

Representative Ken Ivory proposes the following substitute bill:

EDUCATION LICENSING AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ken Ivory

Senate Sponsor: _____

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;
- ▶ requires the Utah Professional Practices Advisory Committee to follow certain standards when making a recommendation to the State Board of Education regarding disciplinary action;
 - ▶ gives rulemaking authority; and
 - ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



26 AMENDS:

27 **53A-6-306**, as last amended by Laws of Utah 2015, Chapter 389 and repealed and
28 reenacted by Laws of Utah 2015, Chapter 311 and last amended by Coordination
29 Clause, Laws of Utah 2015, Chapter 311

30 **53A-6-405**, as repealed and reenacted by Laws of Utah 2015, Chapter 311

31 **53A-6-501**, as repealed and reenacted by Laws of Utah 2015, Chapter 311

32 **53A-6-602**, as enacted by Laws of Utah 1999, Chapter 108

33 **53A-6-604**, as last amended by Laws of Utah 2015, Chapter 311

34 ENACTS:

35 **53A-6-308**, Utah Code Annotated 1953

36 **53A-6-309**, Utah Code Annotated 1953



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

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

40 **53A-6-306. UPPAC duties and procedures.**

41 (1) The board may direct UPPAC to review a complaint about an educator and
42 recommend that the board:

- 43 (a) dismiss the complaint; or
- 44 (b) investigate the complaint in accordance with this section.

45 (2) (a) The board may direct UPPAC to:

- 46 (i) in accordance with this section, investigate a complaint's allegation or decision; or
- 47 (ii) hold a hearing.

48 (b) UPPAC may initiate a hearing as part of an investigation.

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

- 50 (i) provide findings to the board; and
- 51 (ii) in accordance with Section **53A-6-308**, make a recommendation for board action.

52 (d) UPPAC may not make a recommendation described in Subsection (2)(c)(ii) to
53 adversely affect an educator's license unless UPPAC gives the educator an opportunity for a
54 hearing.

55 (3) (a) The board may:

- 56 (i) select an independent investigator to conduct a UPPAC investigation with UPPAC

57 oversight; or

58 (ii) authorize UPPAC to select and oversee an independent investigator to conduct an
59 investigation.

60 (b) In conducting an investigation, UPPAC or an independent investigator shall
61 conduct the investigation independent of and separate from a related criminal investigation.

62 (c) In conducting an investigation, UPPAC or an independent investigator may:

63 (i) in accordance with Section 53A-6-603 administer oaths and issue subpoenas; or

64 (ii) receive evidence related to an alleged offense, including sealed or expunged

65 records released to the board under Section 77-40-109.

66 (d) If UPPAC finds that reasonable cause exists during an investigation, UPPAC may
67 recommend that the board initiate a background check on an educator as described in Section
68 53A-15-1504.

69 ~~[(e) UPPAC has a rebuttable presumption that an educator committed a sexual offense
70 against a minor child if the educator voluntarily surrendered a license or certificate or allowed a
71 license or certificate to lapse in the face of a charge of having committed a sexual offense
72 against a minor child.]~~

73 (4) The board may direct UPPAC to:

74 (a) recommend to the board procedures for:

75 (i) receiving and processing complaints;

76 (ii) investigating a complaint's allegation or decision;

77 (iii) conducting hearings; or

78 (iv) reporting findings and making recommendations to the board for board action;

79 (b) recommend to the board or a professional organization of educators:

80 (i) standards of professional performance, competence, and ethical conduct for

81 educators; or

82 (ii) suggestions for improvement of the education profession; or

83 (c) fulfill other duties the board finds appropriate.

84 (5) UPPAC may not participate as a party in a dispute relating to negotiations between:

85 (a) a school district and the school district's educators; or

86 (b) a charter school and the charter school's educators.

87 (6) The board shall make rules establishing UPPAC duties and procedures.

88 Section 2. Section 53A-6-308 is enacted to read:

89 **53A-6-308. UPPAC disciplinary recommendations -- Rulemaking.**

90 (1) UPPAC shall make a recommendation described in Section [53A-6-306](#) or
91 [53A-6-501](#) in accordance with this section and Section [53A-6-309](#).

