



**UTAH
EDUCATORS' RIGHTS
PAMPHLET**

UTAH EDUCATION ASSOCIATION

By Michael T. McCoy, General Counsel

**Kim Campbell, President
Susan Kuziak, Executive Director**

© 2006



**UTAH
EDUCATION
ASSOCIATION**

875 East 5180 South • Murray, Utah 84107 • 801-266-4461
1-800-594-8996 • www.utea.org

DISTRICT	UNISERV
Alpine	Bonneville
Beaver	Color Country
Box Elder	Northern
Cache	Northern
Carbon	Bonneville
Daggett	Eastern
Davis	Davis
Duchesne	Eastern
Emery	High Desert
Garfield	Color Country
Grand	High Desert
Granite	Granite
Iron	Color Country
Jordan	Jordan
Juab	High Desert
Kane	Color Country
Logan	Northern
Millard	High Desert
Morgan	Eastern
Murray	Wasatch
Nebo	Bonneville
North Sanpete	High Desert
North Summit	Eastern
Ogden	Ogden/Weber
Park City	Eastern
Piute	Color Country
Provo	Bonneville
Rich	Northern
Salt Lake	Wasatch
San Juan	High Desert
Sevier	High Desert
South Sanpete	High Desert
South Summit	Eastern
Tintic	High Desert
Tooele	Wasatch
Uintah	Eastern
Wasatch	Eastern
Washington	Color Country
Wayne	High Desert
Weber	Ogden/Weber

INTRODUCTION

UNISERV OFFICES

Paul Baum, Suzie Makin, Ron Firmage BONNEVILLE 39 S 400 W Orem, UT 84058 Phone: 801-224-2055 Fax: 801-224-6137	Sue Porter COLOR COUNTRY 180 N Main Street Richfield, UT 84701 Phone: 435-896-4890 Fax: 435-896-8766
Becky Bouvang, Amber Schwartz DAVIS 85 S 185 E PO Box 500 Farmington, UT 84025 Phone: 801-451-2277 Fax: 801-451-0352	Arlene Arnold EASTERN 875 East 5180 South Murray, UT 84107 Phone: 801-269-0259 Fax: 801-265-2249
Star Orullian, Nikki Peterson GRANITE 875 East 5180 South Ste. 1 Murray, UT 84107 Phone: 801-266-4411 Fax: 801-266-3362	Jim Porter HIGH DESERT 180 N Main Street Richfield, UT 84701 Phone: 435-896-4890 Fax: 435-896-8766
Laura Black JORDAN 875 East 5180 South Ste. 2 Murray, UT 84107 Phone: 801-262-2449 Fax: 801-262-1013	Barbara Covert NORTHERN 550 N Main #215 Logan, UT 84321 Phone: 435-753-3875 Fax: 435-755-5054
Rick Palmer OGDEN-WEBER 939 25th St. Ogden, UT 84401 Phone: 801-399-3746 Fax: 801-393-0465	Elaine Tzourtzouklis WASATCH 5150 South 900 East Salt Lake City, UT 84117 Phone: 801-262-6627 Fax: 801-262-1416

This pamphlet was prepared at the request of the Utah Education Association's Professional Rights and Responsibilities Committee to inform you about your basic rights and obligations as a Utah educator as well as the job protection you have as an educator and a member of the UEA. Because it is merely a summary, it does not provide details about each right and responsibility, nor does it cover every right or responsibility. The PR&R Committee has prepared a more detailed publication that has been provided to your UniServ director, your local president, and to your UniServ's representative on the UEA PR&R Committee. If you are interested in the longer version, call the Utah Education Association (266-4461x110).

BACKGROUND

Many years ago, public employees were deemed to have few or no employment rights. Employment was "at will" which meant, absent a contract, the employee was free to quit at any time and the employer was free to terminate the employee at any time. Reasons need not be given. While the legal equation appeared balanced, the reality was the employer had tremendous leverage over the employee. Over the years, the employees sought to equalize the bargaining power of employees through unions and legislation.

