

# UTAH SCHOOL LAW UPDATE

Utah State Office of Education

August 2007

## What a Long, Strange Summer it's Been

While many of you were out for the summer, education law became a bit more interesting.

The U.S. and Utah Supreme Courts issued some important decisions for education administrators, parents, students, and voters.

On the student rights' side of the aisle, the U.S. Supreme Court issued its latest decision regarding student speech rights in Morse v. Frederick.

The case began when several students at a high school in Alaska decided to grab their fifteen minutes of fame during the 2002 Olympic Torch Relay. Students were allowed to leave school during the school day to line up and watch the relay. The students were being supervised by school personnel at the time.

Frederick and his friends set themselves up across the street from the school and unfurled the now infamous banner reading "BONG HiTS 4 JESUS."

The principal of the school, Morse, demanded that the students to take the banner down. All but Frederick agreed. Morse then confiscated the banner from Frederick and told him to meet her in her office. At the meeting, Morse suspended Frederick for 10 days.

Frederick appealed the suspension to the Juneau School District Superintendent. His appeal was denied. Frederick then sued, alleging the school had violated his First Amendment rights by suspending him based on the content of his speech.

The U.S. Supreme Court accepted the case and found that Frederick's rights had not been violated, in part because though none of the justices could figure out exactly what message Frederick was trying to send, a majority agreed it had something to do with illegal drugs. The majority also held that schools can discipline students for advocating illegal drug use.

Things break after this point. Justice Thomas, for example, argued in his concurring opinion that schools may discipline students for any speech, period. As he stated, "[a]s originally understood, the Constitution does not afford students a right to free speech in public schools."

On the flip side, Justices Alito and Kennedy agreed with the outcome of the case "on the understanding that the opinion does not hold

that the special characteristics of the public schools necessarily justify any other speech restrictions."

In a loophole only a lawyer could love, the Court subsequently declined to hear a case on a similar issue.

The Second Circuit ruled that a school violated a student's First Amendment rights by telling him to cover up a shirt depicting President Bush with a martini glass in hand and lines of cocaine nearby.

By refusing the case, the Supremes let the ruling stand. Thus, one might argue, "Bong Hits for Jesus" is bad, but "Bush supports Bong Hits for Jesus" would have been okay.

On the local front, the Utah Supreme Court cleared the way for a straight up or down vote on the voucher program, ruling that a bill amending the voucher bill could not create a voucher program without its "parent" bill.

The unanimous decision was issued within hours of the court hearing oral arguments, an unexpectedly short turn-around time for the Utah court.

The Supreme Court also concluded that the ballot language was "unbiased," as required by law.

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### **UPPAC CASES**

The Utah State Board of Education reinstated the license of C. Randall Houk. The Utah Professional Practices Advisory Commission recommended reinstatement following an evidentiary hearing. The license was previously revoked for misuse of public funds. Mr. Houk repaid the misappropriated funds.

### Eye On Legislation

While it may seem early to begin predicting what legislation might appear in the 2008 legislative session, interim committee meetings over the summer provide a glimpse into the intent of some legislators.

So what do those glimpses tell us? That public education could use a Harry Potter about now.

Certain legislators have shown an ever-increasing penchant for **privatizing public education**.

This is not a Utah original; the idea has gained some traction in other areas of the nation, spurred by business leaders who see public ed as a potential goldmine of money-making opportunities.

The privatization move in Utah reared its head in the voucher bills of the 2007 session. It may reappear this year in the form of legislation granting **private**, home and charter students rights to

**pick and choose from available public school programs** without regard to the needs of students actually enrolled in the school.

The idea appears to be that neighborhood schools should work as community centers, offering programs

to all comers, regardless of location.

Meanwhile, the school's

"competitors" can save resources by not offering the more expensive programs, like athletics or special education (private schools are not required to provide special education), that students may then cherry-pick from the neighborhood school.

Legislators may also try once again to "fix" the UBSCT ques-

**tion**. Some legislators are displeased that the State Board rule provides a diploma to students who have not passed UBSCT.

Those who frown on the current system have not been able to convince a majority of their peers to change the statute. Neither, however, have those legislators who prefer the current system and would like to codify it.

The State Board also recognizes that it will face several challenges to its authority in the 2008 session, particularly after its refusal to implement amendments to the original voucher bill.

Legislators will once again attempt to **change the structure of the State Board** by requiring partisan elections, placing the State Superintendent under the control of the governor, or increasing the size of the Board to an unmanageable number.

### **UPPAC** Case of the Month

One of the most common excuses the Utah Professional Practices Advisory Commission hears from educators accused of misconduct is "I was just trying to help." In order to clarify for teachers inclined to use this excuse we offer the following examples of behaviors that are NOT helpful:

- Driving middle school students to a late-night party at a hotel with or without parental permission.
- Providing vocabulary definitions on the vocabulary portion of a standardized state test.
- Pursuing a romantic relationship with a student, with or without parental permission.
- Using a social networking

(Myspace, Facebook, etc.) site to "connect" with students by discussing teachers' or students' penchants for illegal activity, sexual relationships, or religious fervor.

- copying state tests, providing questions, answers or both, to students ahead of a state test, providing inappropriate assistance on tests.
- Grabbing, hitting, threatening, yelling, and/or swearing at students as a disciplinary technique.
- Encouraging students not to discuss what happens in class with parents, administrators, investigators.
- · Passing on humiliating com-

ments made by one student about another to a class of students.

