

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;
- ▶ 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;
 - ▶ requires data on school district employee ratings to be publicly reported;
 - ▶ prescribes procedures for the nonrenewal or termination of a career employee's contract for 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 system;
 - ▶ requires the salary of certain school or district administrators to be contingent on an evaluation; and
 - ▶ makes technical amendments.

Money Appropriated in this Bill:



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **53A-1-301**, as last amended by Laws of Utah 2010, Chapters 139 and 206

34 **53A-1a-512**, as last amended by Laws of Utah 2010, Chapters 266 and 353

35 **53A-3-425**, as last amended by Laws of Utah 2011, Chapter 402

36 **53A-11-605**, as enacted by Laws of Utah 2007, Chapter 111

37 ENACTS:

38 **53A-8a-101**, Utah Code Annotated 1953

39 **53A-8a-301**, Utah Code Annotated 1953

40 **53A-8a-302**, Utah Code Annotated 1953

41 **53A-8a-303**, Utah Code Annotated 1953

42 **53A-8a-409**, Utah Code Annotated 1953

43 **53A-8a-503**, Utah Code Annotated 1953

44 **53A-8a-601**, Utah Code Annotated 1953

45 **53A-8a-602**, Utah Code Annotated 1953

46 **53A-8a-701**, Utah Code Annotated 1953

47 **53A-8a-702**, Utah Code Annotated 1953

48 **53A-8a-703**, Utah Code Annotated 1953

49 RENUMBERS AND AMENDS:

50 **53A-8a-102**, (Renumbered from 53A-8-102, as last amended by Laws of Utah 2011,
51 Chapter 420)

52 **53A-8a-201**, (Renumbered from 53A-8-106, as last amended by Laws of Utah 2010,
53 Chapter 183)

54 **53A-8a-401**, (Renumbered from 53A-10-101, as last amended by Laws of Utah 2011,
55 Chapter 434)

56 **53A-8a-402**, (Renumbered from 53A-10-102, as last amended by Laws of Utah 2011,
57 Chapter 434)

58 **53A-8a-403**, (Renumbered from 53A-10-103, as last amended by Laws of Utah 2011,

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



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

80 Section 1. Section **53A-1-301** is amended to read:

81 **53A-1-301. Appointment -- Qualifications -- Duties.**

82 (1) (a) The State Board of Education shall appoint a superintendent of public
83 instruction, hereinafter called the state superintendent, who is the executive officer of the board
84 and serves at the pleasure of the board.

85 (b) The board shall appoint the state superintendent on the basis of outstanding
86 professional qualifications.

87 (c) The state superintendent shall administer all programs assigned to the State Board
88 of Education in accordance with the policies and the standards established by the board.

89 (2) The superintendent shall develop a statewide education strategy focusing on core

90 academics, including the development of:

91 (a) core curriculum and graduation requirements;

92 (b) a process to select instructional materials that best correlate to the core curriculum
93 and graduation requirements that are supported by generally accepted scientific standards of
94 evidence;

95 (c) professional development programs for teachers, superintendents, and principals;

96 (d) remediation programs;

97 (e) a method for creating individual student learning targets, and a method of

98 measuring an individual student's performance toward those targets;

99 (f) progress-based assessments for ongoing performance evaluations of districts and
100 schools;

101 (g) incentives to achieve the desired outcome of individual student progress in core
102 academics, and which do not create disincentives for setting high goals for the students;

103 (h) an annual report card for school and district performance, measuring learning and
104 reporting progress-based assessments;

105 (i) a systematic method to encourage innovation in schools and school districts as they
106 strive to achieve improvement in their performance; and

107 (j) a method for identifying and sharing best demonstrated practices across districts and
108 schools.

109 (3) The superintendent shall perform duties assigned by the board, including the
110 following:

111 (a) investigating all matters pertaining to the public schools;

112 (b) adopting and keeping an official seal to authenticate the superintendent's official
113 acts;

114 (c) holding and conducting meetings, seminars, and conferences on educational topics;

115 (d) presenting to the governor and the Legislature each December a report of the public
116 school system for the preceding year to include:

117 (i) data on the general condition of the schools with recommendations considered
118 desirable for specific programs;

119 (ii) a complete statement of fund balances;

120 (iii) a complete statement of revenues by fund and source;