To provide stability in the workforce, boards of education required educators to sign one-year contracts

requiring the educator to provide services for one full year. These contracts generally gave the district the right to terminate the employee with little or no notice. Educators had no right to expect continued employment beyond the school year unless the contract was for more than one year.¹

Much has changed in the past 100 years, but the “employment at will” doctrine is still the beginning point of analyzing an educator’s employment rights. If an educator has a grievance about his/her employment, the educator must show the district has violated a provision of the employment contract—either a collective bargaining agreement or board policy. If an educator intends to resist a disciplinary action (including termination) s/he has the burden to show s/he is protected by a law, contract, or district policy. This pamphlet describes those rights.

¹ It should be noted superintendents’ employment contracts are for periods of two years by law. Many superintendents’ contracts contain a provision requiring several months’ notice of intent not to renew the contract or the contract is deemed extended for a period of two years.

5. Do not discuss an injury with the attorney for the other party except after having received advice from your UniServ director or the UEA attorney.

6. If you are threatened with litigation or sued (civil):

- a. Call your UniServ director immediately. If s/he is not available, call UEA.
- b. Follow the requirements of the indemnification law described on p. 11.
- c. Send a copy of the summons and complaint to your UniServ director.

7. If you are about to be charged or are charged with a crime:

- a. Call your UniServ director immediately. If s/he is not available, call the UEA attorney.
- b. Do not discuss the issues involved with anybody except your attorney until otherwise advised.
- c. Do not provide the police, investigators, or the administration with any information until you have consulted an attorney. You have a right to legal counsel. Generally, both the police and the administration will allow you to consult an attorney before they proceed with the inquiry.
- d. Do not volunteer to take a polygraph test without first consulting an attorney.



X. WHAT TO DO WHEN THREATENED WITH A LAWSUIT OR SUED

1. Advise your local president or UniServ director about the problem as soon as possible.
2. Prepare a brief factual, but detailed, summary of the facts. Avoid statements of opinion or speculation. Be as objective as possible. Include names and addresses of witnesses. Do not allow anyone to see this summary until after it has been reviewed by your UniServ director or UEA.
3. Verbally report the incident to your principal. Often your principal will ask for a statement. See 2 above.
4. Make no statement indicating your guilt or responsibility. Do not discuss a matter with a parent or guardian where a student has been injured and you may be responsible. Obviously, you can say you're sorry the child was hurt, but do not accept blame. If the parent wants to know, say, "We're investigating. We'll let you know just as soon as possible." Contact your UniServ director immediately.



I. EDUCATOR RIGHTS MUST BE IN WRITING

Educator rights are found in written documents ~ the U.S. Constitution, federal laws, the state constitution, state laws, district policies and handbooks, and negotiated agreements. With few exceptions, educators' rights are not implied or extended beyond the written agreement or board policies. Additionally, vague language is not construed by the courts in favor of the educator. School districts claim the right to give board policy and vague language the meaning the board wants. The language contained in negotiated agreements will be construed by the judge. UEA takes the position board policy is part of an educator's employment contract and should be construed by the judge. There is no Utah case law addressing the issue, but courts in other states have held board policy is contract language and should be construed against the party drafting it, i.e., the board.



II. CONSTITUTIONAL RIGHTS

The U. S. Constitution prohibits government from establishing (promoting) religion or interfering in the free exercise thereof; it prohibits unreasonable searches in schools, taking life, liberty or property without due process of law, denying equal protection of the law, and nonconsensual self-incrimination in criminal cases; it protects the right of assembly, speech, the press, and privacy. It also prevents states and school districts from impairing contracts (a right important to those relying on the state retirement system). The Constitution of Utah protects most of these same rights.

Free Speech. Technically, it's "protected speech." Protected speech means the school district cannot discipline an educator for exercising his/her rights to express him/herself on a subject about which district administrators or the board of education disagree. Educators do not have a right to speak their minds

DO NOT WITHOUT FIRST CONSULTING AN ASSOCIATION REPRESENTATIVE:

1. Resign.
2. Give written or verbal statements to anyone about a serious allegation of your misconduct, except school administrators have the authority to direct you to prepare such a statement—failure to follow directions may be insubordination. Ask to see an Association representative before giving a statement. (See X, 2. below.)
3. Involve students or parents (unless they are directly involved with the problem). It's unwise for teachers to interview students about an allegation. Often district administrators will direct the educator to not talk to anyone about an incident. Call your UniServ director immediately. You have an absolute right to ask for Association assistance.
4. Write lengthy accounts to the district or your administrator explaining your side until after you have consulted an Association representative or make statements about serious matters without consulting your Association representative.
5. Sign any papers or agreements.
6. Refuse to obey a directive from your supervisor unless you know you have a right to refuse.
7. Agree to take a polygraph test.
8. Admit guilt, accept blame, or agree to pay expenses or compensation.
9. Seek private legal advice with the expectation UEA will pay. **UEA pays legal fees *only if pre-authorized*** by the UEA general counsel or the UEA executive director.



