

HB0182S01 compared with HB0182

~~{deleted text}~~ shows text that was in HB0182 but was deleted in HB0182S01.

inserted text shows text that was not in HB0182 but was inserted into HB0182S01.

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Representative Craig Hall proposes the following substitute bill:

EDUCATOR HEARINGS AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Craig Hall

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends requirements related to hearings held before a local school board or the State Board of Education.

Highlighted Provisions:

This bill:

- ▶ provides that a hearing regarding the dismissal of a school district employee is an informal adjudicative proceeding under the Administrative Procedures Act;
- ▶ provides that a final order or decree from a hearing regarding the dismissal of a school district employee may be appealed to the ~~{Court of Appeals for review;~~
- ▶ ~~provides that a notice of an appeal from a hearing regarding the dismissal of a school district employee be filed in accordance with the Utah Rules of Appellate Procedure;~~

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- provides that review by the Court of Appeals is limited to the record of the local school board or the State Board of Education;
- provides that a review by the Court of Appeal is to determine whether the local school board, or the State Board of Education, exceeded the board's discretion or exceeded the board's authority} district court for review in the same manner as an informal adjudicative proceeding under the Administrative Procedures Act;
 - ▶ amends the jurisdiction of the {Court of Appeals} district court; and
 - ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53G-11-515, as renumbered and amended by Laws of Utah 2018, Chapter 3

~~{78A-4-103}~~ 78A-5-102, as last amended by Laws of Utah ~~{2015}~~ 2020, Chapter

~~{441}~~ 214

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

Section 1. Section **53G-11-515** is amended to read:

53G-11-515. Hearings before ~~{district}~~ school board or hearing officers -- Rights of the board and the employee -- Subpoenas -- Appeals.

(1) (a) Hearings are held under this part before the school board or before hearing officers selected by the school board to conduct the hearings and make recommendations concerning findings.

(b) The school board shall establish procedures to appoint hearing officers.

(c) The school board may delegate [its] the school board's authority to a hearing officer to make decisions relating to the employment of an employee [~~which~~] that are binding upon both the employee and the school board.

~~[(d) This Subsection (1) does not limit the right of the board or the employee to appeal to an appropriate court of law.]~~

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~~[(2) At the hearings, an employee has the right to counsel, to produce witnesses, to hear testimony against the employee, to cross-examine witnesses, and to examine documentary evidence.]~~

~~[(3) Subpoenas may be issued and oaths administered as provided under Section 53E-6-606.]~~

~~— (4) (a)]~~

(2) (a) Hearings held under this part before the school board, or before hearing officers, are informal adjudicative proceedings under Title 63G, Chapter 4, Part 2, Adjudicative Proceedings.

(b) Any final action or order of the school board may be appealed to the {Court of Appeals} district court for de novo review{.

~~— (b) A notice of appeal shall be filed{~~ in accordance with the ~~{Utah Rules of Appellate Procedure, Rule 4.~~

~~— (c) A review by the Court of Appeals:~~

~~— (i) is limited to the record of the school board; and~~

~~— (ii) shall be for the purpose of determining whether the school board exceeded the school board's discretion, or the school board exceeded the school board's authority}{~~requirements and procedures for an informal adjudicative proceeding under Title 63G, Chapter 4, Part 4, Judicial Review.

Section 2. Section ~~{78A-4-103}~~ 78A-5-102 is amended to read:

~~{78A-4-103. Court of Appeals jurisdiction.~~

~~— (1) The Court of Appeals has jurisdiction to}{~~ 78A-5-102. Jurisdiction -- Appeals.

(1) As used in this section:

(a) "Qualifying offense" means an offense described in Subsection 78A-6-703.2(1)(b).

(b) "Separate offense" means any offense that is not a qualifying offense.

(c) "Single criminal episode" means the same as that term is defined in Section 76-1-401.

(2) Except as otherwise provided by the Utah Constitution or by statute, the district court has original jurisdiction in all matters civil and criminal.

(3) A district court judge may issue all extraordinary writs and ~~{to issue all}~~ other writs ~~{and process}~~ necessary{.

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~~_____ (a) } to carry into effect {its judgments, orders, and decrees; or~~

~~_____ (b) in aid of its jurisdiction.~~

~~_____ (2) The Court of Appeals} the district court judge's orders, judgments, and decrees.~~

(4) The district court has jurisdiction over matters of lawyer discipline consistent with the rules of the Supreme Court.

(5) The district court has jurisdiction over all matters properly filed in the circuit court prior to July 1, 1996.

