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PROFESSIONALISM IN
UTAH'S PUBLIC SCHOOLS

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A REVIEW OF PROFESSIONAL CONDUCT IN UTAH'S PUBLIC SCHOOLS

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TABLE OF CONTENTS

	<i>Page</i>
EXECUTIVE SUMMARY	5
Chapter One: FOCUS OF THE STUDY	9
Chapter Two: MISCONDUCT CONCERNS AND RELEVANT PRACTICES	13
Part I. Licensed Employees	13
Part II. Non-Licensed Employees	31
Chapter Three: WHAT UTAH CAN LEARN FROM OTHER STATES AND ORGANIZATIONS THAT SERVE CHILDREN	33
Chapter Four: SUMMARY OF FINDINGS AND RECOMMENDATIONS	39
Findings: Licensed Employees	39
Findings: Non-Licensed Employees	41
Principles of Professional Conduct for All Public Schools in Utah	41
Recommendations: Licensed Employees	42
Recommendations: Non-Licensed Employees	44
Associated Costs and Further Study Suggestions	44

EXECUTIVE SUMMARY

This review was initiated to understand the frequency and nature of misconduct cases of employees in Utah's public schools and to make recommendations for improving professional conduct, especially in ways that may discourage future misconduct.

Utilizing the knowledge and experience of experts on professional conduct who comprise the Committee, the review does not represent scholarly research on the subject of professional conduct; rather, the Committee examined practices in the state related to licensure and misconduct and then provided specific recommendations to the State Superintendent. In an effort to understand possible improvement in practices, the report also contains a sampling of licensure and ethical conduct practices from other states, and guidance related to leadership conduct from some youth organizations. For clarity, Chapters Two and Four of the report are divided into two parts: first, licensed educators (teachers, counselors, administrators, etc.) and second, non-licensed public school employees (custodians, paraprofessionals, library assistants, bus drivers, etc.).

While discussing the details of needed improvement, the Committee was constantly impressed with the need for all public school employees to adhere to general principles of professional conduct, all based upon building, sustaining, and prizing trust. These principles emphasize transparency, integrity, and responsibility in conduct.

SUMMARY: LICENSED EMPLOYEES

Data collected by the **Utah Professional Practices Advisory Commission (UPPAC)**, an advisory group to the Utah State Board of Education (Board), show that, on average, over the last nine years, less than two-tenths of one percent of licensed educators were reported to the state for misconduct and there is no upward trend of misconduct from 2001–2009. The data do show, however, that the most frequent types of reported misconduct are actions that victimize students, affecting their safety and well-being. The data set is incomplete, however, as UPPAC does not gather information on all licensed educator misconduct cases; rather, UPPAC only gathers information on cases that may affect licensure, and then only if reported from districts and schools to UPPAC.

Criminal conduct by licensed educators is now being screened through a fingerprint background database under way at the Utah Department of Public Safety (DPS). Early results show a troubling number of arrests, criminal charges or convictions that involve public school employees. Corrective actions are being taken in districts and schools as DPS records are finalized, and serious cases that involve licensed individuals are being referred to UPPAC.

The Committee identified other areas for improvement. The Utah State Board of Education has created standards for licensed educators in administrative rule. The standards are the code of conduct, though not titled as such. It may be helpful to package the standards in such a way as to make them easily recog-

nizable, distributed statewide and discussed among teachers, administrators, and in parent groups as well. Licensure and hiring practices could be strengthened by requiring more information on licensure and employment applications and by ensuring that references are carefully contacted prior to hiring.

Members of the Committee agreed on the need for consistent training and education on ethical and professional conduct across the state and suggested a guidebook or instructional outline to provide assistance. District representatives noted there is some confusion and inconsistency in understanding how to report misconduct in districts and schools. Committee members discussed guidelines, including consistent definitions and an electronic database, to help local administrators understand when and how to make a referral to the state for misconduct that rises to the level of licensure review.

The report gives particular attention to the investigative and hearing procedures of the Utah Professional Practices Advisory Commission (UPPAC), finding that UPPAC provides careful due process and its work has led to almost non-existent recidivism of those cases that were reported to UPPAC. The deliberation phase of the UPPAC hearing is carefully considered by experienced legal and educational experts, but should be guided with specific written parameters that have been discussed with the Board and are used in considering each case. The process for UPPAC deliberation includes internal presumptions regarding possible consequences. The process would be enhanced by discussing these presumptions with the Board, ensuring that the presumptions are well understood by districts and schools, and by providing the presumptions in writing to all hearing participants at each UPPAC hearing. The report concludes that UPPAC actions should be more transparent to the Board and recommends monthly reports of UPPAC corrective actions to the Board.

Specific to the Board's question about the wisdom of, as well as the liability in reinstating licenses following suspension, the courts have found that reinstatement following careful and methodical restitution and improvement is judicious. A brief review of relevant court cases is included in the report.

SUMMARY: NON-LICENSED PUBLIC SCHOOL EMPLOYEES

Data collected by UPPAC do not include cases of misconduct of any type by non-licensed employees. The oversight for non-licensed employees is expected to occur in local districts and schools. Criminal conduct, however, is now being screened through a fingerprint background database under way at the Utah Department of Public Safety (DPS). Early results show a troubling number of arrests, criminal charges or convictions that involve public school employees. Corrective actions are being taken in districts and schools as DPS records are finalized. Hiring practices could be strengthened by requiring more information on employment applications and by ensuring that references are carefully contacted prior to hiring. There are no state standards of expected professional conduct for non-licensed employees, although local standards may exist in districts and schools where oversight of non-licensed employees is located.

In Chapter Four, the Committee cites several findings from its review and then makes recommendations to the State Superintendent for his consideration:

RECOMMENDATIONS: LICENSED EMPLOYEES

- 1** Review standards for professional and ethical conduct in Utah's schools for licensed employees. Set expectations for understanding standards and create the resources and strategies needed to promote, train, educate, and ensure understanding.
- 2** Revise the application for licensure to include a broader history of past conduct and a legal oath and/or affidavit signed under penalty of perjury and/or employment discipline.
- 3** Review administrative rules to ensure effective reporting systems, statewide consistency in mandatory reporting of misconduct by both districts and charter schools, and the construction of a statewide electronic database for misconduct reports.
- 4** Ensure effective and consistent monitoring of the criminal database file housed at the Department of Public Safety and ensure that appropriate corrective action is taken in districts and schools and through UPPAC.
- 5** Develop parameters for UPPAC deliberations to increase the objectivity of deliberations and consequences. Create threshold presumptions for corrective actions based upon certain misconduct and provide for a more complete, monthly UPPAC report of corrective actions. Discuss parameters and presumptions with the Board.
- 6** Use formal Board language for revocations that connotes a permanent loss of license.

RECOMMENDATIONS: NON-LICENSED PUBLIC SCHOOL EMPLOYEES

- 1** Determine whether or not to create statewide conduct standards for non-licensed public school employees.
- 2** Determine whether or not to include non-licensed public school employees in the state misconduct database.
- 3** Ensure effective and consistent monitoring of the criminal database file housed at the Department of Public Safety and ensure that appropriate corrective action is taken in districts and schools.

1. FOCUS OF THE STUDY

THIS REPORT IS PRECIPITATED BY AN ALARMING INCREASE IN RECENT MEDIA REPORTS ABOUT ADULT MISCONDUCT CASES IN UTAH'S SCHOOLS.

Data from reported cases of misconduct by educators do not show a recent increase, but several high profile misconduct cases were reported by Utah's media in the past year, leading to greater concerns for the safety and well-being of children in Utah's public schools.

Utilizing the knowledge and experience of experts on public employee conduct who comprise the Committee on Professionalism in Utah's Public Schools (Committee), the study does not represent scholarly research on the subject of professional conduct; rather, it examines practices in the state related to licensure and misconduct and then provides specific recommendations for action to the State Superintendent, who commissioned the report. The aim is to take action that increases transparency, discourages future misconduct, encourages accurate, consistent and reliable reporting from all public schools, and enhances the public's confidence in its public schools. This report will review misconduct issues of licensed employees in Utah's schools (teachers, administrators, counselors, etc.) and, to a more limited degree, that of non-licensed employees in our schools (aides, library assistants, coaches who are not teachers, bus drivers, custodians, etc.).

Many societal changes are at work in our communities and schools today, some positive and others negative. Schools, themselves, represent a "slice of society" as children come from all sectors of a community and

adults, too, are influenced by their surroundings and social mores. Where inappropriate use of technology, sexual misconduct, and financial fraud (just three examples) are found in communities and businesses across the nation today, so, too, is such behavior found in schools. Nonetheless, educators and those who work in schools always have been and should continue to be held to a higher standard of ethical conduct. State law requires parents to send children to school, absent specific request for waiver. This law makes the safety of students the schools' number one responsibility. Adults who work in schools are role models for the youth of America and their conduct must reflect strong values, consistent with what they teach.

Most importantly, students have every right to expect to have their physical, emotional, academic, and social well-being carefully protected at school by all the adults who work for public schools. Any violation of this essential trust makes the student a victim and erodes the public confidence in schools. When a parent sends his child to a public school in Utah, it should be with complete confidence that all adults in the school, whether licensed or non-licensed, will act with care and professionalism.

Fortunately, the 551,014 (FY 2009) school-aged children in Utah are taught by an abundance of caring, dedicated and honorable professionals who devote their lives to educating our youth. Most licensed employees (28,555 in FY 2009) and most non-licensed employees (21,322 full-time, in FY 2009) as viewed through available data, audits, and by observation, are

doing a professional job of teaching and are treating students with respect and dignity as well as modeling excellent conduct in their relationships with children.

When misconduct by licensed educators occurs, and when it is judged by local officials to be sufficiently serious as to raise questions of continued licensure, the case is expected to be referred to the state. To the extent that the state has received data on misconduct cases, the records of the Utah State Office of Education (USOE) suggest that very few licensed educators have demonstrated misconduct and that the trend for misconduct is not increasing. Data related to licensed educators show that less than two-tenths of one percent of licensed educators have been involved in reports of unprofessional conduct sufficiently serious to jeopardize their licensure.

These statistics represent only the cases that are reported to the state for licensure action and only for licensed individuals. Misconduct by charter school educators is rarely reported to the state, but handled locally, as they are often considered “at will” employees, per state law. Other cases of misconduct that are not deemed to rise to the level of licensure action, or cases that involve non-licensed employees, are handled locally in districts and schools. Thus, the data cited in this study do not represent the entirety of misconduct concerns in Utah’s schools.

Any misconduct that harms children or takes from the valuable resources in Utah’s schools violates an essential trust in public schools and is unacceptable. The violation of trust victimizes the student and negatively affects his parents, his circle of friends, the school community, and the citizens of the state. Thus, there is urgency in working toward greater transparency, integrity, responsibility, and professional and ethical judgment for all public school employees.

Consider some cases recently chronicled in Utah’s newspapers:

- A former teacher’s aide in West Jordan Middle School was charged with having sexual relations with 15- and 16-year-old students.
- A former teacher and coach in Moab entered

an “Alford plea” on charges of having sex with a 14-year-old student. The teen committed suicide.

- A teacher/coach at Pine View High in St. George was charged with sexual abuse of a child.
- A former Title I Director in Davis District was accused of having stolen millions of dollars from Title I funds that should otherwise have helped children in poverty. Her scheme involved selling copied workbooks to schools instead of purchasing new, quality workbooks, and then pocketing the money saved.
- A Roy Junior High shop teacher was charged with having sex with a student. The charges followed two investigations by police of a Layton High choir teacher who had married a recently graduated student and an Ogden teacher who was living with a former student.
- A popular teacher and coach in Fillmore was sentenced to prison for having sex with one of his high school students.