IX. WHAT TO DO ABOUT AN EMPLOYMENT PROBLEM

DO:

1. Consult with your Association representative, local president or UniServ director.
2. **Follow the advice given by the UniServ director or the UEA attorney.**
3. Try to resolve the problem at the lowest administrative level ~ usually the building principal.
4. Prepare a written report of the incident; keep a log where the problem is ongoing. List witnesses.
5. Request and keep copies of documents, papers, and policies related to the problem.
6. Follow the district policy on grievances and know the timelines for processing the grievance.
7. Keep the Association representative, local president or UniServ director informed and current.
8. Know your rights.

about personal matters, to teach off subject, or to criticize district administrators in all situations. School districts own the educator's time during working hours and, during that time, pretty much can direct what, how, when and where to teach. Public employees generally have the right to express themselves about matters of public concern in public meetings and places and to others *on their own time*. Faculty lounges are usually "free speech zones" where educators can express themselves about school conditions and operations. Comments that significantly disrupt the operation of schools may be grounds for discipline even if the speech is protected. Gossip about other employees is not protected speech. Neither is the use of obscenities or profanity. Matters of personal concern are not protected speech. The speech must be about a matter of public concern, generally concern about the operations of the school, the district and education programs.

Religion. Educators may teach *about* religion if the subject is relevant to their assignment. They may not *preach* religion to their students. If asked about their membership in a particular church, the teacher may answer, but the answer should be a factual and very short answer avoiding adjectives in the description. Recently some federal courts have held teachers may attend *and participate* in the before and after school meetings authorized by the Equal Access Act which requires schools receiving federal aid that permit non- curriculum related meetings and activities to be held before and after schools to permit students to hold prayer and religious meetings. Before educators *participate* in the meetings, they should discuss their participation with the building principal. Other groups such as gay/lesbian clubs claim equal rights under the Equal Access Act.



III. STATUTORY RIGHTS

a. **Civil Rights.** Federal and state laws prohibit employment discrimination on the basis of gender, religion, age, color, national origin and disability. All employees have a right to work in an environment free of conduct which perpetuates discrimination based on these protected classes. The EEOC has adopted rules designed to prevent sexual harassment. Age discrimination protects employees age 40 and over. Employers must make a reasonable accommodation for employees who have a disability. Before an employer must make a reasonable accommodation for an employee's disability, the employee must inform his/her supervisor about the disability and request accommodation. All of the civil rights laws require the employee file a written complaint within a short time after the employer took the discriminatory action against the employee—usually within 180 days. The complaint is filed with the EEOC (federal) or the Utah Anti-Discrimination and Labor Division (state).

b. **The Family and Medical Leave Act (FMLA).** FMLA requires school districts to provide leave to most

The UEA provides immediate assistance to members accused of criminal activity or investigated by law enforcement agencies arising out of job-related conduct. Most of these charges relate to corporal punishment, but many are more serious. The protection is important as more and more innocent educators are being accused of abusing or assaulting students.

If you believe you are the subject of a criminal investigation or are arrested, you should demand to talk with the UEA attorney before making any statements to anyone. Make no agreement to do anything until you receive competent legal advice.

