

UTAH SCHOOL LAW UPDATE

Utah State Office of Education

February 2006

HOME SCHOOL ADVANTAGE

Following on the heels of last year's bill to ensure that school district's have no input on home schools, Sen. Mark Madsen is seeking this legislative session to provide home schooled stu-

dents with full access to extracurricular activities, and no accountability.

Madsen's SB 72 provides that a home school student may participate in any extracurricular activity offered by the student's resi-

dent school under the same terms and conditions as an enrolled student.

Home school students already have those rights. What the bill changes, however, is the measure of academic eligibility.

Currently, State Board rule provides that, if a school requires a certain level of academic performance before a student can participate in an extracurricular activity, a home school student must be taking course(s) of study equivalent to the public school curriculum and provide evidence of his or

her academic achievement.

The evidence could include a portfolio of the student's work, or other evidence ac-

ceptable to the district.

Under S.B. 72, the State Board loses all authority to make rules regarding a home school student's participation in extracurricular activities.

Further, the law would eliminate the current practice of districts of requiring some evidence that the student meets academic eligibility. Instead of requiring a portfolio of student work, or other objective evidence of ability, the law would allow a home school student to meet eligibility requirements by providing a note from the person educating him that he is doing just fine.

Meanwhile, public school students would still have to meet objective standards to be eligible for the extracurricular activity.

The public school student would also be subject to removal from the team for failure to keep her grades up, while the home school student becomes a permanent teammate regardless of academic ability.

This inequity is justified, per Sen. Madsen, because home school parents pay income taxes and are, therefore, entitled to receive those benefits of public schooling that they choose for their children.

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UPPAC CASES

- The Utah State Board of Education revoked Donald Gene Hansen's license as a result of his arrest for lewdness. Mr. Hansen's license was earlier suspended following his arrest for solicitation of a sex act.
- The State Board revoked Jonathon Francis Green's license as a result of his inappropriate and unprofessional relationships with female students.
- The State Board reinstated the licenses of Patrick David O'Donnell and Richard Kent Harmston.

UPPAC Case of the Month

Think its okay to swear occasionally at school? Think again.

The use of profanity at school and school-related activities is prohibited by state law (athletic coaches are not exempt). But educators are not the only ones banned from using profanity in the workplace.

A recent article in *HR News*, a publication of the

Society of Human Resource Managers, notes that, while mild profanity in the workplace is not uncommon, it leaves a negative impression on colleagues.

The article sites a survey conducted by WorldWit, "an online community of professional women in 25 countries." The survey

polled 40,000 professional women regarding their experiences with profanity in the workplace.

While most of the respondents did not mind a mild swear word here or there, even mild words were viewed as "dumbeddown language" and "a toll for whiners and complainers."

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Eye On Legislation

It's clearly an election year, and Legislators insist they know how best to "fix" public education.

For Sen. Parley Hellewell, R-Orem, education can be fixed by hearkening back to the Founding

Fathers who, in Hellewell's estimation, intended Americans to be religious people. Thus, he wants a resolution to be sent to all students and parents informing

them of their right to pray at school and have Christmas pageants.

For Rep. Brad Dee, R-Ogden, education is best fixed through a scholarship/voucher program that would provide public funds to individuals who send their child

(ren) to a private school. He would also send some money to public education—a provision which leaves a bad taste in the mouths of "parent choice" advocates (apparently they only want to fix private education,

not public).

Rep. Greg Hughes, R-Draper, will fix public education by adopting the "65% Solution" which requires all districts to spend the admittedly arbitrarily set amount of

65% of their budget on direct "instructional expenses."

"Instructional expenses include things such as books and teacher salaries, but not transportation of students to the school or that well known superfluous expense of school libraries. (Not to mention

that Utah ranks 7th in the nation for the percent of its education budget spent on instructional expenses.)

Rep. David Cox, R-Lehi, would again like to fix public education by reducing the size of school districts so that no more than 30,000 students are covered in any dis-

On the Democratic side of the aisle, Rep. Karen Morgan, D-Cottonwood Heights, will fix public education through student retention and the end of social promotion.

Rep. Jackie Biskupski, D-Salt Lake, wants districts to focus on the effects of school buildings on the environment. Her H.B. 337

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Recent Education Cases

Nieshe v. Concrete School Dist. (Wash. App. Div. 1 2005). A federal appeals court in Washington reiterated that students do not have a right to participate in graduation ceremonies.

The case involved a student who failed one class her senior year. She was warned that she needed a certain grade on a final exam to pass the class and did not meet that expectation. Hours before the graduation ceremony, the student was informed that she had

not passed the class and could not participate in the ceremony.

Three months later, the parents contacted the district stating the student had been discriminated against in the grading. The superintendent applied a creative, though not illegal, use of Section 504 of the Americans with Disabilities Act to raise the students grade.

Three years later, the parents sued the district claiming sex discrimination. The parents asserted that the student was denied access to the graduation ceremony

> based on her very visible pregnancy.

The court did not concern itself with the discrimination claim because, as it noted from the outset, the

student had no right to attend the ceremony. For a discrimination claim to succeed, the person must

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UPPAC cases cont.

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The article also quotes from one respondent who noted that "a profane expression communicates a low threshold for managing difficult circumstances. It raises issues about the effectiveness of that person's style of communication."

