



August 3, 2020

VIA FEDERAL EXPRESS & E-MAIL

Dr. Shane McCord, Ed.D.
Superintendent
Gilbert Public Schools
140 South Gilbert Road
Gilbert, AZ 85296

J. Charles Santa Cruz, Ed.D., President
Lori Wood, Clerk
Reed Carr, Member
Jill Humpherys, Member
Sheila Rogers Uggetti, Member
GPS Governing Board
Gilbert Public Schools
140 South Gilbert Road
Gilbert, AZ 85296

Email: board@gilbertschools.net

Re: Charging Parents for Access to Public School Facilities

Dear Superintendent McCord and Members of the GPS Governing Board:

The American Center for Law & Justice (“ACLJ”) has become aware of the Gilbert Public Schools (GPS) announcement of “GPS Childcare” on nine elementary campuses for Kindergarten - 8th Grade students, set to operate from August 5 to August 17, 2020. We represent [REDACTED] and [REDACTED] in this matter. Each of them has a child who is eligible for, and needs to, attend the GPS Childcare program to engage in GPS’s online learning.

The purpose of this letter is to bring these matters to the attention of the school district so that you may take the necessary steps to ensure that all schools within your school district providing “GPS childcare” at school facilities during the time that school would normally have been in operation, and while online learning is available, do so free of charge, consistent with Arizona constitutional and statutory law.

By way of introduction, the ACLJ is an organization dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys have argued before the Supreme Court of the United States in a number of significant cases involving the freedoms of speech and religion.¹

Statement of Facts

According to its website: GPS is “a district of educational choice,” and “serve[s] over 33,000 students at 40 schools across Gilbert, Chandler, and Mesa, Arizona.” GPS schools consist of “27 elementary schools, five junior high schools, six high schools, one online learning academy and one alternative high school.”²

According to the information we have obtained from public sources, GPS plans to provide “childcare” at nine of its school campuses, available for Kindergarten through Eighth Grade students. GPS provided these details on its website:

Start Date: August 5th, 2020 (offered until all students are able to return in person)

Locations: Ashland Ranch, Canyon Rim, Carol Rae, Finley Farms, Mesquite El, Playa Del Rey, Sonoma Ranch, Spectrum, Superstition Springs

Hours: 6:30 am - 6:00 pm

Cost: Full time - \$160 per week, M/W/F - \$105 per week, T/Th - \$70 per week - Monthly selection and billing

Class Size/Student Grouping: 10 consistent students assigned to each classroom (families may request friends/family members for same classroom)

Curriculum: Daily activities including active games, arts/crafts, gaming, etc. along with structured times for online coursework completion and support.

Parents will need to select one of the three schedules and maintain this schedule through the entire time this program will be running. Parents will be billed monthly with the due date being the 1st of the month. If payment is not received by the due date, the account will be assessed a \$25 late fee. Parents have the option to enter a debit/credit card and authorize an Auto-Payment.

¹ See, e.g., *Pleasant Grove City v. Summum*, 555 U.S. 460 (2009) (unanimously holding that a monument erected and maintained by the government on its own property constitutes government speech and does not create a right for private individuals to demand that the government erect other monuments); *McConnell v. FEC*, 540 U.S. 93 (2003) (unanimously holding that minors enjoy the protection of the First Amendment); *Lamb’s Chapel v. Center Moriches Sch. Dist.*, 508 U.S. 384 (1993) (unanimously holding that denying a church access to public school premises to show a film series on parenting violated the First Amendment); *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990) (holding by an 8-1 vote that allowing a student Bible club to meet on a public school’s campus did not violate the Establishment Clause); *Bd. of Airport Comm’rs v. Jews for Jesus*, 482 U.S. 569 (1987) (unanimously striking down a public airport’s ban on First Amendment activities).

² Gilbert Public Schools, Office of the Superintendent, <https://www.gilbertschools.net/Page/766>.

