

UTAH SCHOOL LAW UPDATE

Utah State Office of Education

April 2006

CONSTRUCTIVE CRITICISM?

Educators who are concerned about their schools or districts are not required to remain silent about those concerns. However, educators need to be aware that their speech against a school, district, or specific personnel can result in job action against them.

The line between valid criticism of a school, district or personnel, which may be protected, and defamation or other speech that will not be protected can be fuzzy. Often, dividing speech between protected and not begins with a question about the content of the speech.

A school district can prohibit employees from discussing matters of private concern in public.

These matters include complaints about an employee's assignment, complaints about internal district processes, criticism of administrators or coaches, employee compensation or other terms of employment, and statements or materials used in class that are not district approved.

In short, when a teacher complains about something that has a direct impact on his or her employment, it is more likely that his comments will be found to address a matter of private concern. If the teacher makes the comments to a newspaper or parents or in some other public setting, the teacher can be disci-

plined.

If, on the other hand, the educator is addressing the general health, safety or welfare of students, is discussing a matter of broad community concern, addresses employment issues related to all employees, or is concerned about potential wrongdoing or a breach of the public trust,

the speech is more likely to be protected.

A topic may be matter of public concern if it is addressed at an open school board meeting or a campaign issue in board elections, or if community

members have submitted petitions or letters to the district or board about the matter.

However, an educator's right to speak on matters of public concern may not include a right to disrupt the educational process.

Courts have found, for example, that educators could be disciplined for encouraging a "sick out" during final exams to protest budgetary mismanagement, <u>Stroman v. Colleton County School Dist.</u>, (4th Cir. 1993) but could not be demoted for ques-

tioning discriminatory application of disciplinary policies <u>Love-Lane v. Martin</u>, (4th Cir. 2004).

Educators can be disciplined for using school resources to further their speech. Educators may not use school computers, school time or other resources to further their speech.

Educators must also be careful not to make defamatory statements in their speech, even if it involves a matter of public concern.

Defamation involves a false statement of fact, or implying facts, that causes damage to the defamed persons reputation. If the false statements are written, the defamatory statement is libel. False statements made orally are libel.

An educator may have a difficult time proving a case for defamation, however, because many cases have found that educators are public figures. As public figures, an educators must prove not only that the statements were false, but also that the comments were made with "actual malice" to win an action for defamation.

School superintendents, principals, coaches, teachers, students and others have all been considered public figures in some contexts, primarily because of the amount of public inter-

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UPPAC CASES

• The Utah State Board of Education accepted a Stipulated Agreement for revocation of Sheridan Prince's educator license. The revocation results from Prince's inappropriate relationships with female students.

Eye On Legislation-Action in Other States

VIRGINIA

The Washington Post reports that Virginia has passed a law requiring schools, starting with the 2006-07 school year, to **teach kids about internet safety**.

The legislation follows on the heels of federal and state sting operations across the nation that have uncovered more and more adults soliciting young people

for sex.

It also reflects the reality that students are sending inappropriate and potentially dangerous photos of themselves and sharing personal information with strangers across cyberspace.

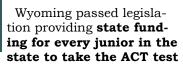
Given the growing safety concerns and challenges posed by the Internet, this type of legislation may be in the future for many more states.

Utah has similar legislation already in place, but no entity is required to provide the education. Instead, Utah's law requires that the Attorney



General make training and informational materials, including classroom presentations, available to

parents, educators, and children.



for college admission. The legislation is paired with other legislation establishing scholarships for Wyoming students who attend college in Wyoming.

Billings Gazette.

Contrast this legislation with attempts in the 2006 Utah Legislature to allow colleges and universities to charge \$30 per credit hour for concurrent enrollment.

Seems Wyoming might have a better strategy to encourage students to participate in higher education.

In the "if only Utah had Bill Gates, not Patrick Byrne" corner, Washington state has created a cabinet-level position in the governor's office to address early-childhood education.

The position, funded with a pledge from the Bill and Melinda Gates Foundation of \$90 million over the next 10 years, will combine existing state programs dealing with early

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Recent Education Cases

Hadley v. Rush Henrietta Central School District, (NY D.Ct 2006). The court prohibited the school district from removing a student from the school lacrosse team.

The student had obtained an immunization waiver from the district for religious reasons. The school policy "recommended" that student athletes have tetanus shots and provided that the school could "withhold sports clearance for a student whose tetanus is overdue."

The parents claimed the school was violating the student's right to free exercise of religion by forcing him off the lacrosse team.

The court noted that the immunization law applies to school attendance but there is a legitimate question whether a school can prohibit a student from participating in extracurricular activities based on an immunization waiver. However, the court noted that, while a student does not have a right to par-

ticipate in extracurricular activities, a school cannot discriminate against potential participants on an impermissible basis, such as religion.

The student, the court ruled, must be allowed to play on the team until a ruling is made on whether the immunization waiver applies only

to school attendance, or if it in-

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Constructive Criticism cont.

(Continued from page 1) est in education.

In the words of one court, "we can think of no higher community involvement touching more families and carrying more public interest than the public school system." Johnson v. Corinthian Television Corp., (Okla. 1978).

