

1 **EDUCATOR LICENSING AND PROFESSIONAL**

2 **PRACTICES ACT**

3 1999 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Sheryl L. Allen**

6 Richard M. Siddoway

7 AN ACT RELATING TO PUBLIC EDUCATION; REFORMATTING AND RESTRUCTURING
8 STATUTORY PROVISIONS ON LICENSING OF EDUCATORS; PROVIDING DEFINITIONS;
9 PROVIDING PROFESSIONAL DEVELOPMENT PROVISIONS; ESTABLISHING CRITERIA
10 FOR USING SUBSTITUTE TEACHERS; PROVIDING FOR A HEARING PROCESS
11 REGARDING COMPLAINTS AGAINST EDUCATORS; PROVIDING A REPEALER; AND
12 PROVIDING AN EFFECTIVE DATE.

13 This act affects sections of Utah Code Annotated 1953 as follows:

14 AMENDS:

15 **58-61-307**, as last amended by Chapter 10, Laws of Utah 1997

16 **63-30-2**, as last amended by Chapters 192 and 260, Laws of Utah 1994

17 ENACTS:

18 **53A-3-420**, Utah Code Annotated 1953

19 **53A-6-303**, Utah Code Annotated 1953

20 **53A-6-304**, Utah Code Annotated 1953

21 **53A-6-305**, Utah Code Annotated 1953

22 **53A-6-306**, Utah Code Annotated 1953

23 **53A-6-307**, Utah Code Annotated 1953

24 **53A-6-403**, Utah Code Annotated 1953

25 **53A-6-404**, Utah Code Annotated 1953

26 **53A-6-405**, Utah Code Annotated 1953

27 **53A-6-501**, Utah Code Annotated 1953

- 28 **53A-6-502**, Utah Code Annotated 1953
- 29 **53A-6-601**, Utah Code Annotated 1953
- 30 **53A-6-602**, Utah Code Annotated 1953
- 31 **53A-6-603**, Utah Code Annotated 1953
- 32 **53A-6-604**, Utah Code Annotated 1953

33 REPEALS AND REENACTS:

- 34 **53A-6-101**, as last amended by Chapter 78, Laws of Utah 1990
- 35 **53A-6-102**, as enacted by Chapter 2, Laws of Utah 1988
- 36 **53A-6-103**, as last amended by Chapters 263 and 280, Laws of Utah 1998
- 37 **53A-6-104**, as last amended by Chapter 246, Laws of Utah 1992
- 38 **53A-6-105**, as enacted by Chapter 2, Laws of Utah 1988
- 39 **53A-6-106**, as last amended by Chapter 160, Laws of Utah 1996
- 40 **53A-6-107**, as last amended by Chapter 263, Laws of Utah 1998
- 41 **53A-6-108**, as enacted by Chapter 220, Laws of Utah 1995
- 42 **53A-6-109**, as enacted by Chapter 95, Laws of Utah 1997
- 43 **53A-6-301**, as last amended by Chapter 113, Laws of Utah 1993
- 44 **53A-6-302**, as last amended by Chapter 260, Laws of Utah 1994
- 45 **53A-6-401**, as enacted by Chapter 308, Laws of Utah 1993
- 46 **53A-6-402**, as enacted by Chapter 308, Laws of Utah 1993
- 47 **53A-7-101**, as enacted by Chapter 2, Laws of Utah 1988
- 48 **53A-7-102**, as last amended by Chapter 247, Laws of Utah 1991

49 REPEALS:

- 50 **53A-7-103**, as last amended by Chapter 247, Laws of Utah 1991
- 51 **53A-7-104**, as last amended by Chapter 247, Laws of Utah 1991
- 52 **53A-7-105**, as last amended by Chapter 247, Laws of Utah 1991
- 53 **53A-7-106**, as last amended by Chapter 247, Laws of Utah 1991
- 54 **53A-7-107**, as last amended by Chapter 247, Laws of Utah 1991
- 55 **53A-7-108**, as enacted by Chapter 2, Laws of Utah 1988
- 56 **53A-7-109**, as last amended by Chapter 247, Laws of Utah 1991
- 57 **53A-7-110**, as last amended by Chapter 46, Laws of Utah 1998
- 58 **53A-7-111**, as last amended by Chapter 247, Laws of Utah 1991

90 (1) ~~h~~ ~~[As noted by the United States Supreme Court, "today education is perhaps the most~~
 91 ~~important function of state and local governments." The Legislature accepts that conclusion.] THE~~
 91a ~~LEGISLATURE ACKNOWLEDGES THAT EDUCATION IS PERHAPS THE MOST IMPORTANT~~
~~FUNCTION~~

91b ~~OF STATE AND LOCAL GOVERNMENTS, h~~

92 ~~recognizing that the future success of our state and nation depend in large part upon the existence~~
 93 ~~of a responsible and educated citizenry.~~

94 (2) In providing for the safe and effective performance of the function of educating Utah's
 95 children, the Legislature finds it to be of critical importance that education, including instruction,
 96 administrative, and supervisory services, be recognized as a profession, and that those ~~h~~ **TO BE** ~~h~~
 96a ~~licensed h AND h to~~
 97 ~~serve as educators:~~

98 (a) ~~meet high standards both as to qualifications and fitness for service as educators before~~
 99 ~~assuming their responsibilities in the schools;~~

100 (b) ~~maintain those standards h~~ **IN THE PERFORMANCE OF THEIR DUTIES** ~~h~~ ~~while holding~~
 100a ~~licenses; and~~

101 (c) ~~have access to a process for fair examination and review of allegations made against~~
 102 ~~them and for the administration of appropriate sanctions against those found, in accordance with~~
 103 ~~due process, to have failed to conduct themselves in a manner commensurate with their authority~~
 104 ~~and responsibility to provide appropriate professional services to the children of the state.~~

105 Section 4. Section **53A-6-103** is repealed and reenacted to read:

106 **53A-6-103. Definitions.**

107 As used in this chapter:

108 (1) "Accredited institution" means an institution meeting the requirements of Section
 109 53A-6-107.

