



JANUARY 2014

## IN THIS ISSUE:

Page

- 1 NICE GUY, BOUNDARY VIOLATOR, OR SEXUAL PREDATOR?
- 2 WYNAR V. DOUGHLAS COUNTY SCH. DIST.
- 3 DECEMBER BOARD ACTION
- 4 YOUR QUESTIONS

Click on the following links to learn more:

UPPAC



*Utah School Law Update* is a publication of the Utah State Office of Education

Law and Legislation  
250 East 500 South  
P.O. Box 144200  
Salt Lake City, UT 84114-4200

Martell Menlove, Ph.D., State Superintendent of Public Instruction

Phone: 801.538.7830  
Fax: 801.538.7729

[william.speigel@schools.utah.gov](mailto:william.speigel@schools.utah.gov)

## NICE GUY, BOUNDARY VIOLATOR, OR SEXUAL PREDATOR?

*Recognizing signs of educators involved with students inappropriately*

Looking back on the year in review, 2013 saw more headline stories of educators involved in sexual misconduct with students than the public cares to see. Currently, UPPAC has eleven open cases involving educator sexual misconduct, or 22% of total UPPAC cases. The cases are not limited to male educators or female educators: they are split almost down the middle with 5 open cases about female educators, 6 about male educators. The cases are not limited to charter schools or traditional schools: 3 are charter school educators, 8 come from traditional schools. The cases are not limited to educators who are very young or very old: of the current 11 cases, 3 educators are between ages 20 and 30, 4 are between the ages of 31 – 40, 2 between the ages of 51-60 and 2 over 61. (See Figure 1.)

The victims also vary in gender and age. Three victims were in elementary school, 1 in junior high school, 6 in high school, and 1 is

teenager whose exact age is unknown. (See figure 2.)

The ages of the victims are telling. Well over half the victims are teenagers and while there are always exceptions to every rule, it has been UPPAC's experience that the perpetrators in junior high and high school are a different type of perpetrator than the perpetrators in elementary schools. Charol Shakeshaft, professor of educational leadership at Virginia Commonwealth University and a researcher of educator sexual misconduct, identified two predominant types of predators in schools: the **"fixated" abuser** and the **"opportunistic" abuser**. The **fixated abuser**, Shakeshaft explains, is typically found in elementary schools and is sexually drawn to young children; the behavior is a result of a fixation on children. The **opportunistic abuser**, on the other hand, is an adult who takes sexual advantage of a situation, but who is not exclusively attracted to children or teenagers. "These are adults who have boundary and judgment problems and aren't difficult to identify once their patterns are familiar to others in the school." *Knowing the Warning Signs of*

(Continued on page 2)

**WYNAR V. DOUGLAS  
COUNTY SCH. DIST. 728  
F.3D1062  
(9TH CIR. 2013)**

Landon Wynar was a sophomore at Douglas High School. He collected weapons and ammunition and reported owning various rifles. Landon and his friends communicated through instant messaging and MySpace. In the first few months of Landon's sophomore year, his messages became increasingly violent and troubling; they focused on a school shooting to take place on April 20 (the date of Hitler's birth and the Columbine massacre and within days of the anniversary of the Virginia Tech shooting).

2

Landon's messages to his friends became so disturbing and violent that two friends contacted a football coach whom they trusted about their fears. The coach contacted the school principal who contacted the police.

The police and school administrators took Landon into custody and questioned him about his MySpace messages (they offered to allow Landon's parents to be present, he refused). Landon admitted to writing the messages but said they were a joke. Landon was initially suspended for 10 days. Following a formal hearing which included attorneys, the opportunity to call and cross-examine witnesses and the presentation of evidence, the school board expelled Landon for 90 days.