Allowing students to see inappropriate emails, websites, etc.

We could go on, but hopefully most educators understand at this point that harming students or placing students in harm's way is never a "helpful" practice.

While a teacher may have great intentions, there are certain activities that should just scream out "this will get you into trouble" to any adult working with kids. Educators should also be aware that "I was just trying to help" will rarely excuse an act of misconduct that any reasonable person could have seen as a self-serving, inappropriate, or potentially harmful act.

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### **Recent Education Cases**

<u>Dillon v. Twin Peaks Charter Academy</u> (10th Cir. 2007): A paraprofessional's free speech rights were violated by her employer.

The paraprofessional, Dillon, and six other charter school employees were concerned about elements of the school's operations, management and mission. They met off campus to discuss their concerns. The principal of the school learned of the discussions and "issued a series of orders directing the teachers not to discuss Academy matters outside of work with any person, including each other."

The six teachers eventually received unsatisfactory performance evaluations and resigned.

Dillon remained until a new principal came on board. This principal evaluated Dillon and gave her mediocre marks. He also noted that he was concerned about her comments against the school and its Board. He recommended to the Board that Dillon be non-renewed because her actions "helped bring about a divisiveness among staff members." The Board agreed.

The 10th Circuit determined that the Board's decision could be retaliation. Some of Dillon's discussions with the other teachers addressed matters of public concern.

She was also non-renewed in part because of her speech **on matters of public concern**. Such an action constitutes unlawful retaliation against an employee for exercising her First Amendment rights.

Layshock v. Hermitage School District (Pa. Dist. Ct. 2007). A Pennsylvania court ruled that a student could not be disciplined for his off-campus Myspace activities because of the circumstances surrounding the site.

The student created a parody profile of the principal. Students discussed the site and accessed it at school.



While other jurisdictions have held this is enough of a disruption to support discipline, the Pennsylvania court was not convinced that the disruption was caused by the student because there were three other parody profiles of the principal on Myspace. The school officials admitted they could not conclusively determine which site created the most student interest.

The court was also concerned

that any disruption might have been caused by the reaction of school administrators, not the students. Classroom teachers were unaware of the site until it was pointed out at a faculty meeting. The faculty was also unable to show any disruption in class, even at times the student accessed the site from a school computer.

The Press of Atlantic City v. Pleasantville Board of Education (N.J. Sup. Ct. 2007). A school board was fined \$18,000 for refusing to provide complete board meeting minutes to a requesting newspaper.

Under New Jersey state law, all meeting minutes, including minutes from closed sessions, are public. The school board refused to provide the minutes from five closed sessions. The court found the district in violation of the law and fined it \$3,000. It also ordered the district to pay \$15,000 to cover the newspaper's legal fees.

Overall, the suit cost the district a little more than \$50,000. *Associated Press, June 2007.* 

### **Your Questions**

Q: Can the district provide information about an upcoming election to its teachers using district resources?

A: Provided the information is neutral, yes. A district, school, or employee can provide information such as "a school bond issue will be on the Nov. ballot. Please get out and vote!"

It is also acceptable to provide information on voting options, such as early voting, vote-by-mail and polling locations. What do you do when. . . ?

It would NOT be acceptable to use school or district resources to lobby educators, staff, parents, or students to vote a particular way on a ballot issue.

This does not restrict school employees from discussing political issues in the faculty room, but it does restrict employees from using school email, copy machines, or

class time to promote a political message.

Q: The local school district said my daughter cannot try out for the soccer team because she is not enrolled in the school. Is this accurate?

A: A home school student can try out for her resident public school's teams or activities. The student must fulfill the same requirements as other team members, such as

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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 Education 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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attending any associated class when the class is required by the school.

Thus, a home school student may need to ENROLL in a debate class in order to be on the debate team, or a weightlifting class if it is required of all soccer players.

The student/parents must also be prepared to **demonstrate** that the student is achieving to the same level, and in the same subjects, required of traditional students. Evidence of achievement may be satisfied through testing, portfolios, and/or copies of completed assignments.

The student does not, however, need to be a full time traditional student at the school in order to try out for the team.

Note: The rules may change at the UHSAA level, so coaches and

> school administrators should check with their districts before telling a charter, private, or home school student "yes, of course you can play" or "absolutely not."

Q: Have any other states attempted to have the federal government pay them for the costs of educating illegal immigrants?

A: Yes. New York sued the federal government for reimbursement of the estimated \$5.6 billion it spent **in one year** providing all required services to over 530,000 illegal immigrants in the state.

The case made it all the way to the 2nd Circuit which found no legal merit in any of the state's 11 causes of action. Ultimately, the court ruled, the federal government has complete power over immigration and any state that is upset with the way that power is exercised must rely on its citizens to elect new members of Congress who they feel will address the issues in a manner more to the state's liking.

Q: What fees can a school charge without granting fee waivers?

A: Per the State Board rule, schools do not need to waive fees for yearbooks, letter jackets, class rings, school photos, or any other items not required for participation in a class or school activity.

Schools may also require, without waiver, fees for optional class projects, provided the optional projects are not used to determine class grades in any manner.