

PUBLIC EDUCATION GOVERNANCE AND APPEALS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Waldrip

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses authority of the State Board of Education over the public education system and certain local school board appeals.

Highlighted Provisions:

This bill:

- ▶ addresses the authority of the State Board of Education (state board) over the public education system;
- ▶ establishes the Public Education Appeals Panel (panel) to decide appeals regarding certain local school board decisions and policies;
- ▶ provides for the composition of the panel;
- ▶ establishes a right for parents representing a certain percentage of total enrollment within a local education agency to submit an appeal to the panel;
- ▶ provides for a public hearing on an appeal or re-hearing;
- ▶ allows certain rulings, including requiring an local school board to seek state board ratification of a modified decision or policy;
- ▶ requires a local school board to comply with a ruling of the panel;
- ▶ grants the state board authority to make rules regarding appeals and hearings; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **53E-3-401**, as last amended by Laws of Utah 2020, