

EDUCATION AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

LONG TITLE

General Description:

This bill amends provisions regarding requirements on the Utah State Board of Education and programs that the Utah State Board of Education administers.

Highlighted Provisions:

This bill:

- ▶ removes language requiring a teacher to submit an annual application for a salary supplement;
- ▶ removes a requirement in the Educational Improvement Opportunities Outside of the Regular School Day Grant Program that matching funds be private;
- ▶ amends a definition regarding a waiver of immunity related to sexual battery and sexual assault against a student under certain conditions; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53F-2-504, as last amended by Laws of Utah 2019, Chapters 134, 186, and 283

53F-5-210, as last amended by Laws of Utah 2019, Chapter 186

63G-7-301, as last amended by Laws of Utah 2019, Chapters 229 and 248

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

Section 1. Section **53F-2-504** is amended to read:

53F-2-504. Teacher Salary Supplement Program.

(1) As used in this section:

(a) "Eligible teacher" means a teacher who:

- 33 (i) has a qualifying educational background or qualifying teaching background;
- 34 (ii) has a supplement-approved assignment that corresponds to the teacher's qualifying
35 educational background or qualifying teaching background;
- 36 (iii) qualifies for the teacher's supplement-approved assignment in accordance with
37 state board rule; and
- 38 (iv) is a new employee or received at least a satisfactory rating on the teacher's most
39 recent evaluation.
- 40 (b) "Field of computer science" means:
- 41 (i) computer science; or
- 42 (ii) computer information technology.
- 43 (c) "Field of science" means:
- 44 (i) integrated science;
- 45 (ii) chemistry;
- 46 (iii) physics;
- 47 (iv) physical science; or
- 48 (v) general science.
- 49 (d) "License" means the same as that term is defined in Section 53E-6-102.
- 50 (e) "Qualifying educational background" means:
- 51 (i) for a teacher who is assigned a secondary school level mathematics course:
- 52 (A) a bachelor's degree major, master's degree, or doctoral degree in mathematics; or
- 53 (B) a bachelor's degree major, master's degree, or doctoral degree that has course
54 requirements that are substantially equivalent to the course requirements for a bachelor's degree
55 major, master's degree, or doctoral degree in mathematics;
- 56 (ii) for a teacher who is assigned a grade 7 or 8 integrated science course, chemistry
57 course, or physics course:
- 58 (A) a bachelor's degree major, master's degree, or doctoral degree in a field of science;
- 59 or
- 60 (B) a bachelor's degree major, master's degree, or doctoral degree that has course
61 requirements that are substantially equivalent to the course requirements of those required for a
62 bachelor's degree major, master's degree, or doctoral degree in a field of science;
- 63 (iii) for a teacher who is assigned a computer science course:

64 (A) a bachelor's degree major, master's degree, or doctoral degree in a field of
65 computer science; or

66 (B) a bachelor's degree major, master's degree, or doctoral degree that has course
67 requirements that are substantially equivalent to the course requirements of those required for a
68 bachelor's degree major, master's degree, or doctoral degree in a field of computer science; or

69 (iv) for a teacher who is assigned to teach special education, a bachelor's degree major,
70 master's degree, or doctoral degree in special education.

71 (f) "Qualifying teaching background" means the teacher has been teaching the same
72 supplement-approved assignment in Utah public schools for at least 10 years.

73 (g) "Supplement-approved assignment" means an assignment to teach:

74 (i) a secondary school level mathematics course;

75 (ii) integrated science in grade 7 or 8;

76 (iii) chemistry;

77 (iv) physics;

78 (v) computer science; or

79 (vi) special education.

80 (2) (a) Subject to future budget constraints, the Legislature shall:

81 (i) annually appropriate money to the Teacher Salary Supplement Program to maintain
82 annual salary supplements for eligible teachers provided in previous years; and

83 (ii) provide salary supplements to new recipients.

84 (b) Money appropriated for the Teacher Salary Supplement Program shall include
85 money for the following employer-paid benefits:

86 (i) retirement;

87 (ii) workers' compensation;

88 (iii) Social Security; and

89 (iv) Medicare.

90 (3) (a) The annual salary supplement for an eligible teacher who is assigned full-time
91 to a supplement-approved assignment is \$4,100 and funded through an appropriation described
92 in Subsection (2).

93 (b) An eligible teacher who is assigned part-time to a supplement-approved assignment
94 shall receive a partial salary supplement based on the number of hours worked in the

95 supplement-approved assignment.

96 (4) The state board shall:

97 (a) create an online application system for a teacher to apply to receive a salary
98 supplement through the Teacher Salary Supplement Program;

99 (b) determine if a teacher is an eligible teacher;

100 (c) verify, as needed, the determinations made under Subsection (4)(b) with school
101 district and school administrators; and

102 (d) certify a list of eligible teachers.

