UTAH SCHOOL LAW UPDATE

Utah State Office of Education

August 2005

Have You Checked Your FERPA?

It's the most wonderful time of the year—or so say parents anyway.

It is also time to make sure the school and district have updated their federal required FERPA disclosures. Educators must know what information can be given out without prior parental notice.

The federal Family Education Rights and Privacy Act requires that schools annually disclose to parents what the school considers directory information. Directory information can be given out without parental consent.

Which is why the school must also give parents an opportunity to opt out of having their student's directory information given out.

The first step, then, is for the school (this decision may also be made on the district level) to determine what it will consider directory information. Most schools include a student's name, address, phone number, email, photos, honors and awards, extracurricular activities and dates of attendance—anything that might be put in the school newspaper or yearbook.

There is a very short list of items that can't be directory information, such as social security numbers and student identifiers that the students use to access information about themselves on, for example, Power School.

Once the definition is set, the school must provide notice to parents what it includes, often accomplished through the school handbook, and inform the parents that they can opt out.

But it's an all or nothing proposition. Parents can't say "I want junior's information given to college recruiters, but not to test preparation companies."

There is one exception. Under recent amendments to the Elementary and Secondary Education Act, if a parent opts out of having directory information given to others, the schools must still provide the information to military recruiters unless the parents specifically opt out of that disclosure as well.

Thus, the school must inform parents that their students' directory information may be given out at the schools discretion and must be given to military recruiters unless the parents opt out of one or both in writing.

All educators should be aware of their schools definition of directory information to ensure student information is only disclosed in accordance with FERPA.

UPPAC Case of the Month

The majority of UPPAC cases involve educators crossing professional boundaries.

Some violations are more serious, and obvious, than others, such as having a sexual relationship with a student. But there are many instances when educators cross the line without recognizing the harm they have done.

These incidents usually involve an educator desperately seeking to be the students best friend or the "cool teacher."

Examples include educators who become confidantes for their students, discussing the students sexual activities or depression or alcohol use, or some other issue the educator should not be involved in without prior written parental consent.

In some cases, the educator has no idea how poorly his actions are being received. An educator may think he is beloved by his students, and he may be popular, but he may also be viewed in an entirely different light behind his back.

For instance, a recurring theme in UPPAC cases involves male teachers

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Inside this issue:

UPPAC CASES

- *The Utah State Board of Education reinstated the license of Jennifer Strassburg. Ms. Strassburg's license was suspended for two years based on misconduct with a student occurring 18 years prior to the suspension.*

Eye On Litigation-Utah Supreme Court

The Utah Supreme Court issued a final ruling in the case of an extracurricular trip gone tragically awry.

Many may remember the sad tale of the Highland High debate team's trip to a tournament in California in 2000. The eight teammates returned to Utah in two rented minivans, each driven by a district employee. One of the employees lost control of his minivan, resulting in the deaths of two students and serious injuries for three others.

The accident occurred not long after the state legislature had limited recovery under the Governmental Immunity Act to $500,000 for injuries sustained by two or more persons in one accident. Thus, each of the five plaintiffs would have to split the $500,000 to cover all medical and other expenses.

The plaintiffs argued that the cap violated several state and federal constitutional provisions. In the process of resolving those claims, the court made several important rulings.

The first important ruling recognized the operation of a debate team, including travel to a tournament, as a core activity of a school district. The court noted that such activities benefit student education and students would be unlikely to have such opportunities if the schools didn't offer extracurricular activities. This ruling is consistent with rulings in other jurisdictions granting immunity for activities such as football, pep rallies and other interscholastic athletics.

The court also determined that the right to sue a school district for tort claims is not a fundamental right. Therefore, the cap could be analyzed, for due process purposes, under a lower rational basis standard. As long as the reason for the cap is rational, it does not violate due process.

The court determined that the cap was designed to protect the state and its political subdivisions from financial disaster. The cap is reasonably related to that legitimate governmental interest, therefore it satisfies due process.

The court did note that the cap also creates financial and emotional hardship on those who suffer injury due to a public employee's negligence, but the legislature is not required to find the best solution, only a rational one.

In the end, the court found nothing unconstitutional about the cap.

The "win" is a bittersweet one for education and the Legislature. Yes, it protects schools from outrageous awards for negligent actions by school employees, but it also leaves the parents and students involved in this tragic accident with far less than they need to cover the costs.

Recent Education Cases

Haney v. Bradley County Bd. Of Educ., (Tenn. Ct. App. 2005). In a case that illustrates the need for school employees to follow procedures, the Tennessee Court of Appeals ruled against the school board's motion for summary judgment in this negligence case.

The mother of two students sued the school board for negligence after her husband checked the students out of school and murdered them. The mother claimed that, had the school employees read the husband's note explaining his reasons for checking the students out, they could have prevented the tragic ending. The husband's written explanations for checking the students out were "keeping promise by mother" and "pay back."

The court rejected several of the mother's arguments in support of a negligence claim against the school. But it did find that the case could proceed to trial on the issue of whether the school failed to exercise reasonable care by not reading the father's explanations for checking the students out before allowing him to do so.

The facts of the case showed that the kindergarten teacher who escorted one of the children to the

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UPPAC cases cont.

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who climb on desks to take pictures of female students. The teacher may have no ill-intent, but he may soon become known as a "perv" among students who think he is looking down their shirts.

