

SCHOOL EMPLOYEE TERMINATION

AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carl Wimmer

Senate Sponsor: _____

LONG TITLE

General Description:

This bill repeals the provisions of the "Utah Orderly School Termination Procedures Act" and requires local school boards to determine the procedures for dismissal of employees.

Highlighted Provisions:

This bill:

- ▶ repeals the provisions of the "Utah Orderly School Termination Procedures Act";
- ▶ requires local school boards to determine the terms and conditions of employment, including the procedures for dismissal of employees; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53A-1a-512, as last amended by Laws of Utah 2005, Chapters 285 and 291

53A-3-411, as last amended by Laws of Utah 2005, Chapter 285

53A-3-425, as enacted by Laws of Utah 2002, Chapter 312



28 53A-11-605, as enacted by Laws of Utah 2007, Chapter 111

29 REPEALS:

30 53A-8-101, as enacted by Laws of Utah 1988, Chapter 2

31 53A-8-102, as last amended by Laws of Utah 2007, Chapter 348

32 53A-8-103, as last amended by Laws of Utah 1994, Chapter 51

33 53A-8-104, as last amended by Laws of Utah 2007, Chapter 348

34 53A-8-105, as last amended by Laws of Utah 2007, Chapter 306

35 53A-8-106, as last amended by Laws of Utah 2003, Chapter 315

36 53A-8-107, as last amended by Laws of Utah 1999, Chapter 324



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

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

40 **53A-1a-512. Employees of charter schools.**

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

42 (2) The school's governing body shall determine the level of compensation and all
43 terms and conditions of employment, except as otherwise provided in Subsections (7) and (8)
44 and under this part.

45 (3) The following statutes governing public employees and officers do not apply to
46 charter schools:

47 [~~(a) Chapter 8, Utah Orderly School Termination Procedures Act;~~]

48 [~~(b)~~] (a) Chapter 10, Educator Evaluation; and

49 [~~(c)~~] (b) Title 52, Chapter 3, Prohibiting Employment of Relatives.

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

52 (i) are licensed; or

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

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

57 (5) State Board of Education rules governing the licensing or certification of
58 administrative and supervisory personnel do not apply to charter schools.

59 (6) (a) An employee of a school district may request a leave of absence in order to
60 work in a charter school upon approval of the local school board.

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

64 (7) Except as provided under Subsection (8), an employee of a charter school shall be a
65 member of a retirement system under Title 49, Utah State Retirement and Insurance Act.

66 (8) (a) At the time of application for a charter school, whether the chartering entity is
67 the State Charter School Board or a school district, a proposed charter school may make an
68 election of nonparticipation as an employer for retirement programs under Title 49, Chapter 12,
69 Public Employees' Contributory Retirement Act and under Title 49, Chapter 13, Public
70 Employees' Noncontributory Retirement Act.

71 (b) A charter school that was approved prior to July 1, 2004 may make an election of
72 nonparticipation prior to December 31, 2004.

73 (c) An election provided under this Subsection (8):

74 (i) is a one-time election made at the time specified under Subsection (8)(a) or (b);

75 (ii) shall be documented by a resolution adopted by the governing body of the charter
76 school;

77 (iii) is irrevocable; and

78 (iv) applies to the charter school as the employer and to all employees of the charter
79 school.

80 (d) The governing body of a charter school may offer employee benefit plans for its
81 employees:

82 (i) under Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act;

83 or

84 (ii) under any other program.

85 (9) The governing body of a charter school shall ensure that, prior to the beginning of
86 each school year, each of its employees signs a document acknowledging that the employee:

87 (a) has received:

88 (i) the disclosure required under Section 63A-4-204.5 if the charter school participates
89 in the Risk Management Fund; or

90 (ii) written disclosure similar to the disclosure required under Section 63A-4-204.5 if
91 the charter school does not participate in the Risk Management Fund; and

92 (b) understands the legal liability protection provided to the employee and what is not
93 covered, as explained in the disclosure.

