

Representative Daniel McCay proposes the following substitute bill:

EDUCATION ABUSE POLICY

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel McCay

Senate Sponsor: Aaron Osmond

LONG TITLE

General Description:

This bill modifies provisions related to school personnel employment and licensing procedures and student abuse reporting.

Highlighted Provisions:

This bill:

- ▶ modifies requirements for providing and obtaining employment and disciplinary history of school personnel;
- ▶ modifies requirements and procedures for educator licensing;
- ▶ gives rulemaking authority to the State Board of Education;
- ▶ modifies provisions related to mandatory reporting of student abuse; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

→ This bill provides a coordination clause. ←

Utah Code Sections Affected:

AMENDS:

53A-6-402, as repealed and reenacted by Laws of Utah 1999, Chapter 108



26 53A-6-502, as last amended by Laws of Utah 2003, Chapter 315

27 53A-6-604, as enacted by Laws of Utah 1999, Chapter 108

28 77-37-4, as last amended by Laws of Utah 2014, Chapter 90

29 REPEALS AND REENACTS:

30 53A-6-306, as last amended by Laws of Utah 2010, Chapter 283

31 53A-6-307, as enacted by Laws of Utah 1999, Chapter 108

32 53A-6-405, as enacted by Laws of Utah 1999, Chapter 108

33 53A-6-501, as last amended by Laws of Utah 2011, Chapter 320

33a **§→ Utah Code Sections Affected by Coordination Clause:**

33b **53A-6-306, as last amended by Laws of Utah 2010, Chapter 283 ←§**



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

36 Section 1. Section 53A-6-306 is repealed and reenacted to read:

37 **53A-6-306. UPPAC duties and procedures.**

38 (1) The board may direct UPPAC to review a complaint about an educator and
39 recommend that the board:

40 (a) dismiss the complaint; or

41 (b) investigate the complaint in accordance with this section.

42 (2) (a) The board may direct UPPAC to:

43 (i) in accordance with this section, investigate a complaint's allegation or decision; or

44 (ii) hold a hearing.

45 (b) UPPAC may initiate a hearing as part of an investigation.

46 (c) Upon completion of an investigation or hearing, UPPAC shall:

47 (i) provide findings to the board; and

48 (ii) make a recommendation for board action.

49 (d) UPPAC may not make a recommendation described in Subsection (2)(c)(ii) to
50 adversely affect an educator's license unless UPPAC gives the educator an opportunity for a
51 hearing.

52 (3) (a) The board may:

53 (i) select an independent investigator to conduct a UPPAC investigation with UPPAC
54 oversight; or

55 (ii) authorize UPPAC to select and oversee an independent investigator to conduct an
56 investigation.

57 (b) In conducting an investigation, UPPAC or an independent investigator shall
 58 conduct the investigation independent of and separate from a related criminal investigation.

59 (c) In conducting an investigation, UPPAC or an independent investigator may:
 60 (i) in accordance with Section 53A-6-603 administer oaths and issue subpoenas; or
 61 (ii) receive evidence related to an alleged offense, including sealed or expunged
 62 records released to the board under Section 77-40-109.

63 (d) If UPPAC finds that reasonable cause exists during an investigation, UPPAC may
 64 recommend that the board initiate a criminal background check on an educator.

65 (e) UPPAC has a rebuttable presumption that an educator committed a sexual offense
 66 against a minor child if the educator voluntarily surrendered a license or certificate or allowed a
 67 license or certificate to lapse in the face of a charge of having committed a sexual offense
 68 against a minor child.

69 (4) The board may direct UPPAC to:

70 (a) recommend to the board procedures for:

71 (i) receiving and processing complaints;

72 (ii) investigating a complaint's allegation or decision;

73 (iii) conducting hearings; or

74 (iv) reporting findings and making recommendations to the board for board action;

75 (b) recommend to the board or a professional organization of educators:

76 (i) standards of professional performance, competence, and ethical conduct for
 77 educators; or

78 (ii) suggestions for improvement of the education profession; or

79 (c) fulfill other duties the board finds appropriate.

80 (5) UPPAC may not participate as a party in a dispute relating to negotiations between:

81 (a) a school district and the school district's educators; or

82 (b) a charter school and the charter school's educators.

83 (6) The board shall make rules establishing UPPAC duties and procedures.

84 Section 2. Section 53A-6-307 is repealed and reenacted to read:

85 **53A-6-307. Licensing power of the board -- Licensing final action -- Appeal rights.**

86 (1) The board holds the power to license educators.

87 (2) (a) The board shall take final action with regard to an educator license.

