

# THE ADVOCATE

## Plan now to attend the Annual Convention



The New Mexico School Boards Association Annual Convention will be held December 4-5, 2009 at the Hotel Albuquerque at Old Town. If you have not already registered to attend please do so immediately. This year's convention will feature two outstanding and nationally known keynote speakers that will head up our program of events.

Those registered will be participate in a whole board training session on *The Key Work of School Boards* written by Katheryn W. Gemberling, Carl W. Smith and Joseph S. Villani and published by the National School Boards Association. The session will be conducted by Kanisha Jones, the National School Boards Association's Director of Educational Services and will feature training in aligning the school board's work to eight key roles of the school board: vision, standards, assessment, culture and climate, collaborative relationships, community engagement and continuous improvement. Each school board member will receive a copy of the Key Work Guidebook compliments of NMSBA.

*School Board Financial & Audit Oversight* will be presented by Charles K. Trainor, President of Management Audit Consultants and Contributing Editor of the *American School Board Journal*. Trainer will address board members about risk assessment, internal audits, control recommendations and board and audit committee training. Trainor a certified internal auditor and fraud examiner and former school board member writes the regular monthly column MONEY for NSBA.

In addition, the Association's Business Meeting will be held, Friday afternoon during the Delegate Assembly. NMSBA has one hundred percent membership of all public school district school board members, therefore all public school board members may vote at the delegate assembly. All of the Delegate Assembly materials will be mailed in late October so that each Delegate may review the information prior to the session.

Reports at the Delegate Assembly include the Nominating Committee reports which will put forward nominations from the members-at-large who have all had the opportunity to choose to run for the offices of Vice-President or Secretary-Treasurer at the state level. The actual election is held and those present will vote.

The Resolutions Committee reports on the submissions of resolutions submitted for inclusion into the association's legislative platform and their recommendations for changes, if any. Calls for input in the form of Resolutions began in May.

The Policy Review Committee reports on the recommendations that the committee reached after taking input from the membership-at-large with regard to changes of the Association Bylaws and Constitution. Input for changes is ongoing and given to the Executive Director for the committee.

The registration forms, tentative agenda and hotel information are available at <http://www.nmsba.org/conferences.htm>.

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# DIRECTOR'S PERSPECTIVE

By Joe Guillen

## NMSBA Takes a Proactive Approach

Over the past few months school boards have become increasingly aware of their responsibilities in the area of financial oversight and timely audits. With the passage of legislation which penalizes districts financially and can result in full board suspension for late audits and with the recent Jemez

Mountain Schools embezzlement and suspension of local financial authority, school boards are again on the front line of accountability.

It does not seem fair that school boards alone should bear the responsibility for these problems, given the statutory role of superintendents as CEOs, the role auditors play in the review of local financial activities and the supervisory role of the Public Education Department. But such is the case in New Mexico today!

For these reasons NMSBA is taking a proactive approach to address these problems by assisting school boards in becoming more aware of responsibilities in these areas and providing critical training necessary to prevent these circumstances from occurring in the future.

NMSBA's Fall Region Meetings include a very informative session entitled "Audits and Financial Improprieties" presented by the Cuddy McCarthy Law Firm. Our 2009 NMSBA Annual Convention in December will feature a keynote address from Charles Trainor, President of Management Audit Consultants, Inc. Trainor provides school districts with risk assessment, internal audits and control recommendations. He is a contributing editor of the *American School Board Journal* and as a former school board member, he is keenly aware of the regulatory challenges facing school districts.

As we all know, school boards take accountability very seriously and dedicate themselves to being responsible stewards ensuring public funds are spent wisely, efficiently and equitably to deliver the kind of education the public wants and expects. As we strive to improve our work, I thank you for your dedicated service to your students and community!



NMSBA representatives attended the Rally for Education held Friday, October 9, 2009 at the Roundhouse in Santa Fe, NM. Over a thousand people (including teachers, students, and education supporters) attended and held signs in support of adequate education funding in New Mexico. There are more pictures on page 12!

## THE ADVOCATE

The mission of *The Advocate* is to provide information to the members of the New Mexico School Boards Association.

Articles published in *The Advocate* represent the ideas or beliefs of the respective writers and are not necessarily the views of the NMSBA unless otherwise noted.

*The Advocate* is the official publication of the NMSBA and is published quarterly. *The Advocate* is supported by membership dues and is sent to all school board members and superintendents of its member districts as well as education stakeholders. Non-profit postage paid in Santa Fe, NM.

Letters to the Editor are welcome. The editorial staff reserves the right to edit article submissions for clarity and length. Deadlines falling on a holiday or weekend will be extended to the next business day. The deadline for submissions is 4 PM:

Winter Issue - December 10th  
Spring Issue - March 10th  
Summer Issue - June 10th  
Fall Issue - September 10th

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# PRESIDENT'S MESSAGE

By David Zimmerman

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School Board Members,

As my term as President of the New Mexico School Boards Association rapidly comes to an end, I take this opportunity to thank you for allowing me to represent school boards throughout our great state. The experience I gained while serving in this capacity has been invaluable and your friendship and the memories will be with me always.

These are challenging times for public education and for the work of local school board members. School boards are responsible for putting into place a system for students to learn and achieve at the highest level possible and as you know excellence in the classroom begins with excellence in the boardroom. I am proud of the work school boards do and the role school board members play in creating a quality public education system for our students.

See you at the annual convention!



