

Representative Daniel McCay proposes the following substitute bill:

EDUCATION ABUSE POLICY

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel McCay

Senate Sponsor: _____

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 and procedures for educator licensing;
- ▶ gives rulemaking authority to the State Board of Education;
- ▶ 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-6-306, as last amended by Laws of Utah 2010, Chapter 283



26 **53A-6-402**, as repealed and reenacted by Laws of Utah 1999, Chapter 108

27 **53A-6-502**, as last amended by Laws of Utah 2003, Chapter 315

28 **53A-6-604**, as enacted by Laws of Utah 1999, Chapter 108

29 **77-37-4**, as last amended by Laws of Utah 2014, Chapter 90

30 REPEALS AND REENACTS:

31 **53A-6-307**, as enacted by Laws of Utah 1999, Chapter 108

32 **53A-6-405**, as enacted by Laws of Utah 1999, Chapter 108

33 **53A-6-501**, as last amended by Laws of Utah 2011, Chapter 320



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

36 Section 1. Section **53A-6-306** is amended to read:

37 **53A-6-306. UPPAC duties and procedures -- Board rulemaking authority.**

38 [~~(1) UPPAC shall:~~]

39 [~~(a) adopt rules consistent with applicable law and board rules to carry out its~~
40 ~~responsibilities under this chapter;~~]

41 [~~(b) make recommendations to the board and professional organizations of educators;~~]

42 [~~(i) concerning standards of professional performance, competence, and ethical~~
43 ~~conduct for persons holding licenses issued by the board; and]~~

44 [~~(ii) for the improvement of the education profession;~~]

45 [~~(c) establish procedures for receiving and acting upon reports or allegations regarding~~
46 ~~immoral, unprofessional, or incompetent conduct, unfitness for duty, or other violations of~~
47 ~~standards of ethical conduct, performance, or professional competence;]~~

48 [~~(d) investigate any allegation of sexual abuse of a student or a minor by an educator;~~
49 ~~and]~~

50 [~~(e) establish the manner in which hearings are conducted and reported, and~~
51 ~~recommendations are submitted to the board for its action.]~~

52 [~~(2) (a) UPPAC may conduct or authorize investigations relating to any matter before~~
53 ~~UPPAC.]~~

54 (1) (a) The board shall make rules regarding UPPAC duties and procedures.

55 (b) The board may direct UPPAC to:

56 (i) review a complaint;

57 (ii) investigate a complaint in accordance with Subsection (2)(a);

58 (iii) hold a hearing; or

59 (iv) take other action the board finds appropriate for UPPAC.

60 (c) Upon completion of an investigation or hearing, UPPAC shall:

61 (i) provide findings to the board; and

62 (ii) make a recommendation for board action.

63 (2) (a) The board may direct UPPAC or an independent investigator operating under
64 UPPAC supervision to hold an investigation.

65 (b) Those investigations shall be independent of and separate from any criminal
66 investigation.

67 (c) In conducting an investigation UPPAC or an investigator operating under [UPPAC]
68 board authorization may:

69 (i) administer oaths and issue subpoenas which may be enforced through the state
70 district courts;

71 (ii) receive any evidence related to an alleged offense, including sealed or expunged
72 records released to the board under Section 77-40-109; and

73 (iii) where reasonable cause exists, initiate a criminal background check on a license
74 holder.

75 (d) (i) A license holder shall receive written notice if a fingerprint check is required as
76 a part of the background check.

77 (ii) Fingerprints of the individual shall be taken, and the Law Enforcement and
78 Technical Services Division of the Department of Public Safety shall release the individual's
79 full record, as shown on state, regional, and national records, to UPPAC.

80 (iii) [UPPAC] The board shall pay the cost of the background check except as provided
81 under Section 53A-6-401, and the money collected shall be credited to the Law Enforcement
82 and Technical Services Division to offset its expenses.