Dad and Landon sued the school board and school officials. The district court denied the Wynar's

(Continued on page 3)

(Continued from page 1)

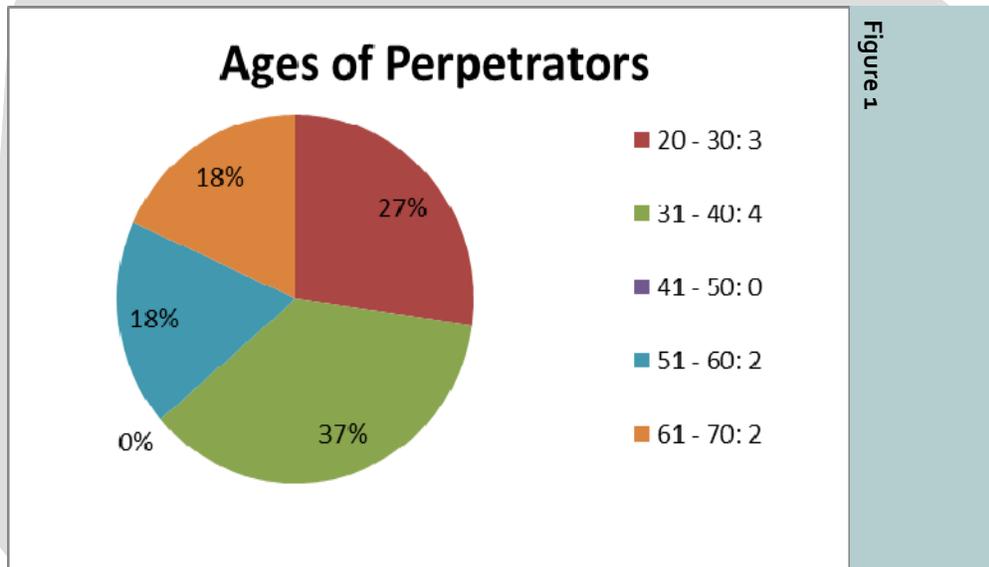


Figure 1

*Educator Misconduct*, C. Shakeshaft, February, 2013.

As the data shows, the vast majority of sexual misconduct cases that come to UPPAC involve the opportunist abusers at the secondary level, rather than fixated abusers in elementary school. Consequently, the focus of this article is on identifying signs of the opportunistic abuser, including signs that each educator can look for in himself. Moreover, these opportunistic abusers seem to be abusing because of poor judgment, not because they have a sexual predilection for young kids; there is more hope for prevention through training for opportunistic

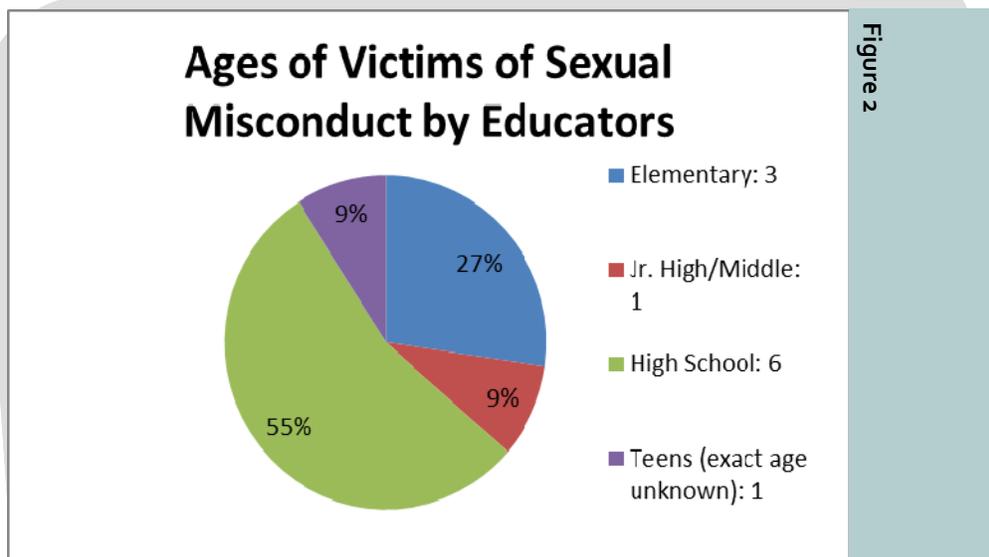


Figure 2

(Continued on page 3)

motion for summary judgment and granted the District's motion.

