

UTAH SCHOOL LAW UPDATE

Utah State Office of Education

October 2004

WEAPONS ON (&OFF) CAMPUS

At present, **pellet guns** are a popular item among school-age kids. These are not your father's (or yours) BB guns, these are "toy" guns made to look like very real pistols and rifles.

The primary means to tell the gun is a toy is a neon colored ring around the tip. Kids, however, have been known to paint the neon rings to match the guns or to break the rings off.

And the guns have a bite. The pellets can cause serious injuries to teeth and eyes.

Bringing these **look alike weapons** to school or school events for the purpose of shooting at the school facilities or other students is a **violation of state law**.

Students are prohibited from bringing even look-

alike weapons on school campuses or at schoolrelated events that occur off-campus.

The law states that a student **shall** be expelled



"the actual or threatened use of a look alike weapon with intent to intimidate another person or to disrupt normal school activities." 53A-11-904(2).

The student may also be disciplined for the same conduct even if it occurs **off school grounds** if the conduct "threatens harm or does harm to the school or school property, to a person associated with the school, or prop-

erty associated with that person. . . ." 53A-11-904 (1)(e).

District and school administrators need to ensure that the educators in their buildings know to **confiscate** pellet guns or other look alike or real weapons and turn them in to the school administration.

Of course, a little common sense is also in order. A butter knife in a car glove compartment may not require a call to the local police, or even dragging the student in to the principal's office. But a six-inch hunting knife in a backpack or a pellet gun at a team practice should be taken awayand only returned to the student's parent or guardian, with a warning about the potential consequences of further violations.

Inside this issue:

Professional Prac- 2 tices Case Law

Eye On Legisla- 2 tion

Recent Education 3 Cases

UPPAC Member Profile

Your Questions 3

3



UPPAC CASES

- The Utah State Board of Education accepted a stipulated agreement for an 18 month suspension of Michael. D. Smith's license. Mr. Smith's suspension results from his arrest for lewdness.
- The State Board revoked the license of James K. McQuade for inappropriate conduct with students.
- The State Board accepted a stipulated agreement suspending the license of Joshua Barnett following his plea to burglary and possession of a controlled substance.
- The Board accepted a stipulated agreement revoking Lee Henrikson's license for alcohol related offenses involving students.
- The Board accepted a stipulated agreement revoking Jaelee Heupel's license following her plea to six felony charges of illegal sexual conduct.

UPPAC Cases of the Month

Ignorance of the law appears to be the latest defense for a number of educators facing UPPAC panels. It is well-settled throughout the courts, however, that ignorance is not a defense.

This is especially true when an educator claims ignorance of the laws directly relating to the profession. For instance, educators are expected to know when parental consent is required for lessons they may be planning or conversations they may engage in with students.

Educators are also expected to understand student confidentiality requirements. This includes not talking about students' personal quirks or problems with neighbors, or even fellow

faculty members. Who have no need to know.

Being a professional means knowing and abiding by the rules of the profession. Every educator, new or veteran, is expected to learn the laws and rules that apply to the profession. Districts are expected to provide training in these areas, but if a district is

(Continued on page 2)

Eye On Legislation

In September, U.S. Senate Democrats proposed a "fix" for No Child Left Behind, The No Child Left Behind Improvement Act of 2004.

The Improvement Act attempts to plug holes in NCLB. First, it would enable school districts to consider health and safety codes while still granting parents the right to transfer their students



from failing schools.

The bill would also provide additional funds for school construction and renovation of overcrowded

schools. The money would ensure choice without sacrificing the goal of reducing class sizes.

The Democratic bill also requires enforcement of non-discrimination laws against private service providers the school's contract with for required supplemental services under NCLB.

Teachers would still be required to reach "highly qualified" status by 2006, but it attempts to ensure uniform state standards are applied across the board and that states provide ample opportunities to demonstrate their competence under NCLB.

Much confusion was generated by NCLB and the Education Department's slow release of guidance and final regulations regarding how to

count children with disabilities and English Language Learners. The bill proposed by the Senators would allow schools to recalculate last year's AYP numbers under the Education Department's new rules, enabling some schools, potentially, to avoid punishment under NCLB.

The bill also required more accountability from the Department of Education by requiring that the Secretary of Education collect and report on dropout rates.

New money would be made available under the bill to fund native language assessments for English Language Learners and for better data systems in the states.

Finally, the proposed act would loosen up the current narrow definition of "scientifically-based research" to support a state's use of a program, activity or strategy to comply with aspects of NCLB. The new definition would enable states to use a wider variety of strategies, provided the strategy has been proven effective.

Recent Education Cases

Warnock v. Archer, (8th Cir. 2004). An Arkansas appellate court ruled that a school superintendent's opening prayers at a mandatory teachers' meeting combined with required in-service trainings at a religious college violated the Establishment Clause. The trainings and meeting would appear to a reasonable person as an explicit endorsement by the district of the religious ideas expressed.

<u>Circle Schools v.</u>
<u>Pappert</u>, (3rd Cir. 2004).

The court struck down a Pennsylvania statute which required schools to notify parents when their students declined to recite the Pledge of Allegiance. The court asserted that the



statute was drafted to chill speech, in violation of the students' First Amendment rights.

Doe v. Little Rock School
District, (8th Cir. 2004). A
district policy of randomly
searching high school students and their possessions
violated the Fourth Amendment. The searches deprived the students of any

(Continued on page 3)

UPPAC cases cont.

