UTAH SCHOOL LAW UPDATE

Utah State Office of Education

September 2005

Special Needs Scholarships - 2005

After working with legislators and other interested groups, the State Board of Education passed an emergency rule to ensure Special Needs Scholarships would be disbursed within the tight legislative time frame.

The Board continued to work through the rule and adopted a final version on Sept. 2.

So where do the scholarships and their recipients stand now?

Under the newly adopted rule, any public school student with an existing IEP is eligible for a scholarship—that criteria has remained unchanged since the law was passed.

Private school students who do not have IEPs may also be eligible if their private school specializes in serving students with disabilities.

A private school "specializes" if it (1) has a student body comprised of 80% (or more) students with disabilities, (2) is accredited as a "special purpose school" for students with disabilities under the Northwest

accrediting standards, or (3) employs licensed special education teachers, contracts with or employs related service providers and meets state caseload guidelines for serving students with disabilities.

As of press time, 207 students had applied for the scholarships. Of those, approximately 127 attended private schools that specialize in serving students with disabilities. One interesting note—several parents applied for and received the scholarship, but subsequently called the USOE to say they had changed their mind and decided to stay in public education.

The law was enacted as a school choice measure. As such, approximately 120 families have chosen to take advantage of the scholarship and leave public education for private.

To date, $945,564.94 in scholarships have been awarded. The law also provides for retroactive payment of tuition for families who attended specialized schools during the 2004-05 school year. Of the total awarded, $305,420.50 was for those retroactive payments.

UPPAC Case of the Month

On rare occasions, an educator whose license is suspended or revoked will appeal the Utah Professional Practices Advisory Commission's recommendation to the State Board or Superintendent.

These appeals typically center on the nature of the evidence presented in the Commission hearing, particularly hearsay evidence.

As any devotee of courtroom TV dramas knows, hearsay evidence is not allowed in court.

Hearsay is allowed, however, in administrative proceedings, such as a UPPAC hearing.

Hearsay is an out of court statement offered in the hearing to prove the truth of the matter asserted in the statement.

For example, if a student tells his mother a teacher touched him in a sexual way, the **mother's** statement in a hearing about what the student said is hearsay if it is offered to prove that the teacher did touch the student.

In contrast, if the student says in the hearing that the teacher touched him, that is direct evidence.

Both statements would be allowed in a UPPAC hearing.

Often, since UPPAC deals

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Inside this issue:

UPPAC CASES

- *The Utah State Board of Education revoked the license of Christopher Adam Evans for five years. The revocation results from Mr. Evans' inappropriate touching of a male student and accessing Internet pornography using school equipment.*
- *The Utah State Board of Education suspended the license of Leo R. Platero for one year. The suspension results from Mr. Platero's accessing pornography using school equipment.*
- *The Utah State Board of Education suspended the license of Ross James Wilkins for one year. The suspension results from Mr.*

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Eye On Legislation-Legislative Audit Editorial Comment

In July, the Legislative Auditor's office presented the results of an audit of school board compliance with the Open Meetings Act.

According to the auditor, school boards are rampantly out of compliance with the law.

In reality, however, while there are some areas of concern, school boards are not violating the law on a regular basis. In fact, the audit shows only four school boards are out of compliance since those four keep no minutes from their closed meeting sessions.

As evidence of "rampant non-compliance" among the 6 other districts included in the audit, the auditor cited the fact that closed meeting minutes were not reviewed or approved.

However, the audit also notes that such review and approval are not required in the law.

The next bit of evidence of non-compliance is the sheer number of closed meetings. The auditor found it suspicious that some boards had more closed meetings during the year than others. It was also suspicious to the auditor that the Utah State Board of Education had more closed meetings than the Utah State Building Board, the Transportation Commission and the Department of Environmental Quality.

What the auditor fails to note, however, is that, unlike the other groups the auditor compared the State Board to, the USBE has licensing authority. At every Board meeting, the Board, in full compliance with the Open Meetings Act, considers the professional competence of licensed educators in closed session.

Similarly, from year to year a local board may have more personnel or other issues that may be considered in closed sessions than in previous years.

