



## **Mesa Achieves Higher Education Task Force**

Agenda

May 14, 2019

10:30am-12:00pm

Mesa Counts on College Access Center

635 E. Broadway Road, Mesa AZ 85204

### Appointed Task Force Members

Co-Chair Councilmember Francisco Heredia

Co-Chair Councilmember Jen Duff

Dr. Richard Haney, Mesa Community College

Jon Schmitt, ASU Asst VP, Ed Outreach & Student Services

Dr. Ember Conley, MPS Superintendent

Elaine Miner, MPS Governing Board President

Dr. Shane McCord, GPS Superintendent

Mike Hutchinson, Executive VP, East Valley Partnership

Jaye O'Donnell, Asst Economic Development Director, City of Mesa

Deanna Villanueva-Saucedo, MCC Community Engagement Director

Vince Yanez, Helios Senior VP of Community Engagement

1. Call to order by Task Force Co-Chair.
2. Opening Remarks and Welcome to the Task Force by Mayor John Giles.
3. Items from citizens present.
4. Address any questions regarding Open Meeting Laws by Alfred J. Smith, Mesa Deputy City Attorney.
5. Discussion of the purpose of the Task Force by the Task Force Co-Chairs, Councilmember's Duff and Heredia.
6. Hear a presentation by Rachel Yanoff, Executive Director of Achieve60AZ, and discuss post-secondary attainment challenges in Arizona.
7. Hear a presentation by Dr. Joe O'Reilly, ASU Decision Center for Excellence, and discuss the post-secondary attainment rates among students in Mesa.
8. Discuss and determine any action items necessary from the presentations.
9. Discuss and act, authorizing Co-Chairs, Councilmember Heredia and Councilmember Duff, to review and approve the minutes from today's meeting and forward to the City Council for acknowledgement.
10. Approve the next meeting date: June 18, 2019 at 2pm. (motion and second)
11. Adjournment. (Motion and Second)

*Task Force Members are highly encouraged to attend each meeting in person. By special request to the Co- Chair, members might also attend by telephone conference call, if needed. City Council members may elect to attend the meeting for their own information, not for purposes of any legal action nor decision making by the Council. The City is committed to making its public meetings accessible to persons with disabilities. For special accommodations, please contact the City Manager's Office at 480-644-3333 at least two days before the meeting. Si necesita asistencia o traducción en español, favor de llamar al menos 48 horas antes de la reunión al 480-644-2767.*

## **Agenda Item 4**

# ARIZONA OPEN MEETING LAW

## A.R.S. 38-431 et. seq.

City of Mesa Attorney's Office  
Open Meeting Law Training For  
Boards, Commissions,  
Committees & Task Forces

# Presentation Overview

- ▶ Purpose: Legislative Policy of Open Meeting Law (OML)
- ▶ Definitions
  - When Does the OML Apply
- ▶ Meeting Requirements
  - Notice/Agenda, Minutes
  - Executive Session
- ▶ Violations/Penalties

# The Open Meeting Law

Arizona law states:

- ▶ All meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings. All legal action of public bodies shall occur during a public meeting. A.R.S. §38-431. 01(A).

# Purpose Of The Open Meeting Law

## A.R.S. § 38-431.09

- ▶ “It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas for those meetings contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided.”
- ▶ To ensure that the public has an opportunity to observe what the government is doing, and how it is being done.
- ▶ Notices and agendas provided for meetings with information reasonably necessary to inform the public of matters to be discussed or decided.
- ▶ Interpret the OML in favor of open and public meetings. When in doubt, be open to the public!

# Does the OML Apply?



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# How the OML Applies

## A.R.S. § 38–431 (Definitions)

### 1. Are you a Public Body?

- Includes city council and advisory boards, committees, subcommittee & task forces.

### 2. Are you Meeting?

- Is a quorum of the public body gathering?
- Is the quorum discussing, proposing or taking legal action, including any deliberations by a quorum with respect to such action. A.R.S. §38–431(4).

# What is a Public Body?

- ▶ The legislature, **all boards and commissions of this state or political subdivisions**, all multimember governing bodies of departments, agencies, institutions and instrumentalities of this state or **political subdivisions**, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by this state or political subdivision. A.R.S. § 38-431(6).

# What is a Public Body (continued)?

- ▶ Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, the public body.
- ▶ Public Body includes all commissions and other public entities established by the Arizona Constitution or by way of a ballot initiative, including the Independent Redistricting Commission, and this article applies except and only to the extent that specific constitutional provisions supersede this article.

