

Senator Aaron Osmond proposes the following substitute bill:

PUBLIC EDUCATION EMPLOYMENT REFORM

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Aaron Osmond

House Sponsor: Francis D. Gibson

LONG TITLE

General Description:

This bill modifies provisions related to the employment of public education personnel.

Highlighted Provisions:

This bill:

▶ reorganizes provisions regarding:

- the status and termination of school district employees; and
- educator evaluations;

▶ requires a charter school to comply with Title 52, Chapter 3, Prohibiting

Employment of Relatives;

▶ creates the Public Education Human Resource Management Act;

▶ directs the State Board of Education to make rules requiring the performance of school district employees to be evaluated annually, with exceptions;

▶ prescribes procedures for the nonrenewal or termination of a career employee's contract for unsatisfactory performance;

▶ restricts the transfer of a public education employee with unsatisfactory performance;

▶ directs the State Board of Education to make rules requiring a school district's employee compensation system to be aligned with the district's annual evaluation



26 system;

27 ▶ requires the salary of certain school or district administrators to be contingent on an
28 evaluation; and

29 ▶ makes technical amendments.

30 **Money Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **53A-1a-512**, as last amended by Laws of Utah 2010, Chapters 266 and 353

37 **53A-3-425**, as last amended by Laws of Utah 2011, Chapter 402

38 **53A-11-605**, as enacted by Laws of Utah 2007, Chapter 111

39 ENACTS:

40 **53A-8a-101**, Utah Code Annotated 1953

41 **53A-8a-301**, Utah Code Annotated 1953

42 **53A-8a-302**, Utah Code Annotated 1953

43 **53A-8a-409**, Utah Code Annotated 1953

44 **53A-8a-503**, Utah Code Annotated 1953

45 **53A-8a-506**, Utah Code Annotated 1953

46 **53A-8a-601**, Utah Code Annotated 1953

47 **53A-8a-602**, Utah Code Annotated 1953

48 **53A-8a-701**, Utah Code Annotated 1953

49 **53A-8a-702**, Utah Code Annotated 1953

50 **53A-8a-703**, Utah Code Annotated 1953

51 RENUMBERS AND AMENDS:

52 **53A-8a-102**, (Renumbered from 53A-8-102, as last amended by Laws of Utah 2011,
53 Chapter 420)

54 **53A-8a-201**, (Renumbered from 53A-8-106, as last amended by Laws of Utah 2010,
55 Chapter 183)

56 **53A-8a-401**, (Renumbered from 53A-10-101, as last amended by Laws of Utah 2011,

- 57 Chapter 434)
- 58 **53A-8a-402**, (Renumbered from 53A-10-102, as last amended by Laws of Utah 2011,
- 59 Chapter 434)
- 60 **53A-8a-403**, (Renumbered from 53A-10-103, as last amended by Laws of Utah 2011,
- 61 Chapter 434)
- 62 **53A-8a-404**, (Renumbered from 53A-10-105, as enacted by Laws of Utah 1988,
- 63 Chapter 2)
- 64 **53A-8a-405**, (Renumbered from 53A-10-106, as last amended by Laws of Utah 2011,
- 65 Chapter 434)
- 66 **53A-8a-406**, (Renumbered from 53A-10-106.5, as last amended by Laws of Utah 2011,
- 67 Chapter 434)
- 68 **53A-8a-407**, (Renumbered from 53A-10-107, as last amended by Laws of Utah 2011,
- 69 Chapter 434)
- 70 **53A-8a-408**, (Renumbered from 53A-10-108, as last amended by Laws of Utah 2009,
- 71 Chapter 287)
- 72 **53A-8a-501**, (Renumbered from 53A-8-103, as last amended by Laws of Utah 1994,
- 73 Chapter 51)
- 74 **53A-8a-502**, (Renumbered from 53A-8-104, as last amended by Laws of Utah 2011,
- 75 Chapter 286)
- 76 **53A-8a-504**, (Renumbered from 53A-8-105, as last amended by Laws of Utah 2007,
- 77 Chapter 306)
- 78 **53A-8a-505**, (Renumbered from 53A-8-107, as last amended by Laws of Utah 2011,
- 79 Chapter 420)



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

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

83 **53A-1a-512. Employees of charter schools.**

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

85 (2) The school's governing body shall determine the level of compensation and all
86 terms and conditions of employment, except as otherwise provided in Subsections (7) and (8)
87 and under this part.

88 (3) [~~The following statutes governing public employees and officers do~~] Chapter 8a,
89 Public Education Human Resource Management Act, does not apply to a charter [~~schools:~~]
90 school.

91 [~~Chapter 8, Utah Orderly School Termination Procedures Act;~~]

92 [~~Chapter 10, Educator Evaluation; and~~]

93 [~~Title 52, Chapter 3, Prohibiting Employment of Relatives.~~]

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

96 (i) are licensed; or

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

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

101 (5) State Board of Education rules governing the licensing or certification of
102 administrative and supervisory personnel do not apply to charter schools.

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

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

108 (7) Except as provided under Subsection (8), an employee of a charter school shall be a
109 member of a retirement system or plan under Title 49, Utah State Retirement and Insurance
110 Benefit Act.

111 (8) (a) At the time of application for a charter school, whether the chartering entity is
112 the State Charter School Board, a local school board, or a board of trustees of a higher
113 education institution, a proposed charter school may make an election of nonparticipation as an
114 employer for retirement programs under:

115 (i) Title 49, Chapter 12, Public Employees' Contributory Retirement Act;

116 (ii) Title 49, Chapter 13, Public Employees' Noncontributory Retirement Act; and

117 (iii) Title 49, Chapter 22, New Public Employees' Tier II Contributory Retirement Act.