110 (2) "Alternative preparation program" means preparation for licensure in accordance with
 111 applicable law and rule through other than an approved preparation program.

112 (3) "Ancillary requirement" means a requirement established by law or rule in addition to
 113 completion of an approved preparation program or alternative education program or establishment
 114 of eligibility under the NASDTEC Interstate Contract, and may include any of the following:

115 (a) minimum grade point average;

116 (b) standardized testing or assessment;

117 (c) mentoring;

118 (d) recency of professional preparation or experience;

119 (e) graduation from an accredited institution; or

120 (f) evidence relating to moral, ethical, physical, or mental fitness.

121 (4) "Approved preparation program" means a program for preparation of educational
122 personnel offered through an accredited institution in Utah or in a state which is a party to a
123 contract with Utah under the NASDTEC Interstate Contract and which, at the time the program
124 was completed by the applicant:

125 (a) was approved by the governmental agency responsible for licensure of educators in the
126 state in which the program was provided;

127 (b) satisfied requirements for licensure in the state in which the program was provided;

128 (c) required completion of a baccalaureate; and

129 (d) included a supervised field experience.

130 (5) "Board" means the Utah State Board of Education.

131 (6) "Certificate" means a license issued by a governmental jurisdiction outside the state.

132 (7) "Educator" means:

133 (a) a person who holds a license;

134 (b) a teacher, counselor, administrator, librarian, or other person required, under rules of
135 the board, to hold a license; or

136 (c) a person who is the subject of an allegation which has been received by the board or
137 UPPAC and was, at the time noted in the allegation, a license holder or a person employed in a
138 position requiring licensure.

139 (8) "Endorsement" means a stipulation appended to a license setting forth the areas of
140 practice to which the license applies.

141 (9) "License" means an authorization issued by the board which permits the holder to serve
142 in a professional capacity in the public schools. The four levels of licensure are:

143 (a) "Letter of authorization," which is a temporary license issued to a person who has not
144 completed requirements for a level 1, 2, or 3 license, such as a student teacher or a person hired
145 to perform professional services on an emergency basis when fully qualified personnel are not
146 available;

147 (b) "Level 1 license," which is a license issued upon completion of an approved
148 preparation program or an alternative preparation program, or pursuant to an agreement under the
149 NASDTEC Interstate Contract, to candidates who have also met all ancillary requirements
150 established by law or rule;

151 (c) "Level 2 license," which is a license issued after satisfaction of all requirements for a

152 Level 1 license as well as any additional requirements established by law or rule relating to
153 professional preparation or experience; and

154 (d) "Level 3 license," which is a license issued to an educator who holds a current Utah
155 Level 2 license and has also received, in the educator's field of practice, National Board
156 certification or a doctorate from an accredited institution.

157 (10) "NASDTEC" means the National Association of State Directors of Teacher Education
158 and Certification.

159 (11) "NASDTEC Interstate Contract" means the contract implementing Title 53A, Chapter
160 6, Part 2, Compact for Interstate Qualification of Educational Personnel, which is administered
161 through NASDTEC.

162 (12) "National Board certification" means a current certificate issued by the National
163 Board for Professional Teaching Standards.

164 (13) "Office" means the Utah State Office of Education.

165 (14) "Rule" means an administrative rule adopted by the board under Title 63, Chapter
166 46a, Utah Administrative Rulemaking Act.

167 (15) "School" means a public or private entity which provides educational services to a
168 minor child.

169 (16) "UPPAC" means the Utah Professional Practices Advisory Commission.

170 Section 5. Section **53A-6-104** is repealed and reenacted to read:

171 **53A-6-104. Board licensure.**

172 (1) (a) The board may issue licenses for educators.

173 (b) A person employed in a position that requires licensure by the board shall hold the
174 appropriate license.

175 (2) (a) The board may by rule rank, endorse, or otherwise classify licenses and establish
176 the criteria for obtaining and retaining licenses.

177 (b) The board shall make rules requiring participation in professional development
178 activities in order for educators to retain their licenses.

179 (3) Unless suspended or revoked by the board, or surrendered by the educator, a license
180 is valid for the following period:

181 (a) a letter of authorization is valid for one year, or a shorter period as specified by the
182 board, subject to renewal by the board for a total of not more than four years;

183 (b) a level 1 license is valid for three years, subject to renewal by the board for a total of
184 not more than six years;

185 (c) a level 2 license is valid for five years, subject to renewal by the board; and

186 (d) a level 3 license is valid for seven years, subject to renewal by the board.

187 Section 6. Section **53A-6-105** is repealed and reenacted to read:

188 **53A-6-105. Licensing fees -- Credit to subfund -- Payment of expenses.**

189 (1) The board shall levy a fee for each new or reinstated license or endorsement in
190 accordance with Section 63-38-3.2.

191 (2) Fee payments are credited to the Professional Practices Restricted Subfund in the
192 Uniform School Fund.

193 (3) The board shall pay the expenses of issuing licenses and of UPPAC operations, and
194 the costs of collecting license fees from the restricted subfund.

195 (4) The office shall submit an annual report to the Legislature's Public Education
196 Appropriations Subcommittee informing the Legislature about the fund, fees assessed and
197 collected, and expenditures from the fund.