- 121 (iv) a complete statement of adjusted expenditures by fund, the status of bonded
- 122 indebtedness, the cost of new school plants, and school levies;
- 123 (v) a complete statement of state funds allocated to each school district and charter
- 124 school by source, including supplemental appropriations, and a complete statement of
- 125 expenditures by each school district and charter school, including supplemental appropriations,
- 126 by function and object as outlined in the U.S. Department of Education publication "Financial
- 127 Accounting for Local and State School Systems";
- 128 (vi) a complete statement, by school district and charter school, of the amount of and
- 129 percentage increase or decrease in expenditures from the previous year attributed to:
- 130 (A) wage increases, with expenditure data for base salary adjustments identified
- 131 separately from step and lane expenditures;
- 132 (B) medical and dental premium cost adjustments; and
- 133 (C) adjustments in the number of teachers and other staff;
- 134 (vii) a statement that includes data on:
- 135 (A) fall enrollments[;];
- 136 (B) average membership[;];
- 137 (C) high school graduates[;];
- 138 (D) licensed and classified employees, including data reported by school districts on
- 139 employee ratings pursuant to Section 53A-8a-302;
- 140 (E) pupil-teacher ratios[;];
- 141 (F) average class sizes calculated in accordance with State Board of Education rules
- 142 adopted under Subsection 53A-3-602.5(4)[;];
- 143 (G) average salaries[;];
- 144 (H) applicable private school data[;]; and
- 145 (I) data from standardized norm-referenced tests in grades 5, 8, and 11 on each school
- 146 and district;
- 147 (viii) statistical information regarding incidents of delinquent activity in the schools or
- 148 at school-related activities with separate categories for:
- 149 (A) alcohol and drug abuse;
- 150 (B) weapon possession;
- 151 (C) assaults; and

- 152 (D) arson;
- 153 (ix) information about:
 - 154 (A) the development and implementation of the strategy of focusing on core
 - 155 academics;
 - 156 (B) the development and implementation of competency-based education and
 - 157 progress-based assessments; and
 - 158 (C) the results being achieved under Subsections (3)(d)(ix)(A) and (B), as measured by
 - 159 individual progress-based assessments and a comparison of Utah students' progress with the
 - 160 progress of students in other states using standardized norm-referenced tests as benchmarks;
 - 161 and
 - 162 (x) other statistical and financial information about the school system which the state
 - 163 superintendent considers pertinent;
 - 164 (e) collecting and organizing education data into an automated decision support system
 - 165 to facilitate school district and school improvement planning, accountability reporting,
 - 166 performance recognition, and the evaluation of educational policy and program effectiveness to
 - 167 include:
 - 168 (i) data that are:
 - 169 (A) comparable across schools and school districts;
 - 170 (B) appropriate for use in longitudinal studies; and
 - 171 (C) comprehensive with regard to the data elements required under applicable state or
 - 172 federal law or state board rule;
 - 173 (ii) features that enable users, most particularly school administrators, teachers, and
 - 174 parents, to:
 - 175 (A) retrieve school and school district level data electronically;
 - 176 (B) interpret the data visually; and
 - 177 (C) draw conclusions that are statistically valid; and
 - 178 (iii) procedures for the collection and management of education data that:
 - 179 (A) require the state superintendent of public instruction to:
 - 180 (I) collaborate with school districts in designing and implementing uniform data
 - 181 standards and definitions;
 - 182 (II) undertake or sponsor research to implement improved methods for analyzing

183 education data;

184 (III) provide for data security to prevent unauthorized access to or contamination of the
185 data; and

186 (IV) protect the confidentiality of data under state and federal privacy laws; and

187 (B) require all school districts and schools to comply with the data collection and
188 management procedures established under Subsection (3)(e);

189 (f) administering and implementing federal educational programs in accordance with
190 Title 53A, Chapter 1, Part 9, Implementing Federal Programs Act; and

191 (g) with the approval of the board, preparing and submitting to the governor a budget
192 for the board to be included in the budget that the governor submits to the Legislature.

193 (4) The state superintendent shall distribute funds deposited in the Autism Awareness
194 Restricted Account created in Section 53A-1-304 in accordance with the requirements of
195 Section 53A-1-304.

196 (5) Upon leaving office, the state superintendent shall deliver to the state
197 superintendent's successor all books, records, documents, maps, reports, papers, and other
198 articles pertaining to the state superintendent's office.