Too often educators naively participate in a meeting with school authorities, law enforcement officers, or investigators for the Division of Child and Family Services aka Child Protective Services. If an educator has reason to believe s/he is about to meet with school administrators where the purpose of the meeting includes possible disciplinary actions against the educator, **prior to the meeting** the educator should (1) ask whether the meeting may involve possible disciplinary action against the educator, and (2) request a representative of the association be present during the meeting if (a) the educator was told disciplinary action was a possible result of the meeting or (b) the administrator refused to tell the educator whether the meeting might result in disciplinary action. If a law enforcement officer or DCFS investigator requests a meeting with an educator, the educator should first find out whether the meeting involves allegations of child abuse against the educator. If it does, **the educator should not meet** with the law enforcement officer or the DCFS investigator *without first consulting with his/her UniServ director or the UEA attorney.* While law enforcement officers must first give a person their *Miranda* rights, DCFS investigators *do not*. Several educators have learned to their regret the statements they gave to DCFS investigators could be and were used against them.



VIII. MEMBERSHIP RIGHTS

The Utah Education Association enforces the contractual and statutory rights of its members. Membership in the Association also provides \$1,000,000/3,000,000 per individual/per occurrence aggregate protection in most job-related civil suits, \$300,000 in civil rights suits, and \$35,000 to defend a criminal charge.

Knowing about your rights isn't enough. Membership in the Utah Education Association guarantees the educator has a way to protect and enforce his or her rights.

Additionally, members are covered by a \$1,000,000 per individual, \$3,000,000 per occurrence aggregate personal liability insurance policy for claims made against the member (\$300,000 civil rights limit), and \$35,000 for costs and attorneys fees incurred in defending job related criminal actions brought against the educator. Certain limitations apply to the coverage. A copy of the insurance policy is provided annually to all members.

The UEA will pay \$1,000 toward the criminal defense of a members accused of job-related crimes and may pay up to \$5,000 in unusual cases.

employees employed for more than a year for reasons related to their own health, child birth, adoption, or foster care, and to take care of an ill relative. The law provides up to 12 weeks of unpaid leave for employees of school districts having more than 50 employees. Districts must pay earned sick-leave and may not terminate an employee during any part of the 12 week period whether or not there is earned sick-leave.

c. **The Occupational Safety and Health Act (OSHA).** OSHA is a federal act enforced by the state of Utah. OSHA requires all districts to provide a safe working environment for employees.

d. **Utah Orderly School Termination Procedures Act (UOSTPA).** The UOSTPA requires career educators be provided with due process before they can be involuntarily terminated. Due process means a career educator must be warned in writing at least 90 days before the end of the contract year his/her contract of employment is in question and given the reasons therefore and an opportunity to improve. If the educator does not improve, notice of termination must be given at least 60 days before the end of the contract term. If the career educator is terminated, s/he has a right to a statement of the reasons for the termination and a right to have those reasons justified before either an independent hearing officer or the board of education in a termination hearing. At the hearing, the educator has a right to hear the evidence against him/her, the right to cross examine the witnesses and question the documentary evidence and to present his/her side of the case. If the board decides to uphold the recommendation to terminate, the educator has a right to have the findings of fact supporting the decision in writing. The law requires provisional educators be given at least 60 days notice of intent to non-renew at the end of the contract term.

e. **Utah Educator Evaluation Act (EEA).** The EEA requires all educators be evaluated using valid and reliable criteria and procedures, i.e., related to their duties. Provisional educators are entitled to have a mentor assigned to them. The EEA requires districts that identify an educator as having performance problems in the evaluation provide the educator with a written remediation plan and assistance. In 1996, the Utah Court of Appeals ruled the EEA did not protect *provisional* educators from non-renewal. In 2002, the United States 10th Circuit Court of Appeals held career educators were entitled to the protections of the EEA.

f. **Utah Professional Practices Act (UPPA).** The UPPA creates a Professional Practices Advisory Commission to the State Board of Education. UPPAC establishes standards for professional competence and ethical behavior for certificated educators and has disciplinary power over educators who fail to meet those standards. The Commission's activities have expanded over the years and it now reviews the professional conduct of hundreds of educators each year. The Commission has a process for conducting hearings to determine whether an educator's license should be suspended or revoked.

g. **Retirement.** Full-time educators participate in the Utah Retirement Systems and the Social Security System. Districts pay 100% of the state retirement contribution and match the employee's payment to the Social Security system. There are substantial penalties for educators that retire before age 65 with fewer than 30 years of retirement credit. Before retiring, discuss your retirement rights with your UniServ director.