198 Section 7. Section **53A-6-106** is repealed and reenacted to read:

199 **53A-6-106. Qualifications of applicants for licenses -- Changes in qualifications.**

200 (1) The board shall establish by rule the scholarship, training, and experience required of
201 license applicants.

202 (2) (a) The board shall announce any increase in the requirements when made.

203 (b) An increase in requirements shall become effective not less than one year from the date
204 of the announcement.

205 (3) The board may determine by examination or otherwise the qualifications of license
206 applicants.

207 Section 8. Section **53A-6-107** is repealed and reenacted to read:

208 **53A-6-107. Program approval.**

209 (1) The board shall establish by rule the standards which must be met by approved
210 preparation programs and alternative preparation programs.

211 (2) Standards adopted by the board for approved preparation programs and alternative
212 preparation programs shall meet or exceed generally recognized national standards for preparation
213 of educators, such as those developed by the Interstate New Teacher Assessment and Support

214 Consortium, the National Board for Professional Teaching Standards, and the National Council
215 for the Accreditation of Teacher Education.

216 Section 9. Section **53A-6-108** is repealed and reenacted to read:

217 **53A-6-108. Prohibition on use of degrees or credit from unapproved institutions.**

218 (1) An individual may not use a postsecondary degree or credit awarded by a
219 postsecondary institution or program to gain a license, employment, or any other benefit within
220 the public school system unless the institution or program was, at the time the degree or credit was
221 awarded:

222 (a) approved for the granting of the degree or credit by the board; or

223 (b) accredited by an accrediting organization recognized by the board.

224 (2) The board may grant an exemption from Subsection (1) to an individual who shows
225 good cause for the granting of the exemption.

226 Section 10. Section **53A-6-109** is repealed and reenacted to read:

227 **53A-6-109. Substitute teachers.**

228 (1) A substitute teacher need not hold a license to teach, but school districts ~~h~~ **[staff] ARE**
228a **ENCOURAGED TO h hire**
229 licensed personnel as substitutes when available.

230 (2) A person must submit to a background check under Section 53A-3-410 prior to
231 employment as a substitute teacher.

232 (3) A teacher's position in the classroom may not be filled by unlicensed substitute teachers
233 for more than a total of 20 days during any school year unless licensed personnel are not available.

234 (4) A person who is ineligible to hold a license for any reason other than professional
235 preparation may not serve as a substitute teacher.

236 Section 11. Section **53A-6-301** is repealed and reenacted to read:

237 **Part 3. Utah Professional Practices Advisory Commission**

238 **53A-6-301. Utah Professional Practices Advisory Commission.**

239 The Utah Professional Practices Advisory Commission, UPPAC, is established to assist
240 and advise the board in matters relating to the professional practices of educators.

241 Section 12. Section **53A-6-302** is repealed and reenacted to read:

242 **53A-6-302. UPPAC members -- Executive secretary.**

243 (1) UPPAC shall consist of a nonvoting executive secretary and 11 voting members, nine
244 of whom shall be licensed educators in good standing, and two of whom shall be members
244a h [of the] h

245 h [general public] NOMINATED BY THE EDUCATION ORGANIZATION WITHIN THE STATE THAT HAS
 245a THE LARGEST MEMBERSHIP OF PARENTS OF STUDENTS AND TEACHERS h .

246 (2) h [Five] SIX h of the voting members shall be persons whose primary responsibility is
 246a teaching.

247 (3) (a) The state superintendent of public instruction shall appoint an employee of the
 248 office to serve as executive secretary.

249 (b) Voting members are appointed by the superintendent as provided under Section
 250 53A-6-303.

251 (4) The office shall provide staff support for UPPAC activities.

252 Section 13. Section **53A-6-303** is enacted to read:

253 **53A-6-303. Nominations -- Appointment of commission members -- Reappointments.**

254 (1) (a) The board shall adopt rules establishing procedures for nominating and appointing
 255 individuals to voting membership on UPPAC.

256 (b) Nomination petitions must be filed with the state superintendent prior to June 16 of the
 257 year of appointment.

258 (c) A nominee for appointment as a member of UPPAC as an educator must have been
 259 employed in the representative class in the Utah public school system or a private school
 260 accredited by the board during the three years immediately preceding the date of appointment.

261 (2) The state superintendent of public instruction shall appoint the members of the
 262 commission.

263 (3) Appointments begin July 1 and are for terms of three years and until a successor is
 264 appointed.

265 (4) Terms of office are staggered so that approximately 1/3 of UPPAC members are
 266 appointed annually.

267 (5) A member may not serve more than two terms.

268 Section 14. Section **53A-6-304** is enacted to read:

269 **53A-6-304. Filling of vacancies.**

270 (1) A UPPAC vacancy occurs if a member resigns, fails to attend three or more meetings
 271 during a calendar year, or no longer meets the requirements for nomination and appointment.

272 (2) If a vacancy occurs, the state superintendent shall appoint a successor to fill the
 273 unexpired term.

274 (3) If the superintendent does not fill the vacancy within 60 days, the board shall make the
 275 appointment.

276 (4) Nominations to fill vacancies are submitted to the superintendent in accordance with
277 procedures established under rules of the board.

278 Section 15. Section **53A-6-305** is enacted to read:

279 **53A-6-305. Meetings and expenses of UPPAC members.**

280 (1) UPPAC shall meet at least quarterly and at the call of the chair or of a majority of the
281 members.

282 (2) Members of UPPAC serve without compensation but are allowed reimbursement for
283 actual and necessary expenses under the rules of the Division of Finance.

284 (3) The board shall pay reimbursement to UPPAC members out of the Professional
285 Practices Restricted Subfund in the Uniform School Fund.

