



# UTAH SCHOOL LAW UPDATE

Utah State Office of Education

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## The Truth About Teachers

Multiple media reports have scanned the rafters for scandals involving teachers and students. Per some of the more sensational reports, teachers are regularly preying on their students.

Reality, of course, is much less dire. Though any case of teacher sexual misconduct with a student is reprehensible, the vast majority of teachers never even come close to crossing the boundaries between teachers and students.

In response to the media reports, the Utah State Board of Education requested a breakdown of teacher misconduct cases from the Utah Professional Practices Advisory Commission. The Commission hears complaints of professional misconduct against educators and recommends final action to the State Board. For the past nine years, the Commission has heard, on average, 43 cases per year. Of these, roughly five percent involve allegations of sexual misconduct with students.

Some years bring more of those allegations than others. 2001 was a high (or low) point for sexual misconduct allegations with 15 teachers out of 46 cases accused of having or attempting to have sexual relationships with stu-

dents. In contrast, 2003 saw only 4 accusations of sexual misconduct out of 46 cases.

It also bears repeating that there are approximately 28,000 licensed educators in Utah.

Not that the relatively small number of cases excuses the accused teachers. But it is important to remember that educators soliciting sexual relationships with students are the rare exception to the norm of ethical and professional conduct by Utah educators.

It should also be noted that the largest number of professional practices cases in any given year do NOT involve sexual misconduct with students, but other misconduct involving students. This category includes actions such as text messaging students with inappropriate, but not necessarily sexual, messages, inadequate supervision of students, or juvenile acts or comments to students—calling students names, giving students permission to smack other students, etc.

One trend that is disturbing in UPPAC cases is the expanding use of text messaging or social networking sites to contact students in an unprofessional manner. Growing numbers of educators here

and across the nation are crossing professional boundaries with students using new media. Texting may be a convenient way to contact students, but professional standards must still be maintained in texts, emails, and social networking posts. Texting seems to be the mode of communication for 15-30 year olds. Even so, educators who use this medium must still maintain professionalism.

The news media has also reported on the thousands of education employees with criminal convictions in their pasts. As we sort through the latest updates from the Bureau of Criminal Investigations on licensed educators, the numbers are, again, less astonishing. The majority of educator arrests involve driving under the influence or retail theft—and most are several years old. There are a very few educators with recent arrests for more troubling crimes, such as child neglect or assault. UPPAC will be seeking more information from educators with recent arrests/convictions and will make licensing recommendations regarding those arrests in the near future.

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### UPPAC CASES

*The Utah State Board of Education revoked by default Daniel Tuttle's educator license. The revocation results from Tuttle's conviction for sexual battery and subsequent sentence to jail and 24 months probation.*

*The State Board permanently revoked the license of Keith Lorraine Gillins. The revocation results from Gillins' conviction for one count of attempted rape and two counts of forcible sexual abuse. The convictions result from Gillins' sexual activity with a student.*

## Eye on Legislation

During the 2007 legislative session, the Legislature passed H.B. 202 *Medical Recommendations for Children*. The law prohibits educators from recommending that parents medicate a child or requiring that parents obtain a psychological evaluation or medication for their child.

At the time of passage, the bill caused grave concerns for teachers and health care professionals who feared that those with the most information about a child's behavior would be unable to inform parents of their concerns.

The concerns were so grave, in fact, that the bill was vetoed by Gov. Huntsman after its first passage in 2005. Rep. Mike Morley, R-Spanish Fork, brought it back a second time in 2006. The bill finally passed both houses and the Governor's desk in 2007.

In its final form, the bill permits educators to describe a child's be-

haviors to parents without making diagnoses. In other words, a teacher can tell a parent that a child is unable to concentrate, frequently gets out of her seat and wanders the room, or engages in other actions that are not conducive to the child's learning.

What the teacher cannot do under the law is say to the parents, "your child has ADHD, you need to have him medicated." Nor can the educator suggest that the child needs any specific psychological treatment.

