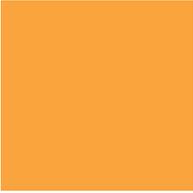




2019 Legal and Legislative Update: A Rundown of the Latest from the Capitol and the World of School Law

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Chris Kotterman, ASBA Director of Governmental Relations



Today's Agenda

- New State Laws (and District Policies)
 - Federal Court Cases of Note
 - Hot Education Issues of the Interim
 - State Board of Education/Arizona Department of Education Update
 - A Look Ahead of What Might Be Coming
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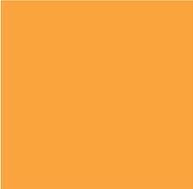
Our Job

- Most lobbyists track a handful of bills – maybe even one – per session
- Committee staff tracks all those that come through their committee
- Partisan staff track those of strategic importance to the partisan caucus
- ASBA routinely tracks over 200 introduced bills that impact school districts in some form – those that go through the education committee and those that go through other committees
 - Plus State Board of Education, federal legislation, etc.



HB2425 school tax credit; contributions

- Temporarily expands, from FY2020 through FY2022, the allowable use of tax credit monies for public school fees to include taxpayer contributions toward:
 - Capital items that would otherwise be funded by the capital outlay section of the district's budget, excluding land, buildings, and associated improvements.
 - Community school meal programs
 - Student consumable health care supplies
 - Playground equipment and shade structures for playground equipment.
- Allows the site council of a public school to transfer undesignated contributions to any school within the same district.



HB2184/SB1014 English language learners; instruction; budgeting

- HB2184/SB1014 English language learners; instruction; budgeting
 - Background
 - Prop 203 – 2000 election required SEI nor normally to exceed one year
 - SBE adopted rules from statutory mandate that required four-hour block
- ASBA has been advocating/lobbying to provide more flexibility to districts and educators



HB2184/SB1014 English language learners; instruction; budgeting

- Repeals the four-hour SEI block, and requires SBE to develop models meeting the following requirements:
 - 120 mins/day, 600 mins/week, or 360 hours per school year for grades K-5.
 - 100 mins/day, 500 mins/week, or 300 hours per school year for grades 6-12.
- Requires SBE to adopt alternative models for students meeting waiver requirements.
- Specifically allows districts to submit alternative models to the board for consideration and approval.
- Thursday breakout session 3:10-4:00 (ADE/EL Frameworks Committee)



SB1071 school districts; personnel evaluations

- Background: Obama-era requirements to have state-level mandates to school districts in teacher and principal evaluations as a condition of RTTT/ARRA



SB1071 school districts; personnel evaluations

- Replaces the requirement that governing boards and charter schools establish a teacher performance evaluation system that meets SBE requirements with the requirement that governing boards and charter school governing bodies (charter governing bodies) establish a system that:
 - is designed to improve teacher performance and improve student achievement;
 - accounts for between 20 and 33 percent of the evaluation outcomes using quantitative data on student academic progress;
 - includes the four performance classifications of highly effective, effective, developing and ineffective.



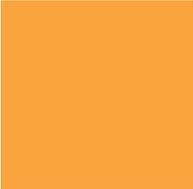
SB1071 school districts; personnel evaluations

- Replaces the requirement that principal performance evaluation systems must meet SBE requirements and be used to annually evaluate principals with the requirement that governing boards and charter governing bodies adopt principal evaluation policies that:
 - are designed to improve principal performance and improve student achievement;
 - require quantitative data on student academic progress to account for between 20 and 33 percent of the evaluation outcomes;
 - include the four performance classifications of highly effective, effective, developing and ineffective;
 - describe the principal performance evaluation methods, including the data used to measure student performance and job effectiveness;
- PA 659, Friday breakout session 1:15PM



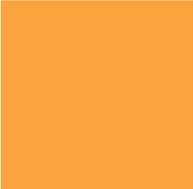
SB1161 school facilities; revisions

- Removes the requirement that school districts attempt to obtain the highest possible value under current market conditions for a sale or lease.
- States buildings used for special education services, preschool programs, schools open for less than five years or magnet schools may not be qualified as vacant or partially used, except that this exemption may only be applied to up to 25% of a district's school buildings.
- Requires the SFB to establish reporting guidelines for districts to report any school or school buildings that are vacant or partially used. SFB must inspect school buildings to ensure the accuracy of these reports.



SB1161 contd.

