



# UTAH SCHOOL LAW UPDATE

Utah State Office of Education

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## Failure to Report

Many years ago, educators facing termination for misconduct might negotiate licensing matters with the school district. The educator might agree to retire or voluntarily resign provided the district did not report the misconduct to the Utah Professional Practices Advisory Commission, law enforcement, or another entity for investigation.

Some educator association representatives still attempt to make such deals with school districts. However, those representatives, and the school districts, should know that such a deal violates state law and State Board Rule.

First, Utah law requires educators to report to the principal, superintendent or the State Office of Education any time the educator has "reasonable cause to believe that a student may have been physically or sexually abused by a school employee. . . ." The school district administrator who receives the report must inform the State Office. U.C. § 53A-6-502.

Thus, a school district which intends to terminate an employee for slapping a student, for example, must report the

incident to the State Office of Education and could not enter into an agreement with the educator to do anything less.

State Board rule also requires all licensed educators provide "Accurate and complete information to appropriate authorities regarding known educator misconduct which could adversely impact performance responsibilities, including role model responsibilities, by himself or others," among other, similar requirements. R277-515-3(c)(19).

The educator who fails to report his own misconduct, or the administrator who agrees not to report known misconduct to UPPAC, could face licensing sanctions based on the failure to report.

In rare instances, local school boards have tried to dissuade employees from reporting known educator misconduct. In a few cases, the board directed the administrator not to report; in other examples, the board attempted to make reporting and cooperating with an investigation as inconvenient as possible.

Both examples force educators to choose between their employment or potential loss of their educator license. Clearly, placing employees be-

tween such a rock and a hard place is an ill-advised strategy for any local board.

On a related note, some association representatives have failed to inform educators of the duty to report an arrest to their district superintendent. Again, failing to make the report is a violation of State Board rule and may be grounds for licensing sanctions, regardless of the reason for the arrest. Thus, an educator who may have faced no or limited sanctions for the arrest faces more stringent sanctions for failing to properly report the arrest.

The administrator who receives the report is, again, required to notify the State Office of Education of the arrest. Failure to do so, whether by agreement with the employee or otherwise, exposes the administrator to similar sanctions.

In short, school and district administrators and boards must report known instances of educator misconduct to the State Office of Education. Doing so encourages public respect for and trust in public education generally.

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## UPPAC CASES

*The Utah State Board of Education did not take action on any educator licenses at its January meeting.*

## Eye on Social Networking

Social networking (Facebook posts, LinkedIn posts, tweeting, etc.) by district or school employees is a growing area of concern for employees and employers alike. The law is mixed and struggling to keep up, but here are a few practical situations (ripped from the headlines) which provide food for thought for social networkers:

- According to the *New York Post* (yes, you must consider the source), a criminal court judge was moved from his current post after seeking to “friend” lawyers who appeared before him on his Facebook page. The lawyers complained, noting that, if they said “no” to his friend request and then had to appear before him, it could be “awkward.” Court employees also ex-

pressed concern that the criminal judge posted details about his life on his public site.

Lesson: Don’t put your subordinates in the awkward position of saying “no” to being your friend. That goes doubly for seeking student friends.

- Inc.com reports that a non-profit fired one of its office workers after discovering her blog about her many sexual escapades. The woman created a Twitter account with a fake screen name but included her real name in her profile. When she found her real name would appear, she removed it, but her original information was cached and continued to show up in the Twitter search engine. Her employer Googled

employees and found the blog, with the employee’s real name. She was fired immediately.

Lesson: Keep your private business private, but if you don’t, at least consistently use a pseudonym.

- The *New York Post* also reported on a Human Resource Manager who forged a jury notice to get out of work for an eight day vacation. Her forgery was discovered when she left evidence of the forged documents on her desk at work. But the case against her was furthered by her gleeful Facebook posts about what she was doing on her vacation.

Lesson: Don’t lie to get out of work. If you do, don’t post your deceit on the Internet!

## UPPAC Case of the Month

Financial misconduct by educators takes many forms. Some educators steal funds directly — pocketing student fee payments, stealing school supplies, etc.

Others may be more creative, though no less unprofessional. For example, the Utah Professional Practices Advisory Commission has investigated more than one educator who has misused the leniency provided by some elective courses.

Some courses, especially those outside of the traditional school year or school day, are paid for based on the number of students taking the course. A few less than honest educators have created fictitious class lists in order to up their own pay without a corresponding increase in work load.

In these cases, rather than encourage students to participate, the educator fills in the required paperwork with various names and fic-

tionalizes other required information.

Unfortunately, in many of these kinds of cases, the educator not only creates fictional students, he may also short-change the very real students who have signed up for the course. It is not uncommon to find that the educator willing to put in the time and effort to create a class list out of thin air is less willing to put in the time and effort to actually teach the few students who are legitimately in the class.

Fortunately, these lazy educators are usually not very vigilant about keeping up the fiction. In several instances, parents began calling their school districts to find out

why the State Office of Education was calling about their student’s involvement in a course or a third party may call regarding other opportunities that arise from a student’s participation.

