

**ABUSE POLICY FOR EDUCATORS**

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Daniel McCay**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to school personnel employment and licensing procedures and student abuse reporting.

**Highlighted Provisions:**

This bill:

- ▶ modifies requirements for providing and obtaining employment and disciplinary history of school personnel;
- ▶ modifies requirements for educator licensing;
- ▶ modifies provisions related to mandatory reporting of student abuse; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**53A-6-401**, as last amended by Laws of Utah 2010, Chapter 362

**53A-6-402**, as repealed and reenacted by Laws of Utah 1999, Chapter 108

**53A-6-502**, as last amended by Laws of Utah 2003, Chapter 315

REPEALS AND REENACTS:



28 **53A-6-307**, as enacted by Laws of Utah 1999, Chapter 108  
 29 **53A-6-405**, as enacted by Laws of Utah 1999, Chapter 108  
 30 **53A-6-501**, as last amended by Laws of Utah 2011, Chapter 320

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

33 Section 1. Section **53A-6-307** is repealed and reenacted to read:

34 **53A-6-307. Licensing power of the board -- Licensing final action -- Appeal rights.**

35 (1) The board holds the power to license educators.

36 (2) (a) The board shall take final action with regard to an educator license.

37 (b) An entity other than the board may not take final action with regard to an educator  
 38 license.

39 (3) For the purpose of making a final action licensing decision, the board shall make  
 40 rules to establish whether a misdemeanor is a crime of moral turpitude:

41 (a) if the misdemeanor is not a sexual offense under Title 76, Chapter 5, Part 4, Sexual  
 42 Offenses; and

43 (b) creating a rebuttable presumption that a misdemeanor of a sexual nature is a  
 44 misdemeanor of moral turpitude.

45 (4) (a) In accordance with Subsection (4)(b), a license applicant or an educator may  
 46 seek judicial review of a final action made by the board under this chapter.

47 (b) A license applicant or educator may file a petition for judicial review of the board's  
 48 final action if the license applicant or educator files a petition within 30 days after the day on  
 49 which the license applicant or educator received notice of the final action.

50 Section 2. Section **53A-6-401** is amended to read:

51 **53A-6-401. Background checks.**

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

54 (b) As used in this section, licensing includes reinstatement of [~~a lapsed, suspended, or~~  
 55 ~~revoked license~~] an expired or suspended license.

56 (2) Where reasonable cause exists, the State Board of Education may require an  
 57 educator to submit to a criminal background check.

58 (3) (a) The [~~office~~] board shall establish a procedure for obtaining and evaluating

59 relevant information concerning license applicants, including fingerprinting the applicant and  
60 submitting the prints to the Criminal Investigations and Technical Services Division of the  
61 Department of Public Safety for checking against applicable state, regional, and national  
62 criminal records files.

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

65 (c) The Criminal Investigations and Technical Services Division shall maintain a  
66 separate file of fingerprints submitted under Subsection (3)(a) and notify the office when a new  
67 entry is made against a person whose fingerprints are held in the file regarding any matters  
68 involving an alleged:

- 69 (i) sexual offense;
- 70 (ii) drug-related offense;
- 71 (iii) alcohol-related offense; or
- 72 (iv) offense against the person under Title 76, Chapter 5, Offenses Against the Person.

73 (d) The cost of maintaining the separate file shall be paid by the office from fees  
74 charged to those submitting fingerprints.

75 (4) An applicant or educator shall have an opportunity to respond to any information  
76 received by the office as a result of the background check.

77 (5) [~~In preparing recommendations concerning licensing for submission to the board,~~  
78 ~~the office]~~ The board shall consider only the following matters obtained through fingerprint  
79 checks to the extent that they are relevant to the license sought by the applicant or held by the  
80 educator:

- 81 (a) convictions, including pleas in abeyance;
- 82 (b) any matters involving an alleged sexual offense;
- 83 (c) any matters involving an alleged felony or class A misdemeanor drug offense;
- 84 (d) any matters involving an alleged offense against the person under Title 76, Chapter  
85 5, Offenses Against the Person;

86 (e) any matters involving a felony;

87 (f) any matters involving a misdemeanor of moral turpitude;

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

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

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

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

99           (8) The applicant shall pay the costs of conducting the background check required  
 100 pursuant to Subsection (1).