- Outlines the process for renewing a lease with an existing tenant that is a public school or that is providing services to public school students.
- States the building owner must provide the tenant with a rationale for any proposed increase to the lessee, which may include considerations for:
 - The percentage of revenue that should be dedicated to educational facilities;
 - Inflation related to student enrollment increases;
 - Inflation
 - Expenses for building and parking lot maintenance and upgrades.



SB1161 contd

- Increases the lease period requiring voter approval from 15 years to 20 years.
- Allows a governing board up to 20 years, rather than 10 years, to enter into a lease approved by electors without requiring another election.
- Exempts the sale or lease of a school building or the lease of a portion of a building from electoral approval requirements if the building is vacant or partially used for at least three years.



SB1177 home school district; special education

- Clarifies the definition of "home school district" for the purposes of institutional placement to mean the school district or charter school where a child last attended, or if the child hasn't attended public school in Arizona, the school district in which the person with legal custody of the child lives.



SB1256 school districts; procurement practices; auditors

- Repeals the “lowest qualified bidder” requirement for school district procurement.
- Repeals the requirement that school districts rotate auditing firms every three years.
- Establishes a “school procurement consulting” pilot program at ADOA.
- PA 652



HB2119 school safety; reporting

- Requires each district and charter school to adopt policies for reporting to law enforcement:
 - A suspected crime that is a serious offense or involves a deadly weapon, dangerous instrument or serious or physical injury.
 - Conduct that poses a threat of death or serious physical injury to an employee, student, or other person on school property
 - Requires the policies to include the notification of the parent/guardian of each student involved.
 - Requires a process for documenting and reporting the conduct, including which employees are responsible for making reports.
- School districts and charters that do not comply are prohibited from applying for school safety program grants.
- PA 666



SB1180 department of revenue; applicants; fingerprinting

- Requires noncertified employees requiring fingerprints or a fingerprint clearance card to disclose a charge or conviction that has been set aside, vacated, or expunged on the school district's background questionnaire.



SB1022 hours; seventh and eighth grades

- Reduces the required instructional hours for seventh and eighth grade to 890, from 1,000.



SB1318 schools; dyslexia screening; training

- Requires ADE to develop a dyslexia screening plan that requires each student in grades K-1 be screened for indicators of dyslexia by July 1, 2020.
- Establishes the indicators to be screened
- Allows the screening to be integrated into other required reading proficiency assessments.



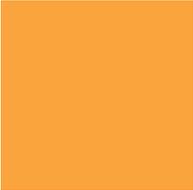
SB1318 contd.

- Establishes a study committee on dyslexia screening until January 15, 2020.
- Requires ADE to designate a dyslexia specialist, and each public school to ensure at least one K-3 teacher has received training related to dyslexia by July 1, 2021.
- Requires all new elementary certificate holders have dyslexia training as part of the required reading instruction beginning 7/1/21.
- PA 662



SB1346 school; assessments; instruction; reporting

- Requires ADE to adopt a statewide assessment plan for grades 3-12 by July 1, 2019.
- Moves the implementation of a 3-8 menu back to 2023-2024.
- Repeals portions of the HIV/AIDS education statute that prohibit districts from including content that “portrays homosexuality as a positive alternative lifestyle” or “suggests that some methods of homosexual sex are safe.”
- PA 647
- Assessment session: Friday, 1:15PM; Sex Education, Friday, 3:25PM



SB1456 vision screening

- Requires schools to provide vision screening to the following:
 - Each student upon initial entry to school and not more than two grades prescribed by DHS by rule.
 - Each student receiving or being referred for special education services who have not been screened in the last year.
 - Students upon request of a teacher who have not been screened in the last year.
 - Students not reading at grade level by the third grade.

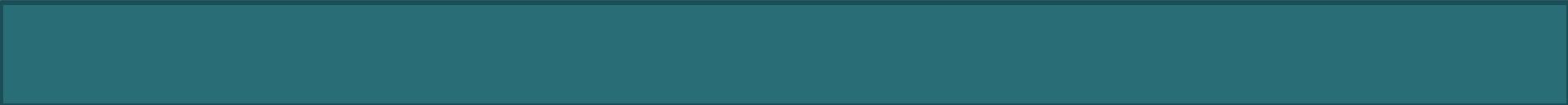


SB1468 schools; suicide prevention training

- Requires school districts and charter schools, beginning in SY20-21, to provide at least every three years training to all personnel working with students in grades 6-12 that includes:
 - Suicide prevention
 - Identifying warning signs of suicidal behavior
 - Appropriate intervention and referral techniques.



SB1468 contd.

