



UTAH SCHOOL LAW UPDATE

Utah State Office of
Education

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Inside this issue:

Red Light, Green Light

The majority of educator misconduct cases involving inappropriate relationships with students start out with seemingly innocuous behavior. In fact, the path to an inappropriate student-teacher relationship is so well established, the United States Department of Education (USED), with the collaboration of the Seattle Public Schools (SPS), has developed some guidelines of behavior to help steer teachers away from the slippery slope of bad decisions leading to bad relationships.

The USED and SPS label the guidelines as green light, yellow light, and red light behaviors. Anyone who has dealt with an educator involved in an inappropriate relationship with a student will easily recognize the problematic behaviors.

For example, red light behaviors include talking to a student about their sexual preferences or practices (are you dating, have you been sexually active with your boyfriend/girlfriend, etc.), engaging in excessive or inappropriate touching of students (back rubs, frontal hugs of one particular student, etc.), having students sit on the educator's lap, meeting students for breakfast on the weekend,

being alone with a student in a private vehicle.

Before a relationship with a student reaches this level, however, there are earlier warning signs—the yellow light behaviors. Behaviors that fit in this category include using sexual innuendo in conversations (written or verbal) with students, overly personal notes, cards, emails, or yearbook inscriptions (if I were younger, I would date you, etc.), singling out a student for special favors (the one student who is always asked to run errands with or for the teacher, allowing a student to skip another class and hang out in the educator's class instead, inviting the student to attend games with the educator, etc.).

USED, SPS, and USOE encourage educators who see others engaged in these behaviors to either talk to the offending educator or school administration. Actions by another educator that make adults feel uncomfortable are probably in the yellow or red light category and should be addressed to protect both the offending educator and the student.

Educators engaged in questionable activities should also be informed of green light, or appropri-

ate, behaviors. Educators are encouraged to compliment students on their school work or performance, to offer assistance to students during school hours or appropriate after school settings, and to pat students on the back, touch an arm to get attention, shake hands with students, and give side hugs.

Educators who allow students and themselves to cross professional boundaries may simply need a gentle reminder to avoid further misconduct. All educators need to understand that if they don't say "no" when a student crosses a boundary, the student will read it as a "maybe." And maybe means the student can keep pushing the boundaries with the educator. Maintaining the boundaries is the responsibility of the educator. When a student sends an inappropriate text message to an educator or touches an educator in an aggressive or otherwise inappropriate manner, the proper, green light, response is one that lets the student know that the behavior is not acceptable and should not be repeated.

UPPAC Case of the Month	2
Eye on Legislation	2
Recent Education Cases	3
Your Questions	3



UPPAC CASES

The Utah State Board of Education reinstated Richard Brunson's educator license. The license was previously suspended because Mr. Brunson accessed pornographic material using his school computer during school hours.

Eye on Legislation

Legislators are beginning to request bill files, and their lists of top priorities among their requests are due on Dec. 1. For now, the only information available publicly is the list of bill requests, which includes the short title for the bill and the sponsor's name.

The list is relatively short so far, but 2010 is an election year, so stay tuned for more. At this point, it appears legislators will focus on school finance, math education, and background checks. Of 29 bills requested as of Nov. 2, seven address funding, four address math and two address background checks for various employees.

The education funding bills include "Amendments to Education Financing" from Rep. Merlynn Newbold, R-South Jordan, "Equalization of Funding for Divided School Districts" offered by

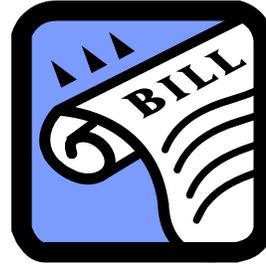
Rep. Jim Bird, R-West Jordan, an "Education Cost Efficiency Task Force" proposed by Sen. Karen Morgan, D-Salt Lake, "Minimum School Program Budget Amendments" and "School Property Tax Equalization Amendments" from Sen. Howard Stephenson, R-Draper, and "Retirement Benefits for Charter School Employees" and "School District Finances" from Rep. Christine Watkins, D-Price.

