



UTAH SCHOOL LAW UPDATE

Utah State Office of Education

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Musical Schools

Some students may move in and out of schools during the school year. Whenever a child changes schools, it raises multiple issues for both the receiving and the sending school.

For instance, in order to facilitate district and charter school planning, state law establishes certain deadlines students, parents, and schools must meet. Schools of all stripes need to have a final enrollment count by October 1. To protect school classroom sizes and budgets, students are required to decide by June 30 if they want to leave their current charter or neighborhood school for a different charter or neighborhood school. The new school must then inform the prior school that the student has been accepted. This frees the prior school to accept a new student of its own, or plan for a slightly smaller class size.

Students are prohibited by law from enrolling in more than one public school, charter or neighborhood, at the same time.

If a student desires to leave a school after June 30, she must have the old and new school's approval prior to enrollment.

Once a student enrolls in a school, the new school

must request the student's records from the prior school within 14 days of the enrollment. The prior school MUST send the records within 30 days of the request. Schools must send copies of all records that are maintained about the student. Once records have been requested, a school cannot sort or destroy materials in the record, it must send the complete record, warts and all, to the requesting school. That means the student's discipline records as well as the academic record. One of the more common complaints we receive comes from the new school finding out months later that a student had a fairly extensive discipline record that the prior school did not provide. Failing to provide the record deprives the new school of the opportunity to enact preventive measures to help the student avoid repeat behaviors. It also helps a school ensure the safety of all of its students and staff. Failing to provide the record can lead to liability for the old school if the student acted out in violent ways at the old school and does so again at the new school.

Students who choose to attend online and charter schools by the required deadline also have some

ability to participate in extracurricular activities at their neighborhood school or prior public school, if the charter school does not offer a similar program. A charter student may also participate in non-competitive activities at other public schools.

In order to take part in the extracurricular activities, the charter student must meet all of the same requirements as a student enrolled at the public school offering the activity, and pay any associated fees. The student's charter school must also pay a share of the program costs to the school.

Not all programs are open to non-enrolled students, however. District program offerings are not included among the extracurricular activities available to non-enrolled students. For example, a district sponsored summer camp for its students would not be open to students who do not attend a district school.

Utah law favors open and flexible enrollment for Utah students. However, the law and Board rules also provide reasonable administrative procedures and deference in order to provide stable funding and activities for all students.

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UPPAC CASES

The Utah State Board of Education revoked Matthew Scott Adams' educator license following his conviction for one count of second degree felony sexual exploitation of a minor, one third degree felony count of voyeurism by electronic means, and a Class A misdemeanor count of voyeurism by electronic means.

The Board reinstated Verrell Clark Blaisdell's educator license.

The Board suspended Ronald Dean Goodrich's license for six months. Goodrich mishandled a student discipline situation and posted and discussed a sexually inappropriate story as part of a curriculum lesson.

The Board suspended Becky June Spaulding's license based on a plea in abeyance to a third degree felony count of Falsely Obtaining a Prescription.

Eye on Legislation

Like the swallows at San Juan Capistrano, or the salmon run in Alaska, districts and charter schools can count on changes to policy every year, either in response to or in anticipation of legislation. So get out your policy manuals ladies and gentleman, here are just a few of the changes to come:

New additions to Bullying/Hazing Policies: News of severe hazing incidents spurred the State Board to add a few more requirements to local board policies on bullying and hazing. State Board rule R277-613 separates bullying and hazing from prior rules and adds significant training requirements for students, teachers, and most particularly coaches. Also note that local policies should address bullying/hazing with sexual overtones.

Electronic Devices Policies: It is conceivable that the recently enacted electronic devices policies will need to be amended to address more explicitly the problem of student sexting (texting with inappropriate sexual content). This is an area of growing concern that is perfectly suited to a legislative pronouncement by a legislator looking for an easy way to score electoral points.

While State Board rule already provides that district policies should address the use of electronic devices to humiliate or harass, policies may also need to address the use of electronic devices to create or access sexually explicit or inappropriate materials.

Gang Prevention: Sen Luz Robles, D-Salt Lake City, will again seek some common ground to address gang activity. That effort will include schools and may involve re-

vamping student discipline, dress code, or other related policies.

And, while less of a local policy writing issue, funding (and the lack of funds) drives legislative actions and votes. Some of the issues to be grappled with in the 2010 session include not only finding funds for ongoing programs, but also:

(1) Charter school funding—should it come from school district property tax revenue or directly from state funds—continues to “tax” public school advocates of all persuasions. Who should pay for choice?

(2) Curriculum—educators and legislators favor strong and accessible math and science courses and programs. Who will fund the courses? How do we train and encourage well prepared teachers in these areas? Who pays for the training and retention programs?

UPPAC Case of the Month

The end of summer all too often brings with it a bundle of testing protocol violations cases. This summer was no different. What seems different are the outcomes of the cases. Across the nation, states are imposing harsher punishments on violators. This stems not only from the increasingly blatant nature of the violations, but also the collective sense that by now teachers should know that violations of testing protocols are serious business.

The most recent example of the growing trend toward holding educators to strict adherence to testing protocols come from Georgia. The Georgia Professional Standards Commission suspended a principal’s license for two years and a vice principal’s license for one year after student retests of the math crite-

tion referenced tests were thrown out. The investigation revealed a high number of erasures on tests. The correct answers replaced the erased answers in a high percentage of the tests. Eight teachers are still being investigated in the matter.

Closer to home, the Utah Professional Practices Commission is reviewing several testing protocol cases, ranging from the outrageous to the ridiculous.

And those teachers will find less tolerance for the violations than in the past. While some teachers were excused for not fully understanding the ethical rules for test administration when the rules were fairly new, such excuses have lost validity this many years into the testing regime.



