UTAH SCHOOL LAW UPDATE

Utah State Office of Education

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Lessons from a Charter School

Having just completed an administrative internship at the Academy of Math, Engineering, and Science, a charter school in Salt Lake, I must share some of the great lessons learned.

AMES has the advantages of many charter schools—small size, fewer state law mandates—but it also has the kind of administrators all schools can benefit from.

The director is a public ed veteran who has seen the best and the worst that schools have to offer. He is also the embodiment of what his school demands of students—active learning. AMES is ahead of the curve when it comes to innovations in teaching and learning, and has a very clear focus on student success—as measured by the students' progress and interest in advanced learning, not just in test scores.

From a legal perspective, I also learned that being an administrator is a legal minefield.

In the course of my few months at AMES, I bandaged a bleeding student (hopefully in compliance with state health codes), helped console grieving students (hopefully in compliance with state FERPA laws), participated in special education meetings (hopefully in compliance with the federal Individuals with Disabilities Education Act and its state law equivalent), met with parents about their students' behavior problems (definitely in compliance with the state Medical Recommendations law), participated in disciplinary meetings with kids (in compliance with due process), and conducted an informal evaluation of teachers (in compliance with the state teacher evaluation law, not required of charter schools).

Each of these moments was just a small part of a school day. In between, I helped ensure kids' safety as they traveled the school between classes (per state hazing provisions, health provisions, and disciplinary provisions), busted kids for skipping classes (per state compulsory ed laws), listened in as parents were called in to discuss truant students (again, per state compulsory ed laws), and met with curriculum specialists to discuss alignment with the state core and higher ed expectations (per state board curriculum rules and higher ed hopes).

Students were regularly counseled about graduation requirements (per State Board rule), SEOP conferences were conducted (State Board rule), and one student was expelled for a safe schools violation (state law and board rule).

I also attended a couple of AMES board meetings (held according to the state Open and Public Meetings Act). The members discussed a variety of issues, including the schools clubs policy (new state law), the school's annual report to the legislature and state charter board (rule and law), "upcoming accountability activities" (rule and law) and U-Pass results (rule and law).

In short (too late, I know), I learned just how much of the daily activity at any public school is regulated by the state. I also learned that the most important aspects—how students feel about the school, learning, and how they treat each other—can't be legislated.

UPPAC CASES

- *The Utah Board of Education reinstated Rebecca Lynn Smith's educator license.*
- *The State Board revoked Christy Anne Brown's license for 25 years following her conviction of forcible sexual abuse involving a student.*
- *The Board revoked Kathryn Parmley's license for 5 years following her conviction for sexual battery against a student.*
- *The Board revoked Frank Laine Hall's license for 25 years following his conviction for 10 felony counts of sexual abuse of a child.*
- *The Board suspended Eric Snow's license for 2 years for viewing sexually oriented materials on his school computer.*

Eye On Legislation

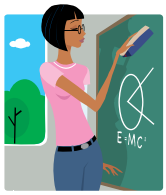
The bill requests just keep on coming, and the rumors keep flying.

As local news sources report, many in the education community expect some form of retribution during the 2008 Legislative session in return for the voucher referendum. Some legislators have denied any interest in retribution, but the rumors persist.

One such rumor is making the rounds of legislative ranks. Some Republican legislators who voted against vouchers have heard they will find it very difficult to get any of their bills passed, or even considered, in 2008.

We assume, however, that despite the rumors, sound public policy will prevail over any petty personal vendettas that may exist.

Which is one reason we are optimistic about Pro-excel (or some version of the 2007 model) passing this year. Legislators have asked public education to propose acceptable reforms in light of the referendum vote and Pro-excel is one of the those reforms.



The bill, sponsored by Rep. Rhonda Menlove, R-Box Elder, who ran it last year as well, creates a comprehensive professional development, recruitment and retention program.

On the professional development side, the bill establishes requirements for a Leadership Consortium for administrators. The Consortium would develop regular training programs in areas such as financial management, legal issues, student assessment, human resource management and others. The Consortium would also draft model policies for school and district management.

The bill adds requirements to district evaluation programs to include measures of student performance and parent satisfaction.

To encourage teacher development and retention of teachers, the bill appropriates funds that districts and charter schools may use for induction programs for new teachers or as additional compensation to attract and retain teachers.

Requirements for an induction program are set forth in the bill. Districts and charter schools must evaluate their programs annually in order to receive funding for the programs and the State Board is required to develop a model program that districts can adapt to meet their own needs.

Finally, the bill requires that the State Board evaluate teacher and administrator preparation programs across the state.

UPPAC Case of the Month

There is one act of educator misconduct that the Utah State Board of Education has never suspended or revoked a license over—breach of a contract with a local school district.

The Rules of Professional Practice in Utah currently require that educators "Adhere to the terms of a contract or assignment unless health or emergency issues require vacating the contract or assignment. Persons shall in good faith comply with penalty provisions" R686-103-4F.

While a teacher deciding to terminate the contract early is violating this rule, the Utah Professional Practices Commission and State Board have determined that district penalty provisions are a more effective deterrent than licensing action.

However, this does not mean that Utah educators have not been denied a license for breach of contract.

Several states do suspend licenses for breach of contract (California is one). If an educator seeks a license in Utah but has had a license suspended in another state for a breach of contract, the educator cannot be approved for licensing in Utah until she is reinstated in the other state.

Further, the Board and UPPAC could consider licensing action against a Utah educator for breach of contract if the facts warranted such an action.