# Public Body Exceptions

These type of proceedings are excluded from the definition of public body:

- ▶ Staff meetings
- ▶ Staff appointed committees that advise staff (not the City Council/ Boards/Commissions)
- ▶ Single department head

# How the OML Applies A.R.S. § 38-431 (Definitions)

## 1. Are you a Public Body?

- Includes advisory/subcommittee.

## 2. Are you Meeting?

- Is a quorum of the public body gathering?
- Is the Is the quorum discussing, proposing or taking legal action, including any deliberations by a quorum with respect to such action. A.R.S. §38-431(4).

# What Is A Meeting?

- ▶ The gathering, in person or through technological devices, of a quorum of members of a public body at which they discuss, propose or take legal action, including any deliberations by a quorum with respect to such action. A.R.S. §38-431(4).

# Technological Devices

- ▶ E-mail
- ▶ Telephone
- ▶ Text Messaging
- ▶ Skype
- ▶ Facetime
- ▶ Chat
- ▶ Messenger
- ▶ Other

# Member Attending By Phone

- ▶ Generally, if there is a problem reaching a quorum, participation by telephone is OK, but:
  - The public must be able to hear the person on the phone;
  - The person on the phone must be able to hear everyone at the meeting; and
  - Participation on the phone must be noted on the agenda and reflected in the minutes.



# What is a Quorum?

- ▶ Majority of members appointed to the Board/Commission/Committee, Task Force etc.
- ▶ Quorum of the Board/Commission Committee/Task Force
  - 7 member Board/Commission/Committee: Quorum = 4 members
  - 3 member subcommittee: Quorum = 2 members
  - May be less if allowed by City Code or By-Laws

# What is Legal Action?

A collective decision, commitment or promise made by a public body pursuant to the constitution, the public body's charter, bylaws or specified scope of appointment and the laws of this state. A.R.S. §§ 38–431(3).

**All LEGAL ACTION of public bodies shall occur during a public meeting. 38–431.01(A), 38–431.03(D).**

# How the OML Applies

A Board/Commission/Committee, Task Force is a **public body**.

- ▶ Are you **meeting**?

- Is there a quorum (majority of members) gathering?
  - In person, by phone, some type of online medium such as Skype, Messenger, chats, e-mail, etc.
- Are you discussing, proposing or taking legal action?
  - Is the matter being discussed, deliberated or proposed something that could result in final action by the public body?
  - Is the matter within your scope of work or purpose as a public body stemming from the Constitution or state and local laws?
- If the answer is yes to all these questions, it's a meeting.

**Public Body + Quorum + Meeting = OPEN MEETING LAW APPLIES**

# Examples–Seven–member Board

Is it a “meeting” if:

- ▶ Four members discuss a board issue by phone? **Yes.**
- ▶ Two members are in-person but discussing a board issue with two members on the phone? **Yes.**
- ▶ At least four members are on an email discussing a board issue? **Yes.**
- ▶ Four members at a social event discussing issues unrelated to the board (not legal action). **No. (see next slide)**
- ▶ Three members are on the phone discussing a board issue? **No, but use caution (splintering quorum).**

# What if only social event?

- ▶ A.G. recommends that you post the event if a quorum will be present.
- ▶ Identify time, date, location, and purpose.
- ▶ State that no legal action will be taken *and then don't talk about city business!*

# Splintering the Quorum

Separate or serial discussions with a majority of the members of the public body.

- ▶ E-mail, Skype, Chat, Messenger, etc.
- ▶ Telephones, including Text Messaging
- ▶ Polling
- ▶ Staff
  - Cannot direct staff to communicate in violation of open meeting law.

# Examples–Seven–member board

## Splintering the Quorum

Is it a “meeting” if:

- ▶ One of the three members on the phone texts a fourth member about the discussion? **Yes.**
- ▶ Two members discuss board issues via email with all seven members copied on the email? **Yes.**
- ▶ Three members discuss board issues via email and ask a staff member to forward the discussion to a fourth member? **Yes.**

# Examples: Staff E-Mail

Is it a violation if:

- ▶ A member of the public e-mails the board and there are no further e-mails among board members? **No.**
- ▶ A board member requests information from staff for specific information and the other members are copied on the e-mail? **No.**
- ▶ The staff member replies to the entire board? **No, unless the staff member is communicating opinions of other board members to circumvent the law.**
- ▶ Board members reply-all to a staff member's communication and ask for more information? **No, as long as there is no discussion or deliberation.**



# Examples: Staff E-Mail

Is it a violation if:

- ▶ A board member asks staff for documents and copies the other board members on the email? **No**, staff may attach and send the documents to all board members.
- ▶ A board member hits reply all and asks for a copy of an AG Opinion relating to the Open Meeting Law? **No**.
- ▶ A board member hits reply all and suggests the board not approve a matter? **Yes**, this is proposing legal action to a quorum.

