



INSTITUTE FOR JUSTICE
ARIZONA

September 25, 2026

Via Pinal County Citizen Portal

Pinal County Board of Adjustment

**Re: BA-045-26 Interpretation of Ordinance: “School” in Section 2.40.010(C)
State 48 Arts and Academics and Karli Kemper, Applicants.**

Members of the Pinal County Board of Adjustment,

The Institute for Justice (IJ) now represents State 48 Arts and Academics (State 48) and Karli Kemper with regard to their application for an interpretation of the term “school” in Section 2.40.010(C). IJ was founded 35 years ago as a public interest, civil liberties law firm that protects the rights of, among others, property owners, parents, and educators across the nation. For 25 of those years, we have had an office here in Arizona.

Ms. Kemper submitted her request on August 14, 2026. On September 4, 2026, Planning Supervisor Sangeeta Deokar requested that Ms. Kemper resubmit the request, which Ms. Kemper did on that same day. That application was on the form created by the County and contained the information requested by that form.

On September 8, 2026, Planning Technician Alec Silva requested that Ms. Kemper “provide a statement of the interpretation proposed.” This letter provides that statement of the interpretation proposed, as well as supplements the remainder of the information in the application as required by Pinal County Development Services Code (PCDSC) § 2.155.060(C)(2).

The specific word, phrase, term, section or provision requiring interpretation here is the word “school” in PCDSC § 2.40.010(C), governing permitted “Public and quasi-public uses” in a General Rural (GR) Zone.

The disputed interpretation is whether “school” is limited to “public schools,” as claimed by officials in the Planning Department, or includes both public and private schools, including State 48, as Ms. Kemper and State 48 believe. Because State 48 is a “school, private” as defined by PCDSC § 2.10.010, those officials have told Ms. Kemper that State 48 is not legal to operate in its current location in a GR zone and cannot be made legal without receiving a Special Use Permit, with numerous conditions, pursuant to PCDSC § 2.151.010(A)(1)(o).

The interpretation proposed by Ms. Kemper and State 48 is that “school” in PCDSC § 2.40.010(C) means both public and private schools, such that State 48 may legally operate as a “school” in a GR zone.

Supporting authority and additional information supplementing the application form follows.

Background

State 48 (<https://state48arts.org/>) is a non-profit private micro school operated by Ms. Kemper, now in its third year. It offers a unique arts-and-academics-based curriculum, in a rural, home-based environment. Its small enrollment and small-class educational setting allow a more personalized educational experience for students. State 48 primarily serves students with special educational needs who participate in Arizona's Empowerment Scholarship Accounts (ESA) program, *see* A.R.S. §§ 15-2401, *et seq.*, including Ms. Kemper's own children. Participation in the ESA satisfies the compulsory education law in Arizona, the same as attendance at a public school, private school, charter school, or homeschool. *Id.* § 15-802(A).

State 48 is located in a General Rural (GR) Zone in unincorporated Pinal County. Permitted uses in the zone include, in relevant part:

Public and quasi-public uses: church, club, museum, library, community service agency, clinic, public park, school, college, playground, athletic field, public or private utility and facilities, governmental structure; athletic, sport or recreation club; and hospital or sanatorium; such buildings shall be located at least 50 feet from any boundary line of the site.

PCDSC § 2.40.010(C).

Although PCDSC § 2.40.010(C) plainly includes a "school" as a permitted use in a GR Zone, the Planning Department has determined that "school" includes only "public" schools. The Planning Department has further determined that State 48 is a private school and therefore is not a permitted use.

As explained in Ms. Kemper's application, and as further explained below, the Planning Department's interpretation of PCDSC § 2.40.010(C) is wrong. The correct interpretation of "school" includes both public and private schools, which means that State 48 is a permitted use under the Code.

Guiding Principles of the PCDSC

We begin with the PCDSC's own "principles and rules." "All terms used" in the PCDSC "shall be interpreted according to their common, plain, natural and accepted usage when not otherwise defined herein." PCDSC § 2.05.030(B). Moreover, interpretations of the code should be the ones that are "most reasonable." PCDSC § 2.05.030(C).