The Wynars claimed that Landon's messages, sent from home on his home computer, deserved the protection of the 1st Amendment. The 9th Circuit Court analyzed the facts using all of the U.S. Supreme Courts decisions about student freedom and speech: what kind of "speech" is protected (*Morse and Bethel v. Fraser*), is the speech school-sponsored (*Hazelwood*), and are students' free speech rights co-extensive with adults/others (*Tinker*). But these cases all addressed troubling, possibly disruptive conduct on school property or at school sponsored events. The Circuit Court acknowledged that there is less consistent guidance—even from lower courts—when student speech takes place off school property.

The 9th Circuit Court held that Douglas County School District did not violate Landon's constitutional right to freedom of speech. The Court found that Landon's messages "threatened the student body as a whole, and targeted specific students by name." The Court also concluded that it was reasonable for Landon's friends and the school district to take Landon's threats seriously. The school could fairly interpret Landon's messages as a dangerous threat; he admitted to owning guns and ammunition. Also, it is probably an understatement to say that such a dangerous threat forecasts school disruption. Holding: "Landon's messages, which threatened the safety of the school and its students, both interfered with the rights of other students and made it reasonable for school officials to forecast a substantial disruption of school activities."

abusers than there is for fixated abusers. We hope this article will help all educators identify the indicators of opportunistic abusers in public schools.

### *Opportunities for the Opportunists*

Opportunistic abusers have increased in number over the last few decades due to several factors, including:

- a. the increased use of technology, making it easier for teachers and students to communicate in the cyber world without the knowledge or oversight of parents;
- b. a shift in the way students see their teachers (eg, students are calling teachers by their first names more often than in the past; students feel more comfortable talking to adults more freely than they were in the past—from bullying to suicidal ideation. Many students seek out adults as they would have peers several years ago); and
- c. a blurring of lines between adult and student

But there is another reason: according to Charol Shakeshaft, opportunistic abusers succeed because fellow educators and administrators do not recognize the signs and do not report colleagues who take the opportunity to misbehave. Teachers are on the front line and know which of their colleagues act inappropriately with students.

However, it is not always easy to recognize the signs and then report colleagues who engage in inappropriate behaviors. Sometimes the line between nice guy, boundary violator, and predator is thin and not always easily distinguishable. And there is not always a static line. The nice guy might start out as just that: a nice guy. Eventually his "niceness" and desire to please pushes the nice guy to cross boundaries and he engages in inappropriate conversations with students. With opportunity and grossly misplaced judgment, the boundary violator **may** find himself the sexual predator. So, how do we watch out for the nice guy turned boundary violator and/or predator?

### *Recognizing the Opportunist Abusers in Ourselves*

First, all educators should look to themselves, and recognize weaknesses and vulnerabilities in their own education practices. Most opportunistic abusers don't begin their careers with the intention of getting involved with a student. Sometimes because they don't recognize their own vulnerabilities—qualities that are not inherently wrong—they often don't recognize the slippery slope they're on until they're at the bottom of the hill. For example,

## DECEMBER UPPAC ACTION

The Utah State Board of Education took the following action in the month of December:

The educator license of Jeffrey Bertuzzi was reinstated following a reinstatement hearing.

Mr. McMurray's license was revoked for entering into a guilty plea to eleven counts of aggravated sexual abuse of a child and three counts of attempted sodomy on a child.

Mr. Culter's license was suspended results from allegations of accessing and viewing inappropriate images on his school-issued computer.

(Continued from page 3)

educators who enjoy being the popular teacher too much run the risk of stepping out of the professional educator role into the friend role and blurring the teacher-student line. Teachers who love to listen and fix other peoples' problems run the risk of playing therapist to their students. This encourages an intimate relationship, sometimes without intent or even awareness. Educators who like "saving" friends and family run the risk of assuming the savior role to a needy student. Educators who are pleasers and have a hard time saying "no" can develop relationships with insistent and persistent students who don't respect or understand the teacher-student line.

With this in mind, all educators should pause and ask themselves, what are **MY** risks? What vulnerabilities do **I** have that might put **me** on the path towards UPPAC review?

