

1 **EDUCATION LICENSING AMENDMENTS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Ken Ivory**

5 Senate Sponsor: _____

6 **LONG TITLE**

7 **General Description:**

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

9 **Highlighted Provisions:**

10 This bill:

- 11 ▶ amends provisions related to licensing:
 - 12 • ineligibility;
 - 13 • disciplinary action; and
 - 14 • hearings;
 - 15 ▶ gives rulemaking authority; and
 - 16 ▶ makes technical changes.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

- 23 53A-6-405, as repealed and reenacted by Laws of Utah 2015, Chapter 311
- 24 53A-6-501, as repealed and reenacted by Laws of Utah 2015, Chapter 311
- 25 53A-6-602, as enacted by Laws of Utah 1999, Chapter 108
- 26 53A-6-604, as last amended by Laws of Utah 2015, Chapter 311



28

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

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

31 **53A-6-405. Ineligibility for educator license.**

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

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

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

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

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

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

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

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

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

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

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

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

50 (g) engaged in sexually explicit conduct, as defined in Section **76-5b-103**, with a
51 student who is:

52 (i) not a minor; and

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

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

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

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

58 (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;

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:

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