83 (3) [~~UPPAC is entitled to~~] The board shall establish in rule a rebuttable evidentiary
84 presumption that a person has committed a sexual offense against a minor child if the person
85 has:

86 (a) after having had a reasonable opportunity to contest the allegation, been found
87 pursuant to a criminal, civil, or administrative action to have committed a sexual offense

88 against a minor child;

89 (b) pled guilty to a reduced charge in the face of a charge of having committed a sexual
90 offense against a minor child, entered a plea of no contest, entered into a plea in abeyance
91 resulting in subsequent dismissal of such a charge, or failed to defend himself against such a
92 charge when given reasonable opportunity to do so; or

93 (c) voluntarily surrendered a license or certificate or allowed a license or certificate to
94 lapse in the face of a charge of having committed a sexual offense against a minor child.

95 (4) In resolving a complaint [~~UPPAC~~] the board may:

96 (a) dismiss the complaint;

97 (b) issue a warning or reprimand;

98 (c) issue an order of probation requiring an educator to comply with specific conditions
99 in order to retain a license;

100 (d) enter into a written agreement requiring an educator to comply with certain
101 conditions;

102 (e) recommend board action such as revocation or suspension of a license or restriction
103 or prohibition of licensure; or

104 (f) take other appropriate action.

105 (5) UPPAC may not:

106 (a) participate as a party in any dispute relating to negotiations between a school
107 district and its educators;

108 (b) [~~take~~] recommend action against an educator without giving the individual an
109 opportunity for a fair hearing to contest the allegations upon which the action would be based;
110 or

111 (c) [~~take~~] recommend action against an educator unless [~~it finds that~~] the action or the
112 failure of the educator to act impairs the educator's ability to perform the functions of the
113 educator's position.

114 (6) The board may direct UPPAC to make recommendations to the board and
115 professional organizations of educators:

116 (a) concerning standards of professional performance, competence, and ethical conduct
117 for persons holding licenses issued by the board; or

118 (b) for the improvement of the education profession.

119 Section 2. Section **53A-6-307** is repealed and reenacted to read:

120 **53A-6-307. Licensing power of the board -- Licensing final action -- Appeal rights.**

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

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

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

125 (3) (a) In accordance with Subsection (3)(b), a license applicant or an educator may
126 seek judicial review of a final action made by the board under this chapter.

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

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

131 **53A-6-402. Evaluation information on current or prospective school employees --**
132 **Notice to employee -- Mandatory employment history check -- Exemption from liability.**

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

138 (i) a current or prospective school employee[~~, license holder, or applicant for~~
139 licensing];

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

141 (iii) a license applicant.

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

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

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

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

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

147 (2) At the request of the [~~office's administrator of teacher licensing;~~] board, an
148 administrator of a public school or school district shall, and an administrator of a private school
149 may, provide [~~any~~] a recommendation or other information possessed by the school or school

150 district ~~[which]~~ that has significance in evaluating the employment or licensure of:

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

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

154 (c) a license applicant.

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

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

162 (a) an educator; or

163 (b) an individual who:

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

165 (ii) has significant unsupervised access to students.

166 ~~[(4)]~~ (5) A person who, in good faith, provides a recommendation or discloses or
167 receives information under this section is exempt from civil and criminal liability relating to
168 that recommendation, receipt, or disclosure.

169 ~~[(5)]~~ (6) For purposes of this section, "employee" includes a volunteer.

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

171 **53A-6-405. Ineligibility for educator license.**

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

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

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

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

178 (ii) a violation of standards of ethical conduct, performance, or professional
179 competence.

180 (2) The board may not issue, renew, or reinstate an educator license if the license

181 applicant or educator:

182 (a) was convicted of a felony of a sexual nature;

183 (b) pled guilty to a felony of a sexual nature;

184 (c) entered a plea of no contest to a felony of a sexual nature;

185 (d) entered a plea in abeyance to a felony of a sexual nature;

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

187 Offenses, against a minor child;

188 (f) engaged in sexually explicit conduct, as defined in Section [76-5b-103](#), with a

189 student who is a minor;

190 (g) engaged in sexually explicit conduct, as defined in Section [76-5b-103](#), with a

191 student who is:

192 (i) not a minor; and

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

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

195 conduct that amounts to:

196 (i) a felony of a sexual nature; or

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

198 (g).