- Requires AHCCCS to develop a suicide prevention training program, and provide a list of approved evidence-based training materials.
 - Requires any costs incurred by school districts to be considered “classroom spending” by the auditor general.
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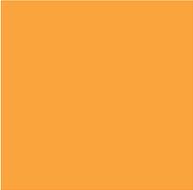
SB1485 school tuition organization; inflator

- This bill reduces the cap on annual growth for corporate STO tax credits from 20% to:
 - 15% in FY21;
 - 10% in FY22;
 - 5% in FY23; and
 - 2% or inflation, whichever is greater, in FY24 and beyond.



Federal Cases of Note



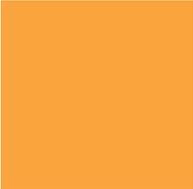


Employee Religious Speech

- 9th Circuit upheld denial of injunction, finding a former coach had failed to show a likelihood of success on the merits of his First Amendment retaliation claim because his speech, i.e., praying on the fifty-yard line immediately after games, was pursuant to his official duties as a coach (applying *Garcetti v. Ceballos*, 547 U.S. 410 (2006) and finding the former coach's praying was not protected speech under the First Amendment).
- Cert. denied in *Kennedy v. Bremerton Sch. Dist.*, 869 F.3d 813, cert. denied 2019 WL 272131, U.S., Jan. 22, 2019

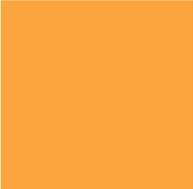
The First Amendment:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.



The Peace Cross Case

- American Legion, et. al. v. American Humanist Assn., et. al.
 - 40-foot cross in Maryland on public property honoring World War I soldiers that died in combat
 - Plaintiffs sued saying cross was a violation of the First Amendment's Establishment Clause
 - Cross initially was on private land which came later into state's hands; state has paid over \$100K over the years to maintain it
 - SCOTUS (Alito, 5-4): Monument did not primarily convey a religious message.
 - (Applying the Lemon test) "That the cross originated as a Christian symbol and retains that meaning in many context...does not change the fact that the symbol took on an added secular meaning when used in World War I memorials."



Blaine Amendments at Risk?

- What are Blaine Amendments?
 - State constitutional provisions that prohibit public funding for religious purposes; higher barrier than the Establishment Clause
- Espinoza v. Montana Department of Revenue
 - MT SC ruled that state tax credit program that funds private religious schools unconstitutional under state's Blaine Amendment
 - Institute for Justice trying to get Blaine Amendments declared unconstitutional under federal free exercise clause; SCOTUS accepted cert. for 2020 term



U.S. Census Case

- Department of Commerce v. New York
 - State of New York and others challenged decision of the Department of Commerce, the agency charged with administering the decennial census, with the inclusion of a citizenship question on the 2020 census.
 - NSBA filed an amicus in case as school districts have a strong interest in ensuring that all of their students and the students' families are counted since census figures are used in allocation of programs and funds to assist those students.



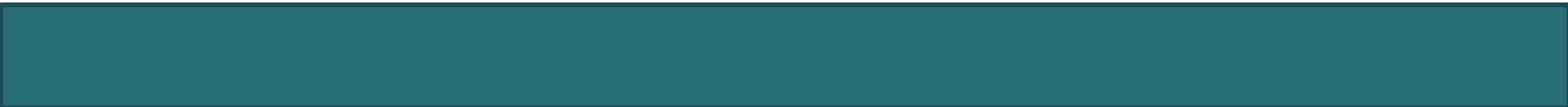
U.S. Census Case

- Fractured Court

- Five Justices (Roberts, Thomas, Alito Gorsuch and Kavanaugh) agreed that Enumeration Clause of the Constitution permits inquiry on citizenship on census questionnaire.
- HOWEVER, five justices (Roberts, Ginsberg, Breyer, Kagan and Sotomayor) found that the Secretary's decision should be set aside because it rested on a pretextual basis which warranted a remand to the agency.
- Because of deadlines for printing the census questionnaire on time, it was decided the agency lacked the ability to get a new reason before the court.



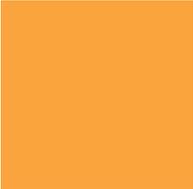
Hot Education Issues of the Interim





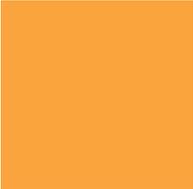
Sex Education

- SB1346 schools; assessments; instruction; reporting
 - Repeals portions of the state's HIV/AIDS education statute that prohibit school district curriculum that:
 - Promotes a homosexual lifestyle
 - Portrays homosexuality as a positive alternative lifestyle
 - Suggests that some methods of sex are safe methods of homosexual sex.



