

LIABILITY PROTECTION OF EDUCATORS

2005 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Howard A. Stephenson

House Sponsor: LaVar Christensen

LONG TITLE

General Description:

This bill requires school district and charter school employees to acknowledge in writing receipt of an existing disclosure.

Highlighted Provisions:

This bill:

- ▶ requires school district and charter school employees to acknowledge receipt of an existing liability protection disclosure; and
- ▶ modifies when school districts and charter schools may provide liability protection information to employees.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53A-1a-512, as last amended by Chapters 251 and 330, Laws of Utah 2004

53A-3-411, as last amended by Chapters 284 and 315, Laws of Utah 2003

63A-4-204, as last amended by Chapter 266, Laws of Utah 2001

63A-4-204.5, as last amended by Chapter 266, Laws of Utah 2001

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

Section 1. Section **53A-1a-512** is amended to read:

53A-1a-512. Employees of charter schools.

(1) A charter school shall select its own employees.

(2) The school's governing body shall determine the level of compensation and all terms and conditions of employment, except as otherwise provided in Subsections (6) and (7) and under this part.

(3) The following statutes governing public employees and officers do not apply to charter schools:

(a) Chapter 8, Utah Orderly School Termination Procedures Act;

(b) Chapter 10, Educator Evaluation; and

(c) Title 52, Chapter 3, Prohibiting Employment of Relatives.

(4) (a) To accommodate differentiated staffing and better meet student needs, a charter school, under rules adopted by the State Board of Education, shall employ teachers who:

(i) are licensed; or

(ii) on the basis of demonstrated competency, would qualify to teach under alternative certification or authorization programs.

(b) The school's governing body shall disclose the qualifications of its teachers to the parents of its students.

(5) (a) An employee of a school district may request a leave of absence in order to work in a charter school upon approval of the local school board.

(b) While on leave, the employee may retain seniority accrued in the school district and may continue to be covered by the benefit program of the district if the charter school and the locally elected school board mutually agree.

(6) Except as provided under Subsection (7), an employee of a charter school shall be a member of a retirement system under Title 49, Utah State Retirement and Insurance Act.

(7) (a) At the time of application for a charter school, whether sponsored by the state or a school district, a proposed charter school may make an election of nonparticipation as an employer for retirement programs under Title 49, Chapter 12, Public Employees' Contributory Retirement Act and under Title 49, Chapter 13, Public Employees' Noncontributory Retirement

Act.

(b) A charter school that was approved prior to July 1, 2004 may make an election of nonparticipation prior to December 31, 2004.

(c) An election provided under this Subsection (7):

(i) is a one-time election made at the time specified under Subsection (7)(a) or (b);

(ii) shall be documented by a resolution adopted by the governing body of the charter school;

(iii) is irrevocable; and

(iv) applies to the charter school as the employer and to all employees of the charter school.

(d) The governing body of a charter school may offer employee benefit plans for its employees:

(i) under Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act; or

(ii) under any other program.

(8) The governing body of a charter school shall ensure that, prior to the beginning of each school year, each of its employees signs a document acknowledging that the employee:

(a) has received:

(i) the disclosure required under Section 63A-4-204.5 if the charter school participates in the Risk Management Fund; or

(ii) written disclosure similar to the disclosure required under Section 63A-4-204.5 if the charter school does not participate in the Risk Management Fund; and

(b) understands the legal liability protection provided to the employee and what is not covered, as explained in the disclosure.

Section 2. Section **53A-3-411** is amended to read:

53A-3-411. Employment of school personnel -- Length of contract -- Termination for cause -- Individual contract of employment -- Employee acknowledgment of liability protection.

(1) A local school board may enter into a written employment contract for a term not to

exceed five years.

(2) Nothing in the terms of the contract shall restrict the power of a local school board to terminate the contract for cause at any time.

(3) (a) A local school board may not enter into a collective bargaining agreement that prohibits or limits individual contracts of employment.

(b) Subsection (3)(a) does not apply to an agreement that was entered into before May 5, 2003.

(4) Each local school board shall:

(a) ensure that each employment contract complies with the requirements of Section 34-32-1.1; ~~and~~

(b) comply with the requirements of Section 34-32-1.1 in employing any personnel, whether by employment contract or otherwise~~[-]; and~~

(c) ensure that at the time an employee enters into an employment contract, the employee shall sign a separate document acknowledging that the employee:

(i) has received:

(A) the disclosure required under Subsection 63A-4-204(4)(d) if the school district participates in the Risk Management Fund; or

(B) written disclosure similar to the disclosure required under Section 63A-4-204 if the school district does not participate in the Risk Management Fund; and

(ii) understands the legal liability protection provided to the employee and what is not covered, as explained in the disclosure.

