

PUBLIC EDUCATION REVISIONS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Sheryl L. Allen

AN ACT RELATING TO PUBLIC SCHOOLS; PROVIDING FOR CONFORMING CHANGES BY REFERENCING TO LICENSED RATHER THAN CERTIFICATED TEACHERS OR EDUCATORS; AND PROVIDING FOR A REPEALER.

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

AMENDS:

- 53A-1-301**, as last amended by Chapter 19, Laws of Utah 1999
- 53A-1a-403**, as enacted by Chapter 231, Laws of Utah 1998
- 53A-1a-504**, as enacted by Chapter 231, Laws of Utah 1998
- 53A-1a-512**, as enacted by Chapter 231, Laws of Utah 1998
- 53A-3-602**, as last amended by Chapter 19, Laws of Utah 1999
- 53A-7-101**, as repealed and reenacted by Chapter 108, Laws of Utah 1999
- 53A-13-107**, as last amended by Chapter 34, Laws of Utah 1999
- 53A-17a-132**, as last amended by Chapter 332, Laws of Utah 1999
- 53A-25-111**, as enacted by Chapter 250, Laws of Utah 1998
- 53A-25a-106**, as enacted by Chapter 280, Laws of Utah 1994
- 58-61-307**, as last amended by Chapter 108, Laws of Utah 1999
- 63-30-2**, as last amended by Chapter 108, Laws of Utah 1999

REPEALS:

- 20A-14-107**, as enacted by Chapter 1, Laws of Utah 1995
- 35A-1-208**, as enacted by Chapter 240, Laws of Utah 1996
- 53A-4-101**, as enacted by Chapter 2, Laws of Utah 1988
- 53A-4-102**, as enacted by Chapter 2, Laws of Utah 1988
- 53A-4-103**, as enacted by Chapter 2, Laws of Utah 1988
- 53A-4-104**, as enacted by Chapter 2, Laws of Utah 1988
- 53A-4-105**, as enacted by Chapter 2, Laws of Utah 1988

53A-4-106, as enacted by Chapter 2, Laws of Utah 1988

53A-4-107, as enacted by Chapter 2, Laws of Utah 1988

53A-4-108, as enacted by Chapter 2, Laws of Utah 1988

53A-20a-201, as enacted by Chapter 273, Laws of Utah 1993

53A-20a-202, as enacted by Chapter 273, Laws of Utah 1993

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **53A-1-301** is amended to read:

53A-1-301. Appointment -- Qualifications -- Duties.

(1) (a) The State Board of Education shall appoint a superintendent of public instruction, hereinafter called the state superintendent, who is the executive officer of the board and serves at the pleasure of the board.

(b) The board shall appoint the state superintendent on the basis of outstanding professional qualifications.

(c) The state superintendent shall administer all programs assigned to the State Board of Education in accordance with the policies and the standards established by the board.

(2) The superintendent shall perform duties assigned by the board, including the following:

(a) investigating all matters pertaining to the public schools;

(b) adopting and keeping an official seal to authenticate the superintendent's official acts; copies of authenticated documents shall be received as evidence in the courts of this state in the same manner as originals;

(c) holding and conducting meetings, seminars, and conferences on educational topics;

(d) presenting to the governor and the Legislature each December a report of the public school system for the preceding year to include:

(i) data on the general condition of the schools with recommendations considered desirable for specific programs;

(ii) a complete statement of fund balances;

(iii) a complete statement of revenues by fund and source;

(iv) a complete statement of adjusted expenditures by fund, the status of bonded

indebtedness, the cost of new school plants, and school levies;

(v) a complete statement of state funds allocated to each of the state's 40 school districts by source, including supplemental appropriations, and a complete statement of expenditures by each district, including supplemental appropriations, by function and object as outlined in the U.S.

Department of Education publication Financial Accounting for Local and State School Systems;

(vi) a statement that includes such items as fall enrollments, average membership, high school graduates, ~~certificated~~ licensed and classified employees, pupil-teacher ratios, average salaries, applicable private school data, and data from standardized norm-referenced tests in grades 5, 8, and 11 on each school and district;

(vii) statistical information regarding incidents of delinquent activity in the schools or at school-related activities with separate categories for:

- (A) alcohol and drug abuse;
- (B) weapon possession;
- (C) assaults; and
- (D) arson;

(viii) a statement on the amount of class time missed by students and faculty in grades 9 through 12 for activities which occur or for which travel is required during normal class time, to include:

(A) the total number of individuals involved, the total amount of normal class time missed, the total miles traveled to and from the activities, and the costs for transporting students and faculty to and from the activities; and

(B) a breakdown of the totals under Subsection (viii)(A) by individual school district and a breakdown of the activities by category as follows:

- (I) athletic contests;
- (II) music performances and contests;
- (III) forensics, debate, speech, and drama performances and contests;
- (IV) school club activities and contests; and
- (V) all other school-sponsored activities and contests; and

(ix) other statistical and financial information about the school system which the superintendent considers pertinent; and

(e) with the approval of the board, preparing and submitting to the governor a budget for the board to be included in the budget that the governor submits to the Legislature.