## National News

### **PDK Poll Shows Support for Teachers, Testing and Charters**

The 2009 annual PDK Gallup poll found Americans strongly support merit pay for teachers, national tests, expanding charter schools, early childhood education programs, and President Obama's stimulus package.

The poll, which has been conducted annually for 41 years, tracks public opinion on education. The poll is conducted by Phi Delta Kappa International (PDK) in conjunction with the Gallup organization. The 2009 findings are based on telephone interviews conducted in June with a sample of 1,003 Americans.

This year's survey reveals that almost three out of four Americans favor merit pay for teachers, regardless of the respondent's political affiliation. Student academic achievement, administrator evaluation and advanced degrees are the three most favored criteria for awarding merit pay.

Support for No Child Left Behind continued to decline. Only one in four Americans believes NCLB has helped schools in their community. However, Americans continue to support annual testing of students in grades three through eight by a two-to-one margin, and they favor using a single national test rather than letting each state use its own. This opinion is held by Democrats and Republicans equally.

Two out of three Americans support charter schools, although many are confused about whether charters are public schools and whether they can charge tuition, teach religion, or select their own students. During the last five years, America's approval of charter schools has increased by 15 percent. The survey showed that 46 percent of Americans support the use of stimulus money earmarked for education to retain teachers slated to be laid off. Eight-one percent of Americans favor making Kindergarten attendance compulsory.

The two issues cited as most important for moving schools in the right direction were better teachers and more parental support. The biggest obstacle? Lack of money.

When it comes to communications, nearly three fourths of Americans say they are well informed about their schools. Newspapers and school employees remained the top two sources of information about schools.

♦ Source: New Jersey School Boards Association, *Weekly Education News Report*, September, 2009.

## Public Service and What it Means

By Steve Nelson, MBM Candidate and School Board Member in Farmington Municipal Schools

To the school board members of New Mexico who are all a part of the New Mexico School Boards Association: a very gracious “Thank you.” Hopefully this will mean something to all school board members of old, as well as the new members that are about to come up on their 1<sup>st</sup>-year anniversary.

According to the American Heritage Dictionary of the English Language, public service is “the business of supplying an essential commodity, such as water or electricity, or a service, such as communications or transportation, to the public.” In your case, the service is support of education. Public service is a commitment to serve your community and school district to the best of your ability. In making such a commitment, you are taking on a job that the majority of the citizens in your community would not even think of doing.

You’re serving on the board of directors of a business with a multi-million-dollar budget. It’s stressful: you and your district can be sued at any time for anything. It’s time-consuming: you probably didn’t realize how much time board meetings committee meetings, regional meetings, state meetings, emails, mail, telephone calls, lobbying the legislator, and continuing education would take. It requires a lot of effort: with all of the political misuse around, you must take your job seriously. Being prepared for meetings, understanding your role as a board member, and continuing to learn the public school process are what it takes to help your district succeed.

Criticism is rampant. You have all heard and read it: “Why do we even need school board members?” They’re just puppets of the state PED or of the Superintendent!!” Maybe we should be called “arbitrators” instead of board members. I think this quote from Malcolm Forbes sums up

how many of you may feel about dealings you have with the public: “It’s so much easier to suggest solutions when you don’t know much about the problem.”

As if the job weren’t hard enough, you now realize that you can be front-page news without even trying! Trying to do what was right, you broke the State Open Meetings Act. Trying to solve a student issue, you may have created an EEOC issue with the union! Hopefully you’ll never be caught cheering for a cross-town school (not your home district school) at a sports competition!

All of this time and effort for no monetary reward – that’s something special. Public service is a sacrifice. The commitment costs you time and effort that you could otherwise spend on your family, friends, and work. But the primary reason you’re here, I hope, is for the kids—not just yours, but all the children of your district.

Without you and the gracious forfeiture of your time, the community’s voice wouldn’t be shared directly with the administration. You provide the administration with your community’s ideas on how policy may better serve your community. In addition, you relay back to the public what is going on in your school district. Yes, you fight for your district’s needs, but the needs of the entire community strongly affect your decisions. This is not just a single-minded agenda.

You are here for the right reasons: to help the children of New Mexico become well-educated, strong community members willing to work for the betterment of their community and to make the state of New Mexico a global competitor. Not many of us truly understood what Public Service Means. I am honored to thank you, for you do understand.

Thank you.

## National Cyber Security Awareness Month

October is National Cyber Security Awareness Month (NCSAM), a national public awareness campaign to encourage everyone to protect their computers, children, and data. As the Internet becomes increasingly pervasive, it is important that everyone takes steps to stop it from becoming invasive. People are constantly connected from home, school, work, and even in between on their mobile devices. Check out StaySafeOnline.org’s top tips to keep you safe online at <http://www.staysafeonline.info/top-tips>: 1) Know who you’re dealing with online. 2) Keep your web browsers and operating system up to date. 3) Back up important files. 4) Protect your children online. 5) Use security software tools as your first line of defense. 6) Use strong passwords or strong authentication technology to help protect your personal information. 7) Learn what to do if something goes wrong.

StaySafeOnline.org also has a page dedicated to K-12 educators at <http://www.staysafeonline.info/content/k-12-educators>, asking: Are your students, faculty and staff safe and secure on the Internet? Making school networks safe and secure protects your school, faculty and staff as well. The page promotes three pillars, Cyber Security, Cyber Safety, and Cyber Ethics, as a means of teaching students about online safety. They also recommend you check out Cybersmart! - Cyberbullying prevention lessons. The standards-based K-12 lessons are based on the most current research on online victimization, using best practices from the field of character education. Teacher lesson plans, student activity sheets, home connections, prevention activities, and optional Web 2.0 strategies are included.

