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Education Law Newsletter Back to School

SCHOOL TRUST LAND MONEY

The Utah State Board of Education has wrestled for years with what a Community Council should like in a charter school. Of course charter schools are eligible to receive School LAND trust funds—a significant and growing source of revenue for all Utah public schools. However, charter schools are often confused by the requirements for their parent trust land councils necessary for schools to determine how this money is to be spent by a school.

The composition of charter trust land committees is different than the requirements for district schools. Utah Board Rule R277-470-7 directs charter school boards and administrators to other sections of the administrative rules and Utah code for the required composition of a “charter school trust land council.” The Charter School Parent Council must include parents/guardians of students enrolled at the school

and may include others. The parent member number must exceed the number of others by at least two members. The individual charter governing board can establish its own procedures for electing parent members. The parent council chair must be a parent/guardian member. *Also, the law and Board Rule allow a charter school governing board that meets the requirements of the above composition to act as the parent council for the school.*

Finally, under the Board Rule, a “small or special school” may receive an exemption from the State Board of Education from the charter land trust council composition requirements if the school applies to the Board and satisfies specific conditions.

Feel free to contact us if you have questions about ensuring your school’s policies and procedures enable you to receive your share of these funds.



TRANSGENDERED STUDENTS— RESPECT for ALL

The Office of Civil Rights and charter and traditional schools are asking many of the same questions about serving transgendered students equally and appropriately with all students in a school. All public schools can benefit from the following pointers gleaned from court cases and OCR guidance:

- School personnel should use a student’s preferred name and the appropriate pronouns for their students.
- The official school record must reflect a student’s birth certificate, but a classroom roll is not the “official record.”
- School personnel should encourage other students to use a student’s preferred name



Surveillance videos are “student records” under FERPA according to the Utah Court of Appeals

Surveillance Cameras and FERPA

The Utah Court of Appeals issued a ruling earlier this summer that surveillance cameras as used and maintained in Canyons School District, are student records under FERPA. Bryner v. Canyons School District, 2105 UT App 131. This means a request to view a video from a surveillance camera requires consent from the parents of all the students in the video, or the blurring out of all identifiable features of the other students in the video before releasing the video to one parent.

The case began 3 years ago when Mr. Bryner’s child was involved in an altercation with other students outside of a classroom in Butler Middle School. A surveillance camera recorded the incident and Mr. Bryner filed a GRAMA request for a copy of the video. The District denied the request on the grounds that the video was an “education record” under FERPA and unless all the parents of the other students in the video consented to a release of the video, it could not be produced to Mr. Bryner. Bryner filed a complaint in state court arguing that the video was not an education record and must be disclosed under GRAMA.

The trial court ruled that Bryner could have a redacted copy of the video if he paid the money to blur out all the identifiable features of other students. Bryner appealed. The Utah Court of Appeals held that the video is an education record as defined by FERPA, rejecting the argument that because the record is “nonacademic in nature” it is “therefore not the type of record FERPA was meant to protect.” Instead the court found that a plain reading of FERPA suggests that Congress intended to define education records to be broad in scope. Because the video contained information directly related to students and because the video was maintained by persons acting for the District, it qualified as an education record. While the court did not discuss how the record was maintained exactly, it is clear that if a surveillance video is maintained by a school or district or by an entity who is maintaining it on behalf of the school or district, it likely meets the “maintained” prong of the definition of an education record. It is therefore protected under FERPA.

Transgender Students, Cont.

and appropriate pronouns, without embarrassing a student or calling attention to the issue.

–School people should create an accepting atmosphere in the classroom and school. No bullying, no mocking, no harassing—toward ANY student—with strict and sure consequences for students who do not comply.

–Classroom discussions should stay on point—without digressing into non-curriculum areas.

–Teachers should not share personal opinions on sexuality and transgender issues with students—either in class, in small groups or with individual students.

–School personnel should hold information about transgendered students in strictest

confidence, sharing information with other school employees only as needed.

–Student records must be strictly confidential between need-to-know employees and parents.

–If possible, schools should have a unisex bathroom or offered the use of the faculty unisex restroom. Some charters have opted to use gender specific bathrooms of the student’s choosing for their students.

–School employees should listen to parents of transgendered students and make reasonable accommodations when asked.

–School personnel must not penalize student grades, overlook students in class, or make examples of students to illustrate their points.

It is the school’s responsibility to educate ALL students and to refrain from discriminating against any student struggling with gender identity.

To Discipline or Not to Discipline for Off Campus Online Threats

An August 2015 en banc 5th Circuit Court of Appeals decision in Taylor and Dora Bell v. Itawamba County School District both furthered and complicated disciplining students and employees for online activity. In December 2010, Taylor Bell, an 18 year old aspiring rapper and a senior in Itawamba School District in Mississippi, composed and recorded a rap song about some female students' complaints that two of the male coaches at the high school were sexually harassing them. He said he believed if he wrote and sang about the incidents, someone might hear his song and do something about the teacher-on-student harassment. The resulting song was raunchy, included foul language, and freely used disgusting words

and phrases. It also defamed the coaches. Bell wrote the song during the Christmas holidays, using his own equipment and resources. After Christmas, Bell uploaded the song to his Facebook page where it was available to his Facebook "friends," and later uploaded the song to YouTube, he said targeting recording companies.

