UTAH SCHOOL LAW UPDATE

Utah State Office of Education

March 2005

LEGISLATIVE AFTERMATH

Another legislative session has finally come to an end, with few pleasant surprises for education.

The one victory in this year's battle was the defeat of **tuition tax credits**. Despite a roughly $400,000 lobbying campaign by Parents for Choice and other such groups, and the governor's personal lobbying, legislators pushing the credits fell four votes shy of passing the legislation.

Three new lawmakers, in particular, showed incredible fortitude against the intense lobbying efforts of their Republican colleagues. Educators owe a debt of gratitude to **Rep. Lorie Fowlke,** R-Orem.**, Rep. Kerry Gibson,** R-Ogden**, and Rep. John Mathis,** R-Naples, who stood firm against the pressure to give in on tuition tax credits.

The bill's sponsor, Rep. James Ferrin, R-Orem, was quick to blame the Utah Education Association for the bill's defeat, ignoring the vast discrepancies between the war chests and lobbying tactics of UEA and Parents for Choice.

UEA was an integral part of a team of education groups that used the power of logical argument and public sentiment to help defeat the bill. UEA, PTA, the Utah School Boards and School Superintendents Associations, and others continually reminded legislators of the philosophical, economic and legal reasons for opposing the tax credits bill.

Those reasons included the basic premise that public money should not be given to private individuals, an unavoidable consequence of a refundable tax credit (a person need not pay any taxes to get the refund).

Education groups also raised substantial questions about the purported savings the tax credits would bring to education. Assistant Supt. Patrick Ogden noted that the Legislature provided $2900 per student in new funding for growth but would give $3600 per student leaving the system through the tax credits. The net result is that students leaving the system with a tax credit would cost public education more than students coming in.

UEA and USOE also managed to publicly chal-

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UPPAC Case of the Month

Unprofessional educators have found numerous ways to abuse their school computer privileges.

From viewing pornography to running a business, there are some educators who spend far more of the school day violating school acceptable use policies than educating students.

An alarming number of those educators are also using the school equipment to find sexual partners.

This is unprofessional conduct and typically will result in licensing action.

Such action is even more likely if the potential partner is, at least in the eyes of the educator, a minor.

News reports abound regarding the activities of the Internet Crimes Against Children Task Force (ICAC). The ICAC has caught a number of professionals from all walks of life trying to find minors to meet them for sexual activity.

Most, but not all, of the

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Inside this issue:

UPPAC CASES

- *The State Board of Education accepted a Stipulated Agreement for a two year suspension of Edward J. Birmingham, III's license for attending school under the influence of alcohol.*
- *The State Board accepted a Stipulated Agreement for a two year suspension of Jerald Robert DeMille's license for possession of pornography on his school computer.*
- *The State Board accepted a Stipulated Agreement for a two year suspension of Colby M. Neilson's license for diversion of school funds for his personal use.*

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lenge the constitutionality of the tax credits. A review of the U.S. Supreme Court case law on the issue revealed that tax credits had been upheld only in states that provided an education related credit for both public and private school parents. Ferrin's bill provided a credit to private school parents only, a scheme the U.S. Supreme Court has ruled unconstitutional.

Rep. Ross Romero, D-Salt Lake, persuasively argued this issue on the House floor, noting also that there may be a constitutional issue where the bill discriminated against residents in favor of non-residents.

The tax credit victory was followed by several darker moments.

For instance, the Legislature passed a measure that proponents touted as simply putting a State Board Rule into law. The rule prohibits an educator from requiring that a student take a specific medication as a condition for attending school.

The rule has worked well since its inception two years ago (we have received one parent complaint about a violation since it was enacted). Had the bill sponsor, **Rep. Mike Morley**, R-Spanish Fork, simply transferred the rule to law, it would have been unnecessary, but harmless.

Morley, however, wanted far more. His law also **prohibits educators from recommending or administering any kind of behavioral analysis** to a student without parental consent, unless there is a risk of "serious and imminent harm."

