

Representative Sheryl L. Allen proposes to substitute the following bill:

**EDUCATOR LICENSING AND PROFESSIONAL
PRACTICES ACT**

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Sheryl L. Allen

Richard M. Siddoway

AN ACT RELATING TO PUBLIC EDUCATION; REFORMATTING AND RESTRUCTURING
STATUTORY PROVISIONS ON LICENSING OF EDUCATORS; PROVIDING DEFINITIONS;
PROVIDING PROFESSIONAL DEVELOPMENT PROVISIONS; ESTABLISHING CRITERIA
FOR USING SUBSTITUTE TEACHERS; PROVIDING FOR A HEARING PROCESS
REGARDING COMPLAINTS AGAINST EDUCATORS; PROVIDING A REPEALER; AND
PROVIDING AN EFFECTIVE DATE.

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

AMENDS:

58-61-307, as last amended by Chapter 10, Laws of Utah 1997

63-30-2, as last amended by Chapters 192 and 260, Laws of Utah 1994

ENACTS:

53A-3-420, Utah Code Annotated 1953

53A-6-303, Utah Code Annotated 1953

53A-6-304, Utah Code Annotated 1953

53A-6-305, Utah Code Annotated 1953

53A-6-306, Utah Code Annotated 1953

53A-6-307, Utah Code Annotated 1953

53A-6-403, Utah Code Annotated 1953

53A-6-404, Utah Code Annotated 1953

- 26 **53A-6-405**, Utah Code Annotated 1953
- 27 **53A-6-501**, Utah Code Annotated 1953
- 28 **53A-6-502**, Utah Code Annotated 1953
- 29 **53A-6-601**, Utah Code Annotated 1953
- 30 **53A-6-602**, Utah Code Annotated 1953
- 31 **53A-6-603**, Utah Code Annotated 1953
- 32 **53A-6-604**, Utah Code Annotated 1953

33 REPEALS AND REENACTS:

- 34 **53A-6-101**, as last amended by Chapter 78, Laws of Utah 1990
- 35 **53A-6-102**, as enacted by Chapter 2, Laws of Utah 1988
- 36 **53A-6-103**, as last amended by Chapters 263 and 280, Laws of Utah 1998
- 37 **53A-6-104**, as last amended by Chapter 246, Laws of Utah 1992
- 38 **53A-6-105**, as enacted by Chapter 2, Laws of Utah 1988
- 39 **53A-6-106**, as last amended by Chapter 160, Laws of Utah 1996
- 40 **53A-6-107**, as last amended by Chapter 263, Laws of Utah 1998
- 41 **53A-6-108**, as enacted by Chapter 220, Laws of Utah 1995
- 42 **53A-6-109**, as enacted by Chapter 95, Laws of Utah 1997
- 43 **53A-6-301**, as last amended by Chapter 113, Laws of Utah 1993
- 44 **53A-6-302**, as last amended by Chapter 260, Laws of Utah 1994
- 45 **53A-6-401**, as enacted by Chapter 308, Laws of Utah 1993
- 46 **53A-6-402**, as enacted by Chapter 308, Laws of Utah 1993
- 47 **53A-7-101**, as enacted by Chapter 2, Laws of Utah 1988
- 48 **53A-7-102**, as last amended by Chapter 247, Laws of Utah 1991

49 REPEALS:

- 50 **53A-7-103**, as last amended by Chapter 247, Laws of Utah 1991
- 51 **53A-7-104**, as last amended by Chapter 247, Laws of Utah 1991
- 52 **53A-7-105**, as last amended by Chapter 247, Laws of Utah 1991
- 53 **53A-7-106**, as last amended by Chapter 247, Laws of Utah 1991
- 54 **53A-7-107**, as last amended by Chapter 247, Laws of Utah 1991
- 55 **53A-7-108**, as enacted by Chapter 2, Laws of Utah 1988
- 56 **53A-7-109**, as last amended by Chapter 247, Laws of Utah 1991

57 53A-7-110, as last amended by Chapter 46, Laws of Utah 1998
 58 53A-7-111, as last amended by Chapter 247, Laws of Utah 1991
 59 53A-7-112, as last amended by Chapter 247, Laws of Utah 1991
 60 53A-7-113, as enacted by Chapter 2, Laws of Utah 1988
 61 53A-7-201, as last amended by Chapter 247, Laws of Utah 1991
 62 53A-7-202, as last amended by Chapter 247, Laws of Utah 1991
 63 53A-7-203, as last amended by Chapter 247, Laws of Utah 1991
 64 53A-7-204, as last amended by Chapter 247, Laws of Utah 1991

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

66 Section 1. Section 53A-3-420 is enacted to read:

67 **53A-3-420. Professional competence or performance -- Administrative hearing by**
 68 **local school board -- Action on complaint.**

69 (1) (a) No civil action by or on behalf of a student relating to the professional competence
 70 or performance of a licensed employee of a school district, or to the discipline of students by a
 71 licensed employee, application of in loco parentis, or a violation of ethical conduct by an employee
 72 of a school district, may be brought in a court until at least 60 days after the filing of a written
 73 complaint with the local board of education of the district, or until findings have been issued by
 74 the local board after a hearing on the complaint, whichever is sooner.

