



Hot Topics Roundup: Tips and Potential Traps

In recent weeks, we've learned about some issues that are percolating at ASBCS. Because those issues may affect your operational dashboards, we wanted to share them with you so that you can make any necessary changes to your operations.

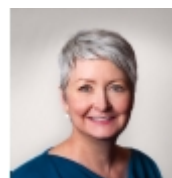
- **Be careful about religious curriculum, activities, or décor.** During a recent meeting with Ashley Berg, the ASBCS Executive Director, she mentioned that her staff had been noticing a lot of what they considered impermissible school-sponsored religious activities and objects at schools. In particular, she mentioned a Bible magic show that was held during regular class time and was presented by a priest; religious seminary classes held on campus and during the school day; crucifixes that had been put up in classrooms and in school offices by the school; and a Bible chorus class. Ashley indicated that any of these issues—anything that ASBCS believes is an endorsement of a specific religious belief by a charter school—will result in a finding of noncompliance by ASBCS.

ASBCS's position is based both on the First Amendment as it has been applied to schools and on Arizona statute, which requires that a charter school be "nonsectarian in its programs, admission policies and employment practices and all other operations." A.R.S. § 15-183(E)(2). If you have any questions about whether your practices are allowable, we are happy to provide advice, as the analysis of these issues is very fact-specific.

- **Only use non-state funds for student referral fees or attendance incentives.** As you may have seen from the recent ASBCS newsletter, ASBCS is examining the payment by schools of student referral fees and incentives for good attendance. ASBCS's position is that although schools may provide students cash awards for attendance and referrals, it is not appropriate to use state funds for those purposes. ASBCS believes that such payments violate the Gift Clause of the Arizona Constitution, which prohibits the gift of state funds. The interpretation of the Gift Clause has changed fairly significantly in the past 10 years, and whether these payments would violate the prohibition or not would likely depend on the circumstances of the payments. However, as with the religious issues identified above,

Education Law

For questions regarding education law matters generally, please contact:



Lynne C. Adams

(602) 640-9348

[E-mail](#)

Whether it is reviewing your discrimination and Title IX policies, handling an OCR complaint, providing training for teachers and staff, or providing legal advice as issues arise during the school day, Osborn Maledon's Education Law team is here to help. For more information, please contact:



David D. Garner

(602) 640-9358

[E-mail](#)



John L. Blanchard

(602) 640-9304

[E-mail](#)

ASBCS will be examining school operations for these types of payments and noting an instance of non-compliance if they exist. Therefore, you may wish to use only donated private funds (not state tax credit dollars, which must be used for specific purposes as well) for these types of payments.

In addition to these ASBCS issues, we wanted to highlight a few other issues that have arisen recently.

- **Prepare for potential cyber attack threats.** On October 13, the Privacy Technical Assistance Center of the U.S. Department of Education issued an advisory, warning K-12 schools across the country of a cyber extortion threat. Schools in several states, including New York, Iowa, Texas and California, have been the subject of extortion threats by cyber criminals. Those criminals have threatened to release student information from the schools' electronic files. The criminals have threatened violence, shaming or bullying of the students whose records would be affected, and they have even sent text and email messages directly to parents of students at the schools (using the information they have stolen), indicating that they have their children's information and will use it unless the schools cooperate.

Although none of the attacks has occurred in Arizona to our knowledge, now is a good time to examine the security of your data systems and to remind school staff about potential phishing attacks. Schools are viewed as "soft targets" because their security systems may not be as robust as other potential targets. And the student information that cyber criminals can steal can be valuable—most students' credit is untarnished and students are unlikely to quickly know that their identities have been stolen. Much of the malicious software used to threaten school records is introduced when a school employee clicks on a dangerous link in an email or opens an attachment.

If you are the target of an attack, you should contact law enforcement immediately. You may also want to contact [PTAC](#), which monitors these types of threats against schools. In addition, the [PTAC website](#) contains information about responding to cyber attacks. Stay tuned for an upcoming Lunch and Learn addressing cyber-security issues in school.

- **Respond promptly to all public records requests.** In mid-September, many charter schools received a public records request from American Transparency, a group apparently located in Florida. This is the same organization that requested teacher experience and pay information from many schools last year. This year's request asked for several years' worth of very detailed vendor information. If your school receives this request—or any other public records request—you must respond to it. The law allows for you to charge for copies of the records, and even for the commercial value of the records in certain circumstances. But you must respond to avoid a potential lawsuit. If you receive a request and would like our assistance in analyzing your obligations and preparing a response, please let us know.

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