286 Section 16. Section **53A-6-306** is enacted to read:

287 **53A-6-306. Purpose, powers, and duties of UPPAC.**

288 (1) UPPAC shall:

289 (a) adopt rules consistent with applicable law and board rules to carry out its
290 responsibilities under this chapter;

291 (b) make recommendations to the board and professional organizations of educators:

292 (i) concerning standards of professional performance, competence, and ethical conduct for
293 persons holding licenses issued by the board; and

294 (ii) for the improvement of the education profession;

295 (c) establish procedures for receiving and acting upon reports or allegations regarding
296 immoral, unprofessional, or incompetent conduct, unfitness for duty, or other violations of
297 standards of ethical conduct, performance, or professional competence;

298 (d) investigate any allegation of sexual abuse of a student or a minor by an educator; and

299 (e) establish the manner in which hearings are conducted and reported, and

300 recommendations are submitted to the board for its action.

301 (2) (a) UPPAC may conduct or authorize investigations relating to any matter before
302 UPPAC.

303 (b) Those investigations shall be independent of and separate from any criminal
304 investigation.

305 (c) In conducting an investigation UPPAC or an investigator operating under UPPAC
306 authorization may:

307 (i) administer oaths and issue subpoenas which may be enforced through the state district
308 courts;

309 (ii) receive any evidence related to an alleged offense, including sealed or expunged
310 records released to the board under Section 77-18-15; and

311 (iii) where reasonable cause exists, initiate a criminal background check on a license
312 holder.

313 (d) (i) A license holder shall receive written notice if a fingerprint check is required as a
314 part of the background check.

315 (ii) Fingerprints of the individual shall be taken, and the Law Enforcement and Technical
316 Services Division of the Department of Public Safety shall release the individual's full record, as
317 shown on state, regional, and national records, to UPPAC.

318 (iii) UPPAC shall pay the cost of the background check except as provided under Section
319 53A-6-401, and the moneys collected shall be credited to the Law Enforcement and Technical
320 Services Division to offset its expenses.

321 (3) UPPAC is entitled to a rebuttable evidentiary presumption that a person has committed
322 a sexual offense against a minor child if the person has:

323 (a) after having had a reasonable opportunity to contest the allegation, been found pursuant
324 to a criminal, civil, or administrative action to have committed a sexual offense against a minor
325 child;

326 (b) pled guilty to a reduced charge in the face of a charge of having committed a sexual
327 offense against a minor child, entered a plea of no contest, entered into a plea in abeyance resulting
328 in subsequent dismissal of such a charge, or failed to defend himself against such a charge when
329 given reasonable opportunity to do so; or

330 (c) voluntarily surrendered a license or certificate or allowed a license or certificate to
331 lapse in the face of a charge of having committed a sexual offense against a minor child.

332 (4) In resolving a complaint UPPAC may:

333 (a) dismiss the complaint;

334 (b) issue a warning or reprimand;

335 (c) issue an order of probation requiring an educator to comply with specific conditions
336 in order to retain a license;

337 (d) enter into a written agreement requiring an educator to comply with certain conditions;

338 (e) recommend board action such as revocation or suspension of a license or restriction
 339 or prohibition of licensure; or

340 (f) take other appropriate action.

341 (5) UPPAC may not:

342 (a) participate as a party in any dispute relating to negotiations between a school district
 343 and its educators; ~~h~~ ~~or~~ ~~h~~

344 (b) take action against an educator without giving the individual an opportunity for a fair
 345 hearing to contest the allegations upon which the action would be based ~~h~~ ; OR

345a **(c) TAKE ACTION AGAINST AN EDUCATOR UNLESS IT FINDS THAT THE ACTION OR**
 345b **FAILURE OF THE EDUCATOR TO ACT IMPAIRS THE EDUCATOR'S ABILITY TO PERFORM THE**
 345c **FUNCTIONS OF THE EDUCATOR'S POSITION ~~h~~ .**

346 Section 17. Section **53A-6-307** is enacted to read:

347 **53A-6-307. Powers of state board not abrogated.**

348 Nothing in this chapter limits or abrogates the power of the board to issue or revoke
 349 licenses, hold hearings, or otherwise carry out its functions.

350 Section 18. Section **53A-6-401** is repealed and reenacted to read:

351 **Part 4. Licensing and Background Checks**

352 **53A-6-401. Background checks.**

353 (1) (a) A license applicant shall submit to a background check as a condition for licensing.

354 (b) As used in this section, licensing includes reinstatement of a lapsed, suspended, or
 355 revoked license.

356 (2) (a) The office shall establish a procedure for obtaining and evaluating relevant
 357 information concerning license applicants, including fingerprinting the applicant and submitting
 358 the prints to the Criminal Investigations and Technical Services Division of the Department of
 359 Public Safety for checking against applicable state, regional, and national criminal records files.

360 (b) The Criminal Investigations and Technical Services Division shall release to the office
 361 all information received in response to the office's request.

362 (3) An applicant shall have opportunity to respond to any information received by the
 363 office as a result of the background check.

364 (4) In preparing recommendations concerning licensing for submission to the board, the
 365 office shall consider only the following matters obtained through fingerprint checks to the extent
 366 that they are relevant to the license sought by the applicant:

367 (a) convictions;

368 (b) any matters involving an alleged sexual offense;

369 (c) any matters involving an alleged felony or class A misdemeanor drug offense;

370 (d) any matters involving an alleged offense against the person under Title 76, Chapter 5;

371 (e) any matters involving a felony;

372 (f) any matters involving a class A misdemeanor property offense alleged to have occurred
373 within the previous three years; and

374 (g) any matters involving any other type of criminal offense, if more than one occurrence
375 of the same type of offense is alleged to have taken place within the previous eight years.