(6) The district court has appellate jurisdiction ~~{, including jurisdiction of interlocutory appeals, over:~~

~~_____ (a) (i) a final order or decree resulting from:~~

~~_____ (A) a formal adjudicative proceeding of a state agency; [or]~~

~~_____ (B) a special adjudicative proceeding, as} over judgments and orders of the justice court as outlined in Section 78A-7-118 and small claims appeals filed in accordance with Section 78A-8-106.~~

(7) Jurisdiction over appeals from the final orders, judgments, and decrees of the district court is described in ~~{Section 19-1-301.5; or~~

~~_____ (C) a hearing before a local school board or the State Board of Education as described in Section 53G-11-515; or~~

~~_____ (ii) an appeal from the} Sections 78A-3-102 and 78A-4-103.~~

(8) The district court ~~{ review of an informal adjudicative proceeding of an agency other than the following:~~

~~_____ (A) the Public Service Commission;~~

~~_____ (B) the State Tax Commission;~~

~~_____ (C) the School and Institutional Trust Lands Board of Trustees;~~

~~_____ (D) the Division of Forestry, Fire, and State Lands, for an action reviewed by the executive director of the Department of Natural Resources;~~

~~_____ (E) the Board of Oil, Gas, and Mining; or~~

~~_____ (F) the state engineer;~~

~~_____ (b) appeals from the district court review of:~~

~~_____ (i) } has jurisdiction to review:~~

(a) agency adjudicative proceedings ~~{of agencies of political subdivisions of the state~~

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~~or other local agencies; and~~

~~—— (ii) a challenge to agency action under Section 63G-3-602;~~

~~—— (c) appeals from the juvenile courts;~~

~~—— (d) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;~~

~~—— (e) appeals from a court of record in criminal cases, except those involving a conviction or charge of a first degree felony or capital felony;~~

~~—— (f) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to a conviction of or the sentence for a first degree or capital felony;~~

~~—— (g) appeals from the orders on petitions for extraordinary writs challenging the decisions of the Board of Pardons and Parole except in cases involving a first degree or capital felony;~~

~~—— (h) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, parent-time, visitation, adoption, and paternity;~~

~~—— (i) appeals from the Utah Military Court; and~~

~~—— (j) cases transferred to the Court of Appeals from the Supreme Court.~~

~~—— (3) The Court of Appeals upon its own motion only and by the vote of four judges of the court may certify to the Supreme Court for original appellate review and determination any matter over which the Court of Appeals has original appellate jurisdiction.~~

~~—— (4) The Court of Appeals shall comply with the requirements of } as set forth in Title 63G, Chapter 4, Administrative Procedures Act, and shall comply with the requirements of that chapter in [its] the district court's review of agency adjudicative proceedings: [and]~~

~~(b) municipal administrative proceedings in accordance with Section 10-3-703.7[-];~~

~~and~~

~~(c) a final action or order of a school board under Section 53G-11-515.~~

~~(9) Notwithstanding Section 78A-7-106, the district court has original jurisdiction~~

~~over:~~

~~(a) a class B misdemeanor, a class C misdemeanor, an infraction, or a violation of an ordinance for which a justice court has original jurisdiction under Section 78A-7-106 if:~~

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(i) there is no justice court with territorial jurisdiction;

(ii) the offense occurred within the boundaries of the municipality in which the district courthouse is located and that municipality has not formed, or has not formed and then dissolved, a justice court; or

(iii) the offense is included in an indictment or information covering a single criminal episode alleging the commission of a felony or a class A misdemeanor by an individual who is 18 years old or older; or

(b) a qualifying offense committed by an individual who is 16 or 17 years old.

(10) (a) Notwithstanding Subsection 78A-7-106(2), the district court has exclusive jurisdiction over any separate offense:

(i) committed by an individual who is 16 or 17 years old; and

(ii) arising from a single criminal episode containing a qualifying offense for which the district court has original jurisdiction under Subsection (9)(b).

(b) If an individual who is charged with a qualifying offense enters a plea to, or is found guilty of, a separate offense other than the qualifying offense, the district court shall have jurisdiction over the separate offense.

(c) If an individual who is 16 or 17 years old is charged with a qualifying offense and the qualifying offense results in an acquittal, a finding of not guilty, or a dismissal, the exclusive jurisdiction of the district court over any separate offense is terminated.

(11) If a district court has jurisdiction in accordance with Subsection (6), (9)(a)(i), or (9)(a)(ii), the district court has jurisdiction over an offense listed in Subsection 78A-7-106(2) even if the offense is committed by an individual who is 16 or 17 years old.

(12) The district court has subject matter jurisdiction over an offense for which the juvenile court has original jurisdiction if the juvenile court transfers jurisdiction over the offense to the district court in accordance with Section 78A-6-703.5.

(13) The district court has subject matter jurisdiction over an action under Title 78B, Chapter 7, Part 2, Child Protective Orders, if the juvenile court transfers the action to the district court.