

HB0419S01 compared with HB0419

~~deleted text~~ shows text that was in HB0419 but was deleted in HB0419S01.

inserted text shows text that was not in HB0419 but was inserted into HB0419S01.

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Representative Ken Ivory proposes the following substitute bill:

EDUCATION LICENSING AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ken Ivory

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to licensing in the public education system.

Highlighted Provisions:

This bill:

- ▶ amends provisions related to licensing:
 - ineligibility;
 - disciplinary action; and
 - hearings;
- ▶ requires the Utah Professional Practices Advisory Committee to follow certain standards when making a recommendation to the State Board of Education regarding disciplinary action;
- ▶ gives rulemaking authority; and

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- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53A-6-306, as last amended by Laws of Utah 2015, Chapter 389 and repealed and reenacted by Laws of Utah 2015, Chapter 311 and last amended by Coordination Clause, Laws of Utah 2015, Chapter 311

53A-6-405, as repealed and reenacted by Laws of Utah 2015, Chapter 311

53A-6-501, as repealed and reenacted by Laws of Utah 2015, Chapter 311

53A-6-602, as enacted by Laws of Utah 1999, Chapter 108

53A-6-604, as last amended by Laws of Utah 2015, Chapter 311

ENACTS:

53A-6-308, Utah Code Annotated 1953

53A-6-309, Utah Code Annotated 1953

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

Section 1. Section 53A-6-306 is amended to read:

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

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

- (a) dismiss the complaint; or
- (b) investigate the complaint in accordance with this section.

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

- (i) in accordance with this section, investigate a complaint's allegation or decision; or
- (ii) hold a hearing.

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

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

- (i) provide findings to the board; and

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(ii) in accordance with Section 53A-6-308, make a recommendation for board action.

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

(3) (a) The board may:

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

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

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

(c) In conducting an investigation, UPPAC or an independent investigator may:

(i) in accordance with Section 53A-6-603 administer oaths and issue subpoenas; or

(ii) receive evidence related to an alleged offense, including sealed or expunged records released to the board under Section 77-40-109.

(d) If UPPAC finds that reasonable cause exists during an investigation, UPPAC may recommend that the board initiate a background check on an educator as described in Section 53A-15-1504.

~~[(c) UPPAC has a rebuttable presumption that an educator committed a sexual offense against a minor child if the educator voluntarily surrendered a license or certificate or allowed a license or certificate to lapse in the face of a charge of having committed a sexual offense against a minor child.]~~

(4) The board may direct UPPAC to:

(a) recommend to the board procedures for:

(i) receiving and processing complaints;

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

(iii) conducting hearings; or

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

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

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

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- (ii) suggestions for improvement of the education profession; or
- (c) fulfill other duties the board finds appropriate.
- (5) UPPAC may not participate as a party in a dispute relating to negotiations between:
 - (a) a school district and the school district's educators; or
 - (b) a charter school and the charter school's educators.
- (6) The board shall make rules establishing UPPAC duties and procedures.

Section ~~{1}~~2. Section ~~{53A-6-405}~~53A-6-308 is enacted to read:

53A-6-308. UPPAC disciplinary recommendations -- Rulemaking.

- (1) UPPAC shall make a recommendation described in Section 53A-6-306 or 53A-6-501 in accordance with this section and Section 53A-6-309.
- (2) UPPAC shall recommend the board revoke an educator's license if UPPAC finds that the educator's misconduct is described in Subsection 53A-6-501(5)(b).
- (3) Subject to Section 53A-6-309, UPPAC shall recommend the board revoke an educator's license if UPPAC finds that the educator:
 - (a) engaged, on or off school property, in viewing real or simulated child pornography;
 - (b) is convicted at least twice of a drug, alcohol, violent, or sexual offense in the three years before the day on which UPPAC learns of the educator's convictions;
 - (c) is a sex offender, as defined in Section 77-41-102; or
 - (d) intentionally provided alcohol or illegal drugs to an individual who is younger than 21 years old.
- (4) (a) Subject to Section 53A-6-309, UPPAC shall recommend the board suspend an educator's license for at least 10 years if UPPAC finds that the educator is convicted of a felony that is not subject to Subsection (3) or described in 53A-6-501(5)(b).
 - (b) The board shall make rules that allow an educator an opportunity to request that the board reconsider a suspension that occurs as a result of a recommendation required by Subsection (3)(a) if the educator's underlying felony conviction is:
 - (i) expunged; or
 - (ii) reduced to a misdemeanor as described in Section 76-3-402.
- (5) Subject to Section 53A-6-309, UPPAC shall recommend the board suspend an educator's license for at least three years if UPPAC finds that the educator:
 - (a) engaged in a sexually suggestive boundary violation that is not sexually explicit