♦ Source: NSBA Boardbuzz web blog, found at <http://boardbuzz.nsba.org>

# NMSBA NEWS

## Call for Talent

NMSBA Annual Convention will be held **December 4-5, 2009 at the Hotel Albuquerque**, Albuquerque, NM. We are seeking performing school groups for the upcoming Annual Convention. These student performers may be dancers, musicians or vocalists. The performances will give students and the district a chance to spotlight their talented students. Performances are compensated by NMSBA. If you have a student performing group, please e-mail Carolyn Mole directly at [cmole@nmsba.org](mailto:cmole@nmsba.org) with "District Talent" in the subject line and the following information in the text: District name, name of performance group, description of performance, district contact name, title, address and phone number.

## New Training Year Began September 1st

State mandated school board member training is tracked from **September 1 – August 31** each year. Board members are **required to have 5 hours of approved training** per year. NMSBA tracks school board member training and sends quarterly reports to Superintendents. Final 08-09 reports were sent to Superintendents in early September. Final reports are submitted to the Public Education Department's Office of Accountability for publication in the School District's Report Cards. If you have questions or concerns regarding training, please contact Elizabeth Egelhoff, Programs Director in the NMSBA office.

## Boardbook Offers Districts Paperless Meetings

This tutorial link is available from the NMSBA homepage at [www.nmsba.org](http://www.nmsba.org) and then choose "links" or directly at <http://www.nmsba.org/links.htm>. BoardBook is an electronic means to have Paperless Board Meetings and is now being offered through a partnership between NMSBA and Texas Association of School Boards (TASB) to New Mexico school districts.

## Subscription Policy Service Available

NMSBA offers districts the option of a Subscription Policy Service. This service offers policy development by a consultant/lawyer and provides up-to-date Policy Service Advisories. The direct link to the information page is <http://www.nmsba.org/policysvc.htm>. For further information or clarification, contact Joe Guillen, Executive Director of NMSBA via e-mail at [jguillen@nmsba.org](mailto:jguillen@nmsba.org) or by phone at (505) 983-5041 or Donn Williams, NMSBA Policy Consultant via e-mail at [nmsbapolicy@cox.net](mailto:nmsbapolicy@cox.net) or by phone at (505) 469-0193.

## Technology & Leadership Conference

The NSBA T&L2 Conference will be held October 28-30, 2009 in Denver, Colorado. The premier technology and learning conference for district leadership teams. T+L features sessions, workshops, site visits, field trips, exhibits and networking opportunities. Content areas will include: Tools for Engagement, Technology & the Law, Professional Development, Leadership for Innovation, 1:1-Next Steps, Preparing Tomorrow's Workforce with STEM, and Mission Critical - IT Management. For more information about the specific programs and registration, you can log onto <http://www.nmsba.org/tl/Events>.

## NMSBA 2009 FALL REGION MEETINGS

### Region I

#### Wednesday, October 7 in Aztec

Aztec, Bloomfield, Central, Dulce, Farmington, Gallup, and Zuni

### Region II

#### Monday, September 10 in Chama

Chama Valley, Espanola, Jemez Mountain, Los Alamos, Mesa Vista, Pecos, Penasco, Pojoaque Valley, Questa, Santa Fe, and Taos

### Region III

#### Monday, October 19 in Maxwell

Cimarron, Clayton, Des Moines, Las Vegas City, Maxwell, Mora, Mosquero, Raton, Roy, Santa Rosa, Springer, Wagon Mound, and West Las Vegas

### Region IV

#### Monday, October 14 in Quemado

Albuquerque, Belen, Bernalillo, Grants-Cibola, Cuba, Estancia, Jemez Valley, Los Lunas, Magdalena, Moriarty-Edgewood, Mountainair, Quemado, Rio Rancho, Socorro, and Vaughn

### Region V

#### Tuesday, September 15 in Elida

Clovis, Dora, Elida, Floyd, Fort Sumner, Grady, House, Logan, Melrose, Portales, San Jon, Texico, and Tucumcari

### Region VI

#### Wednesday, September 28 in Roswell

Artesia, Carlsbad, Dexter, Eunice, Hagerman, Hobbs, Jal, Lake Arthur, Loving, Lovington, Roswell, and Tatum

### Region VII

#### Wednesday, October 27 in Las Cruces

Alamogordo, Capitan, Carrizozo, Cloudcroft, Corona, Gadsden, Hatch Valley, Hondo Valley, Las Cruces, Ruidoso, T or C, and Tularosa

### Region VIII

#### Tuesday, September 22 in Cobre

Animas, Cobre, Deming, Lordsburg, Reserve, and Silver City

## A View From My Front Porch: AYP

By William Bayne Anderson, MBM Candidate and School Board Member in Deming Public Schools

*This article was originally intended as a "Letter to the Editor" in the Deming Headlight. Several local residents had submitted letters blaming teachers and administrators for the school district not obtaining passing AYP scores. I submitted this letter in response and thought other school districts might want to reprint the article if they are also being unfairly criticized over AYP scores.*

I need to clarify that what I say in this article does not reflect the opinion of the Board of Education. These are my thoughts on the topic of Annual Yearly Progress (AYP).

I know from a couple of letters to the editor, appearing recently in the *Deming Headlight*, that many in the community know that the Annual Yearly Progress results have been published by the State Public Education Department. The letters that have appeared in the *Deming Headlight* fault the teachers and administrators for the failure of Deming schools to gain AYP.