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

103           Section 3. Section **53A-6-402** is amended to read:

104           **53A-6-402. Evaluation information on current or prospective school employees --**  
 105 **Notice to employee -- Mandatory employment history check -- Exemption from liability.**

106           (1) (a) The ~~[office's administrator of teacher licensing may]~~ board shall provide the  
 107 appropriate administrator of a public or private school or of an agency outside the state ~~[which]~~  
 108 that is responsible for licensing or [certification of educators with any] certifying educational  
 109 personnel with a recommendation or other information possessed by the [office which] board  
 110 that has significance in evaluating the employment or license of:

111           (i) a current or prospective school employee~~[-license holder, or applicant for~~  
 112 licensing.];

113           (ii) an educator or education license holder; or

114           (iii) a license applicant.

115           (b) Information supplied under Subsection (1)(a) ~~[may]~~ shall include:

116           (i) the complete record of a hearing ~~[or]~~; and

117           (ii) the investigative report for matters ~~[which]~~ that:

118           ~~[(i)]~~ (A) the educator has had an opportunity to contest; and

119           ~~[(ii)]~~ (B) did not proceed to a hearing.

120           (2) At the request of the ~~[office's administrator of teacher licensing,]~~ board, an

121 administrator of a public school or school district shall, and an administrator of a private school  
 122 may, provide ~~[any]~~ a recommendation or other information possessed by the school or school  
 123 district ~~[which]~~ that has significance in evaluating the employment or licensure of:

124 (a) a current or prospective school employee~~[- license holder, or applicant for~~  
 125 licensing-];

126 (b) an educator or education license holder; or

127 (c) a license applicant.

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

132 (4) A local school board, a charter school governing board, or the Utah Schools for the  
 133 Deaf and the Blind shall obtain references and a discipline record from prior employers of a  
 134 potential employee before hiring:

135 (a) an educator; or

136 (b) an individual who:

137 (i) works in a public school as an employee; and

138 (ii) has significant unsupervised access to students.

139 ~~[(4)]~~ (5) A person who, in good faith, provides a recommendation or discloses or  
 140 receives information under this section is exempt from civil and criminal liability relating to  
 141 that recommendation, receipt, or disclosure.

142 ~~[(5)]~~ (6) For purposes of this section, "employee" includes a volunteer.

143 Section 4. Section **53A-6-405** is repealed and reenacted to read:

144 **53A-6-405. Ineligibility for educator license.**

145 (1) The board may refuse to issue a license to a license applicant if the board finds  
 146 good cause for the refusal, including behavior of the applicant:

147 (a) found pursuant to a criminal, civil, or administrative matter after reasonable  
 148 opportunity for the applicant to contest the allegation; and

149 (b) considered, as behavior of an educator, to be:

150 (i) immoral, unprofessional, or incompetent behavior; or

151 (ii) a violation of standards of ethical conduct, performance, or professional

152 competence.

153 (2) The board may not issue, renew, or reinstate an educator license if the license  
154 applicant or educator:

155 (a) was convicted of a misdemeanor of moral turpitude or a felony;

156 (b) pled guilty to a misdemeanor of moral turpitude or a felony;

157 (c) entered a plea of no contest to a misdemeanor of moral turpitude or a felony;

158 (d) entered a plea in abeyance to a misdemeanor of moral turpitude or a felony;

159 (e) was convicted of a sexual offense under Title 76, Chapter 5, Part 4, Sexual

160 Offenses, against a minor child;

161 (f) engaged in sexually explicit conduct, as defined in Section [76-5b-103](#), with a  
162 student who is a minor;

163 (g) engaged in sexually explicit conduct, as defined in Section [76-5b-103](#), with a  
164 student who is:

165 (i) not a minor; and

166 (ii) enrolled in a school where the license applicant or educator is or was employed; or

167 (h) admits to the board or UPPAC that the license applicant or educator committed:

168 (i) a misdemeanor of moral turpitude;

169 (ii) a felony; or

170 (iii) a sexual offense or sexually explicit conduct described in Subsection (2)(e), (f), or

171 (g).

172 (3) If a person is ineligible for licensure under Subsection (1) or (2), a public school  
173 may not:

174 (a) employ the person in the public school; or

175 (b) allow the person to volunteer in the public school.

176 (4) (a) If the board denies a license applicant licensure under this section, the board  
177 shall immediately notify the applicant of:

178 (i) the denial; and

179 (ii) the applicant's right to request a hearing before UPPAC.

180 (b) Upon receipt of a notice described in Subsection (4)(a), a license applicant may,  
181 within 30 days after the day on which the applicant received the notice, request a hearing

182 before UPPAC for the applicant to review and respond to all evidence upon which the board

183 based the denial.

184 (c) If the board receives a request for a hearing described in Subsection (4)(b), the  
185 board shall direct UPPAC to hold a hearing.

