

# UPPAC NEWS

A BI-ANNUAL NEWSLETTER FROM THE UTAH PROFESSIONAL  
PRACTICES ADVISORY COMMISSION

## **FIRST AMENDMENT FREEDOM OF EXPRESSION IN A SNAPCHAT WORLD:**

### **What Educators Need to Know**

In June 2021, the U.S. Supreme Court decided the *Mahanoy Area School v. B.L.*, 20-255 (2021) case involving a public school student's First Amendment Freedom of Expression rights. The case arose from a Pennsylvania high school student's use of the F-word written on a picture and uploaded to the student's Snapchat story. The picture, and use of the F-word, referred to the student learning that she did not make the varsity cheerleading team. The photo showed the student with her middle finger raised and included the words: "F— school, F— softball, F— cheer, F— everything." The Snapchat story, posted on a Saturday afternoon, quickly made its way around the school. The student's coaches were made aware of the Snapchat story and suspended the student from the junior varsity cheer team, citing the team rules that said "cheerleaders must show 'respect' for the school, coaches and other cheerleaders, and avoid 'foul language and inappropriate gestures.'" In order to understand the impact of this ruling on educators and

administrators, it might be helpful to review the history of U.S. Supreme Court cases that deal with public school students' First Amendment Freedom of Expression rights.

The U.S. Supreme Court has decided several cases involving the First Amendment rights of public school students, but the most often cited are *Tinker v. Des Moines Independent Community School District* (1969), *Bethel School District No. 403 v. Fraser* (1986) and *Hazelwood School District v. Kuhlmeier* (1988).

In *Tinker*, the Supreme Court ruled students, "do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." The court found that Iowa public school officials violated the First Amendment rights of several students by suspending them for wearing black armbands to school. When the school officials tried to justify their actions, saying that the armbands would disrupt the school environment, the Supreme Court said that "in our system, undifferentiated fear or

## **SPECIAL THANK YOU FOR SERVICE**

UPPAC would like to thank Camille Johnson from Davis School District and Chet Hunsaker from Ogden School District who have just completed six years of service on the commission. Their contributions will be greatly missed. At the same time, we'd like to welcome Brianne Moon from Davis School District and Corby Briggs from North Sanpete School District, who have joined the commission.

apprehension of disturbance is not enough to overcome the right to freedom of expression.” School officials cannot silence student speech simply because they dislike what the student is saying or believe the student’s speech is controversial or unpopular. Rather, according to the Court, school officials must reasonably forecast that student speech will cause a “substantial disruption” or “material interference” with school activities or “invade the rights of others” before they can censor student expression.

Twenty years later, the Court cut back on students’ free-expression rights in *Fraser* and *Hazelwood*. In *Fraser*, school officials suspended a high school student for giving a lewd speech before the student assembly while on school property. Even though the speech was part of a student-government campaign, the Court distinguished the sexual nature of the address from the political speech in *Tinker*. The Court wrote in its decision that “[I]t is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse.” They further held that “[t]he undoubted freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against the society’s countervailing interest in teaching students the boundaries of socially appropriate behavior.”

The Court further restricted student First Amendment rights in *Hazelwood*. The *Hazelwood* case arose when a Missouri high school principal censored two articles in the school newspaper. The articles, written by students, dealt with divorce and teen pregnancy. The principal believed the subject matter was inappropriate for some of the younger students. The students argued that the principal violated their First Amendment rights because he did not meet the *Tinker* standard. Instead of examining the case under *Tinker*, however, the Court

developed a new standard for what it termed “school-sponsored speech.” Under this standard, school officials can regulate school-sponsored student expression, as long as the school officials can show that they have a reasonable educational reason for their actions. The Court held that school officials could censor material which would “associate the school with anything other than neutrality on matters of political controversy.”

Fast forward three decades, account for tremendous advancements in technology, along with social media, and the Court gives us *Mahanory Area School v. B.L.* (2021). In *Mahanory*, the Court mentioned three features of off-campus speech that distinguish it from on-campus speech: 1) Off-campus speech will normally fall within the zone of parental responsibility; 2) If on-campus and off-campus speech were regulated by the school, the student’s speech would be regulated 24/7 by the school; 3) The school has an interest in protecting a student’s unpopular expression on and off campus. The Court expressed the opinion that “America’s public schools are the nurseries of democracy. Our representative democracy only works if we protect the ‘marketplace of ideas.’ This free exchange facilitates an informed public opinion, which, when transmitted to lawmakers, helps produce laws that reflect the People’s will. That protection must include the protection of unpopular ideas, for popular ideas have less need for protection.”