I believe that those who take this point of view have this opinion because they do not understand what AYP is and why some schools can make the acceptable annual progress while many do not. So, if you will allow me a few minutes of your time, I would like to explain, from my viewpoint and with some experience in the area, what is going on with AYP.

First, if you look at the schools that are making AYP, you will find that in most cases these are small schools. These schools are in school districts that have fewer students in the entire district than Deming has in one school. So, what does that mean in terms of AYP?

To fail to meet AYP standards, a school only needs to fail in one of a vast number of categories. The larger the school, the larger number of categories in which you must be successful.

Let me explain, although every school has the same score card for AYP, if you have only a few students who are identified into an area, then likely you have too few students to be evaluated by the state in that area. The state has minimum enrollment numbers such as the number of special education students in a school. If a school has fewer than the minimum and even if the school fails in the special education area, it doesn't count toward making AYP. So, small schools simply have it easier.

Second, making AYP can be the worst thing to happen to a school. If a school makes AYP then for the next school year the scale needed for success to meet AYP multiplies faster than for a school that does not make AYP. For example, Los Alamos High School, which has more parents with PhD degrees than nearly any school in the country, began in the early years of AYP to meet the progress standards. However, the multiplying effect has now grown to a level for that high school that they are now nearly at the point of state "take over" of the school. I am sure there is great progress made each year in the school but not enough to make the standard. A standard, by the way, that increases each year even if you don't make AYP.

Third, when No Child Left Behind was passed by Congress each state was allowed to set a beginning standard to use to begin the AYP process. Different states set different beginning standards. New Mexico set one of the higher standards in the nation and so the annual score increase is greater than for states which began with a lower beginning score.

The teachers and administrators in Deming schools are doing all they can do to attempt to make the passing standard for AYP. It is simply difficult to hit a moving target. It is unfair to put the blame for not making AYP fully on these individuals. Did these professionals give up when these results were announced? No, they picked themselves up, developed new plans, and will try harder this year.

Are there areas in which our schools can improve? Did some results, this year, drop in some areas? Yes, but there are so many factors that can affect a score. Sometimes in areas in which a teacher, administrator or a school can simply not do anything about in one particular year especially when the target score keeps moving.

Secretary of Education, Veronica Garcia, stated with this year's results that schools across the state are making good progress toward AYP. However, even though the state attempted to have progress become a factor in determining AYP, the federal government denied the request.

For those of you still not convinced, I would make the challenge to you to get involved and see for yourself what is going on in Deming Schools. There are many areas for community involvement. The district is always looking for good people to fill needs. It is easy to sit back and criticize. Get involved and go see what is really going on.

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## Training Compliance for School Board Members

As the result of the passage of SB 148 effective June 19, 2009 all governing body members of charter schools shall attend five hours of training at least annually on topics that include department rules, policies and procedures, statutory powers and duties of governing boards, legal concepts pertaining to public schools, finance and budget and other relevant matters. This new requirement is similar to the mandatory training requirements for local school board members set forth in statute 22-5-13 NMSA 1978. With this addition of training for charter school governing bodies, NMSBA staff was consulted for specifics about procedures utilized to meet training requirement tracking issues. In preparing for that meeting and presentation, some interesting statistics were accumulated that I thought the membership might be interested in.

Since 2003, when the school board members' mandated training began, the first program year being September 1, 2003 to August 31, 2004, there were 33 hours of training offered. NMSBA was providing training prior to that, but it was not required, therefore an effort was made to inform school board members of the training opportunities available. Overall, in the 2003-2004 program year we saw a 76% compliance rate among the 451 board members (89 school districts: 86 have a 5-member board and 3 have a 7-member board).

Compliance over the last six years has remained steady between 85% and 89%. The compliance is lower in election years, possibly due to newly elected members having to settle in/adjust to the varying demands of their new role or the strain in district budgets to cover both outgoing and incoming board members' training. Noncompliance statistics showed a trend in that the same school districts are repeatedly noncompliant in terms of their mandated training. This is an issue that NMSBA is going to study further.

New Mexico is among 18 other states that require school board training. Four states (Mississippi, New Jersey, Oklahoma and West Virginia) remove board members from office for noncompliance in mandated training. The state of Tennessee withholds state funds directly from school districts whose school board members are noncompliant in mandated training with the idea that these regulations are necessary for those in charge of public funds. The PED acknowledged that New Mexico may not renew charter school governing bodies' requests if their boards have not received mandated training.

NMSBA seeks to encourage mandated board training compliance through communicating the value and importance that school board training brings to the district as a value-added service. Just as doctors, lawyers and teachers continually seek professional development in their area of expertise, school board members, because they are in a position requiring public trust, should also seek to have current knowledge of school district finance, legal issues and policy development. NMSBA recognizes school board members as a key player in the educational team for the children of New Mexico. We have developed and instituted a Call for Proposals for training at conferences that ties training to specific topic strands important to the school board member's role. In addition, we ask for a written summary of experience and credentials of presenters in order to determine the potential value of their presentation to school board members.

NMSBA also seeks to communicate with districts and board members about their training. We postal mail quarterly training hour reports to the Superintendent and board President following each conference. The NMSBA website has registration, agendas and hotel links available as well as a calendar of events. This information is also postal mailed to Superintendents and Board Presidents. NMSBA has also increased the number of training hours available each training year, for instance in the 2008-2009 training year, 50 hours were possible. NMSBA also has taken input from members and allowed up to two-hours per year of independent training to be possible for those who may attend other state or national conference or have qualified professional training on-site. The form for submitting an Independent Request for Training is available in the "publications" section of the NMSBA website, at [www.nmsba.org](http://www.nmsba.org). There is also a formal recognition of members who achieve the various levels of training held at the Annual Convention awards luncheon.