75 (b) § [(i)] § As used in Subsection (1)(a), "in loco parentis" means the power of professional
 76 school personnel to exercise the rights, duties, and responsibilities of a reasonable, responsible
 77 parent in dealing with students in school-related matters.

78 ~~§ [(i)] (ii) A licensed employee who violates a school policy or rule, a state or federal law,~~
 78a ~~or a~~
 79 ~~constitutional provision in dealing with students in school related matters is not entitled to the~~
 80 ~~presumption that the employee was acting in loco parentis.] §~~

81 (c) A parent of a student has standing to file a civil action against an employee who
 82 provides services to a school attended by the student.

83 (2) Within 15 days of receiving a complaint under Subsection (1), a local school board
 84 may elect to refer the complaint to the State Board of Education.

85 (3) If a complaint is referred to the board, no civil action may be brought in a court on
 86 matters relating to the complaint until the board has provided a hearing and issued its findings or
 87 until 90 days after the filing of the complaint with the local school board, whichever is sooner.

88 Section 2. Section **53A-6-101** is repealed and reenacted to read:

89 **CHAPTER 6. EDUCATOR LICENSING AND PROFESSIONAL PRACTICES ACT**

90 **Part 1. General Provisions**

91 **53A-6-101. Title.**

92 This chapter is known as the "Educator Licensing and Professional Practices Act."

93 Section 3. Section **53A-6-102** is repealed and reenacted to read:

94 **53A-6-102. Declaration of education as a profession.**

95 (1) h (a) h The Legislature acknowledges that education is perhaps the most important
95a function

96 of state and local governments recognizing that the future success of our state and nation depend
97 in large part upon the existence of a responsible and educated citizenry.

97a h (b) THE LEGISLATURE FURTHER ACKNOWLEDGES THAT THE PRIMARY RESPONSIBILITY
97b FOR THE EDUCATION OF CHILDREN WITH THE STATE RESIDES WITH THEIR PARENTS OR
97c GUARDIANS AND THAT THE ROLE OF STATE AND LOCAL GOVERNMENTS IS TO SUPPORT AND
97d ASSIST PARENTS IN FULFILLING THAT RESPONSIBILITY. h

98 (2) In providing for the safe and effective performance of the function of educating Utah's
99 children, the Legislature finds it to be of critical importance that education, including instruction,
100 administrative, and supervisory services, be recognized as a profession, and that those h [to be] WHO
100a ARE LICENSED OR SEEK TO BECOME h
101 licensed and to serve as educators:

102 (a) meet high standards both as to qualifications and fitness for service as educators before
103 assuming their responsibilities in the schools;

104 (b) maintain those standards in the performance of their duties while holding licenses; and

105 (c) have access to a process for fair examination and review of allegations made against
106 them and for the administration of appropriate sanctions against those found, in accordance with
107 due process, to have failed to conduct themselves in a manner commensurate with their authority
108 and responsibility to provide appropriate professional services to the children of the state.

109 Section 4. Section **53A-6-103** is repealed and reenacted to read:

110 **53A-6-103. Definitions.**

111 As used in this chapter:

112 (1) "Accredited institution" means an institution meeting the requirements of Section
113 53A-6-107.

114 (2) "Alternative preparation program" means preparation for licensure in accordance with
115 applicable law and rule through other than an approved preparation program.

116 (3) "Ancillary requirement" means a requirement established by law or rule in addition to
117 completion of an approved preparation program or alternative education program or establishment
118 of eligibility under the NASDTEC Interstate Contract, and may include any of the following:

- 119 (a) minimum grade point average;
120 (b) standardized testing or assessment;
121 (c) mentoring;
122 (d) recency of professional preparation or experience;
123 (e) graduation from an accredited institution; or
124 (f) evidence relating to moral, ethical, physical, or mental fitness.
- 125 (4) "Approved preparation program" means a program for preparation of educational
126 personnel offered through an accredited institution in Utah or in a state which is a party to a
127 contract with Utah under the NASDTEC Interstate Contract and which, at the time the program
128 was completed by the applicant:
- 129 (a) was approved by the governmental agency responsible for licensure of educators in the
130 state in which the program was provided;
- 131 (b) satisfied requirements for licensure in the state in which the program was provided;
132 (c) required completion of a baccalaureate; and
133 (d) included a supervised field experience.
- 134 (5) "Board" means the Utah State Board of Education.
- 135 (6) "Certificate" means a license issued by a governmental jurisdiction outside the state.
- 136 (7) "Educator" means:
- 137 (a) a person who holds a license;
138 (b) a teacher, counselor, administrator, librarian, or other person required, under rules of
139 the board, to hold a license; or
- 140 (c) a person who is the subject of an allegation which has been received by the board or
141 UPPAC and was, at the time noted in the allegation, a license holder or a person employed in a
142 position requiring licensure.
- 143 (8) "Endorsement" means a stipulation appended to a license setting forth the areas of
144 practice to which the license applies.
- 145 (9) "License" means an authorization issued by the board which permits the holder to serve
146 in a professional capacity in the public schools. The four levels of licensure are:
- 147 (a) "Letter of authorization," which is a temporary license issued to a person who has not
148 completed requirements for a level 1, 2, or 3 license, such as a student teacher or a person hired
149 to perform professional services on an emergency basis when fully qualified personnel are not

