



UTAH SCHOOL LAW UPDATE

Utah State Office of Education

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Field Trip Liability

Have a nice, legalistic field trip waiver form? One that purports to protect the school from any and all liability? Think it covers the school and the teacher should a student be hurt on a trip or left behind? Think again.

Long ago (2001, to be precise), and several more times since, the Utah Supreme Court ruled that the commonly used waivers of liability for activities involving minors have little legal effect.

In Hawkins v. Navajo Trails, the Court found that parents may NOT release a child's cause of action for negligence prior to (or even after) an injury.

The court further found that agreements to indemnify the service provider for any injuries are also invalid. The court determined that shifting the financial responsibility from a negligent operator to a parent would be poor public policy since it would discourage the operator from using reasonable care to protect minors participating in the activity.

The court explained:

“Where a parent has a duty to protect the best interests of a child, an agreement to insure a third party against any consequences for that

third party's negligent behavior toward the child can only serve to undermine the parent's fundamental obligations to the child.”

The case involved a company which provided horses and guides for trail rides. However, within its decision, the Utah Supreme Court noted that other courts have refused to enforce waivers of liability where the transaction between the individual and the organization 1) involves an entity generally thought suitable for public regulation (public schools clearly apply); (2) the entity seeking the waiver is engaged in a service of great importance to the public (education); (3) the entity holds itself out as willing to provide the service for any member of the public who seeks it or meets certain standards (public education qualifies); (4) the entity seeking the waiver holds a decisive bargaining advantage (school has the advantage); (5) there is no opportunity for the individual to pay additional reasonable fees for protection against negligence (schools do not offer additional insurance); **and** (6) the individual is placed under the control of the

entity (by law, the minor is subject to the school's control).

While governmental immunity does apply in these situations to protect a school from some liability, a permission slip that purports to exonerate the school from any and all liability and/or requires the parent to indemnify the school from liability is almost certainly unenforceable in Utah.

The forms serve a purpose—informing parents of the dangers of an activity and requiring that they consider those dangers before sending a student on a field trip—but the forms cannot and do not protect the school from all liability should it act without the proper level of care for the minors in its charge.

In other words, whether or not the parent signs the form, the school is still liable for the negligent acts of its educators, volunteer chaperones, and others who plan, supervise, and conduct the field trip. A waiver of liability signed by a parent may make the parent think twice, but the student retains her rights to sue should she be injured on the trip.

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UPPAC CASES

The Utah State Board of Education suspended Curtis Reed Scharman's educator license following his guilty plea to voyeurism.

The State Board revoked VaLynn Asay Bowers' license based on her inappropriate sexual relationship with a minor student.

The State Board revoked by default Douglas M. Bullock's educator license based on his inappropriate sexual relationship with a minor.

The State Board revoked by default Kenneth William Taylor's educator license based on his inappropriate relationship with a minor student.

Eye on Legislation

It's that magical time during the Utah legislative session when bill titles unexpectedly appear with no text to explain what, exactly, the sponsor seeks to accomplish.

New and intriguing titles on the bill list include:

HB 147 Charter School Revisions, Rep. Merlynn Newbold, R-South Jordan

HB 149 School Finance Amendments, Rep. Ron Bigelow, R-West Valley City

HB 154 Minimum School Program Act Amendments, Rep. Kenneth Sumsion, R-American Fork

HB 163 School and Institutional Trust Lands Changes, Rep. James Gowans, D-Tooele

HB 323 School and Institutional Trust Lands Amendments, Rep. Kenneth Sumsion

HB 344 State School Board Nominating Committee Amend-

ments, Rep. Lorie Fowlke, R-Orem
HB 350 Club Teams in Public Schools, Rep. Stephen Sandstrom, R-Orem

HB 354 Finance Amendments for Financially Distressed School Districts, Rep. Christine Watkins, D-Price

