



Legislative and Judicial Update

NMSBA School Law Conference
June 5-6, 2009

John F. Kennedy
Cuddy & McCarthy, LLP



LEGISLATIVE UPDATE

- I. WHAT DID NOT PASS?
 - HB 331 - Funding Formula Reform
 - NMSBA joins NMCSA in RFP for legal counsel to explore litigation
 - Unit value reduced \$20/unit
 - HB 373 - To restore authority of school boards to hire district-wide administrators
 - HB 646 – School Board candidate contribution information filing with Secretary of State under Campaign Reporting Act



LEGISLATIVE UPDATE

- I. WHAT DID NOT PASS? (Continued)
 - HB 550 – Local Board compliance with Governmental Conduct Act
 - HB 436 – Remove Local Boards from termination/discharge hearing process
 - SJR 11 – Hold school elections at General Election



LEGISLATIVE UPDATE

- II. WHAT PASSED?
 - A. Legislation Affecting The Board
 - HB 321 – Requires timely completion of annual audit and sanctions for failure to comply (CEC will discuss in next session)
 - SB 212 – Expands nepotism definition to add heads of charter schools and charter school governing bodies – includes sisters, brothers and in-laws to prohibited relationships



LEGISLATIVE UPDATE

- II. WHAT PASSED? (Continued)
 - A. Legislation Affecting School Boards (Continued)
 - HB 466 Amends Public School Lease Purchase Act to prohibit issuing G.O. Bonds for projects on property acquired by lease purchase
 - HB 928 – Creates Qualified School Construction Bonds
 - HB 485 – School bus liens must be filed to secure repayment of money owed on contractor owned buses



LEGISLATIVE UPDATE

- II. WHAT PASSED? (Continued)
 - A. Legislation Affecting School Boards (Continued)
 - SB 226 – Liability coverage through NMPSIA for actions of volunteers and private use of school facilities



LEGISLATIVE UPDATE

- II. WHAT PASSED? (Continued)
 - B. Legislation Affecting the School Program
 - HB 333 – 5 year high school graduation
 - HB 432 – School Athletics Equity Act – to ensure gender equity (Break-out Session VII)
 - HB 691 – Public school year and length of school day requirements. (180 full instructional days, 150 for 4-day week districts) (Effective 2010-2011)



LEGISLATIVE UPDATE

- II. WHAT PASSED? (Continued)
 - B. Legislation Affecting School Programs (Continued)
 - SB 464 – Restricts release of student information to post secondary recruiters
 - S 189 – Amends compulsory attendance law to establish consistency in enforcement and reporting of unexcused absences and truancy



JUDICIAL UPDATE

- I. State Courts
 - A. Scanlon v Las Cruces Public Schools, 2007 NMCA 150, 143 NM 48 (2007)
 - Due Process does not entitle a student to cross-examine students who provided information to Assistant Principal as to student's marijuana use on campus.
 - "Exclusionary Rule" does not apply in student disciplinary proceedings.
 - Need for a "trial-type" hearing for student discipline is outweighed by burden that such hearings would impose on school authorities.



JUDICIAL UPDATE

- I. State Courts
 - B. City of Farmington v The Daily Times et al., NM Court of Appeals Docket No. 27,858 (May 7, 2009)
 - Under IPRA, Local Public Bodies must disclose names and applications of all applicants for “high profile public positions.”
 - Public Policy / “Rule of Reason” exception to IRPA still applies but not sufficient to deny disclosure here.



JUDICIAL UPDATE

- I. State Courts

- B. City of Farmington v The Daily Times et al., NM Court of Appeals Docket No. 27,858 (May 7, 2009), Continued
 - "...[W]hen, as here, the application is for a high-ranking public position, the public's interest in disclosure outweighs the City's concern that fewer people will apply, and thus, disclosure is required.
 - FOLLOW-UP ACTION SUGGESTED:
Include on application form a disclaimer that the applicant's name and application may be publicly disclosed upon an IPRA request.



JUDICIAL UPDATE

- II. Federal Courts

- A. Strip Search Challenge Presented to U.S. Supreme Court. Safford Unified School Dist. No. 1 v. Redding (Argued April 21, 2009).



JUDICIAL UPDATE

- II. Federal Courts
 - B. Supreme Courts Reinforces Right to Bring Title VII Retaliation Claims
Crawford v Metropolitan Govt of Nashville...Decided 9-0, January 26, 2009. (Andrew Sanchez will cover in break-out session.)



JUDICIAL UPDATE

- II. Federal Courts

- C. Supreme Courts Upholds Mandatory Arbitration Clauses in CBA.

14 Penn Plaza LLC v Pyett...Decided 5-4 April 1, 2009 (Will be discussed in Collective Bargaining break-out session.)



Contact Information

John F. Kennedy
Cuddy & McCarthy, LLP
P.O. Box 4160
1701 Old Pecos Trail
Santa Fe, NM 87502
505-988-4476
866-679-4476

jkennedy@cuddymccarthy.com