Math-based legislation includes "Grants for Math Teacher Training," proposed by Rep. Brad Last, R-St. George, a "Math Education Initiative," "Corporate Recruitment of High School Students Pursuing Careers in Science, Technology, and Math" and "Math Teacher Training Programs" all from Sen. Stephenson.

On the background check front, Rep. Laura Black, D-Sandy, would

like to see "Background Checks for School Referees" and Rep. Sheryl Allen, R-Bountiful, will propose a "School Employee Criminal Background Check" bill.

Among the rest of the requested bill files are "Vending Machines in Elementary School" from Sen. Pat Jones, D-Salt Lake, "Music Teacher Auditory Protection Requirements," from Rep. Black, "Hazing in Public Schools," from Sen. Stephenson, "Interagency Use of School Bus" by Rep. Kraig Powell, R-Heber City, and the already well-publicized "Reproductive Health Amendments" from Rep. Lynn Hemingway, D-Salt Lake.



UPPAC Case of the Month

When does a DUI threaten your teaching license? When it is either recent enough that you are still under court probation, or common enough that it raises questions about your ability to function as a role model for students.

As we parse through the background check results from our most recent run of educator names, by far the most common arrest is Driving Under the Influence. Most of the arrests are several years old and the educators do not have a history of DUI.

But a few of the cases include DUIs that are still being adjudicated or for which the educator is still under the terms of a plea agreement. For these educators, and for educators who receive DUIs in the future, being under current court jurisdiction may result in suspension of the edu-

cator's license.

The Educator Standards rule is clear. Educators subject to a plea in abeyance for any reason may be incapable of acting as role models for their students—a requirement for the profession. Educators are asked to teach civic and character education as part of their curriculum and by personal example. If an educator is not abiding by state law, it is difficult for that educator to teach civic responsibility by personal example.

A DUI received on contract time is problematic as well, for obvious reasons. The sanction for a DUI issued during contract time may be greater than the sanction imposed on the educator who received a DUI over the weekend. But both will most likely have their licenses suspended for the term of any court ordered probation or plea in abeyance term. The educator who

was under the influence on work time may face a suspension term that extends beyond the court terms, if the circumstances of the case warrant more time for the educator to receive appropriate-counseling or training.

A longer suspension term may also be warranted for educators with a history of DUIs and a recent arrest. The goal of the suspension is too protect students, but also to give an educator ample time to correct the problems that lead to the criminal behavior. If a person has a drinking problem, the State Board does not want to put that person back into a classroom without some assurance that the person is in a stage of recovery and working diligently toward a life of sobriety.

Recent Education Cases

Converse v. City of Oklahoma City, (OK D. Ct. 2009). Converse claimed the school district violated her First Amendment rights by transferring her after she complained about a high school's handling of a school discipline case.

Converse was a supervisor over 15 high schools, including the one involved in the disciplinary action. She investigated a resource officer's use of pepper spray to stop a student fight at one of the high schools. The student's involved in the fight were suspended. Converse stated to her supervisor that she felt the district would not have suspended one of the student's but for his race.

Shortly after Converse complained about the discipline the supervisor she complained to notified her that she was being laterally transferred. Converse's pay, benefits, and job classification remained the same. In the transfer notice, the supervisor noted that Converse has initiated many programs in her former position but "has not been successful in fostering positive leadership and accountability of staff and students"

Converse sued claiming the transfer was retaliation for her comments regarding the resource officer and discipline of the student.

The federal District Court for Oklahoma disagreed. Applying the standard established by the U.S. Supreme Court in Garcetti v. Ceballos, the court found that Converse's comments were made within the scope of her employment and not as a private citizen. The First Amendment does not protect employee speech.

