



# UTAH SCHOOL LAW UPDATE

Utah State Office of Education

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## Those Sexting Teens

A recent report from the Pew Research Center suggests that sending sexually suggestive images between pre-teens and teens is on the rise.

A prior study by another organization suggested that children as young as ten were receiving sexually suggestive images via cell phones. The Pew study focused specifically on youth ages 12-17. The findings, released Dec. 15, 2009, show a rising trend that should concern schools across the nation.

First, the study notes that cell phone ownership is increasing across the 12-17 age range. The percentage of 12-year olds with cell phones has increased from 18% in 2004, to 58% in 2009. By age 17, 83% have access to a cell phone.

Of all these pre-teens and teens with phones, 15% have received sexually-suggestive nude or nearly nude images on their cell phones (only 4% admit to sending the photos).

Perhaps most troubling, the teens interviewed who had sent or received the images did not see any reason for concern.

Parents play a vital role in sexting. The Pew study determined that teens whose parents search phones and/or pay the

phone bill are less likely to send and receive sexually inappropriate images.

For schools, sexting raises a host of legal and disciplinary issues. Teens caught sending, receiving, or creating sext messages can be criminally prosecuted. Moreover, several news stories have reported on the devastating effects of having a sexual image forwarded on to others in the school and beyond.

School policies prohibiting students from sending or receiving "sexts" messages are a start, but catching students misusing their cell phones in this way is difficult.

But schools can play a role in the sexting trend through education for parents and students. Utah Board Rule includes the proper use of technology in the health education curriculum. Discussions about technology should include the legal implications for students who send or receive sexual images on their cell phones, and the long-term ramifications if, and when, the photos are forwarded on to others.

And parents need to be informed of the growing trend as well as the steps they can take to prevent their teens from being exploited through sexting.

For educators, it is important to address any inappropriate text messages or images sent to their phones. An educator who receives a sext message should inform a supervisor and the student's parents.

An educator who is informed that a student has such images on a phone may also have the level of suspicion necessary to justify a search of the text messages on the phone. Before searching a student's phone, however, we would urge the educator to discuss the situation with a supervisor and to only search those files in the phone related to text messages.

Sexting is a growing trend in middle and high schools. Students across the demographic spectrum have been involved in the trend and it has spread across rural and urban landscapes. Schools that hope to avoid the tragedy of a student suicide, as occurred in one state, or students being placed on a sex offender registry should review their health education curriculum to ensure the issue is properly addressed, and reiterated through school policies and practices.

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### UPPAC CASES

*The Utah State Board of Education suspended Jose Bernardo Fanjul's educator license for two years. The suspension results from Fanjul's inappropriate relationship with a minor student. The relationship included inappropriate and excessive email, phone and other electronic communications, violations of district policies and directives, unauthorized visits to the student's residence, inappropriate gifts, and failure to obtain prior parental consent before discussing certain topics with students.*

## Eye on Legislation

The 2010 Legislative Session will begin on Monday, Jan. 25, 2010. This is also an election year for all House of Representatives members and half of the Senate. With an ethics initiative still circulating the state during the session, little money available, and election year angst, expect much posturing on ethics and taxes, and heavy emphasis on the budget, with some smoke and mirror issues thrown in for good measure.

On the public education front, education-related bills continue to pop up this year. Some bills were reviewed in the last month's Update, but a few new bills have been added to the Legislature's website.

For instance, Sen. Howard Stephenson, R-Draper, is opening up the U-Pass section of the Code to loosen testing requirements and permit more computer adaptive

testing, at the State Board of Education's discretion. The bill will assist the State Board in its efforts to improve both the efficiency and effectiveness of state mandated tests.

Rep. Rhonda Menlove, R-Garland, will attempt to give school districts more leeway in determining if an educator is ready for career status by amending the Orderly Termination Act to permit a district to hold a teacher in probationary status for 3 to 5 years (current law establishes the probationary term at 3 years).

