

UTAH SCHOOL LAW UPDATE

Utah State Office of Education

May 2005

U.S. SUPREME COURT RULING

As many of you have undoubtedly read, the U.S. Supreme Court has ruled to

give a third party who complains about sex discrimination, but is not the victim of the complained of discrimination, the right to sue for damages.



In <u>Jackson v.</u>
<u>Birmingham Board of Education</u>, the Court found that a coach could proceed to trial on his claims that the Board retaliated against him for complaining about discrimination in a high school athletic program.

The coach discovered that his girls' basketball team was not receiving equal funding or equal access to the school's athletic equipment and facilities. He complained to his supervisors, but nothing was done to resolve the problems.

Instead, the teacher began to receive negative evaluations and was re-

moved from his coaching job, though he remained as a physical education teacher.

The teacher sued the school board. While most such cases are brought under the First Amendment, this teacher brought his suit as a claim of sex discrimination under Title IX of the Civil Rights Act.

He lost his case in the lower courts. The 11th Circuit ruled that Title IX does not create a private cause of action for retaliation and, even if it did, the teacher was not in the class of persons the law was designed to protect.

The Supreme Court disagreed. It found that Title IX prohibits intentional discrimination based on sex. The coach alleged he had been retaliated

against, an intentional act, that he had been treated differently, discrimination, and the discrimination was based on sex because it was a response to an allegation of sex discrimination.

Jackson still has to prove he was retaliated against because of his complaint, but the Supreme Court has opened the door for those who raise the issue of sex discrimination to bring suit under not only the First Amendment, but also Title IX, if they face adverse employment action because they spoke out.

The Birmingham Board of Education, meanwhile, faces monetary damages unless it can show a non-discriminatory reason for its decision to remove Jackson as the coach of the girls' team. And there is no word yet on whether the girls have been given more funds or facilities.

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UPPAC CASES

- The Utah State Board of Education reinstated the license of Donald Jay Gressman.
 The license was suspended as a result of Mr. Gressman's inappropriate relationship with a female student 11 years ago.
- The Utah State Board of Education accepted a Stipulated Agreement suspending the license of Kim Terry Hansen for one year. The suspension results from Mr. Hansen's use of school equipment to access pornography during the summer and for a limited time period.

UPPAC Case of the Month

UPPAC just completed a survey of educators to gauge their understanding of the rules of professional practices.

The good news is that most educators act in an ethical manner and do not violate the rules. But the survey shows that most educators don't know the rules or the consequences of a violation.

The survey was sent elec-

tronically to about 1100 active, licensed educators.

It was also given to preservice students at four Utah universities.

The survey consisted of 30 scenarios, based on actual UPPAC cases, and asked the educator to select one of five possible disciplinary outcomes.

Scenarios included things such as recrea-

tional use of illegal drugs outside of the school day, patting students of the opposite sex on the butt, viewing pornography on the school computer, using the school email to foster a personal tutoring business, reporting child abuse, dating students, multiple DUI convictions, showing inappropriate videos in class, and a host

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Eye On Legislation

While Utah continues to make national headlines over its stand on NCLB, Texas had already defied the law, receiving a slap on the wrist in response.

U.S. Secretary of Education Margaret Spellings issued a "stern" warning to Texas after it failed to report failing schools within the required time frame. Texas claimed the delay was due to the federal government's failure to approve its AYP plans in time. Texas is also battling with the feds over its exemption of 9% of its students from testing requirements. NCLB allows a maximum exemption of 1%.

Spellings fined Texas \$444,282 out of the \$11 million it could have withheld from the state. It is the largest fine imposed on a state thus far.

As anyone who even glances at local news knows, Texas is just one of the many states debating

with the feds over NCLB

Our state passed legislation placing the state's right to regulate education over the federal government's attempts.

Issues still remain about the state's ability to address those populations of students most in need of education assistance, but state decision-makers insist those debates should be resolved on the local level, without federal interference.

Meanwhile, the Attorney General of Connecticut announced his plans to file a lawsuit against the

federal government arguing for

the right to disregard provisions that the feds have not funded. He has asked for the support of other states' attorney's general.

The National Education Association has already filed suit, arguing NCLB is an unfunded mandate which in-

fringes on states and school districts. Districts in Michigan, Ohio and Vermont have joined the suit, as has the Utah Education Association.

Recent Education Cases

Levich v. Liberty Central School District (S.D.N.Y. 2005). A teacher claimed his free speech rights had been violated after he was disciplined for sending a letter to parents regarding his reassignment from Global History to American History.

In the letter, the certified social studies teacher claimed he did not have any knowledge of American History and would not take any responsibility for students who might fail the state's standardized

exam in American History.

that he needed to write an apology eral court once the district began to the many concerned parents who received the letter. The apology needed to include a statement about the teacher's com-

mitment to fulfilling his teaching duties. The district also warned the teacher that failure to send the letter could result in disciplinary action.

The teacher did not write the The district informed the teacher apology and brought suit in fed-

> disciplinary proceedings. The teacher claimed he was being retaliated against for his exercise of his free speech right to send the letter to parents.

The court ruled that the teacher had not been retaliated against because the change of assignment was not adverse employment ac-

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UPPAC cases cont.

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of other cases UPPAC has seen over the years.

The survey revealed some surprising numbers, including a disturbing number of educators who see little problem with dating students and a larger than expected number who think yelling or swearing at students is about the worst thing an educator can do.