103 (5) (a) An eligible teacher shall apply to the state board [~~before the conclusion of a~~
104 ~~school year~~], as provided by the board, to receive the salary supplement authorized in this
105 section.

106 (b) An eligible teacher may [~~apply to the state board~~], after verification that the
107 requirements under this section have been satisfied, [~~to~~] receive a salary supplement after the
108 completion of:

109 (i) the school year as an annual award; or

110 (ii) a semester or trimester as a partial award based on the portion of the school year
111 that has been completed.

112 (6) (a) The state board shall establish and administer an appeal process for a teacher to
113 follow if the teacher applies for a salary supplement and does not receive a salary supplement
114 under Subsection (8).

115 (b) (i) The appeal process established in Subsection (6)(a) shall allow a teacher to
116 appeal eligibility as an eligible teacher with a qualifying educational background on the basis
117 that the teacher has a degree or degree major with course requirements that are substantially
118 equivalent to the qualifying educational background associated with the teacher's
119 supplement-approved assignment.

120 (ii) A teacher shall provide transcripts and other documentation to the state board in
121 order for the state board to determine if the teacher has a degree or degree major with course
122 requirements that are substantially equivalent to the qualifying educational background
123 associated with the teacher's supplement-approved assignment.

124 (c) (i) The appeal process established under Subsection (6)(a) shall allow a teacher to
125 appeal eligibility as an eligible teacher with a qualifying teaching background on the basis that

126 the teacher has a qualifying teaching background.

127 (ii) The teacher shall provide to the state board evidence to verify that the teacher has a
128 qualifying teaching background.

129 (7) (a) The state board shall distribute money appropriated to the Teacher Salary
130 Supplement Program to school districts and charter schools for the Teacher Salary Supplement
131 Program in accordance with the provisions of this section.

132 (b) The state board shall include the employer-paid benefits described under
133 Subsection (2)(b) in the amount of each salary supplement.

134 (c) The employer-paid benefits described under Subsection (2)(b) are an addition to the
135 salary supplement limits described under Subsection (3).

136 (8) (a) Money received from the Teacher Salary Supplement Program shall be used by
137 a school district or charter school to provide a salary supplement equal to the amount specified
138 in Subsection (3) for each eligible teacher.

139 (b) The salary supplement is part of an eligible teacher's base pay, subject to eligible
140 teacher's qualification as an eligible teacher every year, semester, or trimester.

141 (9) Notwithstanding the provisions of this section, if the appropriation for the program
142 is insufficient to cover the costs associated with salary supplements, the state board shall
143 distribute the funds in the Teacher Salary Supplement Program on a pro rata basis.

144 Section 2. Section **53F-5-210** is amended to read:

145 **53F-5-210. Educational Improvement Opportunities Outside of the Regular**
146 **School Day Grant Program.**

147 (1) As used in this section:

148 (a) "Applicant" means an LEA, private provider, nonprofit provider, or municipality
149 that provides an existing program and applies for a grant under the provisions of this section.

150 (b) "Existing program" means a currently funded and operating program, as described
151 in Subsections 53E-3-508(1)(a) and (b).

152 (c) "Grant program" means the Educational Improvement Opportunities Outside of the
153 Regular School Day Grant Program created in Subsection (2).

154 (d) "Grantor" means:

155 (i) for an LEA that receives a grant under this section, the state board; or

156 (ii) for a private provider, nonprofit provider, or municipality that receives a grant

157 under this section, the Department of Workforce Services.

158 (e) "Local education agency" or "LEA" means a school district or charter school.

159 (2) There is created the Educational Improvement Opportunities Outside of the Regular
160 School Day Grant Program to provide grant funds for an existing program to improve and
161 develop the existing program in accordance with the high quality standards described in
162 Section 53E-3-508.

163 (3) Subject to legislative appropriation and in accordance with Subsection (7):

164 (a) the state board shall:

165 (i) solicit LEA applications to receive a grant under this section; and

166 (ii) award a grant based on the criteria described in Subsection (5); and

167 (b) the Department of Workforce Services shall:

168 (i) solicit private provider, nonprofit provider, or municipality applications to receive a
169 grant under this section; and

170 (ii) award a grant based on the criteria described in Subsection (5).