HB 355 Legal Guardianship Amendments, Rep. Stephen Sandstrom

HB 360 Public Education Grants, Rep. Kenneth Sumsion

HB 367 Guardianship Residency Requirements, Rep. Laura Black, D-Sandy

HB 385 Beverly Taylor Sorenson Elementary Arts Learning Program Amendments, Rep. Greg Hughes, R-Draper

HB 386 Interstate Compact on Educational Opportunity for Military Children, Rep. Greg Hughes

HB 390 Maternity Leave for School Employees-Adoptive Parents, Rep. Janice Fisher, R-West Valley City

HB 393 Advertisements on School Buses, Rep. James Bird, R-West Jordan

HB 433 Foreign Exchange Student Amendments, Rep. Carl Wimmer, R-Herriman

SB 66 Public School Extracurricular Activities for Home School and Private School Students, Sen. Mark Madsen, R-Lehi

SB 175 School District Capital Outlay Equalization Amendments, Sen. Ben McAdams, D-Salt Lake

SB 188 Charter School Amendments, Sen. Howard Stephenson, R-Draper

SB 201 Civic Instruction Requirements, Sen. Mark Madsen

UPPAC Case of the Month

Sadly, there are still educators out there who troll the school halls for potential romantic partners. After reading the interviews of several students who were the subject of an educator's prurient interest, perhaps the best deterrent for educators seeking a Valentine amongst their students is a glimpse at what those students really think of your romantic overtures.

From the case files of three educators who spent several years trying to pick up students through subtle and not so subtle means, we present a sampling of the students' thoughts:

"I thought he was weird, but all I had to do was call him and he would buy me lunch and stuff, so why not?"

"He would tell us about his wife

and cry all the time. It was creepy."

"I saw him with [the student] and thought he was acting like a boyfriend. It was weird."

"He would tell me I was cute, or looked really good. I kept thinking how gross this was coming from an old guy."

"I felt sorry for him. He must be really lonely to stalk a student like that."

"I can't remember a single student that truly had respect and cared for him."

"I felt like he was stalking me."

"We had ongoing jokes about who he would pick next."

"He was creepy and it was freaky the way he kept talking about girls."

"It was weird, how he always wanted to hang out with us. Shouldn't he have friends his own age?"

"I had to get a new phone number so he would quit texting me."

"He was kinda' needy."

"I had lunch with him once. He started crying about something. I never had lunch with him again."

"He was always flirting with me, it was gross."

"He's talking about all these problems with his wife and asking me for advice. What do I know, I'm just a kid."

Recent Education Cases

Weintraub v. Board of Ed. (2nd Cir. 2010). The 2nd Circuit Court of Appeals ruled that a teacher could be terminated for filing a grievance with his union regarding a supervisor's decision not to discipline a student who threw books at the teacher.

Weintraub, the teacher, referred a student who threw a book at him to the assistant principal. The assistant sent the student back to class. The next day, the student again threw books at Weintraub. Weintraub sent the student to the assistant principal again and the assistant sent the student back to class again.

Weintraub was upset that the assistant did not discipline the student and concerned about the safety of his students. Weintraub told the assistant principal that if he was not going to do anything about the student, Weintraub would have to file a grievance with the union to have something done. Weintraub also told other teachers about the situation and then filed a grievance with the union.

Following the filing, Weintraub received negative evaluations, was wrongfully accused of abandoning his class, and it was alleged on false grounds that he was arrested for attempted assault of another

teacher. Finally, he was terminated.

Weintraub challenged the termination. When the case reached the 2nd Circuit, the court ruled that Weintraub's grievance and related complaints were speech "pursuant to his official duties" and thus, not protected speech.

The court explained that Weintraub could be terminated from his employment where he spoke through the grievance process, as established in district policy, about an issue integral to his employment—classroom management.

Busch v. Marple Newton School Dist. (U.S. 2010). The U.S. Supreme Court refused to hear a case from the 3rd Circuit in which the court of appeals upheld a school district's decision not to allow a mother to read portions of the Bible to a kindergarten class.