199 (3) If a person is ineligible for licensure under Subsection (1) or (2), a public school

200 may not:

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

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

203 (4) (a) If the board denies a license applicant licensure under this section, the board

204 shall immediately notify the applicant of:

205 (i) the denial; and

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

207 (b) Upon receipt of a notice described in Subsection (4)(a), a license applicant may,

208 within 30 days after the day on which the applicant received the notice, request a hearing

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

210 based the denial.

211 (c) If the board receives a request for a hearing described in Subsection (4)(b), the

212 board shall direct UPPAC to hold a hearing.

213 Section 5. Section [53A-6-501](#) is repealed and reenacted to read:

214 **53A-6-501. Board disciplinary action of an educator.**

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

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

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

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

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

225 (a) was charged with a felony of a sexual nature;

226 (b) was convicted of a felony of a sexual nature;

227 (c) pled guilty to a felony of a sexual nature;

228 (d) entered a plea of no contest to a felony of a sexual nature;

229 (e) entered a plea in abeyance to a felony of a sexual nature;

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

232 (g) engaged in sexually explicit conduct, as defined in Section [76-5b-103](#), with a
233 student who is a minor; or

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

236 (i) not a minor; and

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

238 (3) Upon notice that an educator allegedly violated Section [53A-6-502](#), the board shall
239 direct UPPAC to:

240 (a) investigate the alleged violation; and

241 (b) hold a hearing for the educator to respond to the allegation.

242 (4) Upon completion of an investigation or hearing described in this section, UPPAC

243 shall:

244 (a) provide findings to the board; and

245 (b) make a recommendation for board action.

246 (5) (a) Except as provided in Subsection (5)(b), upon review of UPPAC's findings and

247 recommendation, the board may:

248 (i) revoke the educator's license;

249 (ii) suspend the educator's license;

250 (iii) restrict or prohibit the educator from renewing the educator's license;

251 (iv) warn or reprimand the educator;

252 (v) enter into a written agreement with the educator that requires the educator to

253 comply with certain conditions;

254 (vi) direct UPPAC to further investigate or gather information; or

255 (vii) take other action the board finds to be appropriate for and consistent with the
256 educator's behavior.

257 (b) Upon review of UPPAC's findings and recommendation, the board shall revoke the
258 license of an educator who:

259 (i) was convicted of a felony of a sexual nature;

260 (ii) pled guilty to a felony of a sexual nature;

261 (iii) entered a plea of no contest to a felony of a sexual nature;

262 (iv) entered a plea in abeyance to a felony of a sexual nature;

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

264 Offenses, against a minor child;

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

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

269 (A) not a minor; and

270 (B) enrolled in a school where the educator is or was employed; or

271 (viii) admits to the board or UPPAC that the applicant committed conduct that amounts
272 to:

273 (A) a felony of a sexual nature; or

274 (B) a sexual offense or sexually explicit conduct described in Subsection (5)(b)(v), (vi),
275 or (vii).

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

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

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

280 **53A-6-502. Mandatory reporting of physical or sexual abuse of students.**

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

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

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

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

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

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

299 Section 7. Section **53A-6-604** is amended to read:

300 **53A-6-604. Rules for conducting hearings -- Standard of proof.**

301 (1) The board~~[;]~~ and each local school board~~[; and UPPAC]~~ shall ~~[each]~~ adopt rules for
302 the conduct of hearings to ensure that requirements of due process are met.