These cases are, unfortunately, multiplied in number by similar cases which have occurred in the past few years in Utah’s schools, both those reported for licensure action and those which were handled locally in districts and schools. Early tallies from the newly constructed criminal database at the Department of Public Safety (DPS) show that there have been nearly 7,000 arrests, criminal charges, or convictions of public school employees among licensed and non-licensed employees, although it is unclear from DPS what time span is represented by those figures. Although a single employee could account for more than one of those citations, the number is of great concern. The chapters that follow examine the processes surrounding misconduct, cite several chief findings, offer five principles for ethical behavior in public schools, and provide recommendations by which misconduct might be eradicated in Utah’s schools.

The actions that might be taken as a result of this report should help to strengthen protections for students in Utah’s public schools and build the essential trust that all citizens expect from educators and other school employees. This report, however, could

be viewed overly simplistically, without thought for the rights of the accused. It is vital to note that state strategies and processes cannot trample on the due process rights afforded employees in public schools in Utah, even when they are accused of highly publicized misconduct.

2. MISCONDUCT CONCERNS AND RELEVANT PRACTICES

PART I. LICENSED EMPLOYEES

CASES OF UPPAC-REPORTED LICENSED EMPLOYEE MISCONDUCT IN UTAH ARE RELATIVELY FEW BUT OF GREAT CONCERN.

There have been 927 cases of licensed educator misconduct reported to the Utah State Office of Education (USOE) from 1973–2009. The Utah Professional Practices Advisory Commission (UPPAC), an organization that is advisory to the Board, began its operations by requirement of statute in 1994 and its officers work at the Utah State Office of Education under the direction of the State Superintendent and the Utah State Board of Education. The Commission’s work is to investigate educator misconduct as reported to the Commission from districts and charter schools, and provide a review of licensure as it relates to reported misconduct. The Commission then takes limited action on continued licensure or, in more serious cases, makes recommendation to the Board for licensure suspension or revocation.

UPPAC began to keep detailed, longitudinal data in 2001. A recent review of UPPAC reports shows that from 2001–2009, on average, less than two-tenths of

one percent of licensed educators were reported to UPPAC for misconduct. These cases have been highly publicized of late, giving the public fresh reason to be concerned about the conduct of adults in its public schools.

Exhibit 1 shows the number of cases reviewed by UPPAC, by year, from 2001–2009.

There were 386 misconduct cases reported to UPPAC over the nine-year period from 2001–2009. While the frequency of news reports citing professional misconduct in schools seems to be on the rise, the actual number of UPPAC-reported violations has varied over the years from a low of 32 violations reported in 2009 to a high of 55 violations reported in 2007. The average over the nine-year period is 43 cases, representing less than two-tenths of one percent of licensed educator misconduct over those years (using the count of teachers from FY 09 to figure percentage).

There are no distinct trends of an increased number of violations over the last nine years. Exhibit 2 shows the number of cases reviewed each year and the num-

Exhibit 1. Number of Cases Reviewed by the Utah Professional Practices Advisory Commission (UPPAC) by Year

2001	2002	2003	2004	2005	2006	2007	2008	2009
46	51	41	44	37	45	55	35	32

Total: 386 Cases

ber and type of violations per year. The reader should understand that there is often more than one type of violation for each single reported case of misconduct. Definitions to clarify some categories in Exhibit 2 follow the exhibit.

DEFINITIONS

PORNOGRAPHY means searching for, downloading, storing, viewing, or otherwise accessing sexually explicit materials in any format at school or by using school computer information systems or connections.

SEXUAL ACTIVITY WITH STUDENT means engaging in a sexual relationship with a public school-age student, regardless of school attendance, or recent graduate of school where the educator is assigned.

SEXUAL ACTIVITY WITH NON-STUDENT means any other illegal sexual activity, including soliciting pros-

titution, sex with a minor who may not be a public school student, illegal sex activity with another adult that causes disruption or loss of trust in school setting, or lewdness arrests or convictions.

DRUGS/ALCOHOL means arrests for drug or alcohol-related crimes, and non-criminal misuse of alcohol or prescription drugs which affects the educator’s ability to perform his or her responsibilities, including role model responsibility.

VIOLENCE means using unreasonable force or other unreasonable disciplinary measures against a student, including actions that demean or embarrass, and any criminal activity involving violence such as assault or domestic violence.

SEXUAL HARASSMENT means unwanted, objectively offensive comments or touching; using sexual innu-

Exhibit 2. Number of Cases Reviewed by UPPAC by Violation Type
(Some cases involved more than one type of misconduct, and thus the number of reviewed cases does not necessarily equal the number of violations.)

Violation Type	2001	2002	2003	2004	2005	2006	2007	2008	2009	Total
Pornography	6	6	5	7	6	4	8	5	3	50
Sexual Activity with Student	15	10	4	11	5	8	7	5	8	73
Sexual Activity With Non-Student	7	4	4	2	4	1	4	1	0	27
Drugs/Alcohol	4	5	5	5	7	4	4	3	5	42
Violence	1	0	2	1	0	0	0	0	0	4
Theft/Fraud	4	5	7	6	2	5	5	3	1	38
Testing Protocol Violation	4	5	2	2	2	5	9	1	4	34
Sexual Harassment	3	1	0	1	1	4	2	1	1	14
Insubordination	1	0	1	2	1	3	0	3	0	11
Other–Employment Practices	0	2	2	1	0	0	1	0	1	7
Other–Student Related	11	19	10	9	17	10	17	18	20	131
Other–Moral and Ethical Conduct	3	2	5	5	1	3	6	6	13	44
Total Violations	59	59	47	52	46	47	63	46	56	475

endo in class; sharing off-color jokes with students in person, in print or electronically; commenting inappropriately or in a sexually suggestive manner on student clothing or appearance; inappropriate touching (back rubs, etc.).

OTHER EMPLOYMENT PRACTICES means violating school or district policies in ways that do not involve direct student harm or serious lapses in moral behavior, such as using school equipment or physical facilities for personal use and/or realizing personal financial gain from school resources.

OTHER STUDENT RELATED means behavior that may cause direct harm to students but is not sexual in nature, such as leaving students unsupervised and causing harm; having a physical altercation with a student; refusing to tell the truth to an investigating administrator about a misconduct incident; and making racially or religiously discriminatory remarks to students.

OTHER MORAL AND ETHICAL CONDUCT means seriously violating district or school policy in ways that may also jeopardize student well-being, such as using a school computer to write personal e-mails; discussing topics such as abortion, contraception and AIDS in class without prior written parental consent; setting up a MySpace account at school and posting inappropriate communication, a violation of the acceptable use policy in the school; and voyeurism by electronic means for videotaping people, including minors in their homes.

Each type of UPPAC-reported misconduct in Exhibit 2 was coded by the State Office of Education following a review of each case of misconduct. There is not yet a common acceptance and understanding by schools and districts of the definitions of misconduct types, nor are there commonly used methods throughout the state for categorizing and reporting misconduct. Thus, the data are subject to error.

The data may also be incomplete. A legislative audit in 2009 revealed, among other findings, that the Department of Public Safety (DPS) and the Utah State

Office of Education (USOE) failed to initiate a criminal background database in 1999, as enacted that year. The two agencies took swift action in 2009 to begin that process, and the database is well under way. The database tallies criminal behavior by both licensed and non-licensed public school employees. Early results, as reported in local media, are troubling and show that “nearly 7,000 arrests, criminal charges or convictions” can be found on public school employees (*Salt Lake Tribune*, Jan. 27, 2010, p. A6). It is, however, unclear from DPS what time span is represented by those figures. Data from individual districts and schools are still being entered on the database. Cases of confirmed criminal conduct that involve licensed educators are being referred to UPPAC for possible licensure action, and all cases of confirmed criminal conduct (licensed and non-licensed) are being reviewed by local districts and schools for possible employment action. Once the database is completed, it will be imperative that the State Board reviews data for licensed and non-licensed public school employees, and then reviews state and local policies related to criminal misconduct and actions to deter and correct misconduct.

In 2009, a large number of UPPAC-reported misconduct cases (from various categories) involved licensed educators creating direct harm to students. Recent news reports have been more active in reporting school misconduct, especially sexually related misconduct; however, the actual frequency of UPPAC-reported misconduct relative to the number of public school employees who might demonstrate misconduct is very low. But the type of misconduct is alarming and is personally damaging to students, and is far too often sexual in nature, therefore demanding greater attention. The criminal database being finalized by DPS may yield even more cases that have, until now, gone unreported to UPPAC. Undoubtedly, the DPS criminal background database findings will continue to stir action and concern by school personnel as well as the public at large.

CORRECTIVE ACTIONS TAKEN BY THE BOARD RELATED TO LICENSURE

Consistent with Utah law (53A-6-104[1 and 2]), the State Board has responsibility for issuing and monitoring educator licenses. The Board has sole authority for “. . . classify[ing] licenses and establish[ing] the criteria for obtaining and retaining licenses” [emphasis added]. UPPAC has specific authority in the law (53A-8-306[4]) to determine specific penalties directed toward licensed educators other than suspension and revocation, which require Board action. The Board might take more than one type of action on a case. The corrective actions taken by the Board all have to do with licensure and not with employment. Employment actions are delegated to local districts and schools.

The types of corrective action issued from the Board in Utah are common actions of state boards from around the nation. They are listed below, in order from most consequential to least consequential, with a few examples following each type of action. The actions taken by the Board do not need to be taken in sequential order.

- **Revocation of license.** Permanent loss of license—requires formal Board action.
Examples: Sexual acts with students, fraud and theft involving significant amounts of money or resources, aggressive altercation with student resulting in physical harm to student, violation of Agreement Not to Teach.
- **Suspension of license.** Temporary loss of license—requires formal Board action; dependent on the completion of corrective requirements; may be reinstated with formal hearing by UPPAC followed by formal Board action.
Examples: Accessing pornography on school computer, brief altercation with student resulting in no physical harm, emotional berating of students, discussing sexual matters with students.
- **Probation.** No loss of license—UPPAC takes action; allowance to remain licensed is conditional,

pending immediate improvement in conduct as monitored by supervisors.

Examples: Leaving students unsupervised with resulting harm to students, continued misconduct following earlier reprimand.

- **Reprimand.** No loss of license—UPPAC takes action; specific improvement of unprofessional conduct is required or further action will be taken immediately by UPPAC.

Examples: Leaving area of assigned supervision with no resulting harm, discussing personal matters with students, gaining access to students for personal reasons, continued misconduct following earlier warnings.

- **Warning.** No loss of license—UPPAC takes action; written caution about specific conduct that is deemed unprofessional or unethical.

Examples: Spending non-instructional time with students, contacting students electronically for personal matters, continued misconduct following Letter of Admonishment.

- **Agreement Not to Teach.** No official loss of license—UPPAC takes action; educator agrees not to teach in exchange for retaining license. Only available for educators with long, otherwise unblemished careers whose misconduct does not involve any level of sexual activity with a student.

Examples: Extended and inadequate lesson planning or classroom management, discordant relationships with parents or students.

- **Letter of Admonishment.** No loss of license—UPPAC takes action; written caution about conduct that appears to be leading toward unprofessional or unethical conduct.

Examples: Over involvement in student’s personal concerns, disruptive actions among colleagues, ignoring school policies, inadequate attendance or timeliness.