# E-Mail, Texting, & Other Electronic Communications

- ▶ Avoid using devices among a quorum to discuss, deliberate, or propose legal action on a matter that may reasonably be expected to come before the board/committee/task force.
  - Do not propose legal action.
  - Do not use technological devices to circumvent the requirements in the OML.

*See Op. Atty. Gen. No. 105-004.*

# Recap: What is a Meeting?

- ▶ If all the requirements of what constitutes a meeting are met, as a public body the open meeting law applies to you in your capacity as an appointed board member.
- ▶ Remember the purpose of the OML: public policy is for open meetings to inform the public about matters to be discussed or decided.
  - The OML grants the public the right to attend and listen to the meetings.
  - They want to hear your voice, understand your deliberations, and know who is influencing your decisions about matters in their city or town.

# Pre-Meeting Requirements

- ▶ Disclosure Statement
  - Tells the public where all meeting notices will be posted
- ▶ Notice of the Meeting
  - Members
  - Public
- ▶ Agenda

# Disclosure Statement of Notices

## A.R.S. § 38-431.02(A)(4)

- ▶ *Conspicuously* post a disclosure statement identifying the physical and electronic locations where public notices of meetings will be displayed.
  - Public must have reasonable access to notification location.
  - Normal business hours, not geographically isolated, no limitations on access or be difficult to find.
- ▶ Public bodies of cities and towns must post the required information on their own websites or on the website of an association of towns and cities.

# Public Notice of a Meeting

## A.R.S. § 38-431.02(C),(G)

- ▶ Post at least 24 hours before the meeting (excludes Sundays and Legal Holidays).
- ▶ Back up material must be available 24 hours before meeting.
- ▶ Must include the agenda or where the public can obtain the agenda.
- ▶ Post on website and the location(s) identified in the Disclosure Statement.
- ▶ Provide “additional notice” of meetings as is “reasonable and practicable.”
  - News releases, mailing notices, public access TV announcements, publications, etc.

# Agendas

## A.R.S. § 38-431.02(H)

- ▶ Must be posted 24 hours in advance (excludes Sundays and Legal Holidays).
- ▶ Time, Date, Place of Meeting.
- ▶ Must list the specific matters to be discussed, considered or decided at the meeting.
- ▶ Action may only be taken (discussed or considered) on items listed on the agenda.
- ▶ Even in a public meeting–Cannot discuss any issue not on the agenda.

# At the Meeting

- ▶ Chairperson manages the meeting
- ▶ Parliamentary Rules of Procedure  
(Mesa doesn't follow Robert's Rules of Order)
- ▶ Determine if quorum present
- ▶ Record members present, absent
- ▶ Manage agenda order/changes
- ▶ After hours meetings: do not lock entrance doors—accessibility required
- ▶ Record motions and the maker
- ▶ Record of how each board member votes



# Calls to the Public

“All persons so desiring shall be permitted to attend and listen to the deliberations and proceedings.”

G/R: The OML does not give the public the right to speak at a meeting. Exception: for zoning ordinances, a public hearing is required at planning commission. A.R.S. 9-462.04(A).

A public body *may* make an open call to the public. A.R.S. § 38-431.01(H)

- ▶ Sign-in sheets (optional) but persons addressing the body should identify themselves—(include name and subject in minutes).
- ▶ Chairperson may require speakers on same side to select a spokesperson.
- ▶ Subject to reasonable time, place and manner restrictions.
- ▶ The public may address issues *within the jurisdiction* of the public body.
- ▶ Council members may NOT discuss or take action on matters raised during the call if the matter is not specifically identified on the agenda.
  - Board members may respond to criticism (Caution!)
  - Ask staff to review matter; or
  - Ask that the matter be put on a future agenda for discussion.