If you have questions about board training, please call me at the NMSBA office (505) 983-5041 - Elizabeth Egelhoff, Programs Director.

**Don't forget the awards luncheon at the Annual Convention is a separate event on the registration form - make sure you are registered for it if you want to attend!**

## Be Careful When Attempting to Ban Gang-Related Apparel

by C. Emery Cuddy, Jr., Special Counsel, Cuddy & McCarthy, LLP

The Student Rights And Responsibilities Regulation of the Public Education Department [NMAC 6.11.2.9(A)(2)] includes “gang related activity” in its list of “prohibited activities.” Furthermore, local boards are given the authority and discretion to regulate all areas of student conduct which are not specifically prohibited, so long as such regulation is “within legal limits.” NMAC 6.11.2.9(B)(3) specifically allows boards to regulate “student dress and appearance.” With regard to the regulation of student attire which local school boards consider to be necessary to control gang activity, there is a need for boards to be aware of when such regulations have been held to be “within legal limits” and when they have not. This article will try to give you guidance in developing policies for the control of gang-related attire which will withstand a judicial challenge.

The United States Supreme Court has never directly considered the issue. Therefore, we need to look to general principles of constitutional law, as well to the decisions of courts in other jurisdictions for guidance. The problem is made more difficult because the judicial decisions about this issue recognize an important fact; i.e. districts can expect to be tested constantly by the subtle and changing forms of gang symbols. Therefore, the dilemma for school districts is how to craft policies that are broad enough to encompass potential shifts made by gangs to avoid detection, while providing sufficient specificity to avoid constitutional challenges on the grounds that the policy is overboard and vague. For example, this year Oakland Raiders jackets may be the gang symbol *de jour*, whereas next year it may be red bandanas.

In general, a student’s dress may be restricted if the school can show that it creates a health or safety problem or if the dress promotes the use of illegal substances or depicts lewd, indecent or offensive speech. Thus, a school need not allow speech or expression that “would undermine the school’s basic educational mission.” Most courts do not currently recognize gang insignia as forms of symbolic speech worthy of First Amendment protection, unless the wearing of religious insignia is involved. Schools and municipalities have at times prohibited the wearing of religious symbols when such symbols have been thought to be gang-related. Among the religious symbols banned have been the Star of David, rosary beads worn as necklaces, cross tattoos, long hair worn by Native American youths, and various “Satanic” or Wiccan symbols, such as the pentagram or pentacle. The general rule is that dress codes which prohibit the wearing of religious attire or symbols are not a valid means of achieving discipline when weighed against students’ rights to religious freedom and free speech. Therefore, a ban on

gang-related attire cannot restrict the wearing of religious symbols and will not be upheld where there is no evidence of substantial disruption or material interference with school activities that justifies infringement on student’s religiously motivated symbolic speech.

For example, in the *Chalifoux* case, a Texas school district, pursuant to a dress code prohibiting “gang-related apparel,” forbade student plaintiffs from wearing their rosaries as necklaces displayed outside their shirts. The School District argued that such measures were necessary because it had determined that a local gang, the United Homies, wore rosary bead necklaces. The students argued that their wearing of rosaries constituted an act of religious expression and, as such, was “symbolic speech,” a form of “pure speech” that should be afforded the same constitutional protections that were given to the political speech at issue in *Tinker v. Des Moines Independent Comm. Sch. Dist.*, 393 U.S. 593 (1969). The School District argued that the wearing of the rosary necklaces should be considered an example of “speech-plus-conduct,” where the government may regulate the conduct associated with an act of speech—in this case, the act of physically wearing the necklaces—if it furthers an important governmental interest, such as the protection of student safety in the public schools. The School District argued that its objective in banning the display of rosaries was not to suppress the students’ religious expression but to curb gang activity, a legitimate goal of public school officials.

The court rejected the School District’s argument and found that the wearing of the rosaries constituted symbolic speech and, therefore, qualified for protection under the First Amendment. Accordingly, the court applied the balancing test established in *Tinker* and found that the school district had to show that the plaintiffs’ religious expression had “caused a substantial disruption of or material interference with the school activities” before it could infringe on the students’ protected speech. As a result of the school district’s inability to produce sufficient evidence of either actual disruption or reasons to anticipate a disruption at the school, the court held that the school district had not right to prohibit the plaintiffs from wearing and displaying their rosaries as a sign of their faith.

In addition to protecting the students’ rights to wear rosaries under a claim of protected speech, the court also upheld their right to wear their rosaries as part of the free exercise of their religion. The court held that “the fact that wearing a rosary as a necklace is not mandated by orthodox Catholicism does not defeat their First Amendment rights to free exercise of their personal beliefs.” The court also noted that the school dress code that banned “gang-related apparel” did not sufficiently

define that term, which meant the dress code provided excessive discretion to law enforcement officials to decide the parameters of the ban on “gang-related apparel.” The court found the school dress code’s prohibition on gang-related apparel void for vagueness.