303 (2) An accused party shall be provided not less than 15 days before a hearing with:

304 (a) notice of the hearing;

- 305 (b) the law, rule, or policy alleged to have been violated;
- 306 (c) sufficient information about the allegations and the evidence to be presented in
- 307 support of the allegations to permit the accused party to prepare a meaningful defense; and
- 308 (d) a copy of the rules under which the hearing will be conducted.

309 (3) If an accused party fails to request a hearing within 30 days after written notice is
310 sent to the party's address as shown on the records of the local board, for actions taken under
311 the auspices of a local board, or on the records of the office, for actions taken under the
312 auspices of UPPAC or the state board, then the accused party shall be considered to have
313 waived the right to a hearing and the action may proceed without further delay.

314 (4) Hearing fact finders shall use the preponderance of evidence standard in deciding
315 all questions unless a higher standard is required by law.

316 (5) Unless otherwise provided in Title 53A, the decisions of state and local boards are
317 final determinations under this section, appealable to the appropriate court for review.

318 Section 8. Section ~~77-37-4~~ is amended to read:

319 **77-37-4. Additional rights -- Children.**

320 In addition to all rights afforded to victims and witnesses under this chapter, child
321 victims and witnesses shall be afforded these rights:

322 (1) Children have the right to protection from physical and emotional abuse during
323 their involvement with the criminal justice process.

324 (2) Children are not responsible for inappropriate behavior adults commit against them
325 and have the right not to be questioned, in any manner, nor to have allegations made, implying
326 this responsibility. Those who interview children have the responsibility to consider the
327 interests of the child in this regard.

328 (3) Child victims and witnesses have the right to have interviews relating to a criminal
329 prosecution kept to a minimum. All agencies shall coordinate interviews and ensure that they
330 are conducted by persons sensitive to the needs of children.

331 (4) Child victims have the right to be informed of available community resources that
332 might assist them and how to gain access to those resources. Law enforcement and prosecutors
333 have the duty to ensure that child victims are informed of community resources, including
334 counseling prior to the court proceeding, and have those services available throughout the
335 criminal justice process.

336 (5) (a) Child victims have the right, once an investigation has been initiated by law
337 enforcement or the Division of Child and Family Services, to keep confidential their interviews
338 that are conducted at a Children's Justice Center, including video and audio recordings, and
339 transcripts of those recordings. Except as provided in Subsection (6), recordings and
340 transcripts of interviews may not be distributed, released, or displayed to anyone without a
341 court order.

342 (b) A court order described in Subsection (5)(a):

343 (i) shall describe with particularity to whom the recording or transcript of the interview
344 may be released and prohibit further distribution or viewing by anyone not named in the order;
345 and

346 (ii) may impose restrictions on access to the materials considered reasonable to protect
347 the privacy of the child victim.

348 (c) A parent or guardian of the child victim may petition a juvenile or district court for
349 an order allowing the parent or guardian to view a recording or transcript upon a finding of
350 good cause. The order shall designate the agency that is required to display the recording or
351 transcript to the parent or guardian and shall prohibit viewing by anyone not named in the
352 order.

353 (d) Following the conclusion of any legal proceedings in which the recordings or
354 transcripts are used, the court shall order the recordings and transcripts in the court's file sealed
355 and preserved.

356 (6) (a) The following offices and their designated employees may distribute and receive
357 a recording or transcript to and from one another without a court order:

358 (i) the Division of Child and Family Services;

359 (ii) administrative law judges employed by the Department of Human Services;

360 (iii) Department of Human Services investigators investigating the Division of Child
361 and Family Services or investigators authorized to investigate under Section [62A-4a-202.6](#);

362 (iv) an office of the city attorney, county attorney, district attorney, or attorney general;

363 (v) a law enforcement agency;

364 (vi) a Children's Justice Center established under Section [67-5b-102](#); or

365 (vii) the attorney for the child who is the subject of the interview.