The Court also noted that the district did not take any adverse action against Converse since her pay, benefits, and job classification were unchanged.

Fordham v. Islip Union Free School Dist., (N.Y. D.C.T. 2009). In a rare example of an educator actually prevailing, at least initially, on a defamation charge, a court rejected a claim for summary judgment by a school district based on allegations that the principal defamed a first grade teacher.

The teacher, Mrs. Fordham, was a veteran educator, hired in 1992. She received excellent evaluations throughout her tenure and was "Educator of the Year" in 2006.

During the 2006/2007 school year, Fordham met with her principal in several meetings regarding the time she spent on arts and crafts in her classroom. Fordham also claimed that one of the meet-

ings was intended to force her to retire.

At the end of the school year, the principal prepared an email to another administrator and sent it throughout the school. The email discussed the many problems the principal saw with the teacher and was rather snarky in tone.

Fordham had her attorney write to the District and its attorneys advising them of the adverse actions being taken against her because of, she asserted, her age (she was 58). The district did not investigate the claims but its attorneys issued a document purporting to be the results of an investigation and finding no evidence of age discrimination.

Two days later, the principal accused Fordham of harming a child based on her observations of Fordham tapping a child on the head with her hand.

The court found that the claim of defamation could proceed to trial. Fordham's attorneys characterized the principal's claims as an accusation of child abuse. While rejecting that characterization, the court found that a claim that a teacher inappropriately touched a child is serious enough to constitute defamation if known to be untrue and made with malice.

Your Questions

Q: If a child attended a school of choice out of the resident district but the parents have decided to home school, who is responsible for obtaining the home schooling affidavit?

A: The resident district. Though the child went to an out-of-district school, or charter school the resident district remains responsible for ensuring compliance with compulsory education once the child is no longer enrolled in the out-of-district or charter school.

What do you do when. . . ?

In order for the resident district to meet its obligations, however, it must know where the child is and whether the child is still enrolled in an out-of-district or charter school. This is one of the reasons why state law requires schools to inform the resident district when a student is no longer enrolled at

the school. Districts do not want to send threatening letters to parents about compulsory education only to learn from the irate parent that the student is attending another school. Nor do districts need to offer home school services to a student who is enrolled in another school.

As a courtesy and in compliance with state law, districts and charter schools need to inform the resident district of any changes in the student's enrollment—and in a timely manner.

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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)

Q: A representative from the Association for Career and Technical Education approached our school administrator about placing informational fliers in faculty mailboxes. Must the administrator give this union access to faculty mailboxes?

A: If the school allows any other education employee union to use faculty mailboxes, it must provide equal access to other education employee associations.

Some school administrators may not be aware of U.C. § 53A-3-426. This statute requires equal access and equal participation by various education employee associations in schools. The law makes it clear that if schools permit any education employee association to distrib-

ute information to teachers or employees by use of physical or electronic mailboxes, or allow solicitation activities involving new teachers, the schools must permit all other education employee associations to engage in the activity on the same terms and conditions.

For example, if one education employee association is allowed to use school mailboxes to distribute association literature, this same opportunity must be allowed for all education employee associations. Requiring that a representative of any association obtain permission from the superintendent or board of education to engage in activities another association is allowed to engage in without such permission would be a violation of this law.

Q: May we impose a fine on a student who is eligible for fee waivers

and has defaced or destroyed a text book or other school property?

A: State law and State Board Rule specifically state that schools may fine students for intentional destruction or damage to school property, even if the student is eligible for fee waivers or is a K-6 student, where fees are not otherwise permitted.

Per the State law, however, schools should take into account a parent's ability to pay for the damages and consider a work alternative if the parents are unable to pay. The law also permits a school to withhold official transcripts, diplomas, and grade reports until the damages are paid or the work time is completed.

In some instances, the best solution may be a work alternative since it may be a more effective deterrent to the student than forcing his or her parents to pay for the damage.