199 (6) (a) For the purpose of Subsection (3)(d)(vii):

200 (i) the pupil-teacher ratio for a school shall be calculated by dividing the number of
201 students enrolled in a school by the number of full-time equivalent teachers assigned to the
202 school, including regular classroom teachers, school-based specialists, and special education
203 teachers;

204 (ii) the pupil-teacher ratio for a school district shall be the median pupil-teacher ratio of
205 the schools within a school district;

206 (iii) the pupil-teacher ratio for charter schools aggregated shall be the median
207 pupil-teacher ratio of charter schools in the state; and

208 (iv) the pupil-teacher ratio for the state's public schools aggregated shall be the median
209 pupil-teacher ratio of public schools in the state.

210 (b) The printed copy of the report required by Subsection (3)(d) shall:

211 (i) include the pupil-teacher ratio for:

212 (A) each school district;

213 (B) the charter schools aggregated; and

214 (C) the state's public schools aggregated; and
215 (ii) indicate the Internet website where pupil-teacher ratios for each school in the state
216 may be accessed.

217 Section 2. Section **53A-1a-512** is amended to read:

218 **53A-1a-512. Employees of charter schools.**

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

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

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

225 [~~(a) Chapter 8, Utah Orderly School Termination Procedures Act;~~]

226 [~~(b) Chapter 10, Educator Evaluation; and~~]

227 (a) Chapter 8a, Public Education Human Resource Management Act; and

228 [~~(c)~~] (b) Title 52, Chapter 3, Prohibiting Employment of Relatives.

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

231 (i) are licensed; or

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

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

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

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

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

243 (7) Except as provided under Subsection (8), an employee of a charter school shall be a
244 member of a retirement system or plan under Title 49, Utah State Retirement and Insurance

245 Benefit Act.

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

- 250 (i) Title 49, Chapter 12, Public Employees' Contributory Retirement Act;
- 251 (ii) Title 49, Chapter 13, Public Employees' Noncontributory Retirement Act; and
- 252 (iii) Title 49, Chapter 22, New Public Employees' Tier II Contributory Retirement Act.

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

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

- 256 (i) shall be made at the time specified under Subsection (8)(a) or (b);
- 257 (ii) shall be documented by a resolution adopted by the governing body of the charter
258 school;

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

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

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

- 265 (i) under Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act;
- 266 or
- 267 (ii) under any other program.

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

- 271 (i) Title 49, Chapter 12, Public Employees' Contributory Retirement Act;
- 272 (ii) Title 49, Chapter 13, Public Employees' Noncontributory Retirement Act; or
- 273 (iii) Title 49, Chapter 22, New Public Employees' Tier II Contributory Retirement Act.

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

- 275 (i) shall be documented by a resolution adopted by the governing body of the charter

276 school;

277 (ii) is a one-time election;

278 (iii) is irrevocable; and

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

280 school.

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

283 (a) has received:

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

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

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

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

291 **53A-3-425. Association leave -- District policy.**

292 (1) As used in this section:

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

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

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

298 or

299 (ii) performs union duties.

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

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

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

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

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

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

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

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

315 (B) soliciting a contribution for a political action committee, a political issues
316 committee, a political party, or a candidate, as defined in Section 20A-11-101; or

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

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

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

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

326 (i) on unpaid association leave; or

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

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

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

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

337 (a) ensure that the duties performed by employees on paid association leave directly

338 benefit the school district;

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

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

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

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

346 (i) advocating for or against a candidate for public office in a partisan or nonpartisan
347 election;

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

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

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

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

356 (5) If a local school board adopts a policy to allow paid association leave, that policy
357 shall indicate that a willful violation of this section or of a policy adopted in accordance with
358 Subsection (3) or (4) may be used for disciplinary action under Section [~~53A-8-104~~]
359 53A-8a-503.

360 Section 4. Section **53A-8a-101** is enacted to read:

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

362 **Part 1. General Provisions**

363 **53A-8a-101. Title.**

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

365 Section 5. Section **53A-8a-102**, which is renumbered from Section 53A-8-102 is
366 renumbered and amended to read:

367 [~~53A-8-102~~]. **53A-8a-102. Definitions.**

368 As used in this chapter:

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

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

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

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

377 (b) failure to renew or continue the employment contract of a career employee beyond
378 the then-current school year;

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

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

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

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

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

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

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

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

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

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

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

400 (a) a public school district; or

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

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

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

409 (i) due to undeveloped skills, lack of knowledge, aptitude, or insufficient effort; and

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

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

415 (i) a violation of work rules;

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

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

418 (iv) insubordination.