(3) Upon leaving office, the state superintendent shall deliver to his successor all books, records, documents, maps, reports, papers, and other articles pertaining to his office.

Section 2. Section **53A-1a-403** is amended to read:

53A-1a-403. Selection of schools -- Funding -- Incentive awards.

(1) The State Board of Education and local school boards, in collaboration with the governor's office, shall develop and implement application procedures and a process for the selection of up to 60 schools each year over a three-year period for participation in the Schools for the 21st Century Program authorized under this part.

(2) Selected schools shall participate in the program and be eligible for funding for three consecutive years.

(3) (a) The Legislature shall provide an annual appropriation to fund the program.

(b) The board, through the State Office of Education, shall administer and distribute the appropriation in the following manner:

(i) each school selected as a first-year participant shall receive a base amount of either \$5,000 or \$10,000 depending on the size of the school;

(ii) each first-year school shall also receive an additional per student allocation of up to \$27, based upon the number of students as of October 1 in the program as related to the amount of appropriation available for distribution after the base amount has been calculated for all the schools participating on a first-year basis under Subsection (3)(b)(i);

(iii) each school in its second year shall receive \$9 per student and be eligible to receive an incentive award based upon its achievement of second-year goals; and

(iv) each school in its third year shall be eligible to receive major incentive awards based upon achievement of third-year goals.

(c) (i) The board shall determine the amount of incentive award money given to schools

under Subsections (3)(b)(iii) and (iv) on the basis of goal attainment and student enrollment, with a minimum threshold of 50% attainment of goals for second-year schools and a minimum threshold of 60% attainment for third-year schools in order to receive a portion of the award money.

(ii) It is estimated that the incentive award money generated for successful second-year schools would be up to \$500 per [~~certificated~~] licensed professional staff member at each participating school and increase to up to \$2,000 per [~~certificated~~] licensed professional staff member for each successful third-year school.

(d) (i) First-year schools shall use their allocations for program development, implementation, and evaluation, technical assistance, and teacher development, including the establishment of performance goals and identification of a system of measurement and evaluation.

(ii) (A) Second-year schools shall use their per student allocations for continuing program operation, modification, and evaluation.

(B) If participating schools meet the threshold established in Subsection(3)(c)(i), based upon documentation of the school's progress provided to the board by the school, the appropriate share of incentive award money shall be distributed each year at the school level as determined by the school directors.

(C) The distribution may include giving award shares to the school as a whole or to individual programs at the school or to professional staff members or any combination of these options.

(iii) Third-year schools shall receive all appropriate incentive moneys under the program based on year-end evaluation of goal attainment and shall distribute it on the same basis as second-year schools distribute incentive award money under Subsections (3)(d)(ii)(B) and (C).

Section 3. Section **53A-1a-504** is amended to read:

53A-1a-504. Proposal.

(1) A proposal to establish a charter school may be made by an individual or groups of individuals, including teachers and parents or guardians of students who will attend the school, or a not-for-profit legal entity organized under the laws of this state.

(2) (a) The principal, teachers, or parents of students at an existing public school may submit a proposal to convert the school or a portion of the school to charter status.

(b) (i) At least [~~two-thirds~~] 2/3 of the [~~certificated~~] licensed educators employed at the school and at least two-thirds of the parents or guardians of students enrolled at the school must have signed a petition approving the proposal prior to its submission to the sponsoring entity if the entire school is applying for charter status.

(ii) The percentage is reduced to a simple majority if the conversion is for only a portion of the school.

(c) A proposal submitted under Subsection (2)(a) must first be approved by the local school board based on its determination that:

(i) students opting not to attend the proposed converted school would have access to a comparable public education alternative; and

(ii) current teachers who choose not to teach at the converted charter school or who are not retained by the school at the time of its conversion would receive a first preference for transfer to open teaching positions for which they qualify within the school district. If no positions are open, contract provisions or board policy regarding reduction in staff would apply.

(3) A parochial school or home school is not eligible for charter school status.

Section 4. Section **53A-1a-512** is amended to read:

53A-1a-512. Employees of charter schools.

(1) A charter school shall select its own employees.

(2) The school's governing body shall determine the level of compensation and all terms and conditions of employment, except as otherwise provided in this part.