In *Stephenson v Davenport Community School District*, 110 F.3d 1303 (8<sup>th</sup> Cir. 1996), school officials ordered the plaintiff to remove a small cross tattooed between her thumb and index finger. School officials argued that the cross tattoo was a symbol of gang affiliation. In *Stephenson*, the Eighth Circuit found that school regulations prohibiting the wearing of “gang-related...colors, symbols, signals, signs, etc.” violated the due process clause of the Fourteenth Amendment because without a definition of the pivotal term, “gang,” the regulation was overly vague. A law or regulation is unconstitutionally vague if it fails to provide adequate notice of prohibited conduct or if it fails to prevent arbitrary enforcement. The court explained, “[A] regulation is void-for-vagueness if it ‘forbids or requires the doing of an act in terms so vague that [persons] of common intelligence must necessarily guess at its meaning and differ as to its application.’” The court noted that the term “gang” is “notoriously imprecise.” The court found that “gang” was not defined and that “gang symbols...take many forms and are constantly changing.” The court held that, because the school district failed to provide any definition of “gang,” the use of that term in the dress code allowed school administrators and local police too much discretion in deciding what represents a gang symbol.

Similarly, in *City of Harvard v. Gaut*, 277 Ill. App. 3d 1, 214 Ill. Dec. 68, 660 N.E.2d 259, 262-63 (1996), the court invalidated a city ordinance on overbreadth grounds, because the ordinance outlawing the wearing of “known gang colors, emblems, or other insignia” banned a substantial amount of protected speech, given the fact that “gang colors” and “gang clothing” included the official colors of the local high school, Chicago Bulls jackets, and religious jewelry such as the Star of David.

Closer to home, in *Hodge v. Lynd*, 88 F.Supp. 2d 1234, 1245 (D.N.M. 2000), the United States District Court for the District of New Mexico held that “the informal dress code established by the Sheriff’s Department for the [County] Fair on the basis of the County’s “zero gang tolerance” rule, which banned the wearing of clothing that ‘could be an indicator of gang activity,’ suffers from the same vagueness problems as the dress codes and ordinance involved in *Stephenson*, *Chalifoux*, and *City of Harvard*.” The New Mexico federal district court opined, “There is nothing in the zero-tolerance rule that in any way specifies what is meant by gang activity, gang symbols, or gang-related apparel. Due to this lack of specificity, enforcement of the dress code is left to the unfettered discretion of individual officers....”

By contrast, a federal court in Kentucky held that a school dress code adopted to address the gang problem at Atherton High School did not violate the First Amendment rights of high school students. There, the dress code did not use the terms “gang”, “gang activity” or

“gang signs.” Instead, the policy specifically listed the permissible items of clothing and stated that “[i]tems not listed are inappropriate and not allowed.”

More recently [2008], in the case of *Cooper v. Denlinger*, the North Carolina Court of Appeals issued an opinion which contains a helpful discussion of the constitutional pitfalls that await anti-gang policies that attempt to cast a net so broadly so as to lump innocent personal expressions and behaviors in with anti-social, possibly criminal gang conduct. Explicit in the appellate court’s opinion is the need for specificity in identifying what particular types of clothing, jewelry, etc., are gang-related. The court acknowledges that if, as the school district asserted, a list exists of the prohibited items, symbols and conduct, that list would constitute proper notice to students sufficient to eliminate any constitutional concerns. In fact, quoting from *Chalifoux* case, the North Carolina court emphasized the need to “provide a definite list of prohibited items and to update that list as needed.” Clearly, a list, that is consistently updated, would go long way toward demonstrating notice to students and limiting the discretion of school officials charged with enforcing the policy.

In light of the foregoing, in order for school dress codes to be effective “gang-busters,” school districts should take sufficient time to develop a comprehensive list of the specific clothing and apparel items that will be permitted and prohibited, without any reference to “gangs” or “gang-related activity.” School districts should be careful in not identifying and listing religious insignia, such as crosses, stars of David, and even pentagrams, as prohibited items.

Boards should consider the following in crafting anti-gang apparel or symbol policies: First, an anti-gang policy should specify particular items banned by the district so as to avoid a challenge for vagueness. Second, when determining what items to list in the ban, the district should obtain input from the district’s school resource officer, if one exists, local police and others in the community and the district knowledgeable about the gangs in the area and their clothing, insignia, gestures, etc. Boards should actually receive “evidence” from those sources at an open board meeting, or by a subcommittee developing the policy or banned items list, which evidence can later be cited if the policy is challenged. Third, the policy should be reviewed regularly to make sure it keeps up with the ever changing gang culture. Fourth, as part of the regular review of the policy, items should be added or subtracted from the list using a deliberative process that involves consulting a variety of gang experts, not based solely on whims of a local police officer whispering in the principal’s ear.

Our firm has developed a model policy which we will provide to any board wishing to address this issue in its policies. Please contact me if you wish to receive a copy of the model policy, free of charge. As always, of course, no model policy should be adopted without careful consideration of the needs and uniqueness of each school district and amendment/revision to make the policy right for your district.

## Increasing education: an essential component of health care reform

*NSBA has a web blog called “BoardBuzz” recently had a post that you might find interesting...*

Boardbuzz knows that people are probably not looking forward to any more opinions related to the proposed health care reform – it’s overwhelming as is. But BoardBuzz also has an opinion that really should be heard: invest more in education! That’s right, education. Not “health education,” just plain old *education*. The health care reform debate is currently focused on health insurance, health care costs, and increasing prevention, but education, seems to be left out of this important discussion.