419 Section 6. Section **53A-8a-201**, which is renumbered from Section 53A-8-106 is
420 renumbered and amended to read:

421 **Part 2. Status of Employment**

422 **[53A-8-106]. 53A-8a-201. Career employee status for provisional**

423 **employees -- Career status in the event of change of position -- Continuation of**

424 **probationary status when position changes -- Temporary status for extra duty**

425 **assignments -- Employees not eligible for career status.**

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

428 (b) A school district may extend the provisional status of an employee up to an
429 additional two consecutive years in accordance with a written policy adopted by the district's
430 school board that specifies the circumstances under which an employee's provisional status

431 may be extended.

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

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

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

437 (3) If an employee who is under an order of probation or remediation in one
438 assignment in a school district is transferred or given a new assignment in the district, the order
439 shall stand until its provisions are satisfied.

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

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

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

448 (b) holds an administrative/supervisory letter of authorization pursuant to Section
449 53A-6-110.

450 Section 7. Section **53A-8a-301** is enacted to read:

451 **Part 3. Employee Evaluations**

452 **53A-8a-301. Evaluation of employee performance.**

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

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

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

462 (3) An evaluation of employee performance shall differentiate among four levels of
463 performance.

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

465 **53A-8a-302. Report of employee ratings.**

466 (1) A school district shall report to the State Board of Education the number and
467 percent of employees in each of the four rating categories referred to in Section 53A-8a-301
468 based on an employee's annual evaluation.

469 (2) The data reported under Subsection (1) shall be separately reported for the
470 following employee classifications:

471 (a) administrators;

472 (b) teachers;

473 (c) licensed employees, other than administrators and teachers; and

474 (d) classified employees.

475 (3) The data reported by school districts under this section shall be included in the state
476 superintendent's annual report of the public school system required by Section 53A-1-301.

477 (4) The State Board of Education shall make rules to ensure the privacy and protection
478 of individual evaluation data.

479 Section 9. Section **53A-8a-303** is enacted to read:

480 **53A-8a-303. State Board of Education rules.**

481 Subject to Part 4, Educator Evaluations, and Part 7, Evaluation and Compensation of
482 Administrators, rules adopted by the State Board of Education under Section 53A-8a-301 may:

483 (1) establish a timeline for school districts to develop and implement employee
484 evaluations as required by this part;

485 (2) establish procedures for developing and implementing employee evaluations; and

486 (3) establish required components, and allow for optional components, of employee
487 evaluations.

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

490 **Part 4. Educator Evaluations**

491 **[53A-10-101]. 53A-8a-401. Legislative findings.**

492 (1) The Legislature recognizes that the quality of public education can be improved and

493 enhanced by systematic, fair, and competent annual evaluation of public educators and
494 remediation of those whose performance is inadequate.

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

497 (a) allow the educator and the school district to promote the professional growth of the
498 educator; and

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

500 Section 11. Section **53A-8a-402**, which is renumbered from Section 53A-10-102 is
501 renumbered and amended to read:

502 ~~[53A-10-102].~~ **53A-8a-402. Definitions.**

503 As used in this chapter:

504 (1) "Career educator" means a licensed employee who has a reasonable expectation of
505 continued employment [~~under the policies of a local school board~~] based upon Section
506 53A-8a-201 and an agreement with the employee or the employee's association, district
507 practice, or policy.

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

510 (a) a superintendent; or

511 (b) an individual who:

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

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

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

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

519 Section 12. Section **53A-8a-403**, which is renumbered from Section 53A-10-103 is
520 renumbered and amended to read:

521 ~~[53A-10-103].~~ **53A-8a-403. Establishment of educator evaluation program**
522 **-- Joint committee.**

523 (1) A local school board shall develop an educator evaluation program in consultation

524 with its joint committee.

