

SCHOOLS FOR THE DEAF AND BLIND

AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kenneth W. Sumsion

Senate Sponsor: Curtis S. Bramble

Cosponsor: Jennifer M. Seelig

LONG TITLE

General Description:

This bill recodifies the Utah Schools for the Deaf and the Blind, including modifying provisions regarding its employees and a student's eligibility for services.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates the Utah Schools for the Deaf and the Blind as a single public school agency and a public corporation;
- ▶ allows the Utah Schools for the Deaf and the Blind to serve as the designated local education agency (LEA) for a student;
- ▶ clarifies that the Utah Schools for the Deaf and the Blind, with certain exceptions, is subject to state laws applicable to public schools and state government agencies;
- ▶ provides that the State Board of Education is the governing board of the Utah Schools for the Deaf and the Blind;
- ▶ directs the State Board of Education to appoint:
 - a superintendent for the Utah Schools for the Deaf and the Blind; and
 - members of the Advisory Council for the Utah Schools for the Deaf and the Blind;
- ▶ directs the superintendent to appoint, subject to approval by the State Board of Education:

- 30 • an associate superintendent to administer the Utah School for the Deaf; and
- 31 • an associate superintendent to administer the Utah School for the Blind;
- 32 ▶ establishes the power and duties of the superintendent and the advisory council;
- 33 ▶ establishes eligibility criteria for services of the Utah Schools for the Deaf and the
- 34 Blind;
- 35 ▶ specifies educational program, assessment, and reporting requirements;
- 36 ▶ provides that certain educators employed by the Utah Schools for the Deaf and the
- 37 Blind are exempt from classified service, state pay plan, and career service
- 38 provisions of the Utah Personnel Management Act and rules of the Department of
- 39 Human Resource Management;
- 40 ▶ requires the State Board of Education to make rules to establish and specify
- 41 procedures for the operation of the Utah State Instructional Materials Accessibility
- 42 Center; and
- 43 ▶ makes technical amendments.

44 **Monies Appropriated in this Bill:**

45 None

46 **Other Special Clauses:**

47 None

48 **Utah Code Sections Affected:**

49 AMENDS:

50 **53A-25a-105**, as last amended by Laws of Utah 2002, Chapter 299

51 **63I-4-102**, as renumbered and amended by Laws of Utah 2008, Chapter 147

52 **67-19-12**, as last amended by Laws of Utah 2007, Chapter 166

53 **67-19-15**, as last amended by Laws of Utah 2008, Chapter 3

54 ENACTS:

55 **53A-25b-101**, Utah Code Annotated 1953

56 **53A-25b-102**, Utah Code Annotated 1953

57 **53A-25b-103**, Utah Code Annotated 1953

- 58 **53A-25b-104**, Utah Code Annotated 1953
- 59 **53A-25b-105**, Utah Code Annotated 1953
- 60 **53A-25b-201**, Utah Code Annotated 1953
- 61 **53A-25b-202**, Utah Code Annotated 1953
- 62 **53A-25b-203**, Utah Code Annotated 1953
- 63 **53A-25b-301**, Utah Code Annotated 1953
- 64 **53A-25b-302**, Utah Code Annotated 1953
- 65 **53A-25b-303**, Utah Code Annotated 1953
- 66 **53A-25b-304**, Utah Code Annotated 1953
- 67 **53A-25b-305**, Utah Code Annotated 1953
- 68 **53A-25b-306**, Utah Code Annotated 1953
- 69 **53A-25b-307**, Utah Code Annotated 1953
- 70 **53A-25b-401**, Utah Code Annotated 1953
- 71 **53A-25b-402**, Utah Code Annotated 1953
- 72 **53A-25b-501**, Utah Code Annotated 1953
- 73 REPEALS:
- 74 **53A-25-101**, as enacted by Laws of Utah 1988, Chapter 2
- 75 **53A-25-102**, as enacted by Laws of Utah 1988, Chapter 2
- 76 **53A-25-103**, as enacted by Laws of Utah 1988, Chapter 2
- 77 **53A-25-104**, as last amended by Laws of Utah 1996, Chapter 37
- 78 **53A-25-105**, as enacted by Laws of Utah 1988, Chapter 2
- 79 **53A-25-107**, as enacted by Laws of Utah 1988, Chapter 2
- 80 **53A-25-108**, as enacted by Laws of Utah 1988, Chapter 2
- 81 **53A-25-109**, as enacted by Laws of Utah 1988, Chapter 2
- 82 **53A-25-110**, as enacted by Laws of Utah 1988, Chapter 2
- 83 **53A-25-111**, as last amended by Laws of Utah 2007, Chapter 380
- 84 **53A-25-201**, as enacted by Laws of Utah 1988, Chapter 2
- 85 **53A-25-202**, as enacted by Laws of Utah 1988, Chapter 2

- 86 **53A-25-203**, as last amended by Laws of Utah 1996, Chapter 37
- 87 **53A-25-204**, as enacted by Laws of Utah 1988, Chapter 2
- 88 **53A-25-205**, as enacted by Laws of Utah 1988, Chapter 2
- 89 **53A-25-206**, as last amended by Laws of Utah 2001, Chapter 73
- 90 **53A-25-301**, as last amended by Laws of Utah 1995, Chapter 223
- 91 **53A-25-302**, as last amended by Laws of Utah 1995, Chapter 223
- 92 **53A-25-303**, as last amended by Laws of Utah 1995, Chapter 223
- 93 **53A-25-304**, as last amended by Laws of Utah 1995, Chapter 223
- 94 **53A-25-305**, as last amended by Laws of Utah 1995, Chapter 223
- 95 **53A-25-306**, as enacted by Laws of Utah 2001, Chapter 312

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

98 Section 1. Section **53A-25a-105** is amended to read:

99 **53A-25a-105. Braille versions of textbooks.**

100 (1) As a condition of the annual contract for instructional materials process and as a
 101 condition of textbook acceptance, the State Board of Education [~~through the State Office of~~
 102 ~~Education~~] shall require publishers of textbooks recommended by the [state] board to furnish,
 103 on request, their textbooks [~~on computer diskettes, on request, for literary subjects in the~~
 104 ~~American Standard Code for Information Interchange (ASCH)] and related instructional
 105 materials in an electronic file set, in conformance with the National Instructional Materials
 106 Accessibility Standard, from which Braille versions of all or part of the textbook and related
 107 instructional materials can be produced.~~

108 (2) When Braille translation software for specialty code translation becomes available,
 109 publishers shall [~~make computer diskettes available, on request, in ASCH]~~ furnish, on request,
 110 electronic file sets, in conformance with the National Instructional Materials Accessibility
 111 Standard, for nonliterary subjects such as mathematics and science.