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

119 nonparticipation prior to December 31, 2004.

120 (c) An election provided under this Subsection (8):

121 (i) shall be made at the time specified under Subsection (8)(a) or (b);

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

124 (iii) is in effect unless the charter school makes an irrevocable retraction of the election
125 of nonparticipation in accordance with Subsection (9); and

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

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

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

131 or

132 (ii) under any other program.

133 (9) (a) A charter school that made an election of nonparticipation as an employer for
134 the following retirement programs may subsequently make an irrevocable retraction of the
135 election of nonparticipation:

136 (i) Title 49, Chapter 12, Public Employees' Contributory Retirement Act;

137 (ii) Title 49, Chapter 13, Public Employees' Noncontributory Retirement Act; or

138 (iii) Title 49, Chapter 22, New Public Employees' Tier II Contributory Retirement Act.

139 (b) A retraction provided under this Subsection (9):

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

142 (ii) is a one-time election;

143 (iii) is irrevocable; and

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

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

148 (a) has received:

149 (i) the disclosure required under Section 63A-4-204.5 if the charter school participates

150 in the Risk Management Fund; or

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

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

155 Section 2. Section **53A-3-425** is amended to read:

156 **53A-3-425. Association leave -- District policy.**

157 (1) As used in this section:

158 (a) "Association leave" means leave from a school district employee's regular school
159 responsibilities granted for that employee to spend time for association, employee association,
160 or union duties.

161 (b) "Employee association" means an association that:

162 (i) negotiates employee salaries, benefits, contracts, or other conditions of employment;

163 or

164 (ii) performs union duties.

165 (2) Except as provided in Subsection (3), a local school board may not allow paid
166 association leave for a school district employee to perform an employee association or union
167 duty.

168 (3) (a) A local school board may allow paid association leave for a school district
169 employee to perform an employee association duty if:

170 (i) the duty performed by the employee on paid association leave will directly benefit
171 the school district, including representing the school district's licensed educators:

172 (A) on a board or committee, such as the school district's foundation, a curriculum
173 development board, insurance committee, or catastrophic leave committee;

174 (B) at a school district leadership meeting; or

175 (C) at a workshop or meeting conducted by the school district's local school board;

176 (ii) the duty performed by the employee on paid association leave does not include
177 political activity, including:

178 (A) advocating for or against a candidate for public office in a partisan or nonpartisan
179 election;

180 (B) soliciting a contribution for a political action committee, a political issues

181 committee, a political party, or a candidate, as defined in Section 20A-11-101; or

182 (C) initiating, drafting, soliciting signatures for, or advocating for or against a ballot
183 proposition, as defined in Section 20A-1-102; and

184 (iii) the local school board ensures compliance with the requirements of Subsections
185 (4)(a) through (g).

186 (b) Prior to a school district employee's participation in paid or unpaid association
187 leave, a local school board shall adopt a written policy that governs association leave.

188 (c) Except as provided in Subsection (3)(d), a local school board policy that governs
189 association leave shall require reimbursement to the school district of the costs for an
190 employee, including benefits, for the time that the employee is:

191 (i) on unpaid association leave; or

192 (ii) participating in a paid association leave activity that does not provide a direct
193 benefit to the school district.

194 (d) For a school district that allowed association leave described in Subsections
195 (3)(c)(i) and (ii) prior to January 1, 2011, the local school board policy that governs association
196 leave may allow up to 10 days of association leave before requiring a reimbursement described
197 in Subsection (3)(c).

198 (e) A reimbursement required under Subsection (3)(c), (d), or (4)(g) may be provided
199 by an employee, association, or union.

200 (4) If a local school board adopts a policy to allow paid association leave, the policy
201 shall include procedures and controls to:

202 (a) ensure that the duties performed by employees on paid association leave directly
203 benefit the school district;

204 (b) require the school district to document the use and approval of paid association
205 leave;

206 (c) require school district supervision of employees on paid association leave;

207 (d) require the school district to account for the costs and expenses of paid association
208 leave;

209 (e) ensure that during the hours of paid association leave a school district employee
210 may not engage in political activity, including:

211 (i) advocating for or against a candidate for public office in a partisan or nonpartisan

212 election;

213 (ii) soliciting a contribution for a political action committee, a political issues
214 committee, a political party, or a candidate, as defined in Section 20A-11-101; and

215 (iii) initiating, drafting, soliciting signatures for, or advocating for or against a ballot
216 proposition, as defined in Section 20A-1-102;

217 (f) ensure that association leave is only paid out of school district funds when the paid
218 association leave directly benefits the district; and

219 (g) require the reimbursement to the school district of the cost of paid association leave
220 activities that do not provide a direct benefit to education within the school district.

221 (5) If a local school board adopts a policy to allow paid association leave, that policy
222 shall indicate that a willful violation of this section or of a policy adopted in accordance with
223 Subsection (3) or (4) may be used for disciplinary action under Section [~~53A-8-104~~]

224 53A-8a-503.

225 Section 3. Section **53A-8a-101** is enacted to read:

226 **CHAPTER 8a. PUBLIC EDUCATION HUMAN RESOURCE MANAGEMENT ACT**

227 **Part 1. General Provisions**

228 **53A-8a-101. Title.**

229 This chapter is known as the "Public Education Human Resource Management Act."

230 Section 4. Section **53A-8a-102**, which is renumbered from Section 53A-8-102 is
231 renumbered and amended to read:

232 [~~53A-8-102~~]. **53A-8a-102. Definitions.**

233 As used in this chapter:

234 (1) "Career employee" means an employee of a school district who has obtained a
235 reasonable expectation of continued employment based upon Section [~~53A-8-106~~] 53A-8a-201
236 and an agreement with the employee or the employee's association, district practice, or policy.