Interpreting “school” to include private schools is most consistent with the “common, plain, natural and accepted usage” of the term and with PCDSC’s own definitions.

The “common, plain, natural and accepted usage” of the term “school” includes both public and private schools. Moreover, although the PCDSC does not directly include a definition of “school,” its school-related definitions and other PCDSC provisions demonstrate that “school” includes both public and private schools.

The common understanding of the term “school” is a place where children receive educational instruction. Dictionaries, which demonstrate ordinary meaning, *see In re Drummond*, 257 Ariz. 15, 18 ¶ 7 (2024) (courts “may look to dictionary definitions” for ordinary meaning), define “school” as: “an organization that provides instruction: such as an institution for the teaching of children,” *School*, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/school> (last visited Sept. 25, 2026); “a place where children go to be educated,” *School*, Cambridge Dictionary, <https://dictionary.cambridge.org/us/dictionary/english/school> (last visited Sept. 25, 2026); “an institution where instruction is given, especially to persons under college age.” *School*, Dictionary.com, <https://www.dictionary.com/browse/school> (last visited Sept. 25, 2026); and “[a]n institution of learning and education, esp. for children.” *School*, Black’s Law Dictionary (11th ed. 2024)

Nothing in this common understanding limits “school” to exclusively public or publicly-funded institutions. Otherwise, there would be no need to label schools “public” or “private.” The Planning Department’s definition would make “public school” redundant and “private school” nonsensical. The commonly accepted, natural understanding that “school” means a place where children go to learn supports Ms. Kemper’s proposed interpretation and undermines the interpretation given by the Planning Department.

The PCDSC’s own definitions confirm this common understanding of the term school. School is not a specifically defined term in the PCDSC, but there are three school-related definitions demonstrating that “school” includes private schools in Section 2.10.010:

School, private, means any building or group of buildings, the use of which meets state requirements for education and which does not secure any major part of its funding from a governmental agency.

School, public, means an institution of learning belonging to the public and established and conducted under public authority; and pursuant to A.R.S. § 15-189.01, also includes charter schools for purposes of zoning.

School, nursery, means an institution intended primarily for the daytime care of children of preschool age. Even though some instruction may be offered in connection with such care, the institution shall not be considered a school within the meaning of this title.

By distinguishing between a “school, private” and a “school, public,” these definitions confirm that “school” without further qualification includes both private and public schools. Moreover, the fact that the definitions expressly provide that only “school, nursery” is not “considered a school within the meaning of” the PCDSC demonstrates that “school, private” is a school within the meaning of the PCDSC.

**Interpreting “school” to include private schools is
most consistent with PCDSC’s regulation of “schools”**

Interpreting “school” in PCDSC § 2.40.010 to exclude private schools would also create conflicts with the County’s specific zoning regulations of “schools” in PCDSC § 2.150.280.

First, the title of Section 2.150.280 says it regulates “schools.” And it contains regulations expressly for public, private, and charter schools.¹ This again indicates that a “private school” is just a subgroup within “school,” and that “school” is not limited to “public schools.” If “schools” meant only “public schools,” then there would be no regulations for “private schools” in PCDSC § 2.150.280.

Second and relatedly, PCDSC § 2.150.280 demonstrates that when the PCDSC means to distinguish between public and private schools, it does so expressly. Section 2.150.280 distinguishes between “public schools” and “private schools” by using different terms (public and private) to modify the term “school.” Accordingly, the absence of those modifying terms in conjunction with “school” indicates that “school” does not distinguish between public and private schools.

Third, if “school” in PCDSC § 2.40.010(C) includes only public schools as claimed by the Planning Department, then PCDSC § 2.150.280(A) (allowing “public schools” in *all* zoning districts) reduces Section 2.40.010(C) to “mere surplusage.” Statutory interpretation should give meaning to every term used and avoid rendering terms mere surplusage. *Welch v. Cochise Cnty. Bd. of Supervisors*, 251 Ariz. 519, 524 ¶ 15 (2021). Section 2.150.280(A) already makes “public schools” legal in the GR Zone. Therefore, saying that the term “school” in PCDSC § 2.40.010(C) allows only public schools in the GR Zone makes the term “school” duplicative and therefore surplusage. But if “school” in PCDSC § 2.40.010(C) allows all kinds of “schools,” then it is no longer duplicative of PCDSC § 2.150.280(A), and therefore has independent meaning and is not mere surplusage.

