



UTAH SCHOOL LAW UPDATE

Utah State Office of Education

January 2007

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Professionalism Pop Quiz

As licensed professionals, educators have a duty to uphold professional standards in the workplace. Those standards include not only policies in the district employee handbook, but the USOE Rules of Professional Practices and basic common sense as well.

How well do you represent those standards in your school? Try your hand at our quiz and see!

1. A student gives you a pair of silk pajamas for a Christmas gift. You:

A. Thank the student profusely and ask if she/he would like to see you model the pajamas.

B. Thank the student, then tell the student (or call her/his parents to discuss the situation) why the gift causes concern.

C. Tell the student "take your stinking gift back—do you want to get me fired?"

2. You are involved in a sting operation by the Internet Crimes Against Children task force. You enter into a Plea in Abeyance resolving the charges. You can expect:

A. No action against your license—what you do on your own time is your business.

B. A Letter of Reprimand in your licensing file—the Plea in Abeyance is not evidence of any wrongdoing.

C. Your license will be suspended. Solicitation of children/child pornography online is unethical conduct.

3. You observe several bruises on one of your third grade student's arms. You should:

A. Ask the student to explain who gave her the bruises.

B. Ignore the bruises, believing the student fell at home.

C. Ask the student if the bruises were due to an accident, and depending upon answer, notify the Division of Child and Family Services of suspected child abuse.

D. Wait 3 weeks until the principal returns from maternity leave to discuss possible child abuse and response.

4. You have been entrusted with the collection of student funds. Your school district has specific policies regarding funds, including that all funds must be turned

over to the school finance secretary and requiring receipts for all purchases. You should:

A. Strictly adhere to all district policies regarding the collection and use of funds.

B. Put the money collected in a shoe box in your filing cabinet until it is full enough to justify walking down to the office with it.

C. Put the money in a personal bank account and write a check for the total to the school.

5. You disagree with a school/district policy. As a public employee you may express your views by:

A. Taking class time to tell your student's how bad the policy is and why they should also protest against it.

B. Using the school directory and school email, send an email to all parents explaining your point of view.

C. Wearing a t-shirt to school emblazoned "Down with Tyranny at X School District."

D. Writing a Letter to the Editor from home.

Congratulations. You have completed the professionalism quiz, and hopefully passed. The answers are 1.B, 2. C, 3.



UPPAC CASES

- The Utah State Board of Education reinstated the educator license of Michael Dennis Smith. Mr. Smith's license has been suspended following an arrest for lewdness and Plea in Abeyance. Satisfaction of the plea in abeyance resulted in a misdemeanor conviction for trespass.

Eye On Legislation

In case you haven't heard, there is, in the words of Rep. Steve Mascaro, R-West Jordan, a "surplus of needs and additional money" for legislators to dole out this year. What does that mean for education? It's just too early to tell.

What we do know is that there will be a voucher bill, brought out early in the session, and without the mitigation measures that Rep. Brad Dee, R-Ogden, included in his original bill last session. (Some readers may remember that Rep. Dee vowed to pull his bill if anyone tried to monkey with it. Legislators tried to monkey with it, and Dee made good on his promise).

What is still up in the air is whether legislators will use the old trick of hiding the voucher somewhere in an "omnibus" bill. Omnibus bills include a multitude of things that education may need, along with some thing, or things,

it can't stand but can't get out of the bill without losing the other important concessions.

While it appears Rep. Steve Urquhart, R-St. George, is ready to run a voucher in an omnibus bill, other Republican leaders are not as willing to force a bitter pill into another bill.

Either way, the voucher fight is expected to take place early in the session and be voted up or down fairly quickly. This will leave plenty of time to argue over the multitude of other education related bills, including many designed to do little more than spur lawsuits.

In the lawsuit-inducing category, we have Sen. Chris Buttars', R-West Jordan, slew of bills designed to bring religion to the classroom. Sen. Buttars has kept these bills protected, but has made public comments about his

intent to take on the U.S. Supreme Court through his legislation.

Rep. Aaron Tilton, R-Springville, on the other hand, has made his lawsuit-ready bill public. Tilton has revived his anti-gay clubs bill which died last session, after much public denigration of those with same-sex orientation.

On the plus side for education, legislators appear poised to have a serious discussion about funding class-size reduction, a daunting task, but one that needs to be addressed.

Legislators will also battle over school fees, with Rep. Lou Shurtliff, D-Ogden, reviving her perennial fee waiver funding bill and Rep. Craig Frank, R-Pleasant Grove, presenting the other side of the coin by seeking a cap on fee amounts.

As always, the most we can say at this point is that the legislative session will NOT be boring.



UPPAC Case of the Month

An educator who loses his or her license is expected to meet certain requirements before asking to have the license reinstated. Often, the requirements include counseling or training in topics related to the educator's ethical lapse.

For example, an educator who strikes a student may be required to attend anger management counseling and training. An educator who makes sexually suggestive comments to students may be required to complete sexual harassment training. Or an educator who uses creative accounting procedures may be asked to attend financial management courses related to public school finance.

The Commission imposes these requirements in the hope the educator will learn something about

not only how to avoid the problems that led to the license being suspended or revoked, but also about why the educator's actions were wrong.



Per state law, the Commission cannot recommend any particular training program or counselor. Some educators express legitimate concerns about this prohibition, since they are at a loss about how to find the required courses.

Others, however, use the lack of a State approved list of providers to try to find courses that the educator finds personally interesting but that are tangentially related, at best, to the requirements.