237 (2) "Contract term" or "term of employment" means the period of time during which an
238 employee is engaged by the school district under a contract of employment, whether oral or
239 written.

240 (3) "Dismissal" or "termination" means:

241 (a) termination of the status of employment of an employee;

242 (b) failure to renew or continue the employment contract of a career employee beyond

243 the then-current school year;

244 (c) reduction in salary of an employee not generally applied to all employees of the
245 same category employed by the school district during the employee's contract term; or

246 (d) change of assignment of an employee with an accompanying reduction in pay,
247 unless the assignment change and salary reduction are agreed to in writing.

248 (4) (a) "Employee" means a career or provisional employee of a school district, ~~[but]~~
249 except as provided in Subsection (4)(b).

250 (b) For purposes of Part 2, Status of Employment, Part 4, Educator Evaluations, and
251 Part 5, Orderly School Termination Procedures, "employee" does not include:

252 ~~[(a)]~~ (i) the district superintendent, or the equivalent at the Schools for the Deaf and the
253 Blind;

254 ~~[(b)]~~ (ii) the district business administrator or the equivalent at the Schools for the Deaf
255 and the Blind; or

256 ~~[(c)]~~ (iii) a temporary employee.

257 (5) "Last-hired, first-fired layoff policy" means a staff reduction policy that mandates
258 the termination of an employee who started to work for the district most recently before
259 terminating a more senior employee.

260 (6) "Provisional employee" means an individual, other than a career employee or a
261 temporary employee, who is employed by a school district.

262 (7) "School board" or "board" means a district school board or its equivalent at the
263 Schools for the Deaf and the Blind.

264 (8) "School district" or "district" means:

265 (a) a public school district; or

266 (b) the Schools for the Deaf and the Blind.

267 (9) "Temporary employee" means an individual who is employed on a temporary basis
268 as defined by policies adopted by the local board of education. If the class of employees in
269 question is represented by an employee organization recognized by the local board, the board
270 shall adopt its policies based upon an agreement with that organization. Temporary employees
271 serve at will and have no expectation of continued employment.

272 (10) (a) "Unsatisfactory performance" means a deficiency in performing work tasks
273 which may be:

274 (i) due to insufficient or undeveloped skills, lack of knowledge or aptitude, poor
 275 attitude, or insufficient effort; and

276 (ii) remediated through training, study, mentoring, practice, or greater effort.

277 (b) "Unsatisfactory performance" does not include the following conduct that is
 278 designated as a cause for termination under Section 53A-8a-501 or a reason for license
 279 discipline by the State Board of Education or Utah Professional Practices Advisory
 280 Commission:

281 (i) a violation of work rules;

282 (ii) a violation of local school board policies, State Board of Education rules, or law;

283 (iii) a violation of standards of ethical, moral, or professional conduct; or

284 (iv) insubordination.

285 Section 5. Section **53A-8a-201**, which is renumbered from Section 53A-8-106 is
 286 renumbered and amended to read:

287 **Part 2. Status of Employment**

288 **~~[53A-8-106].~~ 53A-8a-201. Career employee status for provisional**
 289 **employees -- Career status in the event of change of position -- Continuation of**
 290 **probationary status when position changes -- Temporary status for extra duty**
 291 **assignments -- Employees not eligible for career status.**

292 (1) (a) A provisional employee must work for a school district on at least a half-time
 293 basis for three consecutive years to obtain career employee status.

294 (b) A school district may extend the provisional status of an employee up to an
 295 additional two consecutive years in accordance with a written policy adopted by the district's
 296 school board that specifies the circumstances under which an employee's provisional status
 297 may be extended.

298 (2) Policies of an employing school district shall determine the status of a career
 299 employee in the event of the following:

300 (a) the employee accepts a position which is substantially different from the position in
 301 which career status was achieved; or

302 (b) the employee accepts employment in another school district.

303 (3) If an employee who is under an order of probation or remediation in one
 304 assignment in a school district is transferred or given a new assignment in the district, the order

305 shall stand until its provisions are satisfied.

306 (4) An employee who is given extra duty assignments in addition to a primary
307 assignment, such as a teacher who also serves as a coach or activity advisor, is a temporary
308 employee in those extra duty assignments and may not acquire career status beyond the primary
309 assignment.

310 (5) A person is an at-will employee and is not eligible for career employee status if the
311 person:

312 (a) is a teacher who holds a competency-based license pursuant to Section 53A-6-104.5
313 and does not hold a level 1, 2, or 3 license as defined in Section 53A-6-103; or

314 (b) holds an administrative/supervisory letter of authorization pursuant to Section
315 53A-6-110.

316 Section 6. Section **53A-8a-301** is enacted to read:

317 **Part 3. Employee Evaluations**

318 **53A-8a-301. Evaluation of employee performance.**

319 (1) Except as provided in Subsection (2), a local school board shall require that the
320 performance of each school district employee be evaluated annually in accordance with rules of
321 the State Board of Education adopted in accordance with this chapter and Title 63G, Chapter 3,
322 Utah Administrative Rulemaking Act.

323 (2) (a) Rules adopted by the State Board of Education under Subsection (1) may
324 include an exemption from annual performance evaluations for temporary or part-time
325 employees.