The *Mahanory* case provides guidelines for educators and administrators to consider when dealing with a student’s First Amendment Freedom of Expression rights:

1. What did the student actually say or do? Did the words or actions criticize or threaten a member of the school community? Were they “fighting words”? Were the words or actions obscene (as defined by the Court)? If

the words or actions committed by an adult would they be protected?

2. When, where and how did the student commit the words/actions? Outside of school hours? From a location outside the school? Was the school identified? Were any members of the school community specifically identified?

3. What are the school's interests in the expression? Did the expression substantially disrupt a school activity? Did the expression threaten harm to the rights of others?

## **UPPAC EDUCATOR DISCIPLINE**

### **A Summary of Utah State Board of Education Licensing Actions from January to July 2021**

#### **Surrender**

UPPAC Case No. 20-1761

UPPAC received allegations that an educator had engaged in sexual acts with a student while the student was a senior, but over the age of 18. The educator continued the sexual relationship with the student after her graduation. The educator permanently surrendered his license during the pendency of the UPPAC investigation.

#### **Revocation**

UPPAC Case No. 19-1588

An educator was criminally convicted of two counts of Sexual Battery for touching one female student on the buttocks and one female student on the breast. The educator's license was permanently revoked.

UPPAC Case No. 19-1645

An educator was criminally convicted of Sexual Battery for touching the buttocks of a student. The educator's license was permanently revoked.

UPPAC Case No. 19-1681

An educator exchanged thousands of emails, text messages, and social media messages about many

inappropriate topics. Many of the educator's messages were sexual in nature, and a few contained photos depicting nudity or links to photos depicting nudity. The educator arranged to have three teenagers (ages 16, 15, and 14) have a threesome in his house. The educator was also convicted of providing alcohol to a student when she was 14 years old. The educator's license was permanently revoked.

UPPAC Case No. 20-1743

An educator engaged in sexually explicit conduct with a student who was a minor and was convicted of a felony of a sexual nature. The educator's license was permanently revoked.

UPPAC Case No. 20-1785

An educator engaged in a highly sexual conversation, asked for nude images, and drove to an arranged meeting place with the intent to have sex with a 13-year-old girl. The educator was convicted of Enticing a Minor, a second-degree felony and Attempted Sexual Exploitation of a Minor, a third-degree felony. The educator's license was permanently revoked.

UPPAC Case No. 20-1786

An educator stalked a 17-year-old girl and offered to pay her tuition or pay off her car in exchange for kissing him. The educator watched the girl over a long period of time, intentionally picked a girl who was not a student at his school, and gave the girl a false name, signifying that the educator knew that the activity that was inappropriate. The educator's license was permanently revoked.

### **Suspension**

UPPAC Case No. 19-1668

An educator engaged in multiple incidents of inappropriate behavior, including throwing a water bottle and swearing at a coworker, swearing at and in front of students, sending a text image of his buttocks to co-workers, and thrusting and grabbing his groin in front of co-workers. The educator's license was suspended for no less than six months.

UPPAC Case No. 19-1690

An educator brought a can of flavored vodka onto school grounds in his bag. He hid his bag in a cabinet in the faculty break room, where it remained throughout the school day. After school, he retrieved his bag, poured the drink into a mug, and took it outside, where he sat down on a bench near the school parking lot, still on school grounds, and drank it while he waited for his ride. The educator's license was suspended for no less than one year.

UPPAC Case No. 19-1706

In addition to her teaching duties, an educator volunteered as a board member for a non-profit organization. The purpose of that organization is to organize fundraisers and collect donations on

behalf of a children's charity. Over a period of about seven years, the educator stole about \$145,000 from the organization to pay her bills and buy food, clothing, household supplies, and other items. The educator entered a guilty plea to Attempted Theft, a class A misdemeanor. The educator's license was suspended for no less than four years.