112 Section 2. Section **53A-25b-101** is enacted to read:

113 **CHAPTER 25b. UTAH SCHOOLS FOR THE DEAF AND THE BLIND**

Part 1. General Provisions

53A-25b-101. Title.

This chapter is known as the "Utah Schools for the Deaf and the Blind."

Section 3. Section **53A-25b-102** is enacted to read:

53A-25b-102. Definitions.

As used in this chapter:

(1) "Advisory council" means the Advisory Council for the Utah Schools for the Deaf and the Blind.

(2) "Alternate format" includes braille, audio, or digital text, or large print.

(3) "Associate superintendent" means:

(a) the associate superintendent of the Utah School for the Deaf; or

(b) the associate superintendent of the Utah School for the Blind.

(4) "Blind" means:

(a) if the person is three years of age or older but younger than 22 years of age, having a visual impairment that, even with correction, adversely affects educational performance or substantially limits one or more major life activities; and

(b) if the person is younger than three years of age, having a visual impairment.

(5) "Blindness" means an impairment in vision in which central visual acuity:

(a) does not exceed 20/200 in the better eye with correcting lenses; or

(b) is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

(6) "Board" means the State Board of Education.

(7) "Cortical visual impairment" means a neurological visual disorder:

(a) that:

(i) affects the visual cortex or visual tracts of the brain;

(ii) is caused by damage to the visual pathways to the brain;

(iii) affects a person's visual discrimination, acuity, processing, and interpretation; and

(iv) is often present in conjunction with other disabilities or eye conditions that cause

142 visual impairment; and

143 (b) in which the eyes and optic nerves of the affected person appear normal and the
144 person's pupil responses are normal.

145 (8) "Deaf" means:

146 (a) if the person is three years of age or older but younger than 22 years of age, having
147 a hearing impairment, whether permanent or fluctuating, that, even with amplification,
148 adversely affects educational performance or substantially limits one or more major life
149 activities; and

150 (b) if the person is younger than three years of age, having a hearing impairment.

151 (9) "Deafblind" means:

152 (a) if the person is three years of age or older but younger than 22 years of age:

153 (i) deaf;

154 (ii) blind; and

155 (iii) having hearing and visual impairments that cause such severe communication and
156 other developmental and educational needs that the person cannot be accommodated in special
157 education programs solely for students who are deaf or blind; or

158 (b) if the person is younger than three years of age, having both hearing and vision
159 impairments that are diagnosed as provided in Section 53A-25b-301.

160 (10) "Deafness" means a hearing loss so severe that the person is impaired in
161 processing linguistic information through hearing, with or without amplification.

162 (11) "Educator" means a person who holds:

163 (a) (i) a license issued under Title 53A, Chapter 6, Educator Licensing and
164 Professional Practices Act; and

165 (ii) a position as:

166 (A) a teacher;

167 (B) a speech pathologist;

168 (C) a librarian or media specialist;

169 (D) a preschool teacher;

- 170 (E) a guidance counselor;
- 171 (F) a school psychologist;
- 172 (G) an audiologist; or
- 173 (H) an orientation and mobility specialist; or
- 174 (b) (i) a bachelor's degree or higher;
- 175 (ii) credentials from the governing body of the professional's area of practice; and
- 176 (iii) a position as:
 - 177 (A) a Parent Infant Program consultant;
 - 178 (B) a deafblind consultant;
 - 179 (C) a school nurse;
 - 180 (D) a physical therapist;
 - 181 (E) an occupational therapist;
 - 182 (F) a social worker; or
 - 183 (G) a low vision specialist.
- 184 (12) "Functional blindness" means a disorder in which the physical structures of the
- 185 eye may be functioning, but the person does not attend to, examine, utilize, or accurately
- 186 process visual information.
- 187 (13) "Functional hearing loss" means a central nervous system impairment that results
- 188 in abnormal auditory perception, including an auditory processing disorder or auditory
- 189 neuropathy/dys-synchrony, in which parts of the auditory system may be functioning, but the
- 190 person does not attend to, respond to, localize, utilize, or accurately process auditory
- 191 information.
- 192 (14) "Hard of hearing" means having a hearing loss, excluding deafness.
- 193 (15) "Hearing impairment" includes hard of hearing, deafness, or functional hearing
- 194 loss.
- 195 (16) "Individualized education program" or "IEP" means:
 - 196 (a) a written statement for a student with a disability that is developed, reviewed, and
 - 197 revised in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. Sec.

198 1400 et seq.; or

199 (b) an individualized family service plan developed:

200 (i) for a child with a disability who is younger than three years of age; and

201 (ii) in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. Sec.

202 1400 et seq.

203 (17) "LEA" means a local education agency that has administrative control and

204 direction for public education.

205 (18) "LEA of record" means the school district of residence of a student as determined

206 under Section 53A-2-201.

207 (19) "Low vision" means an impairment in vision in which:

208 (a) visual acuity is at 20/70 or worse; or

209 (b) the visual field is reduced to less than 20 degrees.

210 (20) "Parent Infant Program" means a program at the Utah Schools for the Deaf and

211 the Blind that provides services:

212 (a) through an interagency agreement with the Department of Health to children

213 younger than three years of age who are deaf, blind, or deafblind; and

214 (b) to children younger than three years of age who are deafblind through Deafblind

215 Services of the Utah Schools for the Deaf and the Blind.

216 (21) "Section 504" means Section 504 of the Rehabilitation Act of 1973.

217 (22) "Section 504 accommodation plan" means a plan developed pursuant to Section

218 504 of the Rehabilitation Act of 1973, as amended, to provide appropriate accommodations to

219 an individual with a disability to ensure access to major life activities.

220 (23) "Superintendent" means the superintendent of the Utah Schools for the Deaf and

221 the Blind.