150 available;

151 (b) "Level 1 license," which is a license issued upon completion of an approved
152 preparation program or an alternative preparation program, or pursuant to an agreement under the
153 NASDTEC Interstate Contract, to candidates who have also met all ancillary requirements
154 established by law or rule;

155 (c) "Level 2 license," which is a license issued after satisfaction of all requirements for a
156 Level 1 license as well as any additional requirements established by law or rule relating to
157 professional preparation or experience; and

158 (d) "Level 3 license," which is a license issued to an educator who holds a current Utah
159 Level 2 license and has also received, in the educator's field of practice, National Board
160 certification or a doctorate from an accredited institution.

161 (10) "NASDTEC" means the National Association of State Directors of Teacher Education
162 and Certification.

163 (11) "NASDTEC Interstate Contract" means the contract implementing Title 53A, Chapter
164 6, Part 2, Compact for Interstate Qualification of Educational Personnel, which is administered
165 through NASDTEC.

166 (12) "National Board certification" means a current certificate issued by the National
167 Board for Professional Teaching Standards.

168 (13) "Office" means the Utah State Office of Education.

169 (14) "Rule" means an administrative rule adopted by the board under Title 63, Chapter
170 46a, Utah Administrative Rulemaking Act.

171 (15) "School" means a public or private entity which provides educational services to a
172 minor child.

173 (16) "UPPAC" means the Utah Professional Practices Advisory Commission.

174 Section 5. Section **53A-6-104** is repealed and reenacted to read:

175 **53A-6-104. Board licensure.**

176 (1) (a) The board may issue licenses for educators.

177 (b) A person employed in a position that requires licensure by the board shall hold the
178 appropriate license.

179 (2) (a) The board may by rule rank, endorse, or otherwise classify licenses and establish
180 the criteria for obtaining and retaining licenses.

181 (b) The board shall make rules requiring participation in professional development
182 activities in order for educators to retain their licenses.

183 (3) Unless suspended or revoked by the board, or surrendered by the educator, a license
184 is valid for the following period:

185 (a) a letter of authorization is valid for one year, or a shorter period as specified by the
186 board, subject to renewal by the board for a total of not more than four years;

187 (b) a level 1 license is valid for three years, subject to renewal by the board for a total of
188 not more than six years;

189 (c) a level 2 license is valid for five years, subject to renewal by the board; and

190 (d) a level 3 license is valid for seven years, subject to renewal by the board.

191 Section 6. Section **53A-6-105** is repealed and reenacted to read:

192 **53A-6-105. Licensing fees -- Credit to subfund -- Payment of expenses.**

193 (1) The board shall levy a fee for each new or reinstated license or endorsement in
194 accordance with Section 63-38-3.2.

195 (2) Fee payments are credited to the Professional Practices Restricted Subfund in the
196 Uniform School Fund.

197 (3) The board shall pay the expenses of issuing licenses and of UPPAC operations, and
198 the costs of collecting license fees from the restricted subfund.

199 (4) The office shall submit an annual report to the Legislature's Public Education
200 Appropriations Subcommittee informing the Legislature about the fund, fees assessed and
201 collected, and expenditures from the fund.

202 Section 7. Section **53A-6-106** is repealed and reenacted to read:

203 **53A-6-106. Qualifications of applicants for licenses -- Changes in qualifications.**

204 (1) The board shall establish by rule the scholarship, training, and experience required of
205 license applicants.

206 (2) (a) The board shall announce any increase in the requirements when made.

207 (b) An increase in requirements shall become effective not less than one year from the date
208 of the announcement.

209 (3) The board may determine by examination or otherwise the qualifications of license
210 applicants.

211 Section 8. Section **53A-6-107** is repealed and reenacted to read:

212 **53A-6-107. Program approval.**

213 (1) The board shall establish by rule the standards which must be met by approved
214 preparation programs and alternative preparation programs.

215 (2) Standards adopted by the board for approved preparation programs and alternative
216 preparation programs shall meet or exceed generally recognized national standards for preparation
217 of educators, such as those developed by the Interstate New Teacher Assessment and Support
218 Consortium, the National Board for Professional Teaching Standards, and the National Council
219 for the Accreditation of Teacher Education.