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conduct as defined in Section 76-5b-103;

(b) is convicted of child abuse, if the conviction resulted in a class A misdemeanor;

(c) has a conviction that caused the educator to be placed under court supervision for at least three years; or

(d) was convicted of theft or a crime related to misappropriation of public funds.

(6) Subject to Section 53A-6-309, UPPAC shall recommend the board suspend an educator's license for at least one year but less than three years if UPPAC finds that the educator:

(a) willfully or knowingly created, viewed, or gained access to sexually inappropriate material on school property or using school equipment;

(b) is convicted of at least one violent misdemeanor offense in the three years before the day on which UPPAC learns of the educator's violent misdemeanor offense;

(c) is convicted of using physical force on an individual who is younger than 18 years old, if the conviction is a class B or class C misdemeanor;

(d) engaged in repeated incidents or at least one egregious incident of excessive physical force or discipline to a student or an individual who is younger than 18 years old, and the incident or incidents:

(i) did not result in a conviction; and

(ii) are not permitted under Section 53A-11-802;

(e) threatened a student physically, verbally, or electronically;

(f) engaged in a pattern of inappropriately fraternizing with a student, if the pattern does not include a boundary violation described in Subsection (5)(a);

(g) engaged in multiple incidents or a pattern of theft or misappropriation of public funds that did not result in a criminal conviction;

(h) attended a school or school-related activity as an assigned educator to the activity, while the educator possessed, used, or was under the influence of alcohol or illegal drugs;

(i) is convicted at least twice of a drug-related or alcohol-related offense in the three years before the day on which UPPAC learns of the educator's convictions;

(j) engaged in a single egregious incident or a pattern of:

(i) harassment;

(ii) bullying; or

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(iii) threatening a co-worker or community member;

(k) knowingly or deliberately falsified or misrepresented information on an education-related document;

(l) knowingly or deliberately taught, counseled, or assisted a student in a way that undermines or disregards the lawful, express directives of a parent; or

(m) failed to appropriately report suspected child abuse or sexual abuse.

(7) Subject to Section 53A-6-309, UPPAC shall recommend the board suspend an educator's license for less than one year if UPPAC finds that the educator engaged in three or more incidents of inappropriate conduct, if the incidents would otherwise warrant lesser discipline.

(8) Subject to Section 53A-6-309, UPPAC shall recommend the board send to an educator a letter of admonition, warning, or reprimand if UPPAC finds that the educator:

(a) engaged in a physical, electronic, or verbal miscellaneous minimal boundary violation with a student or an individual who is younger than 18 years old;

(b) engaged in minimal inappropriate physical contact with a student;

(c) engaged in unprofessional communication or conduct with a student, co-worker, school community member, or parent;

(d) engaged with a student in an inappropriate discussion that violates state or federal law;

(e) knowingly violates a special education requirement or procedure;

(f) knowingly violates standardized testing protocol;

(g) is convicted of one of the following, regardless of whether the educator receives court probation:

(i) an offense under Section 41-6a-502;

(ii) an offense under Section 41-6a-502.5; or

(iii) a charge that contains identical or substantially similar elements to Section 41-6a-502 or 41-6a-502.5, including under the law of another state or territory;

(h) carelessly mismanages public funds or fails to accurately account for the receipt and expenditure of public funds entrusted to the educator's care;

(i) fails to report certain behavior related to employment or licensing as required by board rule;

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(j) is convicted of one or two misdemeanor offenses not described in this section;

(k) engaged in an activity that constitutes or creates the appearance of a conflict of interest with the educator's professional responsibility; or

(l) engaged in other minor violations of educator standards described in board rule.

(9) The board may make rules that require UPPAC to recommend more serious discipline than the discipline UPPAC is required to recommend under this section.

Section 3. Section 53A-6-309 is enacted to read:

53A-6-309. UPPAC disciplinary aggravating and mitigating factors.