UPPAC Case No. 19-1721

An educator/administrator came across three female students, two of whom were heavily intoxicated. The educator did not immediately contact the students' parents, did not notify law enforcement, and did not seek medical attention. Instead, he planned to have the third student, who was not intoxicated, take the two intoxicated students home. His plan changed when an assistant principal told him the driver might also be intoxicated. The educator drove the student's vehicle and dropped all three students at one student's house. That student's uncle was home, but none of the students were released to their legal guardians. The educator's license was suspended for no less than one year.

UPPAC Case No. 20-1737

An educator engaged in inappropriate conduct towards his coworker, including asking her to go bra shopping with him, inviting her to his home to look at bras he purchased for his wife, and giving his coworker pajamas for her birthday. The educator's license was suspended for no less than one year.

UPPAC Case No. 20-1755

An educator forged prescriptions using a prescription pad stolen from her former employer's office. She was criminally convicted of felony Forgery and several prescription drug

related misdemeanors. She entered Felony Drug Court and received a 36-month plea in abeyance to the charges. The educator's license was suspended for no less than ten years with the ability to request reinstatement after successful completion of the court plea in abeyance.

UPPAC Case No. 20-1768

An educator viewed pornography on his district-owned laptop while in his own home. The educator's license was suspended for no less than one year.

UPPAC Case No. 20-1784

An educator viewed sexually inappropriate images on a school computer while in his office at the school. The educator's license was suspended for no less than one year.

### **Reprimand**

UPPAC Case No. 19-1678

After observing a student driving recklessly in the parking lot, an educator confronted the student. After a couple of minutes arguing with the student, the educator decided to leave the area to avoid escalating the situation further. As the educator attempted to position his car to leave the area, he pulled forward toward the student, who was standing next to his car. The educator bumped or pushed the student's leg with the car before backing up again. The educator received a reprimand.

UPPAC Case No. 19-1709

An educator violated the appropriate procedures and requirements of her student's Individualized Education Plans, including failing to update student data, failing to provide the appropriate number of service minutes to students, failing to send notice of meetings to involved parties, creating IEP meeting notes before an IEP meeting

was held that could result in confusion as to the date of the meeting and the people in attendance, and asking LEAs to sign IEP meeting documents when they did not in fact attend the meeting. The educator received a reprimand.

UPPAC Case No. 19-1712

An educator reacted very emotionally to the attempted suicide of a former student and posted on Facebook about what happened. The post was in a private Facebook group, but the post was allegedly left open and visible on her computer at school. After the faculty was directed not to release information to any students, the educator contacted several former students and provided information and updates regarding the student's condition. Some of her messages to the students were during school hours and were very upsetting to the students. The educator received a reprimand.

UPPAC Case No. 19-1720

An educator failed to report to DCFS or law enforcement allegations of sexual abuse that were reported to him by a student victim. The educator received a reprimand.

UPPAC Case No. 20-1750

An educator struggled to manage his fifth-grade classroom. The administration found his classroom culture to be negative and punitive. In one incident, the educator lectured his students for four minutes and engaged in public shaming, threats, mocking of individual students, and disclosure of student information regarding grades. The educator received a reprimand.

UPPAC Case No. 20-1760

An educator was convicted of misdemeanor Driving Under the Influence of Alcohol/Drugs and Possession or Use of a Controlled Substance

in 2018. The educator was convicted of misdemeanor Purchase, Transfer, Possession, Use of a Firearm by a Restricted Person and Driving with Measurable Controlled Substance in 2020. The educator received a reprimand.

UPPAC Case No. 20-1767

An educator/administrator used his school P-card (school credit card) to make personal purchases on two (2) occasions. The educator was dishonest during the district investigation. The educator received a reprimand.

UPPAC Case No. 20-1776

An educator and her husband drank alcohol while visiting her parents out of state. They left her parents' home around 10:00 p.m. to return to their hotel. The educator's husband, who was driving, neglected to turn on his headlights, and a police officer attempted to pull him over. The educator's husband led the officer on a short high-speed chase before parking in a dark parking lot and fleeing on foot, leaving the educator in the passenger seat. Unsure what to do, the educator climbed into the driver seat. Other officers arrived on the scene and arrested the educator for DUI and Aiding and Abetting. The educator continually lied to the officers, telling them her husband was not present and that she had been driving the whole time. The educator later entered guilty pleas to DUI and Aiding and Abetting, both misdemeanors. The educator received a reprimand.