Section 3. Section **63A-4-204** is amended to read:

63A-4-204. School district participation in Risk Management Fund.

(1) (a) For the purpose of this section, action by a public school district shall be taken upon resolution by a majority of the members of the school district's board of education.

(b) (i) Upon approval by the state risk manager and the board of education of the school district, a public school district may participate in the Risk Management Fund and may permit a foundation established under Section 53A-4-205 to participate in the Risk Management Fund.

(ii) Upon approval by the state risk manager and the State Board of Education, a state public education foundation may participate in the Risk Management Fund.

(c) Subject to any cancellation or other applicable coverage provisions, either the state risk manager or the public school district may terminate participation in the fund.

(2) The state risk manager shall contract for all insurance, legal, loss adjustment, consulting, loss control, safety, and other related services necessary to support the insurance program provided to a participating public school district, except that all supporting legal services are subject to the prior approval of the state attorney general.

(3) (a) The state risk manager shall treat each participating public school district as a state agency when participating in the Risk Management Fund.

(b) Each public school district participating in the fund shall comply with the provisions of this part that affect state agencies.

(4) (a) By no later than March 31 of each year, the risk manager shall prepare, in writing, the information required by Subsection (4)(b) regarding the coverage against legal liability provided a school district employee of this state:

(i) by the Risk Management Fund;

(ii) under Title 63, Chapter [~~30, Utah~~] 30d, Governmental Immunity Act of Utah; and

(iii) under Title 63, Chapter 30a, Reimbursement of Legal Fees and Costs to Officers and Employees.

(b) (i) The information described in Subsection (4)(a) shall include:

(A) the eligibility requirements, if any, to receive the coverage;

(B) the basic nature of the coverage for a school district employee, including what is not covered; and

(C) whether the coverage is primary or in excess of any other coverage the risk manager knows is commonly available to a school district employee in this state.

(ii) The information described in Subsection (4)(a) may include:

(A) comparisons the risk manager considers beneficial to a school district employee between:

- (I) the coverage described in Subsection (4)(a); and
- (II) other coverage the risk manager knows is commonly available to a school district employee in this state; and
- (B) any other information the risk manager considers appropriate.
- (c) The risk manager shall provide the information prepared under this Subsection (4) to each school district that participates in the Risk Management Fund.

(d) A school district that participates in the Risk Management Fund shall provide a copy of the information described in Subsection (4)(c) to each school district employee within the school district:

- (i) at the time an employee enters into an employment contract and signs a separate acknowledgment of legal liability protection in accordance with Section 53A-3-411; or
- (ii) if the school district does not provide the information to the employee pursuant to Subsection (4)(d)(i):

[~~(i)~~] (A) within 30 days of the day the school district employee is hired by the school district; and

[~~(ii)~~] (B) by no later than April 15 of each calendar year.

Section 4. Section **63A-4-204.5** is amended to read:

63A-4-204.5. Charter school participation in Risk Management Fund.

(1) A charter school established under the authority of Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act, may participate in the Risk Management Fund upon the approval of the state risk manager and the governing body of the charter school.

(2) (a) For purposes of administration, the state risk manager shall treat each charter school participating in the fund as a state agency.

(b) Each charter school participating in the fund shall comply with the provisions of this part that affect state agencies.

(3) (a) By no later than March 31 of each year, the risk manager shall prepare, in writing, the information required by Subsection (3)(b) regarding the coverage against legal liability provided a charter school employee of this state:

(i) by the Risk Management Fund;
(ii) under Title 63, Chapter [30] 30d, Utah Governmental Immunity Act of Utah; and
(iii) under Title 63, Chapter 30a, Reimbursement of Legal Fees and Costs to Officers and Employees.

(b) (i) The information described in Subsection (3)(a) shall include:

(A) the eligibility requirements, if any, to receive the coverage;

(B) the basic nature of the coverage for a charter school employee, including what is not covered; and

(C) whether the coverage is primary or in excess of any other coverage the risk manager knows is commonly available to a charter school employee in this state.

(ii) The information described in Subsection (3)(a) may include:

(A) comparisons the risk manager considers beneficial to a charter school employee between:

(I) the coverage described in Subsection (3)(a); and

(II) other coverage the risk manager knows is commonly available to a charter school employee in this state; and

(B) any other information the risk manager considers appropriate.

(c) The risk manager shall provide the information prepared under this Subsection (3) to each charter school that participates in the Risk Management Fund.

(d) A charter school that participates in the Risk Management Fund shall provide a copy of the information described in Subsection (3)(c) to each charter school employee within the charter school:

(i) within 30 days of the day the charter school employee is hired by the charter school; and

(ii) by no later than April 15 of each calendar year.