88 (b) An entity other than the board may not take final action with regard to an educator
 89 license.

90 (3) (a) In accordance with Subsection (3)(b), a license applicant or an educator may
 91 seek judicial review of a final action made by the board under this chapter.

92 (b) A license applicant or educator may file a petition for judicial review of the board's
 93 final action if the license applicant or educator files a petition within 30 days after the day on
 94 which the license applicant or educator received notice of the final action.

95 Section 3. Section 53A-6-402 is amended to read:

96 **53A-6-402. Evaluation information on current or prospective school employees --**
 97 **Notice to employee -- Mandatory employment history check -- Exemption from liability.**

98 (1) (a) The [~~office's administrator of teacher licensing may~~] board shall provide the
 99 appropriate administrator of a public or private school or of an agency outside the state [~~which~~]
 100 that is responsible for licensing or [certification of educators with any] certifying educational
 101 personnel with a recommendation or other information possessed by the [office which] board
 102 that has significance in evaluating the employment or license of:

103 (i) a current or prospective school employee[~~, license holder, or applicant for~~
 104 licensing.];

105 (ii) an educator or education license holder; or

106 (iii) a license applicant.

107 (b) Information supplied under Subsection (1)(a) [~~may~~] shall include:

108 (i) the complete record of a hearing [~~or~~]; and

109 (ii) the investigative report for matters [~~which~~] that:

110 [(i)] (A) the educator has had an opportunity to contest; and

111 [(ii)] (B) did not proceed to a hearing.

112 (2) At the request of the [~~office's administrator of teacher licensing;~~] board, an
 113 administrator of a public school or school district shall, and an administrator of a private school
 114 may, provide [~~any~~] a recommendation or other information possessed by the school or school
 115 district [~~which~~] that has significance in evaluating the employment or licensure of:

116 (a) a current or prospective school employee[~~, license holder, or applicant for~~
 117 licensing.];

118 (b) an educator or education license holder; or

119 (c) a license applicant.

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

124 ~~Ŝ → [(4) A local school board, a charter school governing board, or the Utah Schools for the~~
125 ~~Deaf and the Blind shall obtain references and a discipline record from prior employers of a~~
126 ~~potential employee before hiring:~~

127 ~~—— (a) an educator; or~~

128 ~~—— (b) an individual who:~~

129 ~~—— (i) works in a public school as an employee; and~~

130 ~~—— (ii) has significant unsupervised access to students.]~~

130a (4) A local school board, a charter school governing board, or the Utah Schools for the Deaf and
130b the Blind shall obtain references and a discipline record from prior employers of an individual
130c before hiring the individual to work:

130d (a) as an educator; or

130e (b) in a public school, if the individual would have significant unsupervised access to students. ←Ŝ

131 ~~[(4)]~~ (5) A person who, in good faith, provides a recommendation or discloses or
132 receives information under this section is exempt from civil and criminal liability relating to
133 that recommendation, receipt, or disclosure.

134 ~~[(5)]~~ (6) For purposes of this section, "employee" includes a volunteer.

135 Section 4. Section **53A-6-405** is repealed and reenacted to read:

136 **53A-6-405. Ineligibility for educator license.**

137 (1) The board may refuse to issue a license to a license applicant if the board finds
138 good cause for the refusal, including behavior of the applicant:

139 (a) found pursuant to a criminal, civil, or administrative matter after reasonable
140 opportunity for the applicant to contest the allegation; and

141 (b) considered, as behavior of an educator, to be:

142 (i) immoral, unprofessional, or incompetent behavior; or

143 (ii) a violation of standards of ethical conduct, performance, or professional
144 competence.

145 (2) The board may not issue, renew, or reinstate an educator license if the license
146 applicant or educator:

147 (a) was convicted of a felony of a sexual nature;

148 (b) pled guilty to a felony of a sexual nature;

149 (c) entered a plea of no contest to a felony of a sexual nature;