The educator's actions are not highly professional and do impair his ability to function in the classroom, though he may be completely unaware that he has lost student respect.

Another common professional glitch involves educators who reveal far too much of their personal lives to students. Wherever the educator is, if students are present, he or she must remember to be the adult.

Students don't need to know much, if anything, about your religious, political, or sexual preferences. They shouldn't see you inebriated or otherwise acting irresponsibly, or hear about your wild weekends.

When students are also friends of a teacher's children, matters are even more complicated. As a rule of thumb, the teacher should behave as a responsible adult, parent and educator.

There is no clear line labeled "professional boundary." However, most educators will not cross the line, or will do so rarely and in a minor transgression. But an educator who forgets he or she is an adult, and not one of the students, is more likely to cross the line in a way that will affect his or her job and license to teach.

Eye on Legislation-It's Not Just Us

During the 2005 Legislative session, the State Office, pediatricians, and parents put serious effort into defeating a bill that would have discouraged teachers from discussing students' behavioral problems with parents.

HB42 Medical Recommendations for Children ostensibly codified an existing State Board rule prohibiting educators from requiring that a student take a particular medication in order to attend school. The legislation went further, however, prohibiting schools from assessing student behavioral issues.

The bill was vetoed by Gov. Huntsman.

Since then, the federal government has followed suit.

As part of the amendments to the reauthorized Individuals with Disabilities Education Act, the act requires states to adopt a policy against school personnel requiring students to take medications listed in the Controlled Substances Act (such as Ritalin) as a condition for attending school. It does not prohibit behavioral assessments.

Proponents and opponents of the federal legislation made many of the same arguments as were heard in Utah; proponents fear teachers are trying to be doctors, opponents fear the legislation will discourage teachers, who spend the most time with the kids during the day, from having frank conversations with parents about a student's behavior.

The amendment follows the President's New Freedom Commission on Mental Health's 2003 endorsement of mental health screenings in public schools in 2003.

Screening opponents argue it is just a means for drug companies to push more pills on students, hence the legislation against school personnel requiring medications.

Meanwhile, the Surgeon General found that 1 in 10 children suffer from mental illness severe enough to cause impairment, but fewer than 1 in 5 of these will receive needed treatment.

Your Questions

What do you do when. . . ?

Q: I am a coach and want to have one of my players live with my family to get him out of a gang lifestyle. Can the student establish residency by living with my family?

A: Only if you are designated by a court as the student's legal guardian.

In general, students are residents of the district where their parent or legal guardian resides. If the student lives with someone other than a parent or legal guardian, he is not a resident and would be required to pay tuition to attend the school.

There is, however, an exception. A district can adopt a policy that allows a student to establish residency without a legal guardian if the student lives with a **relative**, is **not** living with the relative **for the primary purpose of attending school** and the student's "physical, mental, moral or emotional health would best be served by considering the child a resident for school purposes."

The law is very clear, however, that **the student must be living with a grandparent, brother, sister, aunt or uncle** to qualify for

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Recent Cases Cont.

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office to be checked out did read the reasons after the father left. She was concerned enough to show the principal. The principal was also concerned and showed the remarks to the school resource officer.

While the three were reviewing the remarks, the resource officer got a call about an arson fire at the father's home. In the time it took the school to consider the father's written remarks, he had stabbed the children and set fire to their bodies and his home.

The school may still escape liability, but it might have avoided trial altogether if the reasons had been checked up front. Miami-Dade County School Board v. A.N., (Fla. App 3 Dist. 2005). Along similar lines, a school was found negligent for the sexual assault of a kindergarten student by another kindergartener in a school bathroom. The board failed to warn a substitute teacher of the perpetrator's known sexually aggressive behavior and did not explain the bathroom pass procedures. Those procedures prohibited more than one student at a time from being in a bathroom.

Doe v. Rohan (N.Y.A.D. 2 Dept. 2005). In contrast, a school district was not liable for a bus driver's sexual abuse of a student. The driver had no criminal history, no prior complaints in 27 years of service and an excellent employment record.

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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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this exception.

Thus, even if the student residing with the coach is best for the student's health, the coach must obtain court ordered guardianship in order for the student to be considered a resident of the school district.

The coach should also consider if this is even a good idea or will raise an appearance of impropriety.

Q: If I sue the school district for_____, and I lose, can/will the district fire me?

A: We have received a number of questions along these lines recently. The callers have been searching for the impossible—guarantees about what will happen if a lawsuit fails.

In each of the scenarios callers have presented, their main concern is protecting their current position if a lawsuit is unsuccessful. Employees have some protection from retaliatory dismissal for legal activities, but much depends on the employee.

A district could not terminate an employee for exercising his or her right to pursue legal remedies for harms caused by the district.

However, if the court rules the lawsuit is frivolous, the district could terminate the employee for, in essence, harassing the district.

Employees do not have a right to bring costly litigation against a district merely for the fun of annoying a district administrator, for example.

A district could also terminate an employee for actions underlying the lawsuit. For instance, if the employee is using the school or workplace to air his grievance, barraging his coworkers with tales about the lawsuit, the district might have grounds for dismissal.

While an employee has a right to speak about matters of public concern, a private suit against the district is not a matter of public concern.

An employee who spends contract time trying to rally the troops behind his or her private cause may certainly be dismissed for that activity.

A district could not dismiss an employee for bringing a legitimate claim against the district or an administrator, however, even if the claim fails in court.