

**To: Donald M. Peters****May 17, 2000****Re: Special Education Services For  
Home-Schooled Students****Miller, LaSota & Peters, P.L.C.****I00-012  
(R00-015)**

Pursuant to Arizona Revised Statutes ("A.R.S.") § 15-253(B), you submitted for review an education opinion you provided to the Scottsdale Unified School District No. 48 ("District"). This Office concurs with your conclusion that a school district is not required to provide special education services to home-schooled student and issues this Opinion to provide guidance to others concerning this subject.

### **Question Presented**

Is a school district required to provide special education services to home-schooled students who reside within the district's boundaries?

### **Summary Answers**

Neither Federal nor State law requires Arizona school districts to provide special education services to home-schooled students.<sup>(1)</sup>

### **Background**

Under the Individuals with Disabilities Education Act ("IDEA"), the federal government provides funding to states for the education of students with disabilities. See 20 U.S.C. §§ 1400 -1412. Congress enacted the IDEA, in part, "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs. . . ." 20 U.S.C. § 1400(d)(1)(A). To qualify for federal funding under the IDEA, states must meet various federal requirements that relate to the IDEA's purpose of ensuring the availability of free appropriate public education for children with disabilities. 20 U.S.C. § 1412. The federal requirements include, for example, establishing "child find" programs to identify, locate and evaluate children with disabilities, developing individualized education programs for children with disabilities, and educating children with disabilities "[t]o the maximum extent appropriate" with children who are not disabled. 20 U.S.C. §§ 1412(a)(3)-(5). Arizona receives funding under the IDEA, and, therefore, this State must comply with that law's requirements. In addition, Arizona law expressly incorporates IDEA requirements. See, e.g., A.R.S. §§ 15-235(F), -744(11), (27), (28), -766(E).<sup>(2)</sup>

Consistent with the IDEA, Arizona law requires that public schools -- district schools and charter schools -- provide special education services to children with disabilities. See, e.g., A.R.S. §§ 15- 183(E)(7) (requiring charter schools to comply with state and federal laws regarding special education services for children with disabilities), -764 (establishing requirements concerning special education services in school districts). Public schools must provide special education services "at no cost to the parents of children with disabilities." A.R.S. § 15-763. The statutory formula for determining the amount of State aid a district receives includes weights for students with disabilities, thus providing increased State funding for students with disabilities enrolled in public schools. A.R.S. §§ 15-901(2)(a), -943, -971.

The District's question concerns its obligations under these State and federal laws with regard to

children who reside in the district but are home-schooled. Under Arizona law, parents have the choice of sending their children to public or private schools, or providing an education to their children in a home-school setting. See A.R.S. § 15-802. Several parents home schooling their children have requested that the District provide their children special education services, but these children are not enrolled in the District.

### Analysis

Neither the IDEA nor its regulations address services to home-schooled children. See 20 U.S.C. § 1400 - 1412; 34 C.F.R.Pt. 300. In contrast, the IDEA has specific provisions regarding services for students with disabilities enrolled in private schools. See 20 U.S.C. § 1412(a)(10); 34 C.F.R. § 300.450. In 1999, the United States Department of Education clarified the rights of home-schooled children under the IDEA in the following comment published in the *Federal Register*:

#### *Definition of "Private School Children with Disabilities"*

*Comment:* Several commenters asked that the Department clarify whether children with disabilities who are home-schooled are included in the definition of "private school children with disabilities."

*Discussion:* State law determines whether home schools are "private schools." If the State recognizes home schools as private schools, children with disabilities in those home schools must be treated in the same way as other private school children with disabilities. If the State does not recognize home schools as private schools, children with disabilities who are home-schooled are still covered by the child find obligations of SEAs [State Educational Agencies] and LEAs [Local Educational Agencies], and these agencies must insure that home-schooled children with disabilities are located, identified and evaluated, and that FAPE [free appropriate public education] is available if their parents choose to enroll them in public schools.