Or, as stated more recently, "members of society are profoundly interested in the qualifications and performance of the teachers who are responsible for educating and caring for the children in their classrooms." Kelley v. Bonney, (Conn. 1992).

On the other hand, because the public's interest in education is so great, those who have the responsibility to educate children are encouraged to speak out about school matters and school personnel without fear of liability or retribution.

Thus, there is a qualified immunity from defamation claims for complaints about an educator's performance, improper behavior by educators, or allegations of mismanagement. To succeed on a defamation claim, the accused educator would have to prove actual malice on the part of the person making the criti-

cisms.

If, however, someone claims an educator is guilty of a criminal offense, **knowing such claims to be false**, the statements per se injure the teacher's reputation and are defamatory regardless of the intentions of the person making the statements.

Thus, educators have limited protection against defamatory statements and greater protection for their speech on matters of broad public interest.

Eye on Legislation Cont.

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childhood development, including day care and preschool, into one department. That department will provide referrals for parents, education for parents and early learning educators, and child-care subsidies. Seattle Post-Intelligencer.

Meanwhile, Utah has Patrick Byrne who has provided hundreds of thousands of dollars to antipublic education candidates and causes, including current attempts to oust legislators who are opposed to vouchers.

Much like Utah's move to tougher graduation standards, Michigan has passed a law requiring 4 years of English, 3 1/2 years of math, 3 years of science, 3 years of social studies, 2 years of foreign language, 1 year of physical education, 1 year of Arts and **completion of at**

least one course over

the Internet for students intending to graduated in the class of 2011. *Detroit Free Press*.

North Carolina has joined the fifteen other

vide additional revenues for education. The state expects to raise approximately \$400 million from its lottery this year. Perhaps more importantly, Governor Mike Easley has suggested

states that use a state lottery to pro-

amending North Carolina's Consti-

tution to ensure the state legislature does not use lottery funds to supplant general fund revenues for education. Raleigh News and Observer.

Finally, South Dakota has passed a law **mandating that students attend kindergarten**. Rapid City Journal.

Like Utah, South Dakota had provided for kindergarten, but did not require parents to send their students to school until first grade. Beginning in 2010, compulsory education will begin with at least a 1/2 day of kindergarten.

Your Questions

Q: What are limitations are there on searching a cell phone? Many students have camera phones and they may also have the capability of downloading content from the Internet. If I have reason to believe there is inappropriate material on the cell phone that the student is sharing with other students, can I search it without worrying about a lawsuit?

A: If you have a reason to believe students are sharing inappropri-

What do you do when. . . ?

ate materials at school, you can conduct a search of the phone to the same extent you could search a student's purse or backpack if you had a reason to believe the student was carrying inappropriate materials onto campus.

You can also search if the students are sharing inappropriate

photos off campus but discussing the photos on campus, causing a disruption in class or elsewhere in the school.

Perhaps the most important step, however, is to have a policy in place informing student's that their cell phones may be confiscated and searched.

Q: Can our school have a policy that student grades across the board will be based on a 90% at-

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Recent Cases Cont.

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cludes participation in extracurricular activities.

Moss v. Shelby County, (Tenn. D. Ct. 2005). A federal court ruled that a school should have accommodated a student with asthma in applying its disciplinary policy.

The student suffered an asthma attack, requiring a call to paramedics, during gym class. The school policy stated that students who are unprepared for class (in this case, the student forgot his

gym clothes) will spend class do-

ing jumping jacks, situps and walking. The student suffered an attack while performing the punishment.

The Americans with Disabilities Act requires schools, among others, "to modify standard procedures to ensure that disabled individuals are receiv-

ing the same benefits and opportunities as non-disabled individuals."

The school was aware of the student's disability, and knew he had experienced three prior attacks at school. Thus, the court ruled, it had a duty to "modify the school's standard punishment to accommodate Clinton's condition."

Because the school did not modify its standard practice, Clinton was unable to finish the school day, depriving him of the benefit of public education for the remainder of the day.

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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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A: No. A Utah Attorney General's opinion from 1983 still stands as good advice.

In that opinion, the AG's office determined that students who have earned a grade in a class based on performance cannot have that grade arbitrarily lowered due to attendance.

A teacher can lower a grade for attendance **if** the teacher can show that attendance is a vital component of the class—such as a P.E. class or science lab where attendance is critical to student achievement in the class.

Schools can also include citizenship grades as part of the student's transcript and G.P.A. that can include attendance and discipline in the calculation of

the grade.

Q: Can our school district adopt a policy closing a particular program to non-resident students?

A: Not as a policy. Every district must go through the annual process of declaring schools and programs open or closed for school choice purposes. To have a long term policy closing any one program to choice

circumvents the choice statute and is subject to legal challenge.

This does not mean that the district can't declare a program that is at capacity closed every year, but it does need to make an annual statement, not adopt a blanket policy without requir-

ing periodic review.

Q: Can our school deny enrollment to a student who does not have an immunization record?

A: Yes and no. A student is not required to be immunized if he or she has a medical or "personal belief opposed to immunizations." See U.C. § 53A-11-302.

The student does need to provide proof of the medical or personal objections to the school in the form of a doctor's note or a form completed at the local department of health.

Students who do not object but haven't received all required immunization on time can also be enrolled under the condition that the student has had at least one dose of the vaccine.