220 Section 9. Section **53A-6-108** is repealed and reenacted to read:

221 **53A-6-108. Prohibition on use of degrees or credit from unapproved institutions.**

222 (1) An individual may not use a postsecondary degree or credit awarded by a
223 postsecondary institution or program to gain a license, employment, or any other benefit within
224 the public school system unless the institution or program was, at the time the degree or credit was
225 awarded:

226 (a) approved for the granting of the degree or credit by the board; or

227 (b) accredited by an accrediting organization recognized by the board.

228 (2) The board may grant an exemption from Subsection (1) to an individual who shows
229 good cause for the granting of the exemption.

230 Section 10. Section **53A-6-109** is repealed and reenacted to read:

231 **53A-6-109. Substitute teachers.**

232 (1) A substitute teacher need not hold a license to teach, but school districts are
233 encouraged to hire licensed personnel as substitutes when available.

234 (2) A person must submit to a background check under Section 53A-3-410 prior to
235 employment as a substitute teacher.

236 (3) A teacher's position in the classroom may not be filled by unlicensed substitute teachers
237 for more than a total of 20 days during any school year unless licensed personnel are not available.

238 (4) A person who is ineligible to hold a license for any reason other than professional
239 preparation may not serve as a substitute teacher.

240 Section 11. Section **53A-6-301** is repealed and reenacted to read:

241 **Part 3. Utah Professional Practices Advisory Commission**

242 **53A-6-301. Utah Professional Practices Advisory Commission.**

243 The Utah Professional Practices Advisory Commission, UPPAC, is established to assist
244 and advise the board in matters relating to the professional practices of educators.

245 Section 12. Section **53A-6-302** is repealed and reenacted to read:

246 **53A-6-302. UPPAC members -- Executive secretary.**

247 (1) UPPAC shall consist of a nonvoting executive secretary and 11 voting members, nine
248 of whom shall be licensed educators in good standing, and two of whom shall be members
249 nominated by the education organization within the state that has the largest membership of
250 parents of students and teachers.

251 (2) Six of the voting members shall be persons whose primary responsibility is teaching.

252 (3) (a) The state superintendent of public instruction shall appoint an employee of the
253 office to serve as executive secretary.

254 (b) Voting members are appointed by the superintendent as provided under Section
255 53A-6-303.

256 (4) The office shall provide staff support for UPPAC activities.

257 Section 13. Section **53A-6-303** is enacted to read:

258 **53A-6-303. Nominations -- Appointment of commission members -- Reappointments.**

259 (1) (a) The board shall adopt rules establishing procedures for nominating and appointing
260 individuals to voting membership on UPPAC.

261 (b) Nomination petitions must be filed with the state superintendent prior to June 16 of the
262 year of appointment.

263 (c) A nominee for appointment as a member of UPPAC as an educator must have been
264 employed in the representative class in the Utah public school system or a private school
265 accredited by the board during the three years immediately preceding the date of appointment.

266 (2) The state superintendent of public instruction shall appoint the members of the
267 commission.

268 (3) Appointments begin July 1 and are for terms of three years and until a successor is
269 appointed.

270 (4) Terms of office are staggered so that approximately 1/3 of UPPAC members are
271 appointed annually.

272 (5) A member may not serve more than two terms.

273 Section 14. Section **53A-6-304** is enacted to read:

274 **53A-6-304. Filling of vacancies.**

275 (1) A UPPAC vacancy occurs if a member resigns, fails to attend three or more meetings
276 during a calendar year, or no longer meets the requirements for nomination and appointment.

277 (2) If a vacancy occurs, the state superintendent shall appoint a successor to fill the
278 unexpired term.

279 (3) If the superintendent does not fill the vacancy within 60 days, the board shall make the
280 appointment.

281 (4) Nominations to fill vacancies are submitted to the superintendent in accordance with
282 procedures established under rules of the board.

283 Section 15. Section **53A-6-305** is enacted to read:

284 **53A-6-305. Meetings and expenses of UPPAC members.**

285 (1) UPPAC shall meet at least quarterly and at the call of the chair or of a majority of the
286 members.

287 (2) Members of UPPAC serve without compensation but are allowed reimbursement for
288 actual and necessary expenses under the rules of the Division of Finance.

289 (3) The board shall pay reimbursement to UPPAC members out of the Professional
290 Practices Restricted Subfund in the Uniform School Fund.

291 Section 16. Section **53A-6-306** is enacted to read:

292 **53A-6-306. Purpose, powers, and duties of UPPAC.**

293 (1) UPPAC shall:

294 (a) adopt rules consistent with applicable law and board rules to carry out its
295 responsibilities under this chapter;

296 (b) make recommendations to the board and professional organizations of educators:

297 (i) concerning standards of professional performance, competence, and ethical conduct for
298 persons holding licenses issued by the board; and

299 (ii) for the improvement of the education profession;

300 (c) establish procedures for receiving and acting upon reports or allegations regarding
301 immoral, unprofessional, or incompetent conduct, unfitness for duty, or other violations of
302 standards of ethical conduct, performance, or professional competence;

303 (d) investigate any allegation of sexual abuse of a student or a minor by an educator; and

304 (e) establish the manner in which hearings are conducted and reported, and

305 recommendations are submitted to the board for its action.