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

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

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

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

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

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

534 Section 13. Section **53A-8a-404**, which is renumbered from Section 53A-10-105 is
535 renumbered and amended to read:

536 **~~[53A-10-105].~~ 53A-8a-404. Evaluation orientation.**

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

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

541 Section 14. Section **53A-8a-405**, which is renumbered from Section 53A-10-106 is
542 renumbered and amended to read:

543 **~~[53A-10-106].~~ 53A-8a-405. Components of educator evaluation program.**

544 An educator evaluation program adopted by a local school board in consultation with a
545 joint committee established in Section ~~[53A-10-103]~~ 53A-8a-403 shall include the following
546 components:

547 (1) a reliable and valid evaluation program consistent with generally accepted
548 professional standards for personnel evaluation systems;

549 (2) (a) the evaluation of provisional and probationary educators at least twice each
550 school year; and

551 (b) the annual evaluation of all career educators;

552 (3) systematic evaluation procedures for both provisional and career educators;

553 (4) the use of multiple lines of evidence, such as:

554 (a) self-evaluation;

- 555 (b) student and parent input;
- 556 (c) peer observation;
- 557 (d) supervisor observations;
- 558 (e) evidence of professional growth;
- 559 (f) student achievement data; and
- 560 (g) other indicators of instructional improvement;
- 561 (5) a reasonable number of observation periods for an evaluation to insure adequate
- 562 reliability;
- 563 (6) administration of an educator's evaluation by:
- 564 (a) the principal;
- 565 (b) the principal's designee;
- 566 (c) the educator's immediate supervisor; or
- 567 (d) another person specified in the evaluation program; and
- 568 (7) an orientation for educators on the educator evaluation program.

569 Section 15. Section **53A-8a-406**, which is renumbered from Section 53A-10-106.5 is
570 renumbered and amended to read:

571 ~~[53A-10-106.5]~~. **53A-8a-406. Summative evaluation timelines -- Review of**
572 **summative evaluations.**

- 573 (1) The person responsible for administering an educator's summative evaluation shall:
- 574 (a) at least 15 days before an educator's first evaluation:
 - 575 (i) notify the educator of the evaluation process; and
 - 576 (ii) give the educator a copy of the evaluation instrument, if an instrument is used;
- 577 (b) (i) allow the educator to make a written response to any part of the evaluation; and
- 578 (ii) attach the educator's response to the evaluation;
- 579 (c) within 15 days after the evaluation process is completed, discuss the written
- 580 evaluation with the educator; and
- 581 (d) following any revision of the written evaluation made after the discussion:
 - 582 (i) file the evaluation and any related reports or documents in the educator's personnel
 - 583 file; and
 - 584 (ii) give a copy of the written evaluation and attachments to the educator.
- 585 (2) An educator who is not satisfied with a summative evaluation may request a review

586 of the evaluation within 15 days after receiving the written evaluation.

587 (3) (a) If a review is requested, the school district superintendent or the
 588 superintendent's designee shall appoint a person not employed by the school district who has
 589 expertise in teacher or personnel evaluation to review the evaluation procedures and make
 590 recommendations to the superintendent regarding the [teacher's] educator's summative
 591 evaluation.

592 (b) The State Board of Education shall make rules prescribing standards for an
 593 independent review of an educator's summative evaluation.

594 (c) A review of an educator's summative evaluation under Subsection (3)(a) shall be
 595 conducted in accordance with State Board of Education rules made under Subsection (3)(b).

596 Section 16. Section **53A-8a-407**, which is renumbered from Section 53A-10-107 is
 597 renumbered and amended to read:

598 ~~[53A-10-107].~~ **53A-8a-407. Deficiencies -- Improvement.**

599 (1) The person responsible for administering an educator's evaluation shall give an
 600 educator whose performance is inadequate or in need of improvement a written document
 601 clearly identifying:

- 602 (a) specific, measurable, and actionable deficiencies;
- 603 (b) the available resources that will be provided for improvement; and
- 604 (c) a recommended course of action that will improve the educator's performance.

605 (2) An educator is responsible for improving performance, including using any
 606 resources identified by the school district, and demonstrating acceptable levels of improvement
 607 in the designated areas of deficiencies.

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

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

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

617 Section 17. Section **53A-8a-408**, which is renumbered from Section 53A-10-108 is
 618 renumbered and amended to read:

619 ~~[53A-10-108].~~ **53A-8a-408. Mentor for provisional educator.**

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

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

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

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

632 Section 18. Section **53A-8a-409** is enacted to read:

633 **53A-8a-409. State Board of Education to establish a framework for the evaluation**
 634 **of educators.**

635 The State Board of Education shall:

636 (1) make rules establishing a framework for the evaluation of educators that:

637 (a) is consistent with the requirements of Part 3, Employee Evaluations, and this part;

638 and

639 (b) includes valid and reliable measurement tools; and

640 (2) require each school district to fully implement an evaluation system for educators in

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

642 2014-15 school year.

