

Arizona School Law Review, 2nd Edition

By:
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CONNECTIONS

Rice University, Houston, Texas

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Chapter 1

Arizona School Law Review: Introduction¹

1.1 Arizona School Law Review: Introduction

The major portions of state school law are found in Arizona Revised Statutes (A.R.S.) Title 15, Arizona State Board of Education Administrative Rules, and certain other A.R.S. titles and rules which contain mandates for education and the operation of school districts. These laws contain both mandatory and permissive provisions for school districts. In order for school administrators to be in compliance with the law, they must meet all the mandatory provisions of the law that apply to the district. This handbook lists the statutes and rules that school administrators are responsible to implement in chapters that correspond to the chapters in A.R.S. Title 15.

Provisions in the above-described statutes and rules that are of special significance to school district administrators are addressed in this handbook with the following exceptions: those requirements which are currently being monitored by any divisions or units of the Arizona Department of Education, such as statutory or Board requirements relating to Special Education and Vocational Education; any requirement addressed in the Uniform System of Financial Records which is monitored by the Auditor General's Office; items of infrequent occurrence, such as statutes regarding changing district boundaries, forming new districts, subdivision of existing districts, annexation and consolidation of districts. State Board rules on school district procurement practices are not included, nor are Chapters 11 through 14 of Title 15 which pertain to the Arizona State School for the Deaf and Blind, colleges, universities, and related institutions.

The handbook should be used as a self-assessment instrument. The handbook is designed for use in Educational leadership classes as a part of the requirements for becoming a school administrator. The chief school administrator should utilize the work done by the intern and then appoint a local team to review the provisions of the handbook. Then the superintendent or chief administrator should report the results of the handbook to the local governing Board. This handbook and any other material or follow-up materials for the handbook should be kept on file for the next 2 years.

The handbook is formed in compliance chapters that roughly correspond to chapters in A.R.S. Title XV. Accurate determination of self-assessment can only come about through a systematic approach. The best method for such assessment is to have a team of individuals who can approach different sections of the handbook, seek compliance information in the policy manuals of the district, and then compare findings and results. The self-assessment process, to be effective, should generate a plan of action which will contain a description of any deficiencies found, a plan for moving forward, and the time lines for reaching compliance with the statute.

¹This content is available online at <<http://cnx.org/content/m41212/1.2/>>.

1.2 Suggestions for Self-Assessment

1. Supervisor/Administrator

Review each chapter title page for a synopsis of the contents of the chapter and determine the most appropriate district person or persons as respondents for questions in that chapter. The following district persons are among those who should be considered when selecting respondents: Governing Board members, the superintendent, principals, instructional staff and business office staff and administrative interns. The handbook may then be separated into individual chapters.

2. Respondent/administrative intern or contacted individual

Consider each question assigned to you and determine the proper response for the district. Prior to selecting and marking the district response, collect and analyze all evidence pertaining to district compliance with the point(s) of law expressed in the question.

Space is provided for the respondent to cite evidence to show compliance and to include other comments when considering evidence of compliance. Please use the following to show evidence of compliance: Board Policy Handbook, Teacher's Handbook, Student Handbook and Board Meeting minutes. Testimony of compliance from appropriate administrators should be used only as a last resort and should then form the basis for a recommendation of future governing board policy.

NOTE: A "Yes" response indicates that the administrator is currently doing the correct action or in the event the situation has not yet occurred, the district is ready for that eventuality. A "No" answer indicates that the district is not doing what is required with the item or is not ready for the event should it occur.

3. Administrative intern

Review responses in each chapter with special concern for the adequacy of available evidence. List all "No" responses on the Plan of Action form provided at the end of the assessment instrument in the handbook. Develop the plan of action, including time lines, and present the plan to the Governing Board for review as a Board agenda item.

1.3 The Problem: Why do we need this service?

The first problem that school administrators have with legal issues is that the landscape is always changing. They must make time in their busy schedules to research and study new changes to state laws. In Arizona, this is a challenge. In a typical legislative session, which starts in January and can run through the end of the fiscal year, there are frequently over 1,000 bills introduced. As many as 300+ of all bills govern education administration. A typical session might have as many as 350 bills that would change some aspect of Arizona School Law. Arizona Revised Statutes, Title XV contains most, but not all of laws that govern public schools. After 6 months of political fighting in the legislature, a typical year will see 60+ bills that change the laws governing schools. In addition, there are "rules and regulations" from a number of legal entities such as the State Board of Education, Library and Archives, Building Codes, Transportation laws, and personnel. There are also 45 different legal codes in Arizona that cover these basic areas, all of which change on a yearly basis. The only document that brings all of these elements together in a self-contained document is compiled every two years and is entitled: *Arizona Education Law Review*, published by NCPEA press. As part of registration for the conference, participants are given an updated copy of this document to help prepare their district to stay in compliance with Arizona School law.