GPS School District Employees receive a 25% discount on cost of the program. Employment verification required.³

According to its website:

Beginning the School Year Online August 5th - August 17th

Following Governor Ducey's Executive Order (06/29/20) announcing that school cannot start in-person until August 17, 2020 but can begin online on the original start date, Gilbert Public Schools Governing Board approved to start school on the original date of August 5, 2020, online, transitioning students to our campuses August 17, 2020.

For those students that select GPS Global Academy (full-time online) for their return to school learning model, school will begin August 5th online using GPS Global Academy.

For students that select Flex or In-person On Campus for their return to school learning models school will begin August 5th online and on August 17th these students will transition back to our campuses and their chosen learning model. During the eight days of online learning, students will be working with their classroom teacher(s) and classmates. Online learning will be interactive and led by their GPS teacher. It will not be the same as remote learning delivered at the end of the last school year.⁴

Normal school hours for GPS elementary schools are 8:10 am to 2:55 pm on Mondays, Tuesdays, Thursdays, and Fridays, and 8:10 am to 1:55 pm on Wednesdays.⁵

Normal school hours for GPS junior high schools are 8:40 am to 3:30 pm on Mondays, Tuesdays, Thursdays, and Fridays, and 8:40 am to 2:30 pm on Wednesdays.⁶

According to the GPS website, the GPS Childcare program will be provided 6:30 am to 6:00 pm. Therefore, GPS Childcare will be providing approximately five hours of classroom access in addition to the approximately seven hours of classroom access comprising a normal school day.

As we understand it, GPS schools will begin on August 5, 2020, and transition to on-campus learning on August 17, 2020. Parents willing and able to pay an extra amount may have their children present in a GPS classroom starting August 5, 2020, which is the date school was set to begin in normal course, to participate in "online learning," where the "students will be working with their classroom teacher(s) and classmates," with a "curriculum" and "online coursework completion and support."

³ Gilbert Public Schools, GPS Childcare, <https://gilbertschools.ce.eleyo.com/child-care/7/gps-child-care>.

⁴ Gilbert Public Schools, You Choose How You Return - In-person, Online, & Flex Options, <https://www.gilbertschools.net/Page/1994>.

⁵ Gilbert Public Schools, Bell Schedules, <https://www.gilbertschools.net/Page/217>.

⁶ *Id.*

Whatever the intentions of GPS in offering this fee-based classroom access, the net result is that parents must pay as much as \$160/week for their child to have access to a classroom on a public school campus for learning, during a time (from August 5 to at least August 17) that school access would have been provided, but is not, due to public safety concerns.

Statement of Law

According to the Arizona Supreme Court, “**instruction in high as well as in common schools shall be absolutely free.**” *In re Arizona Southwest Bank’s Estate*, 41 Ariz. 507, 511 (1933). In a different case, the Arizona Supreme Court reaffirmed that education shall be free: “A school financing system which meets the educational mandates of our constitution, *i.e.*, uniform, **free, available to all persons aged six to twenty-one**, and open a minimum of six months per year, need otherwise be only rational, reasonable and neither discriminatory nor capricious.” *Shofstall v. Hollins*, 515 P.2d 590, 592 (1973). On its face, the classroom-for-a-fee system at issue here is not free.

In 1996, the Arizona Supreme Court again reaffirmed the right to a free education: “**Arizona’s children have the right to receive a free, public, basic education through high school.**” *Roosevelt Elementary Sch. Dist. No. 66 v. Bishop*, 179 Ariz. 233, 244 (1994) (citing *Shofstall*, 110 Ariz. at 90, 515 P.2d at 592).

From the foregoing, it appears that GPS’s action to require payment for the provision of classroom access on school premises during school hours, under any title or categorization, to our clients’ children is ultra vires and unlawful, and violates the Arizona Constitution. Specifically, this action violates Sections 6, 8, 9, and 10 of Article 11 of the Arizona Constitution in that it reflects an attempt to charge tuition and provide an education which is not free, and which is funded by moneys not generated by taxation.

