charter status to applicants and, through charter contracts, set policies pertaining to the operation of the schools that they sponsor. A.R.S. §§ 15-182(E), -183(C), (E); *see also* A.A.C. R7-5-101 *et seq.* The charter contract must, among other things, require that the charter school be “subject to the same financial and electronic data submission requirements as a school district.” A.R.S. § 15-183(E)(6).<sup>6</sup> A sponsoring entity is obligated to evaluate the performance of charter schools that it sponsors and can seek to revoke a charter school’s charter if it determines that the charter school is not

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<sup>6</sup> Sponsoring entities may opt to include in the charter contract necessary exceptions to this requirement not otherwise required by law. *See* A.R.S. § 15-183(E)(5), (6).

operating in accordance with requirements set forth by Arizona law, or the charter contract. A.R.S. § 15-182(E)(1), -183(I)(3), (R); A.A.C. R7-5-607.<sup>7</sup>

Although A.R.S. § 15-1043 provides limitations on the authority to update student-level data, a charter school's sudden closure and failure to fulfill its obligation to submit and update student-level data brings about consequences apparently not considered by the Legislature. Neither the text of the statute nor the legislative history indicate that the Legislature ever envisioned the abrupt closure of a charter school during the school year. For example, A.R.S. § 15-341(A)(32) requires an explicit notification process when school districts will decide whether to close a school within the district. Charter schools are not subject to this notice provision or any similar provision. *See* A.R.S. § 15-183(E)(5). Similarly, nothing indicates that the Legislature intended to forbid other supervisory entities, such as the Charter Board, from fulfilling the charter school's obligations, where the charter school is unable or fails to do so. Although the Legislature likely intended to protect student-level data from improper or unnecessary modifications, that protection was not intended to be unqualified, as evidenced by the Legislature removing ownership status of that data from school districts and charter schools as part of an amendment package to the previous student-level data management system. S.B. 1447, 51st Leg., 1st Reg. Sess. (Ariz. 2013) (removing language providing that student-level data was the property of school districts and charter schools).

Further, the statutory scheme governing schools itself is further evidence the Legislature did not foresee this absurdity and suggests the appropriate remedy. Under A.R.S. § 15-1043(B), when a public school closes, the school district can authorize an update to the student-level data and exit students from the defunct school. Similarly, when a career technical education school

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<sup>7</sup> In addition to the Charter Board, other sponsoring entities include the state board of education, a university under the jurisdiction of the Arizona board of regents, a community college district, or a group of community college districts. A.R.S. § 15-101(4), -183(C).

closes, the career technical education district can authorize a change to the student-level data for the school. The analogous body for charter schools would be a supervisory entity such as the Charter Board, but in the absence of statutory authorization for a supervisory entity to update data, the supervising entity is the entity authorized by statute. Therefore, and without giving the supervisory entity authority that it does not have by statute, a charter school's supervisory entity may authorize ADE to update the data when a charter school is unable to.

Interpreting A.R.S. § 15-1043 to be an absolute bar on the adjustment of student-level data by a supervisory entity would create an impossible and untenable result by impeding the functioning of the statewide school system and obstructing a student's ability to enroll in a new school after his present school abruptly closes. The students would be forever enrolled in a defunct school. Even if a new school enrolled the students, that school may not receive funding for them—solely due to a data management issue. In other words, it would lead to an absurd result that no reasonable person could approve. *See Estrada*, 201 Ariz. at 251, ¶ 17. Although the absurdity doctrine should be applied only under “rare and exceptional circumstances[.]” such circumstances are presented here. *See Crooks*, 282 U.S. at 60.

The absurdity doctrine must be applied to read this statute to give an individual charter school's supervisory entity the authority to ensure that the charter school's obligations are fulfilled to limit the negative impact on students, parents, and other schools that it sponsors, as well as public schools generally. *See* A.R.S. §§ 15-182(E)(1), -183(D), (R). Thus, the Charter Board, as the supervisory entity of the charter school described in the opinion request, may authorize ADE, through the Superintendent, to make necessary adjustments to the student-level data of the closed charter school. *See also* A.R.S. § 15-182(E)(7) (the Charter Board may delegate the execution of its policies to the Superintendent). This authorization will ensure that

the data remains accurate and that former students of the charter school can enroll in other schools without impediments caused by the charter school's inability or failure to appropriately manage student-level data. Under the foregoing analysis, a charter school's supervisory entity may delegate authority to ADE to update the charter school's student-level data where the school unexpectedly closes without appropriately updating its student-level data. Thus, there is no need to answer your second question regarding whether ADE has independent authority to update the charter school's student-level data.

### **Conclusion**

A charter school's supervisory entity has the authority to authorize ADE, through the Superintendent, to update student-level data if a charter school it sponsors abruptly closes and is unable to properly manage its student-level data.

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