

UTAH SCHOOL LAW UPDATE

Utah State Office of Education

October 2006

New Ethics Standards

In November 2005, we reported on the committee that had been established to draft new rules of professional practices. The committee has completed the bulk of its work and its rec-

ommendations will now be crafted into a State Board rule.

The new standards are similar to the old, at least in the sense that most of the rules are common sense.

For example, few educators would argue that having a sexual relationship with a student is a professional act. Even fewer would argue that not dating students it is too high of a standard to uphold.

In the current draft form, the ethics standards are based on four principals, stated as follows:

The professional educator:

 is a role model of civic and societal responsibility for students. As such, the professional educator shall familiarize himself with professional ethics and is responsible for compliance with federal, state and local

> laws and district policies regarding professional and ethical behavior.

• recognizing that students need role models, will act, speak and teach in such a man-

ner as to exemplify nondiscriminatory behavior and encourage respect for others' cultures and beliefs. The professional educator reflects sensitivity to the fundamental human rights of dignity, privacy and respect. The educator maintains a positive,

safe learning environment and ensures educational standards are met.

Maintains a professional relationship with all students, parents, and colleagues, inside and outside the classroom and is a role model of ethical and moral conduct.

The professional educa-

tor maintains appropriate and professional boundaries with students, colleagues and members of the school community, including parents of students.

 Maintains integrity and honesty in his relationship with school and district administrators and personnel.

Each of these principals will also be embodied in the State Board rule, which will be discussed by the Board sometime before the end of the year.

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UPPAC CASES

- The Utah State Board of Education reinstated the educator license of Carma R.
 Pickup. Pickup's license was suspended for sexual misconduct with a student that occurred 30 years ago.
- The State Board accepted a Stipulated Agreement for a 10 year revocation of Brandy L. Bishop Yates' educator license. The revocation results from Yates' sexual involvement with a student. Yates also violated the terms of a prior Stipulated Agreement for Letter of Reprimand and Probation.
- The State Board suspended Gary J. Garcia's educator license for two years and revoked his administrative license for five years. The action results from Garcia's solicitation of prescription drugs from staff members for his personal use.

UPPAC Case of the Month

Testing protocol cases continue to crop up on the UPPAC agenda, with varying results.

The latest batch, however, indicate a minor protest movement against state testing. While **teachers**, as public employees, **are free to protest state testing, using students or required education assignments to do so is highly unprofessional**

conduct.

For other educators, however, there is no great political agenda behind their actions on state tests; there is, rather, confusion about state requirements.

While most educators who have attended even one training session on test security realize they cannot give students answers or copy the tests for preparation purposes, inconsistent instructions from the state have caused some legitimate questions from educators.

For example, the State Office noted a few years ago that "double bubbling" by a teacher was acceptable. For those who aren't familiar with the term, double bub-

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Eye On Legislation- FERPA interpretations

The Education Law Section of the Utah State Bar recently hosted a FERPA training seminar for attorneys and educators with FERPA guru Leroy Rooker of the Family Policy Compliance Office.

Mr. Rooker heads the office charged with investigating potential violations, recommending regulations, and providing guidance to

school officials about FERPA. He provided updated information on the law and timely reminders. Some of the more salient points in the discussion were:

On the "Sole Possession" exception (personal notes maintained in the sole possession of an educator are not education records):
 If an individual's notes about a

student are incorporated into a later report on the student, or are used in determining a student's SEOP, the notes become part of the student's education record, even if no other individual sees the original notes.

- On parental rights to copies of records: If three students are captured on a security camera in a fight, for example, the video becomes part of the record of each student. As such, and since the school is not required to redact the other students' faces from the video, a parent does not have a right to a copy of the video. The parent does have the right to be told what the video shows.
- Records requests and safety issues: If a request for a student's

records, even from a parent, raises a safety issue, the school should err on the side of the student's safety and withhold the information until the safety issue is resolved.

For example, if a non-custodial parent requests the home address of a student, information he or she would be entitled to under FERPA, but there is an allegation the parent seeks to harm the student or his family, the school can deny the parent access to the address, bus route, home phone, class schedule, or any other information the school decides could be used to find the student.

 Information about former students: If a school receives a request from, for example, an employer seeking confirmation that

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Recent Education Cases

Baker v. Couchman (App. Mich. 2006). The role of a school resource officer (SRO) was clarified in this case involving a superintendent's authority over an SRO.

The superintendent was highly involved in regulating the SRO, most of which the court supported. The court ruled that the superintendent could provide close supervision of the SRO, express concerns about the SRO to his commanding officer and the school

board, make public comments about his concerns to the general community, and set boundaries on

the SRO's "proactive law enforcement activities."

The court drew the line, however, at the superintendent's attempts to interfere

with the SRO's investigation of potential criminal conduct at the school. The superintendent, the

court ruled, had no authority to direct, manage, or otherwise interfere with a criminal investigation.

Smith v. Petal School Distr. (App. Miss. 2006). A school could non-renew a teacher's contract for failing to perform his coaching duties. The coach had a teaching contract with an extracurricular duty rider requiring him to serve as an assistant football coach. His football du-

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UPPAC case cont.

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bling essentially means the teacher copies the students' answers for his/her own use in evaluating student performance and areas in need of improvement.