Accordingly, interpreting “school” in PCDSC § 2.40.010(C) to include private schools would prevent conflicts with PCDSC § 2.150.280 and would ensure that PCDSC § 2.40.010(C) maintains its independent meaning.

¹ It is not relevant to the Board’s interpretation here, nor within the Board’s interpretative power to address, but the private school regulations in PCDSC § 2.150.280(B) have been preempted by state law. As of 2018, A.R.S. § 11-820.01 prohibits any county from “adopt[ing] or enforc[ing] a land use regulation that requires the property on which a nongovernmental primary or secondary school operates to be larger than one acre.” State 48 is a nongovernmental primary or secondary school located on a parcel of more than one acre, so A.R.S. § 11-820.01 applies to preempt PCDSC § 2.150.280(B).

**Interpreting “school” to include private schools is most consistent
with PCDSC’s allowance of schools in other zones**

Interpreting “school” in PCDSC § 2.40.010(C) to exclude private schools would also create inconsistencies with the zoning in other districts.

The GR zone is a rural zoning district, PCDSC § 2.15.030, and all other rural zoning districts that allow schools allow both public and private schools. The Suburban Ranch (SR) zone allows a “public or parochial school” as a permitted use. PCDSC § 2.20.010(D). So does the Suburban Homestead (SH) zone. PCDSC § 2.30.010(A) (allowing “[a]ny use permitted in the SR zone). Parochial schools are definitionally private schools.² It would, therefore, be inconsistent to not allow private schools in the GR zone when they are allowed in other rural zoning districts.

Similarly, all residential districts that allow schools allow both public and private schools:

- CR-1A Single Residence zoning allows “public or parochial school” as a permitted use. PCDSC § 2.55.010(B).
- CR-1 Single Residence zoning allows “public or parochial school” as a permitted use. PCDSC § 2.60.010(B).
- CR-2 Single Residence zoning allows “[a]ny use permitted in the CR-1 zone.” PCDSC § 2.65.010.
- CR-3 Single Residence zoning allows “public or parochial school” as a permitted use. PCDSC § 2.70.010(B).
- CR-4 Multiple Residence zoning allows “[a]ny use permitted in the CR-3 zone.” PCDSC § 2.75.010(A).
- CR-5 Multiple Residence zoning allows “[a]ny use permitted in the CR-3, CR-4 zone.” PCDSC § 2.80.010(A).

Thus, as with rural zoning, it would be inconsistent with Pinal County’s residential zoning to not allow private schools in the GR zone.

In addition, every one of these regulations uses the term “public school” to refer to public schools. As with Section 2.150.280, when the PCDSC means to distinguish between public and private schools, it does so expressly. Moreover, if “school” meant only “public school,” then each of these provisions would read “school or parochial school,” rather than “public or parochial

² A plain reading of “parochial school” might exclude private *secular* schools. But such an interpretation—allowing private religious schools while prohibiting private secular schools—would, among other problems, be unconstitutional under the Establishment Clause of the First Amendment and the doctrine of religious neutrality. The government may neither favor nor disfavor private religious schools compared to private secular schools. Nor, for purposes of zoning, may the government treat public and private schools (secular or religious) differently just because they are public, private, religious, or secular.

school.” And, if the Planning Department’s interpretation of “school”—*i.e.*, that “school” equals “public school”—were correct, then each of these provisions effectively reads “public or parochial public school,” which makes no sense.

At the end of the day, it would make no sense that private schools are not a permitted use in the GR zone, but are a permitted use in every other rural and residential zone where schools are a permitted use. Therefore, interpreting “school” to mean only “public school” in PCDSC § 2.40.010(C) would not be the “most reasonable” one.