h. **Unemployment Compensation.** Educators are eligible for unemployment compensation if they are terminated from district employment unless terminated for serious misconduct. Educators do not qualify for unemployment

constitutes "fair use." Four factors are used when determining whether the reproduction of copyrighted material is "fair use": (1) the purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work. Generally, if only a small portion of the work is reproduced for educational purposes, the educator will not run afoul of the law. It is always best, however, to get the permission of the copyright holder before incorporating copyrighted work into lesson plans.

websites. Educators should read and familiarize themselves with their district's acceptable use policy at least once each year. Additionally, the Utah legislature has strongly objected to educators using district owned computers to communicate partisan political positions. Educators should not use district computers to *send* partisan political statements. Ordinarily, information about political events such as the time, date and place of a county convention would not violated the policy, but it's wise to check with administrators first. It's okay to receive information. If the educator wants to forward partisan information, send it to the home computer and distribute it from home without the district's logo or other school or district information in it.

i. **Testing Protocols.** In this era of increased testing, educators must be aware of the procedures involved with the tests they administer to students. Violations of testing protocols may lead to disciplinary action against your employment and/or your license. The Utah State Office of Education has prepared a video outlining elements of good testing. Every district's testing director should have a copy. Suggestions include: never copy a test, keep all tests and test manuals in a secure area, count all tests and test manuals, never use old tests for any reason including practicing test preparation, students cannot be used to monitor testing, do not rephrase questions or provide hints to students, *follow the testing manual directions precisely.*

Copyright. Educators often use additional materials to supplement their lessons. This is generally an effective way to help maintain students' interest in the subject matter. Educators must do this with caution, however. Apart from the concerns raised by presenting non-approved materials in the classroom, the educator also runs the risk of violating federal copyright law. It is possible, however, to display copyrighted material without violating federal law if the reproduction

compensation during summer months where they expect to continue employment next fall. While unemployment compensation was routinely paid 20 years ago, districts now often contest unemployment compensation applications.

i. **Workers' Compensation.** Educators are eligible for workers' compensation when they are injured on-the-job. State law requires employers to have workers' compensation application forms available. The form should be completed as soon as possible after a job-related accident. Claims not filed within one year are barred. While workers' compensation was almost automatically granted 20 years ago, most school districts often contest the application where questions of eligibility exist.

j. **Dues Deductions.** It may appear axiomatic, but public employees have not always had the right to have their dues deducted. Utah law gives public employees the right to have their employers deduct association dues.

k. **Political Contributions.** Until 2001, public employees had the right to have a political action deduction taken from their pay and contributed to a political action program. The 2001 Utah legislature enacted punitive restrictions on these rights prohibiting employees from making or school districts from collecting and paying contributions to a PAC. The legislation was ultimately ruled unconstitutional by state and federal courts. (As if this writing, the issue is on appeal in the federal courts.)

l. **Right to Organize Without Employer Interference.** The U.S. Constitution gives employees the right to associate with other individuals and join organizations. Utah's Right to Work law goes further prohibiting employers from interfering with Association attempts to organize, selecting its own representatives, and from engaging in activities that might discourage employees from joining. While most districts

have no policy limiting the right of employees to organize (recruit members), some have restricted the right of employees to actively organize to certain times of the year. Employees can always organize off school time and premises.

m. **Right to Hold Public Office.** Educators have a right to hold public office except on the school board of the district where they are employed.² Many districts provide leave to perform public service jobs.

n. **Immunity and Indemnification.** Educators have governmental immunity for acts or omissions occurring within the course and scope of employment, except for where the employee intentionally injures individuals or property. Governmental immunity means Utah state courts will not hear civil cases against the school district or its employees except under limited conditions. Educators, members of the board of education and district employees do not have Utah governmental immunity in federal court for violations of federally protected rights. The Utah Governmental Immunity Act entitles employees to request defense and indemnification when sued for acts related to their employment. The request must be made in writing within a few days after the employee is served with a summons.

o. **Educator Records.** Educators have a right to request, examine and copy documents contained in their personnel file. They also have a right to obtain copies of most school district records. The Utah Governmental Records Access and Management Act makes certain parts of an educator's personnel records public, but restricts access to specific information such as an educator's evaluation and financial records.

