UTAH SCHOOL LAW UPDATE

Utah State Office of Education

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Unwanted Visitors

Schools are public buildings, built with public funds. But schools are not "open to the public" the same way as public libraries or town squares; school administrators have the authority to remove or deny access to visitors.

On the other hand, schools also have a duty to follow visitor policies established by the school or its board. A school may be found liable for a visitor's bad acts if the school ignores its own policies.

Utah Code provides that " a person is guilty of criminal trespass upon school property if the person . . . enters or remains unlawfully upon school property and . . . is reckless as to whether the person's presence will cause fear for the safety of another or enters or remains without authorization upon school property."

To be guilty of criminal trespass, one must also have notice against entry or remaining on the property. Notice may be given by personal communication with a school official or posted signs that the trespasser is reasonably likely to see.

Case law supports the ability of schools to determine who is welcome on campus, and it must follow properly adopted policies.

For instance, the 7th Circuit stated very clearly in 1992 that "members of the public have no constitutional right of access to public schools." Vkadinovich v. Board of School Trustees. The 4th Circuit was perhaps even more clear in 2009 when it stated, "a school board's authority encompasses the authority to remove or bar from entry an individual who threatens the safety of students or staff, or who disrupts the orderliness of the educational process." Cole v. Buchanan County School Board.

The school's compelling interest in protecting students has been used to support a number of visitor policies, including a policy which requires scanning visitors' state issued IDs. The scanning system checks the name and birth date on the I.D. against the registered sex-offender databases of all 50 states and federal territories.

The power to protect students, however, entails an equally important duty to actually do what the school says it will to protect students. This means, if the school has a visitor policy, it better enforce that policy with all visitors.

Many schools have adopted policies requiring that visitors check in with the school office and, perhaps, wear a visitor badge. Such a policy was enacted but not followed in Doe v. Independent School District (Minn. Ct. App., 2010). The school allowed a former student and recent high school graduate to visit the school several times without signing in or wearing a visitor badge. The school and a kindergarten student learned the value of the policy the hard way when the former graduate sexually assaulted the student in a school bathroom (other policies were also violated in this case, including a policy requiring supervision of students at all times). The case returns to trial for a determination as to whether the failure to adhere to school policies was a proximate cause of the injuries to the student.

Regardless of the outcome at trial, no school wants its students to be harmed in this manner. Especially if simple acts, such as following reasonable policies, might help prevent such a tragedy.

UPPAC CASES

The Utah State Board of Education reinstated Becky June Spaulding's educator license.

The State Board permanently revoked Norman Ray Bernard's educator license. The revocation is based on his guilty plea to one first degree felony count of Aggravated Sexual abuse of a Child and one first degree felony count of Forcible Sodomy.

The State Board revoked by default Bennie Joseph Booth's educator license. The revocation results from Booth's use of school equipment to access pornographic images and videos. Students were inadvertently exposed to some of the images.

Eye on Research– A View From Supt. Larry Shumway

The Utah Foundation released a research report that provides important insight into Utah's student achievement, using NAEP results as the metric. The report compared the NAEP results of student in states with demographics similar to Utah. Utah students performed below the students in those states, though still above the national average.

I think the table below is useful to give a complete picture. The continuing message that I'm concentrated on is that Utah's school system is the most efficient in the country, and that, with targeted strategic investments, we can have these same results without ever needing to spend what Wyoming spends.

There are two parts to the message that I think have to go together: first, our school system is efficient and well managed, producing extraordinary returns on our state's investment; and second, that our school system can be counted on to produce results with additional investment.

The public education community has proven its ability to produce great results at the price of a good education.

Cost per student among "peer states" as identified by the Utah Foundation, September 2010[1]:

State	Cost per Student[2]	Compared to Utah
Wyoming	$16,286	263%
New Jersey	$14,308	230%
Vermont	$16,113	259%
Minnesota	$9,921	159%
New Hampshire	$11,859	190%
South Dakota	$10,602	170%
UTAH	**$6,228**	**100%**

1. *Utah Foundation Research Report.* "School Testing Results: How Utah Compares to States with Similar Demographics," September, 2010.
2. *Education Week,* January 14, 2010.

UPPAC Case of the Month

Now that the Utah Professional Practices Advisory Commission is receiving ongoing notice of educator arrests, it may be useful for educators to understand a few issues; good criminal defense attorneys should be aware of these.

One issue is the question of lesser included offenses. Often, a defense attorney may think licensing issues can be resolved by having the educator plead to a lesser offense that may also sound less ominous than the primary offense. For example, a domestic violence charge may be reduced to disorderly conduct, or a driving while under the influence may become driving while impaired. What defense attorneys need to understand is that the title of the offense is not the Commission's primary concern—the underlying facts are usually considered more important.

Thus, a DUI with a blood alcohol count of .20 may be called something else, but it still suggests a significant lapse in judgment on the part of the educator. Similarly, a shoplifting charge may be reduced to a class C misdemeanor, but if the educator has already appeared before the Commission on similar charges, the level of the criminal charge is far less of a concern than the fact that the educator continues to steal.