The teacher can refer the child to appropriate school personnel, such as a counselor, but could not refer the parents to an outside provider. In addition, the school may not require that the child take psychotropic drugs (e.g., Ritalin) in order to attend the school.

For many years, the Utah State Office of Education has encouraged educators to avoid making medical diagnoses or similar judgments about students and communicating

those diagnoses to parents. USOE recommends that educators use observed facts in their communications to parents about a wide range of potential medical issues, from a child who may show signs of autism or ADHD, to students who may be pregnant or suffering from an eating disorder.

On the other hand, a school counselor may *recommend* to a parent that a child have a psychiatric or behavioral evaluation or a particular psychiatric, psychological, or behavioral treatment. The counselor may also provide a list of at least three possible mental health therapists at the parent's request.

While this law tends to discourage frank parent/teacher discussions about children, most educators have focused on communicating objective information and observations about children.

## UPPAC Case of the Month

The Utah Professional Practices Advisory Commission continues to receive complaints about educators flirting with students. While it should go without saying, apparently some educators just can't resist the temptation of reliving, or improving upon, their own high school experiences.

The problem is not restricted to new or young educators. Educators of all age levels and years of service have been disciplined for actions ranging from sending flirtatious text messages to insinuating a sexual relationship.

One of the more egregious cases involved an educator "buddy-ing up" with a student to play a practical joke on a fellow educator. This joke involved making the other educator believe the student was having an affair with her teacher.

Just the thought that a student

might knowingly makeup such a relationship and tell another educator causes great anxiety for some educators. That an educator would be a willing participant in creating a false scandal is outrageous.

Educators who develop a relationship with a student where such a prank is even thought of, let alone acted upon, have clearly crossed the lines of professionalism. Educators have a responsibility to act with due regard for the health, safety, and well-being of their students. For an educator to willingly spread a rumor about a sexual relationship with a student he or she claims is a friend without regard for the damage that such a rumor could cause to the student and colleague is unconscionable.

Pretending to be in love with a student, sending flirtatious text messages to a student, allowing

students to be your Facebook, MySpace or other social networking site friends are all examples of crossing professional boundaries. Educators must not only maintain the boundaries for their own sakes, they must also ensure that their actions do not have the potential to cause harm to students or the learning environment.

Most educators can point to at least one colleague (if not themselves) who tries to be the students' best friend. But students are not the educator's peers and should never be treated as such. An educator who receives a questionable text message from a student must stop the messaging then, not continue the conversation. An educator who knows a student has a crush on him or her needs to gently discourage the crush, not use the student's feelings for his or her own amusement or ego boost.

## Recent Education Cases

Lopez v. Bay Shore Union Free Sch. Dist. (N.Y. D.Ct. 2009). Parents sued the school district after their son was suspended for violating a school policy regarding gang affiliation. The court held the policy “void for vagueness.”

The school policy stated: “Any activity, affiliation, and/or communication in connection with a non-school sanctioned club/group, including fraternal organizations or gangs, is prohibited.”

The student made a comment to another student about MS—arguably referring to a gang known as MS-13. The student was suspended for violating the above rule. The court found, however, that the term “gang” has been ruled unconstitutionally vague since 1939. The court noted that the use of the term has only broadened since 1939, rendering “gang” “notoriously imprecise.” The 8th Circuit Court of Appeals has further explained that the broad meaning of gang “gave school administrators too much discretion in enforcing the rule, in violation of students’ due process rights.”

The district court in New York determined, therefore, that the Bay Shore policy is further hampered by the equally ambiguous terms, “activity,” “affiliation,” and

“communication.” Because the policy can be interpreted to apply to any action or communication, “regardless of how benign the act or word,” the policy is unconstitutionally vague.

