

UTAH SCHOOL LAW UPDATE

Utah State Office of Education

January 2005

SHALL WE DANCE?

Many of us read the newspaper accounts of a male student who wished to attend a high school dance with another male.

The principal was understandably concerned for the safety of the two students and considered having the students get signed permission from their parents to attend the dance together.

While the principal's intentions were good, the permission idea was not.

The problem with the idea may become more clear for some readers if we substitute a bi-racial couple for the homosexual couple. Most educators react to the suggestion that a biracial couple get prior parental permission to attend a dance with an immediate "yikes," followed by, "that's discrimination."

The same holds true for the homosexual couple.

In fact, when we posed the question as a hypothetical to

members of the National

Council of State Education Attorneys, the official legal opinion was "yuck" (no, you won't find it in a law dictionary, but it is about as succinct as attorneys get).

Homosexual couples must be allowed to attend a school dance under the same conditions as any other couple. They may not be subjected to additional requirements that heterosexual couples are not subjected to.

Schools can impose requirements on school dances, such as only students from the school may attend. Except in rare cases, schools cannot tell some students they can attend under a different set of guidelines from all others. Administrators who have

reason to be concerned about the safety of students at school dances have one completely legal solution—

provide adequate supervision.

As one court implied, if the school can protect students at sporting events, where emotions are typically high and student aggression is common, then certainly it can protect students at a dance.

Adequate supervision means the ratio of students to adults is reasonable considering the age and maturity of the students, the activity and any known risks of harm.

If the administrators fear harassment of a particular couple, they need to be especially vigilant on behalf of the couple. They do not, however, need to provide an armed cadre of police surrounding the potential victims or a one to one ratio of chaperones to dancers.

Treat homosexual students as you would all couples; provide adequate supervision to ensure a good time is had by all.

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UPPAC CASES

- In 2004, UPPAC opened 44 cases:
- 11 cases involved sexual contact with students
- 7 cases involved teachers viewing pornography
- 5 involved drug and alcohol
- 5 involved theft or fraud of school district funds
- 2 involved testing protocol violations
- 13 involved other misconduct
- Thus far, 5 of the 44 cases resulted in revocations, 4 in suspensions, 10 in letters of warning or reprimand and two have been dismissed.

UPPAC Case of the Month

Last month many articles were written, including one in this publication, about religion in the classroom. While many educators are tired of hearing about the topic, it should be noted that educators who blatantly cross the line between church and state can be disciplined against their license by the Profes-

sional Practices Commission.

UPPAC recently considered one such case. The educator took it upon himself to discipline students for reporting to the principal that the educator had allegedly used foul language in the classroom.

To do so, the educator brought in a Bible from

his home and spent 15-20 minutes explaining his personal beliefs to the class. Those beliefs included that if a person swears on the Bible and lies, he or she faces eternal consequences.

The teacher in the UP-PAC case compounded the problem by inviting students, after his expla-

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Eye On Legislation

Legislators began filing requests for bills in Dec. As of publication, there are 6 education bills numbered and available for review and 41 bill requests.

Of the bills with text, two are old educator favorites, including Rep. James Ferrin's Tuition Tax Credit bill (www.le.state.ut.us/~2005/htmdoc/hbillhtm/hb0039.htm) and Kay Bryson's Medical Recommendations for Children (www.le.state.ut.us/~2005/htmdoc/hbillhtm/hb0042.htm).

For the bill requests, all that is currently available are the titles—which can be ominous.

Rep. James Ferrin, for example, has several bill titles on hold, including "State School Board Elections," "Charter School Enrollment," and "Charter School Student Selection Process."

Other bills have become annual offerings. Rep. Dave Cox has two bills related to his continual efforts to create smaller schools. Rep. Karen Morgan, a

constant champion for reading skills, has requested a bill entitled "Reading Requirements for Student Advancement" and "Reading Achievement Plans.