Rep. Curtis Oda, R-Clearfield, offers a resolution asking public schools to provide age-appropriate information about family and dating violence to students. The resolution applies to both public and higher education.

Some new boxcars (bills with short titles, but no text) are also available

now. Rep. Wayne Harper, R-West Jordan, will offer "Educator Training Amendments," Rep. John Dougall, R-American Fork, wants "Local Control of Public School Schedules," and Rep. Patrick Painter, R-Nephi, will attempt "Closed Meeting Amendments." Sen. Pat Jones, D-Holladay, will also take another stab at "Vending Machines in Elementary Schools."

There is little good news on the budget front, though Gov. Herbert and others have expressed a desire to at least maintain current levels of education funding. Those levels, of course, would not account for the 10,000 new students expected for the 2010-2011 school year. However, far fewer legislators are seeking additional funds for new programs this year than in years past.



## UPPAC Case of the Month

While a run of sexual misconduct cases is disturbing on its own, four recent cases are particularly troubling.

The alleged misconduct in each case is the same, a teacher who initiates a romantic relationship with a student within days of graduation.

What is concerning, however, is each educator's long history of attempts at the same conduct, and the number of students who were approached but didn't tell anyone about the educator's inappropriate behavior.

In most of the cases, the educator began grooming students before the school year ended. This included asking students to lunch, showing up at a student's house to see how she was feeling on a sick day, surprise visits to student workplaces, text messages about personal matters, and other similar violations of professional

boundaries.

In each of the cases, the same type of activity occurred with more than one student and on a regular basis. One educator chose one student per year, others chose several students in the hope that one might take the bait.

And in every case, the educator approached the students in a manner that "creeped them out." Students told no one, or told a friend who kept their secret. In order to stop those few educators who see schools as their dating pool, schools must overcome this culture of silence.

One method for doing so is to make sure students and parents know what behavior is acceptable from educators, and what is not. Students also need to know whom they can tell about acts by an educator that make them feel uncomfortable, weird, or "creeped out." And they need to feel that it is okay

to talk to that person. If a school designates only one person as the official person to report creepy feelings to, little is accomplished. All educators in the school should be regularly trained on appropriate boundaries and should be available to students who need someone to tell about a teacher who has crossed the line. At minimum, a school should designate at least two employees, of different genders and assignments, to receive reports.

Parents, similarly, need some training on the issues. As the unfortunate parents have found in some of the recent cases, convincing an 18-year old that her teacher is not likely to be the love of her life can be impossible. Stopping the teacher's initial forays as a romantic friend to the student is far more effective, but parents need training to be able to recognize when teacher communications have gone over the line and what to do about it.

## Recent Education Cases

Morgan v. Plano Ind. Sch. Dist. (5th Cir. 2009). The 5th Circuit addressed a First Amendment challenge to school policies on the distribution of written materials.

The school district adopted a policy in 2004 requiring that students seeking to distribute written materials have the principal's prior approval. Under the policy, some students were prevented from distributing pencils inscribed with "Jesus is the Reason for the Season" and candy canes with explanations of their religious significance.

The parents of the students sued the district. While the case was pending, the district changed the policy, permitting the distribution of written materials at certain times and at designated tables. The policy prohibited the distribution of material that were obscene, vulgar, age-inappropriate, advocated violation of school rules, constituted hate speech, or which could reasonably result in a material and substantial interference with school functions. The policy was more restrictive for elementary schools than middle or high schools. The 5th Circuit found the arguments against the 2004 policy moot since it had already been changed. The court then reviewed the parents' argument that the

2005 policy was an unreasonable restriction on speech, particularly in the elementary schools. The court found the policy reasonable and constitutional. It noted that "the regulations are aimed at providing a focused learning environment for its students. The regulation of speech during and immediately before the classroom instruction period is intended to facilitate the beginning of class . . . . Similarly, restrictions on distribution of materials by elementary students in hallways and the cafeteria are intended to facilitate the movements of students between classes and at lunch and to reduce littering."

