

UTAH SCHOOL LAW UPDATE

CHILD ABUSE INVESTIGATIONS

School administrators, law enforcement and DCFS investigators frequently ask questions related to investigations of child abuse and neglect.

Utah law provides that law enforcement or DCFS are responsible for child abuse and neglect investigations. The Division is directed by law to take a multi-disciplinary approach, including the involvement, as appropriate, of law enforcement agencies and the schools. School officials therefore have a statutory duty to cooperate with duly authorized investigators.

A school official who demands to be present to "protect the child's rights" goes beyond cooperation, assumes an additional duty about which he or she probably knows very little, may establish himself as a potential witness in the ongoing investigation, and by assuming that duty becomes vulnerable to liability which would not otherwise exist. The better response when an investigator comes to a school to investigate child abuse and neglect is for the school official to do the following:

- Make sure that the investigator is legitimate; ask to see identification and, if necessary, confirm the investigator's identity with the employing agency.
- Formally turn the child over to the investigator, announcing in the child's presence something similar to, "I am turning this child over to you in accordance with your request; you are responsible for taking any steps necessary to protect the rights of this child, the parents, and any other persons involved." Some schools have the investigator sign a statement assuming those responsibilities.
- Refrain from contacting parents, asking to participate in the interview, or any other action unless directed by the investigator. If the investigator asks for the administrator to be present, do so, but say in the presence of the investigator and the child, "I am here solely as a support person to the child." Do not prompt the child or answer for the child.
- If a parent calls about the interview, advise the parent that under the law the school may neither

confirm nor deny that an interview has taken place, that all such investigations are the responsibility of the Division of Child and Family Services and law enforcement, and that those agencies should be contacted if there are any questions.

This approach with child abuse and neglect investigations will leave responsibility where the law places it, and will assist early intervention efforts for the protection of children. School personnel at all levels must also treat confidentially **all** information that they receive related to a child abuse investigation, beginning with the initial contact by the assigned investigator. This is confidential information regardless of the nature of the abuse or suspected identity of the abuser.

We expect that schools will respect the challenges that law enforcement faces and that law enforcement recognizes that schools are primarily places of learning. Mutual respect and cooperation should be the norm.

Utah State Office of Education

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UPPAC CASES

The Utah State Board of Education reinstated Kameron Dean Klitgaard's educator license.

The State Board revoked Matthew Ray Madsen's educator license. The revocation results from Madsen's pursuit of romantic relationships with minors and recent alumnae, discussing personal family problems, relationships and religion in violation of the state FERPA law, and inappropriately touching students.

The State Board accepted a Stipulated Agreement for suspension of Bradford Bruce Garrison's educator license. The suspension results from Garrison engaging in inappropriate sex-related conversations with students.

Eye on Licensing Requirements

Licensed educators and students in teaching programs will soon receive or see notices about a **required Ethics Review**. Beginning in Spring 2011, education graduates and educators whose licenses expire in June 2011 will be required to take an online Ethics Review in order to be licensed or renewed.

Rumors about the Review have already begun to spread, but don't believe everything you hear. The Review is not an exam, hence the name. Nor is it designed to trip educators. The Review is designed to educate and remind educators of the professional standards they are required to maintain.

Educators seeking to renew their licenses will find a link to the Ethics Review on the license renewal page. Once an educator clicks on the link, she will be directed

through a series of multiple choice questions based on State Board of Education rules R277-515 and 516. Both rules will be available to the educator throughout the Review.

If an educator misses a question, a tutorial page will walk her through the question and the correct answer. The educator will then repeat the question, provide the answer, and move on.

In other words, it is practically impossible to "fail" the Review.

The only way an educator can "fail" is by not completing the Review before the license renewal date.

There is no additional cost for the Review and it should take around 30-45 minutes to complete. Once completed, notice will be automatically sent to USOE. The educator is not required to submit any additional information

The multiple choice questions focus on actual situations educators have faced and appropriate responses to those situations. For example, a question may provide information about a text message an educator received from a student, then ask the educator which of four responses would be appropriate under the circumstances and according to the Educator Standards rule. For many educators, the answer might seem obvious, but if an educator misses the question, the tutorial page will immediately appear, providing the correct answer and an explanation for the answer.

The educator will then be directed back to the missed question, answer it correctly, and move on to the next question.

UPPAC Case of the Month

Among the State Board of Education's Professional Standards rules is a requirement that educators perform their contractual duties with professionalism. Utah Professional Practices Advisory Commission cases related to violations of this rule include several different categories of misconduct by educators.

Many of the cases involve administrators. While all educators are expected to act professionally, administrators have an additional responsibility to set a professional tone within their building or area of supervision. An administrator who fails to exhibit professionalism in daily interactions may lose the respect and confidence of subordinates.

Examples of violations of the rules by administrators include a superintendent who provides lax oversight of those within his direct

line of supervision, or who spends the day on Ebay rather than performing his contractual duties.

Similarly, a principal who is regularly heard yelling at his employees lacks professionalism. Barring some other acts of mis-

conduct, it is doubtful either of these cases will lead to the administrator losing an educator license, but some level of licensing discipline may still be warranted.

And suspension of the license may occur if, for example, the principal's comments are regularly sexist, racist, or abusive, or violate student confidentiality inappropriately.

