

UTAH SCHOOL LAW UPDATE

Utah State Office of Education

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Inside this issue:

UPPAC Case of the Month Eye on Legislation 2 Recent Education 3 Cases Your Questions 3



UPPAC CASES

- The Utah State Board of Education reinstated Nathaniel Meeks Morrell's educator license.

 Morrell's license was suspended for 18 months for using school computers and information systems to view pornographic materials.
- rhe State Board accepted a Stipulated
 Agreement suspending Kelly Jo Larsen's license for 18
 months. Larson's suspension results from being under the influence of alcohol at school during contract hours.

Arizona Strikes Down Vouchers

The Arizona Supreme Court ruled unanimously that two Arizona voucher programs violate the state's constitutional prohibition against providing state monies to private or sectarian schools or public corporations.

The Court did not address the state's Religion Clause in its analysis but focused solely on the Aid Clause which is designed to protect the public treasury and public schools.

The programs the Court struck down are the Arizona Scholarship for Pupils with Disabilities Program and the Displaced Pupils Choice Grant Program.

The Arizona Scholarship for Pupils with Disabilities Program provides students with disabilities a scholarship equal to the amount of basic state aid to attend a private school of the student's choice.

The Displaced Pupils Choice Grant Program provides state money for children in foster care to attend a private school of their choice.

Much like Utah's Carson Smith Scholarship Program, students may choice a private or sectarian school and the state money is paid to the parent who must restrictively endorse the check to the selected school.

A parent, Virgel Cain,

sued the state superintendent, Tom Horne, to enjoin the programs. Cain alleged that the programs violated the state's constitutional provisions against religious entanglements and aid to private or sectarian schools or public corporations.

The Arizona Court of Appeals had determined that the programs did NOT violate the state's Religion Clause because the parent's chose where to send the money, not the state. The court did find that the programs violated the Aid Clause.

On appeal, the Arizona Supreme Court did not address the Religion Clause finding but focused on the Aid Clause.

The Superintendent argued that the Aid Clause should be construed in the same manner as the Religion Clause and that

no violation had occurred because the money is forwarded to the parent, not the school.

The Court found that the Aid Clause isn't about the endorsement of religion, but is about protecting public funds and public schools. As such, it could not be interpreted using the standards of the Religion Clause.

The Court reviewed the history of the constitutional provision and found that the framers viewed a strong public education system "of prime importance." To ensure the strength of the system, the framers sought to prohibit the "appropriation of funds from the public treasury to private schools."

The Court found the fact that the checks went to the parents "immaterial" under the Aid Clause. It noted that "once a pupil has been accepted into a qualified school under either program, the parent or guardians have no choice; they must endorse the check or warrant to the qualified school." To claim that this is not direct aid to the school, the Court

reasoned, would be to "nullify the Aid Clause's clear prohibition against the use of public funds to aid private or sectarian education."

Thus, the two programs violated the State's prohibition against aid to any private school.

The Court also ruled that the parent and his fellow plaintiffs are entitled to attorneys' fees "not to exceed forty percent of the amount saved by the State by way of this action."

Eye on Legislation

Oklahoma: The Oklahoma Senate passed a bill that would allow schools to ignore any state mandates from which charter schools are exempted. This includes class size requirements, all-day kindergarten, advanced placement courses, and educator licensing.

All schools would still be required to meet minimum salary schedules, provide health benefits, and conduct criminal background checks. The Oklahoma Education Association opposes the bill, the Oklahoma School Boards Association supports it. *Source: Tulsa World 3/11/09.*

Oregon: The Oregon Legislature is considering a stack of bills designed to prevent school districts from "passing the trash."

Following a local newspaper exposé on teachers accused of sexual misconduct with students who left their districts with confidential agreements providing cash, benefits, and letter of recommendation in exchange for the teacher leaving the district, the Oregon legislature seeks to end the practice.

The Oregon House Education Committee is looking at bills that would ban secret deals requiring the district to suppress or expunge information about sexual misconduct. The bill would also allow parents to sue the district that covered up the conduct if the teacher reoffends in another district.

The Senate Education Committee will look at barring anyone who is disciplined for sexual misconduct from working with children in schools, colleges, or child care. The committee is also considering legislation that would give the state's licensing commission the authority to prevent a student teacher from applying for a license for a period of time if the student teacher engaged in misconduct. Source: Oregonian 1/24/09.

Utah: The Utah Legislature passed a bill which requires districts to permit the child of an active member of the armed forces to either attend the school where their parent resided before being called to service, or to live with an adult designated by the parent without requiring court-ordered guardianship.

The law creates an exception for the first timefrom the Sept. 2 enrollment statute, requiring that a district enroll a military child who does not meet the deadline if the student has previously

attended kindergarten or a higher grade in another state.

The law also requires that the district expedite the transfer of the student's records and work with a senior-age student and the student's former school to help the student graduate on time. *Source: H.B.* 194.

UPPAC Case of the Month

State law and State Board of Education rule prohibit teachers from accessing or possessing inappropriate material on school property, regardless of the format.

In the past, the rule was violated by teachers bringing in *Playboy* or some other inappropriate viewing material and storing it in a closet or filing cabinet.

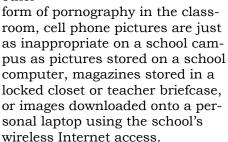
In the Internet age, the rule is often violated by a teacher using school computers or the school's Internet to access pornographic images.

And in the cell phone age, the rule is violated by keeping inappropriate, pornographic photos of oneself or others on a personal cell phone that is accessible to students.