222 (24) "Visual impairment" includes partial sightedness, low vision, blindness, cortical

223 visual impairment, functional blindness, and degenerative conditions that lead to blindness or

224 severe loss of vision.

225 Section 4. Section **53A-25b-103** is enacted to read:

226 53A-25b-103. Utah Schools for the Deaf and the Blind created -- Designated LEA
227 -- Services statewide.

228 (1) The Utah Schools for the Deaf and the Blind is created as a single public school
229 agency that includes:

230 (a) the Utah School for the Deaf;

231 (b) the Utah School for the Blind;

232 (c) programs for students who are deafblind; and

233 (d) the Parent Infant Program.

234 (2) Under the general control and supervision of the board, consistent with the board's
235 constitutional authority, the Utah Schools for the Deaf and the Blind:

236 (a) may provide services to students statewide:

237 (i) who are deaf, blind, or deafblind; or

238 (ii) who are neither deaf, blind, nor deafblind, if allowed under rules of the board
239 established pursuant to Section 53A-25b-301; and

240 (b) shall serve as the designated LEA for a student and assume the responsibilities of
241 providing services as prescribed through the student's IEP or Section 504 accommodation plan
242 when the student's LEA of record, parent or legal guardian, and the Utah Schools for the Deaf
243 and the Blind determine that the student be placed at the Utah Schools for the Deaf and the
244 Blind.

245 (3) When the Utah Schools for the Deaf and the Blind becomes a student's designated
246 LEA, the LEA of record and the Utah Schools for the Deaf and the Blind shall ensure that all
247 rights and requirements regarding individual student assessment, eligibility, services,
248 placement, and procedural safeguards provided through the Individuals with Disabilities
249 Education Act, 20 U.S.C. Sec. 1400 et seq. and Section 504 of the Rehabilitation Act of 1973,
250 as amended, remain in force.

251 (4) Nothing in this section diminishes the responsibility of a student's LEA of record
252 for the education of the student as provided in Title 53A, Chapter 15, Part 3, Education of
253 Children with Disabilities.

254 Section 5. Section **53A-25b-104** is enacted to read:

255 **53A-25b-104. Corporate powers.**

256 (1) The Utah Schools for the Deaf and the Blind is a public corporation with perpetual
257 succession and a corporate seal.

258 (2) The Utah Schools for the Deaf and the Blind may:

259 (a) sue and be sued;

260 (b) contract and be contracted with;

261 (c) take and hold by purchase, gift, devise, or bequest real and personal property
262 required for its uses; and

263 (d) convert property, if not suitable for its use, into other property or money.

264 (3) The property of the Utah Schools for the Deaf and the Blind is exempt from taxes
265 and assessments.

266 Section 6. Section **53A-25b-105** is enacted to read:

267 **53A-25b-105. Applicability of statutes to the Utah Schools for the Deaf and the**
268 **Blind.**

269 (1) The Utah Schools for the Deaf and the Blind is subject to Title 53A, State System
270 of Public Education, and other state laws applicable to public schools, except as otherwise
271 provided by this chapter.

272 (2) The following provisions of Title 53A, State System of Public Education, do not
273 apply to the Utah Schools for the Deaf and the Blind:

274 (a) provisions governing the budgets, funding, or finances of school districts or charter
275 schools; and

276 (b) provisions governing school construction.

277 (3) Except as provided in this chapter, the Utah Schools for the Deaf and the Blind is
278 subject to state laws governing state agencies, including:

279 (a) Title 51, Chapter 5, Funds Consolidation Act;

280 (b) Title 51, Chapter 7, State Money Management Act;

281 (c) Title 52, Chapter 4, Open and Public Meetings Act;

- 282 (d) Title 63A, Utah Administrative Services Code;
- 283 (e) Title 63G, Chapter 2, Government Records Access and Management Act;
- 284 (f) Title 63G, Chapter 4, Administrative Procedures Act;
- 285 (g) Title 63G, Chapter 6, Utah Procurement Code;
- 286 (h) Title 63J, Chapter 1, Budgetary Procedures Act;
- 287 (i) Title 63J, Chapter 2, Revenue Procedures and Control Act; and
- 288 (j) Title 67, Chapter 19, Utah State Personnel Management Act.

289 Section 7. Section **53A-25b-201** is enacted to read:

290 **Part 2. Governance**

291 **53A-25b-201. Authority of the State Board of Education.**

292 (1) The State Board of Education is the governing board of the Utah Schools for the
293 Deaf and the Blind.

294 (2) (a) The board shall appoint a superintendent for the Utah Schools for the Deaf and
295 the Blind.

296 (b) (i) Except as provided in Subsection (2)(b)(ii), the superintendent shall:

297 (A) hold an administrative/supervisory license;

298 (B) have demonstrated success in administration of education programs;

299 (C) have demonstrated skill in organizational management; and

300 (D) have a knowledge of special education practice and law.

301 (ii) The board may grant a letter of authorization permitting a person with outstanding
302 professional qualifications, including management experience and skills consistent with the
303 mission of the Utah Schools for the Deaf and the Blind, to be appointed as superintendent.

304 (c) The board shall establish the salary for the superintendent.

305 (3) (a) The board shall:

306 (i) appoint members of the Advisory Council for the Utah Schools for the Deaf and the
307 Blind; and

308 (ii) receive and consider the recommendations and advice of the advisory council.

309 (b) The board is not obligated to follow the recommendations of the advisory council.

310 (4) The board shall approve the annual budget and expenditures of the Utah Schools
311 for the Deaf and the Blind.

312 Section 8. Section **53A-25b-202** is enacted to read:

313 **53A-25b-202. Authority and duties of the superintendent.**

314 The superintendent shall:

315 (1) serve as the chief executive officer of the Utah Schools for the Deaf and the Blind;

316 (2) subject to the approval of the board, appoint an associate superintendent to
317 administer the Utah School for the Deaf based on:

318 (a) demonstrated competency as an expert educator of deaf persons; and

319 (b) knowledge of school management and the instruction of deaf persons;

320 (3) subject to the approval of the board, appoint an associate superintendent to
321 administer the Utah School for the Blind based on:

322 (a) demonstrated competency as an expert educator of blind persons; and

323 (b) knowledge of school management and the instruction of blind persons, including
324 an understanding of the unique needs and education of deafblind persons;

325 (4) establish policies for student conduct and procedures for due process, consistent
326 with federal and state statutes;

327 (5) establish policies and procedures for reporting child abuse in accordance with
328 Section 62A-4a-403; and

329 (6) establish procedures to ensure effective communication and relationships with
330 school districts, charter schools, other state agencies, and the community.