For example, if the educator had flitted from contract to contract over the course of a school year, leaving several districts in the lurch, UPPAC might consider a letter of warning or reprimand appropriate.

If the breach also involves a heightened level of dishonesty, such as drawing two paychecks from separate districts or schools for work done at one while the educator was expected to be working at the other, a suspension or revocation might result.

But the educator who finds himself heavily recruited by another district during the school year and who succumbs to the temptation is not likely to lose his license.

District policies, however, may apply monetary penalties against the educator, or note the breach of the contract in their recommendations to future employers.

The best remedy in this situation is for the district that is losing the educator to impose any penalties provided for in its contract and to censure the recruiting district for its bad faith actions.

Recent Education Cases

Lowery v. Jefferson County Bd. of Ed. (D.Ct. Tenn. 2007): Parents' First Amendment rights were not harmed by a board's decision to keep them off the board agenda.

The parents sought a spot on the board's agenda to discuss their son's dismissal from the football team. The executive committee of the board decided not to put the parents on the agenda because they had spoken at the last board meeting and the board had no authority over the issue of who could play on the team.

The parents sued, claiming the board's decision was a prior restraint on their free speech.

The court disagreed. The parents were not denied an opportunity to speak to the board and had taken several opportunities to do so—including meetings with each individual board member and comments at the Nov. board meeting.

The board also expressed a legitimate concern that the item would take up space on the agenda for a matter that the board had no authority over and would include harassing, frivolous, and repetitive comments.

The board could legitimately consider these issues in its decision about its agenda.

Bhatt v. New York State Ed. Dept. (N.Y.
The Education Department's denial of a teacher's application for a teaching certificate was not arbitrary or capricious where the teacher failed to meet the requirements for the certificate.

The teacher was notified in 2000 that his application for a provisional certificate was deficient in several respects. He was given until Feb. 1, 2004 to remedy the situation.

In the meantime, the requirements for the certificate were revised. The teacher submitted his application in April 2005. The application materials were reviewed and rejected because the materials did not meet the new standards.

The educator sued, claiming the materials should have been evaluated under the old standards. The court disagreed, noting that, had the educator turned his work in on time, he would have been evaluated under the old standards. However, since he was several months late after being granted a 3 1/2 year deadline, he was not entitled to review under the less stringent prior standards.

The Education Department had provided ample notice to all teachers that only those who met the Feb. 1, 2004 deadline would be grandfathered in under the old standards.

Taylor v. Altoona Area School Dist. (Penn. D. Ct. 2007): The court ruled that a parent could proceed with her case against a teacher who failed to follow the student's IEP and 504 plans, resulting in the student's death.

The student had severe asthma problems. The teacher was involved in the development of the student's IEP and 504 plans, including a detailed Asthmatic Reaction Procedure. The teacher failed to administer the plan on a daily basis and did not follow the ARP during an asthma attack.

When the student told the teacher he was not feeling well, she told him to put his head down on his desk and rest. She did not return to him until other students noticed he was not breathing and had turned purple. Medical personnel were then called in. The student died at the hospital.

Your Questions

Q: Many parents with public school students call our principals to say that they have sole custody, physical custody, custodial rights, joint custody, etc. We get confused as to who can make changes, or who needs to be notified about IEPs and on and on. Do you have anything that would clear up some of those terms for us?

A: Here goes: a parent with **sole custody** has the sole right to make decisions about the student's education. Per state law, a parent with **physical custody** may be treated like a parent with sole custody by the school.

What do you do when. . . ?

A parent with **joint custody** has some rights to make decisions, but those rights are exercised with the former spouse, not at the school. The school can, per state law, decide based on the divorce decree which parent has physical custody the majority of the time (even if that is one day or one hour), and declare that parent to be the one with physical custody and thus, the one the school will notify about IEP meetings, SEOP conferences, etc.

The parent who receives the information then needs to share it with the joint custodian. If the parent doesn't, the other parent can complain to the courts and seek changes to the divorce decree. The

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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 Education 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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parents need to work things out between themselves, however. The school need not and cannot take contradictory commands from both parents.

Please note that a biological parent, regardless of the terms of the custody agreement, has the right to review the student's education records. A parent with sole or any other type of custody cannot demand that the school keep student records from the other parent.

But the right to access records is limited to education records (attendance, grades, discipline, etc). Non-physical custodial parents do not have a right to receive all notices about lunch menus, parent-teacher conferences, etc. The school can provide that information to both parents, but it does not have to.

The most consistent USOE message is that schools will not settle child custody or parental disputes. Schools can only, to the extent resources and personnel are available, enforce child custody or protective orders. Parents must solve these problems (in court, if necessary) and not expect schools to resolve parent conflicts.

Q: We have special education students attending LDS Seminary during release time. The seminary does not have aides or interpreters that some students require. May our special education aides accompany the students to seminary and provide the assistance they would provide for the student in the public classroom?

A: No. State and federal education funds cannot be used to provide religious instruction to students.

While U.S. Supreme Court case law supports some use of public funds to provide services to students in parochial schools, attending seminary in Utah is not the same as a student attending classes at a private school per the terms of an Individual Education Plan under IDEA.

If the school had any discretion over release time, that period would fulfill the compulsory education law and the school could provide the aide to the student (in Indiana, for example, the principal must approve the release time and can determine when release time classes can occur). However, under Utah law the decision to participate in release time belongs solely to the parent.

Because the parent has the full say in the matter, a student on release time has no claim to public school resources.

As the law stands, if you wouldn't send a special education aide to a student's Sunday school or piano lesson, you shouldn't be sending one to assist with the student's release time activities.