326 (b) As provided by Section 53A-8a-405, a provisional or probationary educator shall be
327 evaluated at least twice each school year.

328 Section 7. Section **53A-8a-302** is enacted to read:

329 **53A-8a-302. State Board of Education rules -- Reporting to Legislature.**

330 (1) Subject to Part 4, Educator Evaluations, and Part 7, Evaluation and Compensation
331 of Administrators, rules adopted by the State Board of Education under Section 53A-8a-301
332 shall:

333 (a) provide general guidelines, requirements, and procedures for the development and
334 implementation of employee evaluations;

335 (b) establish required components and allow for optional components of employee

336 evaluations;

337 (c) allow school districts to chose valid and reliable methods and tools to implement
338 the evaluations; and

339 (d) establish a timeline for school districts to implement employee evaluations.

340 (2) The State Board of Education shall report to the Education Interim Committee, as
341 requested, on progress in implementing employee evaluations in accordance with this part, Part
342 4, Educator Evaluations, and Part 7, Evaluation and Compensation of Administrators.

343 Section 8. Section **53A-8a-401**, which is renumbered from Section 53A-10-101 is
344 renumbered and amended to read:

345 **Part 4. Educator Evaluations**

346 **~~[53A-10-101].~~ 53A-8a-401. Legislative findings.**

347 (1) The Legislature recognizes that the quality of public education can be improved and
348 enhanced by systematic, fair, and competent annual evaluation of public educators and
349 remediation of those whose performance is inadequate.

350 (2) In accordance with Subsections 53A-1a-104(7) and 53A-6-102(2)(a) and (b), the
351 desired purposes of evaluation are to:

352 (a) allow the educator and the school district to promote the professional growth of the
353 educator; and

354 (b) identify and encourage quality instruction in order to improve student achievement.

355 Section 9. Section **53A-8a-402**, which is renumbered from Section 53A-10-102 is
356 renumbered and amended to read:

357 **~~[53A-10-102].~~ 53A-8a-402. Definitions.**

358 As used in this chapter:

359 (1) "Career educator" means a licensed employee who has a reasonable expectation of
360 continued employment under the policies of a local school board.

361 (2) "Educator" means an individual employed by a school district who is required to
362 hold a professional license issued by the State Board of Education, except:

363 (a) a superintendent; or

364 (b) an individual who:

365 (i) works fewer than three hours per day; or

366 (ii) is hired for less than half of a school year.

367 (3) "Probationary educator" means an educator employed by a school district who,
368 under local school board policy, has been advised by the district that the educator's
369 performance is inadequate.

370 (4) "Provisional educator" means an educator employed by a school district who has
371 not achieved status as a career educator within the school district.

372 Section 10. Section **53A-8a-403**, which is renumbered from Section 53A-10-103 is
373 renumbered and amended to read:

374 ~~[53A-10-103].~~ **53A-8a-403. Establishment of educator evaluation program**
375 **-- Joint committee.**

376 (1) A local school board shall develop an educator evaluation program in consultation
377 with its joint committee.

378 (2) The joint committee described in Subsection (1) shall consist of an equal number of
379 classroom teachers, parents, and administrators appointed by the local school board.

380 (3) A local school board may appoint members of the joint committee from a list of
381 nominees:

382 (a) voted on by classroom teachers in a nomination election;

383 (b) voted on by the administrators in a nomination election; and

384 (c) of parents submitted by school community councils within the district.

385 (4) The evaluation program developed by the joint committee must comply with the
386 requirements of this chapter.

387 Section 11. Section **53A-8a-404**, which is renumbered from Section 53A-10-105 is
388 renumbered and amended to read:

389 ~~[53A-10-105].~~ **53A-8a-404. Evaluation orientation.**

390 (1) The principal of each school shall orient all educators assigned to the school
391 concerning the school board's educator evaluation program, including the purpose of the
392 evaluations and the method used to evaluate.

393 (2) Evaluations may not occur prior to the orientation by the principal.

394 Section 12. Section **53A-8a-405**, which is renumbered from Section 53A-10-106 is
395 renumbered and amended to read:

396 ~~[53A-10-106].~~ **53A-8a-405. Components of educator evaluation program.**

397 An educator evaluation program adopted by a local school board in consultation with a

398 joint committee established in Section [~~53A-10-103~~] 53A-8a-403 shall include the following
399 components:

- 400 (1) a reliable and valid evaluation program consistent with generally accepted
401 professional standards for personnel evaluation systems;
- 402 (2) (a) the evaluation of provisional and probationary educators at least twice each
403 school year; and
- 404 (b) the annual evaluation of all career educators;
- 405 (3) systematic evaluation procedures for both provisional and career educators;
- 406 (4) the use of multiple lines of evidence, such as:
- 407 (a) self-evaluation;
- 408 (b) student and parent input;
- 409 (c) peer observation;
- 410 (d) supervisor observations;
- 411 (e) evidence of professional growth;
- 412 (f) student achievement data; and
- 413 (g) other indicators of instructional improvement;
- 414 (5) a reasonable number of observation periods for an evaluation to insure adequate
415 reliability;
- 416 (6) administration of an educator's evaluation by:
- 417 (a) the principal;
- 418 (b) the principal's designee;
- 419 (c) the educator's immediate supervisor; or
- 420 (d) another person specified in the evaluation program; [~~and~~]
- 421 (7) an orientation for educators on the educator evaluation program[~~]; and~~
- 422 (8) a summative evaluation that differentiates among four levels of performance.

