Presenters

Jennifer MacLennan, Esq.
Gust Rosenfeld, PLC
and
Denise Lowell-Britt, Esq.
Udall Shumway, PLC
Presentation Objectives

• Identify possible or probable #RedforEd activities
• Discuss lawful ways public school administrators can support #RedforEd efforts
• Discuss applicable legal limits or prohibitions
Topics Covered

• Arizona Constitution Art. 9, §7
• A.R.S. §15-511
• Sick-outs
• Walk-ins
• Teacher strikes
Topics Covered – Cont’d

• T-shirts
• Use of District facilities / equipment
• Use of District email system
• Distribution of flyers
Topics Covered – Cont’d

• Use of District or School social media
• Signs in/on vehicles
• Signs during student drop-off and pick-up
• PTO involvement
• Governing Board Resolutions
Arizona Constitution: “Gift Clause”
Art. 9, §7

• Prohibits a school district from giving a loan, credit, donation or grant, by subsidy or otherwise to any individual, association or corporation
Arizona Constitution: “Gift Clause”
Art. 9, §7

2-Prong test:
(a) Does the expenditure have a public purpose; and
(b) Is the expenditure grossly disproportionate to what is received in return (indirect benefits may not be considered)

*Turken v. Gordon* (AZ S. Ct. 2010)
A.R.S. §15-511: Use of School Resources to Influence the Outcome of Elections

• No items on a future ballot election identified to date
• Thus far, #RedforEd lobbying efforts are focused on the AZ legislature
• Save Our Schools (SOS) does have a ballot measure (Prop 305) re: expansion of empowerment scholarship accounts
A.R.S. §15-511: Use of School Resources to Influence the Outcome of Elections

A.R.S. §15-511 prohibits:

- Employee distribution of written materials to students that supports or opposes legislation

- Employee use of the authority of their position to influence the vote or political activities of a subordinate employee
Sick-Outs

- Consult Governing Board Policy (ASBA Sections H or G)
- Prop 206 (A.R.S. §23-373) prohibits requiring proof of illness prior to 3 consecutive days of absence
- Impact on hourly employees if a school is closed
Sick Outs

• Discipline options for proven violation of sick leave policy (vs. use of personal leave time/general leave)

• If schools must close due to staff shortages, determine impact on school calendar and possible need to add days or hours to meet minimum State requirements (A.R.S. §15-341.01: 180 days/equivalent number of minutes)
Walk-Ins

Employees:
• May congregate on school property prior to their contracted work time
• Should lease the facilities if they want access when the building or grounds are not otherwise open
• Must not distribute materials to students during the walk-in
Teacher Strikes

• Arizona statutes do not prohibit or authorize public employees to strike, BUT -

• Two Attorney General Opinions (I80-039 and I71-12) indicate there is no right to strike

• One case says no right to strike, although the language was not necessary to reach the decision - *Communications Workers of America v. AZ Board of Regents* (1972)
Tee Shirts Worn by Staff

• School personnel may exercise their 1st Amendment rights to wear red T-shirts with words supporting #RedforEd
• BUT - If the staff dress code prohibits all “message” T-shirts, staff may wear red T-shirts but without the message
• Caution: If the T-shirt message is about influencing the outcome of an election (e.g. SOS), it may be prohibited
Encouraging Students to Join #RedforEd Activities

• Whether and when staff may lawfully and appropriately talk to students about the movement will be based upon the particular situation. Lots of variations on the theme!

• Staff should not use curriculum time to encourage student involvement in the staff member’s #RedforEd activities

• Consult Governing Board Policies relating to staff instruction and discussion of political or controversial issues (ASBA Policies GBI and Policy IMB)
Use of District Facilities/Equipment

• Gift of Public Funds and A.R.S. §15-511 considerations
• Comply with Governing Board Policy/Regulations re: Use of School Facilities and Equipment (ASBA Policy KF)
• The District will need to charge for copies made on its equipment if it permits the usage at all
Use of District Email System By Outside Groups

• Unless the school district typically allows outside groups to use its email system to directly advertise or promote the group’s activities, it should not allow outside #RedforEd groups to do so.

• If allowed, the District must require payment for the use of the system.
Use of District Email System By “Inside” Groups

If the District already permits its local education group(s) to use its email system to communicate with members / staff at large re: meetings, information on educational issues, then the District can likely lawfully permit usage to share information about #RedforEd activities.

CAVEATS …. 
Use of District Email System By “Inside” Groups

CAVEATS ....

• No communication on District email re: ballot measures (e.g. SOS)

• No communication on District email re: activities that will disrupt the educational mission or activities of the District (e.g. sick outs, strikes)
Distribution of Flyers

• Per A.R.S. §15-511, no distribution of flyers to students allowed

• Require compliance with Governing Board Policy re: flyer distribution (ASBA Policy KHC)
Use of District / School Social Media

• There is no Arizona statute directly on point
• Consult Board Policy GBEF (Staff Use of Digital Communications and Electronic Devices) and User Agreement
• One concern: Does the photo or other posting of #RedforEd activities constitute (or appear to constitute) an attempt to influence the political activities of subordinate staff?
Use of District / School Social Media

• Some postings may be appropriate (e.g. photo of a teacher wearing a red shirt) and some not
• A safer option is for employees to post photos, etc. to their personal social media sites
Signs In or On Vehicles

• Anyone who is authorized to have their vehicle on District or school lots may have signs or bumper stickers on their vehicles.

• Exception: Vehicles with signage may not be left on the premises day and night and may not amount to a “billboard on wheels.”
Signs During Drop-off and Pick-up

• A.R.S. § 23-1322 (Unlawful picketing) may apply
• Student drop-off and pick-up occurs during working and school hours. Thus, neither employees nor outside groups should hold signs on District/ school property during drop off and pick up
Use of Public Sidewalks

• The District may be required to permit 1st Amendment activities on public sidewalks, which are considered to be traditional public forums

• Districts may impose reasonable time, place and manner restrictions to promote health, welfare and safety
PTO Involvement with #RedforEd

• School districts do not have any authority over the PTO’s participation in the #RedforEd movement
• PTOs must use caution not to jeopardize their 501c3 status
Governing Board Resolutions

• Many governing boards have previously adopted resolutions and are now doing so for #RedforEd

• A Board resolution in support of #RedforEd is likely defensible so long as it pertains only to supporting legislative action (vs. influencing the outcome of an election) and does not promote unlawful activities
Contact Information

Jennifer N. MacLennan, Esq.
Gust Rosenfeld, PLC
maclennan@gustlaw.com
602.257.7475

Denise Lowell-Britt, Esq.
Udall Shumway, PLC
dlb@udallshumway.com
480.461.5333