(Continued from page 1)

less than diligent about training, it

does not excuse the educator from being a professional.

Educators should be particularly aware of the laws and



rules regarding professional prac-

tices, parental consent requirements and state testing protocols. Districts are required to provide training on

> the consents and protocols, but if the district is remiss, the educator needs to check the state office website for the information.

Imagine a student telling a teacher he didn't do his homework, not because he didn't understand it, but because he just didn't want to learn about the topic. This is not an ex-

cuse most educators would accept.

Similarly, the Professional Practices Commission does not accept "I didn't want to learn the rules" as an excuse for misconduct. A first or second year teacher may not know all the rules, but professional educators are expected to be professional and seek out information about the standards that apply to the profession.

Educators with questions about any rules or laws that apply to their practices or their subject matter can contact the State Office at any time for answers.

Utah State Office of Education Page 2

UPPAC Member Profile—

Steve Rowley is a chemistry, physics and algebra teacher in Sevier School District, and an adjunct professor at Snow College.

Mr. Rowley grew up in west Millard County and graduated from Delta High School. He credits his 36-year career as an educator to one of his high school teachers, Mr. Fay Jacobsen.

Following high school, Mr. Rowley received an associate degree from Snow College and B.S. and Master's degrees from BYU. He has a major in chemistry and a minor in physics.

In addition to teaching, Mr. Row-

ley is the concurrent enrollment

coordinator for Richfield High School, the Yearbook Advisor and in charge of football and basketball ticket sales. In the summers, he works for Sevier County, applying his chemistry degree to the control of noxious weeds.

For Mr. Rowley serving on the Commission "has been a great experience." He



Steve Rowley

is excited to be serving his sec-

ond term with the Commission.

Mr. Rowley has a great love for teaching, as evidenced by his tenure in the profession. He notes that his "greatest joy comes when students learn to apply concepts and become successful learners."

Mr. Rowley is married and the proud father of seven children—five boys and two girls.

Your Questions

Q: Our junior high school is an "open" campus—students can leave during the school day to get lunch, walk to local businesses, etc. What liability does the school have for a student injured while off campus?

A: A school with an open campus **extends its liability** to any of the places a student might choose to go—a range limited only by the student's ability to find transportation.

Courts examine a number of factors when determining a school's liability for any injury to a student.

What do you do when...?

One of those factors is how reasonable the school's **level of supervision** is given the age and maturity level of the students. A junior high with an open campus is more likely to be held liable since the students are old enough to get into some se-

rious trouble, but young enough to not know any better, thus requiring greater supervision than, for example, high school seniors.

On the other side of the equation, a school that adopts a policy prohibiting students from leaving school grounds during the school day (except with parental permission for a limited duration or purpose), communicates that policy in writing to students and parents, and **consistently disciplines** students who are caught violating the

Recent Cases Cont.

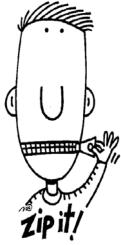
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privacy. The district exacerbated the situation by routinely turning items found in the searches over to law enforcement—allowing law enforcement to take action against the students without meeting its higher burden of probable cause to search the students.

Brown v. Regional School Dist., (D. Conn. 2004). A teacher's speech regarding her disputes with a supervisor did not involve a matter of public concern and, therefore, was not protected speech under the

First Amendment. The district could decide not to renew her contract based on the speech which involved her classroom performance and inability to accept constructive criticism.

Arbaugh v. Board of Educ., (N.D. W.Va. 2004). A grade school principal who was deliberately indifferent to the risk that a teacher was sexually abusing



students might be personally liable for damages to the student.

The court ruled that the principal was not entitled to qualified immunity from the student's lawsuit where the principal knew of several allegations against the teacher, knew the teacher spent time alone with students outside of school and did not investigate or report the allegations.

Utah State Office of Education Page 3

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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.

(Continued from page 3) policy, limits its liability if a student violates the policy and is injured.

The school is still responsible for its students during the school day, regardless of whether the campus is open or closed, but it does not have to be perfect. It does not have to prevent all violations, catch all violations or punish all violations in the exact same manner. But it must be a able to show that its policy is reasonable - few would argue it is unreasonable to keep junior high students on school grounds during the school day -and its general practice is to enforce the policies, while providing violators with adequate due proc-

Open campuses are not the best option for junior high school students. While a closed campus

doesn't prevent a parent for suing a school when a child is injured off campus, it does limit the parent's chances of success if the school is consistent in its enforcement of the closed campus policies.

Q: A student told me he was being "released" back to his neighborhood school by his charter school because he had truancy problems. Can a charter school release students for attendance or other

non-safe schools issues?

A: A charter school can **suspend or expel students** for the same reasons that any other public school may do so—the student's behavior threatens the welfare.

safety, or morals of other students, the student brings drugs, alcohol or weapons on campus, causes harm to other students or the school, or the student engages in frequent or flagrant willful disobedience or disruptive behavior.

A charter student **belongs to the charter school.** Charter schools may not send a student back to his or her neighborhood school because the student missed too many days of school, tests poorly, has special needs, or for any other reason not addressed in the state law on suspension or expulsion.

A student released for any of these reasons is also entitled to appropriate due process and cannot be unilaterally released without notice of the allegations, and an opportunity to address the allegations and confront his or her accusers.