376 (5) If a recommendation is made for denial of licensure because of information obtained
377 through a background check, the person shall receive written notice of the reasons for the
378 recommendation and have an opportunity to respond in accordance with procedures set forth under
379 board rules.

380 (6) Information obtained under this section is confidential and may only be disclosed as
381 provided in this part.

382 (7) The applicant shall pay the costs of conducting the background check.

383 (8) This section applies to matters occurring both before and after the effective date of this
384 section.

385 Section 19. Section **53A-6-402** is repealed and reenacted to read:

386 **53A-6-402. Evaluation information on current or prospective school employees --**
387 **Notice to employee -- Exemption from liability.**

388 (1) (a) The office's administrator of teacher licensing may provide the appropriate
389 administrator of a public or private school or of an agency outside the state which is responsible
390 for licensing or certification of educators with any recommendation or other information possessed
391 by the office which has significance in evaluating the employment or license of a current or
392 prospective school employee, license holder, or applicant for licensing.

393 (b) Information supplied under Subsection (1)(a) may include the complete record of a
394 hearing or the investigative report for matters which \hat{h} :

394a **(i) THE EDUCATOR HAS HAD AN OPPORTUNITY TO CONTEST; AND**

394b **(ii) \hat{h} did not proceed to a hearing.**

395 (2) At the request of the office's administrator of teacher licensing, an administrator of a
396 public school or school district shall, and an administrator of a private school may, provide any
397 recommendation or other information possessed by the school or school district which has
398 significance in evaluating the employment or licensure of a current or prospective school
399 employee, license holder, or applicant for licensing.

400 (3) If a decision is made to deny licensure, to not hire a prospective employee, or to take
401 action against a current employee or educator based upon information provided under this section,
402 the affected individual shall receive notice of the information and be given an opportunity to
403 respond to the information.

404 (4) A person who, in good faith, provides a recommendation or discloses or receives
405 information under this section is exempt from civil and criminal liability relating to that
406 recommendation, receipt, or disclosure.

407 (5) For purposes of this section, "employee" includes a volunteer.

408 Section 20. Section **53A-6-403** is enacted to read:

409 **53A-6-403. Office tie-in with the Criminal Investigations and Technical Services**
410 **Division.**

411 (1) The office shall:

412 (a) be an online terminal agency with the Department of Public Safety's Criminal
413 Investigations and Technical Services Division under Section 53-10-108; and

414 (b) provide relevant information concerning current or prospective employees or
415 volunteers upon request to other school officials as provided in Section 53A-6-402.

416 (2) The cost of the online service shall be borne by the entity making the inquiry, using
417 funds available to the entity, which may include funds authorized under Section 53A-6-401.

418 Section 21. Section **53A-6-404** is enacted to read:

419 **53A-6-404. Certification in other jurisdictions -- Impact on licensing in Utah.**

420 (1) An applicant for a license, renewal of a license, or reinstatement of a license shall
421 provide the administrator of teacher licensing with an affidavit, stating under oath the current
422 status of any certificate, license, or other authorization required for a professional position in
423 education, which the applicant holds or has held in any other jurisdiction.

424 (2) If the applicant's certificate, license, or authorization as an educator in any other
425 jurisdiction is under investigation, has expired or been surrendered, suspended or revoked, or is
426 currently not valid for any other reason, then the office may not grant the requested license,
427 renewal, or reinstatement until it has received confirmation from the administrator of professional
428 certification in that jurisdiction that the applicant would be eligible for certification or licensure
429 in that jurisdiction.

430 (3) The office may not withhold a license for the sole reason that the applicant would be

431 ineligible for certification, licensure, or authorization in the jurisdiction referred to in Subsection
432 (2) because of failure to meet current requirements in that jurisdiction relating to education, time
433 in service, or residence.

434 Section 22. Section **53A-6-405** is enacted to read:

435 **53A-6-405. Denial of license.**

436 (1) The board may refuse to issue a license to any person for good cause shown, including
437 any person who, after having had a reasonable opportunity to contest the allegation, has been found
438 pursuant to a criminal, civil, or administrative action to have exhibited behavior evidencing
439 unfitness for duty, including behavior which would, had the person been an educator, have been
440 considered to be immoral, unprofessional, or incompetent conduct, or a violation of standards of
441 ethical conduct, performance, or professional competence.

442 (2) (a) Upon receipt of findings and recommendations from UPPAC, including the
443 findings and recommendations, if any, of a hearing requested under Subsection (4), the board may
444 issue a permanent ban on licensure of any person who has committed a sexual offense against a
445 minor child.

446 (b) A permanent ban issued under this Subsection (2) is not subject to further review by
447 UPPAC.

448 (3) A person ineligible for licensure under Subsection (2) may not be employed or
449 permitted to volunteer services in any position in a public or private school where the person
450 would be in close proximity to minor children or be permitted or required to interact with a minor
451 child.

452 (4) (a) A person denied licensure or employment under this section may, within 30 days
453 of receipt of the denial and notice of rights of appeal, request a hearing before UPPAC to review
454 and respond to all evidence upon which the denial was based.

455 (b) UPPAC shall prepare findings and recommendations for the board on any hearing held
456 under Subsection (4)(a).

457 Section 23. Section **53A-6-501** is enacted to read:

458 **Part 5. Conduct of Educators**

459 **53A-6-501. Disciplinary action against educator.**

460 (1) (a) The board shall take appropriate action against any person who is, or at the time of
461 an alleged offense was, the holder of a license, and:

462 (i) who, after having had a reasonable opportunity to contest the allegation, has been found
463 pursuant to a criminal, civil, or administrative action to have exhibited behavior evidencing
464 unfitness for duty, including immoral, unprofessional, or incompetent conduct, or other violation
465 of standards of ethical conduct, performance, or professional competence; or

466 (ii) who has been alleged to have exhibited such behavior or committed such a violation.