Rep. Lou Shurtliff will once again attempt to convince legislators to fund an "Appropriation for School Districts Impacted by Fee Waivers," a fight she has taken up for several years, and Rep. Margaret Dayton has revived her "No Child Left Behind Option."

New offerings include the intrigu-

ingly titled "Alternative Licensure of Public School Administrators" from Sen. Bev Evans, Rep. James Dougall's "School Community Council Membership," and "Declining Enrollment School Protection" from Rep. Dave Ure.

Special education students and teachers will receive some attention this year. Freshman Rep. Rhonda Menlove has requested a "Loan Program for Students Seeking Teacher Licensure in Disability or Special Education," Rep David Hogue will try to get "Air Conditioned Buses for Special Education Students," and Rep. Kory Holdaway seeks as yet unspecified "Special Education Amendments."

Recent Education Cases

Jackson v. Birmingham, Ala. Board of Education. Doc. No. 02-1672. The U. S. Supreme Court heard arguments in the case of a coach who was fired from his coaching position after he complained about the state of the girls' facilities.

The coach told school administrators that he thought the girls' basketball team had less access to the gym and equipment than the boys', perhaps in violation of Title IX.

After his complaint, the coach received negative evaluations and lost

his coaching job.

Rather than sue under the First Amendment for violation of his rights

to speak on a matter of public concern, the coach brought suit for discrimination against *him* under Title IX.

The coach argued that the students

need an adult to assert their rights for them. He was discriminated against under Title IX because he was speaking on behalf of the girls.

The school argued that Title IX doesn't give third parties the right to sue for discrimination against others.

The district court and 11th Cir. Court of Appeals both ruled against the coach, finding no private right of action for third party whistleblowers under Title IX.

A Supreme Court ruling is not expected for several months, but at least three of the justices indicated an unwillingness to create such a

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UPPAC cases cont.

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nations of the significance of the act, to come up to his table and swear on the Bible that he had said what he had been accused of saying.

Throughout his extended religion lesson, the educator continually stated that he was not violating state law because he made it clear these were his beliefs and the students did not have to agree with him.

The educator was wrong.

He absolutely violated state law. Educators may not discuss their personal religious beliefs with stu-

dents.



As court cases demonstrate, that includes not only a 20 minute presentation of a teacher's beliefs to a class, it also includes more

subtle acts, such as reading a personal Bible during a silent reading time in class, or having books

about one's personal religion in a classroom library, to the exclusion of all other religions. A teacher may also violate the law if he teaches a subject which does not involve religion in any way, such as math, but has religious books on display.

This educator's lecture on his personal beliefs and attempt to intimidate students with those beliefs clearly crossed the line, to the detriment of his students and his career.

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UPPAC Member Profile—Holly Peterson

Holly Peterson has worked in Cache School District for 31 years and is currently Associate Superintendent.

Ms. Peterson began her career as a 5th and 6th grade teacher and has also worked as an assistant principal, principal, and in director positions at the district level.

Ms. Peterson's long commitment to education may best be summed up in her own words; "there is not a greater profession than education. I can think of no other career that allows one to have such a significant impact on others."

That philosophy is reflected in Ms. Peterson's reason for joining the Commission. She views the Com-

mission as an opportunity to gain information that can help educators in their profession and which she can pass on to teachers in her district.

In addition Holly Potential Ho

tion experience, Ms. Peterson has served on the ski patrol and currently works on a board seeking alternative solutions for parole vio-



Holly Peterson

lators.

She is also an avid traveler, a interest she shares with her husband (who recently rode his motorcycle solo to the Artic Ocean) and two daughters (one of whom is in Germany with an exchange program). She and her family have traveled to every country in Western Europe and Russia (except the British Isles) and have hosted eight foreign students in their home.

When not globe-trotting, Ms. Peterson can be found skiing, body surfing or off on an adventure, such as wild water kayaking or hot air ballooning.

Your Questions

Q: What can a school do to prevent retailers from using the school name and mascot on merchandise without the school's permission?

A: A school can register its name and mascot as a trademark.