### **Letter of Warning**

UPPAC Case No. 19-1708

During an evening junior varsity football game at a High School, an educator entered the locked school to use the restroom, which was in a locked coaches' area. When he left the restroom and returned to the football field, he accidentally left

his gun on the floor of the restroom. When he realized what he had done about 20-25 minutes later, he returned to the restroom, but a custodian had already found the gun and delivered it to the school resource officer. The educator received a letter of warning.

UPPAC Case No. 19-1717

Two male students made hand gestures of a gun at an educator and her student teacher. The educator was concerned because one of the male students reached into his pants and she thought he was going to expose his genitalia to her and the class. The educator felt threatened, so she yelled at the boys to "get the hell out of her classroom" and physically escorted them to the office. While walking to the office, the educator made physical contact with the two students by tapping one of the boys in the chest with her hand one time and made an upward swiping motion to the back of the other student's head two times. On the approximately two-minute walk to the office, the educator continued to yell at the boys. The educator received a letter of warning.

UPPAC Case No. 19-1724

An educator did not seek approval for a research project from his principal nor did he follow district policy. On three separate occasions, the educator allowed all students to participate in a study, which involved the students tasting an unusual food, whether the students submitted signed parent permission slips or not. At least one student suffered physical side effects. The educator received a letter of warning.

UPPAC Case No. 20-1730

An administrator engaged in inappropriate texting and in-person conversations with an educator at

his school. The texts were unprofessional in nature. The educator received a letter of warning.

#### UPPAC Case No. 20-1771

An educator altered the title to a vehicle he purchased to change the odometer number and purchase date. The educator pled guilty to misdemeanor charges of False or Fraudulent Insurance claim and Attempted Forgery. Both pleas were held in abeyance for a period of eighteen months. The educator received a letter of warning.

#### UPPAC Case No. 20-1774

While doing laundry in the laundry facility of his apartment complex, an educator noticed a debit card that someone had left behind. He used the debit card to pay for his laundry and later used the card at two fast food restaurants. He then attempted to use the card to buy gas; however, the card was declined, and he threw it in the trash. The total amount of fraudulent purchases was less than fifty dollars. The educator entered a guilty plea to misdemeanor Attempted Acquisition of a Financial Transaction Card. The educator received a letter of warning.

#### UPPAC Case No. 20-EH35

An educator attended an administrator meeting in another school in early October. He had a concealed carry permit and accidentally left his bag, with a gun in it, in the media center at the school where the meeting was held. The media center was locked and was discovered before students arrived. The educator was remorseful and has stopped carrying a gun while at school. The educator received a letter of warning.

#### UPPAC Case No. 20-EH36

An educator was at school for a meeting prior to the school year in August. She went into a unisex

faculty restroom and removed her concealed carry firearm while she used the facilities. The educator forgot the weapon in the restroom, which was found by a colleague. The educator was remorseful and has since purchased specialized clothing, so she does not have to remove the firearm in the restroom. The educator received a letter of warning.

#### UPPAC Case No. 21-EH1

An educator was having trouble with a student who wouldn't follow covid protocols for mask wearing. Notwithstanding administrative directives for teachers to leave these issues to administration, the educator pursued the student through the hall, physically tried to block the student, and grabbed the student. Another teacher had to separate the two. The educator received a letter of warning.

#### UPPAC Case No. 21-EH2

An educator had concerns with a student who was returning to his class after an absence. The educator erroneously thought the student, who was outspoken in his pro-Trump feelings, had been suspended. The educator, who felt threatened by the student, had conversations with an administrator within student earshot where he spoke negatively about the student and demanded the student be placed in another class. The educator's conversation got back to the student who had already been bullied for his political leanings in a highly publicized fashion. The educator received a letter of warning.

UPPAC Case No. 21-EH3

An educator was teaching a special education class when a student started spraying a classmate with disinfectant spray and wouldn't stop. The educator responded by spanking the student with an open hand. The educator acknowledged the mistake and reported it to the principal as soon as class was over. She contacted the parents as well and apologized to the student. The educator received a letter of warning.

**QUESTIONS?  
PLEASE CONTACT US**

**Our UPPAC team is available if you need to report an ethical violation, have questions about the ethics of a situation, or if you would like us to provide training to your LEA regarding the educator standards. Please email UPPAC at [uppac@schools.utah.gov](mailto:uppac@schools.utah.gov) or call (801) 538-7835.**