331 Section 9. Section **53A-25b-203** is enacted to read:

332 **53A-25b-203. Advisory Council for the Utah Schools for the Deaf and the Blind.**

333 (1) (a) There is created the Advisory Council for the Utah Schools for the Deaf and the
334 Blind composed of at least six, but no more than 11, voting members appointed by the board.

335 (b) The advisory council shall include:

336 (i) two members who are blind;

337 (ii) two members who are deaf; and

- 338 (iii) two members who are deafblind or parents of a deafblind child.
- 339 (c) The board may appoint other advisory council members who have an interest in
- 340 and knowledge of the needs and education of students who are deaf, blind, or deafblind.
- 341 (2) The board may remove a council member for cause.
- 342 (3) The board shall makes rules in accordance with Title 63G, Chapter 3, Utah
- 343 Administrative Rulemaking Act, regarding the operation of the advisory council, including
- 344 rules:
- 345 (a) specifying the term of membership for advisory council members;
- 346 (b) establishing procedures for filling a vacancy on the advisory council; and
- 347 (c) establishing procedures for dismissing an advisory council member.
- 348 (4) An advisory council member may receive per diem and expenses incurred in the
- 349 performance of the member's official duties at the rates established by the Division of Finance
- 350 under Sections 63A-3-106 and 63A-3-107.
- 351 (5) The advisory council shall meet at least ten times per year.
- 352 (6) (a) The advisory council shall elect a chair and vice chair from its membership.
- 353 (b) The advisory council may elect other officers from its membership.
- 354 (c) The advisory council officers shall serve one-year terms.
- 355 (7) A majority of the advisory council constitutes a quorum for the transaction of
- 356 business.
- 357 (8) The board shall assign a staff member from the Utah State Office of Education and
- 358 the superintendent to act as liaisons between the board and the advisory council.
- 359 (9) The advisory council shall:
- 360 (a) advise and make recommendations to the board, superintendent, and associate
- 361 superintendents regarding:
- 362 (i) staff positions;
- 363 (ii) policy;
- 364 (iii) budgets; and
- 365 (iv) operations;

366 (b) advise the board, superintendent, and associate superintendents as to the needs of
367 those who are deaf, blind, or deafblind and of appropriate programs and services to address
368 individual needs consistent with state and federal laws, rules, and regulations; and

369 (c) advise and make recommendations to the board regarding the continued
370 employment of the superintendent and associate superintendents.

371 (10) The board shall receive and consider the advice and recommendations of the
372 advisory council but is not obligated to follow that advice or adopt the recommendations.

373 Section 10. Section **53A-25b-301** is enacted to read:

374 **Part 3. Services and Educational Programs**

375 **53A-25b-301. Eligibility for services of the Utah Schools for the Deaf and the**
376 **Blind.**

377 (1) Except as provided in Subsections (3) and (4), a person is eligible to receive
378 services of the Utah Schools for the Deaf and the Blind if the person is:

379 (a) a resident of Utah;

380 (b) younger than 22 years of age;

381 (c) referred to the Utah Schools for the Deaf and the Blind by the person's school
382 district of residence or a local early intervention program; and

383 (d) identified as deaf, blind, or deafblind through:

384 (i) the special education eligibility determination process; or

385 (ii) the Section 504 eligibility determination process.

386 (2) (a) In diagnosing a person younger than age three who is deafblind, the following
387 information may be used:

388 (i) ophthalmological and audiological documentation;

389 (ii) functional vision or hearing assessments and evaluations; or

390 (iii) informed clinical opinion conducted by a person with expertise in deafness,
391 blindness, or deafblindness.

392 (b) Informed clinical opinion shall be:

393 (i) included in the determination of eligibility when documentation is incomplete or

394 not conclusive; and

395 (ii) based on pertinent records related to the person's current health status and medical
396 history, an evaluation and observations of the person's level of sensory functioning, and the
397 needs of the family.

398 (3) (a) A student who qualifies for special education shall have services and placement
399 determinations made through the IEP process.

400 (b) A student who qualifies for accommodations under Section 504 shall have services
401 and placement determinations made through the Section 504 team process.

402 (c) A parent or legal guardian of a child who is deaf, blind, or deafblind shall make the
403 final decision regarding placement of the child in a Utah Schools for the Deaf and the Blind
404 program or in a school district or charter school program subject to special education federal
405 regulations regarding due process.

406 (4) (a) A nonresident may receive services of the Utah Schools for the Deaf and the
407 Blind in accordance with rules of the board.

408 (b) The rules shall require the payment of tuition for services provided to a
409 nonresident.

410 (5) (a) The board shall make rules in accordance with this chapter and Title 63G,
411 Chapter 3, Utah Administrative Rulemaking Act, that determine the eligibility of students to
412 be served by the Utah Schools for the Deaf and the Blind.

413 (b) The board may make rules to allow a resident of Utah who is neither deaf, blind,
414 nor deafblind to receive services of the Utah Schools for the Deaf and the Blind if the student:

415 (i) is younger than 22 years of age and has an IEP; or

416 (ii) is younger than 19 years of age.

417 Section 11. Section **53A-25b-302** is enacted to read:

418 **53A-25b-302. Entrance policies and procedures.**

419 With input from the Utah Schools for the Deaf and the Blind, school districts, parents,
420 and the advisory council, the board shall establish entrance policies and procedures that IEP
421 teams and Section 504 teams are to consider in making placement recommendations at the

422 Utah Schools for the Deaf and the Blind.

423 Section 12. Section **53A-25b-303** is enacted to read:

424 **53A-25b-303. Educational programs.**

425 (1) The Utah Schools for the Deaf and the Blind shall provide an educational program
426 for a student:

427 (a) based on assessments of the student's abilities; and

428 (b) in accordance with the student's IEP or Section 504 accommodation plan.