An example of the many changes that occur in Arizona public education law can be found in the additions to this document since 2008. In just the last three years, these changes include:

- Elimination of seniority as a basis for rehire of employees when there has been a reduction in force (RIF)".
- Substitution of letter grades for the current system of classifying schools. This includes allowing the State Board of Education to assign a letter grade of F to persistently low achieving schools

- Substantive changes to the retirement system to save the state money. (2011)
- Requiring school districts to adopt and enforce policies and procedures to prohibit bullying including bullying through electronic technology or school computers.(2011)
- Supplementary training reading instruction required for all teachers in underperforming schools. (2011)
- Requiring school districts to collect and maintain “verifiable documentation” of residency of all enrolled pupils. (2011)
- Prohibiting deduction of payments from payrolls for any organization that uses funds for political purposes (unions). \$10,000 fine per violation. (2011)
- Defining that parents of all students have the right to request to review all materials and activities used in class in advance of their use. (2011)
- Requiring every school board to adopt policies to educate coaches, students and parents of the danger of head injuries, policy must stipulate that a student suspected of sustaining a concussion will be immediately removed until the student is evaluated by and receives medical clearance. (2011)
- State immigration laws prohibiting school districts from hiring “illegal” aliens with the threat of “permanent revocation” of a license to operate the school for violations of this rule.
- Prohibition of any school personnel from providing prescribed medication to a pupil without specific approval by parent.
- Prohibition of teaching any curriculum that promotes overthrowing the U.S. government, or is designed primarily for pupils of a specific race or class or advocates ethnic solidarity with the provision that 10% of state aid will be withheld from any district that agrees to teach such curriculum.
- Requirement for each district to maintain a web site listing specific information about the district.
- Exemption for all charter schools from paying taxes on food or drink.
- Requirement to base all superintendents evaluation and pay on student performance and parental satisfaction, with a subsequent requirement to publish the list of the “rankings of all districts from 1-100”.
- Requirement to provide a 30 minute recess for all elementary pupils.
- Requirement to allow all pupils to test out of high school after age 16.
- Additional requirements to teacher evaluations to include at least 40% of their evaluation on the basis of student test scores.
- A requirement to publish “letter grades” on the performance of all schools in Arizona.
- A requirement that all contractors, sub-contractors, vendors and employees who are on school grounds during a day must have valid fingerprint clearance.
- A requirement that all charter school property will be taxed at the lowest rate available
- A prohibition against immediate family in the same household serving on the same school board.
- A requirement that the State Board of Education must develop standards for on-line schools, that a full-time student be one enrolled for 5 hours a day in an on-line environment, and that all public schools are eligible to provide on-line schools for all students grades k-12.
- An expansion of the statutes requiring mandatory reporting to include drug and sex abuse.
- An addition of child bigamy and sale of a child to the list of convictions where no person may hold a teaching certificate.
- A requirement that a district must respond to a parents’ request for information within 10 days.
- A requirement that student teachers must be fingerprinted.
- A provision that allows charter schools to set enrollment preferences for children of school employees.
- A provision that allows for creation of single gender schools.
- Requirement to fingerprint all contractors, subcontractors and vendors before coming onto a school campus.

And these changes are just a representative sample of the changes that have been made in 2009 through 2011.

The second major challenge that school administrators face is the increasingly hostile environment in litigation including personal risk of decertification and criminal penalties for failure to comply with new laws, as well as personal and corporate responsibility for damages from civil law suits.

The power to “decertify educators” is something that has only been used in modern times. The power of the Arizona State Board of Education to grant certificates was granted to them in the State Constitution. This power has always held within it the power to withdraw or revoke certificates; however, state statutes were remarkably quiet on this issue. In addition, State Boards were reluctant to invoke this power over teachers and administrators. The first recorded instance of withholding a certificate for “unprofessional” activity occurred in 1952. Although more cases were explored in the 1970’s, the 1979 state statutes granted the power to the Arizona State Board to discipline educators through the finding of “unprofessional behavior”. Statutes specifically named as unprofessional behavior “any teacher who uses sectarian or denominational books or teaches any sectarian doctrine” (ARS 15-203) and teachers who “failed to comply with any provision of the duties of teachers” (ARS 15-208). In addition, the Legislature added a new section in 1979 that made it a criminal offense for “failure to report suspected child abuse.” (ARS 13-3623) In spite of these additions, less than a dozen such cases were recorded in the 1970’s.