150 (d) entered a plea in abeyance to a felony of a sexual nature;
151 (e) was convicted of a sexual offense under Title 76, Chapter 5, Part 4, Sexual
152 Offenses, against a minor child;
153 (f) engaged in sexually explicit conduct, as defined in Section 76-5b-103, with a
154 student who is a minor;
155 (g) engaged in sexually explicit conduct, as defined in Section 76-5b-103, with a
156 student who is:
157 (i) not a minor; and
158 (ii) enrolled in a school where the license applicant or educator is or was employed; or
159 (h) admits to the board or UPPAC that the license applicant or educator committed
160 conduct that amounts to:
161 (i) a felony of a sexual nature; or
162 (ii) a sexual offense or sexually explicit conduct described in Subsection (2)(e), (f), or
163 (g).
164 (3) If an individual is ineligible for licensure under Subsection (1) or (2), a public
165 school may not:
166 (a) employ the person in the public school; or
167 (b) allow the person to volunteer in the public school.
168 (4) (a) If the board denies licensure under this section, the board shall immediately
169 notify the applicant of:
170 (i) the denial; and
171 (ii) the applicant's right to request a hearing before UPPAC.
172 (b) Upon receipt of a notice described in Subsection (4)(a), an applicant may, within 30
173 days after the day on which the applicant received the notice, request a hearing before UPPAC
174 for the applicant to review and respond to all evidence upon which the board based the denial.
175 (c) If the board receives a request for a hearing described in Subsection (4)(b), the
176 board shall direct UPPAC to hold a hearing.
177 Section 5. Section **53A-6-501** is repealed and reenacted to read:
178 **53A-6-501. Board disciplinary action of an educator.**
179 (1) (a) The board shall direct UPPAC to investigate an allegation, administrative
180 decision, or judicial decision that evidences an educator is unfit for duty because the educator

181 exhibited behavior that:

182 (i) is immoral, unprofessional, or incompetent; or

183 (ii) violates standards of ethical conduct, performance, or professional competence.

184 (b) If the board determines an allegation or decision described in Subsection (1)(a)

185 does not evidence an educator's unfitness for duty, the board may dismiss the allegation or
186 decision without an investigation or hearing.

187 (2) The board shall direct UPPAC to investigate and allow an educator to respond in a
188 UPPAC hearing if the board receives an allegation that the educator:

189 (a) was charged with a felony of a sexual nature;

190 (b) was convicted of a felony of a sexual nature;

191 (c) pled guilty to a felony of a sexual nature;

192 (d) entered a plea of no contest to a felony of a sexual nature;

193 (e) entered a plea in abeyance to a felony of a sexual nature;

194 (f) was convicted of a sexual offense under Title 76, Chapter 5, Part 4, Sexual

195 Offenses, against a minor child;

196 (g) engaged in sexually explicit conduct, as defined in Section [76-5b-103](#), with a
197 student who is a minor; or

198 (h) engaged in sexually explicit conduct, as defined in Section [76-5b-103](#), with a
199 student who is:

200 (i) not a minor; and

201 (ii) enrolled in a school where the educator is or was employed.

202 (3) Upon notice that an educator allegedly violated Section [53A-6-502](#), the board shall
203 direct UPPAC to:

204 (a) investigate the alleged violation; and

205 (b) hold a hearing to allow the educator to respond to the allegation.

206 (4) Upon completion of an investigation or hearing described in this section, UPPAC
207 shall:

208 (a) provide findings to the board; and

209 (b) make a recommendation for board action.

210 (5) (a) Except as provided in Subsection (5)(b), upon review of UPPAC's findings and
211 recommendation, the board may:

- 212 (i) revoke the educator's license;
- 213 (ii) suspend the educator's license;
- 214 (iii) restrict or prohibit the educator from renewing the educator's license;
- 215 (iv) warn or reprimand the educator;
- 216 (v) enter into a written agreement with the educator that requires the educator to
- 217 comply with certain conditions;
- 218 (vi) direct UPPAC to further investigate or gather information; or
- 219 (vii) take other action the board finds to be appropriate for and consistent with the
- 220 educator's behavior.
- 221 (b) Upon review of UPPAC's findings and recommendation, the board shall revoke the
- 222 license of an educator who:
- 223 (i) was convicted of a felony of a sexual nature;
- 224 (ii) pled guilty to a felony of a sexual nature;
- 225 (iii) entered a plea of no contest to a felony of a sexual nature;
- 226 (iv) entered a plea in abeyance to a felony of a sexual nature;
- 227 (v) was convicted of a sexual offense under Title 76, Chapter 5, Part 4, Sexual
- 228 Offenses, against a minor child;
- 229 (vi) engaged in sexually explicit conduct, as defined in Section [76-5b-103](#), with a
- 230 student who is a minor;
- 231 (vii) engaged in sexually explicit conduct, as defined in Section [76-5b-103](#), with a
- 232 student who is:
- 233 (A) not a minor; and
- 234 (B) enrolled in a school where the educator is or was employed; or
- 235 (viii) admits to the board or UPPAC that the applicant committed conduct that amounts
- 236 to:
- 237 (A) a felony of a sexual nature; or
- 238 (B) a sexual offense or sexually explicit conduct described in Subsection (5)(b)(v), (vi),
- 239 or (vii).
- 240 (c) The board may not reinstate a revoked license.
- 241 (d) Before the board takes adverse action against an educator under this section, the
- 242 board shall ensure that the educator had an opportunity for a UPPAC hearing.