429 (2) If a student's ability to access the core curriculum is impaired primarily due to a
430 severe sensory loss, the Utah Schools for the Deaf and the Blind shall provide an educational
431 program that will enable the student, with accommodations, to access the core curriculum.

432 (3) The Utah Schools for the Deaf and the Blind shall provide instruction in Braille to
433 students who are blind as required by Chapter 25a, Blind Persons' Literacy Rights and
434 Education Act.

435 Section 13. Section **53A-25b-304** is enacted to read:

436 **53A-25b-304. U-PASS testing and reporting.**

437 (1) The Utah Schools for the Deaf and the Blind shall annually administer, as
438 applicable, the U-PASS tests specified in Section 53A-1-602, except a student may take an
439 alternative test in accordance with the student's IEP.

440 (2) By November 30 of each year, through 2011, the Utah Schools for the Deaf and
441 the Blind shall report to the board and the Education Interim Committee the following data:

442 (a) number of students served;

443 (b) services provided;

444 (c) student participation in state assessments;

445 (d) academic achievement of students; and

446 (e) the impact on enrollment at the Utah Schools for the Deaf and the Blind resulting
447 from statutory changes regarding eligibility.

448 Section 14. Section **53A-25b-305** is enacted to read:

449 **53A-25b-305. Collaboration with Department of Health.**

450 The Utah Schools for the Deaf and the Blind shall collaborate with the Department of
451 Health to provide services to children with disabilities who are younger than three years of age
452 in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et
453 seq.

454 Section 15. Section **53A-25b-306** is enacted to read:

455 **53A-25b-306. Programs for deafblind individuals -- State deafblind education**
456 **specialist.**

457 (1) The board shall adopt policies and programs for providing appropriate educational
458 services to individuals who are deafblind.

459 (2) Except as provided in Subsection (4), the board shall designate an employee of the
460 Utah State Office of Education who holds a deafblind certification or equivalent training and
461 expertise to:

462 (a) act as a resource coordinator for the board on public education programs designed
463 for individuals who are deafblind;

464 (b) facilitate the design and implementation of professional development programs to
465 assist school districts, charter schools, and the Utah Schools for the Deaf and the Blind in
466 meeting the educational needs of those who are deafblind; and

467 (c) facilitate the design of and assist with the implementation of one-on-one
468 intervention programs in school districts, charter schools, and at the Utah Schools for the Deaf
469 and the Blind for those who are deafblind, serving as a resource for, or team member of,
470 individual IEP teams.

471 (3) The board may authorize and approve the costs of an employee of the Utah State
472 Office of Education to obtain a deafblind certification or equivalent training and expertise to
473 qualify for the position described in Subsection (2).

474 (4) The board may contract with a third party for the services required under
475 Subsection (2).

476 Section 16. Section **53A-25b-307** is enacted to read:

477 **53A-25b-307. Educational Enrichment Program for Hearing and Visually**

478 **Impaired Students -- Funding for the program.**

479 (1) There is established the Educational Enrichment Program for Hearing and Visually
480 Impaired Students.

481 (2) The purpose of the program is to provide opportunities that will, in a family
482 friendly environment, enhance the educational services required for deaf, blind, or deafblind
483 students.

484 (3) The advisory council shall design and implement the program, subject to the
485 approval by the board.

486 (4) The program shall be funded from the interest and dividends derived from the
487 permanent funds created for the Utah Schools for the Deaf and the Blind pursuant to Section
488 12 of the Utah Enabling Act and distributed by the director of the School and Institutional
489 Trust Lands Administration under Section 53C-3-103.

490 Section 17. Section **53A-25b-401** is enacted to read:

491 **Part 4. Employees**

492 **53A-25b-401. Educators exempt from Department of Human Resource**

493 **Management rules -- Collective bargaining agreement.**

494 (1) Educators employed by the Utah Schools for the Deaf and the Blind are exempt
495 from mandatory compliance with rules of the Department of Human Resource Management.

496 (2) The board may enter into a collective bargaining agreement to establish
497 compensation and other personnel policies with educators employed by the Utah Schools for
498 the Deaf and the Blind to replace rules of the Department of Human Resource Management.

499 (3) A collective bargaining agreement made under Subsection (2) is subject to the
500 same requirements that are imposed on local school boards by Section 53A-3-411.

501 Section 18. Section **53A-25b-402** is enacted to read:

502 **53A-25b-402. Annual salary adjustments for educators.**

503 (1) Subject to future budget constraints, the Legislature shall annually appropriate
504 money to the board for the salary adjustments described in this section, including step and lane
505 changes.

506 (2) The board shall include in its annual budget request for the Utah Schools for the
507 Deaf and the Blind an amount of money sufficient to adjust educators' salaries as described in
508 Subsection (3) and fund step and lane changes.

509 (3) (a) The board shall determine the salary adjustment specified in Subsection (2) by:

510 (i) calculating a weighted average salary adjustment for nonadministrative licensed
511 staff adopted by the school districts of the state, with the average weighted by the number of
512 teachers in each school district; and

513 (ii) increasing the weighted average salary adjustment by 10% in any year in which
514 teachers of the Utah Schools for the Deaf and the Blind are not ranked in the top ten in 20-year
515 earnings when compared to earnings of teachers in the school districts of the state.

516 (b) In calculating a weighted average salary adjustment for nonadministrative licensed
517 staff adopted by the school districts of the state under Subsection (3)(a), the board shall
518 exclude educator salary adjustments provided pursuant to Section 53A-17a-153.

519 (4) From money appropriated to the board for salary adjustments, the board shall
520 adjust the salary schedule applicable to educators at the school each year.

521 Section 19. Section **53A-25b-501** is enacted to read:

522 **Part 5. Utah State Instructional Materials Access Center**

523 **53A-25b-501. Instructional Materials Access Center -- Board to make rules.**

524 (1) The Utah State Office of Education shall collaborate with the Utah Schools for the
525 Deaf and the Blind, school districts, and charter schools in establishing the Utah State
526 Instructional Materials Access Center to provide students with print disabilities access to
527 instructional materials in alternate formats in a timely manner.