643 Section 19. Section **53A-8a-501**, which is renumbered from Section 53A-8-103 is
 644 renumbered and amended to read:

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

646 ~~[53A-8-103].~~ **53A-8a-501. Local school board to establish dismissal**
 647 **procedures.**

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

651 (2) The procedures shall include:

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

653 (b) causes for dismissal[~~;~~]; and

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

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

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

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

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

661 Section 20. Section ~~53A-8a-502~~, which is renumbered from Section 53A-8-104 is
662 renumbered and amended to read:

663 ~~[53A-8-104].~~ **53A-8a-502. Dismissal procedures.**

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

665 (a) the causes under which a career employee's contract may not be renewed or
666 continued beyond the current school year;

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

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

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

677 [(3) (a) ~~A district shall notify a career employee, at least 30 days prior to issuing under~~
678 ~~Subsection (3)(d) notice of intent not to renew or continue the career employee's contract~~

679 beyond the current school year, that continued employment is in question and the reasons for
680 the anticipated nonrenewal or discontinuance.]

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

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

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

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

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

693 ~~[(4)] (3) (a) A district is not required to provide a cause for not offering a contract to a~~
694 ~~provisional employee.~~

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

698 ~~[(5)] (4) In the absence of a notice, an employee is considered employed for the next~~
699 ~~contract term with a salary based upon the salary schedule applicable to the class of employee~~
700 ~~into which the individual falls.~~

701 ~~[(6)] (5) If a district intends to not renew or discontinue the contract of a career~~
702 ~~employee or to terminate a career or provisional employee's contract during the contract term:~~

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

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

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

708 (d) the notice shall state the date of termination and the detailed reasons for
709 termination;

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

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

717 [~~(7)~~] (6) (a) The procedure under which a contract is terminated during its term may
718 include a provision under which the active service of the employee is suspended pending a
719 hearing if it appears that the continued employment of the individual may be harmful to
720 students or to the district.

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

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

727 [~~(8)~~] (7) The procedure under which an employee's contract is terminated during its
728 term shall provide for a written notice of suspension or final termination including findings of
729 fact upon which the action is based.

730 Section 21. Section **53A-8a-503** is enacted to read:

731 **53A-8a-503. Nonrenewal or termination of a career employee's contract for**
732 **unsatisfactory performance.**

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

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

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

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

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

745 (e) if the career employee's performance remains unsatisfactory, give notice of intent to
 746 not renew or terminate the career employee's contract in accordance with Subsection
 747 53A-8a-502(5).

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

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

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

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

752 (b) In accordance with local school board policy, the period of time for implementing a
 753 plan of assistance may extend beyond 120 school days if a career employee is on leave from
 754 work during the time period the plan of assistance is scheduled to be implemented.

755 (3) (a) If upon a reevaluation of the career employee's performance, the district
 756 determines the career employee's performance is satisfactory, and within a three-year period
 757 after the initial documentation of unsatisfactory performance for the same deficiency pursuant
 758 to Subsection (1)(a), the career employee's performance is determined to be unsatisfactory, the
 759 district may elect to not renew or terminate the career employee's contract.

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

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

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

766 Section 22. Section **53A-8a-504**, which is renumbered from Section 53A-8-105 is
 767 renumbered and amended to read:

768 **[53A-8-105].** **53A-8a-504. Hearings before district board or hearing**
 769 **officers -- Rights of the board and the employee -- Subpoenas -- Appeals.**

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

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

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

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

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

780 (3) Subpoenas may be issued and oaths administered as provided under Section
781 53A-6-603.

782 Section 23. Section **53A-8a-505**, which is renumbered from Section 53A-8-107 is
783 renumbered and amended to read:

784 ~~[53A-8-107]~~. **53A-8a-505. Necessary staff reduction not precluded --**
785 **Last-hired, first-fired layoffs prohibited.**

786 (1) Nothing in this chapter prevents staff reduction if necessary to reduce the number
787 of employees because of the following:

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

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

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

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

798 Section 24. Section **53A-8a-601** is enacted to read:

799 **Part 6. Performance Compensation**

800 **53A-8a-601. State Board of Education to make rules on performance**
801 **compensation.**

802 (1) The State Board of Education shall make rules requiring a school district's

803 employee compensation system to be aligned with the district's annual evaluation system.