Educators who have received prior disciplinary action from UPPAC and/or the State Board will usually face more severe consequences for repeat offenses. The educator who has been reprimanded by UPPAC for committing retail theft will most likely have her license suspended for subsequent theft convictions or pleas in abeyance, regardless of how successful a defense attorney may be at pleading the case to a lesser offense.

This is true for most repeat offenders, unless there are extraordinary circumstances warranting lesser action. For example, an educator previously reprimanded for a DUI would face greater sanctions if the only explanation was that she "fell off the wagon." However, the educator might not receive more severe consequences if she can show that she reacted badly, and unpredictably, to a legitimate but new prescription drug (a warning label on the prescription bottle about operating machinery would negate the educator's claim that the reaction was unpredictable).

Recent Education Cases

Anderson v. Hillsborough County School Bd. (11th Cir. 2010). Renee Anderson argued she was denied due process when she was suspended from one high school, but offered enrollment in an alternative high school.

Anderson was suspended for 10 days during the final week of school. The principal suspended her for fighting with other students and pushing an assistant principal. The board scheduled an administrative hearing during the summer to determine what discipline would be appropriate in the case.

The hearing convened, but the hearing officer terminated the process based on the disruptive conduct of Anderson's parents. The Superintendent then informed the family that Renee was "expelled" until another hearing could be convened.

Rather than request a second hearing, Anderson's parents decided to enroll her in another school. When the parents learned from the second school that they could not enroll Anderson, they hired an attorney who asked the board to re-admit Anderson. The Board declined, but offered to have Anderson attend an alternative high school for one year. If there were no problems at that school, Anderson would be able to return to the original high school.

The parents enrolled Anderson in a different alternative high school and sued the board for violation of Anderson's due process rights and denied her constitutional right to a public education (while the lawsuit was pending, Anderson continued to get into trouble at her new school).

The court found that Anderson's rights were not violated. Under the Florida Constitution, Anderson did have a right to public education, but not at the school of her choosing. Further, Anderson's federal due process rights were not violated. Anderson was provided notice and an opportunity to be heard by the school board.

MacCabee v. Mollica (Ohio App. 2010). The court denied a third grade teacher's motion for summary judgment (a motion to dismiss a case outright because no genuine issues of fact exist for a court to adjudicate) on his claim for governmental immunity.

To be immune from suit as a government employee, several conditions must be met, including a requirement that the employee's actions which caused injury were not done with malice, recklessly, or otherwise in bad faith.

The court found that reasonable minds could differ on whether a teacher acted with malice or recklessly where the teacher grabbed the student by the shirt, pulled him into a hallway, pushed him into a wall with a hand to the stomach, yelled at the boy and told the boy he would not stop other students from beating up the boy. The teacher acted after the boy denied hitting another student.

The teacher claimed he did not act with malice but was simply yelling to be heard over a gym class and informing the boy that the teacher would not be supervising recess so there could be some risk to the boy if he was lying about hitting the other student.

The case may now proceed to a trial.

Your Questions

What do you do when. . . ?

Q: Is there a Board rule or state law about the use of district email services by an employee association?

A: Case law and Utah statute prohibit the use of school resources for political campaigning. However, associations can use the email to announce meetings, non-political activities, etc. The law also requires that you provide equal access to all employee associations, so if you allow one employee association to use school email for permitted activities, you would need to provide the same access to other associations represented in your school.

Any other uses of school email by associations or individual educators would be determined by district acceptable use policy.

Q: We have received requests for non-custodial parents to be informed of everything that is given to the custodial parent. This includes phone calling system notifications and any concerns about behavior, attendance, etc. Would we need the permission of the custodial parent to release such information? What is the status of joint custody, although one parent has physical custody for more time during the month?

A: Attendance records, discipline issues, and grades are subject to FERPA but your notifica-

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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 Cont.

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tion system provides greater records access than FERPA requires. FERPA grants both custodial and non-custodial parents the right to review records, not to receive regular updates.

However, if you are providing parents with regular updates, you may want to treat both parents equally, absent some compelling reason not to do so-such as a restraining order. If the parents have joint custody, you can add both parents to the notification system without seeking either one's permission (though you may want to provide notice of the practice so it doesn't come as a shock to anyone). If there is a restraining order regarding one parent's access to records, you should NOT add that parent to the notification system.

If a parent has sole custody or is expressly given decision-making authority over education issues, then you would need the parent's permission before you add the non-custodial parent to your phone notification system.

Notices about lunch menus, school calendars, etc., are not covered by FERPA and can be sent to the parent with PHYSICAL CUSTODY the majority of the time (per the Utah divorce code, even if there is joint custody, if one parent gets one more hour or day or week with the children, that is the parent with physical custody the majority of the time and you can choose to only communicate the daily issues to that parent who can then choose to share it with the ex-spouse).

Q: What is the statute of limitations for the State Board on allegations that a teacher has engaged in an inappropriate relationship with a student?

A: For professional licensing misconduct issues, there is no statute of limitations. Allegations from as far back as 20 years ago, or longer, may be considered for licensing purposes. While some types of allegations may not raise concerns, such as a 20 year old DUI, allegations of sexual misconduct with a student will most likely be taken very seriously and reviewed for possible licensing action. Older allegations may also be factored in when more recent allegations of similar misconduct arise.