In addition, the Board takes formal action to reinstate a license:

- **Reinstatement.** Restoration of license, requires

formal Board action; follows remediation and restitution, and an evidentiary hearing at which the burden of proving fitness for reinstatement lies with the educator.

Examples: Counseling or other remediation strategies have led to a full understanding of the harm done through past actions and restitution has been made. A realistic plan for improvement is ready. The UPPAC panel has full confidence that no further harm will take place.

Exhibit 3 tallies the corrective actions taken on misconduct cases reported in Utah from 2001–2009. The reader should understand that there may be more than one type of corrective action taken for any single case of misconduct.

Four of those tallied in Exhibit 3 were repeat offenders, having had a second referral to UPPAC. Of those four repeat offenders, only one was for the same type of original offense and all of the cases involved drug use or shoplifting and did not include sexual misconduct.

THE BOARD DELEGATES SOME AUTHORITY TO UPPAC AND LOCAL ACTIONS CAN ALSO BE TAKEN

Corrective actions that do not include revocation, suspension or reinstatement are delegated to UPPAC by the Board, and are determined in the UPPAC hearing.

For revocation, suspension or reinstatement, UPPAC makes a recommendation to the Board and then the Board takes formal action in its regularly scheduled meeting. The Board may determine that it cannot yet accept the recommendation from UPPAC and the Board may send the case back to UPPAC for further consideration, like a court remand. The Board may also place certain stipulations on the remand request. The Board might also take other licensure action on a case, inconsistent with the UPPAC recommendation, but consistent with the Board’s authority.

In addition to state corrective action, district human resources officials indicate that even when they determine that an educator’s behavior does not rise to the level of reporting to UPPAC, there are terminations occurring locally, as appropriate, for specific educator misconduct and for poorly performing employees. Districts and schools also report that their dismissals and UPPAC referrals have greater details and care

Exhibit 3. Corrective Actions Taken for Cases of Misconduct
(Letter of Admonishment was first exercised as an option in 2005)

Action	2001	2002	2003	2004	2005	2006	2007	2008	2009	Total
Revocation (4 pending)	10	10	4	8	8	10	10	4	2	66
Suspension (3 pending)	14	4	12	7	10	8	11	11	4	81
Probation	0	0	3	1	3	4	5	2	1	19
Reprimand	3	3	6	7	4	6	16	4	1	50
Warning	6	0	4	4	4	5	5	5	2	35
Agreement Not to Teach	1	0	0	0	0	0	0	0	0	1
Letter of Admonishment					3	3	1	4	3	14
Total	34	17	29	27	32	36	48	30	13	266

when they have been developed in tandem with local police departments. Such cooperation leads to mutual support in investigations and an added level of protection to students.

Local corrective action sometimes creates concern at the state level. While quick action is needed at the local level to protect children and schools, there remains the concern that local action alone, without UPPAC notice and potential licensure action by the State Board, leaves the possibility that an educator who has acted unprofessionally, but still holds a license, could seek employment elsewhere in the public education system in the state and in the U.S. Quick action at the local level can sometimes lead to overly hasty action and thus a denial of some aspect of due process, which then becomes another legal hurdle for all involved.

Sometimes when a case is referred to UPPAC for further action, it appears that the district or school has not taken as decisive action as the misconduct might demand. Occasionally districts and schools have political, community or familial tension that bears on a case of misconduct. This may be especially true in smaller districts and charter schools where members of a board or district administration may have to address the misconduct of an extended family member or close friend who is an employee. In such cases, local authorities may determine that it is wiser to launch the case into the hands of the UPPAC panel and the State Board of Education where it results in licensure action and/or sends a message to the miscreant, even in the form of reprimand or warning, that the action could affect his career and not just his present job.

As helpful as that may be for local authorities, indecisive or inadequate local action for misconduct tends to send an uncertain message to the UPPAC panel. The uncertainty may lead the panel toward less consequential corrective action, even when the respondent may appear to be a liability to the system. A past example of this was a teacher who violated the expected testing protocol for standardized testing. The district consequence was a written reprimand and one

day of lost pay, and yet in front of UPPAC, the district was urging severe licensure consequences.

ADDITIONAL INFORMATION FRAMES THE ISSUES

A number of other data and factors weigh into the discussion of professional conduct in Utah's schools. **Some experts on the Committee noted that while some educators may understand ethical behavior during the school day, those same educators exhibit unprofessional conduct after school in extracurricular activities or in other "outside" associations with students.** Many districts and schools have ethical directives in place, but some do not. According to some Committee members, there are a few school employees that believe there is one set of expectations for teachers and another for non-licensed employees, including coaches and support personnel. Some districts and schools prefer to have their own local expectations and training while others, including charter schools, prefer that the Board, through the USOE, provides the expectations and training.

Employee misconduct that victimizes students is often the result of allowing or creating a situation for it to readily occur. For example, according to UPPAC officials, many of the 2009 cases of educator misconduct involving sexual acts with a student began with phone texting. Yet phone texting is also an efficient way for some teacher advisors to remind students and student leaders of time lines and changes in the school schedule for an event or of homework expectations or assistance. Some educational leaders believe that controlling technology is the key to controlling misconduct by students and teachers, while others make a rational plea to put technology to work in positive ways that thwart misconduct and encourage appropriate technology use. A few districts in the state are considering policies that would guide the appropriate use of new technology and software applications in schools. A statewide review of this matter would be helpful to all Utah school districts and schools, including recommendations for appropriate and inappropriate uses and practices.

LAWS AND BOARD RULES SET CORRECTIVE PROCEDURES

It is helpful to step back from the data and understand the governing laws, Board rules and procedures that guide decision-making with regard to public school employee misconduct. The authority granted the Utah State Board of Education is one of general control and supervision (Art. X, Section 3). In a 2002 Utah Supreme Court ruling in a case involving the Board's authority over local school districts, the Court determined that the Board cannot have general control unless it also has specific control (*Utah School Boards Association v. Utah State Board of Education*, 17 P.3d 1125). **Thus, the Board specifically controls the rules and policies that regulate both licensed and non-licensed employee concerns.** The Board's Constitutional authority gives it purview over all other aspects of the public education system and provides authority to set rules and regulations, as needed.

State law sets forth expectations of appropriate behavior for school employees, especially for school employees who are licensed to teach or administer in schools in Utah. These laws call for mandatory criminal background checks on all (licensed and non-licensed) school employees (53A-3-410; 53A-6-401; R277-516); outline the procedures for disciplinary action against educators including permanent revocation causes (53A-6-501); call for the mandatory reporting of physical or sexual abuse of students (53A-6-502); and allow for reimbursement of legal fees and costs to educators if they are challenged with legal action while performing duties within the scope of employment (53A-6-503). Additionally and importantly, state-mandated due process is assured for all licensed employees except, as per state law, those working in Utah's charter schools (53A-6-601; 53A-1a-512[3]).

Recently updated administrative rule adopted by the Utah State Board of Education contains the general standards expected of Utah educators, including the expectation to be role models of civic and societal responsibility and of maintaining a safe learning environment in school (R-277-515). These laws and this rule give rise to individual district and school respon-

sibilities and policies related to ethical behavior. For example, districts and charter schools must have policies for cyclical checking of criminal behavior of non-licensed employees under R277-516. This same rule also requires that all prospective licensed educators must have **background checks** every five years, and if offenses are identified then or in subsequent service, information must be provided to UPPAC (although, if not reported, is not punishable by penalty).

While the laws and rule outline, in specific language, unethical actions and possible results, they do not require (with potential penalty for inaction) the development of local policies on ethics in districts or schools. The state rule is not called a code of ethics or code of conduct, although the standards outlined in administrative rule are professional conduct expectations. Further, the standards set forth in administrative rule only address educators or licensed employees. There is no statewide code of conduct or set of professional expectations that is addressed and tailored to non-licensed employees. And again, while the rules cite the need for reporting educator misconduct to the USOE, they do not require such reporting with meaningful penalties. Thus, some districts and schools have carefully written ethics/conduct guidelines and procedures and report every case of educator misconduct to the UPPAC, while others may not have such guidelines and/or do not report cases of misconduct to UPPAC for potential action regarding licensure.

It is imperative that all employees in Utah's public schools are regularly screened for criminal behavior, and this process is now under way and expected periodically throughout the employment of both licensed and non-licensed public school employees. For a parent of any child, every school employee must be above misconduct that would harm children, rob the system of its resources, or undermine the public confidence in Utah's schools. Parents and children do not readily differentiate between the licensed employees and the non-licensed employees. Thus, the entire employee group working in Utah's schools must be regularly fingerprinted, monitored and screened for appropriate behavior and be representative of

excellence in nurturing and protecting our youth. Local districts and charter schools have recently been directed, by Board rule, to develop policies requiring cyclical fingerprint checks of all non-licensed employees which should occur at least every six years. Less or more extensive training or professional development is also warranted if employees may be disciplined for violating standards.

The fingerprint background file at DPS is now operating, although not yet fully populated, and is able to flag criminal behavior by licensed employees who have been hired since 1994 (as 1994 was the year when fingerprint requirements were implemented statewide). Districts and schools are working concertedly with DPS to add non-licensed employees to the database as well as all employees hired prior to 1994. One human resources director representing a large district reported that he currently had three employees working all day every day to establish and monitor these files for his district and to report and handle infractions. Completing the database and acting with dispatch on current infractions will continue to be a time-consuming operation and is costing tens of thousands of dollars for that one district alone.

VARIOUS TYPES OF LICENSES ARE GRANTED BY THE BOARD

As noted earlier, the State Board oversees the granting of licenses to licensed employees, both new employees and those who are in the renewal process. This is true for all educators, whether they currently teach in a district or charter school or are not currently employed but desire to renew a current license. Renewal is required every five years for each active, licensed educator. New licenses are granted following a fingerprint background check and a review of coursework and readiness to teach. Renewal of license is granted following a fingerprint background check, a review of service for current employees, of coursework for those who are not currently working in a Utah school, and of required earning of professional development credits. All of these processes are available online.

Earning the first license to teach is a matter of suc-

cessful completion of coursework as outlined by colleges and universities and as approved by the Board through a successful college accreditation process. Student teaching is usually the final college course requirement and the supervisor's report of a candidate's student teaching experience is a key to successful graduation and the recommendation for licensure. The supervisor's report includes a summary and rating of the candidate's abilities with the subject or grade content, the methodologies of teaching, classroom management, character and integrity and the candidate's emotional and social attributes that lend themselves to success (or not) in a public school classroom.

Other candidates who have graduated from college and have had life experiences outside of education, but who wish to teach, obtain the license by being hired in a district/school based upon their successful career experience and then complete a selected set of education-related courses. This is called **Alternative Routes to Licensure**. For new teaching candidates (traditionally prepared and those seeking the alternative route to licensure) and for all renewal candidates, the judgment to grant a license is delegated by the Board to licensure experts in the USOE who review preparatory coursework as well as the results of a background check and then make recommendation to the board for license.

REPORTS TO, AND COMMUNICATION FROM UPPAC CAN BE IMPROVED

It is expected that educator misconduct is reported to UPPAC in a timely manner. **UPPAC's hearing panel is composed of public school experts in Utah**, including practicing teachers, administrators, and community members. The process expands to include USOE lawyers, an outside hearing officer and witnesses, as necessary. The UPPAC panel conducts a legal review of misconduct cases involving only licensed employees and licensure is its focus, not employment. In these reviews, employees are heard, evidence is presented, and recommendations for corrective action related to licensure are rendered to the Board for consideration and final action. Licensure action of suspension or re-

vocation is action taken by the Board; lesser disciplinary actions such as required counseling are delegated to UPPAC. There are many lesser actions taken by UPPAC that are not reported to the Board.

