UTAH SCHOOL LAW UPDATE

Utah State Office of Education

December 2005

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Skipping Christmas

With regards to John Grisham for the title of this article, we just want to remind educators, once again, that you should not and do not need to discourage children from acknowledging Christmas as part of the holiday season.

The raging war for and against religion in the schools notwithstanding, **educators should not be afraid of the "C" word**—whether it is Christmas or Chanukah.

While most educators understand they should **avoid endorsing any particular religion** by focusing solely on the traditions of that religion during the holidays, some have taken things much too far.

For instance, an educator who threatens to lower the grades of students who say "Merry Christmas" is needlessly punitive, and in a manner that violates state law (an educator should not dock a student's grade for matters unrelated to the curriculum).

Students may wish each other, and their teachers, a Merry Christmas. A teacher may respond in kind.

But the teacher may not use her captive class as a sounding board for her views on a particular holiday tradition, whether it is for or against.

Nor should the teacher assign students to reenact the Nativity or explain the significance of the Menorah, unless the study of holiday traditions is tied specifically to the curriculum for the class and includes an unbiased review of the traditions.

In short, **as long as there is a legitimate educational purpose** in the activities related to the holidays, educators can decorate, discuss and enjoy the season to their hearts content, without excluding any student on the basis of religious belief.

"Peace on earth, good will toward men" can be achieved in the classroom, at least until that "magical" moment when a student discovers the mischief-making potential of tinsel.

UPPAC Case of the Month

While UPPAC cases typically involve the extremes of unprofessional behavior, educators should recognize there is a continuum of behavior that can be labeled as unprofessional.

For instance, it is clearly unprofessional conduct for an educator to be in a dating relationship with a student, regardless of whether the relationship includes sex.

It is also inappropriate, however, for an educator to give high school students of a gender the educator is attracted to, full hugs.

Or to discuss personal issues with a student without parental permission.

Or to join in student banter about each other or other educators.

Educators should also be aware of student reactions to physical contact. Students may feel uncomfortable with an educator rubbing their shoulders, or frequently rubbing the shoulders of select other students.

Students may also fail to appreciate a shutterbug

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UPPAC CASES

- *The Utah State Board of Education accepted a Stipulated Agreement for an 18 month suspension of Sharon Hollinger's educator license. The suspension results from Ms. Hollinger's abuse of prescription medications and arrest for theft of prescription medications from homes in her community.*
- *The State Board accepted a Stipulated Agreement suspending Toanui Colin Tawa's educator license for 18 months. Mr. Tawa's suspension results from his use of his school computer to access pornographic sites during the summer.*

Eye On Legislation-What Can You Do

Readers may have noticed a bit of frustration in our reports on all things legislative. Readers may also have their own frustration, or positive experiences, regarding legislative proposals.

But we need not feel completely helpless. Individually, educators can have a positive effect on the Legislature.

First, **educators can contact their own Legislators**. State Office employees who attempt to provide information to Legislators are often labeled "bureaucrats," and their expertise disregarded with the pejorative label.

A teacher, principal, school counselor or other individual "in the trenches," however, is not so easily dismissed. This is particularly true when the teacher is also a constituent.

If an educator is concerned about a bill or legislative issue, she or he needs to let the local legislator know. This can be accomplished with an email or phone call. Legislators' emails, addresses and phone numbers are available on the legislative website at www.le.state.ut.us.

While a one-time contact is useful, educators can have even more influence if they **remain in regular contact with the Legislator**. This doesn't mean planning to call every Wednesday at 4:00 just to shoot the breeze, but it does mean keeping the Legislator informed of the educator's view on a particular bill or bills and education issues in general.

If possible, on a day off educators should make an effort to **watch their Legislator in action at the Capitol, and let him or her know what you thought about the performance.**

Educators can also have a profound effect on legislation by getting involved in the election process.

Voting isn't enough, educators who want a responsive Legislator need to **attend neighborhood caucus meetings** and bring like-minded friends who will vote for the preferred party candidate to ensure public education supporters are on the ballot in the first place.

Recent Education Cases

Fields v. Palmdale School Distr., (9th Cir. 2005). The court ruled that a survey which asked 1st, 3rd and 5th grade students highly personal questions about sex, did not violate the parents' rights to raise and educate their children.

The school obtained parental consent for the survey, notifying parents that it would conduct a survey to measure students' experiences with trauma to determine if it effected learning.

The school noted that questions would address violence, but did not inform parents of the sex-related questions.

Parents did not have an opportunity to see the survey before it was administered.

Parents of some students sued the district, claiming it had unconstitutionally usurped their right to control the education of their children, including a child's exposure to the topic of sex.

The court found no constitutional violations, noting that a parent's right to direct the education of a child did not include a right to direct the curriculum or dissemination of information at a school.

The court made specific note that it did not rule on the wisdom of the questions, only on the issue of the parents' rights to

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UPPAC cases cont.

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teacher's attempts to get new and interesting photos of students from different angles, like atop a desk.

Educator dress can also be a professional issue. The educator who attempts to dress like students may find him or herself the subject of student ridicule, or at least fighting to maintain student respect.

An educator's style of dress has not resulted in a referral to UPPAC. But educators who are referred to the Commission often share the trait of being too close to their students or too nostalgic for their own school days. An educator who blurs the line between him or herself and students through dress or speech may also blur the line in more important ways, such as inappropriately touching students.

