



UTAH SCHOOL LAW UPDATE

Utah State Office of Education

March 2004

Reporting to UPPAC

UPPAC receives reports of alleged educator misconduct from a variety of sources; district administrators, principals, teachers and parents may all file complaints against educators. UPPAC may also begin an investigation based on news reports or other public notices of alleged misconduct.

In addition, police officers, by law, must report arrests of educators to UPPAC.

The rules of professional practice place a similar duty to report on educators. R686-103-4C requires educators to "document professional misconduct of other educators under the educator's direction . . . And

take appropriate action based on the misconduct." The rules also prohibit an educator from recommending "an educator who has been disciplined for unprofessional or unethical conduct or who has not met minimum professional standards" for employment in another school district.

As with all of the professional practices rules, a supervisor who violates these rules can be subject to discipline him/herself.

UPPAC, however, is unlikely to take action for minor, unintended violations of the rules. Few principals, for instance, would report a single instance of a

teacher momentarily losing her cool and uttering an oath.

But supervisors must report to UPPAC if a teacher views pornography on a school computer, uses unwarranted physical force against students, misuses school funds or otherwise acts in a manner inconsistent with the standards professional educators maintain.

Reports to the Commission do not always result in discipline. But it is the duty of educators to encourage their colleagues to uphold their duty as role models to their students. When educators refuse to perform that duty, UPPAC will act.

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UPPAC Cases of the Month

In the past few months, UPPAC received an inordinate number of cases involving the use of school funds by educators. The bulk of the cases stemmed from driver's education teachers logging hours incorrectly and pocketing payment for time they did not actually work.

Mathematical mistakes

happen, and teachers are not typically disciplined for miscalculations that result in minor errors of a few dollars here and there. The UPPAC cases, involved errors which added up to several thousand dollars, all in the teacher's favor.

Failure to keep accurate records, particularly where the records sug-

gest the educator fabricated significant portions of the records, can lead to licensing action.

The driver's ed cases also led to action because the teacher's had not provided students with state required drive time and then fraudulently claimed on the

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UPPAC CASES

- The Utah State Board of Education revoked the license of David A. Rivers for a period of 10 years. Mr. Rivers used his school computer to view, store and compose pornographic stories involving children.

Eye On Legislation

The following is a small sample of the education laws passed this year by the Utah Legislature.

As reported earlier, charter schools will now be approved by a charter school board. The final bill eliminated most of the constitutional problems and many of the more questionable exemptions, but does still grant charters somewhat bizarre exemptions from state law provisions, such as the requirement to teach adoption.

A plan to give teachers five days out of the school year for professional development was scaled back to a pilot program. Interested dis-

tricts would submit a proposed schedule and plans for providing professional development to the State Board. The district would also have to establish some means to measure the effect of the five days of professional development on student achievement.

Legislators also created a pilot scholarship program for students with disabilities to attend private schools. Any fiscally solvent private school can receive the scholarship funds, without providing any special education services. The money for the scholarships will come from the General Fund, which also provides money for county services for people with disabilities. Whether county services will suffer

from the lost funds remains to be seen.

The selection process for State Board members was revamped, though not as educators hoped. The nominating committee will consist of 12 individuals selected by the Governor from slates of names submitted by organizations representing various interests. Six of the organizations represent business and trade groups, six represent education interests-including higher ed and charter schools.

Several Representatives attempted to return the nomination process to local control, but to no avail.

Recent Education Cases

In Adams V. Groesbeck Independent School District (Tex. App. 2003), the court upheld the non-renewal of a teacher's contract. The teacher asserted that the district's decision not to renew was an act of retaliation under the state's whistleblower act. Adams had previously filed a grievance against the school for failing to provide her with a performance evaluation in a timely manner.

The court noted that the attorney for the school district presented Ad-

ams' attorney with a list of 46 reasons for the teacher's dismissal, including intentionally disparaging a student. In contrast, Adams' attorney presented no evidence to support the retaliation claim.

Teachers in New Jersey were punished by the court for engaging in an illegal work stoppage. In Board of Education v. Middletown Teachers Education Association, (N.J. Super.Ch. 2004), the court refused

to expunge the incarceration records of teachers and stated that, even if it had the ability to do so, it would not. The court noted that the teacher's act of "willful disobedience caused the shutdown of all of the public schools in the district, depriving thousands of children of their constitutional right to an education, all for the sake of the teacher's financial well being." (Quoted from a summary of the case provided by

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UPPAC cases

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driver's ed logs that the students had received adequate drive time.

UPPAC also took action against educators who used school or district-issued credit cards for personal purchases, and made claims for reimbursement.