Newly revised Board administrative rules indicate that the process for reporting misconduct includes reporting it to UPPAC. Educators are required by the rule to report known misconduct by their subordinates, but the more common district practice is to use committees to determine if employment action and referral to UPPAC are warranted. The standards and procedures for reporting and for determining licensure actions, as they currently exist in state law and in Board of Education rules, are inadequate, not well-publicized and not readily accessible to school personnel. See Section 53A-6-502 and R277-514. While many district administrators are often well-trained on criminal and ethical misconduct, the process for detecting, investigating and taking action on misconduct varies from district to district. As well, the judgment to refer to UPPAC or not also varies and is likely determined on varying standards.

A large constraint on UPPAC effectiveness is related to the reporting from districts and schools. State law requires, under penalty of law, that school personnel report child abuse to legal officers when it is known to them, whether that abuse occurs within or outside of the school setting. But reporting to UPPAC, though required in Board rule, is not required by state law and is sometimes omitted by some districts and schools. Thus, licensed employee misconduct is usually, but not always reported to UPPAC. It is possible, then, that misconduct, including misconduct associated with child abuse or sexual misconduct, is confronted only at the local level and licensure might remain in place even if local disciplinary action is taken against the school employee who has exhibited misconduct. Local action may be the only action taken on some licensed employee misconduct and local action cannot, by law, include forfeiture or suspension of license. What happens, then, with those who have been terminated locally for misconduct but who are still licensed by the state? They are free to seek employment elsewhere in Utah's schools or in schools across the nation. And if

their past behavior goes undetected and unimproved, it poses danger to students.

Reports of misconduct, once made public, can negatively reflect on a district or school and may become a deterrent to reporting to the state. It is true in Utah that there are some districts that have multiple records of reports to UPPAC while others, apparently spotless in conduct, or preferring to handle all misconduct through local corrective action, do not have any reports of misconduct registered with UPPAC. **Thus, the data reported in this study may not include many local misconduct cases that have occurred or reoccurred, but which were handled internally in districts and schools.** Nonetheless, state standards for determining when and which types of misconduct to report to UPPAC are inadequate and not commonly known, and need to be developed and strengthened.

The data relating to the nature and types of UPPAC cases (Exhibits 1–3) were tallied by hand and through a time-consuming process. As noted earlier, the categories are not ones known by districts and schools. The database could be far more useful and accurate if it used consistent definitions and classifications and was accessible electronically to all schools, districts and the state. The accuracy of claims regarding the number of misconduct cases in the state would be greatly improved by reporting all educator misconduct cases on such a database, whether handled locally or by UPPAC. Another powerful use of the database would be for targeted training for public school employees.

CHARTER SCHOOL EXCEPTIONS CREATE CHALLENGES

Due process is a right conferred by federal and state constitutions and cannot be denied by statute. However, **state law in Utah actually exempts charter school employees from the provisions of the Utah Orderly Termination Procedures Act** (Utah Code Ann. 53A-8-101 et seq.), allowing charter schools to treat their employees as “at will” employees. See Utah Code Ann. 53A-1a-512(3)(a). So while charter schools may, as they consider appropriate, give their employ-

ees rights beyond mere “at will” status, they are not required to do so in Utah. Thus, if an employee in a charter school has shown misconduct (licensed or non-licensed), he can be summarily dismissed without further report, hearing or notification to UPPAC.

Reports of misconduct and subsequent corrective action in charter schools are often not reported to UPPAC for further corrective action on licensure.

As one charter school principal noted about a teacher who came to school following obvious drug use, “I didn’t want the teacher in the building long enough to get data on his problem—it was apparent what the problem was, and I fired him as soon as I verified the misconduct.” While all charter school employees participate in the fingerprint process upon licensure and renewal, they will be outside of the UPPAC process if misconduct is not reported. Adequacy of training may also be an issue, as charter directors, trained locally, may not receive the same training or have the broader experience that is typical among district administrators.

THE UPPAC PROCESS IS COMPLEX

If a licensed employee is charged with misconduct inside the scope of employment or outside the scope of employment but with relevance to working with minor children, then licensure is in question and the employee should be reported to UPPAC for corrective action. The Board is directly involved in the deliberations about continued, suspended, or revoked licensure following recommendations made to Board members by UPPAC. **The corrective action process is thoroughly documented throughout and typically follows this pattern:**

- A district, school or other source provides a written report of suspected or confirmed educator misconduct to UPPAC; or, in the case of reinstatement, the educator seeks a reinstatement hearing following restitution and required improvement.
- An initial UPPAC meeting is held to discuss the initial report/complaint, and most often, the UPPAC attorney is dispatched to investigate the claims.

- Evidence is gathered, interviews are conducted, and claims are refuted or confirmed. In the case of reinstatement hearings, facts are also gathered and summary reports from experts are requested as evidence. It is important to note that while psychologists, counselors and other professional service providers may help an educator to resolve issues surrounding misconduct and then submit summary reports as evidence, such experts must be approved by UPPAC before they are acceptable for those purposes.

Even with UPPAC approval, ultimately the educator and/or his lawyer selects the exact service provider they wish to use, and the provider is paid by the educator. This could lead to at least the perception that the report could be skewed in favor of the educator. Indeed, in practice, one attorney associated with UPPAC noted that most professional reports, submitted as evidence for reinstatement, indicate the person is “ready to go back to the classroom.” But most providers do not have any expertise in the mental abilities required to teach. They make assumptions about the workplace, but may not have any experience as a public educator, and therefore, may not understand, appreciate or have familiarity with a “higher expectation of professional conduct” expected of public school educators.

- A UPPAC hearing, involving the UPPAC panel, may be necessary to hear the evidence about the matter and to deliberate what type of corrective action, if any, is to be taken or recommended to the Board. In the hearing, a legal officer presides, a State Office of Education attorney serves as the prosecutor and the accused educator is typically represented by an attorney as well. Both sides make an opening statement, and the facts of the case are presented. Witnesses may be summoned by either side and heard in testimony. The attorneys conduct direct and cross-examination and raise other pertinent questions. The case is heard in full and then all but the panel members and the hearing officer are excused. If the recommen-

dation is for a consequence or penalty less than suspension or revocation of license, the penalty is meted out by UPPAC.

- Recommendations for suspension/revocation/reinstatement of licenses are brought before the Board in an executive session of the Board, typically held on the same day as the Board’s regularly scheduled meeting.

There is only one mandatory action for a specified event of misconduct at the state level or as determined by UPPAC or the Board. **STATE LAW REQUIRES PERMANENT REVOCATION OF AN EDUCATOR’S LICENSE IF THE EDUCATOR IS CONVICTED OF A SEXUAL CRIME AGAINST A MINOR.** Beyond that, there are no automatic consequences for other specific behaviors; rather, each case is heard individually and consequences are determined on an individual basis. Some districts have outlined automatic, early actions they will take for some alleged misconduct. Granite District, as one of many, has a “zero tolerance” policy for sex or violent crimes, felonies, and certain drug or alcohol violations. Under its zero tolerance policy and upon allegations of misconduct for the specified infractions, the employee is immediately put on leave with pay, and an investigation is launched. Other schools and districts may place employees on leave without pay.

A case-by-case review, rather than pre-determined or automatic consequences for certain behaviors, has allowed UPPAC to weigh each case individually and independently. All of the current UPPAC panel members support a case by case review, rather than mandatory, pre-determined consequences for certain misconduct, claiming that by weighing each case individually, a more fluid process is provided which develops greater cooperation from reporting districts and schools. UPPAC members further express the difficulty of “post-holing” a behavior with a pre-determined punishment. Rather, each case is considered separately and consequences are recommended or determined according to the elements of the case and aggravating and mitigating circumstances.

While corrective action consequences are not pre-

determined for any one case, it is true that UPPAC operates with some “**threshold presumptions**” that typically tie specified corrective action to certain misconduct. Threshold presumptions are presumed corrective actions for a certain threshold of misconduct. For example, viewing pornography on a school computer during work time presumes a suspension of the educator’s license for two or more years. Consistent with state law, when sexual behavior with students takes place, licenses are revoked permanently with no hope of reinstatement.

But the threshold presumptions understood by UPPAC members are not in writing, nor have they been carefully discussed with the State Board, and they are not transparent nor understood by administering district leaders, practicing educators, or other school employees. This leaves the State Board without a full view of the options for corrective action and without a comparative understanding of common actions recommended by UPPAC. It can furthermore lead to a belief by some Board members, that UPPAC is not sufficiently rigorous in recommending tough actions for egregious behavior. Likewise, the lack of knowing that certain behavior will lead to certain corrective action eliminates an otherwise potentially effective tool for deterring misconduct. If practicing educators and other school employees knew of the likely corrective actions associated with certain misconduct, that knowledge itself may act as a deterrent to misconduct. Finally, it is vital for effective district leadership that district administrators know and understand presumptions that are in effect in UPPAC deliberations.

Even when threshold presumptions are understood and used in practice, there are occasional mitigating circumstances or aggravating factors that must be considered in some cases. Therefore, while predetermined corrective action may thwart the very purpose of holding individual hearings, threshold presumptions, used with an understanding that certain other factors may also have to be considered, provide a judicious framework for UPPAC determinations. This framework of threshold presumptions must be discussed by the State Board and made transparent to all public education employees.

UPPAC PANEL HEARINGS MUST CONSISTENTLY CONSIDER MANY FACTORS

The UPPAC panel process is a legal one that honors due process, and it is very similar to other legal administrative hearings: the respondent and his lawyer provide opening statements and ongoing testimony; the prosecuting lawyer representing the Board is rigorous in questions and cross-examination; panel members may raise any and all questions related to the case; witnesses occasionally testify both for and against the accused; facts are the focus of the meeting; and professional reports are accepted from experts whose expertise and credibility are weighed by the panel. But the actual deliberations of the panel appear to be fairly subjective—that is, while panel members are careful to think through many cogent issues, there are no written guiding parameters or weighing of issues to ensure that the panel regularly and consistently considers all concerns on all cases. For example, as panel members deliberate, it is clear that their chief concern is the safety and well-being of students. And yet, the harm done to students by past misconduct and the threat posed to them by potential future misconduct are not weighted as the primary considerations in their discussions.

Parameters and issues such as those which follow might be in writing for use in the hearing, and used to make the deliberations more objective and less likely to miss important and cogent points of a case.

- Was the misconduct a crime?
- Did the misconduct harm students physically or emotionally, and if so, how many students have been affected and for how many years?
- Did the misconduct harm others who are not students, and if so, how many others have been affected and for how many years?
- Has the misconduct been temporary and rare or often demonstrated and repeated?
- Was the misconduct so heinous as to warrant immediate and permanent licensure action, or is restitution and improvement a viable option?

- Is the misconduct associated with scientifically-recognized addiction and thus less suitable to restitution and improvement?
- Is the plan for possible reinstatement detailed, realistic and considerate of past harm done as a result of the misconduct?
- Is there ample evidence of contrition and restitution by the educator?
- Are there other remediation steps that might be required prior to reinstatement?
- If reinstatement is given, is the panel reasonably convinced that misconduct will not reoccur?

Through recent observation and a reading of a history of selected cases by the Committee Chair, it is clear that the UPPAC panel has been giving careful thought to these types of questions. Still, written parameters and weighting of factors would ensure scrutiny of all the factors in a case, ensure that the most important factors of the case prevail in assigning corrective action, and make the process more objective. In addition to questions listed above, some of the parameters used to evaluate teachers and student teachers might well be added.