Professionalism requires that educators maintain appropriate boundaries with students. Those boundaries include avoiding the obvious— like dating students, or touching students in illegal ways, or sexually harassing students, or cheating on state core tests—and the more subtle—like being too much of a friend to students rather than a role model, or dressing and talking like students.

Being a professional means remembering that the educator is in a position of trust over young people; she has a duty to act as a reasonable parent during the school day for the students in her care.

U.S. Supreme Court Decision: Schaffer v. Weast

The U.S. Supreme Court ruled in November 2005 on an important Individuals with Disabilities Education Act issue—who has the burden of persuasion in a due process hearing under IDEA?

The student, Brian Schaffer, attended private school until the 7th grade. At that point, the private school could no longer meet his needs, so his parents sought public schooling.

The district conducted the appropriate team meetings and developed an IEP for Brian. His parents disagreed with the team's proposed placement and services and placed Brian in another private school and initiated a hearing under IDEA to recoup the costs of the private placement.

The Administrative Law Judge who conducted the hearing ruled that the evidence was close but, since the parents bore the burden of persuading the ALJ that the district should pay, he ruled in favor of the district.

Following a decision by the 4th Circuit Court of Appeals, the Supreme Court took the case to decide which party bears the burden of persuasion at an administrative hearing regarding the appropriateness of an IEP.

The parents argued that the district had the burden because the districts control the IEP process and have the expertise.

The court rejected this argument, noting that the district will have a "natural advantage in information and expertise," but the district also has statutory duty "to safeguard the procedural rights of parents and to share information with them."

The court ruled, therefore, that the burden of persuasion in a hearing regarding an IEP lies with "the party seeking relief," otherwise known as the plaintiff.

In short, if parents feel an IEP is inadequate, they would have the burden of persuading an ALJ of the inadequacy rather than the district having to prove the IEP would provide a free, appropriate public education.

Your Questions

What do you do when. . . ?

Q: After a student self-reported marijuana use off-campus but during the school day, the school suspended the student and his cohorts. The parents now claim their students' rights were violated because no **Miranda warning** was given. Is the school required to give Miranda warnings to students?

A: No. When the school suspects student misconduct, whether the misconduct is criminal or a violation of a school rule, or both, the school need only provide the student with notice of the allegations against him or her and a chance to present his or her side of the story.

If the school then decides to suspend the student for more than 10 days or expel the student, the student has a right to appeal the decision, but at no time in the process is the student entitled to the full stable of rights granted to criminal defendants, including Miranda rights.

Miranda rights are only required in the criminal context by law enforcement. A school resource officer who, acting at the request and on behalf of the school, questions a student has no reason to give the student a Miranda warning.

If the officer suspects criminal conduct and wants to pursue criminal charges, then the officer can give a Miranda warning in anticipa-

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Recent Cases Cont.

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direct the school.

While no federal constitutional violations were found, such a case under Utah law would lead to sanctions. Utah law requires that surveys like the one at issue that address violence, criminal activity, and sexual content, among other things, must be available for parent inspection prior to administration.

Ketchersid v. Rhea County School Bd. (Tenn. Ct. App. 2005). A teacher challenged the sufficiency of evidence leading to her termination.

The teacher was terminated following multiple acts of insubordination. The teacher was told never to put her hands on a student after she slapped a boy in anger.

Four months after this directive, the teacher was again accused of slapping a student. Subsequent interviews of the third-grade students revealed that the teacher had slapped all but two of the seven kids in her class during the school year.

The teacher asserted that she merely "patted" their faces when she was angry to get their attention and that she only had the bad students.

The court agreed with the district that the students were in her class because they were below grade level performance, not because they were bad, and that patting the students violated the directive not to touch students in anger.

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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 of a criminal charge.

Q: If a school employee is arrested or disciplined for misconduct at another non-school related place of employment, should the arrest or discipline be reported to UPPAC?
A: It depends on the reason for and circumstances of the arrest or discipline.

The first question for a district faced with such a scenario is "how does this affect the kids in the school?"

If, for example, a teacher is arrested for embezzlement, the district may consider employment discipline because the educator, who is supposed to teach kids to obey rules and respect the law, has violated the very principles he or she is expected to teach students.

The effect on the school need not be obvious. An educator who is arrested for embezzlement can't escape punishment simply because the arrest is not common knowledge at the school.

The effect should, however, be related to the teacher's ability to role model for students societal responsibility. If, for example, the teacher is fired for always being late for work at the second job, but is always where she is supposed to be at school, discipline by the district or UPPAC is probably unwarranted since the teacher is modeling appropriate behavior at school and has not committed a criminal offense.

Q: Where custody of a child is an issue, or to determine parental rights to student information, should the school maintain the full divorce or child custody decree and all supplemental materials in the student's education record?
A: No. The school needs just the information about who has custody and, if it is joint custody, whatever provision provides the school with evidence that one parent has primary physical custody of the child. This gives the school information it needs to assist with student decision-making.

That evidence may be an explicit statement in the decree itself or the actual schedule setting out whom the child lives with throughout the course of the year.

The school should also have the sections of the decree, if any, setting out who picks up the child, who has the authority to make decisions about education and any other matters directly related to the school.