Sex Education

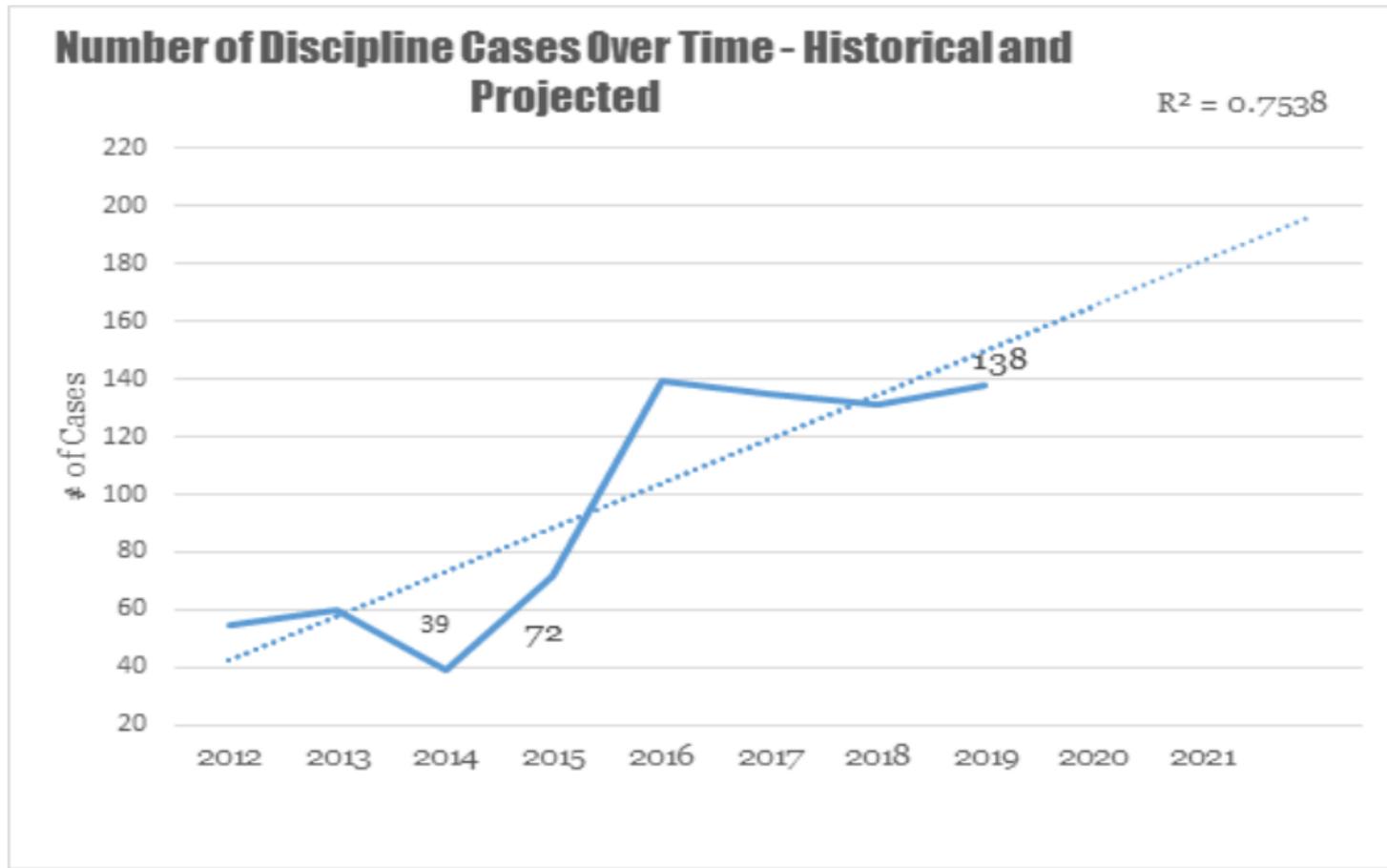
- Corresponding rule change to eliminate language that requires school curriculum to exclusively promote monogamous heterosexual marriage, adopted unanimously, effective 5/20/2019.