171 (4) To receive a grant under this section, an applicant shall submit a proposal to the
172 grantor describing:

173 (a) how the applicant proposes to develop and improve the existing program to meet
174 the standards described in Section 53E-3-508;

175 (b) information necessary for the state board to determine the impact of the applicant's
176 program on the academic performance of participating students;

177 (c) the total number of students the applicant proposes to serve through the existing
178 program;

179 (d) the estimated percentage of the students described in Subsection (4)(c) who qualify
180 for free or reduced lunch; and

181 (e) the estimated cost of the applicant's existing program, per student.

182 (5) In awarding a grant under Subsection (3), the grantor shall consider:

183 (a) how an applicant's existing program proposes to meet the standards described in
184 Section 53E-3-508; and

185 (b) the percentage of students in that program who qualify for free and reduced lunch.

186 (6) An applicant that receives a grant under this section shall:

187 (a) use the grant to improve an existing program in accordance with the standards

188 described in Section 53E-3-508; and

189 (b) annually report to the grantor:

190 (i) the number of students served by the existing program;

191 (ii) the academic outcomes that the program is expected to have on participating
192 students;

193 (iii) program attendance rates of participating students; and

194 (iv) other information required by the grantor.

195 (7) (a) To receive a distribution of grant money under this section, an applicant shall
196 identify and certify the availability of [private] matching funds in the amount of the grant to be
197 distributed to the applicant.

198 (b) Neither the state board nor the Department of Workforce Services shall be expected
199 to seek [private] matching funds for this grant program.

200 (8) The state board shall make rules to administer this section that include:

201 (a) specific criteria to determine academic performance;

202 (b) application and reporting procedures; and

203 (c) criteria for an existing program to qualify for a grant under this section.

204 (9) The Department of Workforce Services shall make rules to administer the grant
205 program as described in Subsection (3)(b).

206 (10) In accordance with 34 C.F.R. Sec. 99.35, the state board shall designate the
207 Department of Workforce Services as an authorized representative for the purpose of sharing
208 student data and evaluating and reporting the impact and effectiveness of the grant program.

209 (11) The state board and the Department of Workforce Services may utilize up to 10%
210 of the funds appropriated for administrative costs associated with the grant program and the
211 report described in Subsection (12).

212 (12) The state board shall report to the Education Interim Committee before November
213 30, 2019, regarding:

214 (a) the grant program's effect on the quality of existing programs that participate in the
215 grant program; and

216 (b) the impact of the existing programs on the academic performance of participating
217 students.

218 Section 3. Section **63G-7-301** is amended to read:

219 **63G-7-301. Waivers of immunity.**

220 (1) (a) Immunity from suit of each governmental entity is waived as to any contractual
221 obligation.

222 (b) Actions arising out of contractual rights or obligations are not subject to the
223 requirements of Sections 63G-7-401, 63G-7-402, 63G-7-403, or 63G-7-601.

224 (c) The Division of Water Resources is not liable for failure to deliver water from a
225 reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development
226 Act, if the failure to deliver the contractual amount of water is due to drought, other natural
227 condition, or safety condition that causes a deficiency in the amount of available water.

228 (2) Immunity from suit of each governmental entity is waived:

229 (a) as to any action brought to recover, obtain possession of, or quiet title to real or
230 personal property;

231 (b) as to any action brought to foreclose mortgages or other liens on real or personal
232 property, to determine any adverse claim on real or personal property, or to obtain an
233 adjudication about any mortgage or other lien that the governmental entity may have or claim
234 on real or personal property;

235 (c) as to any action based on the negligent destruction, damage, or loss of goods,
236 merchandise, or other property while it is in the possession of any governmental entity or
237 employee, if the property was seized for the purpose of forfeiture under any provision of state
238 law;

239 (d) subject to Subsection 63G-7-302(1), as to any action brought under the authority of
240 Utah Constitution, Article I, Section 22, for the recovery of compensation from the
241 governmental entity when the governmental entity has taken or damaged private property for
242 public uses without just compensation;

243 (e) subject to Subsection 63G-7-302(2), as to any action brought to recover attorney
244 fees under Sections 63G-2-405 and 63G-2-802;

245 (f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees
246 Act;

247 (g) as to any action brought to obtain relief from a land use regulation that imposes a
248 substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious
249 Land Use Act;