Great teachers work to ensure that all students achieve. Whether students are well-behaved or rambunctious, accelerated or struggling, of poverty or wealth, great teachers work to “save” all students. Often, great teachers later become school administrators, but fail to alter their thinking when it comes to handling employee misconduct. In error, they may liken employee misconduct to student misconduct and then work, even for years, to remediate misconduct among adults. Public schools are not in the business of providing employment; they are in the business of protecting, nurturing, and teaching children. That is their first consideration. Students who are under the authority of inappropriate or ineffective educators become victims of the system. Those who are in authority to take action to insist on improvement or to take action toward dismissal of educators who exhibit misconduct must do so. This imperative is particularly true for those who sit on the UPPAC

panel. Their primary worry cannot be the well-being of the adult, nor the person's continued employment, although due consideration for improvement and respect for due process must be shown. The panel's primary concern must be in making decisions that are in the best interests of students, today and tomorrow. Written and weighted parameters would help to keep this focus.

UPPAC cases are rarely clear cut and linear, but are complex and informed by the actions of others who are involved in the matter. In some cases, the UPPAC hearing process is intertwined with criminal court proceedings and/or district employment action. Occasionally UPPAC refrains from taking action until court hearings are under way or completed. At other times, it takes immediate action and awaits further action pending court hearings. In some cases, courts and prosecutors are very aware that schools/districts must make employment decisions on a shorter timeline than criminal processes are concluded. In any case, UPPAC actions, although they may coincide with court deliberations, are taken independently from court action. The need to work with an understanding of court action in each case is another compelling reason for a case-by-case review by UPPAC.

Districts and schools that are awaiting UPPAC or court hearings may take immediate dismissal action or may place the employee on leave, with or without pay. Paying an employee who has been reported for serious misconduct while that employee is not on the job has inherent concerns. It is also very rare that an employee is required or able to repay the salary awarded while not on the job, if found guilty of the misconduct charge. At the same time, the employee may well be found innocent of charges. Such considerations are challenging ones for local administrators. Generally speaking, and as a matter of reinforcing the presumption of innocence, most districts will place the accused on leave with pay while an investigation is conducted.

Some records of criminal misconduct are expunged by courts upon request of the violator following the passage of time and with a renewed court hear-

ing. Expunging a record has the effect of erasing the record: it is as if the infraction never occurred. Thus, criminal misconduct by a school employee, if expunged, is erased from the employee's record, although maintained by DPS. Nevertheless, as permitted by state statute, UPPAC has access to expunged court records, so that it may fully review a file prior to issuing or reinstating a license.

REINSTATEMENT ACTIONS GENERALLY CREATE LIMITED LIABILITY FOR THE BOARD

According to UPPAC officers, about sixty percent of those whose licenses have been suspended do not seek reinstatement. When reinstatement is sought, UPPAC has a formal process provided for in administrative rule to review the case, and UPPAC requires a detailed review of the actions taken by the employee since licensing action occurred. The Board hears the final recommendation of UPPAC, receives a review of remediation activities and requirements, and then determines if reinstatement is appropriate. The Board has occasionally discussed the possible ramifications for granting reinstatement as it relates to the Board's or Board members' personal liability, when reinstatement is granted to those who have documented histories of misconduct but who have made restitution and correction. The Board also has expressed concern about the liability for districts and schools that may hire licensed educators whose licenses have been reinstated following restitution for past misconduct.

Can the Board reinstate a license following restitution and corrective action without worry about liability for having known about earlier misconduct, and can a district or charter school hire such an individual without concern for its own liability as well? A federal circuit court case in 1998 sheds light on the dilemma. The case supports the proposition that an employer who, upon hearing of allegations of employee misconduct and then acts "reasonably," is not liable for additional acts of misconduct of which it is not aware. The case of *Adler v. Wal-Mart Stores, Inc.* (10th Cir. 1998) involved sexual harassment between employees which was addressed per Wal-Mart policy. The employee

alleged that Wal-Mart's response was inadequate; the court found that an employer is not liable for all harassment that occurs if it takes appropriate remedial and preventive action.

In addition, a review of U.S. and Utah Supreme Court cases regarding employer liability for negligent hiring reinforces the same notion. Employers are not liable for negligent hiring unless they are "deliberately indifferent" to reasonably foreseeable risks based on information about the employee that the employer knew or should have known.

For example, the U.S. Supreme Court ruled in *Board of County Commissioners v. Brown* (1997) that a sheriff was not liable for an officer's use of unreasonable force even though the officer had a misdemeanor conviction for assault on his record at the time he was hired. A divided court found that the sheriff's failure to scrutinize the officer's record (the officer was also the grand nephew of the sheriff) was not an act of "deliberate indifference" where even a careful review of the record would not have caused the sheriff to know that the officer would use excessive force. The court noted that the assault charge arose while the officer was in college and found that "a finding of culpability simply cannot depend on the mere probability that any officer inadequately screened will inflict any constitutional injury. Rather, it must depend on a finding that *this* officer was highly likely to inflict *the particular injury* suffered by the plaintiff. The connection between the background of the particular applicant and the specific constitutional violations alleged must be strong."

The Utah Supreme Court follows this line of reasoning. In a case involving a West Valley City police officer molesting a young boy in a community youth program operated by police, the court held that "to show a city was deliberately indifferent in its hiring practices, actual knowledge of the applicant's problems *and their relationship to the damage caused* . . . *must be established*" [emphasis added]. The court also noted that intervening years of successful employment help negate the required connection between the hiring decision and the wrongful act. The court

continues, noting that a claim of negligent retention requires a showing that the employer knew or should have known about an employee's criminal proclivities and the damage that occurred was foreseeable. It is foreseeable that a teacher who molests a student may molest another, but it is probably not reasonable to expect a teacher with a DUI to move on to molesting students.

The Utah Supreme Court cited a 10th Circuit Court case that similarly held that a school district's hiring or supervision of teachers was not conducted with reckless disregard or deliberate indifference to student rights where the district was unaware of a teacher's prior arrest for sodomy until he was arrested for molesting a student (at the time, there was no reasonable means for the district to obtain criminal background information). The court also noted that the district may have faced liability if it had not responded to prior allegations of misconduct against the teacher, allegations that came from a phone call by a relative three years before, alleging abuse of her son. Immediately following the phone call, the principal investigated and took prompt action.

Finally, a district which hires a person whose license was suspended based on the non-criminal act of viewing pornography using a school laptop, then reinstated, is not liable for negligent hiring if that teacher then proceeds to use excessive force against a student. The applicant's problems and the relationship to the damage caused must be established. The processes followed by UPPAC and the Board are carefully prescribed and tailored to the individual misconduct of those who are accused. When a license is reinstated, reinstatement follows multiple considerations on the case and extensive reviews of restitution, remediation, and corrective efforts.

REVOCATION LANGUAGE HAS BEEN CONFUSING

Occasionally the Board has experienced some confusion about the effects of certain recommendations from UPPAC. One repeated example of this is when UPPAC has recommended revocation of a license for

a set number of years. Some have surmised that according to this recommendation, the license will be automatically reinstated after that waiting period. This is not the case and the recommendation is incorrect. In actuality, a revocation is a permanent loss of license and cannot be reinstated. UPPAC recommendations for revocation in the future should not include any language about possible reinstatement. If a license is revoked, the respondent may reapply, perhaps, for licensure at some later point in life, but the Board's action permanently removes the active license. Time frames may be included in suspension actions, but even then, the suspension may be for an indefinite period of time so as to not unduly create expectations of automatic reinstatement at a certain point in time. Reinstatement from a suspended license is conditional upon contrition, restitution, improvement, a viable plan of action for the future, and a UPPAC hearing, and not on the passage of time.

REPORTING AND WARNING SYSTEMS ARE INCONSISTENT

A consistent state reporting system that provides information about how to report public school employee misconduct does not exist. Such systems are more commonly found in schools and districts, when they exist. Nonetheless, claims of misconduct are periodically made by employees, parents and occasionally, from students. According to human resource directors, these reports are not increasing in number in recent years but they remain of great concern, even if there is just one verifiable report. It is daunting for children, licensed and non-licensed employees, and parents to report suspected misbehavior. Doing so potentially puts them in jeopardy of wrongful suspicion, retributive anger from a colleague, or creating havoc in their personal lives as such claims are investigated. Some parents believe there may be retribution toward their children or families. Children may not recognize growing concerns of inappropriate texting or of leading statements by adults in schools and if they recognize them, they may often be afraid to report them or unknowledgeable about to whom to report and how to handle such a concern.

Although lacking systematic data, Committee members noted that **teachers and other school employees report that they are often aware of concerning behavior** by other employees well before a building administrator is aware of such behavior, but may, as one of many concerns, be **uncertain about the level of proof they need to make the report.** So their early detection goes without report. Committee members further indicated that teachers and other school employees also report that oftentimes students know about inappropriate activities or relationships, but students, too, are either reluctant to report or without knowledge about how and to whom such a report should be given. As well, some indicated that administrators are reluctant to report or to act upon some reports as there is the perception by some administrators that reporting or taking action on employees will be so resisted or, indeed, fought by their associations, that the efforts are not worth the struggle. Misconduct can go unreported because the observer doesn't believe it is serious enough to report, is poorly documented and thus discounted, or is a matter that can be handled and eradicated between the building administrator and the employee.

Another potential deterrent to reporting or acting upon a report at the school building is the worry of false accusations. When a student makes a report, the investigating principal almost always needs to interview the accused as well as other students and employees who may validate or refute the claim. Once students are interviewed, and sometimes when other employees are interviewed, even with a commitment to full confidentiality, rumors begin. Such rumors, if the charges are false, can quickly damage reputations. Investigators/principals are highly restrained about what they can say about the case in public, even in their ability to refute obvious misstatements, and so rumors continue unabated until the investigation is closed. Investigations can lead to specific charges and further corrective action or can lead to full exoneration of the employee. But reputations may have already been damaged. Occasionally, false charges are deliberately made against an employee and stem from the result of the issuance of a poor grade, from

a disgruntled colleague, or from the acrimony of an employee's marriage or divorce. Thus, the reporting of misconduct is made more complex by the potential of a false accusation.

PROFESSIONAL DEVELOPMENT IS UNEVEN

According to members of the Committee, **professional development regarding ethical behavior for currently employed public school employees** is well-conceived and delivered in some districts and schools, but absent in others. Some school employees have a full day devoted strictly to learning expectations of professional conduct with direct instruction in appropriate behavior and a set of role-playing experiences during which employees make decisions about ethical choices. Other districts and charter schools indicate that they utilize ethical discussions in other types of professional development, but do not address it as directly. As education budgets in Utah tighten, the hours or days formerly devoted to professional development on any matter will decrease, leaving direct instruction about ethical behavior without the attention it demands.

Training for administrators in due process and in how to conduct investigations without incrimination is done inconsistently in districts and schools and in college and university education pre-service programs as well. Some students receive direct training on due process and even spend time in role model examples, working through the ethical considerations of various misconduct cases. Others do not have such experiences in college or on the job, but must learn about the processes while handling the misconduct itself. This scenario brings high stress to the situation and likely robs both the administrator and the accused of information and experience that would benefit the rational and careful handling of such concerns. Additionally, in previous years most misconduct in Utah's schools was handled only by the principal of the school building and was rarely referred to the district, much less the state. Current practice more commonly involves district assistance. Even so, **there**

is a lack of clarity among school and district leaders about what is reportable and what is not reportable to the district and to the state. Greater clarity and training is needed. Finally, there is such increased mobility among educators today compared to previous decades that it is increasingly important and imperative that the state and State Board learn about past misconduct of potential or current employees so that the information is available both statewide and to public educators nationally.

