



STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>TERRY GODDARD ATTORNEY GENERAL</p> <p>September 1, 2009</p>	<p>No. I09-006 (R09-005)</p> <p>Re: Daily Attendance Requirements and Reporting of Absences by Public Schools</p>
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To: The Honorable Tom Horne
Superintendent of Public Instruction

Questions Presented

1. When considered together, do Arizona Revised Statutes ("A.R.S.") §§ 15-901(A)(6)(e), -801(A) and (B), -861(A), and -901(A)(2)(c)(vi) require four hours of instruction per day for full-time high school students, contrary to the conclusion reached in Attorney General Opinion I08-007?

2. How should a high school student enrolled in a full-time instructional program be reported for purposes of daily attendance when the student attends school for three hours on some days rather than four hours and:

(A) the student is scheduled for three hours on certain days and attends all three hours; or

(B) the student is scheduled for four hours on a given day but is absent for one hour?

3. Department of Education (“Department”) policy GE-20 requires four hours of instruction per day and mandates that a “day,” as contemplated for purposes of average daily attendance, must consist of at least four hours of instruction—720 hours divided by 180 days. Is the Department’s definition of “day” entitled to deference because the word “day” is not defined in Arizona law?

Summary Answers

1. When considered together, A.R.S. §§ 15-901(A)(6)(e), -801(A), -801(B), -861(A) and -901(A)(2)(c)(vi) do not require that a school report a full-time high school student as absent unless he or she attends school for four hours of instruction each day. Rather, Arizona statutory law allows schools flexibility in the manner in which they report students’ daily attendance by permitting them to report absences as prescribed in A.R.S. § 15-901(A)(6)(d) or (e).

2(A). A school may report the attendance of a full-time high school student enrolled in a full-time instructional program who is scheduled to attend and actually does attend school for three hours on certain days in one of two ways:

Under A.R.S. § 15-901(A)(6)(d), if the student is enrolled in four subjects, and the student attends the three hours for which he is scheduled on a given day, then no absences need be reported to the Department. However, if the school calculates attendance under the exception in A.R.S. § 15-901(A)(6)(e), the school would report one-fourth of a day’s absence for each day on which the student only attended school for three hours.¹

¹ This opinion does not address how to report attendance for a student attending an alternative education program or a charter school operating on an approved alternative calendar under A.R.S. § 15-797.

2(B). A school may report the attendance of a full-time high school student enrolled in a full-time instructional program who attends school for three hours but is scheduled to attend four hours in one of two ways:

Under A.R.S. § 15-901(A)(6)(d), if the student is enrolled in four subjects and misses one of the four hours for which he is scheduled on a given day, an absence should be reported to the Department for the missed hour. Similarly, if the school calculates attendance under the exception in A.R.S. § 15-901(A)(6)(e), the school would report one-fourth of a day's absence to the Department for each day on which the student only attended school for three hours.

3. The Department is not entitled to deference regarding its definition of the word "day" because its definition conflicts with the statutes that define "daily attendance" and "full-time instructional program."

Background

Average daily membership ("ADM") is defined as "the total enrollment of fractional students and full-time students, minus withdrawals, of each school day through the first one hundred days or two hundred days in session, as applicable, for the current year." A.R.S. § 15-901(A)(2). It is part of a complex formula to determine funding for public schools. A.R.S. §§ 15-901, -902. ADM is calculated differently for high schools and common (elementary) schools because the definitions for fractional and full-time students vary depending on the type of school.² These definitions contain very specific requirements, including, but not limited to, annual hours of instruction, required number of subjects, and the parameters for instructional

² This opinion does not address the calculation of ADM or daily attendance for common school students.

time.³ A student's enrollment, or ADM, must be reported to the Department in accordance with A.R.S. § 15-902(I). The ADM calculation is used to determine state aid for public schools. A.R.S. § 15-902.