528 (2) The board shall make rules, in accordance with Title 63G, Chapter 3, Utah
529 Administrative Rulemaking Act, to:

530 (a) establish the Utah State Instructional Materials Access Center;

531 (b) define how the Educational Resource Center at the Utah Schools for the Deaf and
532 the Blind shall collaborate in the operation of the Utah State Instructional Materials Access
533 Center;

534 (c) specify procedures for the operation of the Utah State Instructional Materials
535 Access Center, including procedures to:
536 (i) identify students who qualify for instructional materials in alternate formats; and
537 (ii) distribute and store instructional materials in alternate formats;
538 (d) establish the contribution of school districts and charter schools towards the cost of
539 instructional materials in alternate formats; and
540 (e) require textbook publishers, as a condition of contract, to provide electronic file
541 sets in conformance with the National Instructional Materials Accessibility Standard.

542 Section 20. Section **63I-4-102** is amended to read:

543 **63I-4-102. Definitions.**

544 (1) (a) "Activity" means to provide a good or service.

545 (b) "Activity" includes to:

546 (i) manufacture a good or service;

547 (ii) process a good or service;

548 (iii) sell a good or service;

549 (iv) offer for sale a good or service;

550 (v) rent a good or service;

551 (vi) lease a good or service;

552 (vii) deliver a good or service;

553 (viii) distribute a good or service; or

554 (ix) advertise a good or service.

555 (2) (a) Except as provided in Subsection (2)(b), "agency" means:

556 (i) the state; or

557 (ii) an entity of the state including a department, office, division, authority,
558 commission, or board.

559 (b) "Agency" does not include:

560 (i) the Legislature;

561 (ii) an entity or agency of the Legislature;

- 562 (iii) the state auditor;
- 563 (iv) the state treasurer;
- 564 (v) the Office of the Attorney General;
- 565 (vi) the Dairy Commission created in Title 4, Chapter 22, Dairy Promotion Act;
- 566 (vii) the Heber Valley Railroad Authority created in Title 9, Chapter 3, Part 3, Heber
567 Valley Historic Railroad Authority;
- 568 (viii) the Utah Science Center Authority created in Title 9, Chapter 3, Part 4, Utah
569 Science Center Authority;
- 570 (ix) the Utah Housing Corporation created in Title 9, Chapter 4, Part 9, Utah Housing
571 Corporation Act;
- 572 (x) the Utah State Fair Corporation created in Title 9, Chapter 4, Part 11, Utah State
573 Fair Corporation Act;
- 574 (xi) the Workers' Compensation Fund created in Title 31A, Chapter 33, Workers'
575 Compensation Fund;
- 576 (xii) the Utah State Retirement Office created in Title 49, Chapter 11, Utah State
577 Retirement Systems Administration;
- 578 [~~xviii~~] (xiii) a charter school chartered by the State Charter School Board under Title
579 53A, Chapter 1a, Part 5, The Utah Charter Schools Act[-];
- 580 (xiv) the Utah Schools for the Deaf and the Blind created in Title 53A, Chapter 25b,
581 Utah Schools for the Deaf and the Blind;
- 582 [~~xvi~~] (xv) an institution of higher education as defined in Section 53B-3-102;
- 583 [~~xiii~~] (xvi) the School and Institutional Trust Lands Administration created in Title
584 53C, Chapter 1, Part 2, School and Institutional Trust Lands Administration;
- 585 [~~xiv~~] (xvii) the Utah Communications Agency Network created in Title 63C,
586 Chapter 7, Utah Communications Agency Network Act; or
- 587 [~~xv~~] (xviii) the Utah Capital Investment Corporation created in Title 63M, Chapter
588 1, Part 12, Utah Venture Capital Enhancement Act[+];
- 589 [~~xvii~~] ~~a school established under Title 53A, Chapter 25, Schools for the Deaf and~~

- 590 ~~Blind; or]~~
- 591 (3) "Agency head" means the chief administrative officer of an agency.
- 592 (4) "Board" means the Privatization Policy Board created in Section 63I-4-201.
- 593 (5) "Commercial activity" means to engage in an activity that can be obtained in
- 594 whole or in part from a private enterprise.
- 595 (6) "Local entity" means:
- 596 (a) a political subdivision of the state, including a:
- 597 (i) county;
- 598 (ii) city;
- 599 (iii) town;
- 600 (iv) local school district;
- 601 (v) local district; or
- 602 (vi) special service district;
- 603 (b) an agency of an entity described in this Subsection (6), including a department,
- 604 office, division, authority, commission, or board; and
- 605 (c) an entity created by an interlocal cooperative agreement under Title 11, Chapter
- 606 13, Interlocal Cooperation Act, between two or more entities described in this Subsection (6).
- 607 (7) "Private enterprise" means a person that for profit:
- 608 (a) manufactures a good or service;
- 609 (b) processes a good or service;
- 610 (c) sells a good or service;
- 611 (d) offers for sale a good or service;
- 612 (e) rents a good or service;
- 613 (f) leases a good or service;
- 614 (g) delivers a good or service;
- 615 (h) distributes a good or service; or
- 616 (i) advertises a good or service.
- 617 (8) "Privatize" means that an activity engaged in by an agency is transferred so that a

618 private enterprise engages in the activity including a transfer by:

- 619 (a) contract;
- 620 (b) transfer of property; or
- 621 (c) another arrangement.

622 Section 21. Section **67-19-12** is amended to read:

623 **67-19-12. State pay plans -- Applicability of section -- Exemptions -- Duties of**
624 **the executive director.**

625 (1) (a) This section, and the rules adopted by the department to implement this section,
626 apply to each career and noncareer employee not specifically exempted under Subsection (2).

627 (b) If not exempted under Subsection (2), an employee is considered to be in classified
628 service.

