



A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

MEMORANDUM

TO: Lee Miller

FROM: Lynne C. Adams

DATE: February 23, 2015

RE: Charter Schools and Records Requirements

Below is a summary of the analysis Eileen Sigmund and I shared with you last week regarding the Library, Archives and Public Records' authority to obtain and retain charter schools' documents and records.

Issue

Are charter schools required to submit a list of "essential records" every five years to the Library, Archives and Public Records (the "Library") or otherwise provide the Library with their financial, operational and other records?

Discussion

Charter schools were authorized by statute in 1994. Since that time, they have never been required to turn over their records to the Library. However, last year the Library asked charter schools – for the first time – to provide it with a list of all "essential public records" pursuant to A.R.S. § 41-151.14(A)(5). That directive came as a surprise to charter school operators, who understood that they were subject to Arizona's Public Records Law, but did not believe that they were state or local agencies under the direction and control of the Library.

Charter schools are not state or local agencies. The statute relied upon by the Library as authority for its request for the charter schools' "essential records" list requires "[t]he head of each state and local agency" to submit once every five years "lists of all essential public records in the custody of the agency." A.R.S. § 41-151.14(A)(5). In announcing the requirement to charter schools, the Library noted, "It is the responsibility of the head of each state and local agency to establish and maintain an active, continuing program for the economical and efficient

management of the records of the agency.” The Library provided examples of “essential records”: “Administrative Records, Audit Records, Electronic Communications, Equipment and Vehicles, Facilities and Grounds, Financial, Human Resources, Management, etc.”

There can be no dispute that charter schools are neither state nor local agencies. Because this statute (including the other provisions of A.R.S. § 41-151.14, which provide other directives regarding required reporting to the Library’s director) governs only state or local agencies, charter schools need not comply with it. It simply is inapplicable to their operations.

That conclusion is not changed by the fact that traditional public school districts are required to comply with Library directives and standards. School districts’ compliance with the Library’s standards for the maintenance and storage of their public records (with some potential revisions to the standards) is statutorily mandated. A.R.S. § 15-341(A)(41). Conversely, charter schools are not subject to any of the statutes governing school districts unless specifically stated. A.R.S. §§ 15-181(A), 15-183(E)(5) (charter schools are “exempt from all statutes and rules relating to schools, governing boards and school districts” unless specifically indicated in statute). There is nothing in the charter school statutes or the Library’s statutes that similarly directs charter schools to comply with the Library’s directives.

Although charter schools are not themselves a “state or local agency,” the vast majority of charter schools contract with and are subject to regulatory oversight by a state agency – the Arizona State Board for Charter Schools (“State Board”). The State Board *is* required to comply with Library directives, and it has adopted a Records Retention Schedule that has been approved by the Library Directory. *See* December 10, 2007 Records Retention Schedule for the Office of the Governor, Arizona State Board for Charter Schools, Schedule Number 1-07-243. Thus, those documents that are submitted to the State Board for licensing and regulatory purposes will necessarily be retained by the State Board and handled in accordance with its approved Retention Schedule.

Charter schools are subject to the Public Records Law. Although they are not state or local agencies subject to the Library’s oversight, charter schools are subject to Arizona’s Public Records Law because they fall within the definition of “public body” that governs that statute. In the context of the Public Records Law “public body” means “this state, any county, city, town, school district, political subdivision or tax-supported district in this state, any branch, department, board, bureau, commission, council or committee of the foregoing, and any public organization or agency, supported in whole or in part by monies from this state or any political subdivision of this state, or expending monies provided by this state or any political subdivision of this state.” A.R.S. § 39-121.01(A)(2).¹ In examining whether charter schools were subject to

¹ The definition of “public body” varies depending upon the statutory context. For example, although both the Open Meeting Law and the Public Records Law apply to a “public body,” that term is defined differently in each statutory scheme, and it is therefore possible that one of those laws could apply to an entity while the other would not. *Compare* A.R.S. § 39-121.01(A)(2) (Arizona Public Records Law definition of “public body”) *with* A.R.S. § 38-431(5) (Arizona Open Meeting Law definition of “public body”); *see also* *Ariz. Att’y Gen. Op. I95-010* (noting that “[w]hether an entity is a ‘public body’ under other state statutes depends on the definition used in those statutes and upon a factual and legal analysis consistent with the particular statute”).

the Public Records Law, the Arizona Attorney General determined that they were because the applicable definition of “public body” included organizations that are supported by public funds. Ariz. Att’y Gen. Op. I95-010. Thus, although they are not subject to Library oversight, charter schools are nonetheless required to preserve and maintain certain documents as “public records” that may be examined by an individual pursuant to the Public Records law. A.R.S. § 39-121.01(C) & (D).

Charter schools are quasi-public entities. The previous analysis demonstrates the quasi-public nature of charter schools. Although they are approved by the State Board, enter into a contract with the State Board, and are the recipients of public funds, they operate independently of the State, with private governing boards overseeing their operations, which are free from much of the regulation and statutory mandates to which traditional school districts are subject. Like many quasi-public entities, charter schools’ document obligations derive from multiple sources. Some of their records may be gathered and maintained by the State Board pursuant to its regulatory authority, similar to the records of other private businesses that are subject to state regulation. Other records are maintained pursuant to the charter schools’ contractual obligations to the State Board. Here, the form charter contract used by the State Board requires schools to “maintain *student records* in accordance with [the Library’s] Retention Schedules.”² See State Board’s Charter Contract form, dated 5/21/2014 (emphasis added). Finally, charter schools maintain certain records pursuant to their Public Records Law obligations.

The State’s vital interest in student records. Based on our conversations with you, we understand – and agree – that the State nonetheless has a vital interest in maintaining student records, which may be in the possession of charter schools. As set forth above, the retention and maintenance of those records while they are in the custody and control of charter schools are specifically addressed by the charter contract, which requires charter schools to comply with the Library’s retention schedule for those documents. Student records must be maintained “permanently” whether they are in the possession of a charter school, the State Board, a traditional public school district, or the Arizona Department of Education.

When a charter school closes, the State Board obtains information from the school regarding where each student’s records will be sent and maintained. The records may be sent to another school site for the charter holder, another public school (where a majority of the students transfer when a charter school closes), or in a small percentage of instances, to the State Board. The State Board obtains student records when the charter school operator has closed and has not taken proper action with regard to its students’ records. Pursuant to the State Board’s own Records Retention Schedule, the State Board is obligated to maintain student records permanently. Thus, student records are safely and appropriately safeguarded when charter schools close, regardless of the circumstances of the closure.

² That provision is included in the form contract precisely because without it, the Library’s retention schedules and other directives are not applicable to charter schools.

Conclusion

Charter schools are not subject to Library oversight. However, whether student records are permanently maintained pursuant to charter schools' contractual obligations or pursuant to the State Board's own Records Retention Schedule, the state's interest in those records is protected.

Please let me know if you have any questions about this analysis or need any additional information from me or Eileen.

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Cc: Eileen Sigmund