As turn around time on scoring has improved, double bubbling has become less of a necessity and more of a convenience. Some districts, therefore, have outlawed the practice in

their areas.

So which decision controls the educator? All educators are expected to follow district policy, and a permissive decision by the State Office does not preclude a district from adopting a more restrictive stance. Therefore, an educator should follow the district policy.

But what if an educator has a legitimate concern that a state or district policy is ill-advised? As we tell parents who want to complain to the State Board about a local

teacher, follow the chain of command. Talk to the principal and district personnel. Present your case against the policy and see what could be done to change it.

Criticism of a policy is legitimate, using students to push a personal agenda, is not. A teacher should not express concerns about district policies by co-opting students or otherwise harming the school. Taking matters into her own hands may amount to insubordination and amounts to professional misconduct.

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Eye on Legislation (Cont.)

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a student graduated from the school ten years ago, the school can use its current definition of directory information to determine if it can give the older information out.

Keep in mind, however, that nothing in FERPA **requires** that the school provide the information.

It is also important to remember that the school must provide an annual notice to parents of its definition of directory information before it can pass any information on to third parties.

• Guardianships: A court ordered guardianship which specifically

provides that ALL parental rights are terminated would include the natural parent's rights under FERPA.

Further, if the guardianship does not contain this language, Utah's guardianship law may still limit the natural parent's FERPA rights. The parent's rights under the guardianship statute include only the right to consent to an adoption or marriage, determine the child's religious affiliation, and make some major medical decisions.

The law does NOT grant a natural parent any right to direct or participate in the child's education once the court has appointed a guardian. Since these rights have not been

retained, any additional rights or privileges that flow from a parent's responsibility for educating a child, including the rights under FERPA, are transferred in their entirety to the court appointed guardian.

• Linking information: A school can't link directory and non-directory information. Thus, if a person wants to know the dates of attendance of John Smith, social security number ###-##-###, the school can provide dates of attendance for all the John Smiths it has, but can't identify **the** John Smith who corresponds with the social security number.

Your Questions

Q: A parent has requested that we declare an elementary school "**peanut-free**" as an accommodation for her child's **allergies**. Do we have to declare the entire school peanut-free?

A: No. **Reasonable accommoda- tions** can be made short of closing the school to all things peanut. The school can take other precautions such as setting aside a table in the cafeteria that is peanut-free and ensuring it is wiped

What do you do when. . . ?

down with a separate cloth to avoid unintentionally contaminating the surface with peanut residues. It can also have teachers ask that students bring peanutfree treats to share with the class.

If the child's allergies are so severe that any contact with any

peanut residues can cause a severe reaction, the school may look at alternative options for providing services to the student.

Q: Can a student whose **legal guardian** lives within the boundaries of one school still claim **residency** if he or she is living with the parent outside of the school boundaries?

A: Only if the district says so.

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Recent Cases Cont.

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ties included summer workouts; his teaching contract did not require summer work.

Because he felt he should be paid for the two summer months of extra duty, the teacher intentionally skipped eight of 24 summer workouts. As a consequence, the principal informed him that his teaching contract would not be renewed based on his failure to perform his coaching duties.

The court held that the rider was a valid contract, even though the

rider had not been approved by the Board of Education, and was part of the employment contract. As such, non-renewal of the overall contract could be based on the breach of the rider.

Ott v. Edinburgh Community
School Corp. (7th Cir. 2006). Requiring a teacher to submit to biweekly drug tests in order to maintain his coaching position was a valid restriction on the coach.

The coach had been hired after disclosing several felony convictions in his background, including one for conspiracy to distribute marijuana.

The superintendent who hired the coach was replaced mid-year and the new superintendent was concerned about the coach's background. She recommended immediate termination to the Board which accepted the recommendation but allowed him to continue coaching football until the end of the year, provided he submit to the drug tests.

The court upheld the Board's decision.

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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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Residency is defined in court cases, however, as requiring an "intent to remain" at the claimed home. If the student does not intend to remain with the guardian, his or her residency is where he sleeps, eats, keeps his stuff—in other words, resides.

A paper guardianship without the intent to actually live with the guardian does not establish residency and may be in violation of the guardianship.

Q: We have a student transferring from a district school to our charter. We are now two months into the transfer and still do not have the student's records from the district school. Are there any **state laws** or rules that require the district to **send records** in a certain amount of time?

A: State law puts the burden on the requesting school to obtain the records, but does require **the school that receives the request to comply**.



More specifically, the law requires that the new school ask for the records within 14 days of enrolling the stu-

dent.

The law goes on to require that the school exercise "due diligence in obtaining that record."

If a public school meets with recalcitrance from another public school after making the required request, the school should document its "due diligence"—number of phone calls made, any letters sent—to show it has complied with the law.

The school receiving the request,

meanwhile, should send the records as soon as possible. Failure to send the records in a timely matter, whether intentional or not, harms the student and can build animosity among public schools.

All schools should work cooperatively with each other to ensure that students receive meaningful educational opportunities.

Q: I received a call from a student's **pediatrician seeking records**. Can I provide the information she requested?

A: Only if you have the parent's written consent to give the records to the pediatrician. A parent can designate someone to receive records on his or her behalf, but it must be **in writing and dated**.