467 (b) Prior to taking action based upon an allegation or the decision of an administrative
468 body other than UPPAC, the board shall direct UPPAC to review the allegations and any related
469 administrative action and provide findings and recommendations to the board.

470 (c) No adverse recommendation may be made without giving the accused person an
471 opportunity for a hearing.

472 (d) The board's action may include:

473 (i) revocation or suspension of a license;

474 (ii) restriction or prohibition of recertification;

475 (iii) a warning or reprimand;

476 (iv) required participation in and satisfactory completion of a rehabilitation or remediation
477 program; or

478 (v) other action which the board finds to be appropriate after a review of the UPPAC
479 findings and recommendations.

480 (e) The license holder is responsible for the costs of rehabilitation or remediation required
481 under this section.

482 (2) Upon receipt of findings and recommendation from UPPAC, the board may
483 permanently revoke the license of any person who has committed a sexual offense against a minor
484 child or has exhibited other behavior which the board finds to be irremediable.

485 Section 24. Section **53A-6-502** is enacted to read:

486 **53A-6-502. Mandatory reporting of physical or sexual abuse of students.**

487 (1) For purposes of this section, "educator" means, in addition to a person included under
488 Subsection 53A-6-103(7), a person, including a volunteer or temporary employee, who at the time
489 of an alleged offense was performing a function in a private school for which a license would be
490 required in a public school.

491 (2) In addition to any duty to report suspected cases of child abuse or neglect under Section
492 62A-4a-403, an educator who has reasonable cause to believe that a student may have been

493 physically or sexually abused by a school employee shall immediately report the belief and all
 494 other relevant information to the school principal, superintendent, or to the office.

495 (3) A school administrator who has received a report under Subsection (2) or who
 496 otherwise has reasonable cause to believe that a student may have been physically or sexually
 497 abused by an educator shall immediately report that information to the office.

498 (4) Failure to comply with Subsection (2) or (3) shall be considered unprofessional
 499 conduct.

500 (5) A person who makes a report under this section in good faith shall be immune from
 501 civil or criminal liability that might otherwise arise by reason of that report.

502 Section 25. Section **53A-6-601** is enacted to read:

503 **Part 6. Complaints and Hearings**

504 **53A-6-601. Definitions.**

505 As used in this part "hearing" means a proceeding held in accordance with generally
 506 accepted principles of due process and administrative law in which definite issues of fact or of law
 507 are tried before a hearing body, and in which proceeding evidence is presented and witnesses
 508 heard, and in which the party against whom the proceedings are held has a right to:

509 (1) appear with or without counsel to present evidence, confront and cross-examine
 510 witnesses, or subpoena witnesses; and

511 (2) obtain a decision based solely upon evidence presented to the hearing body in the
 512 presence of both parties or representatives of both parties, recognizing that presence is satisfied
 513 if a party has been given a reasonable opportunity to attend, even if the party fails to do so.

514 Section 26. Section **53A-6-602** is enacted to read:

515 **53A-6-602. Designation of hearing officer or panel -- Review of findings.**

516 (1) UPPAC or a state or local school board charged with responsibility for conducting a
 517 hearing may conduct the hearing itself or appoint a hearing officer or panel to conduct the hearing
 518 and make recommendations concerning findings.

519 (2) UPPAC or the school board shall review the record of the hearing and the
 520 recommendations, and may obtain and review, in the presence of the parties or their
 521 representatives, additional relevant information, prior to issuing official findings.

521a **h (3) UPPAC SHALL PROVIDE A PANEL OF ITS MEMBERS TO SERVE AS FACT FINDERS IN A**
 521b **HEARING AT THE REQUEST OF THE EDUCATOR WHO IS THE SUBJECT OF THE HEARING. h**

522 Section 27. Section **53A-6-603** is enacted to read:

523 **53A-6-603. Administering of oaths -- Issuance of subpoenas.**

524 (1) UPPAC or a state or local school board charged with responsibility for conducting an
525 investigation or a hearing under this chapter may administer oaths and issue subpoenas in
526 connection with the investigation or hearing.

527 (2) If a hearing is before a hearing officer or panel, the hearing officer or panel may
528 administer oaths, and the appointing body may issue subpoenas upon the request of the hearing
529 officer or panel.

530 (3) Subpoenas shall be enforced upon the petition of the issuing body by the district court
531 in the jurisdiction where the subpoena was issued, in the same manner as subpoenas issued by the
532 court.

533 Section 28. Section **53A-6-604** is enacted to read:

534 **53A-6-604. Rules for conducting hearings -- Standard of proof.**

535 (1) The board, each local school board, and UPPAC shall each adopt rules for the conduct
536 of hearings to ensure that requirements of due process are met.

537 (2) An accused party shall be provided not less than 15 days before a hearing with:

538 (a) notice of the hearing;

539 (b) the law, rule, or policy alleged to have been violated;

540 (c) sufficient information about the allegations and the evidence to be presented in support
541 of the allegations to permit the accused party to prepare a meaningful defense; and

542 (d) a copy of the rules under which the hearing will be conducted.

543 (3) If an accused party fails to request a hearing within 30 days after written notice is sent
544 to the party's address as shown on the records of the local board, for actions taken under the
545 auspices of a local board, or on the records of the office, for actions taken under the auspices of
546 UPPAC or the state board, then the accused party shall be considered to have waived the right to
547 a hearing and the action may proceed without further delay.

