UTAH SCHOOL LAW UPDATE

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Utah STATE OFFICE of Education

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CRAIG V. RICH TOWNSHIP HIGH SCHOOL DISTRICT 227 (SEVENTH CIRCUIT, DEC. 2013)

Bryan Craig was a high school counselor at Rich Township High School, a school district located in Chicago's south suburbs. In 2012, Mr. Craig self-published a short book ". . . of adult relationship advice entitled 'It's Her Fault.' And when we say 'adult,' we mean it in every sense of the word--in his book, Craig repeatedly discusses sexually provocative themes and uses sexually explicit terminology." (*Craig v. Rich Township High School District* 227, No. 13-1398, p. 1) Eventually, school administrators and school board members heard about Mr. Craig's book—and decided to terminate his employment. Mr. Craig challenged the termination claiming that the district/employer violated his 1st Amendment rights because he was engaging in speech about a matter of public concern—his employer should not have dismissed him for that!

The lower court dismissed Mr. Craig's suit finding that Mr. Craig's provocative short relationship book, "It's Her Fault" did not address a matter of public concern and was not entitled to 1st Amendment protection.

The 7th Circuit Court of Appeals analyzed the facts of the case somewhat differently. The 7th Circuit also analyzed what Mr. Craig did to bring about his own demise more thoroughly than did the district court. The 7th Circuit did not agree with the lower court that Mr. Craig's book could be readily dismissed as a work that was NOT a public concern. Instead, the 7th Circuit agreed that the school district could reasonably predict that "It's Her Fault" would cause disruption in the school and diminish his effectiveness as a counselor—with both young men and young women. The 7th Circuit acknowledged that a topic does not have to be weighty or even substantive to be a matter of public concern. The appellate court found that Mr. Craig's book met that threshold. But it found that even if an employee's speech is a matter of public concern, if there is a potential for harm to the employer or disruption to the education setting and process, a balancing must take place. Mr. Craig's right to freely express himself must be weighed against the school district's interests and the potential for disruption.

Additionally, the 7th Circuit pointed out that Mr. Craig was his own worst enemy in defending his right to speak freely. Mr. Craig references his employment at Rich Central High throughout the book. He establishes his credentials as an advice-giver by explaining the significant amount of time he spent interacting with women. He was a guidance counselor—but he also coached the women's varsity, junior varsity and freshmen basketball teams! He touts his responsibility for counseling roughly 425 high school students per year, about half of whom are females. He also thanks his "students and clients who consistently reach out to [me] during rough times in the world of relationships: Keep listening and learning."

The 7th Circuit also upholds the school district's dismissal of Mr. Craig, but concludes that an employer does not necessarily violate the 1st Amendment by discharging an employee that speaks out

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YOUR QUESTIONS

Q: I am an assistant principal in central Utah. I recently had a conversation with a student that became argumentative and angry (on her part, not mine). The conversation took place during the school day; I did shut my office door because the student's voice was loud and we were talking about her personal concerns. Now she (and her parents) are suing me because they say I hit the student. Do I need an attorney? Will there be a Professional Practices case? –*Anxious Administrator*

A: Contact your district supervisor. Your district supervisor will contact whoever insures your school district. Make this contact quickly and do not talk about the incident or try to explain or seek support for your actions. Usually a government employee is protected by governmental

immunity if the employee's actions are within her assigned duties. As a general rule, it is not a good idea to meet with a student (especially one of the opposite sex) alone in an office with the door closed. But that is a *general* rule. Do not panic. But work closely with your district office and supervisors.

Q: I am a high school social studies teacher in a big school district. I do not live in the community where I teach. My brother-in-law is running for our local school board and I would like to put one of his lawn signs in my yard. I

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on a matter of public concern. "The government is entitled to restrict speech that addresses a matter of public concern 'if it can prove that the interest of the employee as a citizen in commenting on the matter is outweighed by the interest of the government employer in promoting efficient and effective public service.'"