Specific information regarding the causes for certificate suspension or revocation became clearer after the passage of requirements for fingerprinting teachers and immoral behavior by teachers. Although statutes and rules were limited in defining unprofessional behavior, the State Board of Education’s record for decertifications in the 1980’s showed 18 decertification findings for “breach of contract”, 11 for sexual misconduct with students, 3 for fraud and 4 others disciplined for various other offenses, including use of drugs for the period 1980-1989.

In 1991 the standards for morality in education in Arizona underwent a major change. The legislature passed a new law, ARS 15-514, sparked by a notorious case of a “teacher of the year” in a large urban school district, who fell in love with his 14-year-old student and took her across state lines. This statute required all teachers who were newly certified to pass a fingerprint clearance check.

In 1994, as part of a State Board initiative, legislation in the form of ARS 15-534 was passed which required all certified personnel to notify the State Board of Education if they had reason to believe that any certified person had engaged in “immoral conduct” with an underage minor. The legislature also funded a staff position to investigate these allegations. In 1997, a further codicil was added which required administrators to notify the state board of education if they had any reason to believe that a certified individual had engaged in “immoral conduct” with a minor. Administrators were also required to do a thorough background check on any certified teacher hired.

Since the mandatory reporting requirements have been implemented and an investigator hired, the State Board of Education has seen a geometric rise in the number of teachers and administrators who have been disciplined for violations of these statutes. The State Board of Education has seen a significant increase in the total number of teachers disciplined during the decade of the 1990’s. There was a 60% overall rise in the total numbers of teachers disciplined; however, certain offenses have increased dramatically within this total. The number of

individuals disciplined for sexual misconduct has risen 180% in the 1990’s over the decade of the 1980’s. In just the last 5 years of the 1990’s the number of teachers disciplined for sexual contact showed a tremendous increase: 42 of the 69 educators disciplined in the last 2 years of the 1990’s had been guilty of some form of sexual contact misconduct.

It is clear that school administrators need to be educated about these problems. In addition, administrators need to be educated about the correct entity to receive the reports. Protection of the children of Arizona should be all teachers’ and administrators’ primary concern. The leadership academy is a very good mechanism for helping to protect the children of Arizona.

The second issue that has compounded the risk for school administrators has been lawsuits that bring personal and corporate damage claims for failure to protect children. The most common form of litigation comes from students suing school districts and educators because they were injured at school. These suits are intended to prove “negligence” on the part of educators or school districts. In general educators are held to a higher standard of care when they are on the job than the typical worker. Courts expect that “reasonable and prudent” care is taken with the safety of students. When it is not, when injuries result, and when negligence on the part of the school or instructor is proven, then damages and penalties may be imposed by the courts. These cases are especially difficult to defend if the student has been harmed by a

sexual assault from a teacher, staff member or student. One role of the Law and Leadership this text and the law and leadership academies conducted by Northern Arizona University and the Arizona Risk Retention Trust has been to educate school personnel to understand the laws and how to prevent these incidents from happening.

Chapter 2

Arizona School Law Review: Chapter 1¹

2.1 ARS†15-102 Parental Involvement in the School; Definition (2010)

The Governing Board, in consultation with parents, teachers, and administrators, shall develop and adopt a policy to promote parental involvement in the schools which includes:

2.2 ARS†15-102A

1. A plan for parent participation in the schools which is designed to improve parent and teacher cooperation in such areas as homework, attendance and discipline.
2. Procedures by which parents may learn about the course of study for their children and review learning materials.
3. Procedures by which parents who object to any learning materials or activity, on the basis that it is harmful, may withdraw their children from the activity or from the class or program in which the material is used. Objections to a learning material or activity on the basis that it is harmful include objection to a material or activity because it questions beliefs or practices in sex, morality or religion.
4. Procedures to prohibit a school district from providing sex education instruction to a pupil unless the pupil's parent provides written permission for the child to participate.
5. Procedures by which parents will be notified in advance of and given the opportunity to withdraw their children from any instruction regarding sexuality in courses other than formal sex education curricula.
6. Procedures by which parents may learn about the nature and purpose of clubs and activities that are part of the school curriculum including extracurricular clubs and activities that have been approved by the school.
7. Procedures by which parents may learn about parental rights and responsibilities under the laws of this state, including: the right to opt in to a sex education curriculum, if provided by the district, the open enrollment rights of a child, the right to opt out of assignments pursuant to this section, the right to opt out of immunizations pursuant to ARS 15-873. The promotion requirements prescribed in ARS 15-701. The minimum course of study and competency requirements for graduation from high school. The right to opt out of instruction on acquired immune deficiency syndrome, the right to review test results, the right to participate in gifted programs pursuant to ARS 15-779.01. The right to access instructional materials, the right to receive a school report card, the attendance requirements pursuant to ARS 15-802, 803, and 821. The right to public review courses of study and textbooks, the right to seek membership on school councils, and the right to participate in a parental satisfaction survey.