92 (2) UPPAC shall recommend that the board revoke an educator's license if UPPAC
93 finds that the educator's misconduct is described in Subsection [53A-6-501\(5\)\(b\)](#).

94 (3) Subject to Section [53A-6-309](#), UPPAC shall recommend that the board revoke an
95 educator's license if UPPAC finds that the educator:

96 (a) was convicted of engaging in, admitted to engaging in, or, pursuant to an
97 evidentiary hearing, engaged in, on or off school property, viewing real or simulated child
98 pornography;

99 (b) was convicted at least three times of one or more of the following, if three of the
100 convictions occurred within three years before the day after the day on which the educator was
101 most recently convicted of one of the following:

102 (i) a drug-related offense;

103 (ii) an alcohol-related offense;

104 (iii) a violent offense; or

105 (iv) a sexual offense;

106 (c) is a sex offender, as defined in Section [77-41-102](#); or

107 (d) intentionally provided alcohol or illegal drugs to an individual who, at the time,
108 was younger than 21 years old.

109 (4) (a) Subject to Section [53A-6-309](#), UPPAC shall recommend that the board suspend
110 an educator's license for at least 10 years if UPPAC finds that the educator was convicted of a
111 felony that is not subject to Subsection (3) or described in Subsection [53A-6-501\(5\)\(b\)](#).

112 (b) The board shall make rules that allow an educator an opportunity to request that the
113 board reconsider a suspension that occurs as a result of a recommendation required by
114 Subsection (4)(a) if the educator's felony conviction is:

115 (i) expunged; or

116 (ii) reduced to a misdemeanor as described in Section [76-3-402](#).

117 (5) Subject to Section [53A-6-309](#), UPPAC shall recommend that the board suspend an
118 educator's license for at least three years if UPPAC finds that the educator:

- 119 (a) engaged in a sexually suggestive boundary violation that is not sexually explicit
120 conduct as defined in Section 76-5b-103;
- 121 (b) was convicted of child abuse, if the conviction resulted in a class A misdemeanor;
122 (c) has a conviction that caused the educator to be placed under court supervision for at
123 least three years; or
- 124 (d) was convicted of theft or a crime related to misappropriation of public funds.
125 (6) Subject to Section 53A-6-309, UPPAC shall recommend that the board suspend an
126 educator's license for at least one year but less than three years if UPPAC finds that the
127 educator:
- 128 (a) willfully or knowingly created, viewed, or gained access to sexually inappropriate
129 material on school property or using school equipment;
- 130 (b) was convicted of a violent misdemeanor offense in the three years before the day on
131 which UPPAC learns of the conviction;
- 132 (c) was convicted of using physical force on an individual who, at the time of the
133 offense, was younger than 18 years old, if the conviction is a class B or class C misdemeanor;
- 134 (d) engaged in repeated incidents or at least one egregious incident of excessive
135 physical force or discipline to a student or an individual who, at the time of the incident, was
136 younger than 18 years old, and the incident or incidents:
- 137 (i) did not result in a conviction; and
138 (ii) are not permitted under Section 53A-11-802;
- 139 (e) threatened a student physically, verbally, or electronically;
140 (f) engaged in a pattern of inappropriately fraternizing with a student, if the pattern did
141 not include a boundary violation described in Subsection (5)(a);
- 142 (g) engaged in multiple incidents or a pattern of theft or misappropriation of public
143 funds that did not result in a criminal conviction;
- 144 (h) attended a school or school-related activity as an assigned educator to the activity,
145 while the educator possessed, used, or was under the influence of alcohol or illegal drugs;
- 146 (i) was convicted at least twice of one or more drug-related or alcohol-related offenses
147 in the three years before the day on which UPPAC learns of the convictions;
- 148 (j) engaged in a single egregious incident or a pattern of:
149 (i) harassment;

- 150 (ii) bullying; or
- 151 (iii) threatening a co-worker or community member;
- 152 (k) knowingly or deliberately falsified or misrepresented information on an
- 153 education-related document;
- 154 (l) knowingly or deliberately taught, counseled, or assisted a student in a way that
- 155 undermined or disregarded the lawful, express directives of a parent;
- 156 (m) failed to appropriately report suspected child abuse or sexual abuse; or
- 157 (n) engaged in sexually explicit conduct on school property.
- 158 (7) Subject to Section 53A-6-309, UPPAC shall recommend that the board suspend an
- 159 educator's license for less than one year if UPPAC finds that the educator engaged in three or
- 160 more incidents of inappropriate conduct, if the incidents would otherwise warrant lesser
- 161 discipline.