That means, a teacher who is having problems with a disruptive student who is just loud and obnoxious can't send him to the counselors office for an assessment to determine if something is wrong—whether the student has ADD/ADHD or is just having a bad day.

In some ways even more disconcerting, the debate on this bill, particularly in the Senate, seemed to suggest that teachers willy nilly perform psychological evaluations of students. We're not sure where legislators get their information, but most educators we know barely have time to cover the Core, let alone administer individual, highly specialized psychological evaluations of students.

The protests of educators, psychologists, and even rational legislators such as **Sen. Greg Bell**, R–Fruit Heights, or **Reps. Carol Moss**, D-Holladay, and **Kory Holdaway,** R-Taylorsville, were drowned out by the more strident voices of parents' rights advocates who always seem to assume the worst about their kids' teachers.

Another bill started out with good intention but was quickly amended into something of questionable value and constitutionality.

Sen. Howard Stephenson, R-Draper, ran a bill at the request of the **State Charter School Board**. The bill was intended to cleanup some code provisions that the Charter Board needed to streamline for more efficiency.

So far, so good. But then Stephenson decided to add a few things of his own that the Charter Board did not desire.

One of those provisions tells the State Board of Education that it can't consider the effects of a charter school on a local school or district when approving or rejecting a charter application.

Slight problem—considering the well-being of the system of public education is the State Board's constitutional duty. The Legislature can't tell the Board not to carry out its constitutional function.

But Stephenson was determined and the bill passed.

Stephenson also added that charter school administrators, unlike other public school administrators, do not need an administrative certificate or even a letter of authorization.

This in the face of a major audit of one charter school that was allegedly mismanaged by an administrator without the necessary experience or credential.

There was, however, another small victory. A bill that allowed elementary schools to adopt **uniforms,** in a manner that violates the constitutional provision against school fees in elementary schools and a standing court injunction also prohibiting such fees, failed to pass.

The sponsor, again **Rep. Morley,** misinterpreted the law and claimed the bill was okay because it required schools to provide uniforms free of charge to those who can't afford the uniform.

While fee waivers work on a secondary level, NO fees can be charged to elementary students, even if their parents can afford it or want them. Anything a school requires parents to buy in order for their children to attend the school is a fee.

Thus, in order to avoid violating the constitutional and court ordered prohibitions on fees in elementary schools, an elementary school that adopted a uniform under the bill would have to provide the uniform free of charge to ALL students, not just to those without the means to buy it themselves.

Other bills that failed included a bill to tighten the **truancy law**, a bill once again changing the makeup of **school community councils**, and bills requiring that the state office develop and schools offer an alternative college preparation core and an alternative to the **Basic Skills Competency Test**.

Recent Education Cases

Svaldi v. Anaconda-Deer Lodge County, (Mont. 2005). The Supreme Court of Montana found no violation of a teacher's right to privacy from the school's disclosure of an offense report filed against the teacher.

The report, filed by parents with the school, alleged that the teacher had assaulted or verbally abused students. The police investigated and a prosecutor was assigned to the case. The prosecutor subpoenaed the school board's investigative report. He then spoke with a newspaper reporter about the investigations, using information from both the criminal and school investigations.

The criminal charges were dropped. The court noted, however, that the school board report was public information with or without criminal charges.

The court went further, stating that, because the teacher holds a position of great public trust and the allegations directly related to her ability to carry out that trust, the public's right to know the allegations outweighed any privacy interests the teacher might have.

The court also noted that the teacher had helped make the information public through her discussions of the allegations with her students.

Blau v. Fort Thomas Public School District, (C.A. 6 Ky 2005). A Kentucky Court of Appeals ruled that a middle school student's First Amendment rights of expression were not unconstitutionally abridged by a school dress code policy.

The student could not articulate any particular message she wanted to convey through her clothing choices, she just wanted to wear what she thought looked best on her.

The court found that the district's interest in fostering the learning environment and enhancing school safety outweighed the student's interest in looking good.

The court also noted that the code left plenty of opportunities for student expression outside of school and, at school, through means other than dress.

