UTAH SCHOOL LAW UPDATE

Utah State Office of Education

October 2007

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Advertising Religion

The American Civil Liberties Union of Utah has been busy in the last few-months. The organization has been contacted by parents in multiple districts regarding perceived religious bias. While the cases turned out to be something less than intentional discrimination, the complaints serve as a reminder to all that our schools are NOT homogenous and we must respect the rights of ALL students.

The first complaint came from a parent who found a junior high yearbook section devoted to the LDS seminary class objectionable.

Had the yearbook been a school production, the parent would have had a legitimate civil rights complaint against the school. Schools CANNOT provide unpaid yearbook space to a private religious group. If the seminary class wants to purchase an ad, it may, consistent with school policy, but the school cannot include LDS seminary, or any religious activity, as a school activity.

The yearbook in question, however, was not a school publication, it was produced by the local PTA. Per school district policies, it should have also been distributed outside of the school day.

The district policy, in fact, prohibited yearbooks at the middle school level.

However, the policy created some issues by going on to state that the PTA could produce a yearbook "on **behalf** of the school" following district guidelines.

These additional statements in the policy cloud the issue. If the book is purely a PTA publication, the school district should not be setting guidelines. This level of involvement gives at least the appearance that the yearbook is school sponsored to some degree.

Such a connection to the district may be enough to find the district partially liable for the book's content. If the PTA acts "on behalf" of the school and using district guidelines, the district will find it more difficult to argue that it had no control over or involvement in the final product, and parents will legitimately view a book with the school's name on it and distributed at school as a school product.

The second case was a much more blatant violation of established church-state protections. In this case, a school included LDS seminary in its list of courses at registration.

While the school can list "released time" as an option, it cannot highlight the one religious activity from the list of release time options.

The safest bet is to simply say "release time" and let the students and parents decide if that is an option they want to register for, whether the student intends to use the time for work, volunteer activities, or religious instruction.

While the first case did not involve actual religious discrimination, and the second was ill-advised though not egregious, the concerns raised by the parents should not be taken lightly. The second district responded appropriately to the parent and has taken action to ensure the misprint does not occur in the next round of school registrations.

Both cases illustrate the important lesson that religion is welcome in schools provided it is used as a teaching tool, not as a means of promoting a particular religion or belief system.

Thanks to the ACLU for expressing concern to the USOE and raising awareness, without threatening legal action.

UPPAC CASES

The Utah State Board of Education reinstated Edward J. Birmingham's educator license. Mr. Birmingham's license was suspended for attending school under the influence of alcohol.

The State Board revoked Richard. G. Lamb's license after Mr. Lamb entered a plea in abeyance to two counts of lewdness involving two 15-year old boys.

The State Board revoked the license of Kenneth G. Hardy based on his sexual relationship with a student. The relationship began in 1998.

Eye On Legislation

The 2008 Legislative Session is fast approaching. Below is a very abridged list of potential topics to be discussed.

The math wars will continue this session, with some legislators expressing certainty that the current standards, reviewed by a group of respected college and secondary math educators, is sub-par (see www.senatesite.com/Documents/2007/MathStandardsEmail.pdf).

The legislators who feel the standards are sub-par initially suggested they might draft legislation establishing a curriculum. They now suggest a separate legislative task force to further review the curriculum.

Other legislators have expressed their reluctance to become such a "super-school board."

Creating the perfect math curriculum may prove difficult; "the Mathematical Sciences Education Board of the National Academy of Sciences reviewed 147 studies done on the effectiveness of 19 math programs used in schools today. The conclusion . . . .: Not one study had been carried out well enough to prove a program's effectiveness" *Washington Post*, Dec. 21, 2004.

The State Board will look to increase the appropriations for the Public Education Job Enhancement Program scholarships and T.H. Bell loans.

The PEJEP program provides teachers the opportunity to participate in continuing education for endorsement or advanced degrees in math, physics, chemistry, physical science, information technology, learning technology and special education. If also enables school districts to provide signing bonuses to new teachers in the above fields.

The T.H. Bell loans are provided to high school students intent on pursuing teaching degrees and teaching in Utah.

The scholarship and loan programs are particularly important given the teacher shortage in Utah. This issue will also be reviewed by the Legislature, and has been the subject of interim committee meetings as well. Teacher retention and training will also continue to be examined in the Legislature and at the State Board level.

Finally, educators and all voters should become informed about and vote in the Referendum election on Nov. 6. A balanced look at the pros and cons of the issue can be found in the Voter Information Pamphlet (available at www.utah.gov/ltgovernor/docs/vip-2007-final.pdf.

UPPAC Case of the Month

At various times, the Utah Professional Practices Advisory Committee is called upon to remind some educators that they are the adults in a classroom and, no matter what, they must act as adults.

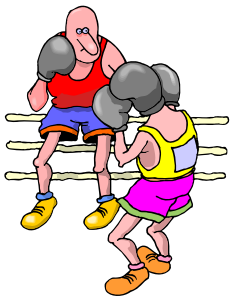
In practice, this usually means the Commission must remind educators of two important rules: They may NOT date students ever and they may NOT hit, grab, push, or pull students except under very narrow circumstances.

We have addressed the first rule many times and won't reiterate it again (in this issue, anyway).

But the second rule requires some discussion.

Teachers get angry—it's one of the expected outcomes of working with large groups of teens, preteens, and other youth. Anger can be channeled into constructive behaviors, or it can destroy an educator's status in the school, and possibly his or her career.