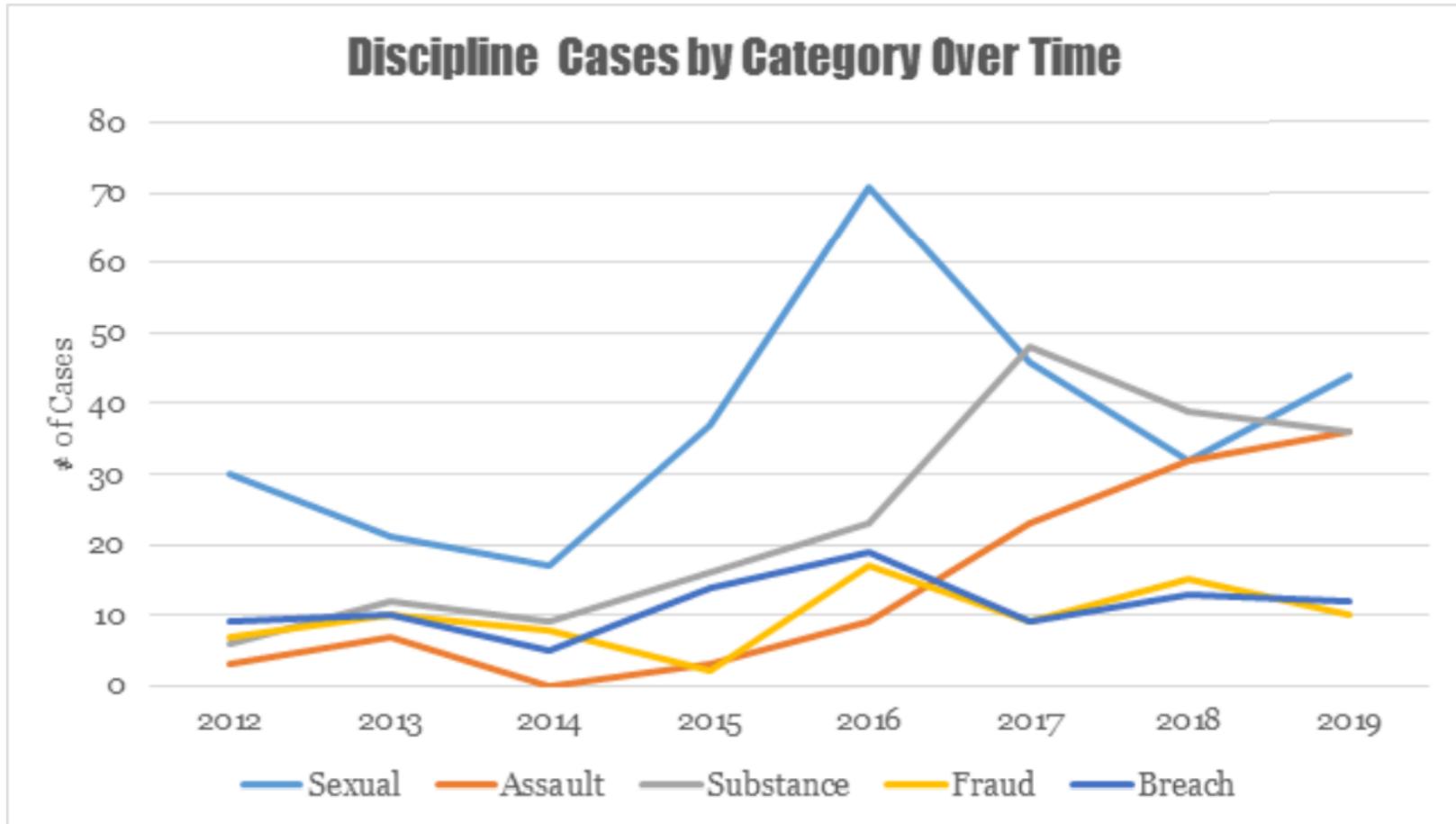
Sex Education

- June 24, 2019 proposed rule change
 - Required that all public hearings on sex education curricula adhere to open meeting law requirements, and legal counsel review.
 - Stated that sex ed MAY be taught to boys and girls separately.
 - Required that information presented be medically and scientifically accurate.

Educator Discipline



Educator Discipline





Educator Discipline

- In 2016, SBE made significant changes to its process to clear a backlog of cases, including running two discipline committees (PPAC) simultaneously.
- Nevertheless, Category I cases (Sexual misconduct/assault/substance abuse) have trended up



Educator Discipline

- Recent media reports have also exposed gaps in the enforcement system.



School Capital Litigation Update

- Danny Adelman, Executive Director,
Arizona Center for Law in the Public
Interest