Misuse of school funds is a serious violation of the rules of professional practices. In most UPPAC cases, the misuse is clearly intentional. In some, however, UPPAC will still take action even where the educator

claims the misuse was not intended but was the result of such sloppy record-keeping that the school is significantly harmed. UPPAC is even more likely to act where, as in the driver's ed cases, students are



harmed in the process.

Similarly, UPPAC will consider action against educators who use their positions for their personal benefit, for example, an educator who violates the rule against advertising personal tutoring services in class or via the school email system. Such services can be advertised on common bulletin boards, to the same extent a non-school person could advertise. But using the captive classroom audience for personal profit is not allowed.

UPPAC Member Profile

Ron Wolff is the superintendent of Morgan District. He has been an educator for 34 years, serving in eight districts and six states. Before his selection as superintendent, he worked as a social studies teacher, wrestling and football coach, athletic director, assistant high school principal, high school principal and assistant superintendent.

Mr. Wolff joined UPPAC in 2002 at the request of the Utah School Superintendent's Association. Like most members of UPPAC, Mr. Wolff has mixed emotions about commission proceedings. "It is hard to see

good people make mistakes that are serious enough to take them away from our profession," he says.

On the other hand, Mr. Wolff enjoys "reinstatement hearings when we have an opportunity to see people who have changed their behavior express a sincere desire to return to the profession."

He also notes the ability of educators to "make a huge difference in



the lives of those whom we serve," and UPPAC's positive effect on students.

Mr. Wolff has several personal accomplishments as well. He has been married for 35 years and has six children, one of whom is in junior high, and six grandchildren.

When he is not leading his district, he can be found traveling, gardening, engaged in athletics, spending time with his family and serving his church community.

Your Questions

The following question came in some form from multiple parents.

Q: Can a teacher announce to the class that a student needs to take his/her medication or should be medicated?

A: Absolutely not. Teachers should not be revealing anything about a student's medical history, nor should they make disparaging remarks about students. A teacher has no right to ridicule a student at any time but especially not in front

What do you do when. . . ?

of the entire class. Teachers who do so should be reported immediately to the principal. Principals should keep written records of the events and take the appropriate steps to ensure the teacher does not repeat the same mistake or to remove the

teacher if she/he continues to ridicule students.

On a side note, the Legislature passed a law that would allow student's to carry and self-administer asthma medications with a doctor's and parent's written permission.

Q: What part of a teacher's personnel file is public information?

A: The Utah Government Records Access and Management Act allows the public to access certain information in any public employee's re-

Recent Cases Cont.

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Westlaw Integration Solutions).

For proof that courts are not oblivious to the plight of teachers, see Keyser v. Jurupa Unified School District (Cal.App.4 Dist. 2003). The court in this case found that a teacher's duty to supervise students had not been breached when a kindergartner tripped and fell. The court noted that there are many reasons a kindergartner might trip and fall and evidence that others had previously done so without in-

jury did not prove that the teacher



had been negligent in her supervision in this case where the student

was injured.

Ryans v. Gresham (E.D. Tex 1998) 6 F.Supp 595, 127 ELR 862 Mom refused to leave her son's class even after the police were called in. The court ruled that parents have "no right of access to the classes in which one's child participates" and the police lawfully arrested the mom even though she originally had the principal's permission to sit in on the class.

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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.

Your Questions Cont.

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cord. That information includes the person's name, gross compensation, job title, job description, prior education, employment and other information regarding the qualifications of the person for the job, hours worked per pay period and dates of employment.

Further, state law protects a public employer from liability when the employer gives a less than favorable recommendation.

A school principal or district, for example, can tell an inquiring school that an employee was dismissed for cause. The principal or district could even pro-

vide some information about the cause, such as, "he violated our acceptable use policy on several occasions."

The principal should probably not, however, claim the ex-employee "is the most rotten, unethical, crooked person I have ever had the misfortune of employing."



Teachers can not reveal medical information about students to their classes.

Q: What are the minimum qualifications for substitute teachers?

A: State rule gives preference to substitutes with an educator license with an endorsement in the subject they will be teaching. Second preference goes to substitutes with an

educator license in any subject.

All substitutes must have a criminal background check, as must volunteers or any other person who has "significant unsupervised access" to students.

A sub must also have either a teaching license or a college degree. State rule does not establish what level of degree, so an associate may do.

In an emergency, a district may employ someone without a degree or license to sub, but the district must have an evaluation process in place to determine if the sub is qualified.

Finally, an unlicensed substitute may not teach any one class for more than 8 weeks and must be replaced with a licensed educator.