**Interpreting “school” to include private schools is most consistent
with other permitted uses in the GR zone.**

Interpreting “school” in PCDSC § 2.40.010(C) to exclude private schools would also create inconsistencies with the remainder of PCDSC § 2.40.010(C). The principal difference between a “school, public” and a “school, private” as defined by PCDSC § 2.10.010 is its source of funding: the government or not the government. Section 2.40.010(C) allows “public and quasi-public uses.” While those terms are not defined in PCDSC, the uses listed in Section 2.40.010(C) include both government-funded uses and privately funded uses. Some can be either government or privately funded, including clubs; museums; libraries; clinics; playgrounds; colleges; athletic, sport or recreation clubs; and hospitals or sanatoriums. Some are expressly privately funded, including private utilities and facilities. And one is a use that constitutionally *cannot* be government funded: churches. In short, “government funding” has nothing to do with being a public or quasi-public use. As above, it therefore makes no sense to interpret “school” here as limited to government funded “public” schools.” “School” in PCDSC § 2.40.010(C) includes privately funded “private” schools as well.

Equal treatment of schools

We recognize that this Board cannot determine PCDSC § 2.40.010(C)’s constitutionality, but it should interpret the zoning code in a manner consistent with both the Arizona and federal Constitutions. *See Greyhound Parks of Ariz., Inc. v. Waitman*, 105 Ariz. 374, 377 (1970) (“Where different interpretations of an ambiguous provision in the statute are possible, a construction should be adopted which avoids constitutional doubts.”). Interpreting “school” in PCDSC § 2.40.010(C) to include only public or charter schools raises serious constitutional concerns under both the federal and Arizona Constitutions. The Board should therefore interpret “school” to include State 48 and other private schools to avoid violating State 48 and Ms. Kemper’s constitutional rights, as well as the rights of the parents whose children State 48 educates.

Both the due process and equal privileges or immunities clauses of the Arizona Constitution protect property rights against zoning laws. Zoning laws must have a “substantial relation to the public health, safety, morals or general welfare” in their application, and cannot be unreasonable, arbitrary, discriminatory, or oppressive. *City of Tucson v. Ariz. Mortuary*, 34 Ariz. 495, 507-08 (1928). And the government is required “to justify legal classifications that subject individuals to adverse treatment.” *Matthews v. Indus. Comm’n*, 254 Ariz. 157, 167 ¶ 50 (2022) (citing *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439 (1985)). In the zoning

context, this means differential treatment is unjustified where there are not different threats to legitimate zoning interests. *Cleburne*, 473 U.S. at 448.

The Planning Department's interpretation of "school" runs afoul of these constitutional protections for property rights. Barring private schools from operating as "schools" in the GR zone while permitting public and charter schools—as well as uses like museums, libraries, colleges, parks, sports or recreation clubs—is unreasonable, arbitrary, and discriminatory. Small private schools do not pose more noise, traffic, or safety concerns than the other uses permitted as of right in the GR zone. Pinal County therefore has no legitimate reason to prohibit only private education providers in the GR Zone.

Interpreting "school" to exclude private schools like State 48 would also run afoul of the U.S. Constitution. Parents and education providers have federal due process rights to direct their children's education and to provide private educational options, as State 48 is doing. *See Farrington v. Tokushige*, 273 U.S. 284, 298-99 (1927); *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534-35 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923). Parents, like Ms. Kemper, have a fundamental constitutional right to choose private educational options for their children, and microschools like State 48 and the education entrepreneurs that run them, like Ms. Kemper, have a concomitant constitutional right to provide those options. The Fourteenth Amendment's Due Process Clause "provides heightened protection against government interference with certain fundamental rights." *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997). Pinal County does not have a rational basis for discriminating against parents who choose private education for their children and the private educators they engage to provide it, much less a rationale that would survive heightened scrutiny. To avoid violating their federal constitutional rights, the Board should decide that "school" means "school."

We look forward to participating in the Board's hearing on this matter. In the meantime, please contact me directly if I can assist in your consideration of this matter.

Sincerely,



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