Why does BoardBuzz want education to be emphasized in the debate? We all know that education is essential to helping people prepare for the future, get good jobs, have higher incomes and function well in society. But new research is showing that education also plays a major role in a person’s health outcomes and longevity. BoardBuzz recently read a new issue brief released by the Robert Wood Johnson Foundation that shows that evidence strongly links education with health, even when other factors like income are taken into account. The brief’s reference to education pertains specifically to “educational attainment,” or the years or level of overall school a person has, rather than instruction on specific health topics like diet or exercise. For instance, according to this report, college graduates can expect to live at least five years longer than individuals who have not finished high school and children whose parents have not finished high school are more than six times as likely to be in poor or fair health as children of college graduates.

You may be asking: how exactly does this link occur? The brief looks at three major interrelated pathways through which educational attainment is connected to health: health knowledge and behaviors; employment and income; and social and psychological factors. Education, for instance, can increase people’s knowledge and cognitive skills, enabling them to make better-informed choices among health-related options for themselves and their families. In addition, greater educational attainment is associated with health-promoting behaviors such as increased consumption of fruits and vegetables and refraining from excessive consumption of alcohol and from smoking. Education is also tied to the provision of knowledge and skills necessary for better employment, which, can shape health in many ways by providing financial stability and jobs with less occupational hazards, better health benefits, and the provision of sick leave. Moreover, education is linked with social and psychological factors including an improved sense of control, social standing, and social support, all of which can lead to better health.

The brief additionally shows that children of more-educated parents experience better health and other social advantages and the quality of children’s health and development consequently influences health later in

life. Parents with lower educational attainment face greater barriers to creating healthy home environments and modeling healthy behaviors for their children and children with less-educated parents face more obstacles to being successful in school and are less likely to receive college degrees, which may negatively affect their health in adulthood.

According to the brief, low education attainment is a major problem in this country. In the U.S., nearly 16 percent of adults ages 25 years and older have not completed high school, 30 percent have no schooling beyond high school, 27 percent have attended but not completed college, and only 28 percent are college graduates. And sadly, the U.S. is the only industrialized nation where young people currently are less likely than members of their parents’ generation to be high-school graduates.

Investing more in education has always made sense, but within the current U.S. health care crisis this investment seems vital. Is education an essential component of health care reform to you now?

♦ Robert Wood Johnson Foundation new issue brief can be found here: <http://www.rwjf.org/files/research/commission2009eduhealth.pdf>

♦ Source: NSBA Boardbuzz, October 5, 2009 found at <http://boardbuzz.nsba.org/>

## Medicaid reimbursement program safe - for now

U.S. Health and Human Services Secretary Kathleen Sibelius made it official that the Department is reversing the Centers for Medicare and Medicaid Services (CMS) rule that would have virtually eliminated school-based Medicaid reimbursement for transportation and administrative healthcare services for students.

If the CMS Rule 2287 had become effective, the fiscal impact on school districts would have been an estimated \$3.6 billion nationwide over five years. According to the Department, the rescission reflects concern that the rule could limit the Medicaid administrative outreach activities of schools, and that the overall budgetary impact on schools could potentially impact their ability to offer Medicaid services to students.

The National School Boards Association orchestrated a coordinated advocacy effort from school districts and state school boards associations to reverse the CMS Rulemaking. These are important supplements that help fund special education reimbursement, for which school only receive an average of 60 cents for every dollar spent.

Even though the rule was issued in December 2007, its implementation had been delayed numerous times through congressional action because of joint advocacy efforts. On May 6, 2009 the Department posted a proposal in the Federal Register to rescind CMS Rule 2287. Secretary Sibelius’ announcement officially confirms the rescission. This also seems to assure the reimbursement program will continue into the foreseeable future. Secretary Sebelius said, “By rescinding these rules, we can expect that children will continue receiving services through their schools.

♦ Source: Nebraska Association of School Boards, *Bulletin*, August 2009

# Leadership Development Program 2009 Recognitions

*School board members earning the noted level of training will receive a certificate and lapel pin at the Awards Luncheon, Friday, December 4, 2009 at the Hotel Albuquerque at Old Town, Albuquerque, NM*

## Leadership Achievement (24+ points - cumulative)

David Ceballes – Alamogordo	Freddie Rodriguez – Cobre	Manuel Saucedo – Lordsburg
Paula Maes – Albuquerque	Marty Vigil – Cuba	Mark Thomas – Lordsburg
Dolores Griego – Albuquerque	Andy Hernandez – Deming	Christopher Martinez – Los Lunas
Robert Lucero – Albuquerque	Gary Simpson – Dora	Barbara Gordon – Magdalena
William Hurt – Animas	Jose Archuleta – Espanola	Dante Vigil – Mora
Leonard Tillman – Aztec	Jerry Sanchez – Estancia	Michael Anaya – Moriarty-Edgewood
Nate Dunn – Capitan	Mike Isaacson – Farmington	Joshua Smith – Mosquero
Ron Singleton – Carlsbad	Manuela Huerta – Gadsden	Darrell Roberts – Mountainair
James Guevara – Carrizozo	Daniel Castillo – Gadsden	Gary Roberts – Quemado
Hoskie Benally – Central	Tejay Simpson – Hobbs	Frank Gibson – San Jon
Lorenzo Montoya – Clayton	Jim Cooper – Hondo Valley	Richard Polese – Santa Fe
Douglas Porch – Cloudcroft	Tom Bruhn – Logan	Danny Montoya – Springer