306 (2) (a) UPPAC may conduct or authorize investigations relating to any matter before
307 UPPAC.

308 (b) Those investigations shall be independent of and separate from any criminal
309 investigation.

310 (c) In conducting an investigation UPPAC or an investigator operating under UPPAC
311 authorization may:

312 (i) administer oaths and issue subpoenas which may be enforced through the state district
313 courts;

314 (ii) receive any evidence related to an alleged offense, including sealed or expunged
315 records released to the board under Section 77-18-15; and

316 (iii) where reasonable cause exists, initiate a criminal background check on a license
317 holder.

318 (d) (i) A license holder shall receive written notice if a fingerprint check is required as a
319 part of the background check.

320 (ii) Fingerprints of the individual shall be taken, and the Law Enforcement and Technical
321 Services Division of the Department of Public Safety shall release the individual's full record, as
322 shown on state, regional, and national records, to UPPAC.

323 (iii) UPPAC shall pay the cost of the background check except as provided under Section
324 53A-6-401, and the moneys collected shall be credited to the Law Enforcement and Technical
325 Services Division to offset its expenses.

326 (3) UPPAC is entitled to a rebuttable evidentiary presumption that a person has committed
327 a sexual offense against a minor child if the person has:

328 (a) after having had a reasonable opportunity to contest the allegation, been found pursuant
329 to a criminal, civil, or administrative action to have committed a sexual offense against a minor
330 child;

331 (b) pled guilty to a reduced charge in the face of a charge of having committed a sexual
332 offense against a minor child, entered a plea of no contest, entered into a plea in abeyance resulting
333 in subsequent dismissal of such a charge, or failed to defend himself against such a charge when
334 given reasonable opportunity to do so; or

335 (c) voluntarily surrendered a license or certificate or allowed a license or certificate to

336 lapse in the face of a charge of having committed a sexual offense against a minor child.

337 (4) In resolving a complaint UPPAC may:

338 (a) dismiss the complaint;

339 (b) issue a warning or reprimand;

340 (c) issue an order of probation requiring an educator to comply with specific conditions

341 in order to retain a license;

342 (d) enter into a written agreement requiring an educator to comply with certain conditions;

343 (e) recommend board action such as revocation or suspension of a license or restriction

344 or prohibition of licensure; or

345 (f) take other appropriate action.

346 (5) UPPAC may not:

347 (a) participate as a party in any dispute relating to negotiations between a school district
348 and its educators;

349 (b) take action against an educator without giving the individual an opportunity for a fair
350 hearing to contest the allegations upon which the action would be based; or

351 (c) take action against an educator unless it finds that the action or the failure of the
352 educator to act impairs the educator's ability to perform the functions of the educator's position.

353 Section 17. Section **53A-6-307** is enacted to read:

354 **53A-6-307. Powers of state board not abrogated.**

355 Nothing in this chapter limits or abrogates the power of the board to issue or revoke
356 licenses, hold hearings, or otherwise carry out its functions.

357 Section 18. Section **53A-6-401** is repealed and reenacted to read:

358 **Part 4. Licensing and Background Checks**

359 **53A-6-401. Background checks.**

360 (1) (a) A license applicant shall submit to a background check as a condition for licensing.

361 (b) As used in this section, licensing includes reinstatement of a lapsed, suspended, or
362 revoked license.

363 (2) (a) The office shall establish a procedure for obtaining and evaluating relevant
364 information concerning license applicants, including fingerprinting the applicant and submitting
365 the prints to the Criminal Investigations and Technical Services Division of the Department of
366 Public Safety for checking against applicable state, regional, and national criminal records files.

367 (b) The Criminal Investigations and Technical Services Division shall release to the office
368 all information received in response to the office's request.

369 (3) An applicant shall have opportunity to respond to any information received by the
370 office as a result of the background check.

371 (4) In preparing recommendations concerning licensing for submission to the board, the
372 office shall consider only the following matters obtained through fingerprint checks to the extent
373 that they are relevant to the license sought by the applicant:

374 (a) convictions;

375 (b) any matters involving an alleged sexual offense;

376 (c) any matters involving an alleged felony or class A misdemeanor drug offense;

377 (d) any matters involving an alleged offense against the person under Title 76, Chapter 5;

378 (e) any matters involving a felony;

379 (f) any matters involving a class A misdemeanor property offense alleged to have occurred
380 within the previous three years; and

381 (g) any matters involving any other type of criminal offense, if more than one occurrence
382 of the same type of offense is alleged to have taken place within the previous eight years.

383 (5) If a recommendation is made for denial of licensure because of information obtained
384 through a background check, the person shall receive written notice of the reasons for the
385 recommendation and have an opportunity to respond in accordance with procedures set forth under
386 board rules.