Arizona statutes allow for tuition charges in certain circumstances not applicable here.⁷ But for our clients, who are residents of the Gilbert school district, the ACLJ finds no statutory basis for the conditioning of any classroom access on school premises to our clients’ children upon the charging or receipt of tuition or fees. It is well established that: “school districts are legislative creations having only such powers as are granted to them by the legislature.” *Tucson Unified Sch. Dist. v. Tucson Educ. Ass’n*, 155 Ariz. 441, 442-43 (Ct. of Ap. 1987) (citing *Oracle School District No. 2 v. Mammoth High School District No. 88*, 130 Ariz. 41, 633 P.2d 450 (App.1981)). Further, “[s]chool boards must exercise their authority in the mode and within the limits permitted by statute.” *Tucson Unified Sch. Dist.*, 155 Ariz. 441, 442-43 (citing *School District No. 69 of Maricopa County v. Altherr*, 10 Ariz. App. 333, 458 P.2d 537 (1969)).

⁷ As an example, Arizona statutes allow tuition to be charged to children of nonresidents of Arizona. A.R.S. § 15-823 (“Except as provided in subsections B, C, D, E, F, G and H of this section, children of nonresidents of this state may be admitted on payment of a reasonable tuition fixed by the governing board.”).

Arizona statutes provide:

- A. A school district governing board or charter school governing body that authorizes the assessment of fees pursuant to this title shall ensure that all fees contain a provision that allows the fees to be waived in the event of economic hardship to the pupil.
- B. The nonpayment of fees charged by a public school may not prevent a pupil from enrolling in, applying to or remaining enrolled in a public school.

A.R.S. § 15-116.

Application and Conclusions

The ACLJ recognizes the unique circumstances and challenges presented by the COVID-19 pandemic, and appreciates GPS's efforts to develop workable solutions with parents in this extraordinarily difficult time. While the ACLJ recognizes that the Arizona Constitution, caselaw and statutes may not have been applied to case quite like the present one, it is clear that "absolutely free" classroom access on public school premises is the starting point for any sound analysis. The ACLJ also recognizes that the GPS Childcare program at issue here is described as childcare, and not school in a conventional sense. Regardless, the impact experienced by our clients – parents of GPS students – is that they must pay up to \$160/week for their children to access GPS classrooms during school hours. The fee imposed for GPS Childcare causes an economic hardship on our clients. The working definitions of "economic hardship" during ordinary times, so as to qualify for a fee waiver as contemplated by A.R.S. § 15-116(b), should be adjusted to allow our clients to receive GPS Childcare. It is our hope that GPS will engage with us to help these parents, and ultimately, their children, receive the classroom access they need, and that is contemplated by Arizona law.

On behalf of our clients, the ACLJ urges GPS to provide GPS Childcare classroom/school facilities access to their children from August 5, 2020, to whenever on-campus learning resumes, free of charge. If GPS insists that a fee will nevertheless be charged, the ACLJ urges that GPS reduce the fee to reflect only the classroom access before and after normal school hours.

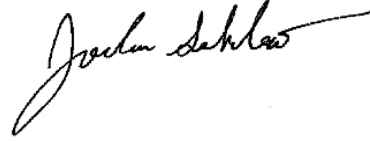
In the event GPS declines to provide classroom access on school premises free of charge, please provide an explanation as to the statutory basis relied upon by GPS to charge a fee for classroom access on school premises during normal school hours; and a justification for any decision declining to waive a fee.

Given the constitutional rights involved and the urgent nature of this matter, in our previous correspondence to Superintendent McCord, **we requested assurances on or before Monday, August 3, 2020**, that GPS will take the necessary steps to ensure that our clients' children, and all GPS students from Kindergarten through Eighth Grade, will have classroom access beginning August 5, 2020, free of charge; or, alternatively, for a reduced fee reflecting only the classroom access before and after normal school hours.

We also request your assurances that our clients' families will not experience retaliation by any GPS school or staff as a result of the concerns and requests they have raised.

We look forward to working with you to resolve this matter. If you'd like discuss by telephone, you can reach us at [REDACTED].

Respectfully,



Jordan Sekulow
Executive Director

CC: Peter Gentala, Esq., [REDACTED] [REDACTED] [REDACTED], Local Counsel for the ACLJ