423 Section 13. Section ~~53A-8a-406~~, which is renumbered from Section 53A-10-106.5 is
424 renumbered and amended to read:

425 [~~53A-10-106.5~~]. 53A-8a-406. Summative evaluation timelines -- Review of
426 summative evaluations.

- 427 (1) The person responsible for administering an educator's summative evaluation shall:
- 428 (a) at least 15 days before an educator's first evaluation:

- 429 (i) notify the educator of the evaluation process; and
430 (ii) give the educator a copy of the evaluation instrument, if an instrument is used;
431 (b) (i) allow the educator to make a written response to any part of the evaluation; and
432 (ii) attach the educator's response to the evaluation;
433 (c) within 15 days after the evaluation process is completed, discuss the written
434 evaluation with the educator; and
435 (d) following any revision of the written evaluation made after the discussion:
436 (i) file the evaluation and any related reports or documents in the educator's personnel
437 file; and
438 (ii) give a copy of the written evaluation and attachments to the educator.
439 (2) An educator who is not satisfied with a summative evaluation may request a review
440 of the evaluation within 15 days after receiving the written evaluation.
441 (3) (a) If a review is requested, the school district superintendent or the
442 superintendent's designee shall appoint a person not employed by the school district who has
443 expertise in teacher or personnel evaluation to review the evaluation procedures and make
444 recommendations to the superintendent regarding the [~~teacher's~~] educator's summative
445 evaluation.
446 (b) The State Board of Education shall make rules prescribing standards for an
447 independent review of an educator's summative evaluation.
448 (c) A review of an educator's summative evaluation under Subsection (3)(a) shall be
449 conducted in accordance with State Board of Education rules made under Subsection (3)(b).
450 Section 14. Section ~~53A-8a-407~~, which is renumbered from Section 53A-10-107 is
451 renumbered and amended to read:
452 ~~[53A-10-107].~~ **53A-8a-407. Deficiencies -- Improvement.**
453 (1) The person responsible for administering an educator's evaluation shall give an
454 educator whose performance is inadequate or in need of improvement a written document
455 clearly identifying:
456 (a) specific, measurable, and actionable deficiencies;
457 (b) the available resources that will be provided for improvement; and
458 (c) a recommended course of action that will improve the educator's performance.
459 (2) An educator is responsible for improving performance, including using any

460 resources identified by the school district, and demonstrating acceptable levels of improvement
461 in the designated areas of deficiencies.

462 ~~[(3)(a) The person responsible for administering the evaluation of an educator whose
463 performance has been determined to be inadequate or in need of improvement shall complete
464 written evaluations and recommendations regarding the educator at least 30 days before the end
465 of the educator's contract school year.]~~

466 ~~[(b) The final evaluation shall include only data previously considered and discussed
467 with the educator as required by Section 53A-10-106.5.]~~

468 (3) Subsections (1)(b), (1)(c), and (2) do not apply if the educator's unsatisfactory
469 performance was documented for the same deficiency within the previous three years and a
470 plan of assistance was implemented as provided in Section 53A-8a-504.

471 Section 15. Section **53A-8a-408**, which is renumbered from Section 53A-10-108 is
472 renumbered and amended to read:

473 ~~[53A-10-108].~~ **53A-8a-408. Mentor for provisional educator.**

474 (1) In accordance with Subsections 53A-1a-104(7) and 53A-6-102(2)(a) and (b), the
475 principal or immediate supervisor of a provisional educator shall assign a person who has
476 received training or will receive training in mentoring educators as a mentor to the provisional
477 educator.

478 (2) Where possible, the mentor shall be a career educator who performs substantially
479 the same duties as the provisional educator and has at least three years of educational
480 experience.

481 (3) The mentor shall assist the provisional educator to become effective and competent
482 in the teaching profession and school system, but may not serve as an evaluator of the
483 provisional educator.

484 (4) An educator who is assigned as a mentor may receive compensation for those
485 services in addition to the educator's regular salary.

486 Section 16. Section **53A-8a-409** is enacted to read:

487 **53A-8a-409. State Board of Education to establish a framework for the evaluation**
488 **of educators.**

489 The State Board of Education shall make rules:

490 (1) establishing a framework for the evaluation of educators that is consistent with the

491 requirements of Part 3, Employee Evaluations, and this part:

492 (2) requiring a teacher's summative evaluation to be based on:

493 (a) student learning growth; and

494 (b) standards of instructional quality; and

495 (3) requiring each school district to fully implement an evaluation system for educators

496 in accordance with the framework established by the State Board of Education no later than the

497 2014-15 school year.

498 Section 17. Section **53A-8a-501**, which is renumbered from Section 53A-8-103 is

499 renumbered and amended to read:

500 **Part 5. Orderly School Termination Procedures**

501 **~~[53A-8-103].~~ 53A-8a-501. Local school board to establish dismissal**
502 **procedures.**

503 (1) A local school board shall, by contract with its employees or their associations, or
504 by resolution of the board, establish procedures for dismissal of employees in an orderly
505 manner without discrimination.

506 (2) The procedures shall include:

507 (a) standards of due process ~~[and]~~;

508 (b) causes for dismissal[-]; and

509 (c) procedures and standards related to developing and implementing a plan of
510 assistance for a career employee whose performance is unsatisfactory.

511 (3) Procedures and standards for a plan of assistance adopted under Subsection (2)(c)
512 shall require a plan of assistance to identify:

513 (a) specific, measurable, and actionable deficiencies;

514 (b) the available resources provided for improvement; and

515 (c) a course of action to improve employee performance.