While school administrators are barred from randomly viewing the images on a teacher's personal cell phone, if a student happens to pick up the phone and see a nude photo of the teacher or his significant other, or a complete

stranger, the teacher may face licensing action.

Like any other



Which is why educators are required to leave their nude photos at home, regardless of format.

For those with personal cell

phones, if the images are on it, the phone should not be at school. Or, at the very least, the phone should be "locked" and kept out of sight and reach of students.

On another cell phone topic, teachers must also be willing and able to respond to overly familiar text messages from students with very clear statements that the messages are inappropriate. And if a student should send a teacher an inappropriate photo of herself, the teacher should be ending such communications immediately and informing the student's parents of the student's ill-advised, inappropriate, and illegal conduct.

Cell phones are valuable tools. But even a personal cell phone must be used appropriately while on school property or when dealing with students on or off school time and school grounds.

Utah State Office of Education Page 2

Recent Education Cases

Baar v. Jefferson County Bd. of Ed. (6th Cir. 2009). The Sixth Circuit Court of Appeals upheld a blanket restriction on a teacher, Mr. Baar, prohibiting him from "communication in any form" with another teacher.

The school district imposed the restriction on the teacher in 2002 after he sent several letters to the teacher warning her of increasing danger to her and her family.

Though the teacher moved to another school, the Memorandum of Understanding barring Baar from communication with the teacher remained in effect.

In 2005, Baar sent an innocuous email to the teacher telling her he would be attending a chemistry teacher's association meeting and would bring his dues money with him. The teacher was listed as the RSVP person for the meeting.

Baar was then disciplined for violating the Memorandum of Understanding by contacting the teacher and told he could not attend the meeting.

The Court upheld the discipline for contacting the teacher but rejected the district's attempts to prohibit Baar from attending the meeting.

First, the court noted that the letters for which Baar was initially

disciplined were not protected by the First Amendment since the letters did not address a matter of public concern. Moreover, the letters "had a detrimental impact on close working relationships . . . and interfered with the regular operation of the school." The final email for which Baar was disciplined similarly did not involve a matter of public concern and, therefore, was also not protected speech.

But Baar's associational rights were trampled by the district edict preventing him from attending the



chemistry
teacher's meeting. The meetings do involve
matters of public concern—
ways to improve
science education across the
state—and the

school district went too far by insisting that Baar could never again attend the meetings. While the district wanted to keep Baar from communicating with the other teacher, it could do so in a less restrictive manner than prohibiting Baar from ever attending a professional association meeting.

Gay-Straight Alliance of Yulee H.S. v. School Board (Fla. Dist. Ct. 2009). A federal court in Florida ruled that a school district's insistence that a student club change its name before it could be approved was found to be an unconstitutional restriction on the club.

Two students applied to form a Gay-Straight Alliance at their high school. The school board denied the application based on its chosen name of "Gay-Straight Alliance." (Utah has a similar statute that permits a board to require a name change).

The Board justified its decision by stating that the name of the group would be disruptive, the group's message violates Florida's abstinence only law, and there is no limited open forum at the high school allowing for discussion of sexual orientation.

The Court rejected all of these arguments, citing case law from several jurisdictions refuting each of the school board's claims. In its final order, the court prohibited the board from requiring that the club change its name and from interfering with the club or retaliating against anyone involved with the club.

Your Questions

Q: A student was showing pornographic pictures on his cell phone to other students. We confiscated the phone but the parent showed up soon after demanding that it be returned to her. Must we return the phone?

A: No. Showing pornography on school grounds is a crime. The phone used to commit the crime, and the photos on the phone, are evidence and the school can and must confiscate the phone in order to preserve the evidence.

What do you do when. . . ?

If a phone is used in a manner that violates school policy, including to commit a crime, and causes a disruption at the school, the school has further grounds to hang onto the phone.

In this case, the phone should be turned over to law enforcement as soon as possible and the parent can work with the police to get it back.

The phone may be the parent's property, but the inappropriate use at school trumps any property right, at least for a reasonable period of time.

Q: Are driver education fees eligible for fee waivers?

A: Yes. As long as the course ifsoffered by the school, any fees associated with the course are fee waiver eligible. This includes the

Utah State Office of Education Page 3

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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.

(Continued from page 3)

fees for actually driving time, even if the driving occurs before or after school.

A fee is any charge or mandatory payment required for participation in a school-sponsored course. If the school pays for and provides the cars and instructor for drivers education, then the fees should be waived for those who are eligible.

However, any portion of the fee that pays for services the student could otherwise receive from the Division of Motor Vehicles would not be fee waiver eligible. For example, if the drivers ed teacher designates a portion of the class fee to pay the DMV for a learner's permit on behalf of the students, those fees would not be fee waiver eligible.

Q: Must a school provide resume information about a teacher or teachers to a parent who requests the information?

A: An educator's qualifications for his or her position are public information under the Utah Government Records Access and Management Act. This includes any degrees earned, prior employment, other qualifications for the position, plus hours worked, dates of employment and salary. The educator's license status, including license level and areas of endorsement, is also public information.

The parent is NOT entitled to information about the educator's interests or hobbies, or the educator's home address, home phone number, or personal email address. Nor should the parent receive information about disciplinary measures taken against a

current employee or performance evaluations of the employee. However, final disciplinary actions against former employees may be released, provided the public interest in the action outweighs the former employee's privacy rights.

A school which receives a request for resume-related information must reply to the request within 10 days. The response may be a notice that additional time is required if the request involves numerous individuals or voluminous records, but the school must provide some response.

The school may charge a reasonable fee to cover the actual costs of compiling the information, redacting any non-public information, and for copies. The school may not charge for researching files for the requested info.