(1) When making a recommendation to the board in accordance with Section 53A-6-308, UPPAC may recommend more serious discipline due to an aggravating factor, including if an educator:

(a) engaged in prior misconduct:

(i) of any nature;

(ii) that directly involved a student;

(iii) that involved a particularly vulnerable student;

(iv) that resulted in physical or psychological harm to a student;

(v) that continued after an investigation by the educator's employer or UPPAC;

(vi) that had a significant impact on the educator's school or community;

(vii) that was witnessed by a student; or

(viii) that resulted in a criminal conviction;

(b) presents a serious threat to a student;

(c) violated multiple standards of professional conduct;

(d) holds an attitude that does not reflect responsibility for the educator's misconduct or the consequences of the educator's misconduct;

(e) holds a position of heightened authority; or

(f) was not honest or cooperative in the course of a UPPAC investigation.

(2) When making a recommendation to the board in accordance with Section 53A-6-308, UPPAC may recommend less serious discipline due to a mitigating factor, including if the educator:

(a) acted as a result of strong provocation;

(b) is young and new to the education profession;

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(c) holds an attitude that reflects recognition of the nature and consequences of the educator's misconduct and demonstrates a reasonable expectation that the educator will not repeat the misconduct;

(d) is amenable to supervision and training;

(e) has little or no previous disciplinary history;

(f) has not engaged in another incident of misconduct for an extended period of time since the original misconduct;

(g) was a less-active participant in a larger offense;

(h) was directed explicitly or implicitly by a supervisor or individual in authority over the educator to participate in the misconduct, or received subsequent approval of the educator's misconduct by a supervisor or individual in authority over the educator;

(i) has voluntarily sought treatment or made restitution for the misconduct; or

(j) lacked training or policy, if the training or policy may have prevented the educator's misconduct.

(3) (a) UPPAC may consider an aggravating or mitigating factor that is not described in Subsection (1) or (2) if UPPAC finds that the factor warrants a recommendation of more or less serious discipline than required by Section 53A-6-308.

(b) UPPAC may determine the weight to give to each aggravating or mitigating factor.

Section 4. Section 53A-6-405 is amended to read:

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

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

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

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

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

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

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

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

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- (b) pled guilty to a felony of a sexual nature;
- (c) entered a plea of no contest to a felony of a sexual nature;
- (d) entered a plea in abeyance to a felony of a sexual nature;
- (e) was convicted of a sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses, against a minor child;
- (f) engaged in sexually explicit conduct, as defined in Section 76-5b-103, with a [~~student who is a~~] minor;
- (g) engaged in sexually explicit conduct, as defined in Section 76-5b-103, with a student who is:
 - (i) not a minor; and
 - (ii) enrolled in a school where the license applicant or educator is or was employed; or
 - (h) admits to the board or UPPAC that the license applicant or educator committed conduct that amounts to:
 - (i) a felony of a sexual nature; or
 - (ii) a sexual offense or sexually explicit conduct described in Subsection (2)(e), (f), or (g).
- (3) If an individual is ineligible for licensure under Subsection (1) or (2), a public school may not:
 - (a) employ the person in the public school; or
 - (b) allow the person to volunteer in the public school.
- (4) (a) If the board denies licensure under this section, the board shall immediately notify the applicant of:
 - (i) the denial; and
 - (ii) the applicant's right to request a hearing before UPPAC.
- (b) Upon receipt of a notice described in Subsection (4)(a), an applicant may, within 30 days after the day on which the applicant received the notice, request a hearing before UPPAC for the applicant to review and respond to all evidence upon which the board based the denial.
- (c) If the board receives a request for a hearing described in Subsection (4)(b), the board shall direct UPPAC to hold a hearing.

Section ~~2~~5. Section **53A-6-501** is amended to read:

53A-6-501. Board disciplinary action against an educator.

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(1) (a) The board shall direct UPPAC to investigate an allegation, administrative decision, or judicial decision that evidences an educator is unfit for duty because the educator exhibited behavior that:

- (i) is immoral, unprofessional, or incompetent; or
- (ii) violates standards of ethical conduct, performance, or professional competence.

(b) If the board determines an allegation or decision described in Subsection (1)(a) does not evidence an educator's unfitness for duty, the board may dismiss the allegation or decision without an investigation or hearing.