Donna Kay Busch and her 5-year old son are Evangelical Christians. Part of the kindergarten curriculum included a socialization activity, known as "All About Me." The unit called for students to bring in a poster with pictures, drawing, or other items showing their hobbies, families, or interests. Parents were also allowed to visit the class during the unit to share a talent, game,

story, or craft.

Busch's son asked his mom to read from the Bible. Busch chose a passage from Psalms, in part because it did not mention Jesus.

Busch told the teacher her chosen reading material before class. The teacher told the principal, who told Busch she could not read from the Bible. Busch read from a non-religious text, then sued the school for violation of her Free Exercise rights.

The court found the school had acted appropriately. It noted that restrictions on speech, especially in an elementary school classroom, are legitimate if tied to pedagogical concerns and in consideration of the age of the students.

In this case, the court found it was reasonable for the principal to prevent the religious speech since it would not further an educational goal but would appear as a state endorsement of religion.

In the words of the circuit court, "parents of public school kindergarten students may reasonably expect their children will not become captive audiences to an adult's reading of a religious text."

Your Questions

Q: What constitutes a school-sponsored trip?

A: If it looks school sponsored to the reasonable parent, it is, regardless of the teacher, school, or board's intentions.

Thus, if a teacher is planning an out of state trip and uses the school to advertise the trip, uses a school email address to inform parents about the trip, collects money for the trip at school, talks about the trip with students at school, or otherwise uses school resources to promote and manage the trip, it may be school spon-

What do you do when. . . ?

sored. This means fee waivers, IDEA or 504 accommodations, and school insurance requirements apply.

Q: A teacher confiscated a student's phone. The phone rang incessantly, so the teacher finally opened it to see who was calling. When the teacher opened the phone, a porno-

graphic image was clearly visible. Can we take any action against the student based on this?

A: Perhaps. The teacher's decision to look at the phone to see who was calling amounts to a search. If school policy prohibits cell phone use during class, and the calls came during class, the teacher has reason to suspect that the student owner was violating a school rule and could, therefore, "search" the phone to determine if another student was calling the phone.

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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)

When the teacher conducted the search, the image was visible in an area that did not require the teacher to search any further than simply opening the phone. Whatever is clearly visible without further searches of the phone is fair game for school discipline.

Based on the events described, the school could take some disciplinary action against the student based on its cell phone policy and the easily accessible pornographic image. That action should include informing the student's parents of the image found on the phone.

Because the search was not about pornography, however, the school should not use the image to impose a suspension or expulsion against the student, unless there is a history of similar misconduct.

Q: A teacher has been using school computers to access pornography. We have copies of the computer logs, but what other evidence should we collect?

A: The entire hard drive should be taken and protected. A computer forensic expert should be called in to copy the contents of the hard drive and search for any and all evidence of inappropriate computer use. The computer may still contain deleted images, details about searches for inappropriate materials, and other information useful in the district's disciplinary process, UPPAC license discipline process, and any criminal investigation (accessing pornography at a school is a crime). Student/colleague affidavits may be useful if they saw the images or noticed unusual activity by the educator—such as finding the educator on the computer late at night on multiple oc-

casions.

Q: A licensed educator showed up for work clearly under the influence of alcohol. Should we report the incident to the Utah Professional Practices Advisory Commission?

A: Yes. Any action by an educator which violates state law and/or impairs an educator's ability to perform his or her duties, including the duty to serve as a role model for students, or jeopardizes the health, safety, or welfare of students, staff, faculty, or the educator him or herself should be reported to UPPAC.

When in doubt, supervisors can also call Jean Hill or Carol Lear to see if a they would recommend a referral under the circumstances (contact information is located above). Ms. Hill and Ms. Lear are willing to discuss possible referrals using the "I have a friend" process.