The audit makes a blanket statement that closed meeting minutes are too brief, regardless of the topic discussed in the meeting. But the topic is the key. If the topic is an employee, the minutes are nonexistent, per the Act.

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Recent Education Cases

In re Removal of Keuhnle, (Ohio App. 12 Dist. 2005). Typically, school board members cannot be removed from office for ethical breaches or general incompetence, but they can be removed for "gross neglect of duty, malfeasance or nonfeasance" in office.

In this case, three school board members were removed for violating the Open Meetings Act in Ohio.

The members used closed sessions to discuss clearly public matters, failed to make any minutes from the sessions, approving contracts for family members and voting to employ family members. While each individual instance of misconduct might not have supported removal, the **pattern** of activity was sufficient.

Raitzik v. Board of Educ. of City of Chicago, (Ill App. 1 Dist. 2005): Dismissal of a 25-year veteran teacher was warranted for failure to complete a 90-day remediation plan.

The teacher had been placed under a remediation plan to address the lack of a discipline plan in her classroom, the lack of positive learning expectations, out of date record keeping, a lack of professional judgment and the lack of a safe and decorated classroom environment. The plan included 50 recommendations for addressing these issues and another educator was assigned to provide extensive assistance to the teacher.

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UPPAC Case of the Month (Cont.)

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with K-12 teachers, student witnesses are afraid to appear at a hearing so there may be limited direct evidence.

And that is typically the grounds for an appeal—the panel relied solely on hearsay in reaching its decision.

If the Commission panel relied on nothing but hearsay evidence to support its decision, the appeal would be successful.

But hearsay that is backed up by even a modicum of direct evidence is sufficient to justify a decision.

Thus, if a student won't testify in person that he was inappropriately touched, but other students testify to activities they experienced with the teacher that, in the eyes of the panel, support the claim, the decision is not based solely on hearsay.

Similarly, if the accused teacher denies the charges, but is found to lack credibility by the panel, the decision is not based solely on hearsay.

The panel's job is a difficult one. It must weigh the credibility of the witnesses and the evidence presented to decide whether to recommend a potentially life-changing penalty. These decisions are not taken lightly.

Because of the care exercised by the UPPAC panels, Commission decisions are rarely overturned by the Superintendent or the State Board—and never in Utah in a court of law.

Eye on Legislation (Cont.)

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The auditor applies his own definition of "detailed" to the requirements in the act that some topics in a closed meeting require "detailed minutes." While his definition may be a good one, there is nothing magical about the term "detailed." Whether minutes are sufficiently detailed does not rest on the auditor's definition.

The audit proceeds to blame the Utah State Office of Education and the Utah School Board Association for failing to train local boards on the requirements.

Nothing in the law requires these entities to train local boards on this issue, although both do provide information to boards about the Open Meetings Act.

And the auditor again fails to note that most of the questions about the act that USOE receives relate to employment issues discussed in closed meetings. Those issues do not need to be recorded in detail, and to do so may expose the Board to legal liability.

Further, the audit fails to note that two of the districts labeled out of compliance have attorneys on staff who are also capable of providing legal advice to their employers about the Act's requirements.

The audit is correct in two areas: first, opening the door to a closed meeting does not make it an open meeting, and second, the Open Meetings Act needs clarification by the Legislature. School boards, however, should not be lambasted as non-compliant with a law that is not as cut and dried as the auditor strives to make it appear.

Your Questions

Q: Can a district refuse to grant a home school exemption?

A: Probably not. Changes made to the compulsory education law during the 2005 Legislative session render it very difficult, if not impossible, for a district to deny a home school exemption.

Prior to the change, the law required that the parents provide evidence **satisfactory to the local board** of the need for the exemption. Presumably, this requirement was in recognition of the legal fact that the local board is the only entity that can exempt a student from the compulsory education requirements.

What do you do when. . . ?

Despite this legal reality, the state legislature removed home schoolers from the requirement of board approval and enacted a separate section which leaves no discretion to the local board.

Thus, a local board cannot deny a home school petition.