516 Section 18. Section **53A-8a-502**, which is renumbered from Section 53A-8-104 is

517 renumbered and amended to read:

518 **~~[53A-8-104].~~ 53A-8a-502. Dismissal procedures.**

519 (1) A district shall provide employees with a written statement specifying:

520 (a) the causes under which a career employee's contract may not be renewed or

521 continued beyond the current school year;

522 (b) the causes under which a career or provisional employee's contract may be
523 terminated during the contract term; and

524 (c) the orderly dismissal procedures that are used by the district in cases of contract
525 termination, discontinuance, or nonrenewal.

526 (2) [~~If the district intends to terminate a~~] A career employee's contract may be
527 terminated during its term for reasons of unsatisfactory performance or [~~discontinue a career~~
528 ~~employee's contract~~] discontinued beyond the current school year for reasons of unsatisfactory
529 performance[~~, the unsatisfactory performance must be documented in at least two evaluations~~
530 ~~conducted at any time within the preceding three years in accordance with district policies or~~
531 ~~practices~~] as provided in Section 53A-8a-503.

532 [(3) (a) ~~A district shall notify a career employee, at least 30 days prior to issuing under~~
533 ~~Subsection (3)(d) notice of intent not to renew or continue the career employee's contract~~
534 ~~beyond the current school year, that continued employment is in question and the reasons for~~
535 ~~the anticipated nonrenewal or discontinuance.]~~

536 [~~(b) If a career employee receives a notice under Subsection (3)(a) that continued~~
537 ~~employment is in question, the board:]~~

538 [~~(i) shall give the career employee an opportunity to correct the problem in accordance~~
539 ~~with the district evaluation policies; and]~~

540 [~~(ii) may grant the career employee assistance to correct the deficiencies, including~~
541 ~~informal conferences and the services of school personnel within the district.]~~

542 [~~(c) If a career employee does not correct the deficiencies as determined in accordance~~
543 ~~with the evaluation and personnel policies of the district and the district intends to not renew or~~
544 ~~discontinue the contract of employment of the career employee at the end of the current school~~
545 ~~year, it shall give notice of that intention to the employee.]~~

546 [~~(d) The district shall issue the notice at least 30 days before the end of the career~~
547 ~~employee's contract term.]~~

548 [(4)] (3) (a) A district is not required to provide a cause for not offering a contract to a
549 provisional employee.

550 (b) If a district intends to not offer a contract for a subsequent term of employment to a
551 provisional employee, the district shall give notice of that intention to the employee at least 60
552 days before the end of the provisional employee's contract term.

553 ~~[(5)]~~ (4) In the absence of a notice, an employee is considered employed for the next
554 contract term with a salary based upon the salary schedule applicable to the class of employee
555 into which the individual falls.

556 ~~[(6)]~~ (5) If a district intends to not renew or discontinue the contract of a career
557 employee or to terminate a career or provisional employee's contract during the contract term:

558 (a) the district shall give written notice of the intent to the employee;

559 (b) the notice shall be served by personal delivery or by certified mail addressed to the
560 employee's last-known address as shown on the records of the district;

561 (c) ~~[except as provided under Subsection (3)];~~ the district shall give notice at least 30
562 days prior to the proposed date of termination;

563 (d) the notice shall state the date of termination and the detailed reasons for
564 termination;

565 (e) the notice shall advise the employee that the employee has a right to a fair hearing
566 and that the hearing is waived if it is not requested within 15 days after the notice of
567 termination was either personally delivered or mailed to the employee's most recent address
568 shown on the district's personnel records; and

569 (f) the notice shall state that failure of the employee to request a hearing in accordance
570 with procedures set forth in the notice constitutes a waiver of that right and that the district may
571 then proceed with termination without further notice.

572 ~~[(7)]~~ (6) (a) The procedure under which a contract is terminated during its term may
573 include a provision under which the active service of the employee is suspended pending a
574 hearing if it appears that the continued employment of the individual may be harmful to
575 students or to the district.

576 (b) Suspension pending a hearing may be without pay if an authorized representative of
577 the district determines, after providing the employee with an opportunity for an informal
578 conference to discuss the allegations, that it is more likely than not that the allegations against
579 the employee are true.

580 (c) If termination is not subsequently ordered, the employee shall receive back pay for
581 the period of suspension without pay.

582 ~~[(8)]~~ (7) The procedure under which an employee's contract is terminated during its
583 term shall provide for a written notice of suspension or final termination including findings of

584 fact upon which the action is based.

585 Section 19. Section **53A-8a-503** is enacted to read:

586 **53A-8a-503. Nonrenewal or termination of a career employee's contract for**
587 **unsatisfactory performance.**

588 (1) If a district intends to not renew a career employee's contract for unsatisfactory
589 performance or terminate a career employee's contract during the contract term for
590 unsatisfactory performance, the district shall:

591 (a) provide and discuss with the career employee written documentation clearly
592 identifying the deficiencies in performance;

593 (b) provide written notice that the career employee's contract is subject to nonrenewal
594 or termination if, upon a reevaluation of the career employee's performance, the career
595 employee's performance is determined to be unsatisfactory;

596 (c) develop and implement a plan of assistance, in accordance with procedures and
597 standards established by the local school board under Section 53A-8a-501, to allow the career
598 employee an opportunity to improve performance;

599 (d) reevaluate the career employee's performance; and

600 (e) if the career employee's performance remains unsatisfactory, give notice of intent to
601 not renew or terminate the career employee's contract in accordance with Subsection
602 53A-8a-502(5).