# Meeting Pitfalls

- ▶ Passing notes.
- ▶ Whispering to fellow members.
- ▶ Privately using modern technology during meeting.
- ▶ Quorum talking to individuals before the meeting officially starts or after the meeting officially ends.

# Executive Sessions

## A.R.S. §§ 38-431.02(I), 38-431.03

- ▶ Limited exceptions allowed by law to a public meeting.
  - Must vote in open meeting for executive session.
- ▶ Agenda must state specific provision of law authorizing the session and specify the item.
- ▶ Must include a general description of matters to be considered.
  - Listing only the statutory authorization is insufficient.

# Executive sessions – Who May Attend?

## A.R.S. § 38-431(2)

- ▶ Members of the public body.
- ▶ Persons subject to a personnel discussion.
- ▶ Auditor general.
- ▶ Individuals whose presence is reasonably necessary in order for the public body to carry out its executive session responsibilities.
  - Clerk to take minutes/run tape.
  - Attorney to give legal advice.
  - Tip: Put on the record why certain staff are reasonably necessary.

# Moving into Executive Session

## A.R.S. § 38-431.03(A)

- ▶ The vote to move into an executive session must be conducted in the public meeting.
- ▶ Make sure the room is cleared and only those authorized to be present are in attendance; survey the room and ensure that there are no belongings or recording devices left behind by the public. (Mesa has separate room for e-sessions).
- ▶ Board members should put away all electronic devices.
- ▶ Once in the executive session, remind all those in attendance that all discussions are **confidential**.

# Executive Session Purposes

## A.R.S. § 38-431.03(A)

- ▶ There are seven statutory purposes for a public body to meet in executive session.
- ▶ Courts have construed exceptions to the OML very narrowly because of the policies that favor open and public meetings.
- ▶ *See* Ariz. Op. Atty. Gen. No. 196-012 (Ariz.A.G.) citing *Fisher v. Maricopa County Stadium District*, 185 Ariz. 116, 912 P.2d 1345 (App. 1995).

# Executive Session Purposes

- ▶ Two of the more common exceptions:
- ▶ Personnel Matters: Employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation.
  - Written notice to employee not less than 24 hours before meeting (Confirm receipt of notice).
  - Employee may require the meeting be held in public.
- ▶ Legal Advice: Discussion or consultation for legal advice with the attorney of the public body.

# Legal Advice in Executive Session

- ▶ Must be lawyers for the public body.
- ▶ Not lawyers for someone else.
- ▶ What is allowed:
  - Advice regarding the legal ramifications of facts.
  - Legal propriety, phrasing, drafting and validity of proposed legislation, including meanings, legal scope, and possible legal challenges.
- ▶ What is not allowed:
  - Discussion regarding the merits of enacting the legislation or what action to take based upon the attorney's advice.
  - Debate over what action to take (i.e., pros and cons, policy implications).



# Executive Session Pitfalls

- ▶ Failure to keep executive session discussion confidential.
- ▶ Failure to advise persons about the confidentiality requirement.
- ▶ Best practices for preserving confidentiality:
  - Do not fax backup materials to members.
  - Members should not take confidential materials home from the meeting.
  - Let staff destroy extra copies.

# What If There Is An OML Violation?



# Meeting Held in Violation of OML

## A.R.S. § 38-431.05(A)

- ▶ All legal action is null and void.
- ▶ Exception: Ratification of legal action.

# Ratification

## A.R.S. § 38-431.05(B)

When a public body must retroactively validate a prior act in order to preserve the earlier effective date of the action.

- ▶ Public meeting within 30 days after discovery of the violation.
- ▶ Special Notice Requirements:
  - Written description of the action to be ratified, a clear statement proposing ratification, and where the public can access the information;
  - Public shall be able to access all deliberations, consultations, and decisions by members relating to the action; and
  - Post at least 72 hours in advance of the public meeting at which the ratification is taken.

# Ratification (continued)

## A.R.S. § 38-431.05(B)

- ▶ Ratification validates a prior action in order to make the legal action valid and enforceable.
- ▶ Ratification does NOT eliminate liability of the public body or others for sanctions under the Open Meeting Law, such as civil penalties and attorney's fees.

# Complaints and Violations

- ▶ Formerly, AG had an Open Meeting Law Enforcement Team (OMLET) to handle inquiries, conduct investigations and enforcement proceedings relating to complaints of violations of the Open Meeting Law.
- ▶ Now–Complaints will be assigned to various divisions for investigation.