If the district has reason to believe that the parents are committing educational neglect, it can inform DCFS of its concerns, but it would still have to grant the exemption. The new law is very clear that the district may not make any inquiries of the parents about their plans or qualifications for home schooling.

Districts may, however, still provide home school parents with resources to ensure students are taught in the core with relevant materials.

Additionally, it would be very fair to

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Recent Education Cases (Cont.)

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Throughout the evaluation period of the plan, the principal noted that not only did the teacher fail to improve, things actually got worse in her classroom!

Following several consultations with the teacher, the principal notified her that he would seek her termination. The district agreed and the school board upheld the termination.

The teacher then sued claiming her termination was retaliatory. She stated that the principal's decision was not based on her failure for several months to implement any of the changes in the remediation plan, but because she had "gone over his head" on another matter in 2000.

The court rejected the teacher's arguments that she had not received due process before her termination or that her dismissal was retaliatory. It found ample evidence to support the principal and board's conclusion that the teacher failed to remediate her conduct.

Winn v. Hibbs (D.Ariz. 2005): A federal district court in Arizona has upheld the state's tuition tax credit law. Parents argued the law violated the Establishment Clause because public funds were given to parochial schools through "student tuition organizations."

The court found no violations where the law was not limited to private or parochial schools and allowed public and private school parents, or citizens without any children, to claim a tax credit for a donation to a tuition organization.

This is the latest in the very short line of cases upholding tuition tax credits where the credits are granted to a broad spectrum of parents, not just private school parents who enroll their students in a particular year.

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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.

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UPPAC CASES (Cont.)

Wilkins' accessing pornography using school equipment.

- *The Utah State Board of Education revoked the license of Michael Franklin Christiansen for five years. The revocation results from Mr. Christiansen's inappropriate sexual contact with at least two female students.*
- *The Utah State Board of Education revoked the license of Charles Richard McClure for five years. The revocation results from Mr. McClure's providing illegal drugs and alcohol to minor students, engaging in sexual conversations with students, inappropriately touching students, and using his school computer to access pornographic and inappropriate computer sites.*

Your Questions (Cont.)

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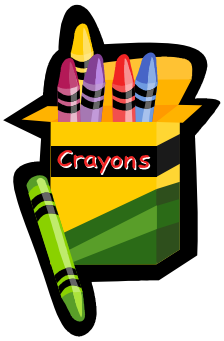
delay dual enrollment or to refuse to review home school work for credit if parent(s) have not fully complied with the law. Districts can access the new "Model Affidavit and Exemption Certificate for Home School Instruction" developed by the USOE. The form carefully satisfies and does not exceed requirements of the new law, including a notary requirement for parents. This form can be accessed at: http://www.usoe.k12.ut.us/LAW/Papers_of_Interest.htm.

Q: Can a school combine its pre-school and kindergarten classes?

A: Technically, there is nothing in the law that prohibits a combined pre-school and kindergarten class.

However, combining classes would create an accounting nightmare. Pre-schools, other than those established specifically for special education students, must be self-funding. No state monies can be used to support the pre-school.

Therefore, any supplies used in a joint class, teachers, equipment or other items funded with state funds must be carefully separated from those items purchased with tuition funds for the preschool students.



Deciding which crayons are state-funded and can be used by the kindergarten students and which are parent-funded for the pre-school students is a task few teachers would want to (or would have the time to) delve into during the school day.

While combining a pre-school and kindergarten may make financial sense from an enrollment point of view, the practical difficulties of separating the funds may create far more headaches than the school wants or needs.

Q: I want my student in another teacher's class. I know he would do better in teacher B's class and the district must accommodate my request, mustn't it?

A: No. Parents have no right to demand a certain teacher within a school, unless there is an IEP that refers to a specific teacher.

However, schools may be wise to make certain accommodations if there are grounds to believe a teacher and student have a conflict with one another or the relationship would otherwise cause strain on both teacher and student.

Schools are also wise to look into multiple requests for transfers out of a particular teacher's class.

While some teachers receive multiple requests simply because they have a reputation of being hard, others have much deserved reputations for being far less than even adequate educators, or worse.