The survey results show that, regardless of age, years of experience or teaching assignment, educators need more information about the

rules of professional practices and what can happen to the educator's license when the rules are broken.

Pre-service students were even more in the dark, suggesting a need for university level training as well.

Based on the results, the State Board will begin moving forward with plans to create an ethics curriculum and options for providing training to licensed educators through online, live, video and other means.

Once these items are in place, the next step will be to include an ethics component within the current requirements for license renewal. For instance, the Board may require that an educator with a level 2 license receive 5 of the required 200 renewal points in ethics training.

Given the relatively small number of UPPAC cases per year, it is clear the vast majority of educators are professional, responsible and ethical. But educators should also know what the standards of behavior are for their profession, and what happens to those educators who can't maintain the required level of professional conduct.

Utah Decision: Natay v. Murray School District

In this case, recently decided by the U.S. 10th Circuit Court of Appeals, the teacher's claims that she had been discriminated against were ruled to be unfounded primarily because of the actions taken by Murray School District.

The employee was provisional. She was also Native American and alleged her principal had been discriminatory.

The principal's conduct allegedly included snubbing the teacher at the first staff meeting, coming late to her evaluations and making comments such as telling the teacher she was

"geographically, racially, culturally, and socially out of place" at the school.

The principal recommended nonrenewal to the district. Fearing a

charge of discrimination, the principal asked Supt. Richard Tranter to conduct an independent evaluation of the teacher.

Dr. Tranter complied, saving the district from an unfavorable judgment. He attempted to observe the teacher on three occasions (she was not actively teaching during his visits), reviewed critical letters from

parents and the teacher's colleagues and met with the teacher twice to discuss her performance and her discrimination claims. Following his investigation, the district non-renewed for lack of performance.

The court noted that, had Dr. Tranter simply "rubber-stamped" the principal's decision, the district would still have faced liability for discrimination.

But Tranter's independent investigation insulated his decision from any bias shown by the principal and provided legitimate reasons not to renew the contract.

Your Questions

Q: My license was suspended for four years. I have served 3 years and completed all other conditions set by the State Board of Education, can I apply for early termination of my suspension?

A: The short answer is no, barring some amazing, unforeseen circumstances, such as the arresting officer comes forward with new DNA evidence that you were not the perpetrator, or some other equally dramatic and uncontestable evidence

What do you do when...?

that you did not commit whatever action led to the suspension.

The time frames for suspensions are not simply to give the educator time to complete the requirements.

As should be clear from the process, there is an element of punishment in a suspension. Educator licenses are suspended for serious breaches of

professional conduct.

While UPPAC certainly hopes that a suspended educator will quickly realize the error of his or her ways, the length of a suspension is carefully timed to send a strong message to the educator about the seriousness of the offense and the circumstances leading to the violation.

Q: A parent is trying to register his child for school. Parent and child are living with others. Can we deny

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Recent Cases Cont.

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tion. Moreover, the teacher's letter did not address a matter of public concern and was therefore not protected speech under the First Amendment.

In essence, the teacher was airing a private grievance and the school district was within its rights to discipline the teacher for his insubordinate response to the district's reasonable decision to reassign the teacher.

Bolden v. Chartiers Valley School District (Pa. Cmwlth. 2005). An employee was properly suspended after bringing a loaded gun onto school district property.

The employee drove a motorcycle to work, forgetting that he had stowed a loaded handgun in the tank bib compartment. The gun was discovered by other employees.

The employee then lied to district

officials on more than one occasion, claiming the gun was not loaded.

At a formal hearing, the employee's con-



duct was found to be incompetent, a neglect of duty and in violation of school laws. He was suspended without pay for four months.

The employee appealed the decision to the court, claiming there was no written policy against possessing a gun on district property. The court upheld the district's discipline, noting the state law on guns on school grounds and stating that the district need not have a policy where the conduct is so "obviously prohibited that a policy would be superfluous."

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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) enrollment for lack of residency?

A: Not until you can prove the parent does not live in the area. Nothing in Utah's education law requires that a parent own or rent a home in order for the child to attend school.

However, Utah law also allows a district to deny enrollment of a student who is not a resident of the district (assuming no school's are open for enrollment).

The district, therefore, can ask for proof of residency. Where the parent does not own or rent a home, proof may include pay stubs for the parent that show the home address, other mail to the parent at the address (other than junk mail), transcripts (if the parent is a college student, for example), or church records, a bank statement to the home address,

bills to the home address, or a letter from an employer stating the address it maintains on its employment records.

In short, the district can be as creative as it wants to be to allow people who, for whatever reason, do not have a home of their own but do intend to reside in the area the opportunity to meet the residency require-

ment.



Q: Can a district deny a student transfer to another school when there are outstanding truancy is-

A: Absolutely. If a student is facing district action for truancy, the district can deny the student's request for a transfer, or an exemption from the compulsory education law.

A student who does not wish to attend school but is under the age of 18 must get an exemption from the school district (home schooling instead, working, can't benefit from school any longer, etc.). The district is not required to simply rubber stamp the student's request and can require that the student resolve outstanding truancy or other disciplinary matters

In fact, it is highly recommended that the district complete its disciplinary process even if the student refuses to comply. This allows the next school to take appropriate action in cases where the student has engaged in serious violations of school rules or policies at his former school.

The district is not required to grant a student transfer request, then, until the student has resolved any outstanding issues.