(3) (a) To accommodate differentiated staffing and better meet student needs, a charter school, under rules adopted by the State Board of Education, shall employ teachers who:

(i) are [~~certificated~~] licensed; or

(ii) on the basis of demonstrated competency, would qualify to teach under alternative certification or authorization programs.

(b) The school's governing body shall disclose the qualifications of its teachers to the parents of its students.

(4) (a) An employee of a school district may request a leave of absence in order to work in

a charter school upon approval of the local school board.

(b) While on leave, the employee may retain seniority accrued in the school district and may continue to be covered by the benefit program of the district if the charter school and the locally elected school board mutually agree.

Section 5. Section **53A-3-602** is amended to read:

53A-3-602. School district performance report -- Elements -- Annual filing.

(1) Each school district shall develop a district performance report providing for accountability of the district to its residents for the quality of schools and the educational achievement of students in the district.

(2) The report shall include the following statistical data:

- (a) norm-referenced achievement test scores and trends by grade or subject;
- (b) ACT scores, including trend data and the percentage of each graduating class taking the ACT;
- (c) advanced placement scores, including numbers taking the tests and percentage who pass;
- (d) criterion-referenced test scores, including trend data;
- (e) enrollment trends;
- (f) ethnic distribution of student population;
- (g) attendance and drop-out rates and trends;
- (h) fiscal information, including revenues available to the district by source and total and the information required under Subsection 53A-1-301(2)(d) as related to the district;
 - (i) expenditures by source and total;
 - (j) per pupil expenditures and trends;
 - (k) pupil-teacher ratios and trends;
 - (l) [~~certificated~~] licensed staff by level and average years of professional experience;
 - (m) course-taking patterns and trends in the high schools;
 - (n) number of buildings by level, number of buildings on year-round programs, and number of buildings on extended days;
 - (o) percent of free or reduced school lunch participants;

- (p) percent of students receiving fee waivers and dollar amount of fee waivers;
- (q) percent of AFDC families; and
- (r) a statement on the amount of class time missed by students and faculty in grades 9

through

12 for activities which require them to miss normal class time, to include:

- (i) the total number of individuals involved;
- (ii) the hours of normal class time missed;
- (iii) the total miles traveled to and from the activities;
- (iv) the costs for transporting students and faculty to and from the activities; and
- (v) a breakdown of the activities by category as follows:
 - (A) athletic contests;
 - (B) music performances and contests;
 - (C) forensics, debate, speech, and drama performances and contests;
 - (D) school club activities and contests; and
 - (E) all other school-sponsored activities and contests.

(3) School districts may include any other data in their reports which they feel is important to report to the general public.

(4) Each district shall issue its report annually by January 15.

(5) Each district shall file a copy of its report with the Legislature and the State Board of Education and have it distributed to the residence of each student enrolled in the district.

Section 6. Section **53A-7-101** is amended to read:

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

(1) The president of a professional local organization which represents a majority of the [certificated] licensed employees of a school district or the chairman or president of a local school board may, after negotiating for 90 days, declare an impasse by written notification to the other party and to the State Board of Education.

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

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

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

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

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

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

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

Section 7. Section **53A-13-107** is amended to read:

53A-13-107. Adoption information.

(1) Each local school board shall ensure that an annual presentation on adoption is given to its secondary school students in grades 7-12, so that each student receives the presentation at least once during grades 7-9 and at least once during grades 10-12.

(2) The presentation shall be made by a [~~certificated~~] licensed teacher as part of the health education core and may be included as part of a district's teenage pregnancy prevention program authorized under Section 53A-17a-121.

Section 8. Section **53A-17a-132** is amended to read:

53A-17a-132. Experimental and developmental programs.

(1) The state's contribution of \$5,933,056 for experimental and developmental programs is appropriated to the State Board of Education for distribution to school districts as follows:

(a) the board shall distribute the first part, 34% of the appropriation, equally among the state's 40 school districts;

(b) the board shall distribute the second part, 41% of the appropriation, to each district on the basis of its kindergarten through grade 12 average daily membership for the prior year as compared to the prior year state total kindergarten through grade 12 average daily membership; and

(c) the board shall distribute 25% of the appropriation pursuant to standards established by the board in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(2) (a) A school district may fund a new experimental or developmental program with monies appropriated under Subsection (1) for a maximum of three consecutive years.

(b) After the third year, the district shall either fund the program with regular ongoing program monies or terminate the program.

(3) (a) The State Board of Education shall allocate \$100,000 of the experimental-developmental appropriation for programs to improve the efficiency of classified employees in the public schools.