The court noted that the policies "provide ample alternative channels of communication" and were narrowly tailored to satisfy the stated purposes. As to the elementary schools, the court also found that elementary students require more guidance and supervision than middle and high school students.

Stratuchuk v. Board of Ed. (3rd Cir. 2009). The School District policy provided that "Music programs prepared or presented by student groups as an outcome of the curriculum shall not have a religious orientation or focus on religious holidays." A parent objected to her

child singing religious songs in the school's December concert. The concert, including religious songs, proceeded as planned. The parent complained to the School Board.

The Board then sent out a memo clarifying its position that music which represents a religious holiday should be avoided. This sparked a second parent revolt; this time by parents who felt the board was intolerant of religion. The Board then clarified that the policy prohibited only the "performance of celebratory holiday music," and not religious music in general.

The subsequent December concerts included religious music, though not specific to Christmas. Stratuchuk then sued, claiming the policy was hostile to religion and violated his childrens' First Amendment rights.

The 3rd Circuit Court of Appeals found that the policy permitted religious music presented objectively within the curriculum. It also found that religious songs were still played at the December concerts. Since the December concerts are school-sponsored events, speech may be limited for legitimate pedagogical reasons, which, the court determined, the board had done in this case.

## Your Questions

**Q:** I received a letter saying a Bureau of Criminal Investigations name check came back with an arrest against me. What happens now?

**A:** As noted in the letter, you are now directed to have a fingerprint check to verify if you were the person arrested or identified. Because the initial checks were only of names and dates of birth, some arrest records may involve a person with the same name, but not an educator.

What do you do when. . . ?

Once the Utah Professional Practices Advisory Commission receives the results of the completed background check, you will be contacted with additional instructions.

If the background check shows that you were not the person arrested, you will not be required to do anything further. On the other hand, if you were arrested in the

recent past or for a more serious crime or several offenses, you must provide a letter explaining the circumstances of your arrest and the criminal outcome.

Once the Commission has all of the documentation from you that it requires, it will make a recommendation to the State Board regarding any possible licensing action based on the arrest. In some cases, no action may be warranted, in others a suspension or revocation might be in order. The potential discipline depends on

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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 Con't.

*(Continued from page 3)*

the nature of the crime, the intervening years since the crime, and the facts surrounding the crime.

**Q:** I would like to request reinstatement of my license following a suspension. What do I do?

**A:** Follow the procedures outlined in the Utah Professional Practices Advisory Commission rule, R686-100-19, and your Stipulated Agreement. The Rule explains how to make a request for a reinstatement hearing and the Stipulated Agreement you entered into at the time of your license suspension includes all of the conditions you must meet BEFORE requesting the hearing.

If you have not complied with all of the conditions, you should NOT request a reinstatement hearing. Finish the requirements and then request the hearing, providing all of the documentation required by the rule and the

Agreement with your request.

If you did not enter into an Agreement, but your license was suspended following a hearing, you or the attorney who represented you at the hearing should have a copy of the Hearing Report which lays out the conditions you must meet prior to requesting a reinstatement hearing.

UPPAC rule R686-100-20 establishes the procedure for the actual hearing. You will also receive written instructions regarding the hearing if your request for a hearing is granted by the Commission. A reinstatement hearing does not guarantee reinstatement of a license.

**Q:** Is a teacher insubordinate if she/he speaks negatively about a program, complains about an individual in the district or at the school site to others in the building? Teachers have been told by

their administrator that they can be "written up" for insubordination if they do any of the above.

**A:** A teacher can be disciplined for derogatory comments about his or her employer (school, district, or administration). Teacher speech is protected if it is about a matter of "public concern." Private gripes or pet peeves are not a matter of public concern, regardless of the status of the person to whom the educator is complaining.

If the teacher is expressing his or her opinion on a matter of public concern, such as whether the district is using state funds in a manner consistent with state law, the teacher then has some protection. However, the U.S. Supreme Court increasingly places limits on speech made as part of the person's job responsibilities, so there may be some sanctions depending on the nature and context of the complaints.