186 Section 5. Section **53A-6-501** is repealed and reenacted to read:

187 **53A-6-501. Board disciplinary action of an educator.**

188 (1) (a) The board shall direct UPPAC to investigate an allegation, administrative  
189 decision, or judicial decision that evidences an educator is unfit for duty because the educator  
190 exhibited behavior that:

191 (i) is immoral, unprofessional, or incompetent; or

192 (ii) violates standards of ethical conduct, performance, or professional competence.

193 (b) If the board determines an allegation or decision described in Subsection (1)(a)  
194 does not evidence an educator's unfitness for duty, the board may dismiss the allegation or  
195 decision without an investigation or hearing.

196 (2) The board shall direct UPPAC to investigate and hold a hearing for an educator to  
197 respond if the board receives an allegation that the educator:

198 (a) was charged with a misdemeanor of moral turpitude or a felony;

199 (b) was convicted of a misdemeanor of moral turpitude or a felony;

200 (c) pled guilty to a misdemeanor of moral turpitude or a felony;

201 (d) entered a plea of no contest to a misdemeanor of moral turpitude or a felony;

202 (e) entered a plea in abeyance to a misdemeanor of moral turpitude or a felony;

203 (f) was convicted of a sexual offense under Title 76, Chapter 5, Part 4, Sexual  
204 Offenses, against a minor child;

205 (g) engaged in sexually explicit conduct, as defined in Section **76-5b-103**, with a  
206 student who is a minor; or

207 (h) engaged in sexually explicit conduct, as defined in Section **76-5b-103**, with a  
208 student who is:

209 (i) not a minor; and

210 (ii) enrolled in a school where the educator is or was employed.

211 (3) Upon notice that an educator allegedly violated Section **53A-6-502**, the board shall  
212 direct UPPAC to:

213 (a) investigate the alleged violation; and

214 (b) hold a hearing for the educator to respond to the allegation.  
215 (4) Upon completion of an investigation or hearing described in this section, UPPAC  
216 shall:  
217 (a) provide findings to the board; and  
218 (b) make a recommendation for board action.  
219 (5) (a) Except as provided in Subsection (5)(b), upon review of UPPAC's findings and  
220 recommendation, the board may:  
221 (i) revoke the educator's license;  
222 (ii) suspend the educator's license;  
223 (iii) restrict or prohibit the educator from renewing the educator's license;  
224 (iv) warn or reprimand the educator;  
225 (v) enter into a written agreement with the educator that requires the educator to  
226 comply with certain conditions;  
227 (vi) direct UPPAC to further investigate or gather information; or  
228 (vii) take other action the board finds to be appropriate for and consistent with the  
229 educator's behavior.  
230 (b) Upon review of UPPAC's findings and recommendation, the board shall revoke the  
231 license of an educator who:  
232 (i) was convicted of a misdemeanor of moral turpitude or a felony;  
233 (ii) pled guilty to a misdemeanor of moral turpitude or a felony;  
234 (iii) entered a plea of no contest to a misdemeanor of moral turpitude or a felony;  
235 (iv) entered a plea in abeyance to a misdemeanor of moral turpitude or a felony;  
236 (v) was convicted of a sexual offense under Title 76, Chapter 5, Part 4, Sexual  
237 Offenses, against a minor child;  
238 (vi) engaged in sexually explicit conduct, as defined in Section [76-5b-103](#), with a  
239 student who is a minor;  
240 (vii) engaged in sexually explicit conduct, as defined in Section [76-5b-103](#), with a  
241 student who is:  
242 (A) not a minor; and  
243 (B) enrolled in a school where the educator is or was employed; or  
244 (viii) admits to the board or UPPAC that the applicant committed:



245 (A) a misdemeanor of moral turpitude;  
246 (B) a felony; or  
247 (C) a sexual offense or sexually explicit conduct described in Subsection (5)(b)(v),  
248 (vi), or (vii).

249 (c) The board may not reinstate a revoked license.

250 (d) Before the board takes adverse action against an educator under this section, the  
251 board shall ensure that the educator had an opportunity for a UPPAC hearing.

252 Section 6. Section **53A-6-502** is amended to read:

253 **53A-6-502. Mandatory reporting of physical or sexual abuse of students.**

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

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

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

266 ~~[(4) Failure to comply with Subsection (2) or (3) shall be considered unprofessional~~  
267 ~~conduct.]~~

268 (4) Upon notice that an educator allegedly violated Subsection (2) or (3), the board  
269 shall direct UPPAC to investigate the educator's alleged violation.

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

**Legislative Review Note**  
**as of 2-17-15 10:49 AM**

**Office of Legislative Research and General Counsel**