603 (2) (a) The period of time for implementing a plan of assistance:

604 (i) may not exceed 120 school days, except as provided under Subsection (2)(b);

605 (ii) may continue into the next school year; and

606 (iii) should be sufficient to successfully complete the plan of assistance.

607 (b) In accordance with local school board policy, the period of time for implementing a
608 plan of assistance may extend beyond 120 school days if:

609 (i) a career employee is on leave from work during the time period the plan of
610 assistance is scheduled to be implemented; and

611 (ii) (A) the leave was approved and scheduled before the written notice was provided
612 under Subsection (1)(b); or

613 (B) the leave is specifically approved by the local school board.

614 (3) (a) If upon a reevaluation of the career employee's performance, the district

615 determines the career employee's performance is satisfactory, and within a three-year period
616 after the initial documentation of unsatisfactory performance for the same deficiency pursuant
617 to Subsection (1)(a), the career employee's performance is determined to be unsatisfactory, the
618 district may elect to not renew or terminate the career employee's contract.

619 (b) If a district intends to not renew or terminate a career employee's contract as
620 provided in Subsection (3)(a), the district shall:

621 (i) provide written documentation of the career employee's deficiencies in
622 performance; and

623 (ii) give notice of intent to not renew or terminate the career employee's contract in
624 accordance with Subsection 53A-8a-502(5).

625 Section 20. Section **53A-8a-504**, which is renumbered from Section 53A-8-105 is
626 renumbered and amended to read:

627 **[53A-8-105]. 53A-8a-504. Hearings before district board or hearing**
628 **officers -- Rights of the board and the employee -- Subpoenas -- Appeals.**

629 (1) (a) Hearings are held under this chapter before the board or before hearing officers
630 selected by the board to conduct the hearings and make recommendations concerning findings.

631 (b) The board shall establish procedures to appoint hearing officers.

632 (c) The board may delegate its authority to a hearing officer to make decisions relating
633 to the employment of an employee which are binding upon both the employee and the board.

634 (d) This Subsection (1) does not limit the right of the board or the employee to appeal
635 to an appropriate court of law.

636 (2) At the hearings, an employee has the right to counsel, to produce witnesses, to hear
637 testimony against the employee, to cross-examine witnesses, and to examine documentary
638 evidence.

639 (3) Subpoenas may be issued and oaths administered as provided under Section
640 53A-6-603.

641 Section 21. Section **53A-8a-505**, which is renumbered from Section 53A-8-107 is
642 renumbered and amended to read:

643 **[53A-8-107]. 53A-8a-505. Necessary staff reduction not precluded --**
644 **Last-hired, first-fired layoffs prohibited.**

645 (1) Nothing in this chapter prevents staff reduction if necessary to reduce the number

646 of employees because of the following:

- 647 (a) declining student enrollments in the district;
- 648 (b) the discontinuance or substantial reduction of a particular service or program;
- 649 (c) the shortage of anticipated revenue after the budget has been adopted; or
- 650 (d) school consolidation.

651 (2) A school district may not utilize a last-hired, first-fired layoff policy when
652 terminating school district employees.

653 (3) A school district may consider the following factors when terminating a school
654 district employee:

- 655 (a) the results of an employee's performance evaluation; and
- 656 (b) a school's personnel needs.

657 Section 22. Section **53A-8a-506** is enacted to read:

658 **53A-8a-506. Restriction on transfer of employee with unsatisfactory performance.**

659 An employee whose performance is unsatisfactory may not be transferred to another
660 school unless the local school board specifically approves the transfer of the employee.

661 Section 23. Section **53A-8a-601** is enacted to read:

662 **Part 6. Performance Compensation**

663 **53A-8a-601. State Board of Education to make rules on performance**

664 **compensation.**

665 (1) The State Board of Education shall make rules requiring a school district's
666 employee compensation system to be aligned with the district's annual evaluation system.

667 (2) Rules adopted under Subsection (1) shall:

668 (a) establish a timeline for developing and implementing an employee compensation
669 system that is aligned with an annual evaluation system; and

670 (b) provide that beginning no later than the 2015-16 school year:

671 (i) any advancement on an adopted wage or salary schedule shall be based primarily on
672 an evaluation; and

673 (ii) an employee may not advance on an adopted wage or salary schedule if the
674 employee's rating on the most recent evaluation is at the lowest level of an evaluation
675 instrument.

676 Section 24. Section **53A-8a-602** is enacted to read:

677 **53A-8a-602. Educator's eligibility for a wage increase.**

678 An educator, as defined in Section 53A-6-103, may not advance on an adopted salary
679 schedule if the educator's rating on the most recent evaluation is at the second lowest level of
680 an evaluation instrument that differentiates among four levels of performance as described in
681 Section 53A-8a-405, unless the educator:

- 682 (1) is a provisional educator; or
 - 683 (2) is in the first year of an assignment, including a new subject, grade level, or school.
- 684 Section 25. Section **53A-8a-701** is enacted to read:

685 **Part 7. Evaluation and Compensation of Administrators**

686 **53A-8a-701. Definitions.**

687 As used in this part:

- 688 (1) "District administrator" means an individual who:
 - 689 (a) serves in a position that requires an educator license with an administrative area of
690 concentration, except as provided in Section 53A-3-301 or 53A-6-110; and
 - 691 (b) supervises school administrators.
- 692 (2) "School administrator" means an individual who:
 - 693 (a) serves in a position that requires an educator license with an administrative area of
694 concentration, except as provided in Section 53A-6-110; and
 - 695 (b) supervises teachers.

