

December 3, 2007

Dan Austen  
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Re: Statutory Interpretation of ORS 338.155(5)(a)

Dear Dan:

I am responding to your request for a legal interpretation of the relative financial obligations of a charter school, a sponsoring school district, and a resident school district (i.e., the district in which a student's parents reside), pursuant to ORS 338.155(5)(a).

In accordance with ORS 338.155(2)(a), a K-8 charter must receive at least 80% of ADM dollars for all students enrolled. However, the charter and sponsoring district may agree, pursuant to the charter contract, for a larger percentage of the ADM dollars to be allocated to the charter. ORS 338.155(7). There is no limitation on the percentage that may be negotiated, so long as it is at least 80%; thus, the district and the charter may negotiate for any percentage 80% and greater, up to 100%.

The sponsoring district claims all students of the charter school as its residents for the purposes of ADM dollars distribution. ORS 338.155(1). For all students who are residents of the sponsoring district, the sponsoring district retains the percentage not paid to the charter (totaling a maximum of 20% of the ADM dollars). For those students whose parents reside in districts other than the sponsoring district, the sponsoring district pays to the resident district an amount "that is equal to 50 percent of the amount of the school district's General Purpose Grant per ADMw as calculated under ORS 327.013 that is not paid to the public charter school through a contract created pursuant to subsections (2) or (3) of this section to: (a) Any school district in which the parent or guardian of or a person in a parental relationship to a student of a public charter school resides pursuant to ORS 339.133 and 339.134."

This means that the sponsoring district pays to the resident district 50% of the ADM dollars not paid out to the charter for each of the students whose parents live in the resident district. This statutory provision does not establish a set dollar amount, but merely requires that 50% of any remaining dollars not paid out to the charter school be remitted to the district in which the parents of a charter student reside.

Thus, if in accordance with the charter agreement, the charter retains only 80% of the ADM dollars, for every student whose parent resides in the resident district, the resident district will receive 50% of the remaining dollars. Here, the remaining dollars are 20% of the ADMw, which would mean that the resident district would receive 10% of those dollars. However, the dollar amount at issue – that is, what amount the resident district receives 50% of – depends on how much the sponsoring district retains pursuant to the charter agreement.

If the sponsoring district retains less than 20%, then the resident district's share is proportionately reduced, as well. For instance, if the sponsoring district retains only 10%, then the resident district receives only 50% of that figure – that is, 5% of the total ADM. Thus, if the sponsoring district retains 0% and pays 100% of the ADM to the charter, then the resident district receives 0%, as well, given that 50% of zero is zero.

I do not see any basis for the resident district to claim that, pursuant to ORS 338.155(5)(a), it is owed any particular dollar amount; the statutory language clearly states that the resident district receives 50% of whatever is retained by the sponsoring district. If the sponsoring district retains nothing, then in accordance with the statutory language, the resident district's share is 50% of nothing. There is no obligation in the statute that the resident district always receive at least some nominal amount per student who attends the charter and whose parents reside in the resident district, just as there is no requirement that the sponsoring district retain any specific amount, or any amount at all, so long as it pays the charter a minimum of 80% of the ADM dollars.

The statute permits the sponsoring district to negotiate away in its charter agreement any percentage that it has a right to retain. The statute does not provide the resident district with any standing to participate in or provide input regarding these negotiations; the resident district is not a party to the charter agreement and has no right to participate in the negotiation of the terms of the agreement. Further, the resident district has no right to obtain any dollars other than 50% of what is retained by the sponsoring district; that amount retained may, in accordance with the statute and the charter agreement, be zero.

Please feel free to share this written opinion as you see fit. Let me know if you have any questions or need further information.

Sincerely,

Andrea L. Hungerford