# Investigations: Attorney General or County Attorney

## A.R.S. § 38-431.06(A),(B)

- ▶ Upon a written, signed complaint the AG or County Attorney may:
  - Issue written investigative demands.
  - Administer an oath or affirmation to any person for testimony.
  - Examine under oath.
  - Examine by means of inspecting accounts, books, computers, documents, minutes, papers, recordings, records.

# Failure to Comply with AG or County Attorney

## A.R.S. § 38-431.06(D)

- ▶ May file an action in superior court for an order to enforce the demand.
- ▶ Failure to comply could result in:
  - Contempt of court.
  - Injunctive order against conduct.
  - Any other relief the court deems proper.



# Consequences of a Violation

## A.R.S. § 38-431.07

- ▶ Any person affected by alleged violation may commence suit in superior court to force compliance with OML.
- ▶ 2<sup>nd</sup> violation: civil penalty up to \$500.
- ▶ Third and subsequent violation: civil penalty up to \$2,500.
- ▶ Removal from office.
- ▶ Generally, no public monies for legal fees incurred by public body or officer as a result of violation.

Arizona Revised Statutes – [www.azleg.gov](http://www.azleg.gov)

Title 38 Public Officers and Employees – Chapter 3 Conduct of Office – Article 3.1 Public Meetings & Proceedings

- ▶ 38-431 Definitions
- ▶ 38-431.01 Meetings shall be open to the public
- ▶ 38-431.02 Notice of meetings
- ▶ 38-431.03 Executive sessions
- ▶ 38-431.04 Writ of mandamus
- ▶ 38-431.05 Meeting held in violation of article; business transacted null and void; ratification
- ▶ 38-431.06 Investigations; written investigative demands
- ▶ 38-431.07 Violations; enforcement; removal from office; in camera review
- ▶ 38-431.08 Exceptions; limitations
- ▶ 38-431.09 Declarations of public policy

# Other OML Resources

- ▶ Arizona Ombudsman's Citizen Aide
- ▶ Arizona Attorney General Agency Handbook

QUESTIONS???