Teachers may also face licensing discipline if they exhibit a lack of professionalism. A teacher who swears at parents, calls students by derogatory names, or continually arrives late for school is not performing with professionalism. Again, the level of licensing discipline depends on the facts of the case. The teacher calling students names will typically face greater sanctions than the teacher who is late since the former is violating additional Professional Standards rules.

Likewise, if the tardy teacher's class is regularly left unsupervised because of his lateness, the teacher may face greater licensing sanctions.

Finally, licensed coaches who regularly use profane, obscene, or vulgar language are also in violation of this rule, not to mention a state statute. A coach who swears on the field but not in the classroom may still face licensing sanctions. The requirement that licensed educators act with professionalism does not vary by assignment.

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Recent Education Cases

Griffith v. Butte School District (2010). The Montana Supreme Court ruled that the Butte School District violated a student's free speech rights by prohibiting her from giving a valedictory address based on her planned references to religion.

The student was one of several valedictorian speakers. Within her speech, she planned to state:

I can say that my regrets are few and far between. I didn't let fear keep me from sharing Christ and His joy with those around me. I learned to impart hope, to encourage people to treat each day as a gift. I learned not to be known for my grades or for what I did during school, but for being committed to my faith and morals and being someone who lived with a purpose from God with a passionate love for Him.

The school district and principal

asked her to remove the religious references. When she refused, she was told she would not be allowed to give her speech at the ceremony.

The student sued and the court found that the district's actions violated the student's right of free speech.

The court noted that a school may bar student speech if it finds that the speech will "materially and substantially disrupt the work and discipline of the school" (citing Tinker v. Des Moines), or that the speech may "reasonably be perceive[d] to bear the imprimatur of the school" (citing Hazelwood v. Kuhlmeier), or that the speech may "reasonably be viewed as promoting illegal drug use" (citing Morse v. Frederick). The court found that none of these exceptions applied in this case.

The court explained that the school admitted it did not expect the speech to cause disruption and the speech did not mention drug use in any manner.

As to the fear that the audience might view the speech as school endorsement of religion, the court found the district's fear unreasonable. The court noted that the twopage speech gave three passing references to the student's beliefs. At no point does the student suggest the beliefs are shared by others, or that others should share her beliefs. Further, the district included a disclaimer in the graduation program stating, among other things, that any religious expression by students is not endorsed by the school district.

The court is very careful to say that its holding is limited to the specific facts of the case before it. However, it also compares the case to others in which schools were permitted to restrict religious speeches by students. In those cases, the court notes, the speeches were primarily about religion and designed to proselytize. The court notes that those cases are one extreme, while the current case represents the other. It could find no valid reason for the school or district to limit the student's right to make passing reference to her personal beliefs under the circumstances.

The court also noted that the student failed to show that the district unduly burdened her free exercise of religion.

Your Questions

Q: Is there a legal basis for a school district to disallow participation in student athletics (basketball for instance) if the student has no health insurance or student insurance?

A: There is no legal reason to impose such a requirement. The school would not be responsible for the reasonably foreseeable injuries to a student athlete, particularly where the athlete and his/her parents have been informed by the school of the potential risks associated with the sport

What do you do when...?

as explained in a waiver or other documentation provided at tryouts or once the student makes the team. If the student is injured playing, and the school is not responsible for the injury—i.e., it's not due to known defects in the school facilities or equipment, or gross negligence or intent on the coach's part—the parent is responsible for the medical costs, regardless of insurance coverage.

Q: Our Math and English departments created a new policy where all students are required to hand in all assignments. If all assignments are not handed in then the teacher will override the student's grade with an "F' until all assignments are handed in. Once all assignments are in then the grade will be reinstated. So, yes, a student can be failing with a score of 80%. My question to you is can we do this legally?

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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: It is borderline. There is some direct connection to the curriculum, but what is the point of doing this if the student can still earn a B without doing all of the work? The teachers should consider weighting the assignments so that not turning assignments results in a lower grade based on the missing grade(s) from the assignment.

Q: May an 18-year old student check himself out of school? If he has excessive unexcused absences, may we send him to court for truancy?

A: Yes and no. An 18-year old student is still subject to the policies of the school. If the student handbook provides notice to students that they will need a note from a parent to check out

of school, that policy applies to all students, regardless of age. The only exceptions are for students who are emancipated (a court decision for students under 18), married, or otherwise living on their own without support from mom and dad.

However, while the 18-year old must comply with all school rules, he is no longer subject to the jurisdiction of a juvenile court.

Therefore, if an 18 year old is truant, the school may follow all truancy policies, up to the point of a referral to juvenile court.

Once the student reaches 18, his truancy issues will need to be addressed within the school or district, not the courts. This may mean denying the student the privilege of walking in the graduation ceremony, or giving the student an F in citizenship which might effect his ability to partici-

pate in extracurricular activities, or any other creative solution the school determines might encourage the student to attend class (and which does not violate a student's rights in some other manner).

Q: I am a teacher and have a personal Facebook page. Is it true that I should not "friend" students?

A: You should not communicate with students on a personal Facebook page. If you want to create a page that rewards or acknowledges students, or provides assignments and reminders to students, it should be a separate page for school activities and student information only (and only if permitted by district policy). Be sure to monitor the page regularly and delete any inappropriate postings.