- Am I the teacher who tries too hard to be "friends" with students? Do I crave the popularity as a teacher? Is it too important to me that kids like me? Does it make me feel good when kids frequently hang out in my classroom during lunch, or invite me to hang out on the weekends?
- Am I the teacher who sees herself as a student "therapist"? Do I frequently offer advice? Do I need to fix problems?
- Is it too important to me to save students? When a student tells me, "You're the only one who cares about me?" do I feel honored and special? Do I encourage a unique relationship with a student because I feel it is saving the student in a crisis?
- Am I the nice teacher who likes to make everyone happy? Do I have difficulty turning people away or telling them "no" when they push and insist on my attention? Is my personal life unfulfilling so that I need to find validation in students' praise and affection?

Educators should keep this mantra in the forefront of their heads at all times: **Be friendly, not friends. Teach, don't treat. Inspire, don't save. And just say no!**

### **Recognizing the Opportunistic Abuser in Our Colleagues**

Once educators recognize their own weaknesses and vulnerabilities, they can pause before engaging in behaviors that lead to inappropriate relationships. They are also better able to identify colleagues engaging in similarly misguided behaviors. For example:

- Are students frequently hanging out in a colleague's classroom?
- Is there one particular student hanging out there more often than others?
- Does your colleague joke with students as if they were his peers,

(Continued on page 5)

## YOUR QUESTIONS

**Q:** I am a junior high school social studies teacher who is interested and concerned about public education in Utah. I would like to tell legislators about my experiences with technology in the classroom and assessments, to name two areas of experience and interest. How can I do this effectively, but without upsetting my principal or district administrators?—Veteran Utah Teacher



(Continued on page 5)

**A:** Certainly teachers have the right (and civic obligation) to express their opinions and contact legislators. Additionally, this sets a good example for students! A few suggestions and cautions: (1) the most effective contact is to the Utah House member and Senator in your district. Find out who they are. They are deluged with emails, so consider a written letter or even a telephone call. Their contact information is readily available and public information. (2) Choose one or two specific topics and communicate about your experience and be brief. (3) Use your own time and equipment. Do not send an email from school or using your school-issued iPad. (4) Be clear that you are expressing a personal viewpoint, based on your personal experience, not the opinion of ABC School or 123 School District. (5) You are a social studies teacher! You can tell your students that you contacted your state senator. But do not expound upon your political positions or preferences. (6) The most effective political participation is your presence. Could you/Would you use a school holiday to attend a committee meeting at the State Capitol or observe the House in action from the gallery? Make a point to contact and meet your representatives.

- making off-color comments or inappropriate remarks to make kids think he is cool?
- Is your colleague always talking about students as if they were his buddies?
- Do you hear students talk about a colleague’s flirtatious comments to her/him?
- Do students tell you about a colleague’s inappropriate behaviors?
- Is the colleague someone who likes to play therapist to students?
- Do you see/hear students talk about personal conversations with the colleague?
- Do you notice students seeking non-school related advice from a colleague?
- Is there one particular student who latches onto the colleague?
- Is there one particular student the colleague is intent on helping? Does that student spend significant time alone with the colleague?
- Does that student vigorously defend the colleague if questioned?
- Does the student have other teachers he/she is seen with or is it just one colleague who the student is drawn to?
- Does the colleague ever hug students inappropriately, or touch them in an inappropriate and overly familiar manner?
- Do you know about texting between a colleague and a student?

### *Reporting the Opportunistic Abuser*

These behaviors are not necessarily evidence of sexual activity but they are all signs of boundary violations which always precedes sexual activity between teacher and student. Reporting colleagues for suspicious behavior is NOT tattle-telling and it is not throwing friends under the bus. It is necessary to protect students. Most boundary violators turned sexual predators can be stopped at the boundary violation if the violations are identified, reported, and addressed. However uncomfortable reporting may be, educators are the eyes and ears of in-school activities. Other educators are the best defense against what some are labeling an “epidemic” of educator sexual misconduct.

## **WHAT IS UPPAC?**

*UPPAC is a committee of nine educators and two community members charged with maintain and promoting a high standard of professional conduct and ethics among Utah teachers. It is advisory to the Utah State Board of Education in making recommendations regarding educator licensing and may take appropriate disciplinary action regarding educator misconduct.*

*The Government and Legislative Relations Section at the Utah State Office 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.*