Following a disciplinary hearing, Bell was sent to the District alternative school for the balance of the 9-week grading period and excluded from school activities. The Committee concluded that Bell's song "... did threaten, harass and intimidate employees in violation of School Board policy and Mississippi State law." No one claimed there was an actual threat or

disruption.

The question posed by the 5th Circuit was whether, consistent with the requirements of the 1st Amendment, student initiated off-campus speech directed intentionally at the school community and reasonably understood by school officials to be threatening, harassing, and intimidating to a teacher satisfies the almost 50-year old Tinker v. Des Moines standard for restricting student speech. The restriction must be based on a reasonable forecast of a substantial disruption. The 5th Circuit, unlike most previous lower and circuit court decisions, determined it did, and upheld Taylor Bell's suspension—to an alternative placement.

Back to School Q&A

Q: It seems that more and more parents are choosing not to enroll their 5-year old boys, especially those with summer birthdays, in kindergarten? Shouldn't these children be in school?

A: Utah's compulsory education age begins in the year a child turns 6. This means that 5 year olds (in Utah) are not required to enroll in school. HOWEVER, this does NOT mean that kindergarten is an optional grade. Public school districts must offer K under Section 53A-3-402.7 (and charter schools must offer the grade level consistent with

their charters), but students are not required to attend school in the traditional kindergarten year. Schools may require students to begin in kindergarten when they enroll in public school for the first time.

Q. May a homeschooled child be dually enrolled at either a neighborhood district school or at my charter school? For example, if a student wanted to take a calculus class in the public schools, but was homeschooled for all other courses, would I have to enroll the student at the charter?

A. Under current law and Board of Education rules, the answer is a "technical" yes. There is no rule or law that currently exempts charters from the dual enrollment law (53A-11-102.5) and Board Rule (R277-438) despite the differences in funding and enrollment caps that charter schools face. However, amendments to R277-438, being discussed at this month's Board meeting, provide that a "public school that is not the student's resident school may allow a private or home school student to enroll ... at the discretion of the public school."

In other words, under the amendment, a charter may decide whether to accept dually enrolled students. If the changes pass, this means that the common past practice of adopting a policy to NOT allow dual enrollment would be in technical compliance with the law, as well as making practical sense due to the funding mechanism for charter schools. A "Dual Enrollment" bill is already open which may change the law consistent with this new Board rule.



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Carol Lear, Heidi Alder, and Erin Preston are pleased to announce their affiliation as of counsel with Lear & Lear, LLP to provide Education Law services to school districts, charter schools and other public education-related entities. Our services include:

- Prompt and cost effect responses to everyday legal questions and issues
- LEA/school policy and contract review
- School facilities, construction and financing issues
- Hearing officer services
- Employee questions and issues
- Training for educators and for students



Lear & Lear Teacher Ethics Training

Since January, 2013, there have been no less than 14 cases of educators accused of sexual misconduct with students and those include cases among charter school staff.

In the 2015 legislative session, H.B. 345 "Educator Abuse Policy" sponsored by Sen. McCay, received a great deal of attention from other legislators and the media. The public is fascinated—and disgusted—by the stories of teachers who become sexually involved with students. It is such a captivating tale that Brianne Altice is making headlines throughout the world. Though these cases represent a very small

percentage of Utah educators, the notoriety of these cases does not help build the perception of professionalism in education.

While at the State Office of Education, Heidi and Carol saw many of these and other similar cases. The fact is, most of these cases do not involve child predators or pedophiles. Of the 14 cases in the last 2.5 years (2013-present), only 2 involve children younger than 12. Most of these cases involve decent educators who have good rapport with older students, but who first lack appropriate boundaries and then have egregious lack of judgment.

Rather than more laws aimed at reducing inappropriate teacher-student relationships, (Sen. McCay's bill does very little more than what is already happening to keep sexual predators out of the classrooms), professionalism and boundary training is much more effective in preventing not only the sex conviction cases that make headline news, but all boundary violations.

In consultation with psychologist Dr. Val Hale, Lear & Lear has developed a 90 minute training based on Carol's and Heidi's collective 30 year experience reviewing and investigating educator boundary cases. The training

is dedicated to helping school employees* understand appropriate boundaries and professionalism in a meaningful and engaging presentation. The training includes real life examples of misguided teacher-student relationships and encourages all employees to be introspective about their own vulnerabilities when it comes to their relationships with students.

If you are interested in a training for school please contact us for more information and for references from those who have received this training.

*L&L also has a student train-