The Commission expects educators to be smarter than that. If an educator chooses to engage in unethical behavior, that educator must take on the responsibility for

finding the course work that will help him or her overcome the bad behaviors. It is not the responsibility of the Commission to lead an educator by the hand and create a curriculum to address his or her particular ethical transgressions.

In short, if you hit, harass or steal from, or otherwise harm students, be prepared to search out relevant counseling, training or coursework to address your areas of poor judgment.

This may mean taking college courses, contacting school districts about training opportunities, researching Internet offerings, and reviewing USOE or UEN professional development calendars.

And yes, the educator bears the expense of any counseling or training he or she is required to attend.

Recent Education Cases

Ross v. New York Quarterly Meeting of Religious Society of Friends, (NY App. Div. 2006). The court denied a school's motion to dismiss a student's injury claim.

The student fractured her leg during softball practice. Practice took place in the school gymnasium and included learning to slide on parachute material laid out on the hardwood gymnasium floor.

The coaches claimed they reset the material after each slide. The student claimed she caught her leg in bunched-up material because it was not reset.

The court found that, while athletes assume the risks associated with sports they voluntarily participate in, schools are required to use ordinary care to protect students from unassumed or unnecessarily increased risks. The student could proceed with her case because issues of fact remained—specifically, whether the coaches increased the risks by directing students to slide in sneakers and failing to smooth out the material between slides.

Doe v. Faerber, (Fla. D.Ct. 2006). A school board may have been deliberately indifferent to sexual abuse committed by a board member against a student.

The student alleged that, from 1997-2003, the board member, Faerber, took him out of class on multiple occasions and sexually abused him. The student stated that Faerber took him to his home, law office, and other locations during the school day. Faerber was never questioned by any of the student's teachers about his need to remove the student from school during class time.

The school board argued that it did not have actual notice of Faerber's abusive conduct and, therefore, could not be liable for his bad acts.

The court disagreed, noting that the board had actual notice of Faerber's prior abuse of another student and was arguably deliberately indifferent to Faerber's repeated acts of removing the student from school without reason or excuse.

Therefore, the school board's motion to dismiss the case was denied and the case will proceed to trial.

BRV, Inc. v. Superior Court, (Cal. Ct. App. 2006). A publisher chal-

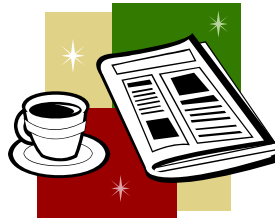
lenged the order of a trial court denying it access to an investigator's report of misconduct by a superintendent.

The school district had hired an outside investigator to look into allegations that the superintendent had verbally abused and sexually harassed students.

Following the investigation, the district entered into an agreement with the superintendent, accepting his resignation in return for some payment and a promise to keep the investigative report confidential.

The publisher interviewed several witnesses and sought access to the report. The lower court denied access.

The Court of Appeals overturned the Superior Court. It ruled that a public official in a high position, such as superintendent, had a reduced expectation of privacy. Further, given the public nature of the allegations and the superintendent's position of authority in public employment, the public's interest in disclosure of the record outweighed the superintendent's already lower privacy interests.



Your Questions

Q: A company we have contracted with to track students through college has been using directory information from us to follow the students. The company is now asking for social security numbers for the students to improve the accuracy of matches between students and their institutions of higher education. Should we provide this information?

A: No. The Family Policy Compliance Office has issued a letter opinion on this very issue. Per

What do you do when . . . ?

the Office, which is responsible for ensuring compliance with the federal Family Education Rights and Privacy Act, social security numbers should not be provided to a student tracking service unless the school has prior written parental consent to provide the information.

While social security numbers do

make it easier to find individual students, the numbers are exactly the type of information that people want protected from disclosure.

Providing the numbers to the tracking company could expose the school to sanctions from the U.S. Department of Education. The FERPA law authorizes the Department to withhold federal funds to any education agency with a policy or practice that violates FERPA.

Q: May the school principal send a

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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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student home for a dress code violation?

A: Yes, provided the student has been given due process and the principal is consistent in his or her discipline of students for similar violations.

In other words, the principal can send the student home after informing the student of the problem and giving the student a chance to explain his or her side of the story.

If, however, the principal regularly allows other students to commit similar dress code violations without sending the students home or imposing any other punishment, the principal must tread carefully. Inconsistent enforcement of discipline policies can lead to legitimate discrimination claims.

Q: Can a home school student participate in concurrent enrollment?

A: Yes, under the same terms and conditions as a regularly enrolled student.

The State Board rule on concurrent enrollment sets some terms and conditions. The Board rule, for instance, requires that:

Each student participating in the concurrent enrollment program shall have a current student education/occupation plan (SEOP) on file at the participating school, as required under Section 53A-1a-106(2)(b). R277-713-3.

A home school student would need to complete the SEOP process prior to enrollment in the program.

The state board rule also requires that local schools and the

colleges or universities establish eligibility requirements for students. Under this rule, schools establish G.P.A. and other requirements that the home school student would need to meet.

Since a home school does not typically compute G.P.A., the school can ask for other evidence, within reason, that the student meets the standards. This might include work the student has done in the core curriculum areas, a passing score on a test administered by the school or some other evidence the school finds acceptable.

As long as the student meets the requirements set for enrolled students, and abides by the same terms and conditions, the student is welcome to enroll in the school programs.

