



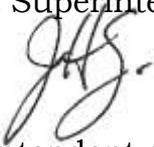
Wyoming Department of Education

Dr. Jim McBride, Superintendent of Public Instruction
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MEMORANDUM NO. 2008 - 115

TO: School District Superintendents and Business Managers

FROM: Joe Simpson 
Deputy Superintendent of Public Instruction

DATE: August 22, 2008

SUBJECT: Reporting of Rental Income from Pre-Schools

IMPORTANT INFORMATION

The Department received a question concerning the issue of reporting rental income from pre-schools as a local resource for the district. The Department forwarded this question to the Attorney General's Office for their opinion. Basically, their question revolves around the issue of the interpretation of W.S.21-15-109(c)(i)(A), which mandates the reporting of rental income from pre-schools as a local resource, and W.S.21-13-310(a)(xv) which excludes rental fees as a local resource.

The attached informal opinion states that a "school district is required to report rental fees collected from preschool programs on the WDE-100, but only if the district includes the space used for the program within its gross square footage."

As a result of this opinion, the Department asks that districts report rental income from pre-schools which are included within the gross square footage funded by the School Facilities Commission as a local resource.

If you have any questions regarding this requirement, please contact Fred Hansen at fhanse@state.wy.us or 307-777-7804.

JS:fh



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August 13, 2008

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RE: Request for informal legal opinion on rental income from preschools.

Dear Dr. McBride:

You recently requested the opinion of the Attorney General on the following question:

Should rental income from pre-schools be treated as a local resource on the WDE-100?

SHORT ANSWER

Yes. If a district includes the space used for preschool programs within its total gross square footage, and meets the requirements of WYO. STAT. ANN. §§ 21-15-109(c)(i)(A)(I) through (VI) (2007), the district must report the fees collected from such preschool programs as a local resource.

DISCUSSION

Wyoming statute gives districts the option to offer part-time preschool programs. "The board of trustees of a school district may permit the enrollment of pupils in a part-

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time preschool program with a curriculum based on developmentally appropriate practices funded by the district.” WYO. STAT. ANN. § 21-4-302(c) (2007). The state is not required to provide the districts with the necessary funds to support and sustain these preschool programs. The Wyoming Supreme Court, in *Campbell County Sch. Dist. v. State*, 2008 WY 2, 181 P.3d 43 (Wyo. 2008) held that “the constitution does not require the state to provide the necessary funds for each district to offer voluntary pre-schools[.]” *Id.* at ¶ 88, at 70. See also, WYO. STAT. ANN. § 21-4-302(c)(ii) (2007) (“A pupil who enrolls in such a preschool program shall not be included within the district’s average daily membership (ADM) for purposes of receiving state funds or within any other school funding formula for purposes of receiving funds from the state, unless the pupil has attained the minimum age for registration in kindergarten as provided in subsection (b) of this section[.]”).

While a district cannot receive ADM for preschool programs, it can include the space used for preschool programs as part of its gross square footage, so long as it simultaneously reports the rental income from such programs as a local resource on the WDE-100. WYO. STAT. ANN. § 21-15-109(c)(i)(A) (2007) sets out the requirements for preschool rental income with relation to major maintenance funding as follows:

The gross square footage of any school building or facility within the district which is not used for purposes of delivering the required educational program shall not be included within the district's total gross square footage computed under this section, except for the square footage of any district school building or facility which would otherwise be treated as a closed building under paragraph (c)(iv) of this section or is determined to be surplus, and following approval of the commission, the building or facility is being used for the provision of one (1) of the programs specified in subdivisions (I) through (III) of this subparagraph and the district complies with subdivisions (IV) through (VI) of this subparagraph:

- (I) Child care programs certified to operate in Wyoming under W.S. 14-4-101 through 14-4-111¹; or

¹ Preschool programs are included under the statutory definition of a “child caring facility.” See WYO. STAT. ANN. § 14-4-101(a)(vi)(K) (2007).

- (II) Developmental preschool programs² receiving state financial assistance for program operations; or
- (III) Educational programs and services provided through a board of cooperative educational services under W.S. 21-20-101 through 21-20-111 in which the district is a participant in the cooperative agreement; and
- (IV) The district incorporates this use of closed or surplus buildings into its facility plans required under W.S. 21-15-116; and
- (V) The district reports any fees or payments received or collected for this use of closed or surplus buildings as a local resource for purposes of foundation program computations under W.S. 21-13-310(a)(xv); and
- (VI) The district limits the lease agreement for the use of the closed or surplus building to not more than one (1) year subject to termination by the district at any time prior to expiration of the one (1) year period if necessary for provision of district educational programs.