The Testing Procedures Rule has been around for almost a decade now, as has the state law providing for licensing action against educators who violate the protocols. The rules also provided for annual training for educators.

All of which means that testing protocol violations will result in licensing sanctions which reflect the level of training teachers have had on testing ethics. This is particularly true in those cases where the teacher’s actions cause harm to students, such as cases in which students may be deprived of needed services based on test results.

As in Georgia, Utah may soon see cases in which educator licenses are suspended for blatant disregard for testing protocols.

Recent Education Cases

Rivera v. City of Camden (N.J. Dist. Ct. 2009). A teacher could not be terminated under the state whistleblower statute. The teacher was absent from school one day and a substitute was in charge. A student spilled some water in the class. The vice principal of the school punished the class for one week by forcing all class members to eat lunch on the cafeteria floor without lunch trays. The vice principal threatened more disciplinary action against the students if they told anyone about the punishment.

The teacher was unaware of the punishment until a parent informed the principal's secretary and the secretary told the teacher. The parent attempted to meet with the principal, but the principal refused.

The teacher told his students to tell their parents what had happened and to ask their parents to complain to the board of education. Parents did complain, and the teacher was suspended. The official reason for the suspension was the teacher's failure to inform the principal of the punishment. The teacher was then terminated for "conduct unbecoming a board employee."

The teacher sued the board for retaliation under the state whistle-

blower statute. The board argued that the teacher was not a whistleblower because the parents already knew about the punishment prior to the teacher telling the students to inform their parents.

Given the vice principal's threat to the students if they told their parents, and the principal's refusal to meet with the one complaining parent, the court was not persuaded by the board's version of events. The court ruled against the board's motion to dismiss and the case will proceed to what will most likely be a very expensive trial for the board.

Richardson v. North Carolina Dept. of Public Instruction Licensure Section (N.C. Ct. App. 2009). Richardson sued his local school board for discrimination after it failed to appoint him to a principal position.

The case resulted in a mistrial. Shortly after, an assistant superintendent and witness in the trial received three anonymous, threatening and obscene letters regarding the case. The board discovered that the author was Richardson. The State Board of Education revoked



Richardson's license for unethical conduct in 2000.

In 2006, Richardson sought reinstatement of his license. The Board determined that Richardson had engaged in immoral conduct and refused to reinstate the license (North Carolina law prohibits reinstatement of a license which has been revoked based on "immoral conduct").

Richardson sued, stating that the original revocation cited "unethical conduct," not "immoral conduct." The court upheld the denial of reinstatement, finding no difference between immoral and unethical conduct.

As the court explained, unethical conduct can be viewed as immoral conduct. The court had previously defined immoral conduct as "conduct that by common judgment reflects on a teacher's fitness to teach." As the court further stated, "a reasonable public school teacher of 'ordinary intelligence' and utilizing 'common understanding' would know that sending threatening and obscene letters to his supervisor would consequently place the teacher's professional position in jeopardy" (more commonly referred to as the "duh" rule).

Your Questions

Q: My district is holding mandatory staff meetings at each school to discuss its upcoming bond election. Can the district require that faculty attend a meeting to discuss a political question?

A: Yes, when the political question is within the district's jurisdiction. In other words, the district can hold mandatory staff meetings to discuss district policies, planning, and budgets. A bond election, though also a political matter, is a district budget question that it can require employees to learn about. What the

What do you do when. . . ?

district cannot do is require employees to attend meetings where employees are then asked to support the election and to advocate for support to their friends, neighbors, etc. An informational meeting is fine, a meeting that assigns employees to take a political stance is not.

Q: When does an out-of-state trip

involving students become a school sponsored trip subject to fee waivers?

A: When the trip **looks** school sponsored, whether it has been approved by the school or not. If a teacher has signed up with an outside company to recruit students to take a trip, the trip is the teacher's outside project, unless the teacher uses school resources to advertise, promote, or plan the experience. If, for example, the teacher sends emails to parents through the school email, the trip

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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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appears school sponsored. If the teacher advertises the trip through a poster in the classroom, the trip appears to be school sponsored.

In short, if a parent would reasonably believe the trip is supported by the school, then it becomes so and the school becomes the sponsor, with all of the responsibilities that entails, including fee waivers and liability.

Q: What can we do about a student who is missing excessive amounts of school, but all of the parent's excuses are valid under our policy?

A: First, change the policy to provide that excused absences may become unexcused if excessive. Next, review why the student is absent. If the reasons are all medical, perhaps the student needs to be on home and hospital

status.

Or the school may need to sit down with the parent and find out why appointments or trips can't be scheduled during non-school hours or on days off from school. A parent may not realize just how much school a student is missing. A face to face conversation may resolve some of the issues.

Utah law expressly allows a school to deny "excused status" for trips or vacations if students are not performing at grade level.

Or perhaps the school needs to require written confirmation from a doctor that appointments are valid and medical conditions are real.

While excused absences under a school policy need to be excused, nothing prevents a school from expressing concern for a student's attendance and working with parents to encourage more regular attendance, or address alternative means for providing an education when the student is just not in

school enough to succeed.

Q: What are the requirements for awarding an honorary diploma to students who left school for military service?

A: With thanks to Bob Wood, Weber District, for remembering that a statute was passed in the 2008 session, Utah Code now provides that a district may award an honorary diploma to a World War II, Korean or Vietnam War veteran: (1) who was honorably discharged or released from service due to a service-related disability and (2) who resides within the district now or did at the time he or she left high school to serve in the military. It is the veteran's or his family's responsibility to verify service and residency, but once that is done, the school can award the honorary diploma.

The school can design an appropriate diploma or award a school diploma.