Smith v. Seligman Unified Sch. Dist. (Ariz. D.Ct. 2009). A student was questioned by her principal about allegations that she had used alcohol on school premises, during school hours. The student denied the allegations and was sent back to class. Seven days later, the student was questioned about suspected marijuana use on campus. The student again denied the allegations. This time, she was given a ten-day suspension. The principal then recommended expulsion to the school board.

A hearing was held and the Board decided not to expel the student. The next day, the principal suspended the student for four days for the alcohol incident.

The parents then sued the district, claiming the principal had violated the student’s due process rights by suspending her without giving her a chance to review all evidence against her and confront witnesses.

The court determined that the student was not denied due process in connection with the short term sus-

pension. The court noted that the principal told the student what she was accused of doing and the basis of the accusations. The student was then given an opportunity to respond. This satisfied due process for students.

The parents argued, however, that the student has a right to confront all of the evidence against her. The court disagreed, explaining that “students ... are not entitled to the type of evidence that is afforded at formal hearing . . . before being temporarily suspended. A school district disciplinarian need not disclose every piece of evidence he or she may have concerning the circumstances leading to the suspension. The disciplinarian need only state what the basis of the accusations are. In short-term suspension context, [the student] did not have the right to know the identity of her accusers nor confront.”

The parents also tried to argue that the principal was unfairly biased against the student because her mother had filed a complaint against him over the earlier suspension. The court found an allegation of bias without factual support was insufficient and that a school disciplinarian is not required to be absolutely neutral.

## Your Questions

Q: A parent is withdrawing her student from our charter school to home school. She says the district told her to file the form with our charter school. Is this the correct location for the parent to file her home schooling affidavit?

A: No. There is some confusion between districts and charter schools regarding what to do when a charter school student withdraws to be home schooled.

Some charters have received the home school affidavit from parents

What do you do when . . . ?

and have been justifiably confused about what to do with the form.

Per state law, only a school district can accept the home schooling affidavit, and it must be filed with the district where the parent or legal guardian resides. Districts are responsible for ensuring students within their boundaries are

being educated according to the state’s compulsory education law. If the district does not receive the affidavit stating that a parent is home schooling, but has received notice that the student withdrew from the charter, the district could begin truancy proceedings. Thus, to avoid truancy claims, the parent must file the affidavit with the school district.

Parents should also be on notice that students may not be withdrawn from charter schools, then home schooled, then enrolled in 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 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)*

boundary school in disregard of enrollment timelines. Students must be denied the transfer from charter to boundary school (or vice versa) until the next enrollment window.

**Q:** Cell phones are banned during classes, assemblies, and other school events. A student had a cell phone out at an assembly, so the principal confiscated the phone. Before handing the phone to the student, the student said he needed to turn it off first. This raised the principal's suspicion and he turned the phone back on in his office. He found several text messages suggesting the student was involved in dealing drugs. May the principal use the text messages to discipline the student?

**A:** No. The principal did not

have any reasonable suspicion to justify turning on the phone and looking at the text messages. The acts of the student were suspicious in a general way, but could not have raised any reasonable suspicion that a school rule or policy was being violated, beyond having a cell phone.

In order to look through the text messages, the principal would have to be able to articulate some reason why the student's actions gave him reason to suspect that the student was violating a school policy or state law using text messages.

To look at the text messages, the principal would at least need to have observed the student using the phone for texting or have someone else tell him the student was texting in violation of school rules. If that were the case, the principal could then justify turning on the phone and checking text

messages.

It is not reasonable, on the other hand, to suspect that a student is sending inappropriate text messages based solely on the fact that the student has a cell phone and turns it off when asked to hand it over to the principal.

**Q:** My class is taking field trip and all students are required to ride the bus. I have my own car and have a fear of riding the bus. Do I have to ride the bus if I am willing to accept all liability for driving myself?

**A:** You must ride the bus, unless your fear is a recognized, diagnosed phobia for which you have a 504 accommodation. Barring an accommodation, the school can impose reasonable safety measures on students, including requiring that students take school provided transportation to and from school-related activities.