94 Section 2. Section **53A-3-411** is amended to read:

95 **53A-3-411. Employment of school personnel -- Length of contract -- Termination**
96 **for cause -- Individual contract of employment -- Employee acknowledgment of liability**
97 **protection.**

98 (1) A local school board may enter into a written employment contract for a term not to
99 exceed five years.

100 (2) Nothing in the terms of the contract shall restrict the power of a local school board
101 to terminate the contract for cause at any time.

102 (3) (a) A local school board may not enter into a collective bargaining agreement that
103 prohibits or limits individual contracts of employment.

104 (b) Subsection (3)(a) does not apply to an agreement that was entered into before May
105 5, 2003.

106 (4) Each local school board shall:

107 (a) ensure that each employment contract complies with the requirements of Section
108 34-32-1.1;

109 (b) comply with the requirements of Section 34-32-1.1 in employing any personnel,
110 whether by employment contract or otherwise; ~~and~~

111 (c) ensure that at the time an employee enters into an employment contract, the
112 employee shall sign a separate document acknowledging that the employee:

113 (i) has received:

114 (A) the disclosure required under Subsection 63A-4-204(4)(d) if the school district
115 participates in the Risk Management Fund; or

116 (B) written disclosure similar to the disclosure required under Section 63A-4-204 if the
117 school district does not participate in the Risk Management Fund; and

118 (ii) understands the legal liability protection provided to the employee and what is not
119 covered, as explained in the disclosure~~[-]; and~~

120 (d) determine the terms and conditions of employment, including the procedures for

121 dismissal of employees.

122 Section 3. Section **53A-3-425** is amended to read:

123 **53A-3-425. Association leave -- District policy.**

124 (1) As used in this section, "association leave" means leave from a school district
125 employee's regular school responsibilities granted for that employee to spend time for
126 association or union duties.

127 (2) Prior to any school district employee's participation in paid or unpaid association
128 leave, a local school board shall adopt a written policy that governs association leave.

129 (3) If a local school board adopts a policy to allow paid association leave, the policy
130 shall include procedures and controls to:

131 (a) ensure that the duties performed by employees on paid association leave directly
132 benefit education within the school district;

133 (b) require the school district to document the use and approval of paid association
134 leave;

135 (c) require school district supervision of employees on paid association leave;

136 (d) require the school district to account for the costs and expenses of paid association
137 leave;

138 (e) ensure that during the hours of paid association leave a school district employee
139 may not engage in political activity, including:

140 (i) actively campaigning for candidates for public office in partisan and nonpartisan
141 elections; and

142 (ii) fundraising for political organizations, political parties, or candidates;

143 (f) ensure that association leave is only paid out of school district funds when the paid
144 association leave directly benefits education within the district; and

145 (g) require the reimbursement to the school district of the cost of paid association leave
146 activities that do not provide a direct benefit to education within the school district.

147 (4) If a local school board adopts a policy to allow paid association leave, that policy
148 shall indicate that a willful violation of this section or of a policy adopted in accordance with
149 Subsection (2) or (3) may be used for disciplinary action [~~under Section 53A-8-104~~].

150 Section 4. Section **53A-11-605** is amended to read:

151 **53A-11-605. Definitions -- School personnel -- Medical recommendations --**

152 **Exceptions -- Penalties.**

153 (1) As used in this section:

154 (a) "Health care professional" means a physician, physician assistant, nurse, dentist, or
155 mental health therapist.

156 (b) "School personnel" means any school district or charter school employee, including
157 licensed, part-time, contract, and nonlicensed employees.