UPPAC CASE OF THE MONTH: STUDENT CONFIDENTIALITY

"An employee, student aide, volunteer, or other agent of the state's public education system shall protect the privacy of students, their parents, and their families…" Utah Code 53A-13-301(1). It is easy for school employees to casually share information about students in conversations with friends, relatives, or even other students. Sometimes, it is pretty tempting to share juicy pieces of gossip that educators learn about their students. In recent months, UPPAC has reviewed cases in which educators have asked student aides make copies of other students' IEPs, shared information about a student who did not do well in his class with parents at back-to-school night, and told faculty members over a lunch time chat about students' family dramas. Sharing information in this nature is a violation of a students' privacy and should not happen in public schools.

A quick review of FERPA, on which state law is predicated, states that sharing identifiable protected public information without parental consent is prohibited, *unless one of the following exceptions applies*:

- if a school official has a "legitimate educational interest;"
- if the record is being provided to another school in which the student seeks or intends to enroll;
- in connection with financial aid for which the student has applied or received if the information is necessary to determine eligibility, amount, conditions, and enforcement terms;
- to authorized representatives of the Comptroller General of the United States, the Attorney General of the United States, the U.S. Secretary of Education, and State and local educational authorities for audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements that relate to those programs;
- to organizations conducting studies for or on behalf of the school making the disclosure for the purposes of administering predictive tests, administering student aid programs, or improving instruction;
- to comply with a judicial order or a lawfully issued subpoena;
- to the victim of an alleged perpetrator of a crime of violence or a non-forcible sex offense concerning the final results of a disciplinary hearing with respect to the alleged crime; and
- to any third party the final results of a disciplinary proceeding related to a

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would also like to campaign for him in my neighborhood. I talk to my students both about election laws and about ethics (or lack of it!) in government and politics. So it is important to me to act both legally and ethically as a public school teacher. What can I do?—*Ethical Social Studies Teacher*

A: We do not give up our rights as citizens and voters when we become public school educators. In fact, continuing to care about the policies and governance in our communities provides an excellent role model for students. HOWEVER, you should not take your opinions about specific candidates or elections into your classroom—even for non-partisan school board races.

Bumper stickers—even on your car at school—probably OK. But do not actively discuss or campaign for brother-in-law at school.

Q: I have heard and read about several incidents recently where teachers hit students, dragged students or were accused of hurting students. In all of the cases that I have heard about, the teacher was defending himself, trying to take something back from a student that the student had grabbed or grabbing a student to stop a fight. Is there anything illegal or unethical about a teacher protecting himself or his property?—*Upset Middle School Teacher*

A: Utah law specifically does not

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> crime of violence or non-forcible sex offense if the student who is the alleged perpetrator is found to have violated the school's rules or policies. The disclosure of the final results only includes: the name of the alleged perpetrator, the violation committed, and any sanction imposed against the alleged perpetrator. The disclosure must not include the name of any other student, including a victim or witness, without the written consent of that other student.

While FERPA and state law specifically refer to information contained in education records, it is also a professional responsibility of educators to maintain confidentiality with regard to observations, verbal disclosures, and information about a student obtained through others. Utah Educator Standard 277-515-4B(3) states "The professional educator…shall strictly protect student confidentiality and understand laws relating to student information and records." In addition to this provision, R277-515-6B(2) states that a professional educator "maintains a professional and appropriate relationship and demeanor with students, colleagues and school community members and parents." Professionalism includes maintaining the privacy and confidentiality of student information. Professionalism does NOT include talking to students or parents about other students or using identifiable student information as a conversation piece on a date or at a dinner party.

This said . . . when the information an educator receives suggests that a student is at risk of suicide, physical self-harm, or harming others, educators MUST report to appropriate personnel and to parents. Utah Code 53A-11a-301(3) and Utah Code 53A-13-302. This is true even if the student has made a specific request that the information be kept confidential. An educator should inform students who disclose such information that the school employee is required by law to report this information. Keeping it confidential is absolutely not an option.