- 250 (h) except as provided in Subsection 63G-7-201(3), as to any injury caused by:
- 251 (i) a defective, unsafe, or dangerous condition of any highway, road, street, alley,
252 crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or
- 253 (ii) any defective or dangerous condition of a public building, structure, dam, reservoir,
254 or other public improvement;
- 255 (i) subject to Subsections 63G-7-101(4) and 63G-7-201(4), as to any injury
256 proximately caused by a negligent act or omission of an employee committed within the scope
257 of employment;
- 258 (j) as to any action or suit brought under Section 20A-19-301 and as to any
259 compensation or expenses awarded under Section 20A-19-301(5); and
- 260 (k) notwithstanding Subsection 63G-7-101(4), as to a claim for an injury resulting from
261 a sexual battery, as provided in Section 76-9-702.1, committed:
- 262 (i) against a student of a public elementary or secondary school, including a charter
263 school; and
- 264 (ii) by an employee of a public elementary or secondary school or charter school who:
- 265 (A) at the time of the sexual battery, held a position of special trust, as defined in
266 Section 76-5-404.1, with respect to the student;
- 267 (B) is criminally charged in connection with the sexual battery; and
- 268 (C) the public elementary or secondary school or charter school knew or in the exercise
269 of reasonable care should have known, at the time of the employee's hiring, to be a sex
270 offender, as defined in Section 77-41-102, required to register under Title 77, Chapter 41, Sex
271 and Kidnap Offender Registry, whose status as a sex offender would have been revealed in a
272 background check under Section 53G-11-402.
- 273 (3) (a) As used in this Subsection (3):
- 274 (i) "~~Appropriate behavior policy~~ Code of conduct" means a ~~[policy]~~ code of conduct
275 that:
- 276 (A) is not less stringent than a model ~~[policy]~~ code of conduct, created by the State
277 Board of Education, establishing a professional standard of care for preventing the conduct
278 described in Subsection (3)(a)(i)(D);
- 279 (B) is adopted by the applicable local education governing body;
- 280 (C) regulates behavior of a school employee toward a student; and

281 (D) includes a prohibition against any sexual conduct between an employee and a
282 student and against the employee and student sharing any sexually explicit or lewd
283 communication, image, or photograph.

284 (ii) "Local education agency" means:

285 (A) a school district;

286 (B) a charter school; or

287 (C) the Utah Schools for the Deaf and the Blind.

288 (iii) "Local education governing board" means:

289 (A) for a school district, the local school board;

290 (B) for a charter school, the charter school governing board; or

291 (C) for the Utah Schools for the Deaf and the Blind, the state board.

292 (iv) "Public school" means a public elementary or secondary school.

293 (v) "Sexual abuse" means the offense described in Subsection 76-5-404.1(2).

294 (vi) "Sexual battery" means the offense described in Section 76-9-702.1, considering
295 the term "child" in that section to include an individual under age 18.

296 (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a
297 claim against a local education agency for an injury resulting from a sexual battery or sexual
298 abuse committed against a student of a public school by a paid employee of the public school
299 who is criminally charged in connection with the sexual battery or sexual abuse, unless:

300 (i) at the time of the sexual battery or sexual abuse, the public school was subject to [~~an~~
301 ~~appropriate behavior policy~~] a code of conduct; and

302 (ii) before the sexual battery or sexual abuse occurred, the public school had:

303 (A) provided training on the [~~policy~~] code of conduct to the employee; and

304 (B) required the employee to sign a statement acknowledging that the employee has
305 read and understands the [~~policy~~] code of conduct.

306 (4) (a) As used in this Subsection (4):

307 (i) "Higher education institution" means an institution included within the state system
308 of higher education under Section 53B-1-102.

309 (ii) "Policy governing behavior" means a policy adopted by a higher education
310 institution or the State Board of Regents that:

311 (A) establishes a professional standard of care for preventing the conduct described in

312 Subsections (4)(a)(ii)(C) and (D);
313 (B) regulates behavior of a special trust employee toward a subordinate student;
314 (C) includes a prohibition against any sexual conduct between a special trust employee
315 and a subordinate student; and
316 (D) includes a prohibition against a special trust employee and subordinate student
317 sharing any sexually explicit or lewd communication, image, or photograph.
318 (iii) "Sexual battery" means the offense described in Section 76-9-702.1.
319 (iv) "Special trust employee" means an employee of a higher education institution who
320 is in a position of special trust, as defined in Section 76-5-404.1, with a higher education
321 student.
322 (v) "Subordinate student" means a student:
323 (A) of a higher education institution; and
324 (B) whose educational opportunities could be adversely impacted by a special trust
325 employee.
326 (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a
327 claim for an injury resulting from a sexual battery committed against a subordinate student by a
328 special trust employee, unless:
329 (i) the institution proves that the special trust employee's behavior that otherwise would
330 constitute a sexual battery was:
331 (A) with a subordinate student who was at least 18 years old at the time of the
332 behavior; and
333 (B) with the student's consent; or
334 (ii) (A) at the time of the sexual battery, the higher education institution was subject to
335 a policy governing behavior; and
336 (B) before the sexual battery occurred, the higher education institution had taken steps
337 to implement and enforce the policy governing behavior.