² UEA funded litigation during the 1960s and 1970s ensuring the right of educators to serve in the Utah legislature.

f. **Professional Requirements.** Educators have the responsibility to meet the minimum standards of the profession. Educators must have the graduate credit necessary, be a graduate of an accredited institution of higher education, hold endorsements in the areas in which they teach and perform services, and remain knowledgeable about current developments in the subjects taught. Because of the increased liability and duties imposed by federal and state law, educators are required now more than ever to be informed about the legal rights and responsibilities they have toward each other and their students.

g. **Public Officers' and Employees' Ethics Act.** Utah law prohibits public employees and officers from having or engaging in activities creating a conflict of interest between the officers' or employees' duties. Essentially, the Act prohibits personal economic gain from one's public position or knowledge gained from one's public position. In 2000, UEA successfully urged amendments to the Ethics Act to permit educators to provide learning experiences to their pupils in the district for which the educator received some kind of compensation. Prior to the amendments the USOE had opined educators could not provide these kinds of services to students and pupils attending schools in the district.

h. **Acceptable Use Policies.** All districts have "acceptable use policies." These policies describe the appropriate uses of school computers. If an educator violates any portion of these policies, s/he may be subject to discipline by the school district and from the Utah Professional Practices Advisory Commission. Many educators have lost their licenses because they viewed inappropriate websites or stored inappropriate pictures on their district-owned computers. Because districts maintain logs of the websites users access, it is important to notify the school's IT department immediately if an educator accidentally comes upon any sexually explicit

Additionally, educators should comply with the code of professional responsibilities adopted by the National Education Association. The Utah State Board of Education has adopted codes of professional and ethical conduct for educators. These codes require the educator be competent to perform in the areas for which s/he is licensed. The code of ethical conduct requires educators to maintain high ethical standards both on and off the job. Educators' licenses will be revoked for illegal drug use, sexual misconduct with a student, and almost any kind of serious criminal conviction.

c. **Student Records.** Student records and information about a student are confidential and should not be provided to persons not authorized to have them. Districts tend to err on the side of caution in defining what is a student record or providing information about a student even to other teachers. The law gives districts considerable discretion to provide information to other school employees on an "as needed basis" as decided by the district.

Utah law also prohibits educators from surveying students or asking questions about a student's private life, mental or psychological problems, illegal, antisocial, or demeaning behavior, sexual behavior, orientation, or attitude, politics, appraisals of individuals with whom the student or family member has close family relationships, and religious affiliations or beliefs.

d. **Child Abuse.** Educators are required to report suspected cases of child abuse. (See pp. 14-15).

e. **Safe Learning Environment.** Districts have a duty to provide a safe learning environment free from conduct which is prohibited by federal law under anti-bias and discrimination laws.



IV. NEGOTIATIONS (AND BOARD POLICY)

The most comprehensive source of teachers' rights is local negotiated agreements and board policy. This section uses the term "negotiated agreement" but negotiated agreement includes board policies.

Most Utah school districts have negotiated agreements with the local affiliate of the UEA providing a wide and diverse range of substantive and procedural rights. The negotiated agreement contains definitions, the process for negotiating with the district, grievance and termination procedures, the salary schedules, personal insurance benefits, leave policies, sick pay, progressive discipline procedures, remediation, voluntary and involuntary transfer procedures, professional development issues, hours of work (at school), extra-duties assignments, work load, class size, peer review, professional assistance and remediation. The UEA has prepared a "Professional Agreement

Reference Manual” to assist locals have access to and use good contract language.

A negotiated agreement should contain:

a. A salary schedule, lane changes and increments, and longevity steps in which all certificated teachers are described. Longevity steps should be indexed at the same rate as the salary.

b. A description of the medical insurance plan, the name of the provider, whether the district will pay employee, dependent and family coverage, describe the deductibles and co-pays and whether the provider will be selected by the local association and the district. Changes in coverage should only be made with the concurrence of the local.

c. A description of any early retirement benefit.

d. A grievance procedure and (if different) a negotiated termination procedure which assures a decision by a third party hearing officer, or better, an independent arbitrator. Disciplinary action should be based on job-related conduct, not the private life of the educator.

e. Good evaluation language including a remediation process.