243 Section 6. Section **53A-6-502** is amended to read:

244 **53A-6-502. Mandatory reporting of physical or sexual abuse of students.**

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

249 (2) In addition to any duty to report suspected cases of child abuse or neglect under
250 Section **62A-4a-403**, an educator who has reasonable cause to believe that a student may have
251 been physically or sexually abused by a school employee shall immediately report the belief
252 and all other relevant information to the school principal, to the superintendent, or to the
253 [office] board.

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

257 ~~[(4) Failure to comply with Subsection (2) or (3) shall be considered unprofessional~~
258 ~~conduct.]~~

259 (4) Upon notice that an educator allegedly violated Subsection (2) or (3), the board
260 shall direct UPPAC to investigate the educator's alleged violation as described in Section
261 **53A-6-501**.

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

264 Section 7. Section **53A-6-604** is amended to read:

265 **53A-6-604. Rules for conducting hearings -- Standard of proof.**

266 (1) The board~~;~~ and each local school board~~;~~ and UPPAC shall ~~each~~ adopt rules for
267 the conduct of hearings to ensure that requirements of due process are met.

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

269 (a) notice of the hearing;

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

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

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

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

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

281 (5) Unless otherwise provided in [~~Title 53A~~] this title, the decisions of state and local
282 boards are final determinations under this section, appealable to the appropriate court for
283 review.

284 Section 8. Section 77-37-4 is amended to read:

285 **77-37-4. Additional rights -- Children.**

286 In addition to all rights afforded to victims and witnesses under this chapter, child
287 victims and witnesses shall be afforded these rights:

288 (1) Children have the right to protection from physical and emotional abuse during
289 their involvement with the criminal justice process.

290 (2) Children are not responsible for inappropriate behavior adults commit against them
291 and have the right not to be questioned, in any manner, nor to have allegations made, implying
292 this responsibility. Those who interview children have the responsibility to consider the
293 interests of the child in this regard.

294 (3) Child victims and witnesses have the right to have interviews relating to a criminal
295 prosecution kept to a minimum. All agencies shall coordinate interviews and ensure that they
296 are conducted by persons sensitive to the needs of children.

297 (4) Child victims have the right to be informed of available community resources that
298 might assist them and how to gain access to those resources. Law enforcement and prosecutors
299 have the duty to ensure that child victims are informed of community resources, including
300 counseling prior to the court proceeding, and have those services available throughout the
301 criminal justice process.

302 (5) (a) Child victims have the right, once an investigation has been initiated by law
303 enforcement or the Division of Child and Family Services, to keep confidential their interviews
304 that are conducted at a Children's Justice Center, including video and audio recordings, and

305 transcripts of those recordings. Except as provided in Subsection (6), recordings and
306 transcripts of interviews may not be distributed, released, or displayed to anyone without a
307 court order.

308 (b) A court order described in Subsection (5)(a):

309 (i) shall describe with particularity to whom the recording or transcript of the interview
310 may be released and prohibit further distribution or viewing by anyone not named in the order;
311 and

312 (ii) may impose restrictions on access to the materials considered reasonable to protect
313 the privacy of the child victim.

314 (c) A parent or guardian of the child victim may petition a juvenile or district court for
315 an order allowing the parent or guardian to view a recording or transcript upon a finding of
316 good cause. The order shall designate the agency that is required to display the recording or
317 transcript to the parent or guardian and shall prohibit viewing by anyone not named in the
318 order.

319 (d) Following the conclusion of any legal proceedings in which the recordings or
320 transcripts are used, the court shall order the recordings and transcripts in the court's file sealed
321 and preserved.

322 (6) (a) The following offices and their designated employees may distribute and receive
323 a recording or transcript to and from one another without a court order:

324 (i) the Division of Child and Family Services;

325 (ii) administrative law judges employed by the Department of Human Services;

326 (iii) Department of Human Services investigators investigating the Division of Child
327 and Family Services or investigators authorized to investigate under Section [62A-4a-202.6](#);

328 (iv) an office of the city attorney, county attorney, district attorney, or attorney general;

329 (v) a law enforcement agency;

330 (vi) a Children's Justice Center established under Section [67-5b-102](#); or

331 (vii) the attorney for the child who is the subject of the interview.