The calculations of daily attendance and average daily attendance are distinct from and are governed by different statutory provisions than those that address the calculation of ADM. Average daily attendance is the actual average daily attendance through the first 100 days or 200 days in session; in contrast, ADM deals with enrollment for the first 100 days or 200 days in session. *Compare* A.R.S. § 15-901(A)(1), (A)(6) (governing average daily attendance) *with* § 15-901(A)(2) (governing ADM). A student who is enrolled full time in a high school may be in attendance or absent for all or part of a day, and this information must be reported to the Department. A.R.S. § 15-902(I), (J).

If absences reach a certain statutory threshold, the ADM of a school district or charter school is adjusted using a statutory formula. A.R.S. § 15-902. Absences for a unified school district are deemed excessive when “[ADM] through the first one hundred days . . . in session . . . of the current year has exceeded the average daily attendance through the first one hundred days . . . of the current year by more than six per cent.” A.R.S. § 15-902(A). Absences for a high school district are deemed excessive when ADM through the first 100 days in session for the current year exceeds the average daily attendance through the first 100 days in session of the

³ For example, a full-time high school student in fiscal year 2009 must be, among other things, enrolled in at least a full-time instructional program of subjects that count toward graduation as defined by the state board of education and that meet for at least a total of 720 hours during the minimum number of days required and include at least four subjects each of which, if taught each school day for the minimum number of days required in a school year, would meet a minimum of 123 hours a year, or the equivalent, or one or more subjects taught in amounts of time totaling at least 20 hours per week prorated for any week with fewer than five school days. A.R.S. § 15-901(A)(2)(b)(ii), (c)(vi). In 1989, this office opined that, pursuant to A.R.S. § 15-901(A)(2), a school district governing board may “count...[a] community college course as one of the four courses in which a high school student must be *enrolled* to be a full-time student.” Ariz. Att’y. Gen. Op. I89-078 (emphasis added). The number of subjects in which a student is enrolled is part of what is used to determine the student’s ADM—whether the student is enrolled as a full-time or fractional student.

current year by more than 8.5 percent. A.R.S. § 15-902(B). The adjustment of ADM may result in a loss of student funding. A.R.S. § 15-902.

Arizona law provides for alternative methods of reporting daily attendance to the Department. If a high school student is enrolled full time, Arizona law provides for two methods for calculating of daily attendance.⁴ Section 15-901(A)(6)(d) states that

[f]or high schools or ungraded schools in which the pupil is at least fourteen years of age by September 1, the *attendance* of a pupil *shall not be counted as a full day unless the pupil is actually and physically in attendance* and enrolled in and carrying four subjects, each of which, if taught each school day for the minimum number of days required in a school year, would meet a minimum of one hundred twenty hours a year, or the equivalent, that count toward graduation in a recognized high school *except as provided in section 15-797 and subdivision (e) of this paragraph*. Attendance of a pupil carrying less than the load prescribed shall be prorated.

(Emphasis added.) Subsection (e) of A.R.S. § 15-901(A)(6) provides another option for daily attendance and states that

[f]or high schools or ungraded schools in which the pupil is at least fourteen years of age by September 1, the *attendance* of a pupil *may be counted as one-fourth of a day's attendance for each sixty minutes of instructional time* in a subject that counts toward graduation, except that attendance for a pupil shall not exceed the pupil's full or fractional membership.

(Emphasis added.)

In 2008, this Office issued an opinion that addressed the issue of whether, “[i]n calculating attendance of high school students for purposes of determining ADM, . . . a school district [is] required to report only absences and, if so, [whether] it [must] consider as absent those students who do not meet a daily minimum of at least four hours of attendance.” Ariz. Att’y Gen. Op. I08-007. The focus of that opinion was whether the Department had statutory

⁴ A.R.S. § 15-901(A)(6)(d) provides for the possibility of a third option for those schools operating an alternative education program or operating on an approved alternative calendar pursuant to A.R.S. § 15-797. As noted in footnote 1, *supra*, this opinion does not address the reporting of attendance under A.R.S. § 15-797.

authority to require that absences be reported in a manner consistent with a four-hour daily attendance requirement for full-time high school students. The opinion concluded that

[w]hen reporting attendance of high school students for determining ADM, a school district is not limited to reporting only absences based on a requirement that a student be present a certain number of hours a day. Rather, a school district may determine full-time student status by considering annual hourly totals comprising an instructional program, as described in A.R.S. § 15-901(A)(2).

