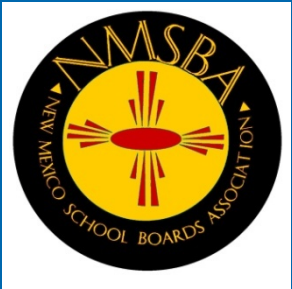


Legislative and Judicial Update



32nd Annual NMSBA
SCHOOL LAW CONFERENCE
June 9-11, 2011

John F. Kennedy
Cuddy & McCarthy, LLP



Legislative and Judicial Update

2011 Legislature:

Bills Passed and Signed by the Governor:

□ HB172 – PROHIBITS CORPORAL PUNISHMENT

“Corporal punishment shall be prohibited by each local school board and each governing body of a charter school.”

- 1) This prohibition is inserted into NMSA 1978 Section 22-5.4.3 which addresses the requirements for adoption of school discipline policies (and requires):

Legislative and Judicial Update

2011 Legislature:

Bills Passed and Signed by the Governor:

- HB172 – PROHIBITS CORPORAL PUNISHMENT (Continued).
 - 2) Input from parents, students and school personnel;
 - 3) A public hearing and school board adoption; and,
 - 4) Filing with PED.

[Copy of bill on CD for Student Discipline Breakout]

Legislative and Judicial Update

2011 Legislature:

Bills Passed and Signed by the Governor:

□ HB78 – BULLYING PREVENTION PROGRAMS

- PED shall establish guidelines for bullying prevention policies.
- By August 2011 – Local Board must adopt a bullying prevention policy.
- By August 2012 – Every Public School must implement a bullying prevention policy.

[Copy of bill on CD for Student Discipline Breakout]

Legislative and Judicial Update

2011 Legislature:

Bills Passed and Signed by the Governor:

- HB52 –INSPECTION OF PUBLIC RECORDS IN ELECTRONIC FORMAT
 - Amends the Inspection of Public Records Act (Section 14-2-9B) to require the Custodian of Records to provide copies of public records in electronic format if:
 - The record is available electronically
 - An electronic copy is specifically requested
 - Duty to provide the electronic record relates only to the file format which exists at time of request; and
 - Exempt (nonpublic) information may be removed (along with corresponding metadata) prior to disclosure.
- [Copy of bill on CD for Public Records Breakout]

Legislative and Judicial Update

2011 Legislature:

Bills Passed and Signed by the Governor:

- HB432 –GOVERNMENTAL CONDUCT ACT AMENDMENTS
 - Expands the ethical requirements of the Governmental Conduct Act to local government officials, including school board members.
 - Restricts ability to contract with an entity represented by a former school employee or board member (employed or serving within the previous year) as to contracts exceeding One Thousand Dollars (\$1,000) if the contract which resulted from an official act of the former employee or board member.

Legislative and Judicial Update

2011 Legislature:

Bills Passed and Signed by the Governor:

- HB432 –GOVERNMENTAL CONDUCT ACT AMENDMENTS (Continued)
 - Requires written disclosure of all employment other than employment or service to the school district.
 - Limits conflicts of interest in a variety of circumstances (**Attend breakout session on this issue for more details**).
 - **Law takes effect July 1, 2011.**
 - [Copy of bill on CD for Governmental Conduct Breakout]

Legislative and Judicial Update

Court Decisions:

- Arizona Christian School Tuition Org. v. Winn, U.S. Supreme Court No. 09-987, Decided April 4, 2011.
 - Supreme Court upheld Arizona law granting tax credits for contributions to school tuition organizations, which use the contributions to fund scholarships for students attending private schools, including religious schools.
 - Taxpayers sued claiming the tax credit system violates the Establishment Clause. (85% of scholarship money available only for use at religious schools.)

Legislative and Judicial Update

Court Decisions:

- Arizona Christian School Tuition Org. v. Winn, U.S. Supreme Court No. 09-987, Decided April 4, 2011 (Continued)
 - By 5-4 decision, Supreme Court holds that tax-payers lack “standing” to challenge the law, because it relates not to a governmental expenditure, but rather to an individual tax credit.
 - We anticipate the effort to create such tax credit structures will spread to other states.

Legislative and Judicial Update

Court Decisions:

- City of Ontario, Calif. V. Quon, U.S. Supreme Court No. 08-1332, decided June 17, 2010.
 - City issued pagers to police officers which they may use to send text messages. No policy on pagers, but computer/internet/email policy limited use to city business, with no expectation of privacy. Pagers later audited to assess costs of personal use by officers, and Officer Quon was found to have sent sexually explicit messages.
 - 9th Circuit Court of Appeals found violation of 4th Amendment – unreasonable search.

Legislative and Judicial Update

Court Decisions:

- City of Ontario, Calif. V. Quon, U.S. Supreme Court No. 08-1332, decided June 17, 2010 (Continued).
 - U.S. Supreme Court reversed and concluded that warrantless searches of messages sent by City employee using pager supplied by City for official business was reasonable and did not violate employee's 4th Amendment rights.

Legislative and Judicial Update

Court Decisions:

- ❑ State of New Mexico v. Antonio T., N.M. Court of Appeals No. 30,827.
 - ❑ Student at Kirkland Central High School was suspected of being under the influence of alcohol at lunchtime. Student admitted drinking to Vice Principal.
 - ❑ Student brought to office and SRO administered breath test. Vice Principal interviewed the student and searched the student's backpack and found a knife with a 3.5 inch blade, prior to SRO entering the office.

Legislative and Judicial Update

Court Decisions:

- ❑ State of New Mexico v. Antonio T., N.M. Court of Appeals No. 30,827 (Continued).
 - ❑ Breath test produced positive result.
 - ❑ Student admitted drinking at school and disposed of bottle in school trashcan. Bottle not found.
 - ❑ Student administered Miranda rights and arrested after knife found and positive breath test. Juvenile Court petition filed only as to minor in possession of alcohol.

Legislative and Judicial Update

Court Decisions:

- State of New Mexico v. Antonio T., N.M. Court of Appeals No. 30,827 (Continued).
 - N.M. Court of Appeals after initially proposed to reverse District Judge's refusal to suppress evidence obtained prior to Miranda rights, has placed case on its general calendar. NMSBA and NMCSA have agreed to file an amicus brief to support Attorney General's position that school disciplinary investigations do not require that students receive Miranda warnings.
 - **(Attend Breakout Session on Police and SRO's on School Property To Learn More.)**

Legislative and Judicial Update

Open Meetings Act Complaint Resolved in School Board's Favor

- Farmington Daily Times filed OMA complaint when 4 members of Central Consolidated School Board attended an NSBA Conference in Phoenix in October 2010.
- In informal opinion issued letter issued in January 2011, AG's office confirmed that Board members sitting in the audience listening to presentation on national educational issues are not performing the tasks of formulating policy, discussing public business and taking action within the Board's authority, contemplated by the OMA.
- [Copy of letters on CD]

Contact Information

Thank You!

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