



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>TERRY GODDARD ATTORNEY GENERAL</p> <p>February 17, 2009</p>	<p>No. I09-001 (R07-035)</p> <p>Re: Admissibility And Tuition Payment of A Child Who Resides With A Legal Guardian Within A School District</p>
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To: Candyce B. Pardee
Deputy County Attorney
Cochise County Attorney's Office

Pursuant to Arizona Revised Statutes ("A.R.S.") § 15-253(B), you submitted for review an opinion that you prepared for the Superintendent of the Douglas Unified School District. We are revising the conclusion reached and issue this opinion to provide guidance concerning this matter to all school districts within Arizona.

Questions Presented

Can a child who resides with a legal guardian but whose parents reside out of State attend the school district in which his legal guardian resides without paying tuition?

Summary Answer

A child who resides with a legal guardian who was not appointed solely to avoid the payment of tuition may attend the school district in which the legal guardian resides without paying tuition. Pursuant to Arizona law, the residence of the person having legal custody of the child is considered the child's residence for school admission purposes, and school districts must admit resident children between the ages of six and twenty-one without payment of tuition.

Analysis

The State is required to provide children between the ages of six and twenty-one with a system of free public education. *See* Ariz. Const. art. XI, §§ 1, 6. As a general rule, only students who are to be considered State residents are entitled to attend the public school system tuition free. *Sleeseman v. State Bd. of Educ.*, 156 Ariz. 496, 498, 753 P.2d 186, 188 (App. 1988) (stating that "the right to a tuition-free public education is reserved to residents of this state").

Pursuant to A.R.S. § 15-824(B), a student's residence is "[t]he residence of the person having legal custody of the pupil." Legal custody is defined as the "[c]ustody exercised by the natural or adoptive parents with whom a student resides" or "[c]ustody granted by order of a court of competent jurisdiction to a person with whom a student resides unless the primary purpose for which custody was requested was to circumvent the payment of tuition." A.R.S. § 15-824(G)(2)(a), (b); *see also Chapp v. High School Dist. No.1 of Pima County*, 118 Ariz. 25, 27, 574 P.2d 493, 495 (App. 1978) ("[A child's] residence is that of his parents, or the one of them who has legal custody of him, or if neither parent has legal custody, the one who stands in the relation of loco parentis to him." (quoting *In Re Webb's Adoption*, 65 Ariz. 176, 179, 177 P.2d 222, 224 (1947))).

Once residency has been established within the school district, Arizona law requires that a school district admit students between the ages of six and twenty-one who reside within its boundaries and qualify for enrollment in one of the grades or programs offered in the school. A.R.S. § 15-821(A). Therefore, if a student's natural parents reside outside of the state and the student "lives with a guardian in the school district and the guardian was not appointed solely to avoid the payment of tuition then the district must admit the child without charging tuition." Ariz. Att'y Gen. Op. I79-173.

Your opinion concluded that, pursuant to A.R.S. § 15-823(C), when a child whose parents reside out of State and who has a legal guardian who resides in the district but who is not a "grandparent, brother, sister, stepbrother, stepsister, aunt or uncle," the school district may require the payment of tuition. The statute's language, however, does not support this conclusion. Section 15-823(C) states that

[t]he governing board shall admit children who are residents of the United States *but who are nonresidents of this state* without payment of tuition if evidence indicates that the child's physical, mental, moral or emotional health is best served by placement with a grandparent, brother, sister, stepbrother, stepsister, aunt or uncle who is a resident within the school district, unless the governing board determines that the placement is solely for the purpose of obtaining an education in this state without payment of tuition.

(Emphasis added.) As it states, this subsection applies to children "who are nonresidents of this state." Thus, the subsection does not apply to a child for whom legal custody has been granted to a guardian who resides within the school district, because the residence of such a child is defined by statute to be the same residence as that of his or her legal guardian. A.R.S. § 15-824(B) ("The residence of the person having legal custody of the pupil is considered the residence of the pupil. . . ."). Rather, the subsection applies to children who are residents of the United States, whose parents are nonresidents of this State, and who are living with one of the enumerated family

members in the district in a nonguardianship arrangement wherein the family member has not been granted legal custody.

In sum, Arizona statutes, case law, and an Attorney General's Opinion have all made clear that "[i]f the child resides with the natural parent or court-appointed guardian within the district, then the district must admit the child without charging tuition." *See* Ariz. Att'y Gen. Op. I79-173.

Conclusion

A child who resides with a legal guardian who was not appointed to circumvent the payment of tuition may attend the school district in which the legal guardian resides without paying tuition.

Terry Goddard
Attorney General