State v. Self (Mo. 2005). A lower court found a mother guilty of failing to cause her child to attend school "regularly" as required by the state's compulsory attendance law.

The Supreme Court of Missouri overturned the conviction, stating there was no evidence that the mother knowingly or intentionally caused her child to miss school.

The student was pregnant and missed 40 days of school over two semesters. All but 17 of those days were related to her pregnancy, as verified by doctor's notes. The school policy excused absences for medical reasons and the school was well aware of the girl's condition.

Given that the school had provided the mother with an application for homebound services, did not inform the mother that the student was in danger of violating the law, and the mother was not the cause of the student's absences, the court overruled the lower court's guilty verdict.

UPPAC Cases Cont.

minors turn out to be undercover officers.

Regardless of whether the minor is real or not, UPPAC will investigate allegations of educators engaging in cyber-sex with, or soliciting sex over the Internet from, minors.

In one court case, a person caught trying to entice a 9-year old into sex claimed he was not guilty because the person was not, in fact, a 9-year old but an undercover officer. The court quickly dismissed that argument, noting that a real victim is not required. State v. Thurston (La. Ct. App. 2005).

The important point for this court, and others that have looked at the issue (including the 10th Cir. which has jurisdiction over Utah), was that he took a substantial step toward committing the crime. That the intended victim was an undercover officer did not change the perpetrator's intent, as expressed by his actions.

UPPAC would be similarly unimpressed by an argument that an educator who engaged in sexually explicit conversations and attempted to meet what he believed to be a minor for sex was not a danger to kids because the minor did not actually exist.

Educators who solicit sex from minors or engage in cyber sex with minors outside of school or anyone while at school, risk losing their license and their profession.

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The Utah Professional Practices Advisory Commission, as an advisory commission to the Utah State Board of Education, sets standards of professional performance, competence and ethical conduct for persons holding licenses issued by the Board.

The Government and Legislative Relations Section at the Utah State Office of provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

Our website also provides information such as Board and UPPAC rules, model forms, reporting forms for alleged educator misconduct, curriculum guides, licensing information, NCLB information, statistical information about Utah schools and districts and links to each department at the state office.

Your Questions

Q: If a teacher's license is suspended or revoked, can the teacher apply for work at a charter school?

A: No. The teacher may not seek or accept employment at ANY public school.

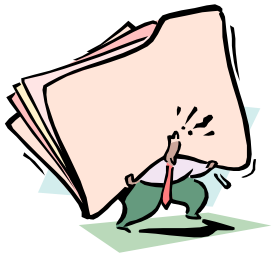
Moreover, if the teacher fails to reveal the suspension or revocation, and, for whatever reason the district does not discover it, the teacher can face additional sanctions, such as an extension of the suspension or revocation.

Further, any private school that checks the licensing status of the educator can also reject the teacher's application based on the suspension or revocation. Accredited private schools typically check the teacher's license since accreditation does depend, in part, on having licensed faculty.

Q: I graduated from high school in 1982. Can the State Office find out what school district I was in so I can get my records?

A: No. The State Office does not keep the records it collects for more than a few years and is not a source of information regarding an individual students enrollment.

Perhaps more importantly, the State Office does not maintain "education records" as defined by the federal Family Rights and Privacy Act. It does have records of enrollment in connection with other data the office collects, but does not provide student specific information unless there is a court order, subpoena, or other court documentation requiring the Office to provide the information.



Q: Can a school that is open for enrollment deny enrollment in a particular grade level or program?

A: Yes. The State Board rule on open enrollment (R277-437) permits the district to declare a school open for enrollment but to still close certain grade levels or programs that are at 90% of maximum capacity.

Maximum capacity for core classes at both the elementary and secondary levels is set by a formula in the State Board open enrollment rule. Districts can establish capacity for special programs or rooms, such as labs or gyms.

Educators may be glad, or amused, to know maximum capacity for grades 1-3 is 15 students and 20 students for core courses in grades 4-12. Please note, those numbers do not enable a school to deny enrollment to a resident within the school's boundaries.