629 (2) The following employees are exempt from this section:

- 630 (a) members of the Legislature and legislative employees;
- 631 (b) members of the judiciary and judicial employees;
- 632 (c) elected members of the executive branch and their direct staff who meet career
633 service exempt criteria as defined in Subsection 67-19-15(1)(k);
- 634 (d) [~~certificated~~] employees of the State Board of Education who are licensed by the
635 State Board of Education;
- 636 (e) officers, faculty, and other employees of state institutions of higher education;
- 637 (f) employees in any position that is determined by statute to be exempt from this
638 Subsection (2);
- 639 (g) employees in the Office of the Attorney General;
- 640 (h) department heads and other persons appointed by the governor pursuant to statute;
- 641 (i) employees of the Department of Community and Culture whose positions are
642 designated as executive/professional positions by the executive director of the Department of
643 Community and Culture with the concurrence of the executive director;
- 644 (j) employees of the Governor's Office of Economic Development whose positions are
645 designated as executive/professional positions by the director of the office; [~~and~~]

646 (k) employees of the Medical Education Council[-]; and
647 (l) educators as defined by Section 53A-25b-102 who are employed by the Utah
648 Schools for the Deaf and the Blind.

649 (3) (a) The executive director shall prepare, maintain, and revise a position
650 classification plan for each employee position not exempted under Subsection (2) to provide
651 equal pay for equal work.

652 (b) Classification of positions shall be based upon similarity of duties performed and
653 responsibilities assumed, so that the same job requirements and the same salary range may be
654 applied equitably to each position in the same class.

655 (c) The executive director shall allocate or reallocate the position of each employee in
656 classified service to one of the classes in the classification plan.

657 (d) (i) The department shall conduct periodic studies and desk audits to provide that
658 the classification plan remains reasonably current and reflects the duties and responsibilities
659 assigned to and performed by employees.

660 (ii) The executive director shall determine the schedule for studies and desk audits
661 after considering factors such as changes in duties and responsibilities of positions or agency
662 reorganizations.

663 (4) (a) With the approval of the governor, the executive director shall develop and
664 adopt pay plans for each position in classified service.

665 (b) The executive director shall design each pay plan to achieve, to the degree that
666 funds permit, comparability of state salary ranges to salary ranges used by private enterprise
667 and other public employment for similar work.

668 (c) The executive director shall adhere to the following in developing each pay plan:

669 (i) Each pay plan shall consist of sufficient salary ranges to permit adequate salary
670 differential among the various classes of positions in the classification plan.

671 (ii) (A) The executive director shall assign each class of positions in the classification
672 plan to a salary range and shall set the width of the salary range to reflect the normal growth
673 and productivity potential of employees in that class.

674 (B) The width of the ranges need not be uniform for all classes of positions in the plan,
675 but each range shall contain merit steps in increments of 2.75% salary increases.

676 (iii) (A) The executive director shall issue rules for the administration of pay plans.

677 (B) The rules may provide for exceptional performance increases and for a program of
678 incentive awards for cost-saving suggestions and other commendable acts of employees.

679 (C) The executive director shall issue rules providing for salary adjustments.

680 (iv) Merit step increases shall be granted, if funds are available, to employees who
681 receive a rating of "successful" or higher in an annual evaluation of their productivity and
682 performance.

683 (v) By October 31 of each year, the executive director shall submit market
684 comparability adjustments to the director of the Governor's Office of Planning and Budget for
685 consideration to be included as part of the affected agency's base budgets.

686 (vi) By October 31 of each year, the executive director shall recommend a
687 compensation package to the governor.

688 (vii) (A) Adjustments shall incorporate the results of a total compensation market
689 survey of salary ranges and benefits of a reasonable cross section of comparable benchmark
690 positions in private and public employment in the state.

691 (B) The survey may also study comparable unusual positions requiring recruitment in
692 other states.

693 (C) The executive director may cooperate with other public and private employers in
694 conducting the survey.

695 (viii) (A) The executive director shall establish criteria to assure the adequacy and
696 accuracy of the survey and shall use methods and techniques similar to and consistent with
697 those used in private sector surveys.

698 (B) Except as provided under Section 67-19-12.3, the survey shall include a
699 reasonable cross section of employers.

700 (C) The executive director may cooperate with or participate in any survey conducted
701 by other public and private employers.

702 (D) The executive director shall obtain information for the purpose of constructing the
703 survey from the Division of Workforce Information and Payment Services and shall include
704 employer name, number of persons employed by the employer, employer contact information
705 and job titles, county code, and salary if available.

706 (E) The department shall acquire and protect the needed records in compliance with
707 the provisions of Section 35A-4-312.

708 (ix) The establishing of a salary range is a nondelegable activity and is not appealable
709 under the grievance procedures of Sections 67-19-30 through 67-19-32, Title 67, Chapter 19a,
710 Grievance and Appeal Procedures, or otherwise.

711 (x) The governor shall:

712 (A) consider salary adjustments recommended under Subsection (4)(c)(vi) in
713 preparing the executive budget and shall recommend the method of distributing the
714 adjustments;

715 (B) submit compensation recommendations to the Legislature; and

716 (C) support the recommendation with schedules indicating the cost to individual
717 departments and the source of funds.

718 (xi) If funding is approved by the Legislature in a general appropriations act, the
719 adjustments take effect on the July 1 following the enactment.

720 (5) (a) The executive director shall regularly evaluate the total compensation program
721 of state employees in the classified service.

722 (b) The department shall determine if employee benefits are comparable to those
723 offered by other private and public employers using information from:

724 (i) the most recent edition of the Employee Benefits Survey Data conducted by the
725 U.S. Chamber of Commerce Research Center; or

726 (ii) the most recent edition of a nationally recognized benefits survey.

727 (6) (a) The executive director shall submit proposals for a state employee
728 compensation plan to the governor by October 31 of each year, setting forth findings and
729 recommendations affecting employee compensation.

730 (b) The governor shall consider the executive director's proposals in preparing budget
731 recommendations for the Legislature.

732 (c) The governor's budget proposals to the Legislature shall include a specific
733 recommendation on employee compensation.