¹This content is available online at <<http://cnx.org/content/m41213/1.1/>>.

Information about Student accountability information system (SAIS) pursuant to ARS 15-806, and the right to access the failing schools tutoring fund.

Yes No

NOTE: For the purposes of this section, "parent" means the natural or adoptive parent or legal guardian of the child.

2.3 ARS†15-102B

The school board must ensure that any policy adopted pursuant to this section may also include:

- a. A plan by which parents will be made aware of the district's parental involvement policy and may include rights under the family educational rights and privacy act of 1974
- b. The parents' right to inspect the school district policies and curriculum; Other elements pursuant to ARS 15-102 B
- c. The governing board may adopt a policy to provide to parents the information required in an electronic form.
- d. A parent shall submit a written requires for information pursuant to this section during regular business hours to either the principal or the superintendent. The Principal or Superintendent shall, within 10 days deliver the requested information or a written explanation of the reasons for denial. If the request for information is denied, a parent may submit a written request for the information to the local governing board which shall formally consider the request at the next scheduled meeting.

Yes No

2.4 ARS†15-103 School Districts: Financial Mismanagement (2008)

This section contains the provisions for The State Board of Education to determine "Insolvency and mismanagement" and to appoint a receiver if the board determines a school district is insolvent or been grossly mismanaged.

2.5 ARS† 15-104 Mental Health Screening: Consent (2006)

Does the governing board ensure that before it conducts a mental health screening of any pupil, a written consent of the student's parents or legal guardian is obtained? Screening is defined as survey, analysis or evaluation.

Yes No

Does the governing board ensure that any written consent form satisfies the following requirements?

1. Contains language that clearly explains the nature of the screening including the time and place the screening will take place.
2. The pupil's parents or guardians' signature.
3. Provide notice that a copy of the survey is available for inspection.

Yes No

2.6 ARS†15-105 Early Graduation Scholarship Program (2009)

Does the governing board of each school district or charter school that provides instruction in grades 9-12 participate in and promote to students an early graduation scholarship program?

Does the governing board of each school district or charter school include each student who graduates early in the student count until the student's class is scheduled to graduate and place the fund in the school's maintenance and operations fund?

Does the governing board transmit the following to the commission for postsecondary education: A list of early graduates with their identifying information, Two thousand and two hundred dollars of the amount of per pupil funding for each student who graduates at least one year early?

Does the district allow students who receive early graduation scholarship grants to participate in extracurricular activities until their high school class is schedule to graduate, and participate in the student's high school class graduation ceremonies?

Yes No

2.7 ARS†15-106 Identity Verified Fingerprints (2009)

Does the governing board insure a copy of the instructions from the Department of Public Safety is provided regarding the submission of identity verified fingerprints to the fingerprinting entity it contracts with or to any employees who provide this service to the district?

Does the governing board contract for fingerprinting services through an entity and provide a copy of the instructions to the entity or elect to provide fingerprinting services at the school district?

Yes No

2.8 ARS†15-107 School District Over-Expenditures: Fiscal Crisis Teams (2008)

Does the governing board insure that any over-expenditure that exceeds \$50,000 or $\frac{1}{2}$ of 1% of the district's general budget, may result in the appointment of a fiscal crisis team by the State Board of Education? Appointment of the fiscal crisis team requires the local governing board to create a fiscal management plan and pay all expenses of a fiscal crisis team.

Yes No

2.9 ARS†15-108 Recess Policies (2010)

Does the governing Board of school districts and charter schools, no later than Jan. 1, 2011 conduct a public meeting to consider the adoption of a policy to provide at least 30 minutes of recess each day for pupils in Kindergarten and grades 1-5? Does the governing board hear public comment and discuss and vote on the adoption of the proposed recess policy?

Yes No

2.10 ARS†15-109 Biometric information: Prohibition (2008)

Does the governing board of a school district refrain from collecting "biometric information" from a pupil unless the pupil's parents give written permission to collect this ?Biometric information is described as "non-invasive electronic measurement and evaluation of any physical characteristics of a pupil including fingerprint, eye characteristics, hand characteristics, vocal characteristics, facial characteristics and other physical characteristics.

Yes No

2.11 ARS†15-110 Rights of Students at public educational institutions: (2009)

Does the governing board of a school district ensure that it does not discriminate against students or parents on the basis of a religious viewpoint or religious expression?