*Id.*⁵

The Department's GE-20 policy was published in May 2008 and revised on July 2, 2008. The revised GE-20 policy requires public schools to report absences electronically to the Department, pursuant to A.R.S. § 15-902(J). More specifically, GE-20 requires that high schools, grades nine through twelve, comply with the following procedures:

At a minimum, statutes require all districts and charter holders to offer instruction of at least four hours a day on a five day a week schedule or five hours a day on a four day week schedule. Student attendance must be based on these statutorily mandated schedules pursuant to A.R.S. § 15-901 A 2 (a)(b)(c), unless otherwise authorized by the Superintendent of Public Instruction pursuant to A.R.S. § 15-801A.

Pursuant to GE-20,⁶ public schools are required to report a student as absent if the student does not attend school for either four or five hours each day, depending on the school's calendar. GE-20 also requires that daily attendance records be submitted through the reporting of absences, rather than the reporting of actual minutes attended by students.

The GE-20 policy cites A.R.S. § 15-901(A)(2)(a),(b) and (c) in support of its four-hour per day requirement. The request for this opinion cites one of the definitions for daily attendance—A.R.S. § 15-901(A)(6)(e)—as well as A.R.S. §§ 15-801(A), -861(A) and (B), and -

⁵ Attorney General Opinion I08-007 treated enrollment, or full-time student status, and attendance interchangeably. Enrollment, or ADM, and daily attendance are, in fact, defined separately in A.R.S. § 15-901.

⁶ An alternative education program or a charter school that operates on an approved alternative calendar pursuant to A.R.S. § 15-797 is not required to comply with GE-20.

901(A)(2)(c)(vi) as further support for the Department's daily attendance requirement contained in GE-20. You have asked this office to revisit the conclusion reached in Attorney General Opinion I08-007 to determine whether these additional statutes support the Department's GE-20 policy requiring four hours of instruction per day during a five-day school week or five hours of instruction per day for a four-day school week for purposes of daily attendance for full-time high school students.

This office did not specifically address GE-20 in Attorney General Opinion I08-007. That opinion instead analyzed the validity of the four-hour daily attendance requirement contained therein and concluded that Arizona law did not compel a four-hour daily attendance requirement, but, rather, allowed school districts more flexibility in constructing a full-time instructional program. *See* Ariz. Att'y Gen. Op. I08-007 (citing A.R.S. § 15-901(A)(2)). This opinion responds to additional questions you raised concerning the statutory requirements for daily attendance and GE-20.

Analysis

I. Arizona Statutes Do Not Require High School Students to Be Reported Absent if They Are in School for Less Than Four Hours on a School Day.

Principles of statutory construction guide the analysis of whether the Department may require school districts to report a student absent if the student does not attend school for the four or five hours each day, as prescribed in GE-20. The best and most reliable indicator of the Legislature's intent is a statute's own words. *See Zamora v. Reinstein*, 185 Ariz. 272, 275, 915 P.2d 1227, 1230 (1996). If the text or plain meaning of a statute is clear, there is no reason to consider other factors such as its legislative history to determine legislative intent. *Id.* Under the rules of statutory construction, all statutes dealing with the same subject matter must be read together in a manner that gives meaning to each statute. *City of Scottsdale v. McDowell*

Mountain Irrigation & Drainage Dist., 107 Ariz. 117, 121, 483 P.2d 532, 536 (1971); *In re Maricopa County Appeal*, 15 Ariz. App. 536, 540, 489 P.2d 1238, 1242 (1971).

Unless a school is on an approved alternative calendar under A.R.S. § 15-797, public schools may follow one of two statutory procedures to determine whether a student is in attendance on a school day. Pursuant to A.R.S. § 15-901(A)(6)(d), a school cannot count a student as in attendance for a full day unless

the pupil is actually and physically in attendance and enrolled in and carrying four subjects, each of which, if taught each school day for the minimum number of days required in a school year, would meet a minimum of one hundred twenty hours a year, or the equivalent, that count toward graduation in a recognized high school.