548 (4) Hearing fact finders shall use the preponderance of evidence standard in deciding all
549 questions unless a higher standard is required by law.

549a **h (5)(a) UNLESS OTHERWISE REQUIRED UNDER TITLE 53A, THE DECISIONS OF STATE AND**
549b **LOCAL BOARDS ARE FINAL DETERMINATIONS UNDER THIS SECTION, APPEALABLE TO THE**
549c **APPROPRIATE COURT FOR REVIEW.**

549d **(b) THE COURT SHALL REVIEW THE FINDINGS AND DECISION OF THE BOARD AND**
UPHOLD
549e **THE BOARD'S DECISION UNLESS IT DETERMINES THE BOARD'S DECISION WAS ARBITRARY AND**
549f **CAPRICIOUS. h**

550 Section 29. Section **53A-7-101** is repealed and reenacted to read:

551 **CHAPTER 7. DISPUTE RESOLUTION**

552 **53A-7-101. Mediation of contract negotiations.**

553 (1) The president of a professional local organization which represents a majority of the

554 certificated employees of a school district or the chairman or president of a local school board may,

555 after negotiating for 90 days, declare an impasse by written notification to the other party and to
556 the State Board of Education.

557 (2) The party declaring the impasse may request the state superintendent of public
558 instruction to appoint a mediator for the purpose of helping to resolve the impasse if the parties
559 to the dispute have not been able to agree on a third party mediator.

560 (3) Within five working days after receipt of the written request, the state superintendent
561 shall appoint a mediator who is mutually acceptable to the local school board and the professional
562 organization representing a majority of the certificated employees.

563 (4) The mediator shall meet with the parties, either jointly or separately, and attempt to
564 settle the impasse.

565 (5) The mediator may not, without the consent of both parties, make findings of fact or
566 recommend terms for settlement.

567 (6) Both parties shall equally share the costs of mediation.

568 (7) Nothing in this section prevents the parties from adopting a written mediation
569 procedure other than that provided in this section.

570 (8) If the parties have a mediation procedure, they shall follow that procedure.

571 Section 30. Section **53A-7-102** is repealed and reenacted to read:

572 **53A-7-102. Appointment of hearing officer -- Hearing process.**

573 (1) If a mediator appointed under Section 53A-7-101 is unable to effect settlement of the
574 controversy within 15 working days after his appointment, either party to the mediation may by
575 written notification to the other party and to the state superintendent of public instruction request
576 that their dispute be submitted to a hearing officer who shall make findings of fact and recommend
577 terms of settlement.

578 (2) Within five working days after receipt of the request, the state superintendent of public
579 instruction shall appoint a hearing officer who is mutually acceptable to the local school board and
580 the professional organization representing a majority of the certificated employees.

581 (3) The hearing officer may not, without consent of both parties, be the same person who
582 served as mediator.

583 (4) The hearing officer shall meet with the parties, either jointly or separately, may make
584 inquiries and investigations, and may issue subpoenas for the production of persons or documents
585 relevant to all issues in dispute.

586 (5) The State Board of Education and departments, divisions, authorities, bureaus,
587 agencies, and officers of the state, local school boards, and the professional organization shall
588 furnish the hearing officer, on request, all relevant records, documents, and information in their
589 possession.

590 (6) If the final positions of the parties are not resolved before the hearing ends, the hearing
591 officer shall prepare a written report containing the agreements of the parties with respect to all
592 resolved negotiated contract issues and the positions that the hearing officer considers appropriate
593 on all unresolved final positions of the parties.

594 (7) The hearing officer shall submit the report to the parties privately within ten working
595 days after the conclusion of the hearing or within the date established for the submission of
596 posthearing briefs, but not later than 20 working days after the hearing officer's appointment.

597 (8) Either the hearing officer, the professional organization, or the local board may make
598 the report public if the dispute is not settled within ten working days after its receipt from the
599 hearing officer.

600 (9) (a) The state superintendent of public instruction may determine the majority status of
601 any professional organization which requests assistance under this section.

602 (b) The decision of the superintendent is final unless it is clearly inconsistent with the
603 evidence.

604 Section 31. Section **58-61-307** is amended to read:

605 **58-61-307. Exemptions from licensure.**

606 In addition to the exemptions from licensure in Section 58-1-307, the following may
607 engage in acts included within the definition of practice as a psychologist, subject to the stated
608 circumstances and limitations, without being licensed under this chapter:

609 (1) the following when practicing within the scope of the license held:

610 (a) a physician and surgeon or osteopathic physician licensed under Chapter 67, Utah
611 Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act; and

612 (b) a registered psychiatric mental health nurse specialist licensed under Chapter [68] 31b,
613 Nurse Practice Act;

614 (2) a recognized member of the clergy while functioning in his ministerial capacity as long
615 as he does not represent himself as or use the title of psychologist;

616 (3) an individual who is offering expert testimony in any proceeding before a court,

617 administrative hearing, deposition upon the order of any court or other body having power to order
618 the deposition, or proceedings before any master, referee, or alternative dispute resolution
619 provider;

620 (4) an individual engaged in performing hypnosis who is not licensed under Title 58,
621 Occupations and Professions, in a profession which includes hypnosis in its scope of practice, and
622 who:

623 (a) (i) induces a hypnotic state in a client for the purpose of increasing motivation or
624 altering lifestyles or habits, such as eating or smoking, through hypnosis;

625 (ii) consults with a client to determine current motivation and behavior patterns;

626 (iii) prepares the client to enter hypnotic states by explaining how hypnosis works and
627 what the client will experience;

628 (iv) tests clients to determine degrees of suggestibility;

629 (v) applies hypnotic techniques based on interpretation of consultation results and analysis
630 of client's motivation and behavior patterns; and