Moreover, maintaining student confidentiality does not override a professional's responsibility to notify a student's parent "without delay" if a school employee "believes that a situation exists which presents a serious threat to the well-being of a student." Utah Code 53A-14-302(6)(b). Thus, if a school counselor receives information, for example, that a student may be in danger, she must notify the student's parents. Assessing whether a situation presents a serious threat to the well-being of a student requires professional discernment and judgment. Articulating and documenting the reasons for believing that a serious threat exists will support the professional's determination.

Educators should exercise professionalism and sound judgment whenever handling student information. Information obtained from student records cannot be shared without consent unless one of the specific FERPA exceptions applies. Information obtained through means other than student records should be regarded as confidential and treated with professionalism and respect. Keep in mind, however, that when information may present a threatening situation, notifying parents and sometimes other authorities is required under the law.

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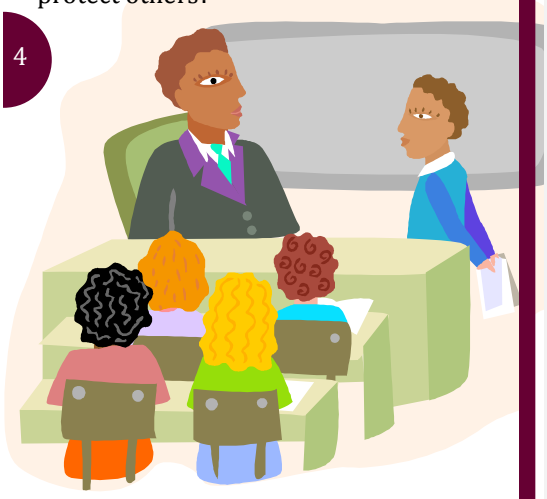
prohibit a school employee from using "reasonable and necessary physical restraint or force in self-defense or otherwise appropriate to the circumstances to:
"(a) obtain possession of a weapon or other dangerous object in the possession . . . of a child; (b) to protect the child or another person from physical injury; (c) to remove from a situation a child who is violent or disruptive; or (d) to protect property from being damaged." (Utah Code §53A -11-802(1))
A couple of cautions: teachers can only use reasonable force under all of the circumstances—how imminent was the danger? How large is the teacher compared to the student(s) he is grabbing? Is the teacher doing what is minimally necessary to stop a student's violent or dangerous action and/or to protect others?



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BOARD ACTION / UPPAC LIST SERVE UPDATE

UPPAC is currently working to update the Newsletter list serve. Due to a change in UPPAC procedures, our office will no longer send **Board Action notifications of invalidation and reinstatement. Instead a confidential list service will be generated in the next couple of weeks for Superintendents, HR Directors, and Charter/Private School Directors only. This will be a confidential list serve and appropriate individuals will receive notice of registration.**

The list serve for UPPAC information and the newsletter is public! Subscribe by clicking here! The Board Action summary will still be in the newsletter for the public.

JANUARY

The license of Barry Bingham was reinstated by the Board following a reinstatement hearing.

The license of Devin Tucker was reinstated by the Board following a reinstatement hearing.

The license of Nathan Dipo was reinstated by the Board following a reinstatement hearing.

MARCH

The license of Justin Davenport was suspended by the Board for allegedly violating appropriate boundaries with a student.

The license of Stephanie Kearns was suspended by the Board for allegedly violating appropriate boundaries with two students.

APRIL

The license of L. Vern Jensen was suspended by the Board for revealing confidential information about students on more than one occasion over a 9 year period.

The license of Courtney Jarrell was revoked by the Board for having a physical sexual relationship with a 17 year old student.

The license of Shawn Mitchell was revoked by the Board for having an inappropriate relationship with a female high school student.

MAY

The license of Saqiba Mahmood was suspended by the Board for pleading guilty to Possession or Use of a Controlled Substance, a Class A Misdemeanor after being arrested for selling spice, an illegal substance.

The license of David Mills was suspended by the Board for allegedly using excessive force with special needs students.

The license of Travis Gough was suspended by the Board for entering into a plea in abeyance for unlawful sexual conduct with a minor under Utah Code Ann. § 76-5-401.2 for touching a female student inappropriately.

The license of Seth McVea was suspended by the Board for repeatedly accessing inappropriate materials on school property, using school equipment and during school hours.