734 Section 22. Section **67-19-15** is amended to read:

735 **67-19-15. Career service -- Exempt positions -- Schedules for civil service**
736 **positions -- Coverage of career service provisions.**

737 (1) Except as otherwise provided by law or by rules and regulations established for
738 federally aided programs, the following positions are exempt from the career service
739 provisions of this chapter:

740 (a) the governor, members of the Legislature, and all other elected state officers,
741 designated as Schedule AA;

742 (b) appointed executives and board or commission executives enumerated in Section
743 67-22-2, and commissioners designated as Schedule AB;

744 (c) all employees and officers in the office and at the residence of the governor,
745 designated as Schedule AC;

746 (d) employees who are in a confidential relationship to an agency head or
747 commissioner and who report directly to, and are supervised by, a department head,
748 commissioner, or deputy director of an agency or its equivalent, designated as Schedule AD;

749 (e) unskilled employees in positions requiring little or no specialized skill or training,
750 designated as Schedule AE;

751 (f) part-time professional noncareer persons who are paid for any form of medical and
752 other professional service and who are not engaged in the performance of administrative
753 duties, designated as Schedule AF;

754 (g) employees in the Office of the Attorney General who are under their own career
755 service pay plan under Sections 67-5-7 through 67-5-13, designated as Schedule AG;

756 (h) teaching staff of all state institutions [~~and patients and inmates employed in state~~
757 ~~institutions~~], including educators as defined by Section 53A-25b-102 who are employed by the

758 Utah Schools for the Deaf and the Blind, designated as Schedule AH;

759 (i) persons appointed to a position vacated by an employee who has a right to return
760 under federal or state law or policy, designated as Schedule AI;

761 (j) noncareer employees compensated for their services on a seasonal or contractual
762 basis who are hired for limited periods of less than nine consecutive months or who are
763 employed on less than 1/2 time basis, designated as Schedule AJ;

764 (k) those employees in a personal and confidential relationship to elected officials,
765 designated as Schedule AK;

766 (l) employees appointed to perform work of a limited duration not exceeding two years
767 or to perform work with time-limited funding, designated as Schedule AL;

768 (m) employees of the Department of Community and Culture whose positions are
769 designated as executive/professional positions by the executive director of the Department of
770 Community and Culture with the concurrence of the executive director, and employees of the
771 Governor's Office of Economic Development whose positions are designated as
772 executive/professional positions by the director of the office, designated as Schedule AM;

773 (n) employees of the Legislature, designated as Schedule AN;

774 (o) employees of the judiciary, designated as Schedule AO;

775 (p) all judges in the judiciary, designated as Schedule AP;

776 (q) members of state and local boards and councils appointed by the governor and
777 governing bodies of agencies, other local officials serving in an ex officio capacity, officers,
778 faculty, and other employees of state universities and other state institutions of higher
779 education, designated as Schedule AQ;

780 (r) employees who make statewide policy, designated as Schedule AR;

781 (s) any other employee whose appointment is required by statute to be career service
782 exempt, designated as Schedule AS; ~~and~~

783 (t) employees of the Department of Technology Services, designated as
784 executive/professional positions by the executive director of the Department of Technology
785 Services with the concurrence of the executive director, designated as Schedule AT[-]; and

786 (u) patients and inmates employed in state institutions, designated as Schedule AU.

787 (2) The civil service shall consist of two schedules as follows:

788 (a) (i) Schedule A is the schedule consisting of positions exempted by Subsection (1).

789 (ii) Removal from any appointive position under Schedule A, unless otherwise
790 regulated by statute, is at the pleasure of the appointing officers without regard to tenure.

791 (b) Schedule B is the competitive career service schedule, consisting of all positions
792 filled through competitive selection procedures as defined by the executive director.

793 (3) (a) The executive director, after consultation with the heads of concerned executive
794 branch departments and agencies and with the approval of the governor, shall allocate
795 positions to the appropriate schedules under this section.

796 (b) Agency heads shall make requests and obtain approval from the executive director
797 before changing the schedule assignment and tenure rights of any position.

798 (c) Unless the executive director's decision is reversed by the governor, when the
799 executive director denies an agency's request, the executive director's decision is final.

800 (4) (a) Compensation for employees of the Legislature shall be established by the
801 directors of the legislative offices in accordance with Section 36-12-7.

802 (b) Compensation for employees of the judiciary shall be established by the state court
803 administrator in accordance with Section 78A-2-107.

804 (c) Compensation for officers, faculty, and other employees of state universities and
805 institutions of higher education shall be established as provided in Title 53B, Chapters 1,
806 Governance, Powers, Rights, and Responsibilities, and 2, Institutions of Higher Education.

807 (d) Unless otherwise provided by law, compensation for all other Schedule A
808 employees shall be established by their appointing authorities, within ranges approved by, and
809 after consultation with the executive director of the Department of Human Resource
810 Management.

811 (5) All employees of the Office of State Auditor, the Office of State Treasurer, and
812 employees who are not exempt under this section are covered by the career service provisions
813 of this chapter.

- 814 Section 23. **Repealer.**
- 815 This bill repeals:
- 816 Section **53A-25-101, School for the Deaf.**
- 817 Section **53A-25-102, Corporate powers.**
- 818 Section **53A-25-103, Purposes -- Qualifications of pupils.**
- 819 Section **53A-25-104, Governance and control by board of trustees -- Initial**
- 820 **placement of children -- Individualized education programs.**
- 821 Section **53A-25-105, Meetings of board.**
- 822 Section **53A-25-107, Board powers -- Bylaws -- Contracts with instructors --**
- 823 **Religious and political doctrine.**
- 824 Section **53A-25-108, Appointment of superintendent and treasurer.**
- 825 Section **53A-25-109, Qualifications and duties of superintendent -- Removal.**
- 826 Section **53A-25-110, Fiscal year.**
- 827 Section **53A-25-111, Annual salary adjustments for school employees -- Benefits.**
- 828 Section **53A-25-201, School for the Blind.**
- 829 Section **53A-25-202, Corporate powers.**
- 830 Section **53A-25-203, Governance and control by board of trustees -- Initial**
- 831 **placement of children -- Individualized education programs.**
- 832 Section **53A-25-204, Subject to same laws as School for Deaf.**
- 833 Section **53A-25-205, Purposes -- Qualifications of pupils.**
- 834 Section **53A-25-206, Instruction of adults with visual impairments.**
- 835 Section **53A-25-301, Establishment of council -- Membership.**
- 836 Section **53A-25-302, Appointment and terms of council members -- Powers --**
- 837 **Expenses.**
- 838 Section **53A-25-303, Council meetings -- Officers.**
- 839 Section **53A-25-304, Duties of council.**
- 840 Section **53A-25-305, Dual sensory impairment disability education specialist.**
- 841 Section **53A-25-306, Educational Enrichment Program for Hearing and Visually**

842 **Impaired Students -- Funding for the program.**