DIRECT INSTRUCTION ON ETHICS AND PROFESSIONAL CONDUCT IN COLLEGE IS UNLIKELY

Some might surmise that all school employees must surely come to their assignments having had a specific college course in ethical behavior. Such is not the case. A recent electronic search of courses of study for education majors in public and private universities in Utah showed that none offers a stand-alone course in ethical behavior. Some claim that ethics are embedded in all courses or taught in the context of another specific education course, which may well be the case. But if so, it is likely tied to the discretion of the instructor and may not be mastery-based in terms of knowledge and content. One district human resources director noted that the teachers being hired today are from a generation that is highly technology literate, but who may not understand the nuances about appropriate texting, Facebook sharing, Twittering and other types of communication through technology that may lead toward inappropriate relationships and behavior.

MODEST EFFORTS ARE UNDER WAY

In July 2004, the Board recognized the limited options for mentoring of beginning teachers and established the **Early Years Enhancement (EYE) mentoring program** for new teachers. The program supports new teachers in a host of ways as they learn to handle the demands of a classroom and begin their work in the field of teaching. The program is required by State Board rule, but remains unfunded systemically, although through June 2011 a federal grant is providing some support to the mentoring programs. Some districts add additional funds to their programs; others do not. According to state leaders, there is a very active consortium of district and charter EYE program coordinators who meet frequently, develop tools, and participate in professional development. About 25 districts participate at various levels, with ten having comprehensive programs. Cogent to this report, the EYE program also has a component of mentoring about ethical behavior and advice about professionalism in education. The program has a statewide presence, but as it pays additional funds to some 350 mentoring teachers, it is limited by budget constraints. The EYE program is directly tied to the expectation that (with or without EYE funding and additional program support) teachers improve their skills from Level 1 to Level 2 licensure and become fully qualified as per definitions of State Board Rule and No Child Left Behind after their first three years of service.

Most districts and schools have a specific, usually community-driven (by police, legal experts or social workers) **presentation on child abuse** that may begin as early as the second grade and may be repeated annually. Such presentations help children to learn what abuse is and how to report it and get help. Participation requires parent permission for student attendance and some districts and schools do not allow any student to come to the presentation without a parent by his side. Some, however, realizing that abuse at home may be the problem, try to provide a setting for instruction that is nurturing but direct, working to help a child understand when abuse has occurred and how to report and stop the abuse, whether it is at school or in other settings. But all of

these efforts represent a hit-or-miss, budget-constrained, and oftentimes crisis-driven process rather than a systemic, well-organized one.

In response to concerns about the need for direct instruction about ethics, the Utah State Office of Education is currently developing **an online tutorial for understanding ethical behavior**. The program is question-based and can be used as an assessment of employee knowledge about what is or is not appropriate with students. It will be used for licensure and renewal purposes. Barring significant budget cuts, the program will be completed and ready for implementation in fall 2010.

LICENSURE RECORDS CONTAIN UPPAC ACTIONS

Licensure records are contained in the Computer Aided Credentials of Teachers in Utah Schools (CACTUS) program, and CACTUS records are fully informed of UPPAC decisions and subsequent Board actions. Thus, a conscientious Utah hiring entity can search CACTUS records and be forewarned of licensure actions taken against licensed individuals who seek employment in its schools. It should be noted that CACTUS is only available to Utah employers and is only as accurate and timely as the information entered into it by districts, charter schools, the USOE, and the educator himself, but the records always contain UPPAC actions.

Utah generally accepts educator licenses from other states as long as Utah's licensing requirements are also met. Utah educators may apply for an educator license in most other states with the expectation that their license will be accepted and that additional requirements, specific to that state, will also need to be met. At the state level, Utah has access to a national clearinghouse of names of licensed educators who have had adverse action taken on their credentials. This list was initiated in 1987 by the National Association of State Directors of Teacher Education and Certification (NASDTEC) and contains over 40,000 names from across the nation. Utah submits an annual report to the clearinghouse. The national database protects children nationwide.

CONTRACTUAL AND LICENSURE APPLICATION LANGUAGE COULD SERVE TO STRENGTHEN UNDERSTANDING OF EXPECTED CONDUCT

The nature of annual contracts for education employees differs from district to district and from charter school to charter school. Some have assurances and commitments related to professional conduct; others are silent on those matters. An expectation of professional behavior is assumed by hiring agents and rightly so, as public school employees are, by nature and history, a highly ethical group. They are generally altruistic in their desires to serve children in their educational pursuits. Nonetheless, **the contract may be the best first place to state expectations of professional conduct while on the job.**

Another seemingly effective place to specify expectation of professional and ethical conduct is on the application for licensure itself. While the Board-approved professional standards could not be included in the application, an agreement to adhere to the standards could be included. In Utah, when a person is registering for the background check required at the time of student licensure, initial licensure, upgrade from Level 1 to Level 2 and every renewal thereafter, a licensed educator is asked to indicate a response electronically to the following question:

Have you ever had a credential revoked or suspended that has NOT been “reinstated” by the Utah Professional Practices Advisory Commission or by another standards board?

The application does not ask specific questions about a person’s criminal history, but does ask a general question about convictions for “violating any law except minor traffic violations,” including DUI convictions. The application does require a statement of verification above the applicant’s signature and the verification statement indicates that the state allows for license revocation for false information, but it does not demand revocation as an automatic result. The statement reads:

I verify that these statements are true and I understand this information may be used or provided to potential employers and to the Utah State Office of Education for appropriate licensure and professional development purposes. If a background check reveals that you have made false statements, your license may be revoked.

Reviewing the nature of the Utah application for licensure and employment may also be a good first place to detect potential misconduct or past problems with maintaining a license or job.

PART II. NON-LICENSED EMPLOYEES

The Committee did not spend as much time in discussing matters related to non-licensed employees as they did licensed employees, except on matters related to gathering data and expected standards of conduct. But even these two issues yielded only preliminary recommendations. More study is needed to expand the information currently available on non-licensed employees in this report.

Data related to non-criminal misconduct of non-licensed employees is not collected for the entire state. As mentioned earlier, a database of fingerprints for criminal background checks on all public education employees, including non-licensed employees, is currently under way in the Department of Public Safety. Districts and school must, by Board rule, require cyclical fingerprint checks on all non-licensed employees at least every six years. But this check is for criminal behavior only, not for behavior which may be deemed highly inappropriate but not criminal in nature. Non-licensed employees, even those who have lost employment due to non-criminal misconduct, cannot be detected by the system without a uniform state database. Of course, complete and honest employment applications can obtain such background information. Collecting non-criminal misconduct reports on non-licensed public school employees at the state level may serve to further protect students but also creates a large state burden. Districts and schools might just as effectively detect non-licensed miscreants by ensuring that careful reference checks are done on every employee candidate.

THERE ARE CURRENTLY NO STATE STANDARDS OF CONDUCT FOR NON-LICENSED EMPLOYEES. It is likely that non-licensed misconduct is handled variously in local districts and schools. The Committee did not conduct a search of standards or common corrective actions in local districts and schools for non-licensed employees, although it is understood by the Committee that they exist in local districts and schools. Conducting a search for local standards, and methods by which non-licensed misconduct is handled, would be an important next step in completing the review of professional conduct by all school employees.

It is important to note that many of the categories of misconduct for licensed employees include behavior that is not criminal in nature, but seriously unethical. Thus, the database created at DPS for non-licensed employees may not detect many types of serious non-licensed misconduct, should it occur. The Committee believes that as non-licensed employees often interact with students and have ready access to students during the school day, and as they are public school employees, like educators, they, too, should be held to high standards of conduct. The State Superintendent may determine to take action to create state standards for non-licensed employees or expect, by Board rule, that standards are ensured in local districts and schools, or the Superintendent may add non-licensed employees to the UPPAC misconduct database. In any case, the need for broad professional development to understand existing and new expectations is very important and such understanding by each non-licensed employee may serve as the best deterrent for misconduct.

3. WHAT UTAH CAN LEARN FROM OTHER STATES AND ORGANIZATIONS THAT SERVE CHILDREN

In an effort to understand how children are protected from adult misconduct in other settings, the committee reviewed a sampling of licensure and ethical conduct practices from other states as well as guidance related to leadership conduct from some youth organizations. The information they reviewed was gathered from state and organization Web sites and was limited to the available information. As well, the information was then distilled to include only key initiatives or specific information related to licensure and the application for licensure, background checks, and ethics guidelines.

The influence of adults on children is a feature of every community and extends well beyond their schools. Thus, with a desire to learn from others and to better utilize the strengths of outside organizations, as well as to find replicable lessons for use in our own state, the committee sought to understand general policies and procedures that are used to protect young people in youth organizations. It is important to note, however, that the states and organizations cited in this chapter still experience adult misconduct that harms children. Before any concept might be fully utilized in Utah, it would be vital to understand the degree of success that policies and procedures have had in curbing employee misconduct.

Each state in the U.S. has licensure procedures and rules that are similar to those in Utah; however, there are some procedural matters that differ from state to state. As well, state laws and State Board rules are similar, with some containing highly detailed information about misconduct and consequences while oth-

ers are more principle-based. Organizations that serve children have also taken action to ensure the safety and well-being of young people, especially when children are separated from their parents for age-specific instruction or activity. These include many churches in the U.S.

In **Utah**, this is apparent in the church setting for the Catholic Church, the Church of Jesus Christ of Latter-day Saints, and the Calvary Baptist Church, just three that can be referenced in this report. Oftentimes, these churches exercise “two-deep” leadership, ensuring that, when parents are absent, more than one adult is always with a group of children or young adults for classes and activities. Some require that one adult is male and the other female when the children are in coeducational settings. The Catholic Church has been very direct about warnings regarding the situations in which abuse might most likely occur and how to avoid such settings. They call their strategy *Situational Crime Prevention*. In 2003, the Catholic Church created *The Code of Ethics for Youth Ministry Leaders* that “professes the dignity and sanctity of all individuals, defines acceptable behavior, and establishes a benchmark for self-evaluation.”

Another national organization, the **Boy Scouts of America**, has a template for training and an organizational framework that is specific about preventing and reporting abuse. The organization has produced *Youth Protection Guidelines* for their Venturing program and an accompanying training program and video. The Venturing program of BSA is the young adult, high adventure program that is coeducational and includes

young people from 14 through 20 years of age.

Some key instructions from *The Youth Protection Guidelines for Venturing* include the following:

- How to handle suspected cases of sexual misconduct
- Setting up two-deep leadership
- Prohibition of one-to-one contact between adults and youth
- Separation of accommodations for males and females
- Respect for youth privacy while changing clothes
- Sleeping arrangement requirements
- Prohibitions on initiations and physical hazing
- Prohibitions of corporal punishment in any form

The guidelines also provide direction on other matters related to attire, safety, and the expected role of leaders. While the consequences for adult misconduct in BSA are not specified in the document, it appears from what is outlined that the “proper authorities” will be contacted and charges will be heard and investigated through legal channels.

In addition to the *Youth Protection Guidelines*, the BSA has created a 21-page handbook for parents of youth that includes a question and answer section that is frank and direct and targeted largely on ways to avoid and report abuse. It also includes counsel on how to talk with a child about abuse, and how to help a child if abuse is suspected or confirmed. The handbook includes suggestions about online behavior to avoid compromising situations. Finally, it includes many “what if” scenarios so that young people can realize how to take action if they have experienced or witnessed abuse. Comic books are available that also teach the basic rules for safety and protection from abuse. Scouts are also encouraged to keep a journal titled “My Safety Notebook” and include in their writing such items as their understanding of personal safety strategies, emergency contact information, parents’ phone numbers, and neighbors and friends who have been approved for help in emergency matters. In addition to this handbook, there are many videos which

reinforce safety and protection for youth in BSA.

