

**EDUCATION LICENSING AMENDMENTS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ken Ivory**

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

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**LONG TITLE**

**General Description:**

This bill amends provisions related to licensing in the public education system.

**Highlighted Provisions:**

This bill:

- ▶ amends provisions related to licensing:
  - ineligibility;
  - disciplinary action; and
  - hearings;
- ▶ gives rulemaking authority; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**53A-6-405**, as repealed and reenacted by Laws of Utah 2015, Chapter 311

**53A-6-501**, as repealed and reenacted by Laws of Utah 2015, Chapter 311

**53A-6-602**, as enacted by Laws of Utah 1999, Chapter 108

**53A-6-604**, as last amended by Laws of Utah 2015, Chapter 311



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

Section 1. Section **53A-6-405** is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) not a minor; and

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

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

(i) a felony of a sexual nature; or

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

(g).

59 (3) If an individual is ineligible for licensure under Subsection (1) or (2), a public  
60 school may not:

- 61 (a) employ the person in the public school; or
- 62 (b) allow the person to volunteer in the public school.

63 (4) (a) If the board denies licensure under this section, the board shall immediately  
64 notify the applicant of:

- 65 (i) the denial; and
- 66 (ii) the applicant's right to request a hearing before UPPAC.

67 (b) Upon receipt of a notice described in Subsection (4)(a), an applicant may, within 30  
68 days after the day on which the applicant received the notice, request a hearing before UPPAC  
69 for the applicant to review and respond to all evidence upon which the board based the denial.

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

72 Section 2. Section **53A-6-501** is amended to read:

73 **53A-6-501. Board disciplinary action against an educator.**

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

- 77 (i) is immoral, unprofessional, or incompetent; or
- 78 (ii) violates standards of ethical conduct, performance, or professional competence.

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

82 (2) The board shall direct UPPAC to investigate and allow an educator to respond in a  
83 UPPAC hearing if the board receives an allegation that the educator:

- 84 (a) was charged with a felony of a sexual nature;
- 85 (b) was convicted of a felony of a sexual nature;
- 86 (c) pled guilty to a felony of a sexual nature;
- 87 (d) entered a plea of no contest to a felony of a sexual nature;
- 88 (e) entered a plea in abeyance to a felony of a sexual nature;
- 89 (f) was convicted of a sexual offense under Title 76, Chapter 5, Part 4, Sexual

90 Offenses, against a minor child;

91 (g) engaged in sexually explicit conduct, as defined in Section 76-5b-103, with a

92 [~~student who is a~~] minor; or

93 (h) engaged in sexually explicit conduct, as defined in Section 76-5b-103, with a

94 student who is:

95 (i) not a minor; and

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

97 (3) Upon notice that an educator allegedly violated Section 53A-6-502, the board shall

98 direct UPPAC to:

99 (a) investigate the alleged violation; and

100 (b) hold a hearing to allow the educator to respond to the allegation.

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

102 shall:

103 (a) provide findings to the board; and

104 (b) make a recommendation for board action.

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

106 recommendation, the board may:

107 (i) revoke the educator's license;

108 (ii) suspend the educator's license;

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

110 (iv) warn or reprimand the educator;

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

112 comply with certain conditions;

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

114 (vii) take other action the board finds to be appropriate for and consistent with the

115 educator's behavior.

116 (b) Upon review of UPPAC's findings and recommendation, the board shall revoke the

117 license of an educator who:

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

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

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

- 121 (iv) entered a plea in abeyance to a felony of a sexual nature;
- 122 (v) was convicted of a sexual offense under Title 76, Chapter 5, Part 4, Sexual
- 123 Offenses, against a minor child;
- 124 (vi) engaged in sexually explicit conduct, as defined in Section 76-5b-103, with a
- 125 ~~[student who is a]~~ minor;
- 126 (vii) engaged in sexually explicit conduct, as defined in Section 76-5b-103, with a
- 127 student who is:
  - 128 (A) not a minor; and
  - 129 (B) enrolled in a school where the educator is or was employed; or
- 130 (viii) admits to the board or UPPAC that the applicant committed conduct that amounts
- 131 to:
  - 132 (A) a felony of a sexual nature; or
  - 133 (B) a sexual offense or sexually explicit conduct described in Subsection (5)(b)(v), (vi),
  - 134 or (vii).
- 135 (c) The board may not reinstate a revoked license.
- 136 (d) Before the board takes adverse action against an educator under this section, the
- 137 board shall ensure that the educator had an opportunity for a UPPAC hearing.
- 138 (6) The board shall make rules to administer this section, including rules to regulate
- 139 action taken by the board under Subsection (5)(a)(vii).

140 Section 3. Section 53A-6-602 is amended to read:

141 **53A-6-602. Designation of hearing officer or panel -- Review -- Official findings.**

142 (1) UPPAC or a state or local school board charged with responsibility for conducting  
143 a hearing may conduct the hearing itself or appoint a hearing officer or panel to conduct the  
144 hearing and make recommendations concerning findings.

145 (2) (a) UPPAC or the school board shall review the record of the hearing and the  
146 recommendations~~[, and may obtain and review, in the presence of the parties or their~~  
147 ~~representatives, additional relevant information, prior to issuing official findings].~~

148 (b) Before issuing official findings, the board, a local school board, or UPPAC, upon  
149 reviewing a record of a hearing under Subsection (2)(a), may request or obtain additional  
150 relevant information if the board, the local school board, or UPPAC affords the parties an  
151 opportunity to be present when the board, the local school board, or UPPAC reviews the

152 information.

153 (c) If the board, a local school board, or UPPAC obtains additional relevant  
154 information in accordance with Subsection (2)(b), the board, the local school board, or UPPAC  
155 may deliberate privately before issuing official findings.

156 (3) UPPAC shall provide a panel of its members to serve as fact finders in a hearing at  
157 the request of the educator who is the subject of the hearing.

158 Section 4. Section **53A-6-604** is amended to read:

159 **53A-6-604. Rules for conducting hearings -- Standard of proof.**

160 (1) The board and each local school board shall adopt rules for the conduct of hearings  
161 to ensure that requirements of due process are met.

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

163 (a) notice of the hearing;

164 (b) the law, rule, or policy alleged to have been violated;

165 (c) sufficient information about the allegations and the evidence to be presented in  
166 support of the allegations to permit the accused party to prepare a meaningful defense; and

167 (d) ~~[a copy of]~~ an Internet address where the accused party can access the rules under  
168 which the hearing will be conducted.

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

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

176 (5) Unless otherwise provided in this title, the decisions of state and local boards are  
177 final determinations under this section, appealable to the appropriate court for review.

178 (6) The board shall make rules to protect the rights of the following during a hearing:

179 (a) a victim who is younger than 18 years old; and

180 (b) a victim who receives special education services from an LEA under the

181 Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.

**Legislative Review Note**  
**Office of Legislative Research and General Counsel**