696 Section 26. Section **53A-8a-702** is enacted to read:

697 **53A-8a-702. Evaluation of school and district administrators.**

698 The State Board of Education shall:

- 699 (1) establish in rules a framework for the evaluation of school and district
700 administrators that includes the following components:
 - 701 (a) student achievement indicators emphasizing learning growth and proficiency;
 - 702 (b) the results of an evaluation tool utilized by the local school board that includes
703 input from employees, parents, and students;
 - 704 (c) the effectiveness of evaluating employee performance in a school or district for
705 which the school or district administrator has responsibility; and
 - 706 (d) other factors as determined by a local school board in implementing state law and
707 State Board of Education rules; and

708 (2) require each school district to fully implement an evaluation system for school and
709 district administrators in accordance with the framework established by the State Board of
710 Education no later than the 2014-15 school year.

711 Section 27. Section **53A-8a-703** is enacted to read:

712 **53A-8a-703. Compensation of school and district administrators.**

713 (1) Beginning no later than the 2015-16 school year, a school or district administrator's
714 salary shall be based on the school or district administrator's most recent evaluation.

715 (2) A school district shall continue each year to award any salary increases to a school
716 or district administrator based on an evaluation administered pursuant to Section 53A-8a-702
717 until at least 15% of a school or district administrator's salary is contingent upon the evaluation
718 administered pursuant to Section 53A-8a-702.

719 Section 28. Section **53A-11-605** is amended to read:

720 **53A-11-605. Definitions -- School personnel -- Medical recommendations --**
721 **Exceptions -- Penalties.**

722 (1) As used in this section:

723 (a) "Health care professional" means a physician, physician assistant, nurse, dentist, or
724 mental health therapist.

725 (b) "School personnel" means any school district or charter school employee, including
726 licensed, part-time, contract, and nonlicensed employees.

727 (2) School personnel may:

728 (a) provide information and observations to a student's parent or guardian about that
729 student, including observations and concerns in the following areas:

730 (i) progress;

731 (ii) health and wellness;

732 (iii) social interactions;

733 (iv) behavior; or

734 (v) topics consistent with Subsection 53A-13-302(6);

735 (b) communicate information and observations between school personnel regarding a
736 child;

737 (c) refer students to other appropriate school personnel and agents, consistent with
738 local school board or charter school policy, including referrals and communication with a

739 school counselor or other mental health professionals working within the school system;

740 (d) consult or use appropriate health care professionals in the event of an emergency
741 while the student is at school, consistent with the student emergency information provided at
742 student enrollment;

743 (e) exercise their authority relating to the placement within the school or readmission
744 of a child who may be or has been suspended or expelled for a violation of Section
745 53A-11-904; and

746 (f) complete a behavioral health evaluation form if requested by a student's parent or
747 guardian to provide information to a licensed physician.

748 (3) School personnel shall:

749 (a) report suspected child abuse consistent with Section 62A-4a-403;

750 (b) comply with applicable state and local health department laws, rules, and policies;
751 and

752 (c) conduct evaluations and assessments consistent with the Individuals with
753 Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq., and its subsequent amendments.

754 (4) Except as provided in Subsection (2) and Subsection (6), school personnel may not:

755 (a) recommend to a parent or guardian that a child take or continue to take a
756 psychotropic medication;

757 (b) require that a student take or continue to take a psychotropic medication as a
758 condition for attending school;

759 (c) recommend that a parent or guardian seek or use a type of psychiatric or
760 psychological treatment for a child;

761 (d) conduct a psychiatric or behavioral health evaluation or mental health screening,
762 test, evaluation, or assessment of a child, except where this Subsection (4)(d) conflicts with the
763 Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq., and its subsequent
764 amendments; or

765 (e) make a child abuse or neglect report to authorities, including the Division of Child
766 and Family Services, solely or primarily on the basis that a parent or guardian refuses to
767 consent to:

768 (i) a psychiatric, psychological, or behavioral treatment for a child, including the
769 administration of a psychotropic medication to a child; or

770 (ii) a psychiatric or behavioral health evaluation of a child.

771 (5) Notwithstanding Subsection (4)(e), school personnel may make a report that would
772 otherwise be prohibited under Subsection (4)(e) if failure to take the action described under
773 Subsection (4)(e) would present a serious, imminent risk to the child's safety or the safety of
774 others.

775 (6) Notwithstanding Subsection (4), a school counselor or other mental health
776 professional acting in accordance with Title 58, Chapter 60, Mental Health Professional
777 Practice Act, or licensed through the State Board of Education, working within the school
778 system may:

779 (a) recommend, but not require, a psychiatric or behavioral health evaluation of a child;

780 (b) recommend, but not require, psychiatric, psychological, or behavioral treatment for
781 a child;

782 (c) conduct a psychiatric or behavioral health evaluation or mental health screening,
783 test, evaluation, or assessment of a child in accordance with Section 53A-13-302; and

784 (d) provide to a parent or guardian, upon the specific request of the parent or guardian,
785 a list of three or more health care professionals or providers, including licensed physicians,
786 psychologists, or other health specialists.

787 (7) Local school boards or charter schools shall adopt a policy:

788 (a) providing for training of appropriate school personnel on the provisions of this
789 section; and

790 (b) indicating that an intentional violation of this section is cause for disciplinary action
791 consistent with local school board or charter school policy and under Section [~~53A-8-104~~
792 53A-8a-502].

793 (8) Nothing in this section shall be interpreted as discouraging general communication
794 not prohibited by this section between school personnel and a student's parent or guardian.