There are some “pre-emptive” strategies employed by some states in the U.S. to help prevent misconduct by public school employees. Again, it is not yet known how effective these strategies are for detecting or stopping adult misconduct. Unfortunately, there is no known specific resource for the collection of national strategies in these matters. A more exhaustive discussion with every state beyond the electronic check done for this report would give a more accurate picture than the handful of scenarios offered here. Nonetheless, this report includes information from a few states that might be useful in strengthening prohibitions on school employee misconduct.

UTAH’S SURROUNDING STATES MAY PROVIDE HELPFUL IDEAS AND PROCEDURES

COLORADO. The Educator Licensing Unit at the Colorado Department of Education is responsible for issuing licenses, reviewing the content of educator preparation programs, induction and professional development, and disciplinary actions. Colorado’s House Bill 03–1114, implemented on March 1, 2004, requires licensure applicants to directly submit a complete set of fingerprints taken by a qualified law enforcement agency to the Colorado Bureau of Investigation (CBI), different in name but similar in function to Utah’s Department of Public Safety. The standards for licensure in Colorado include one titled *Democracy, Educational Governance and Careers in Teaching*. Within this standard is the expectation for teachers to “model, and develop on the part of the students, positive behavior and respect for the rights of others, and those moral standards necessary for personal, family and community well-being.” Renewal expectations specifically state the need for ethics training, among other content. Finally, an induction program is provided by Colorado schools, school districts, some private and charter schools, and other educational groups and includes supervision by mentor teachers, ongoing professional development and training, including ethics, and performance evaluations.

IDAHO. The Department of Education is charged with licensure matters, leadership for professional development, recommendations regarding educator preparation programs and standards, and disciplinary proceedings. In April 2009, a new handbook titled the *Code of Ethics for Idaho Professional Educators* was released. Based upon ten principles of preparation and conduct, the code is very detailed in describing the expectations for public school employee conduct with a focus on licensed educators. Interestingly, this version of the code manual was revised by the Idaho Professional Standards Commission and approved by both the State Board of Education and the Idaho Legislature (IDAPA 08.02.02.076). All adults working in Idaho public schools (licensed and non-licensed) or applying for licensure are required to have the results of a criminal history check (fingerprint check) on file with the State Department of Education. The Background Records Office, a subset of the State Department of Education, only checks fingerprints against the state’s Sex Offender Registry.

NEVADA. Nevada requires fingerprints only upon initial licensure; however, the prints are submitted to local, state, and federal law enforcement agencies via the Federal Bureau of Investigation. The application for licensure asks several questions about possible misconduct and criminal history including domestic violence and sexual-related offenses. Interestingly, special attention is given to questions about whether the applicant for licensure and renewal is obeying the orders of child support, if required. Applications for licensure carry a mandatory punishment of license revocation “for omission of any criminal history or failure to disclose action taken against a professional license.” This revocation warning is followed by an oath requirement, an affidavit requirement “under the pains and penalties of perjury,” and then the entire application is required to be notarized. An electronic search under the word “ethics” yielded no results on the Nevada teacher certification Web site.

ARIZONA. All licensed educators must pass the Arizona Educator Proficiency Assessment tailored to their specific assignment as teacher, principal or superintendent. One proficiency includes “applying

the principles of effective human resources management,” but it is unclear from Web site information exactly what objectives are included in this standard. Fingerprint background checks are required upon initial licensure and renewal, and are handled by the Arizona Department of Public Safety. A Web site search of the word “ethics” on the Arizona Department of Education Web site listed business classes for students and an organization for students titled Future Educators of Arizona (FEA), where discussions about ethics occur among many other topics. A related search for ethics for educators in Arizona did not yield information relative to educator standards and ethical expectations.

TWO HIGH STUDENT ACHIEVEMENT STATES HAVE VARYING EXPECTATIONS

Two states that are highly reputed for their student achievement outcomes are **CONNECTICUT** and **MINNESOTA**. Interestingly, Connecticut does not require a background check of its public school employees through a fingerprinting process. Minnesota, on the other hand, requires a fingerprint background check for licensure and renewal of all public school educators whether they are licensed or non-licensed and whether they are working in districts, charter schools, or academies. In addition, Minnesota collects both licensed and non-licensed employee background information at the state level, creating its own database of information relative to the conduct of all employees. Minnesota also has a separate and highly specific code of ethics (so named in Minnesota) for teachers and another one for administrators. They share similar language, but are highly specific to the differing roles of teacher and administrator. As well, Minnesota requires self-disclosure of misconduct to employers with penalty of corrective action if not self-disclosed.

LARGE POPULATION STATES CONFRONT MORE MISCONDUCT AND OFFER PROCEDURAL IDEAS

TEXAS and other large-population states are instruc-

tive, as it would seem reasonable to assume that they have had to confront a much larger set of misconduct cases due to the sheer size of the state's public employee group. Texas requires a fingerprint background check process. In addition, Texas has specified automatic consequences related to licensure for certain types of misconduct. Texas law requires educators to report colleague misconduct, with language as strong as that which is required in reporting child abuse. Texas has very specific language in its state rule information about what types of behavior will automatically cause investigation by the state's version of UPPAC. It also has an unmistakable set of questions and answers about the treatment the state expects of its young people in schools. The laws in Texas directly forbid, in clear language, physical mistreatment of students, soliciting or engaging in sex or "romantic relationships," and forbidding the furnishing of drugs or alcohol to students.

CALIFORNIA also has a strong pre-emptive strategy that occurs every time a licensed employee obtains or renews licensure. Each is required to provide background information including self-reporting of past infractions, if any. All must obtain a fingerprint check. Then, upon signature of the application, the employee witnesses through an "Oath and Affidavit" under penalty of perjury (a felony offense) that all documents and answers submitted are truthful and accurate. This penalty is of sufficient weight that if the employee has violated his oath, the affidavit is ready for court submission and, as the employee has committed a felony, his job and license are immediately revoked, permanently. In a recent discussion about preventive strategies with a teacher in California, the Chair of the Committee asked the teacher what preventive measures are in place in California. The teacher cited the oath and affidavit she had signed in her most recent renewal process. She indicated that it was clear to her, through such a process, that she would lose her job and licensure if she violated the code of ethics in California. She believes it is a strong deterrent in their state.

FLORIDA. Upon application for licensure or renewal, the applicant must verify and attest via an affidavit

that the information entered is true, accurate, and complete. A detailed code of ethical principles is outlined in state law and carries the warning that "violation of any of these principles shall subject the individual to revocation or suspension of the individual educator's certificate, or the other penalties as provided by law. Florida requires self-reporting within 48 hours "to appropriate authorities (as determined by district) [of] any arrests/charges involving the abuse of a child or the sale and/or possession of a controlled substance. Such notice shall not be considered an admission of guilt nor shall such notice be admissible for any purpose in any proceeding, civil or criminal." Criminal background checks via fingerprints are required of all "traditional and charter public school" employees. These are taken in district offices. But Florida also requires fingerprints and background checks, submitted to the Florida Department of Law Enforcement and the FBI for processing, for all employees of nonpublic schools in the state. Any fingerprint data that reflects criminal records is referred to Professional Practices Services for review.

SOME PRACTICES ARE COMMON AMONG THE ORGANIZATIONS AND STATES STUDIED:

- 1 "Two-deep" leadership/teaching is now required in many community organizations.
- 2 Specific codes of conduct or codes of ethics for leaders and teachers are written and publicized.
- 3 Handbooks for leaders outline in great detail what is expected of them as it relates to their code of conduct.
- 4 Young people and their parents have access to specific information about how to recognize and report abuse.
- 5 The requirement of fingerprints of licensed and non-licensed public school employees is beginning to be a norm throughout the U.S.
- 6 Applications for licensure and employment in public schools are beginning to be more specific and to require more detail. They are also including signed oaths and affidavits which carry a penalty

of perjury, dismissal and loss of license, if falsely completed.

Finally, it might be noted that some professional organizations for educators have established codes of ethics for their membership. The National Education Association (NEA), an association created primarily for supporting teachers, adopted their Code of Ethics for Educators in 1975. See <http://www.nea.org/bare/print.html?content=/bare/30442.htm>.

The American Association of School Administrators Statement of Ethics for Educational Leaders was adopted in March 2007. This organization is primarily composed of school and district administrators. See <http://aasa.org/SchoolAdministratorArticle.aspx?id=10544&terms=Statement+of+Ethics>.

The National School Boards Association Code of Ethics for School Board Members was first approved in April 1979 and most lately reviewed and approved in November 1999. This organization is primarily composed of local school board members. See <http://www.nsba.org/MainMenu/Governance/>

4. SUMMARY OF FINDINGS AND RECOMMENDATIONS

THIS REVIEW WAS INITIATED TO UNDERSTAND THE FREQUENCY AND NATURE OF MISCONDUCT CASES IN UTAH’S PUBLIC SCHOOLS BY BOTH LICENSED AND NON-LICENSED EMPLOYEES AND TO PROVIDE RECOMMENDATIONS FOR IMPROVING PROFESSIONAL CONDUCT, ESPECIALLY IN WAYS THAT MAY DISCOURAGE FUTURE MISCONDUCT. While available data has been cited, analyzed and reviewed in this report, some information in the report is anecdotal evidence, or relevant observation by experts on the Committee. The panel did not discuss practices related to non-licensed employees who work under local district policies as thoroughly as it did for licensed employees working under state policy. Therefore, recommendations related to non-licensed employees are more preliminary. This review reveals several important findings:

FINDINGS: LICENSED EMPLOYEES

- 1** Very few licensed Utah educators have been reported to the Utah Professional Practices Advisory Commission (UPPAC) for professional misconduct in the past nine years, and the reporting shows no upward trends of reported misconduct cases. However, of the misconduct that has occurred, the occurrence of sexual misconduct is of great concern as it is so damaging to the student victims and school community.
- 2** The current database of UPPAC cases includes only those cases of misconduct by licensed individuals that are reported by charter schools and districts, and then only for those whose misconduct, in the judgment of local officials, rises to the level of licensure review. The database has been hand-built with definitions and categories that are not universally publicized or used in the state.
- 3** Early results from the newly created DPS database show a troubling number of arrests, criminal charges or convictions that involve public school employees, although the time span used is still uncertain. Once the database is finalized, the data for licensed public school employees should be carefully scrutinized and the policies and practices for corrective action and deterrence should be reviewed. UPPAC referrals should be made as appropriate.
- 4** While there are standards for professionalism outlined in administrative rule for licensed employees, the standards are not widely or commonly known.