Using this method, no absences would be reported to the Department for students on a day when they were present for the subjects in which they are enrolled.

Schools can also rely on A.R.S. § 15-901(A)(6)(e) to report attendance. That subsection states that “the attendance of a pupil may be counted as one-fourth of a day’s attendance for each sixty minutes of instructional time in a subject that counts toward graduation.” Thus, a school *may* report a student as in attendance one-quarter of a day for each 60 minutes of instructional time. Under subsection (e), a full day’s attendance for a full-time high school student would be four hours.

The Legislature did not provide any directive regarding when schools should use subsection (d) or (e). Accordingly, the statute permits schools to calculate a full-time high school student’s daily attendance by either of the two methods set forth in A.R.S. § 15-901(A)(6)(d) and (e).

Public schools are required to record membership and attendance on a school-by-school basis for each day school is in session and forward this information to the Department in

accordance with A.R.S. § 15-902(D) and (I). Public schools must report absences to the Department as part of the attendance record. A.R.S. § 15-902(J). Accordingly, a full-time high school student should be reported as absent to the Department if the student is not in attendance as described by the daily attendance requirements contained in A.R.S. § 15-901(A)(6)(d) or (e).

These statutes do not require students to be reported absent unless they attend four hours of instruction in a day. The statutes cited in the opinion request also do not impose such a requirement. The opinion request cites statutes that set forth definitions of a school month, school holidays, a four-day school week, program requirements for a full-time high school student who is enrolled in a full-time instructional program, and one of the options for how to calculate and report daily attendance. A.R.S. §§ 15-801(A), (B), -861(A), -901(A)(2)(c)(vi) and -901(A)(6)(e). Specifically, A.R.S. § 15-801(A) establishes that a school month is 20 days or four weeks of five days each. Section 15-801(B) addresses school holidays and teacher compensation. Section A.R.S. § 15-861(A) allows for the establishment of an educational program based on a four-day school week or an alternative kindergarten program based on a three-day school week. A full-time high school instructional program is one that

meets at least a total of seven hundred twenty hours during the minimum number of days required and includes at least four subjects each of which, if taught each school day for the minimum number of days required in a school year, would meet a minimum of one hundred twenty-three hours a year, or the equivalent, or one or more subjects taught in amounts of time totaling at least twenty hours per week prorated for any week with fewer than five school days.

A.R.S. § 15-901(A)(2)(c)(vi). The statutes cited in the opinion request do not establish a requirement that students are reported absent unless they receive four hours of instruction on a

school day. On the contrary, the statutes defining “daily attendance” provide flexibility regarding how to calculate attendance.⁷

II. Scenarios Regarding the Reporting of Absences to the Department.

You have asked for an explanation of the attendance reporting for the following two scenarios: (1) a high school student enrolled in a full-time instructional program attends school for three rather than four hours on certain days and the student is scheduled for three hours and attends all three hours; and (2) a high school student enrolled in a full-time instructional program attends school for three hours rather than four hours on certain days and the student is scheduled for four hours on a given day, but is absent for one hour.

With regard to the first scenario, if a full-time high school student is actually and physically in attendance and enrolled in and carrying four subjects that meet the other criteria in A.R.S. § 15-901(A)(6)(d) and those subjects happen to meet for only three hours on certain days, then the student is actually and physically present in those subjects, and the student may be counted as in attendance for the entire day with no absences reported to the Department. A.R.S. § 15-901(A)(6)(d). Alternatively, the school may count the student’s attendance as one-fourth of a day for each sixty minutes of instruction in accordance with A.R.S. § 15-901(A)(6)(e). Under this second alternative, because the student attended only three hours each day, one-fourth of a day’s absence should be reported to the Department.