387 (6) Information obtained under this section is confidential and may only be disclosed as
388 provided in this part.

389 (7) The applicant shall pay the costs of conducting the background check.

390 (8) This section applies to matters occurring both before and after the effective date of this
391 section.

392 Section 19. Section **53A-6-402** is repealed and reenacted to read:

393 **53A-6-402. Evaluation information on current or prospective school employees --**
394 **Notice to employee -- Exemption from liability.**

395 (1) (a) The office's administrator of teacher licensing may provide the appropriate
396 administrator of a public or private school or of an agency outside the state which is responsible
397 for licensing or certification of educators with any recommendation or other information possessed

398 by the office which has significance in evaluating the employment or license of a current or
399 prospective school employee, license holder, or applicant for licensing.

400 (b) Information supplied under Subsection (1)(a) may include the complete record of a
401 hearing or the investigative report for matters which:

402 (i) the educator has had an opportunity to contest; and

403 (ii) did not proceed to a hearing.

404 (2) At the request of the office's administrator of teacher licensing, an administrator of a
405 public school or school district shall, and an administrator of a private school may, provide any
406 recommendation or other information possessed by the school or school district which has
407 significance in evaluating the employment or licensure of a current or prospective school
408 employee, license holder, or applicant for licensing.

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

413 (4) A person who, in good faith, provides a recommendation or discloses or receives
414 information under this section is exempt from civil and criminal liability relating to that
415 recommendation, receipt, or disclosure.

416 (5) For purposes of this section, "employee" includes a volunteer.

417 Section 20. Section **53A-6-403** is enacted to read:

418 **53A-6-403. Office tie-in with the Criminal Investigations and Technical Services**
419 **Division.**

420 (1) The office shall:

421 (a) be an online terminal agency with the Department of Public Safety's Criminal
422 Investigations and Technical Services Division under Section 53-10-108; and

423 (b) provide relevant information concerning current or prospective employees or
424 volunteers upon request to other school officials as provided in Section 53A-6-402.

425 (2) The cost of the online service shall be borne by the entity making the inquiry, using
426 funds available to the entity, which may include funds authorized under Section 53A-6-401.

427 Section 21. Section **53A-6-404** is enacted to read:

428 **53A-6-404. Certification in other jurisdictions -- Impact on licensing in Utah.**

429 (1) An applicant for a license, renewal of a license, or reinstatement of a license shall
430 provide the administrator of teacher licensing with an affidavit, stating under oath the current
431 status of any certificate, license, or other authorization required for a professional position in
432 education, which the applicant holds or has held in any other jurisdiction.

433 (2) If the applicant's certificate, license, or authorization as an educator in any other
434 jurisdiction is under investigation, has expired or been surrendered, suspended or revoked, or is
435 currently not valid for any other reason, then the office may not grant the requested license,
436 renewal, or reinstatement until it has received confirmation from the administrator of professional
437 certification in that jurisdiction that the applicant would be eligible for certification or licensure
438 in that jurisdiction.

439 (3) The office may not withhold a license for the sole reason that the applicant would be
440 ineligible for certification, licensure, or authorization in the jurisdiction referred to in Subsection
441 (2) because of failure to meet current requirements in that jurisdiction relating to education, time
442 in service, or residence.

443 Section 22. Section **53A-6-405** is enacted to read:

444 **53A-6-405. Denial of license.**

445 (1) The board may refuse to issue a license to any person for good cause shown, including
446 any person who, after having had a reasonable opportunity to contest the allegation, has been found
447 pursuant to a criminal, civil, or administrative action to have exhibited behavior evidencing
448 unfitness for duty, including behavior which would, had the person been an educator, have been
449 considered to be immoral, unprofessional, or incompetent conduct, or a violation of standards of
450 ethical conduct, performance, or professional competence.

451 (2) (a) Upon receipt of findings and recommendations from UPPAC, including the
452 findings and recommendations, if any, of a hearing requested under Subsection (4), the board may
453 issue a permanent ban on licensure of any person who has committed a sexual offense against a
454 minor child.

455 (b) A permanent ban issued under this Subsection (2) is not subject to further review by
456 UPPAC.

457 (3) A person ineligible for licensure under Subsection (2) may not be employed or
458 permitted to volunteer services in any position in a public or private school where the person
459 would be in close proximity to minor children or be permitted or required to interact with a minor

460 child.

461 (4) (a) A person denied licensure or employment under this section may, within 30 days
462 of receipt of the denial and notice of rights of appeal, request a hearing before UPPAC to review
463 and respond to all evidence upon which the denial was based.

464 (b) UPPAC shall prepare findings and recommendations for the board on any hearing held
465 under Subsection (4)(a).