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

- (a) was charged with a felony of a sexual nature;
- (b) was convicted of a felony of a sexual nature;
- (c) pled guilty to a felony of a sexual nature;
- (d) entered a plea of no contest to a felony of a sexual nature;
- (e) entered a plea in abeyance to a felony of a sexual nature;
- (f) was convicted of a sexual offense under Title 76, Chapter 5, Part 4, Sexual

Offenses, against a minor child;

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

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

- (i) not a minor; and
- (ii) enrolled in a school where the educator is or was employed.

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

- (a) investigate the alleged violation; and
- (b) hold a hearing to allow the educator to respond to the allegation.

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

- (a) provide findings to the board; and
- (b) in accordance with Section 53A-6-308, make a recommendation for board action.

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

- (i) revoke the educator's license;
- (ii) suspend the educator's license;
- (iii) restrict or prohibit the educator from renewing the educator's license;
- (iv) warn or reprimand the educator;
- (v) enter into a written agreement with the educator that requires the educator to

comply with certain conditions;

- (vi) direct UPPAC to further investigate or gather information; or
- (vii) take other action the board finds to be appropriate for and consistent with the educator's behavior.

(b) Upon review of UPPAC's findings and recommendation, the board shall revoke the license of an educator who:

- (i) was convicted of a felony of a sexual nature;
- (ii) pled guilty to a felony of a sexual nature;
- (iii) entered a plea of no contest to a felony of a sexual nature;
- (iv) entered a plea in abeyance to a felony of a sexual nature;
- (v) was convicted of a sexual offense under Title 76, Chapter 5, Part 4, Sexual

Offenses, against a minor child;

(vi) engaged in sexually explicit conduct, as defined in Section 76-5b-103, with a [~~student who is a~~] minor;

(vii) engaged in sexually explicit conduct, as defined in Section 76-5b-103, with a student who is:

- (A) not a minor; and
- (B) enrolled in a school where the educator is or was employed; or
- (viii) admits to the board or UPPAC that the applicant committed conduct that amounts

to:

- (A) a felony of a sexual nature; or
- (B) a sexual offense or sexually explicit conduct described in Subsection (5)(b)(v), (vi),

or (vii).

- (c) The board may not reinstate a revoked license.

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(d) Before the board takes adverse action against an educator under this section, the board shall ensure that the educator had an opportunity for a UPPAC hearing.

(e) Except as provided in Subsection (5)(b), the board has discretion to take disciplinary action against an educator's license and is not required to follow a recommendation from UPPAC.

(6) The board shall make rules to administer this section, including rules to regulate action taken by the board under Subsection (5)(a)(vii).

Section ~~{3}~~6. Section **53A-6-602** is amended to read:

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

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

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

(b) Before issuing official findings, the board, a local school board, or UPPAC, upon reviewing a record of a hearing under Subsection (2)(a), may request or obtain additional relevant information if the board, the local school board, or UPPAC affords the parties:

(i) an opportunity to be present when the board, the local school board, or UPPAC reviews the information; and

(ii) a reasonable opportunity, that is less than 30 days after the day on which the board, the local school board, or UPPAC reviews the information under Subsection (2)(b)(i), to respond to the information.

(c) If the board, a local school board, or UPPAC obtains additional relevant information in accordance with Subsection (2)(b), the board, the local school board, or UPPAC may deliberate privately before issuing official findings.

(3) UPPAC shall provide a panel of its members to serve as fact finders in a hearing at the request of the educator who is the subject of the hearing.

Section ~~{4}~~7. Section **53A-6-604** is amended to read:

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

(1) The board and each local school board shall adopt rules for the conduct of hearings

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to ensure that requirements of due process are met.

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

(a) notice of the hearing;

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

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

(d) ~~[a copy of]~~ (i) an Internet address where the accused party can access the rules under which the hearing will be conducted; or

(ii) at the request of the accused party, a copy of the rules under which the hearing will be conducted.

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

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

(5) Unless otherwise provided in this title, the decisions of state and local boards are final determinations under this section, appealable to the appropriate court for review.

(6) The board shall make rules to protect the rights of the following during a hearing:

(a) a victim who is younger than 18 years old; and

(b) a victim who receives special education services from an LEA under the

Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.

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Legislative Review Note

Office of Legislative Research and General Counsel†