366 (b) In a criminal case or in a juvenile court in which the state is a party:

367 (i) the parties may display and enter into evidence a recording or transcript in the
368 course of a prosecution;

369 (ii) the state's attorney may distribute a recording or transcript to the attorney for the
370 defendant, pro se defendant, respondent, or pro se respondent pursuant to a valid request for
371 discovery;

372 (iii) the attorney for the defendant or respondent may do one or both of the following:

373 (A) release the recording or transcript to an expert retained by the attorney for the
374 defendant or respondent if the expert agrees in writing that the expert will not distribute,
375 release, or display the recording or transcript to anyone without prior authorization from the
376 court; or

377 (B) permit the defendant or respondent to view the recording or transcript, but may not
378 distribute or release the recording or transcript to the defendant or respondent; and

379 (iv) the court shall advise a pro se defendant or respondent that a recording or
380 transcript received as part of discovery is confidential and may not be distributed, released, or
381 displayed without prior authorization from the court.

382 (c) A court's failure to advise a pro se defendant or respondent that a recording or
383 transcript received as part of discovery is confidential and may not be used as a defense to
384 prosecution for a violation of the disclosure rule.

385 (d) In an administrative case, pursuant to a written request, the Division of Child and
386 Family Services may display, but may not distribute or release, a recording or transcript to the
387 respondent or to the respondent's designated representative.

388 (e) (i) Within two business days of a request from a parent or guardian of a child
389 victim, an investigative agency shall allow the parent or guardian to view a recording after the
390 conclusion of an interview, unless:

391 (A) the suspect is a parent or guardian of the child victim;

392 (B) the suspect resides in the home with the child victim; or

393 (C) the investigative agency determines that allowing the parent or guardian to view
394 the recording would likely compromise or impede the investigation.

395 (ii) If the investigative agency determines that allowing the parent or guardian to view
396 the recording would likely compromise or impede the investigation, the parent or guardian may
397 petition a juvenile or district court for an expedited hearing on whether there is good cause for

398 the court to enter an order allowing the parent or guardian to view the recording in accordance
399 with Subsection (5)(c).

400 (iii) A Children's Justice Center shall coordinate the viewing of the recording described
401 in this Subsection (6)(e).

402 (f) A multidisciplinary team assembled by a Children's Justice Center or an
403 interdisciplinary team assembled by the Division of Child and Family Services may view a
404 recording or transcript, but may not receive a recording or transcript.

405 (g) A Children's Justice Center:

406 (i) may distribute or display a recording or transcript to an authorized trainer or
407 evaluator for purposes of training or evaluation; and

408 (ii) may display, but may not distribute, a recording or transcript to an authorized
409 trainee.

410 (h) An authorized trainer or instructor may display a recording or transcript according
411 to the terms of the authorized trainer's or instructor's contract with the Children's Justice Center
412 or according to the authorized trainer's or instructor's scope of employment.

413 (i) (i) In an investigation under Section 53A-6-306, in which a child victim who is the
414 subject of the recording or transcript has alleged criminal conduct against an educator, a law
415 enforcement agency may distribute or release the recording or transcript to an investigator
416 operating under [UPPAC] State Board of Education authorization, upon the investigator's
417 written request.

418 (ii) If the respondent in a case investigated under Section 53A-6-306 requests a hearing
419 authorized under that section, the investigator operating under [UPPAC] State Board of
420 Education authorization may display, release, or distribute the recording or transcript to the
421 prosecutor operating under [UPPAC] State Board of Education authorization or to an expert
422 retained by an investigator.

423 (iii) Upon request for a hearing under Section 53A-6-306, a prosecutor operating under
424 [UPPAC] State Board of Education authorization may display the recording or transcript to a
425 pro se respondent, to an attorney retained by the respondent, or to an expert retained by the
426 respondent.

427 (iv) The parties to a hearing authorized under Section 53A-6-306 may display and enter
428 into evidence a recording or transcript in the course of a prosecution.

429 (7) Except as otherwise provided in this section, it is a class B misdemeanor for any
430 individual to distribute, release, or display any recording or transcript of an interview of a child
431 victim conducted at a Children's Justice Center.