466 Section 23. Section **53A-6-501** is enacted to read:

467 **Part 5. Conduct of Educators**

468 **53A-6-501. Disciplinary action against educator.**

469 (1) (a) The board shall take appropriate action against any person who is, or at the time of
470 an alleged offense was, the holder of a license, and:

471 (i) who, after having had a reasonable opportunity to contest the allegation, has been found
472 pursuant to a criminal, civil, or administrative action to have exhibited behavior evidencing
473 unfitness for duty, including immoral, unprofessional, or incompetent conduct, or other violation
474 of standards of ethical conduct, performance, or professional competence; or

475 (ii) who has been alleged to have exhibited such behavior or committed such a violation.

476 (b) Prior to taking action based upon an allegation or the decision of an administrative
477 body other than UPPAC, the board shall direct UPPAC to review the allegations and any related
478 administrative action and provide findings and recommendations to the board.

479 (c) No adverse recommendation may be made without giving the accused person an
480 opportunity for a hearing.

481 (d) The board's action may include:

482 (i) revocation or suspension of a license;

483 (ii) restriction or prohibition of recertification;

484 (iii) a warning or reprimand;

485 (iv) required participation in and satisfactory completion of a rehabilitation or remediation
486 program; or

487 (v) other action which the board finds to be appropriate after a review of the UPPAC
488 findings and recommendations.

489 (e) The license holder is responsible for the costs of rehabilitation or remediation required
490 under this section.

491 (2) Upon receipt of findings and recommendation from UPPAC, the board may
492 permanently revoke the license of any person who has committed a sexual offense against a minor
493 child or has exhibited other behavior which the board finds to be irremediable.

494 Section 24. Section **53A-6-502** is enacted to read:

495 **53A-6-502. Mandatory reporting of physical or sexual abuse of students.**

496 (1) For purposes of this section, "educator" means, in addition to a person included under
497 Subsection 53A-6-103(7), a person, including a volunteer or temporary employee, who at the time
498 of an alleged offense was performing a function in a private school for which a license would be
499 required in a public school.

500 (2) In addition to any duty to report suspected cases of child abuse or neglect under Section
501 62A-4a-403, an educator who has reasonable cause to believe that a student may have been
502 physically or sexually abused by a school employee shall immediately report the belief and all
503 other relevant information to the school principal, superintendent, or to the office.

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

507 (4) Failure to comply with Subsection (2) or (3) shall be considered unprofessional
508 conduct.

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

511 Section 25. Section **53A-6-601** is enacted to read:

512 **Part 6. Complaints and Hearings**

513 **53A-6-601. Definitions.**

514 As used in this part "hearing" means a proceeding held in accordance with generally
515 accepted principles of due process and administrative law in which definite issues of fact or of law
516 are tried before a hearing body, and in which proceeding evidence is presented and witnesses
517 heard, and in which the party against whom the proceedings are held has a right to:

518 (1) appear with or without counsel to present evidence, confront and cross-examine
519 witnesses, or subpoena witnesses; and

520 (2) obtain a decision based solely upon evidence presented to the hearing body in the
521 presence of both parties or representatives of both parties, recognizing that presence is satisfied

522 if a party has been given a reasonable opportunity to attend, even if the party fails to do so.

523 Section 26. Section **53A-6-602** is enacted to read:

524 **53A-6-602. Designation of hearing officer or panel -- Review of findings.**

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

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

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

533 Section 27. Section **53A-6-603** is enacted to read:

534 **53A-6-603. Administering of oaths -- Issuance of subpoenas.**

535 (1) UPPAC or a state or local school board charged with responsibility for conducting an
536 investigation or a hearing under this chapter may administer oaths and issue subpoenas in
537 connection with the investigation or hearing.

538 (2) If a hearing is before a hearing officer or panel, the hearing officer or panel may
539 administer oaths, and the appointing body may issue subpoenas upon the request of the hearing
540 officer or panel.

541 (3) Subpoenas shall be enforced upon the petition of the issuing body by the district court
542 in the jurisdiction where the subpoena was issued, in the same manner as subpoenas issued by the
543 court.

544 Section 28. Section **53A-6-604** is enacted to read:

545 **53A-6-604. Rules for conducting hearings -- Standard of proof.**

546 (1) The board, each local school board, and UPPAC shall each adopt rules for the conduct
547 of hearings to ensure that requirements of due process are met.

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

549 (a) notice of the hearing;

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

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

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

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

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

561 (5) § ~~(a)~~ § Unless otherwise provided in Title 53A, the decisions of state and local boards are
562 final determinations under this section, appealable to the appropriate court for review.

563 § ~~(b) The court shall review the findings and decision of the board and uphold the h~~ ~~{boards}~~

563a **BOARD'S h**

564 **decision unless it determines the board's decision was arbitrary and capricious.** §

565 Section 29. Section **53A-7-101** is repealed and reenacted to read:

566 **CHAPTER 7. DISPUTE RESOLUTION**

567 **53A-7-101. Mediation of contract negotiations.**

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

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

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

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

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

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

583 (7) Nothing in this section prevents the parties from adopting a written mediation

584 procedure other than that provided in this section.

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

586 Section 30. Section **53A-7-102** is repealed and reenacted to read:

587 **53A-7-102. Appointment of hearing officer -- Hearing process.**

588 (1) If a mediator appointed under Section 53A-7-101 is unable to effect settlement of the
589 controversy within 15 working days after his appointment, either party to the mediation may by
590 written notification to the other party and to the state superintendent of public instruction request
591 that their dispute be submitted to a hearing officer who shall make findings of fact and recommend
592 terms of settlement.

593 (2) Within five working days after receipt of the request, the state superintendent of public
594 instruction shall appoint a hearing officer who is mutually acceptable to the local school board and
595 the professional organization representing a majority of the certificated employees.

596 (3) The hearing officer may not, without consent of both parties, be the same person who
597 served as mediator.

598 (4) The hearing officer shall meet with the parties, either jointly or separately, may make
599 inquiries and investigations, and may issue subpoenas for the production of persons or documents
600 relevant to all issues in dispute.

601 (5) The State Board of Education and departments, divisions, authorities, bureaus,
602 agencies, and officers of the state, local school boards, and the professional organization shall
603 furnish the hearing officer, on request, all relevant records, documents, and information in their
604 possession.

605 (6) If the final positions of the parties are not resolved before the hearing ends, the hearing
606 officer shall prepare a written report containing the agreements of the parties with respect to all
607 resolved negotiated contract issues and the positions that the hearing officer considers appropriate
608 on all unresolved final positions of the parties.

609 (7) The hearing officer shall submit the report to the parties privately within ten working
610 days after the conclusion of the hearing or within the date established for the submission of
611 posthearing briefs, but not later than 20 working days after the hearing officer's appointment.

612 (8) Either the hearing officer, the professional organization, or the local board may make
613 the report public if the dispute is not settled within ten working days after its receipt from the
614 hearing officer.

615 (9) (a) The state superintendent of public instruction may determine the majority status of
616 any professional organization which requests assistance under this section.

617 (b) The decision of the superintendent is final unless it is clearly inconsistent with the
618 evidence.

619 Section 31. Section **58-61-307** is amended to read:

620 **58-61-307. Exemptions from licensure.**

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

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

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

627 (b) a registered psychiatric mental health nurse specialist licensed under Chapter ~~68~~ 31b,
628 Nurse Practice Act;

629 (2) a recognized member of the clergy while functioning in his ministerial capacity as long
630 as he does not represent himself as or use the title of psychologist;

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

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

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

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

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

643 (iv) tests clients to determine degrees of suggestibility;

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

646 (vi) trains clients in self-hypnosis conditioning;

647 (b) may not:

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

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

650 or

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

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

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

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

672 (8) an individual certified as a school psychologist under Section [~~53A-6-101~~] 53A-6-104:

673 (a) may represent himself as and use the terms "school psychologist" or "certified school
674 psychologist"; and

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

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

680 Section 32. Section **63-30-2** is amended to read:

681 **63-30-2. Definitions.**

682 As used in this chapter:

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

685 (2) (a) "Employee" includes a governmental entity's officers, employees, servants, trustees,
686 commissioners, members of a governing body, members of a board, members of a commission,
687 or members of an advisory body, officers and employees in accordance with Section 67-5b-104,
688 student teachers certificated in accordance with Section [~~53A-6-101~~] 53A-6-104, educational
689 aides, students engaged in providing services to members of the public in the course of an
690 approved medical, nursing, or other professional health care clinical training program, volunteers,
691 and tutors, but does not include an independent contractor.

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

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

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

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

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

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

707 (7) "Political subdivision" means any county, city, town, school district, public transit

708 district, redevelopment agency, special improvement or taxing district, or other governmental
709 subdivision or public corporation.

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

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

714 Section 33. **Repealer.**

715 This act repeals:

716 Section **53A-7-103, Definitions.**

717 Section **53A-7-104, Professional Practices Advisory Commission -- Members --**
718 **Executive secretary.**

719 Section **53A-7-105, Nominations -- Appointment of commission members --**
720 **Reappointments.**

721 Section **53A-7-106, Qualifications of commission members.**

722 Section **53A-7-107, Filling of vacancies.**

723 Section **53A-7-108, Meetings of commission.**

724 Section **53A-7-109, Expenses of commission members.**

725 Section **53A-7-110, Powers and duties.**

726 Section **53A-7-111, Limitations on commission authority.**

727 Section **53A-7-112, Fees -- Credit to subfund -- Appropriation for expenses.**

728 Section **53A-7-113, Powers of state board not abrogated.**

729 Section **53A-7-201, Definitions.**

730 Section **53A-7-202, Professional competence or performance -- Administrative hearing**
731 **by local school board -- Action on complaint.**

732 Section **53A-7-203, Designation of hearing officer or panel -- Review of findings.**

733 Section **53A-7-204, Administering of oaths -- Issuance of subpoenas.**

734 Section 34. **Effective date.**

735 This act takes effect on July 1, 1999.