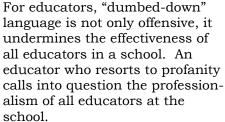
Further, it appears educators aren't the only ones who face job action when they can't control their mouths. The article cites a 4th Circuit decision upholding the termination of a 16 year employee

"for using profanity to insult a supervi-

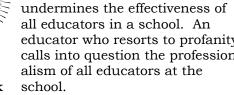
A well respected local employment lawyer, Michael O'Brien from the

law firm of Jones, Waldo, Holbrook & McDonough, adds that salty language in the workplace "can lead to sexual harassment lawsuits and/ or terminations for lack of civility."

But the risk of job action or lawsuits should not be the deciding factor in choosing to use profanity.



In other words, its difficult to gain the respect of students and parents when the teacher, coach or administrator uses the lowest form of communication, swearing, to make a point.



Eye on Legislation Cont.

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Education Resources Conservation Program would require that district add a resource conservation manager to their staffs (their goes the 65%) to devise environmentally sound methods for reducing operation and maintenance costs.

For Rep. Duane Bordeaux, D-Salt Lake, the solutions for public education exist in raising the level of performance of minority students to parity with their Caucasian counterparts. He has filed a number of "boxcars" (bills with titles with text to be filled in later) related

to minority student issues. His boxcars include "Education Accountability," "School District Enrollment Diversity," and the long overdue "Funding of English as a Second Language Program."

Rep. Bordeaux is not the only Legislator with boxcars at this point. There are several other potential "fixes" without text thus far, including "School District Methodology" by Sen, Hellewell, "Parent Choice in Education Act" by Rep. Stuart Adams, R-Layton, Rep. Steve Urquhart's, R-St. George, "Education Reform," Rep. Aaron Tilton's, R-Springville, "Public Education Club Amendments," "Educator Phonics

Requirements" by Rep. Dave Cox, and "Public Education Data Collection" from Rep. Margaret Dayton, R-Orem.

Finally, a few legislators are concerned about a perceived decline in student discipline.

Rep. Laurie Fowlke, R-Orem, has proposed a study, to be conducted by the State Superintendent, of methods of discipline which provide immediate consequences and keep kids in school.

In perhaps a similar vein. Rep. Eric Hutchings, R-Kearns, has a bill file titled "Addressing Major Disruptions by Public Education Students."

Your Questions

Q: My 7th grade daughter has been written up for violating the school uniform policy because her skirt does not have the right kind of pleats. The policy requires one style of pleat for 6th graders and another for 7th graders. I asked for a few waiver but was told waivers are not available for school uniforms. Is this policy acceptable?

A: Probably not. A uniform policy that dictates down to the buttons on the shirt, or style of pleats on the

What do you do when. . . ?

skirt becomes so prescriptive that it is a fee. Per the Utah Constitution and a Permanent Injunction issued by the federal court in Utah, fees may not be charged in grades k-6 and fee waivers must be available for the older grades.

O: A student seeks to enroll in our

school. The public school he is leaving claims it does not need to forward the student's records to us. Is there any law or rule that would require the school to send the records?

A: Yes. State law requires that the school the student is leaving comply with a request for records. 53A-11-504.

There is only one exception to the law. If the school has been notified

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Recent Cases Cont.

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be denied a cognizable right.

R.W. v. Manzek (PA 2005). Parents sued after their elementary school-aged daughter was raped while participating in door-to-door fundraiser for her school.

A federal court dismissed parent complaints against the school district, finding that the rape was not foreseeable by the district, among other things.

The parents then sued the fundraising company in state court. The lower courts dismissed the parents complaints on grounds similar to the federal court ruling but the Pennsylvania Supreme Court permitted the parents to proceed against the private company.

The court ruled that the company which packaged and sold fundraising projects and merchandise, could reasonably be expected to know the dangers of door-to-

door fundraising and may have a duty to warn parents and stu-

dents of those dangers. Whether that duty exists is for a trial court to determine.

Florez v. Arizona (D. Ariz. 2005). Arizona has been prohibited from using its high stakes graduation test on English Language Learners. The prohibition is a sanction for the state's failure to adequately fund ELL programs, depriving ELL students of an equal opportunity to pass the standardized test.

The state was ordered by the federal court to provide adequate funding six years ago.

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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.

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by law enforcement or the Division of Family Services that the child is a missing child, state law requires that the school flag the students' record. If the school receives a request for the flagged record, it must immediately notify the proper authorities of the request and does not need to provide the record.

Moreover, the school enrolling the student has a duty in state law to request the records within 14 days of enrolling the student.

In addition, the school the student transfers from must provide information about student work or credit completed to date. The sending school MAY NOT give a transferring student a failing grade or "no credit" due solely to the student's transfer.

Q: I have received a subpoena for

a student's records. The student graduated, so we no longer have a cumulative file, and the family has moved without leaving a forwarding address. What do I do?

A: The federal Family Rights and Privacy Act (FERPA) provides that a school may provide student records in response to a lawfully issued subpoena.

However, FERPA also requires that the school make a reasonable attempt to contact the parents or eligible student (a student 18 and over) and inform them of the subpoena.

This provision enables the parent or student to contest the subpoena.

A "reasonable" attempt does not mean sending a private detective out to find the whereabouts of the family. It does mean sending a written notice to the eligible student's or parent's last known address.

Once the notice has been sent (preferably by certified mail so the school knows whether the notice arrived), it can begin the process of complying with the subpoena.

The school does not need to recreate the student's cumulative file. A school should only provide what it has, and what is required by the subpoena.

For instance, if the subpoena requests only attendance records, the school should not send transcripts or other records.

On the other hand, if the subpoena requests every paper every generated on the student, and the school only has the transcripts, it should send the transcripts with a letter explaining that this is all that remains in the student's file.