158 (2) School personnel may:

159 (a) provide information and observations to a student's parent or guardian about that
160 student, including observations and concerns in the following areas:

161 (i) progress;

162 (ii) health and wellness;

163 (iii) social interactions;

164 (iv) behavior; or

165 (v) topics consistent with Subsection 53A-13-302(6);

166 (b) communicate information and observations between school personnel regarding a
167 child;

168 (c) refer students to other appropriate school personnel and agents, consistent with
169 local school board or charter school policy, including referrals and communication with a
170 school counselor or other mental health professionals working within the school system;

171 (d) consult or use appropriate health care professionals in the event of an emergency
172 while the student is at school, consistent with the student emergency information provided at
173 student enrollment;

174 (e) exercise their authority relating to the placement within the school or readmission
175 of a child who may be or has been suspended or expelled for a violation of Section
176 53A-11-904; and

177 (f) complete a behavioral health evaluation form if requested by a student's parent or
178 guardian to provide information to a licensed physician.

179 (3) School personnel shall:

180 (a) report suspected child abuse consistent with Section 62A-4a-403;

181 (b) comply with applicable state and local health department laws, rules, and policies;

182 and

183 (c) conduct evaluations and assessments consistent with the Individuals with
184 Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq., and its subsequent amendments.

185 (4) Except as provided in Subsection (2) and Subsection (6), school personnel may not:

186 (a) recommend to a parent or guardian that a child take or continue to take a
187 psychotropic medication;

188 (b) require that a student take or continue to take a psychotropic medication as a
189 condition for attending school;

190 (c) recommend that a parent or guardian seek or use a type of psychiatric or
191 psychological treatment for a child;

192 (d) conduct a psychiatric or behavioral health evaluation or mental health screening,
193 test, evaluation, or assessment of a child, except where this Subsection (4)(d) conflicts with the
194 Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq., and its subsequent
195 amendments; or

196 (e) make a child abuse or neglect report to authorities, including the Division of Child
197 and Family Services, solely or primarily on the basis that a parent or guardian refuses to
198 consent to:

199 (i) a psychiatric, psychological, or behavioral treatment for a child, including the
200 administration of a psychotropic medication to a child; or

201 (ii) a psychiatric or behavioral health evaluation of a child.

202 (5) Notwithstanding Subsection (4)(e), school personnel may make a report that would
203 otherwise be prohibited under Subsection (4)(e) if failure to take the action described under
204 Subsection (4)(e) would present a serious, imminent risk to the child's safety or the safety of
205 others.

206 (6) Notwithstanding Subsection (4), a school counselor or other mental health
207 professional acting in accordance with Title 58, Chapter 60, Mental Health Professional
208 Practice Act, or licensed through the State Board of Education, working within the school
209 system may:

210 (a) recommend, but not require, a psychiatric or behavioral health evaluation of a child;

211 (b) recommend, but not require, psychiatric, psychological, or behavioral treatment for
212 a child;

213 (c) conduct a psychiatric or behavioral health evaluation or mental health screening,

214 test, evaluation, or assessment of a child in accordance with Section 53A-13-302; and
215 (d) provide to a parent or guardian, upon the specific request of the parent or guardian,
216 a list of three or more health care professionals or providers, including licensed physicians,
217 psychologists, or other health specialists.

218 (7) Local school boards or charter schools shall adopt a policy:

219 (a) providing for training of appropriate school personnel on the provisions of this
220 section; and

221 (b) indicating that an intentional violation of this section is cause for disciplinary action
222 consistent with local school board or charter school policy [~~and under Section 53A-8-104~~].

223 (8) Nothing in this section shall be interpreted as discouraging general communication
224 not prohibited by this section between school personnel and a student's parent or guardian.

225 **Section 5. Repealer.**

226 This bill repeals:

227 **Section 53A-8-101, Short title.**

228 **Section 53A-8-102, Definitions.**

229 **Section 53A-8-103, Local school board to establish dismissal procedures.**

230 **Section 53A-8-104, Dismissal procedures.**

231 **Section 53A-8-105, Hearings before district board or hearing officers -- Rights of**
232 **the board and the employee -- Subpoenas -- Appeals.**

233 **Section 53A-8-106, Career employee status for provisional employees.**

234 **Section 53A-8-107, Necessary staff reduction not precluded.**

Legislative Review Note
as of 11-24-08 11:16 AM

Office of Legislative Research and General Counsel

H.B. 260 - School Employee Termination Amendments

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