631 (vi) trains clients in self-hypnosis conditioning;

632 (b) may not:

633 (i) engage in the practice of mental health therapy;

634 (ii) represent himself using the title of a license classification in Subsection 58-60-102(5);

635 or

636 (iii) use hypnosis with or treat a medical, psychological, or dental condition defined in
637 generally recognized diagnostic and statistical manuals of medical, psychological, or dental
638 disorders;

639 (5) an individual's exemption from licensure under Subsection 58-1-307(1)(b) or (c) while
640 completing any supervised clinical training requirement for licensure as a psychologist extends not
641 more than one year from the date the minimum requirement for training is completed, unless the
642 individual presents satisfactory evidence to the division and the Psychologist Licensing Board that
643 the individual is making reasonable progress toward passing the qualifying examination or is
644 otherwise on a course reasonably expected to lead to licensure as a psychologist, but any
645 exemption under this subsection may not exceed two years past the date the minimum supervised
646 clinical training requirement has been completed;

647 (6) an individual holding an earned doctoral degree in psychology who is employed by an

648 accredited institution of higher education and who conducts research and teaches in that
649 individual's professional field, but only if the individual does not engage in providing delivery or
650 supervision of professional services regulated under this chapter to individuals or groups regardless
651 of whether there is compensation for the services;

652 (7) any individual who was employed as a psychologist by a state, county, or municipal
653 agency or other political subdivision of the state prior to July 1, 1981, and who subsequently has
654 maintained employment as a psychologist in the same state, county, or municipal agency or other
655 political subdivision while engaged in the performance of his official duties for that agency or
656 political subdivision; and

657 (8) an individual certified as a school psychologist under Section ~~[53A-6-101]~~ 53A-6-104:

658 (a) may represent himself as and use the terms "school psychologist" or "certified school
659 psychologist"; and

660 (b) is restricted in his practice to employment within settings authorized by the State Board
661 of Education; and

662 (9) an individual providing advice or counsel to another individual in a setting of their
663 association as friends or relatives and in a nonprofessional and noncommercial relationship, if
664 there is no compensation paid for the advice or counsel.

665 Section 32. Section **63-30-2** is amended to read:

666 **63-30-2. Definitions.**

667 As used in this chapter:

668 (1) "Claim" means any claim or cause of action for money or damages against a
669 governmental entity or against an employee.

670 (2) (a) "Employee" includes a governmental entity's officers, employees, servants, trustees,
671 commissioners, members of a governing body, members of a board, members of a commission,
672 or members of an advisory body, officers and employees in accordance with Section 67-5b-104,
673 student teachers certificated in accordance with Section ~~[53A-6-101]~~ 53A-6-104, educational
674 aides, students engaged in providing services to members of the public in the course of an
675 approved medical, nursing, or other professional health care clinical training program, volunteers,
676 and tutors, but does not include an independent contractor.

677 (b) "Employee" includes all of the positions identified in Subsection (2)(a), whether or not
678 the individual holding that position receives compensation.

679 (3) "Governmental entity" means the state and its political subdivisions as defined in this
680 chapter.

681 (4) (a) "Governmental function" means any act, failure to act, operation, function, or
682 undertaking of a governmental entity whether or not the act, failure to act, operation, function, or
683 undertaking is characterized as governmental, proprietary, a core governmental function, unique
684 to government, undertaken in a dual capacity, essential to or not essential to a government or
685 governmental function, or could be performed by private enterprise or private persons.

686 (b) A "governmental function" may be performed by any department, agency, employee,
687 agent, or officer of a governmental entity.

688 (5) "Injury" means death, injury to a person, damage to or loss of property, or any other
689 injury that a person may suffer to his person, or estate, that would be actionable if inflicted by a
690 private person or his agent.

691 (6) "Personal injury" means an injury of any kind other than property damage.

692 (7) "Political subdivision" means any county, city, town, school district, public transit
693 district, redevelopment agency, special improvement or taxing district, or other governmental
694 subdivision or public corporation.

695 (8) "Property damage" means injury to, or loss of, any right, title, estate, or interest in real
696 or personal property.

697 (9) "State" means the state of Utah, and includes any office, department, agency, authority,
698 commission, board, institution, hospital, college, university, or other instrumentality of the state.

699 **Section 33. Repealer.**

700 This act repeals:

701 **Section 53A-7-103, Definitions.**

702 **Section 53A-7-104, Professional Practices Advisory Commission -- Members --**
703 **Executive secretary.**

704 **Section 53A-7-105, Nominations -- Appointment of commission members --**
705 **Reappointments.**

706 **Section 53A-7-106, Qualifications of commission members.**

707 **Section 53A-7-107, Filling of vacancies.**

708 **Section 53A-7-108, Meetings of commission.**

709 **Section 53A-7-109, Expenses of commission members.**

- 710 Section 53A-7-110, Powers and duties.
- 711 Section 53A-7-111, Limitations on commission authority.
- 712 Section 53A-7-112, Fees -- Credit to subfund -- Appropriation for expenses.
- 713 Section 53A-7-113, Powers of state board not abrogated.
- 714 Section 53A-7-201, Definitions.
- 715 Section 53A-7-202, Professional competence or performance -- Administrative hearing
- 716 by local school board -- Action on complaint.
- 717 Section 53A-7-203, Designation of hearing officer or panel -- Review of findings.
- 718 Section 53A-7-204, Administering of oaths -- Issuance of subpoenas.
- 719 Section 34. Effective date.
- 720 This act takes effect on July 1, 1999 ~~h~~ [,except that Section 53A-6-109 takes effect on July
- 721 1, 2000] h .

Legislative Review Note
as of 1-22-99 9:17 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel