

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

53A-6-405, Utah Code Annotated 1953

53A-6-501, Utah Code Annotated 1953

53A-6-502, Utah Code Annotated 1953

53A-6-601, Utah Code Annotated 1953

53A-6-602, Utah Code Annotated 1953

53A-6-603, Utah Code Annotated 1953

53A-6-604, Utah Code Annotated 1953

REPEALS AND REENACTS:

53A-6-101, as last amended by Chapter 78, Laws of Utah 1990

53A-6-102, as enacted by Chapter 2, Laws of Utah 1988

53A-6-103, as last amended by Chapters 263 and 280, Laws of Utah 1998

53A-6-104, as last amended by Chapter 246, Laws of Utah 1992

53A-6-105, as enacted by Chapter 2, Laws of Utah 1988

53A-6-106, as last amended by Chapter 160, Laws of Utah 1996

53A-6-107, as last amended by Chapter 263, Laws of Utah 1998

53A-6-108, as enacted by Chapter 220, Laws of Utah 1995

53A-6-109, as enacted by Chapter 95, Laws of Utah 1997

53A-6-301, as last amended by Chapter 113, Laws of Utah 1993

53A-6-302, as last amended by Chapter 260, Laws of Utah 1994

53A-6-401, as enacted by Chapter 308, Laws of Utah 1993

53A-6-402, as enacted by Chapter 308, Laws of Utah 1993

53A-7-101, as enacted by Chapter 2, Laws of Utah 1988

53A-7-102, as last amended by Chapter 247, Laws of Utah 1991

REPEALS:

53A-7-103, as last amended by Chapter 247, Laws of Utah 1991

53A-7-104, as last amended by Chapter 247, Laws of Utah 1991

53A-7-105, as last amended by Chapter 247, Laws of Utah 1991

53A-7-106, as last amended by Chapter 247, Laws of Utah 1991

53A-7-107, as last amended by Chapter 247, Laws of Utah 1991

53A-7-108, as enacted by Chapter 2, Laws of Utah 1988

53A-7-109, as last amended by Chapter 247, Laws of Utah 1991

53A-7-110, as last amended by Chapter 46, Laws of Utah 1998

53A-7-111, as last amended by Chapter 247, Laws of Utah 1991

53A-7-112, as last amended by Chapter 247, Laws of Utah 1991

53A-7-113, as enacted by Chapter 2, Laws of Utah 1988

53A-7-201, as last amended by Chapter 247, Laws of Utah 1991

53A-7-202, as last amended by Chapter 247, Laws of Utah 1991

53A-7-203, as last amended by Chapter 247, Laws of Utah 1991

53A-7-204, as last amended by Chapter 247, Laws of Utah 1991

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

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

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

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

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

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

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

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

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

CHAPTER 6. EDUCATOR LICENSING AND PROFESSIONAL PRACTICES ACT

Part 1. General Provisions**53A-6-101. Title.**

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

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

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

(1) (a) The Legislature acknowledges that education is perhaps the most important function of state and local governments recognizing that the future success of our state and nation depend in large part upon the existence of a responsible and educated citizenry.

(b) The Legislature further acknowledges that the primary responsibility for the education of children within the state resides with their parents or guardians and that the role of state and local governments is to support and assist parents in fulfilling that responsibility.

(2) In providing for the safe and effective performance of the function of educating Utah's children, the Legislature finds it to be of critical importance that education, including instruction, administrative, and supervisory services, be recognized as a profession, and that those who are licensed or seek to become licensed and to serve as educators:

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

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

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

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

53A-6-103. Definitions.

As used in this chapter:

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

(2) "Alternative preparation program" means preparation for licensure in accordance with

applicable law and rule through other than an approved preparation program.

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

- (a) minimum grade point average;
- (b) standardized testing or assessment;
- (c) mentoring;
- (d) recency of professional preparation or experience;
- (e) graduation from an accredited institution; or
- (f) evidence relating to moral, ethical, physical, or mental fitness.

(4) "Approved preparation program" means a program for preparation of educational personnel offered through an accredited institution in Utah or in a state which is a party to a contract with Utah under the NASDTEC Interstate Contract and which, at the time the program was completed by the applicant:

(a) was approved by the governmental agency responsible for licensure of educators in the state in which the program was provided;

- (b) satisfied requirements for licensure in the state in which the program was provided;
- (c) required completion of a baccalaureate; and
- (d) included a supervised field experience.

(5) "Board" means the Utah State Board of Education.

(6) "Certificate" means a license issued by a governmental jurisdiction outside the state.

(7) "Educator" means:

(a) a person who holds a license;
(b) a teacher, counselor, administrator, librarian, or other person required, under rules of the board, to hold a license; or

(c) a person who is the subject of an allegation which has been received by the board or UPPAC and was, at the time noted in the allegation, a license holder or a person employed in a position requiring licensure.

(8) "Endorsement" means a stipulation appended to a license setting forth the areas of practice to which the license applies.

(9) "License" means an authorization issued by the board which permits the holder to serve in a professional capacity in the public schools. The four levels of licensure are:

(a) "Letter of authorization," which is a temporary license issued to a person who has not completed requirements for a level 1, 2, or 3 license, such as a student teacher or a person hired to perform professional services on an emergency basis when fully qualified personnel are not available;

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

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

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

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

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

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

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

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

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

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

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

53A-6-104. Board licensure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53A-6-107. Program approval.