162 (8) The board may make rules that require UPPAC to recommend more serious

163 discipline than the discipline UPPAC is required to recommend under this section.

164 Section 3. Section 53A-6-309 is enacted to read:

165 **53A-6-309. UPPAC disciplinary aggravating and mitigating factors.**

166 (1) When making a recommendation to the board in accordance with Section

167 53A-6-308, UPPAC may recommend more serious discipline due to an aggravating factor,

168 including if an educator:

- 169 (a) engaged in prior misconduct of any nature, including misconduct that:
- 170 (i) directly involved a student;
- 171 (ii) involved a particularly vulnerable student;
- 172 (iii) resulted in physical or psychological harm to a student;
- 173 (iv) continued after an investigation by the educator's employer or UPPAC;
- 174 (v) had a significant impact on the educator's school or community;
- 175 (vi) was witnessed by a student; or
- 176 (vii) resulted in a criminal conviction;
- 177 (b) presents a serious threat to a student;
- 178 (c) violated multiple standards of professional conduct;
- 179 (d) holds an attitude that does not reflect responsibility for the educator's misconduct or
- 180 the consequences of the educator's misconduct;

181 (e) held a position of heightened authority at the time of the misconduct; or
182 (f) was not honest or cooperative in the course of a UPPAC investigation.
183 (2) When making a recommendation to the board in accordance with Section
184 53A-6-308, UPPAC may recommend less serious discipline due to a mitigating factor,
185 including if the educator:
186 (a) acted as a result of strong provocation;
187 (b) is young and new to the education profession;
188 (c) holds an attitude that reflects recognition of the nature and consequences of the
189 educator's misconduct and demonstrates a reasonable expectation that the educator will not
190 repeat the misconduct;
191 (d) is amenable to supervision and training;
192 (e) has little or no previous disciplinary history;
193 (f) has not engaged in another incident of misconduct for an extended period of time
194 since the original misconduct;
195 (g) was a less-active participant in a larger offense;
196 (h) was directed explicitly or implicitly by a supervisor or individual in authority over
197 the educator to participate in the misconduct, or received subsequent approval of the educator's
198 misconduct by a supervisor or individual in authority over the educator;
199 (i) has voluntarily sought treatment or made restitution for the misconduct; or
200 (j) lacked training or policy, if the training or policy may have prevented the educator's
201 misconduct.
202 (3) (a) UPPAC may consider an aggravating or mitigating factor that is not described
203 in Subsection (1) or (2) if UPPAC finds that the factor warrants a recommendation of more or
204 less serious discipline than required by Section 53A-6-308.
205 (b) UPPAC may determine the weight to give to each aggravating or mitigating factor.
206 Section 4. Section **53A-6-405** is amended to read:
207 **53A-6-405. Ineligibility for educator license.**
208 (1) The board may refuse to issue a license to a license applicant if the board finds
209 good cause for the refusal, including behavior of the applicant:
210 (a) found pursuant to a criminal, civil, or administrative matter after reasonable
211 opportunity for the applicant to contest the allegation; and