f. Provisions for voluntary and involuntary transfers, reductions in force in which seniority is the primary criteria, and progressive discipline.

g. Professional development issues including safe schools, released time for professional development, association work, transfers, site-based decision making, class size, dealing with problem students, special education and support, planning



VII. EDUCATOR RESPONSIBILITIES

a. **School Board Authority.** School boards have broad authority to make employee assignments. School boards may not assign educators to perform duties clearly outside the scope of an educator's contract or to perform services which are obviously dangerous or unlawful. Boards have the authority to make new assignments and to give the educator a reasonable time in which to become qualified to perform those assignments.

b. **Educators.** Educators have the responsibility to be and remain qualified to teach in the areas they are assigned and to perform the duties they are assigned or directed to perform. If an educator is asked or directed to do or not do something the educator believes to be in violation of the working agreement, the educator should do as directed, then grieve. The rule is, “do it, then grieve.” Refusing to do or not do something s/he is directed to do or not do may be insubordination for which the educator can be disciplined.



VI. CHILD AND FAMILY SERVICES

Utah law requires the Division of Child and Family Services to investigate all complaints about child abuse. The law permits Division investigators to “substantiate” child abusers based only on the child’s statements; it does not require a response from the accused (called a perpetrator on the DCFS forms). Many educators have been accused and initially substantiated as child abusers. Almost all those represented by UEA have had the finding changed to “not substantiated.” Educators have a right to challenge the “substantiated” finding.

time, extra duties assignments for which compensation is paid, duty-free lunch time, and protection for academic freedom.

h. Recognition of the association as the exclusive bargaining (representative) for teachers. (Utah law prohibits a school board from entering into an agreement that prevents the board from negotiating individual terms and conditions of employment, but most districts follow the negotiated agreement anyway.)

Because Utah has 40 school districts, each with its own negotiated agreement, any detailed discussion is impossible in this short summary. Those provisions must be obtained from your local board of education and your local association. It is important you know what your rights are.

If a contract right is violated, every district has a grievance or termination procedure to correct the alleged violation. Most procedures require a grievance or request for a hearing be made within a short time after the employee “knew or should have known” of the violation. Failure to timely make the request or file the grievance usually results in waiving it.

UniServ directors who have expertise in the area of employee rights are available to consult with members about their rights.



V. CHILD ABUSE – ASSAULT – CORPORAL PUNISHMENT

Child abuse is a term applied to several kinds of conduct involving a child. Child abuse includes physically striking a student, sexual conduct with a student, and verbally abusing a student. Criminal and civil charges can be brought against an educator. Educators are required by state law to report to local police authorities or the Division of Child and Family Services (“DCFS”) suspected cases of child abuse. Some districts direct employees to report suspected child abuse to their building administrator. The building administrator may tell the educator they need not report to the DCFS or police. The advice is wrong. The individual having the reasonable suspicion must make the report; it cannot be delegated.

Recently, the DCFS has conducted several investigations of teachers who have “touched” students for one reason or another which resulted in “findings” of child abuse. Most of the “findings” have been reversed on appeal. Had the finding not been reversed, the teacher’s name would have been

placed in a computer data base containing hundreds of thousands of names of “substantiated” child abusers. An accusation of child abuse can be substantiated where a child is injured (i.e., bruised) even though the educator did not intend to injure the child. The data base is used for various purposes some of which are not entirely clear. Individuals against whom child abuse charges have been substantiated may not be licensed for employment in certain day care and adult care services. It appears a finding of child abuse is provided to educators’ employers and the UPPAC. Until recently, individuals whose names were placed on the data base were not told about the agency action.

Utah law also requires educators who reasonably suspects a school employee has sexually abuse of a student to report the suspicion to the building administrator.

It is a criminal offense to assault another person (students or educators). However, under Utah's criminal code, it is a defense to the charge of assault that an educator acted in place of the parent and administered *reasonable* punishment under the circumstances.

Utah law prohibits corporal punishment. It is against most district policies for an educator to strike a student except in self-defense, defense of another, or defense of property. Educators who injure a student administering corporal punishment or who continue to administer corporal punishment after being told not to by the district may be terminated—and the UPPAC now challenges the right of an educator to retain his/her license where the educator assaults a student.