Does the governing board ensure that students in public educational institutions may pray or engage in religious activities before, during and after the school day in the same manner and to the same extent that students may engage in nonreligious activities or expressions?

Does the governing board ensure that classroom assignments that express a religious viewpoint shall be evaluated based on ordinary academic standards of substance and relevance to the course curriculum or requirements of the coursework or assignment?

Does the governing board ensure that the student or student's parents have the right to submit a complaint in writing to the principal or superintendent and that a response by the principal or superintendent shall be made within 15 days of receipt?

NOTE: Nothing in this section may be construed to limit the authority of the school to maintain order and discipline, protect the safety of students, employees and visitors or adopt and enforce policies and procedures that prohibit students from wearing any type of clothing, etc. that is worn to convey affiliation with a street gang as defined in ARS 13-105.

Yes No

2.12 ARS†15-111 Declaration of Public Policy (2010)

Does the governing board understand that it is the declared public policy of the legislature that public school pupils should be taught to treat and value each others as individuals and not be taught to resent or hate other races or classes of people?

Yes No

2.13 ARS†15-112 Prohibited Courses and Classes (2010)

Does the governing board ensure that it does not include in it program of instruction any courses or classes that include the promotion of the overthrow of the United States Government, resentment toward a race or class of people, ethnic solidarity instead of the treatment of pupils as individuals or any course or class that is designed primarily for pupils of a particular ethnic group?

NOTE: Nothing in this section shall be construed to restrict or prohibit courses or classes for native American pupils that are required to comply with federal law, grouping of pupils according to academic performance, courses or classes that include the history of any ethnic group and that are open to all students, courses or classes that include the discussion of controversial aspects of history or instruction in the holocaust or any other instance of genocide.

2.14 ARS†15-141 Educational Records: Injunction: Special Action (1989)

The right to inspect and review educational records and the release of or access to such records, other information or instructional materials is governed by federal law in the Family Education Rights and Privacy Act, Title 20, United States Code, Section 1232g and Section 1232h, and federal regulations issued pursuant to this act.

Does the administrator ensure that parents and students have access to inspect and review educational records as spelled out in FERPA?

Yes No

The Governing Board of a school district shall release to the State Department of Juvenile Corrections or the presiding judge of a juvenile court before the juvenile is adjudicated, all educational needs relating to a pupil within ten days not withstanding any financial debt?

Does the administrator ensure that all educational records are released to the State Department of Juvenile Corrections within ten days, notwithstanding any financial debt owed by the student?

Yes No

2.15 ARS†15-142 Access to directory information relating to pupils (2001)

If the governing board of a school district permits the release of directory information relating to pupils or permits access to school buildings, school grounds or other school property to persons who inform pupils of educational opportunities, the governing board shall provide access and directory information to recruiting representatives of the armed services of the United States. Notwithstanding section A above, pupil transcripts shall not be released to such representatives unless the pupil consents in writing to the release of the transcript.

Does the administrator ensure that all educational records are released to representatives of the armed forces but that pupil transcripts are not released unless a release form is signed by the student?

Yes No

2.16 ARS†15-151 Eye-Protective Devices; Definition (1981)

Every student, teacher and visitor in public and private schools, junior colleges, colleges and universities shall wear appropriate eye-protective ware while participating in or when observing vocational, technical, industrial arts, art or laboratory science activities involving exposure to:

1. Molten metals or other molten materials.
2. Cutting, shaping and grinding of materials.
3. Heat treatment, tempering, or kiln firing of any metal or other materials.
4. Welding fabrication processes.
5. Explosive materials.
6. Caustic solutions.
7. Radiation materials.

Does each administrator equip schools within its jurisdiction with eye-protective wear for use as required and does the administrator require students, teachers and visitor to wear such when observing or participating in the activities mentioned above?

Yes No

NOTE: "Eye-Protective Wear" means devices meeting the standards of the USA standards safety code for head, eye, and respiratory protection, Z 21.1959 and subsequent revisions thereof, approved by the USA Standards Institute, Inc.

2.17 ARS†15-152 Pest Management at schools; notice (1993)

Governing Boards of each school district must develop and adopt a policy to provide pupils and employees with at least 48 hours notice before pesticides are applied on school property.

Does each administrator ensure that procedures are followed for written and oral notification to pupils, employees, parents or guardians before pesticides are applied on school property?

Yes No

Does each administrator ensure that procedures are followed for the posting of signs to identify pesticide application areas and that continuing instruction is provided for pupils who are absent because of pesticide application?

Yes No

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