Regarding the second scenario, on a given day, if this full-time high school student is not actually and physically present in one of the subjects in which he or she is enrolled, the student

⁷ The Legislature has, in other instances, specifically required attendance for four hours each school day. *See* Ariz. Att’y. Gen. Op. I08-007 (citing A.R.S. § 15-901(A)(6)(f) (stating that “for homebound or hospitalized, a full day of attendance may be counted for each day during a week in which the student receives at least four hours of instruction.”)). The Legislature has not done so here. *See Padilla v. Industrial Comm’n*, 113 Ariz. 104, 106, 546 P.2d 1135, 1137 (1976) (stating that when construing a statute, one presumes that what the Legislature means, it will say).

should be reported as absent for that subject to the Department under A.R.S. § 15-901(A)(6)(d). Alternatively, under A.R.S. § 15-901(A)(6)(e), the school may count the student's attendance as one-fourth of a day for each sixty minutes of instruction. Under this alternative, because the student only attended school for three hours, one-fourth a day's absence should be reported to the Department.

III. The Department's Definition of a "Day" in GE-20 Is Not Entitled to Deference Because It Conflicts with the Statutes Governing Attendance.

The Department has the authority to "adopt guidelines necessary to implement laws applying to the school districts." A.R.S. § 15-239 (A)(1), (B). When a statute is "silent or ambiguous with respect to the specific issue," the agency's interpretation must be upheld when it is "based on a permissible construction of the statute." *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984) (holding that considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer); *Barnhart v. Walton*, 535 U.S. 212, 217-18 (2002); see *Arizona Water Co. v. Arizona Dep't of Water Res.*, 208 Ariz. 147, 154-56, 91 P.3d 990, 997-99 (2004) (stating that circumstances "in which the legislature has not spoken definitively to the issue at hand, considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer.") (internal quotation marks omitted); *Stearns v. Arizona Dep't of Revenue*, 212 Ariz. 333, 336, 131 P.3d 1063, 1066 (App. 2006).

The Department's GE-20 policy defines "day" in the following manner:

At a minimum...all districts and charter holders . . . offer instruction of at least four hours a day on a five day a week schedule or five hours a day on a four day week schedule. Student attendance must be based on these statutorily mandated schedules. . . unless otherwise authorized by the Superintendent of Public Instruction.

The Department's definition is derived from simple math using the required elements for instruction from A.R.S. § 15-901:

$$\frac{720 \text{ hours of instruction per year}}{180 \text{ days per year (5 days a week)}} = 4 \text{ hours of instruction per day}^8$$

The Department's policy, however, ignores the definitions of "full-time instructional program" and "daily attendance," which provide multiple options for the education of full-time high school students, as well as statutory law allowing for flexibility in the number of school days per school year. The definition of "full-time instructional program" for fiscal year 2005-2006 and each fiscal year thereafter allows a school to have:

an instructional program that meets at least a total of seven hundred twenty hours during the minimum number of days *and* includes at least four subjects each of which, *if taught each school day for the minimum number of days required in a school year*, would meet a minimum of one hundred twenty-three hours a year, *or the equivalent, or one or more subjects taught in amounts of time totaling at least twenty hours per week prorated for any week with fewer than five school days.*

A.R.S. § 15-901(A)(2)(c)(vi) (emphasis added). The definition of "daily attendance" also provides similar options to public schools. A.R.S. § 15-901 (A)(6)(d), (e). Moreover, although A.R.S. § 15-341.01 requires 180 days of instruction each school year, that statute defines 180 days as "one hundred eighty days of instruction *or an equivalent number of minutes of instruction per school year based on a different number of days of instruction.*" A.R.S. § 15-341.01(B) (emphasis added). Section 15-341.01 does not have a four-hour per day requirement, and its language clearly contemplates that a school district can satisfy the 720-hour instruction time requirement in an alternative number of school days. In short, the Department's four-hour

⁸ Pursuant to A.R.S. § 15-861(B), the Department's definition of a "day" for a school operating on a four-day school week is increased to 5 hours per day. Elements from A.R.S. § 15-901 still provide the math upon which the Department's definition is based.