- 212 (b) considered, as behavior of an educator, to be:
- 213 (i) immoral, unprofessional, or incompetent behavior; or
- 214 (ii) a violation of standards of ethical conduct, performance, or professional
- 215 competence.
- 216 (2) The board may not issue, renew, or reinstate an educator license if the license
- 217 applicant or educator:
- 218 (a) was convicted of a felony of a sexual nature;
- 219 (b) pled guilty to a felony of a sexual nature;
- 220 (c) entered a plea of no contest to a felony of a sexual nature;
- 221 (d) entered a plea in abeyance to a felony of a sexual nature;
- 222 (e) was convicted of a sexual offense under Title 76, Chapter 5, Part 4, Sexual
- 223 Offenses, against a minor child;
- 224 (f) engaged in sexually explicit conduct, as defined in Section 76-5b-103, with a
- 225 ~~[student who is a]~~ minor;
- 226 (g) engaged in sexually explicit conduct, as defined in Section 76-5b-103, with a
- 227 student who is:
- 228 (i) not a minor; and
- 229 (ii) enrolled in a school where the license applicant or educator is or was employed; or
- 230 (h) admits to the board or UPPAC that the license applicant or educator committed
- 231 conduct that amounts to:
- 232 (i) a felony of a sexual nature; or
- 233 (ii) a sexual offense or sexually explicit conduct described in Subsection (2)(e), (f), or
- 234 (g).
- 235 (3) If an individual is ineligible for licensure under Subsection (1) or (2), a public
- 236 school may not:
- 237 (a) employ the person in the public school; or
- 238 (b) allow the person to volunteer in the public school.
- 239 (4) (a) If the board denies licensure under this section, the board shall immediately
- 240 notify the applicant of:
- 241 (i) the denial; and
- 242 (ii) the applicant's right to request a hearing before UPPAC.

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

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

248 Section 5. Section **53A-6-501** is amended to read:

249 **53A-6-501. Board disciplinary action against an educator.**

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

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

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

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

- 260 (a) was charged with a felony of a sexual nature;
- 261 (b) was convicted of a felony of a sexual nature;
- 262 (c) pled guilty to a felony of a sexual nature;
- 263 (d) entered a plea of no contest to a felony of a sexual nature;
- 264 (e) entered a plea in abeyance to a felony of a sexual nature;
- 265 (f) was convicted of a sexual offense under Title 76, Chapter 5, Part 4, Sexual
266 Offenses, against a minor child;

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

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

- 271 (i) not a minor; and
- 272 (ii) enrolled in a school where the educator is or was employed.

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

274 direct UPPAC to:

275 (a) investigate the alleged violation; and

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

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

278 shall:

279 (a) provide findings to the board; and

280 (b) in accordance with Section 53A-6-308, make a recommendation for board action.

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

282 recommendation, the board may:

283 (i) revoke the educator's license;

284 (ii) suspend the educator's license;

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

286 (iv) warn or reprimand the educator;

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

288 comply with certain conditions;

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

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

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

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

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

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

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

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

300 (vi) engaged in sexually explicit conduct, as defined in Section 76-5b-103, with a
301 ~~student who is a~~ minor;

302 (vii) engaged in sexually explicit conduct, as defined in Section 76-5b-103, with a
303 student who is:

304 (A) not a minor; and

305 (B) enrolled in a school where the educator is or was employed; or
306 (viii) admits to the board or UPPAC that the applicant committed conduct that amounts
307 to:

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

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

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

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

314 (e) Except as provided in Subsection (5)(b), the board has discretion to take
315 disciplinary action against an educator's license and is not required to follow a recommendation
316 from UPPAC.

317 (6) The board shall make rules to administer this section, including rules to regulate
318 action taken by the board under Subsection (5)(a)(vii).

319 Section 6. Section **53A-6-602** is amended to read:

320 **53A-6-602. Designation of hearing officer or panel -- Review -- Official findings.**

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

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

327 (b) Before issuing official findings, the board, a local school board, or UPPAC, upon
328 reviewing the record of a hearing under Subsection (2)(a), may request or obtain additional
329 relevant information if the board, the local school board, or UPPAC affords the parties:

330 (i) an opportunity to be present when the board, the local school board, or UPPAC
331 reviews the information; and

332 (ii) a reasonable opportunity, that, unless upon request of a party the board grants
333 additional time, is less than 30 days after the day on which the board, the local school board, or
334 UPPAC reviews the information under Subsection (2)(b)(i), to respond to the information.

335 (c) The board, a local school board, or UPPAC may deliberate privately before issuing

336 official findings.

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

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

340 **53A-6-604. Rules for conducting hearings -- Standard of proof.**

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

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

344 (a) notice of the hearing;

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

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

348 (d) ~~[a copy of]~~ (i) an Internet address where the accused party can access the rules
349 under which the hearing will be conducted[-]; or

350 (ii) at the request of the accused party, a copy of the rules under which the hearing will
351 be conducted.

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

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

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

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

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

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

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