(b) The programs should include training components, classified staffing formulas, and preventative maintenance formulas.

(4) (a) The State Board of Education shall allocate \$584,900 of the appropriation for the planning, development, and implementation of alternative experimental pilot programs, using [~~certificated~~] licensed teachers, which are cooperative ventures that have demonstrated support of parents, the recognized teachers' organization, administrators, and students.

(b) The State Board of Education shall select schools for the pilot programs by a grant process using selection criteria developed by the state board.

(5) Models for experimental activities similar to the nine district consortium activities are permissible under the experimental and developmental appropriation.

Section 9. Section **53A-25-111** is amended to read:

53A-25-111. Annual salary adjustments for school employees -- Benefits.

(1) (a) The board shall adjust the salary schedule applicable to nonadministrative [~~certificated~~] licensed staff at the school each school year.

(b) The board shall make the adjustment equal to the average adjustment for nonadministrative [~~certificated~~] licensed staff adopted by the public school districts of the state as determined by the State Office of Education.

(2) (a) The adjustment shall be computed using adjustments made by the school districts by December 1 of each year.

(b) The board shall apply the adjustment to the salary schedule effective July 1 of the following year.

(3) The board shall make salary adjustments for administrative and [~~noncertificated~~] nonlicensed staff at the school on the basis of adjustments approved for state government employees in similar positions.

(4) Administrative, [~~certificated,~~] licensed and [~~noncertificated~~] nonlicensed staff at the school shall receive the same benefits as those provided to state government employees.

Section 10. Section **53A-25a-106** is amended to read:

53A-25a-106. Licensing of teachers.

(1) As part of the [~~certification~~] licensing process, teachers [~~certified~~] licensed in the education of blind and visually impaired students shall demonstrate their competence in reading and writing Braille.

(2) (a) The State Board of Education shall adopt procedures to assess the competencies referred to in Subsection (1), consistent with standards adopted by the National Library Service for the Blind and Physically Handicapped.

(b) The board shall require teachers of the blind to meet the standards referred to in Subsection (2)(a).

Section 11. Section **58-61-307** is amended to read:

58-61-307. Exemptions from licensure.

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

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

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

(b) a registered psychiatric mental health nurse specialist licensed under Chapter 31b, Nurse Practice Act;

(2) a recognized member of the clergy while functioning in his ministerial capacity as long

as he does not represent himself as or use the title of psychologist;

(3) an individual who is offering expert testimony in any proceeding before a court, administrative hearing, deposition upon the order of any court or other body having power to order the deposition, or proceedings before any master, referee, or alternative dispute resolution provider;

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

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

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

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

(iv) tests clients to determine degrees of suggestibility;

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

(vi) trains clients in self-hypnosis conditioning;

(b) may not:

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

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

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

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

requirement has been completed;

(6) an individual holding an earned doctoral degree in psychology who is employed by an accredited institution of higher education and who conducts research and teaches in that individual's professional field, but only if the individual does not engage in providing delivery or supervision of professional services regulated under this chapter to individuals or groups regardless of whether there is compensation for the services;

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

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

(a) may represent himself as and use the terms "school psychologist" or "[~~certified~~] licensed school psychologist"; and

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

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

Section 12. Section **63-30-2** is amended to read:

63-30-2. Definitions.

As used in this chapter:

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

(2) (a) "Employee" includes a governmental entity's officers, employees, servants, trustees, commissioners, members of a governing body, members of a board, members of a commission, or members of an advisory body, officers and employees in accordance with Section 67-5b-104, student teachers [~~certificated~~] holding a letter of authorization in accordance with [~~Section~~] Sections

53A-6-103 and 53A-6-104, educational aides, students engaged in providing services to members of the public in the course of an approved medical, nursing, or other professional health care clinical training program, volunteers, and tutors, but does not include an independent contractor.

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

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

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

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

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

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

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

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

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

Section 13. Repealer.

This act repeals:

Section 20A-14-107, Student member of state board.

Section 35A-1-208, Study of future consolidation.

Section 53A-4-101, Short title.

Section 53A-4-102, Legislative findings and declarations.

Section 53A-4-103, Definitions.

Section 53A-4-104, Foundation created -- Independence from public entities -- Powers.

Section 53A-4-105, Board of directors -- Composition -- Term -- General powers.

Section 53A-4-106, Restrictions on powers of foundation.

Section 53A-4-107, Tax exemption of foundation.

Section 53A-4-108, Construction of chapter.

**Section 53A-20a-201, Sevier Valley Applied Technology Center revenue bonds --
Technology programs/administration building.**

**Section 53A-20a-202, Sevier Valley Applied Technology Center revenue bonds --
Technical training/community services building.**