- 5 Training and education related to ethics and conduct is inconsistent across the state and among districts, schools, colleges and universities. While there is an electronic course in development, there is no Board-approved handbook or outline to guide such instruction.
- 6 A review of specific court cases indicates that when the Board reinstates a license following restitution, improvement, and completion of the steps required in corrective action, that the Board will not be held liable for future misconduct of that licensed educator, if any. The same is true for districts and schools that hire the educator with a reinstated license.
- 7 Guidelines and standards to determine whether or not to refer a case to UPPAC are inadequate and not well-publicized even among administrators, and definitions for types of misconduct are inconsistent across the state.
- 8 Not all misconduct by licensed educators is reported to UPPAC, and there is no penalty associated with the lack of reporting. Further, there is little incentive for charter schools to make such reports as most of their educators are treated as “at will” employees, per allowance by state law. As the Board has authority and concern for all students in Utah’s public schools, as trust is built or eroded by the actions of any public school employee, and as taxpayer money supports all public schools, the Committee believes that reporting must be required from all public schools and districts, including charter schools, and that failure to report should be subject to penalty.
- 9 The Board is unaware of the corrective actions or the denials of reinstatement taken by UPPAC alone, as such actions did not rise to the level of Board review.
- 10 “Threshold presumptions” used by UPPAC in corrective action decisions are not in writing, have not been discussed with the State Board, and are not transparent nor understood by practicing educators and other school employees.
- 11 The process by which UPPAC deliberates a case is fairly subjective on its face but may involve many key questions and other parameters related to the educator, his misconduct and the resulting damage caused from his misconduct. There are no written parameters or weightings to guide UPPAC deliberations. The Board is unaware of the questions or parameters that may be considered by UPPAC panel members in their deliberations.
- 12 The experts who provide UPPAC-required counseling services must be pre-approved by UPPAC. Their actual work, however, is paid for by the respondent, leaving room for at least a questioning of the allegiances of the professional service provider in making final recommendations to UPPAC hearing panels.
- 13 Licensure and employment applications do not require specific disclosure of past misconduct or criminal record, nor do they require signatures following an oath and affidavit with penalty of perjury for false or misleading statements.
- 14 There is some semantic confusion about Board actions on revocations and suspensions. Connotations regarding disciplinary actions are very important and current language does not adequately or accurately reflect the depth of the discipline.
- 15 The processes for reporting misconduct are unclear and are not state-defined. There is some confusion by individuals in understanding how to report misconduct, whether the report comes from a student, parent or public school employee. As a result, the Board may not be receiving a complete picture of the incidents of professional misconduct even by licensed educators. To assess concerns about professionalism, to train effectively, and to protect children compelled by law to attend school, the Board needs to ensure a more effective reporting process.
- 16 The Committee discussed its belief that a key focus of all associations that serve public education ought to be on encouraging professionalism and ethical conduct and that public education

students are best served when there is active and strong collaboration between schools, districts, the state, and educational associations.

- 17** Community organizations and surrounding states can offer Utah ideas on how to improve professional conduct and discourage misconduct, but Utah should carefully examine the actual results of other states and organizations before it moves toward full adoption of their practices.
- 18** The Committee observed that substantial cuts to public education in recent years translate to cuts in the number of adults who supervise and work with students in public schools as well as those who investigate references and handle misconduct concerns. This means fewer adults in each classroom, in the hallways and in after school events and fewer adults available for witnessing, reporting and/or investigating allegations.

FINDINGS: NON-LICENSED EMPLOYEES

- 1** There is no state record kept on non-criminal misconduct by non-licensed public school employees. A state database file for criminal acts by non-licensed employees is in development through the Department of Public Safety.
- 2** Except for criminal conduct, there are no standards of conduct outlined at the state level for non-licensed employees.
- 3** Early results from the newly-created DPS database show a troubling number of arrests, criminal charges or convictions that involve public school employees, although the time span used is still uncertain. Once the database is finalized, the data for non-licensed public school employees should be carefully scrutinized and policies and practices for corrective action and deterrence should be reviewed.
- 4** These findings have been discussed in detail in Chapters Two and Three of this report. The Committee wishes to emphasize five key principles upon which public schools should operate.

PRINCIPLES OF PROFESSIONAL CONDUCT FOR ALL PUBLIC SCHOOLS IN UTAH

- 1** Morality and ethics are foundations of democracy. Democratic societies are based upon the principle that citizens have adopted high standards of moral and ethical behavior and, for the good of society, they seek to act in harmony with those standards. Public institutions, including schools, must support and extend the teaching of these standards, and encourage and promote behavior consistent with the standards.
- 2** Integrity and responsibility must be ensured in public and private activities related to public schools. All public officials, including educators and other school personnel, should be working toward the public interest and with the public's trust. Therefore, they should exemplify high standards of moral and ethical behavior in their professional work, and should avoid illegal, unethical, or questionable practices even in their personal activities and behavior, but especially where public resources and public school students are involved.
- 3** School activities must be conducted in public. Standards of moral and ethical behavior can reasonably be assured when all practices and activities at a school and at school events are transparent and conducted in the public eye, with reasonable and regular reviews of practices and procedures. The expectation that one's behavior is likely to be scrutinized will eliminate many tendencies toward questionable practices.
- 4** School employee and student relationships should be conducted in public. Private relationships between students, public school employees, and between employees and business and community contacts that are not subject to public scrutiny should be viewed as potential problems and must be avoided or justified. This is particularly important with respect to non-egalitarian relationships where one person has the power or authority to manipulate, pressure, or gain access to students

or to access or grant access to public resources. It also has bearing on relationships where grades or other desirable outcomes might be influenced by the relationship. Some to consider include:

- Budget officers' relationships with vendors.
- Administrators'/supervisors' personal relationships with subordinates.
- Educators' and public school employees' personal relationships with students.

- 5 There must be protection against the abuse of trust. Educators have a particularly important role in teaching and promoting moral behavior. Goodlad (1990b, 1994) maintains that all teaching involves values and therefore should be guided by normative principles arising from the school's responsibilities to its students. These normative principles include providing students with equal access to educational opportunity, ensuring that students acquire the knowledge and skill to be productive citizens, and exposing students to the critical thinking and problem-solving skills necessary to maintain and improve the nation's aims (Fenstermacher, 1990; Goodlad, 1993, 1994; Soder, 1996). An educator's position of authority and prominence relative to students, places additional responsibilities to protect the sensitive vulnerabilities of students. Any violation of this trusted relationship, or any abuse of it, victimizes students, and should be considered an egregious offense that could result in sanctions or dismissal.

RECOMMENDATIONS: LICENSED EMPLOYEES

The Committee recommends to the State Superintendent that the USOE develop rules and resources to present to the Board in order to support the following recommendations:

- 1 **EDUCATION AND TRAINING** is at the heart of improving an understanding of professional conduct in Utah, and thus discouraging potential misconduct. Therefore:
- We recommend a review of professional conduct standards for licensed employees. The review might also include how these standards are titled, formatted, packaged, and made accessible. Determining mastery in understanding standards and developing an appropriate protocol(s) to measure mastery will be needed.
 - We urge the completion of an online course regarding professional and ethical conduct, and its implementation in fall 2010.
 - Using the Board's standards as guidelines, we recommend creating a handbook or outline to guide direct instruction in professional and ethical conduct for all public school employees and candidates for licensure, and another set of guidelines for students and parents to learn about how to detect and report abuse.
 - We recommend detailed training of all public school employees throughout the state with periodic meaningful reviews more often than just at points of licensure renewal. Following such training, participants should be asked, by signature, to affirm an understanding of training objectives, including the presumptions used in licensure proceedings, the definitions and examples of misconduct types that constitute violations in Utah, and the processes for reporting misconduct in their districts and schools. Training should be based upon the Board's standards for professional conduct and include model guidelines as well as specific reporting procedures.

- We recommend requiring proof of mastery of learning about professional and ethical conduct at the time of initial licensure, renewal of licensure, initial employment, and every five years thereafter for all employees, licensed and non-licensed.
 - We recommend a requirement for direct and specific instruction in professional and ethical conduct for all education candidates in Utah’s colleges and universities.
 - We recommend a requirement for direct and specific instruction in professional conduct standards, due process, reporting obligations and procedures, and professional investigation methods for all administrative candidates in Utah’s colleges and universities.
- 2** We recommend a **REVISION OF THE APPLICATION FOR LICENSURE AND RENEWAL OF LICENSE** to include more specific information related to past convictions and an affirmation by the applicant/candidate for renewal that the information provided is complete and accurate. The statement should include a specific acknowledgment that failure to provide complete and accurate information may result in licensure discipline and/or termination of employment.
- 3** We recommend a **REVISION OF ADMINISTRATIVE RULES** to require:
- The creation of confidential reporting processes for students, parents and school employees to report suspected misconduct.
 - A review of standards and timelines for reporting misconduct to the Utah Professional Practices Advisory Commission, and placing the action of not reporting under penalty. We further recommend that the Board, in consultation with district and school administrators, creates sample policies and “best practice models” for local districts and schools to guide their own hearing processes, with suggested presumptions and corrective actions.
- A review of misconduct that involves electronic communications between students and employees with possible revision of policies and rules that govern the appropriate use of new technologies.
 - The construction of an electronic, longitudinal data gathering system to report and aggregate licensed educator misconduct, to be used state-wide with common definitions and categories by schools, districts and the state.
- 4** We support the **CURRENT PRACTICE** that allows UPPAC to recommend corrective action on a case-by-case basis. But we strongly recommend that the “threshold presumptions” used by UPPAC in corrective action decisions be discussed with the State Board, and made transparent to practicing educators and other school employees. With respect to UPPAC, we further recommend that:
- UPPAC provides monthly written briefs to the Board of the actions taken by UPPAC that did not rise to the level of formal Board action.
 - Guidelines, parameters, and/or weightings be developed, including considerations of credibility or accuracy of expert testimony, and that these are discussed with the Board and used during all UPPAC deliberations.
- 5** Ensure effective and consistent monitoring of the criminal database file housed at the Department of Public Safety and ensure that appropriate corrective action is taken in districts and schools and through UPPAC.
- 6** We recommend that when the Board revokes a license, the formal statement is one that connotes a permanent loss of license.

RECOMMENDATIONS: NON-LICENSED EMPLOYEES

- 1** We recommend that the State Superintendent consider creating state-defined conduct standards for non-licensed employees.
- 2** We recommend that the State Superintendent consider whether or not to include non-licensed employees in the state database system for misconduct.
- 3** Ensure effective and consistent monitoring of the criminal database file housed at the Department of Public Safety and ensure that appropriate corrective action is taken in districts and schools.

THERE ARE COSTS ASSOCIATED WITH RECOMMENDATIONS

There are going to be costs associated with some of these recommendations. Data gathering software and reporting systems must be created, handbooks/ outlines and testing protocols must be written and published, testing locations and proctoring may be needed, and employees who create and operate software programs must provide support at the USOE and provide professional development to leaders in districts and schools. Broad and continuous professional development is required at each district and school so that all employees are aware of conduct guidelines, and consequential action for misconduct. Colleges and universities might well require a specific course in professional conduct and ethical behavior, which will be a cost item. Care should be taken in cost and time considerations as these recommendations are activated.

FURTHER STUDY SUGGESTIONS

During the committee's work there were other topics that were related to the discussion of professional conduct but not directly studied. **These items merit further study:**

- Review each district and charter school in Utah to determine if one or more might be found to be a model district as it relates to professional conduct and ethical behavior.
- Review evaluation processes used to gauge employee success and determine how evaluation might be used to reinforce professional conduct expectations.
- Determine the types of misconduct that should be reported to law enforcement agencies, thus strengthening protection to students.
- Gauge the understanding of current public school employees with regard to due process and dismissal procedures.
- Understand the value other states claim when they locate licensure in places other than the state's department of education.
- Understand how Utah licenses professions other than education.
- Gauge the effects that decreased spending in education will have on the ability to detect misconduct among school employees.
- Develop a greater understanding of other states' strategies for discouraging and handling misconduct cases in public schools with licensed and non-licensed employees and investigate their results.
- Conduct a search of standards for non-licensed employees in local districts and schools in Utah and in other states.