## **Agenda Item 6**



**EDUCATION  
ADVANCES  
EVERYONE**

# Mesa Achieves Higher Education Task Force

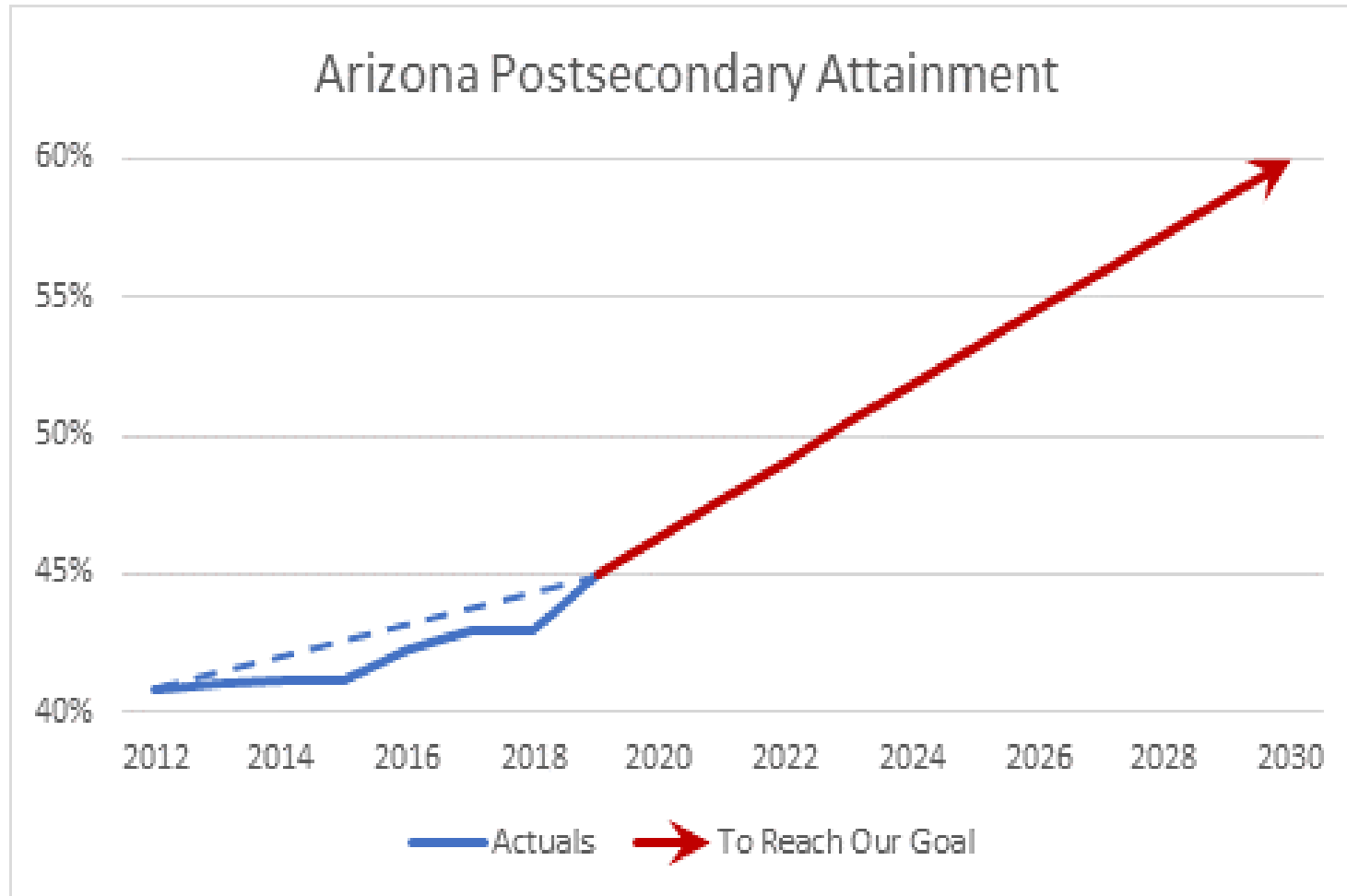
May 14, 2019

# 60% by 2030

Adults, 25-64 years old, with a license, degree or credential.



# Attainment over Time



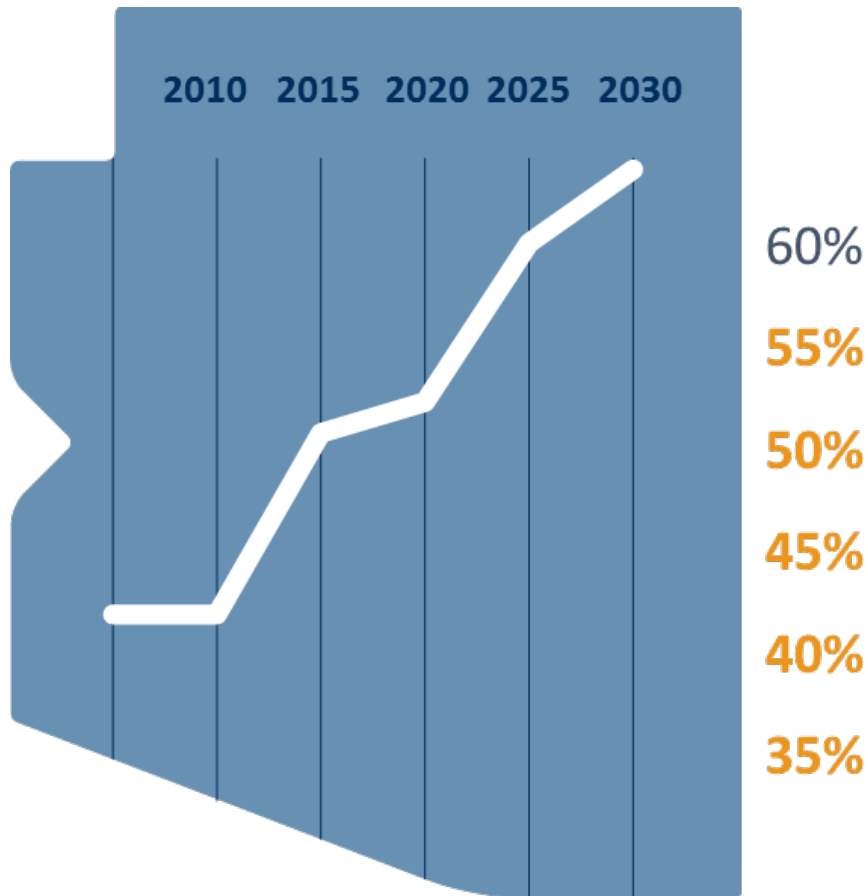
**1,000,000** more  
adults with  
credentials.