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

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

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

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

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

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

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

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

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

53A-6-109. Substitute teachers.

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

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

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

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

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

Part 3. Utah Professional Practices Advisory Commission

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53A-6-304. Filling of vacancies.

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

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

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

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

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

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

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

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

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

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

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

(1) UPPAC shall:

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

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

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

(ii) for the improvement of the education profession;

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

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

(e) establish the manner in which hearings are conducted and reported, and recommendations are submitted to the board for its action.

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

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

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

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

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

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

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

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

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

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

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

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

(c) 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) In resolving a complaint UPPAC may:

(a) dismiss the complaint;

(b) issue a warning or reprimand;

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

order to retain a license;

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

(e) recommend board action such as revocation or suspension of a license or restriction or prohibition of licensure; or

(f) take other appropriate action.

(5) UPPAC may not:

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

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

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

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

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

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

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

Part 4. Licensing and Background Checks

53A-6-401. Background checks.

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

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

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

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

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

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

(a) convictions;

(b) any matters involving an alleged sexual offense;

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

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

(e) any matters involving a felony;

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

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

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

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

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

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

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

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

(1) (a) The office's administrator of teacher licensing may provide the appropriate administrator of a public or private school or of an agency outside the state which is responsible for

licensing or certification of educators with any recommendation or other information possessed by the office which has significance in evaluating the employment or license of a current or prospective school employee, license holder, or applicant for licensing.

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

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

(ii) did not proceed to a hearing.

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

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

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

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

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

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

Division.

(1) The office shall:

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

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

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

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

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

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

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

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

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

53A-6-405. Denial of license.

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

(2) (a) Upon receipt of findings and recommendations from UPPAC, including the findings and recommendations, if any, of a hearing requested under Subsection (4), the board may issue a

permanent ban on licensure of any person who has committed a sexual offense against a minor child.

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

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

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

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

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

Part 5. Conduct of Educators

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

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

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

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

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

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

(d) The board's action may include:

(i) revocation or suspension of a license;

- (ii) restriction or prohibition of recertification;
 - (iii) a warning or reprimand;
 - (iv) required participation in and satisfactory completion of a rehabilitation or remediation program; or
 - (v) other action which the board finds to be appropriate after a review of the UPPAC findings and recommendations.
- (e) The license holder is responsible for the costs of rehabilitation or remediation required under this section.

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

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

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

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

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

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

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

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

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

Part 6. Complaints and Hearings

53A-6-601. Definitions.

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

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

(2) obtain a decision based solely upon evidence presented to the hearing body in the presence of both parties or representatives of both parties, recognizing that presence is satisfied if a party has been given a reasonable opportunity to attend, even if the party fails to do so.

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

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

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

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

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

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

officer or panel.

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

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

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

(1) The board, each local school board, and UPPAC shall each adopt rules for the conduct of hearings 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 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 office, for actions taken under the auspices of UPPAC or the state 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 Title 53A, the decisions of state and local boards are final determinations under this section, appealable to the appropriate court for review.

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

CHAPTER 7. DISPUTE RESOLUTION

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

(1) The president of a professional local organization which represents a majority of the certificated employees of a school district or the chairman or president of a local school board may,

after negotiating for 90 days, declare an impasse by written notification to the other party and to the State Board of Education.

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

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

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

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

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

(7) Nothing in this section prevents the parties from adopting a written mediation procedure other than that provided in this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

58-61-307. Exemptions from licensure.

In addition to the exemptions from licensure in Section 58-1-307, the following may engage in acts included within the definition of practice as a psychologist, subject to the stated circumstances

and limitations, without being licensed under this chapter:

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

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

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

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

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

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

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

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

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

(iv) tests clients to determine degrees of suggestibility;

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

(vi) trains clients in self-hypnosis conditioning;

(b) may not:

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

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

or

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

(5) an individual's exemption from licensure under Subsection 58-1-307(1)(b) or (c) while completing any supervised clinical training requirement for licensure as a psychologist extends not

more than one year from the date the minimum requirement for training is completed, unless the individual presents satisfactory evidence to the division and the Psychologist Licensing Board that the individual is making reasonable progress toward passing the qualifying examination or is otherwise on a course reasonably expected to lead to licensure as a psychologist, but any exemption under this subsection may not exceed two years past the date the minimum supervised clinical training requirement has been completed;

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

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

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

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

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

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

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

63-30-2. Definitions.

As used in this chapter:

(1) "Claim" means any claim or cause of action for money or damages against a

governmental entity or against an employee.

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

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

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

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

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

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

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

(7) "Political subdivision" means any county, city, town, school district, public transit district, redevelopment agency, special improvement or taxing district, or other governmental subdivision or public corporation.

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

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

Section 33. Repealer.

This act repeals:

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

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

Section **53A-7-105, Nominations -- Appointment of commission members --**

Reappointments.

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

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

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

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

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

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

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

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

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

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

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

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

Section 34. **Effective date.**

This act takes effect on July 1, 1999.