The name of a school is not copyrightable and can't be the trademark in and of itself. The school needs to create a distinct design for the name, using a particular font, color, etc.

The same is true of the mascot. A

What do you do when...?

bulldog, Spartan, or even a beet digger is not a trademark until the object is depicted in a particular, unique design.

That means that if the school got its bulldog, Spartan or beet digger mascot from another source, or uses a number of depictions randomly selected, for instance, from the Internet, it can't be trademarked. The design must be the school's own.

Once the name and mascot design is registered as a trademark, the school can enter into licensing agreements with retailers for authorized merchandise.

Protecting the trademark from unauthorized use, however, is also the school's responsibility.

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Recent Cases Cont.

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right where other, perhaps more effective, remedies are available.

Meanwhile in Alabama, a principal's termination for neglect of duty was upheld by the Alabama court of civil appeals. <u>Smith v. Bullock County Board of Educ.</u>, (2004).

The court found that the principal was ultimately responsible for ensuring that gate receipts from athletic events were deposited. The principal created a check-up sheet procedure for ticket sales but did not monitor the process to make sure it was actually working. The school lost \$25,662.25 through miscalculations

and/or theft. The principal claimed he had no further responsibility for the money once he crafted the checkup sheets, but the court found that

board policy made the principal personally responsible for the school's finances.

<u>Dean v. Utica Com-</u> <u>munity Schools</u>, (E.D. Mich. 2004). In the always fertile realm of student newspapers, a

Michigan court further defined the rights of student journalists.

The court found that the school's purported reasons for squelching an

article in the school newspaper were insufficient to justify the infringement on the student's rights.

The article reported on a lawsuit filed against the district claiming that diesel fumes from the district's bus garage created a nuisance.

The school argued that inaccuracies in the article was sufficient grounds to remove the article from the student paper.

The court found the inaccuracies were insubstantial and correctable. In short, the school did not choose the least restrictive means for handling its pedagogical concerns.

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The Utah Professional Practices Advisory Commission, as an advisory commission to the Utah State Board of Education, sets standards of professional performance, competence and ethical conduct for persons holding licenses issued by the Board.

The Government and Legislative Relations Section at the Utah State Office of provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

Our website also provides information such as Board and UPPAC rules, model forms, reporting forms for alleged educator misconduct, curriculum guides, licensing information, NCLB information, statistical information about Utah schools and districts and links to each department at the state office.

Your Questions Cont.

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Q: If a principal suspects students are using drugs off-campus but during school hours, can he contact the police?

A: Absolutely. The police can be called in to search the students for drugs if the principal has a "reasonable suspicion" of drug use.

A reasonable suspicion could be based on information from another, reliable student, smelling something akin to marijuana on a student, physical changes to the student during the day—such as red eyes, slurred speech, etc.— or other conduct by the student that is out of the ordinary.

The police can come in to do a drug test or search the student for drugs. If drugs or evidence of drug use is found, the principal

can take disciplinary action.

The police, however, may not be able to arrest the student. Police action can only occur if the police have "probable cause" to search or drug test the student. This

is a much higher standard than the "reasonable suspicion" of the principal.

A lack of probable cause does not prohibit the police from searching the student on behalf of the school, though it may prevent them from charging the student with a crime based on the findings of the search.

Whether probable cause exists is for the police to determine. The principal need only be concerned with whether his suspicion is reasonable under the circumstances.

Q: Is it legal for a school to pro-

vide incentives to students to "narc" on their fellow students?

A: Nothing in state law prohibits schools from encouraging stu-

dents to tell someone in authority at the school when another student is engaged in illegal conduct or threatening conduct harmful to himself or others.

Incentives, however, should be well-tailored to accomplish the safety goals of the schools, without encouraging students to make up reports just to get the reward or providing an incentive that creates an appearance of impropriety.

Raising a student's grade, for example, because he or she "narced" on another student would be an improper reward. Giving students a free movie pass would probably be okay.