# The Imperatives

## ECONOMIC



- Even modest increases can have a **\$2.3B** impact – approximately the annual growth of the AZ GDP.
- When aligned with future labor needs, increasing educational attainment across all levels can provide **\$7.6B** of economic and social gains for every cohort.
- ROI on producing graduates is high. The value of a new graduate to the state is **\$660,000**.



# The Imperatives

## MORAL



## ARIZONA EDUCATION PROGRESS METER



White Arizonans 25-64



Latinx Arizonans 25-64

**28%**

Attainment gap



# About Achieve60AZ



## Our Vision

Arizona has a **diverse, well-educated, highly-skilled** workforce participating in a **thriving economy**.

## Our Alliance

An independent alliance of nearly **100 community, business, philanthropic, nonprofit, education organizations, and governments** fueled by a grassroots effort to make Arizona more competitive through the power of education.

## Our Organization

Nonprofit and nonpartisan; mission to hold the goal as the North Star for educational and workforce alignment to achieve a thriving Arizona. We:

- 1) Educate and Empower
- 2) Inform and Report
- 3) Increase Public Support
- 4) Build Awareness and Support Actions



# PILLARS AND STRATEGIES TO REACH 60%

## PILLAR 1

### Early Childhood through High School

1. Emphasize high school graduation and promote best practices for certificate, college, and career readiness.

2. Support students

## PILLAR 2

### Postsecondary Access and Success

3. Work collaboratively to address barriers to credential and degree completion through policies and innovation.

4. Ensure pathways and

## PILLAR 3

### Workforce and Business Development

6. Attract businesses to Arizona with well-educated and highly skilled workers and jobs.

7. Promote businesses with proven

## PILLAR 4

### Systems and Structures

9. Utilize metrics and data systems to support thoughtful partnerships and collaboration in pursuit of the 60% post high school

What areas can  
you impact in  
the next year?  
Three years?

1

### High School Graduation -

Right now, with only an 80 percent graduation rate, about 65,000 students are graduating high school each year. If we meet the goal of 90 percent graduation set in the Arizona Education Progress Meter, there would be approximately 10,000 more high school graduates per year.

2

### Postsecondary Access and Enrollment -

Of those students who graduate high school, about 53 percent are enrolling in two- and four-year higher education institutions. Our state goal is to increase this to 70 percent, which would mean tens of thousands more students enrolling per year.

3

### Postsecondary Success and Completion -

Of those who enroll in two- and four-year higher education institutions, approximately 27 percent of students are graduating with a postsecondary degree. Doubling this rate would mean tens of thousands more skilled workers to meet Arizona's growing workforce needs.

4

### Adult Learners -

Currently, there are 1,000,000 adults in Arizona with some college and no degree. To meet the goal of 60 percent attainment, it will be critical to support hundreds of thousands of these adults in finishing a postsecondary program.



# WRAPPING IT UP

**This report states where we are and where we need to go.  
The next steps are in your hands. What can you do to drive action?**

## ACTIONS TO 60 PERCENT

### **Pillar 1. Early Childhood through High School**

1. Increase the number of career counselors in schools.
2. Research what is working at high schools with both high graduation and high enrollment in postsecondary institutions.
3. Streamline systems of enrollment from high school to postsecondary.
4. Increase access to college-level and college-equivalent coursework, including dual and concurrent enrollment.
5. Expand access to CTE programs.
6. Ensure all students take college placement tests in high school.

### **Pillar 2. Postsecondary Access and Success**

1. Create financial-aid programs that support the real cost of attendance.
2. Design policy and incentives to increase FAFSA completion to 75 percent or higher.
3. Expand enrollment policies that take into account multiple measures for college admissions across the state.
4. Ensure affordable pathways for in-state tuition so that Deferred Action for Childhood Arrivals (DACA) students can go to school.
5. Continue to build on transfer programs across K-12, community and tribal colleges, and universities.
6. Support K-12 and postsecondary alignment efforts, including with technical and private schools.

### **Pillar 3. Workforce and Business Development**

1. Promote Arizona as a great state to live, work, and play.
2. Attract companies to Arizona who value developing skills in employees.
3. Leverage employer tuition assistance and reimbursement programs.

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What actions  
are you taking  
now? What  
actions can you  
plan for?

# Stay Connected



Rachel Yanof  
Executive Director

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