



OFFICE OF THE ATTORNEY GENERAL
EDUCATION AND HEALTH SECTION
MEMORANDUM
PRIVILEGED AND CONFIDENTIAL

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TO: Tom Horne
Superintendent
Arizona Department of Education

FROM: Kim S. Anderson
Assistant Attorney General

DATE: August 18, 2006

RE: **Informal Opinion re attorney/client advice:**
Topic: Whether a school district or charter school may charge tuition for full-day kindergarten.

You have asked whether a school district or charter school may charge tuition for full-day kindergarten.

Answer: A school district or charter school that chooses to offer full-day kindergarten cannot charge tuition to students for the full-day kindergarten program. However, a school district or charter school that does not offer full-day kindergarten may offer an optional supplemental or extended-day program to its students to supplement the school's half-day kindergarten program and may charge a fee. The content of these supplemental or extended-day programs varies considerably and, for purposes of this memorandum, we assume that the programs provide more than custodial service.¹

Brief Analysis: School districts are required to provide a half-day kindergarten program unless they file an exemption claim with the Arizona Department of

¹ School districts are without statutory authority to operate a day-care facility to provide merely custodial, rather than educational, services. Ariz. Att'y Gen. Op. I81-014. Charter schools are established to provide both a learning environment to improve pupil achievement and academic choices for parents and pupils and similarly may not provide strictly custodial services. A.R.S. § 15-181(A); Ariz. Att'y Gen. Op. I98-007.

Education. A.R.S. § 15-703(B). A school district that establishes a full-day kindergarten program must allow each parent of a kindergarten pupil to choose either half-day kindergarten instruction or full-day kindergarten instruction. *Id.* Whether a charter school offers kindergarten (half- or full-day) is determined by the requirements of its charter contract. A charter school may limit admission to pupils within a given age group or grade level. A.R.S. § 15-184(C).

A.R.S. § 15-901.02 (2006) provides as follows:

A school district or charter school may offer full-day kindergarten instruction to pupils who meet the enrollment requirements for kindergarten programs. Parents of pupils who meet the enrollment requirements for voluntary kindergarten programs in a school district or charter school that offers full-day kindergarten instruction may choose either half-day kindergarten instruction or full-day kindergarten instruction. If a school district or charter school chooses to offer voluntary full-day kindergarten instruction, any necessary capital monies needed to implement voluntary full-day kindergarten instruction shall be provided by the school district or charter school.

A.R.S. § 15-901.02 (2006) provides funding for voluntary full-day kindergarten instruction beginning in FY 2006-2007 by increasing the Group B weight for students in kindergarten. The increased Group B weight may be used by school districts and charter schools to fund voluntary full-day kindergarten. A school district or charter school that chooses to offer full-day kindergarten cannot charge tuition or a fee to students to participate in the full-day kindergarten program. *See* Ariz. Att’y Gen. Op. I94-004 (school districts cannot charge students fees unless the fees are authorized by statute); *see also* Ariz. Const. art. XI, § 6 (requires free common schools; other state educational institutions must be “as nearly free as possible”); *see* Ariz. Att’y Gen. Op. I99-021 (addressing school districts’ authority to charge parents a fee for optional educational activities for kindergarten students). The Legislature has precluded charter schools from charging tuition (A.R.S. § 15-185(B)(7)) and has restricted school district tuition charges to very limited situations such as individuals over twenty-one years of age (A.R.S. § 15-361), certain non-resident pupils (A.R.S. § 15-823(A) and -824(A)), and adult students in vocational education programs (A.R.S. § 15-782.02). Ariz. Att’y Gen. Op. I98-007.

However, a school district that offers half-day kindergarten may also offer a supplemental or extended-day program for those students to supplement the half-day kindergarten and may charge a fee. Fees for those supplemental programs are authorized as fees for optional extracurricular programs under A.R.S. § 15-342(24), or as fees for participation in community school programs under A.R.S. § 15-1142. *See generally* Ariz. Att’y Gen. Op. I98-007 (addressing the availability of tax credit under A.R.S. § 43-1089.01 for fees for extended-day kindergarten programs). The decision to offer and charge for programs to supplement the school district’s required half-day kindergarten program, either as an extracurricular activity or as a community school program, is left to each individual school district. *Id.*

Unlike school districts, the Legislature did not specifically address fees in the charter school enabling legislation. Notwithstanding this lack of specificity, the Attorney General’s office, in its analysis concerning the interpretation of A.R.S. § 43-1089.01 (school tax credit) and the legislative directive in Title 15 concerning extracurricular activities, has previously opined that charter schools are authorized to charge fees for extracurricular activities. Ariz. Att’y Gen. Op. I98-007.

Conclusion: A school district or charter school that chooses to offer full-day kindergarten cannot charge tuition to students for the full-day kindergarten program. However, a school district or charter school that does not offer full-day kindergarten may offer an optional supplemental or extended-day program to its students to supplement the school’s half-day kindergarten program and may charge a fee.