64 Fed. Reg. 12602 (1999) (discussing 34 C.F.R. § 300.450). Thus, if State law recognizes home schools as private schools, the IDEA provisions that apply to private schools also apply to home-schooled children. Arizona law, however, does not recognize "home-schools" as "private schools." Section 15-802(F), A.R.S., defines "home school" and "private school" separately:

1. "Home school" means a school conducted primarily by the parent, guardian or other person who has custody of the child or instruction provided in the child's home.
2. "Private school" means a nonpublic institution, *other than the child's home*, where academic instruction is provided for at least the same number of days and hours each year as a public school. (emphasis added).

Because, under Arizona law, home schools are not private schools, the IDEA provisions regarding students with disabilities in private schools do not apply to home-schooled students, and nothing in the IDEA requires a school district to provide special education services to home-schooled students residing within the district's boundaries. <sup>(3)</sup>

Although school districts are not required, under federal law, to provide special education services to home-schooled children, districts are required to identify, locate and evaluate children with disabilities within their district. 20 U.S.C. § 1412(a)(3)(A)(child find obligations). If, however, parents choose to home-school their children, rather than enroll them in a public school, federal law does not require that the school districts provide special education services to those children.

Similarly, Arizona law does not require districts to provide special education services to children who are home-schooled. The district must "[p]rovide special education and related services for all children with disabilities and make such programs and services available to all eligible children with disabilities who are at least three . . . but less than twenty-two years of age." A.R.S. §15-764(A)(1). In addition, the district must develop "policies and procedures for providing special education to all children with disabilities within the district. . . ." A.R.S. § 15-763. These statutes require districts to make available special education services and to have procedures for providing these services to the children in their district, but they do not require districts to provide special education services to children who are home-schooled. When the Legislature has intended home-schooled children to participate in district programs, it has done so expressly. *Cf.* A.R.S. § 15-802.01 (eligibility of home-schooled children to participate in interscholastic activities). The Legislature has not required that school districts provide home-schooled children with special education services if those children are not enrolled in the district.

The funding under both the IDEA and State law also supports the conclusion that districts are not required to provide special education services to home-schooled children. Although federal law provides funding, under certain circumstances, to students in private schools, it provides no funding for home-schooled children (unless, unlike Arizona, a home school is considered a private school). Similarly, State education funding is based on enrollment -- only children enrolled at the public school at least one-quarter time are included in the funding calculation. See A.R.S. §§ 15-769, 901(2)(a), -943, -971. Therefore, districts receive no funding to provide special education services to children who are home-schooled. Although State law does not prohibit districts from providing special education services to children who are not enrolled in the district, State law neither requires nor funds such services. See *Ariz. Att'y Gen. Op. 184-085* (district may provide special education services to child not enrolled in district).

### **Conclusion**

Under federal and Arizona law, a school district must provide special education services for students with disabilities enrolled in the district schools. School districts are not statutorily required, and do not receive funding, to provide such services to home-schooled students who reside in the district but are not enrolled in its schools.

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Janet Napolitano  
Attorney General

1. Your opinion also addressed whether, if districts must provide special education services to home-schooled children, the State of Arizona must provide funding for those services. Because this Opinion concludes districts are not required to provide special education services to home-schooled children, this Opinion does not address the funding issue.
2. The Legislature amended many of the statutes regarding special education in 2000 *Ariz. Sess. Laws, ch. 236*, which passed with an emergency clause. This Opinion refers to the statutes as amended in this recent legislation.
3. The IDEA does not require a school district to pay the cost of providing special education services to a child with disabilities attending a private school if the district "made a free appropriate public education available to the child and the parents elected to place the child in . . . [the] private school or facility." 20

U.S.C. § 1412(a)(1)(C)(i). Thus, even if State law treated home schools as private schools, district schools would not necessarily be required to provide special education services to all home-schooled children under the IDEA.

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