Once parents start asking why their child is receiving mail or messages about a program the parent is certain the child is not in, the scheme begins to unfold. Soon, the educator, who made a few hundred or thousand extra dollars from the program, finds himself without a job or a professional license—costing thousands in the long run. Plus, the lost respect for public education is—priceless.



## Recent Education Cases

*Greene v. Camreta*, (9th Cir. 2009 cert. granted Oct. 2010). The U.S. Supreme Court has agreed to hear government officials' appeal of this 9th Circuit opinion regarding search and seizure at a school.

Mrs. Greene sued the Bend Lapine School District in Oregon, the school counselor, the county sheriff and Oregon Department of Human Services caseworker, Bob Camreta, for each agency and individual's role in interrogating her daughter at her elementary school about potential sexual abuse by her father.

The unfortunately named abuser, Nimrod Greene, was arrested for suspected sexual abuse of an unrelated 7-year old boy. The boy reported that Nimrod's wife complained about the way Nimrod made their daughters sleep in his bed when he was drunk and how he acted when they sat on his lap.

DHS became involved a week after Nimrod's arrest. Caseworker Camreta was assigned to assess the daughters' safety. Camreta decided to conduct his interview with one of the girls at her school, in part because her father had been released from jail. Camreta

did not have a warrant or court order to conduct the interview.

Camreta arrived at the school with a sheriff and asked to interview the girl in a private room. The school counselor escorted the girl out of her class and to the interview room, then left.

Camreta spent the next two hours interviewing the girl. The girl revealed several instances of sexual abuse against her and her sister by Nimrod. She and her sister were subsequently removed from the house for a period of time.



Nimrod was arrested and convicted of his actions against the boy, but the charges involving the daughters were eventually dismissed.

Mother sued all parties involved in the interrogation of her daughter. The lower court dismissed all charges on summary judgment (meaning no trial was held). The mother appealed the dismissal, but only as to DHS and the sheriff's office.

The 9th Circuit ruled that the sheriff and DHS had violated the

student's 4th Amendment rights against unreasonable search and seizure. However, the court also found that the defendants were entitled to qualified immunity. Qualified immunity applies where a constitutional violation occurs, but the right was not "clearly established." In other words, the governmental officials are immune from liability this time because the reasonable person would not have known that his conduct violated a constitutional right.

The sheriff and DHS appealed the decision to the Supreme Court. Since certiorari was granted, the California, Oregon, and National School Boards Associations have filed friend of the court briefs. While no school district is involved in the suit at this point, the Associations are asking the U.S. Supreme Court to articulate clear standards for school personnel faced with a law enforcement or family services official wanting to interview children at school.

It is unlikely the Court will do so, but it would certainly clarify difficult issues for schools.

## Your Questions

**Q:** One of our art teachers also teaches at a university. He asked an 18-year old student to be a nude model for one of his university classes. Is this acceptable?

**A:** No. A teacher asking his student to be a nude model in any setting is unprofessional conduct.

Even though the student is 18, such a request coming from a teacher places the student in a very uncomfortable position, regardless of how willing he might be to serve as the model. Saying

### What do you do when . . . ?

"yes" may expose the student in more ways than one. For example, the student may be the subject of much speculation and ridicule by his classmates.

If, on the other hand, the student wants to say "no," he may worry that the decision will jeopardize his grade in a current or future class.

The State Board rule on Educator Standards requires that educators protect students from known harm to their health, safety, or learning. The educator who solicits a student to be a nude model has failed in his duty to protect the student.

Further, the same rule also prohibits educators from using school resources for personal gain. This prohibition would include using students to help an educator fulfill a need in other paid employment outside of his

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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)*

school employment. The age of the public school student is irrelevant in these and similar situations.

**Q:** My wife is a high school teacher. A foreign exchange student at her school is having trouble with her host family. May my wife invite the student to stay with us?

**A:** No. While the desire to help a student out of a tricky situation is admirable, educators should not have non-related students living in their homes. This policy protects both educator and student. Allegations that an educator or the educator's family members have engaged in inappropriate conduct toward the student are made

possible if the student is living in the educator's home.

Again, educators must maintain professional boundaries with students and protect them from harm. This task is doubly difficult when the student is not just a student, but also a house guest.

There maybe emergency situations which will seem to violate this important professional standard, but the situation described is not an emergency.

**Q:** How difficult is it to terminate a bad teacher?

**A:** It is not difficult, with proper documentation.

For the truly horrible teacher—the one who yells at kids, uses highly inappropriate and unprofessional classroom management techniques, or mismanages school funds—the process requires docu-

menting the problems and terminating the teacher based on violations of school policy, State Board Rule and state law.

For the incompetent teacher, the process requires accurate and regular evaluations showing the principal's concerns and a follow up evaluation showing the concerns have not been addressed.

Problems arise when the documentation does not exist. At times, a teacher will have very poor performance, the principal will talk to the teacher about the concerns, but will not document those conversations and gives the teacher undeservedly glowing evaluations. When the principal is unwilling to provide accurate information, that is when terminating a "bad" teacher is difficult.