332 (b) In a criminal case or in a juvenile court in which the state is a party:

333 (i) the parties may display and enter into evidence a recording or transcript in the
334 course of a prosecution;

335 (ii) the state's attorney may distribute a recording or transcript to the attorney for the

336 defendant, pro se defendant, respondent, or pro se respondent pursuant to a valid request for
337 discovery;

338 (iii) the attorney for the defendant or respondent may do one or both of the following:

339 (A) release the recording or transcript to an expert retained by the attorney for the
340 defendant or respondent if the expert agrees in writing that the expert will not distribute,
341 release, or display the recording or transcript to anyone without prior authorization from the
342 court; or

343 (B) permit the defendant or respondent to view the recording or transcript, but may not
344 distribute or release the recording or transcript to the defendant or respondent; and

345 (iv) the court shall advise a pro se defendant or respondent that a recording or
346 transcript received as part of discovery is confidential and may not be distributed, released, or
347 displayed without prior authorization from the court.

348 (c) A court's failure to advise a pro se defendant or respondent that a recording or
349 transcript received as part of discovery is confidential and may not be used as a defense to
350 prosecution for a violation of the disclosure rule.

351 (d) In an administrative case, pursuant to a written request, the Division of Child and
352 Family Services may display, but may not distribute or release, a recording or transcript to the
353 respondent or to the respondent's designated representative.

354 (e) (i) Within two business days of a request from a parent or guardian of a child
355 victim, an investigative agency shall allow the parent or guardian to view a recording after the
356 conclusion of an interview, unless:

357 (A) the suspect is a parent or guardian of the child victim;

358 (B) the suspect resides in the home with the child victim; or

359 (C) the investigative agency determines that allowing the parent or guardian to view
360 the recording would likely compromise or impede the investigation.

361 (ii) If the investigative agency determines that allowing the parent or guardian to view
362 the recording would likely compromise or impede the investigation, the parent or guardian may
363 petition a juvenile or district court for an expedited hearing on whether there is good cause for
364 the court to enter an order allowing the parent or guardian to view the recording in accordance
365 with Subsection (5)(c).

366 (iii) A Children's Justice Center shall coordinate the viewing of the recording described

367 in this Subsection (6)(e).

368 (f) A multidisciplinary team assembled by a Children's Justice Center or an
369 interdisciplinary team assembled by the Division of Child and Family Services may view a
370 recording or transcript, but may not receive a recording or transcript.

371 (g) A Children's Justice Center:

372 (i) may distribute or display a recording or transcript to an authorized trainer or
373 evaluator for purposes of training or evaluation; and

374 (ii) may display, but may not distribute, a recording or transcript to an authorized
375 trainee.

376 (h) An authorized trainer or instructor may display a recording or transcript according
377 to the terms of the authorized trainer's or instructor's contract with the Children's Justice Center
378 or according to the authorized trainer's or instructor's scope of employment.

379 (i) (i) In an investigation under Section 53A-6-306, in which a child victim who is the
380 subject of the recording or transcript has alleged criminal conduct against an educator, a law
381 enforcement agency may distribute or release the recording or transcript to an investigator
382 operating under [UPPAC] State Board of Education authorization, upon the investigator's
383 written request.

384 (ii) If the respondent in a case investigated under Section 53A-6-306 requests a hearing
385 authorized under that section, the investigator operating under [UPPAC] State Board of
386 Education authorization may display, release, or distribute the recording or transcript to the
387 prosecutor operating under [UPPAC] State Board of Education authorization or to an expert
388 retained by an investigator.

389 (iii) Upon request for a hearing under Section 53A-6-306, a prosecutor operating under
390 [UPPAC] State Board of Education authorization may display the recording or transcript to a
391 pro se respondent, to an attorney retained by the respondent, or to an expert retained by the
392 respondent.

393 (iv) The parties to a hearing authorized under Section 53A-6-306 may display and enter
394 into evidence a recording or transcript in the course of a prosecution.

395 (7) Except as otherwise provided in this section, it is a class B misdemeanor for any
396 individual to distribute, release, or display any recording or transcript of an interview of a child
397 victim conducted at a Children's Justice Center.

398 Section 9. **Effective date.**

399 This bill takes effect on July 1, 2015.

399a **Ŝ→ Section 10. Coordinating H.B. 345 with H.B. 124 -- Substantive amendment.**

399b **If this H.B. 345 and H.B.124, Education Background Check Amendments, both pass**
399c **and become law, it is the intent of the Legislature that the Office of Legislative Research and**
399d **General Counsel, in preparing the Utah Code database for publication, amend Subsection**
399e **53A-6-306(3)(d) to read: "(d) If UPPAC finds that reasonable cause exists during an**
399f **investigation, UPPAC may recommend that the board initiate a background check on an**
399g **educator as described in Section 53A-15-1504."** ←Ŝ