UPPAC has suspended the licenses of many angry teachers. Each case involved a teacher who crossed the line in his or her anger and used physical violence against a student in a situation where force was not justified.



A teacher can use force against a student to protect the student or others from harm or prevent the destruction of school property. But the force used must be reasonable.

For example, a teacher, can grab a student who is punching another and hold them tightly until the student is calmed down. The teacher cannot, however, grab a student who is talking out of turn and slap them across the back of the head.

Similarly, a teacher can pull a student who is threatening others out of the classroom. The same teacher cannot shove the student out the door because the student forgot his pencil yet again.

A teacher might also yank the arm of a student who is about to throw a desk across a classroom, but the teacher could not use the same force against a student who is passing a note in class.

No matter how frustrated a student may make a teacher, and there are those who know exactly which buttons to push with which teacher, the teacher is never justified using force against a student simply because the teacher is mad. Force should only be used to protect students, not as a classroom management technique.

Further, the Commission has yet to come across a scenario when a teacher was justified in hitting a student.

Recent Education Cases

Truth v. Grohe, (9th Cir. 2007). A school's decision requiring that a student Bible club drop one of its membership requirements did NOT violate the First Amendment, Equal Protection Clause or Equal Access Act.

The student group, Truth, established membership criteria that included (1) "complying in good faith with Christian character, Christian behavior, and Christian conduct, (2) having a "trust desire to . . . grow in relationship with Jesus Christ, and (3) signing a "Statement of faith" affirming the student's belief that the Bible is the "inspired, the only infallible, authoritative Word of God."

The students claimed they were denied equal treatment based on the religious nature of the club. The court disagreed, finding that the school could require that the club not discriminate in its membership criteria.

The court noted that clubs do discriminate in their membership, seeking students with similar interests and commitment to specific causes or hobbies. Those clubs, however, do not discriminate based on a protected status, such as religion.

Thus, the schools' requirement that Truth eliminate discriminatory membership criteria was permissible.

The court did note that its decision is inconsistent with similar cases in other circuits. The 9th Circuit is also the most overturned circuit court in the nation, so stayed tune for possible U.S. Supreme Court developments somewhere down the road.

San Leandro Teachers Ass'n v. Governing Board of San Leandro Unified School Distr. (Cal. App. 2007). A school district could prohibit the teacher's union from using internal faculty mailboxes to distribute political information.

The district had a policy allowing use of teacher mailboxes for non-political information. The union sued claiming a violation of its free speech rights.

The appellate court found that the mailboxes were not a public forum and the policy prohibited all political campaigning regardless of the source or the message.

It was also important to the court that the policy left open other channels of political communication, including leaving materials in the faculty lounge or sending items to teacher's homes.

Laney v. Farley (6th Cir. 2007). A one-day in-school suspension did not violate a student's right to due process. The student received the suspension after her cell phone rang in class.

The student argued that her due process rights were violated because she was not given a formal hearing before the suspension. The student further claimed the suspension violated her property interest in public education.

The court disagreed, noting that the student was not deprived of her property interest in education since she remained at the school and was required to complete the academic assignments from her classes.

The court did note that a student might be entitled to more process if the in-school suspension was carried out without providing the student with an opportunity to learn.

Your Questions

Q: The elementary school music teacher would like to charge students a music book rental. The class is not required but does take place during the school day. May the teacher charge this rental fee?

A: No. The Utah Constitution specifically and clearly prohibits fees in elementary school. A permanent injunction clarifies the constitutional provision, holding that anything that is required for a student to participate in the school day must be provided to the student without charge.

What do you do when. . . ?

Therefore, a band class that occurs during the school day cannot require that students pay any fee for instruments, books, or anything else they are required to have for the class.

Students can be required to provide items they would normally have at home (pencils, paper, etc.).

Q: A 16-year old student's sister recently moved to the state. Her legal guardian is in one school district but she is living with her brother in another district. She wants to attend school with her bother. Can the school enroll the sister using her brother to establish residency?

A: No. While some districts will grant a district specific guardianship to a relative, the brother is not old enough to qualify for this ex-

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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.

(Continued from page 3)

ception. The student will have to attend school where her legal guardian resides unless open enrollment options are available.

Q: My daughter has received all "A" grades on her class assignments and tests but is receiving an "F" in a class based on her failure to pay the attendant fees. Is it permissible to base a grade on the non-payment of fees?

A: No. Grades must be based on academic performance standards, not on tangential items that may not be within the student's control.

While students and parents should pay their fees, the teacher will have to find other ways to encourage payment beyond docking the grade. If the student is earning one grade based on class assignments, tests and other related measures, the student has earned that grade and may not be denied it based on requirements that have nothing to do with the curriculum.

Q: A non-biological father claims he has the right, per a mediation agreement, to determine what school his non-biological child will attend. Does the biological mother have any rights in this situation?

A: If a biological parent has ceded rights to a non-biological parent in a validly negotiated mediation agreement, the mother must abide by the agreement regardless of the father's paternity.

If the mother feels the agreement was not validly negotiated, she must challenge the agreement in court.

Until a court rules otherwise, the school should abide by the arrangement in the agreement.

If, on the other hand, the agreement is unclear, the school can deny enrollment of a student until it has a better understanding of the document.

This does not mean the school should hire its own attorney to unravel the domestic situation, it does mean the school can ask the parents to resolve any issues that are unclear and come back to the school with a written resolution of the impasse.

Schools are not, and should not be, arbiters of domestic disputes. The school has the right to be certain which parent is the primary custodian, able to make final decisions about the student.