## Outstanding Leadership (36+ points - cumulative)

Dr. Allan Rickman – Alamogordo	Joann Salazar – Espanola	Frank Otero – Los Lunas
David Ceballes – Alamogordo	Floyd Archuleta – Espanola	Clint Kuchan – Maxwell
Lt. Colonel Deb Thompson – Alamogordo	Jesse Sedillo – Estancia	Todd McCarty – Moriarty-Edgewood
Dolores Griego – Albuquerque	Mike Isaacson – Farmington	Sheila Castellini – Raton
Jamie Goldberg – Belen	Manuela Huerta – Gadsden	Michael Anne Holland – Raton
R. Sam Chavez – Belen	William Estevan – Grants-Cibola	Debra Porter – Reserve
James Fields – Capitan	Sharon MacKendrick – Grants-Cibola	Sharma Hutchinson – Reserve
Ron Singleton – Carlsbad	Larry Crites – Jal	Milburn Dolen – Roswell
Elayne Grace Lowe – Central	Randy Cordova – Jemez Mt.	Rhonda Vincent – Ruidoso
Marty Vigil – Cuba	Gary Gold – West Las Vegas	Linda Baca – Springer
David McSherry – Deming	Caroline Lopez – West Las Vegas	Lydia Bamonte – T or C
Susan Garnett – Dexter	Joan Ahlers – Los Alamos	Arsenio Cordova – Taos
Gary Simpson – Dora	Jody Benson – Los Alamos	Don Schutz – Wagon Mound
Leonard Valerio – Espanola	Ed Hernandez – Los Lunas	Tony Rubin – Wagon Mound
		Royce Gchachu – Zuni

## Exemplary (20+ points in just the 2008-2009 program year)

Dr. Allan Rickman - Alamogordo	Joanna Dykehouse – Dulce	Mary Mascarenas – Penasco
Sue Medina – Alamogordo	Andrew Chavez – Espanola	Norman Esquibel – Penasco
Rhonda Cross – Alamogordo	Jose Archuleta – Espanola	Isabel Duran – Penasco
David Ceballes – Alamogordo	Steve Nelson – Farmington	Margaret Tapia – Pojoaque
Dolores Griego – Albuquerque	Scott Stinnett – Fort Sumner	David Ortiz – Pojoaque
William Hurt – Animas	Jennifer Viramontes – Gadsden	Dr. Alan Garrett – Portales
Carolyn Shearman – Artesia	Maria Saenz – Gadsden	Inez Rodriguez – Portales
Mitch Waggoner – Aztec	Craig Ford – Gadsden	David Zimmerman – Questa
Karen Ransom – Bloomfield	Bill Page – Grady	Bernie Torres – Questa
Jim Conyers – Bloomfield	Sharon MacKendrick – Grants-Cibola	Stephanie Jansen – Raton
Robin Parks – Capitan	Randy Cordova – Jemez Mt	Sheila Castellini – Raton
Ron Singleton – Carlsbad	Anthony Delgado – Jemez Valley	Michael Anne Holland – Raton
Dorothy Redhorse – Central	Chuck Davis – Las Cruces	Debra Porter – Reserve
Randy Manning – Central	Ramon Montano – Las Vegas City	Tim Foster – San Jon
Donald Valdez – Chama	Patrick Romero – Las Vegas City	Tommy Evans – San Jon
Silviano Atencio – Chama	Armando Chavez – Loving	Frank Montano – Santa Fe
Lora Harlan – Clovis	Olga Onsurez – Loving	Pauline Jaramillo – Socorro
Terry Martin – Clovis	Francisco Chacon – Loving	Danny Montoya – Springer
Lola Bryant – Clovis	Barbara Gordon – Magdalena	Lorraine Coca-Ruiz – Taos
Frank Cordova – Cobre	Mary Lou Kern – Maxwell	Brenda Yousif – Tularosa
Freddie Rodriguez – Cobre	Phil Anaya – Moriarty-Edgewood	Louis Gauna – Vaughn
Corina Rivera – Cobre	PJ Lovato – Mountainair	Camille Cornell – Wagon Mound
Willam Bayne Anderson – Deming	Paul C de Baca – Pecos	Tony Rubin – Wagon Mound
Ruben Torres – Deming	Mary Ann Vigil – Pecos	Christine Ludi – West Las Vegas
Gary Simpson – Dora	Michael Romero – Penasco	Kenny Lujan – West Las Vegas
David Montoya – Dulce		Virginia Chavez – Zuni

# MARK YOUR CALENDAR!

**T+L Conference**  
**October 28-30, 2009**  
**Denver, CO**  
[www.nmsba.org/tl/Events/](http://www.nmsba.org/tl/Events/)

**Annual Convention**  
**December 4-5, 2009**  
**Albuquerque Hotel**  
**Albuquerque, NM**

**Board Institute**  
**February 12-13, 2010**  
**Hilton & Eldorado Hotels**  
**Santa Fe, NM**

Information for NMSBA conferences will be available on the NMSBA website.  
Go to [www.nmsba.org](http://www.nmsba.org), and from the homepage choose "Conference Information"  
For out-of-state conferences, see the website listed.



A rally for education was held Friday, October 9, 2009 at the Roundhouse in Santa Fe, NM. Over a thousand people (including teachers, students, and education supporters) attended to let legislators know education funding should NOT be cut during the Special Legislative Session. School Board Member and NMSBA Board of Directors member Mary Mascarenas from Penasco speaks to Rep. Sheryl Williams-Stapleton and Rep. Bobbie Gonzales at the Rally. Attendees left "super sized" messages for legislators to support adequate education funding in New Mexico.

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