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

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

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

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

810 (ii) an employee may not advance on an adopted wage or salary schedule if the
811 employee's rating on the most recent evaluation is at the lowest level of an evaluation
812 instrument that differentiates among four levels of performance pursuant to Section
813 53A-8a-301.

814 Section 25. Section **53A-8a-602** is enacted to read:

815 **53A-8a-602. Educator's eligibility for a wage increase.**

816 An educator, as defined in Section 53A-6-103, may not advance on an adopted salary
817 schedule if the educator's rating on the most recent evaluation is at the second lowest level of
818 an evaluation instrument that differentiates among four levels of performance as described in
819 Section 53A-8a-301, unless the educator:

820 (1) is a provisional educator;

821 (2) is in the first three years of an assignment, including a new subject, grade level, or
822 school; or

823 (3) is working under a plan of assistance pursuant to Section 53A-8a-503 and is
824 making progress in improving performance in accordance with criteria for evaluating progress
825 in improving performance established by the State Board of Education in rules.

826 Section 26. Section **53A-8a-701** is enacted to read:

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

828 **53A-8a-701. Definitions.**

829 As used in this part:

830 (1) "District administrator" means an individual who:

831 (a) serves in a position that requires an educator license with an administrative area of
832 concentration, except as provided in Section 53A-3-301 or 53A-6-110; and

833 (b) supervises school administrators.

834 (2) "School administrator" means an individual who:
 835 (a) serves in a position that requires an educator license with an administrative area of
 836 concentration, except as provided in Section 53A-6-110; and
 837 (b) supervises teachers.

838 Section 27. Section **53A-8a-702** is enacted to read:

839 **53A-8a-702. Evaluation of school and district administrators.**

840 The State Board of Education shall:

841 (1) establish in rules a framework for the evaluation of school and district
842 administrators that includes the following components:

843 (a) student achievement indicators emphasizing learning growth and proficiency;

844 (b) the results of a periodic 360 degree evaluation tool utilized by the local school
845 board;

846 (c) the effectiveness of an evaluation and rating process of employees in a school for
847 which the school or district administrator has responsibility; and

848 (d) other factors as determined by a local school board in implementing state law and
849 State Board of Education rules; and

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

853 Section 28. Section **53A-8a-703** is enacted to read:

854 **53A-8a-703. Compensation of school and district administrators.**

855 (1) Beginning with the school year following the school year in which a school district
856 fully implements an evaluation system for school and district administrators pursuant to
857 Section 53A-8a-702, a school or district administrator's salary shall be based on the school or
858 district administrator's most recent evaluation.

859 (2) A school district shall continue each year to increase the portion of a school or
860 district administrator's salary that is based on an evaluation administered pursuant to Section
861 53A-8a-702 until at least 15% of a school or district administrator's salary is contingent upon
862 the evaluation administered pursuant to Section 53A-8a-702.

863 Section 29. Section **53A-11-605** is amended to read:

864 **53A-11-605. Definitions -- School personnel -- Medical recommendations --**

865 **Exceptions -- Penalties.**

866 (1) As used in this section:

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

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

871 (2) School personnel may:

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

874 (i) progress;

875 (ii) health and wellness;

876 (iii) social interactions;

877 (iv) behavior; or

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

879 (b) communicate information and observations between school personnel regarding a
880 child;

881 (c) refer students to other appropriate school personnel and agents, consistent with
882 local school board or charter school policy, including referrals and communication with a
883 school counselor or other mental health professionals working within the school system;

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

887 (e) exercise their authority relating to the placement within the school or readmission
888 of a child who may be or has been suspended or expelled for a violation of Section
889 53A-11-904; and

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

892 (3) School personnel shall:

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

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

895 and

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

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

899 (a) recommend to a parent or guardian that a child take or continue to take a
900 psychotropic medication;

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

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

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

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

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

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

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

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

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

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

926 (c) conduct a psychiatric or behavioral health evaluation or mental health screening,

927 test, evaluation, or assessment of a child in accordance with Section 53A-13-302; and
928 (d) provide to a parent or guardian, upon the specific request of the parent or guardian,
929 a list of three or more health care professionals or providers, including licensed physicians,
930 psychologists, or other health specialists.

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

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

934 (b) indicating that an intentional violation of this section is cause for disciplinary action
935 consistent with local school board or charter school policy and under Section [~~53A-8-104~~
936 53A-8a-502].

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

Legislative Review Note
as of 1-30-12 3:10 PM

Office of Legislative Research and General Counsel