WYO. STAT. ANN. § 21-15-109(c)(i)(A) (2007).

Giving effect to the plain and ordinary meaning of WYO. STAT. ANN. § 21-15-109(c)(i)(A) (2007), the legislature clearly intended that, in order for a district to include square footage used for such preschool programs as part of its gross square footage, it must also report any fees or payments received from the preschool program as a local resource. See WYO. STAT. ANN. § 21-15-109(c)(i)(A)(V) (2007) and *BP Am. Prod. Co. v. Dep't of Revenue*, 2005 WY 60, & 15, 112 P.3d 596, 604 (Wyo. 2005) (“When a statute is sufficiently clear and unambiguous, we give effect to the plain and ordinary

² Federal requirements under free appropriate public education (FAPE), and Wyoming statute, include preschools within the required special education and related services, which the state must provide to children with disabilities. See 20 U.S.C. § 1401(9)(C) (Supp. 2005) and WYO. STAT. ANN. §§ 21-2-701(a)(ii) & 21-2-704 (2007).

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meaning of the words and do not resort to the rules of statutory construction.”). Also note that space for preschool programs must be designated as a “closed building” or determined to be “surplus” in order to include the space within the district’s gross square footage. See WYO. STAT. ANN. § 21-15-109(c)(i)(A) (2007).

You also inquired about the seeming conflict between WYO. STAT. ANN. § 21-13-310(a)(xv) (2007) and WYO. STAT. ANN. § 21-15-109(c)(i)(A) (2007). There is no conflict between the two statutes in that the former deals specifically with preschool rental income and the later deals with fees for goods and services in general. WYO. STAT. ANN. § 21-13-310(a)(xv) (2007) reads as follows:

A district shall make an annual computation of the following revenues:

* * *

All other revenues received or collected by the district during the previous school year, but excluding any amount received from private contributions and gifts, excluding any revenues dedicated by law to the payment of bonded indebtedness, and any revenues from the disposition of school buildings and land pursuant to W.S. 21-15-114(a)(x), **and excluding fees or other charges imposed by the district for goods or services, such as rental fees** and the price paid for admission into any place for recreation, entertainment or an athletic event. Upon application of a district, the department shall exclude from this paragraph revenue received by the district if the department finds that the revenue could not be used by the district to provide educational services to students.

WYO. STAT. ANN. § 21-13-310(a)(xv) (2007) (emphasis added).

When two statutes relate to the same subject matter, “harmonization can be accomplished by applying the rule that a specific statute will govern over a general statute.” *Stauffer Chem. Co. v. Curry*, 778 P.2d 1083, 1093 (Wyo. 1989); *Gerstell v. State ex rel. Dep’t of Revenue & Taxation*, 769 P.2d 389, 394 (Wyo. 1989). In this situation, WYO. STAT. ANN. § 21-15-109(c)(i)(A) (2007) is much more specific in that it deals with fees or payments received from preschool programs, while WYO. STAT. ANN. § 21-13-310(a)(xv) (2007) deals with fees for goods and services in general, within the

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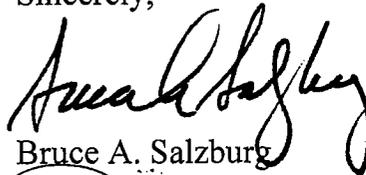
context of local resources. Therefore, these two statutes may be harmonized by giving them both effect, but providing deference to the more specific statute dealing with preschool rental income with regard to reporting such rental income as a local resource on the WDE-100.

CONCLUSION

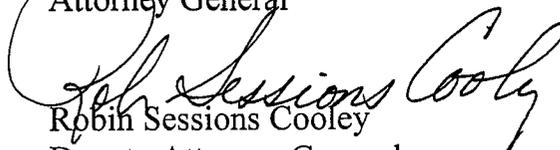
A school district is required to report rental fees collected from preschool programs as a local resource on the WDE-100, but only if the district includes the space used for the program within its gross square footage. Moreover, the space must be designated as a closed building or determined to be surplus. See WYO. STAT. ANN. § 21-15-109(c)(i)(A) (2007). Finally, general rules of statutory construction mandate that the requirements for reporting preschool rental income as per WYO. STAT. ANN. § 21-15-109(c)(i)(A) (2007), the more specific rule, must prevail over the more general rule of WYO. STAT. ANN. § 21-13-310(a)(xv) (2007).

If you have any further questions or concerns, please do not hesitate to contact this Office.

Sincerely,



Bruce A. Salzburg
Attorney General



Robin Sessions Cooley
Deputy Attorney General



John S. Shumway
Assistant Attorney General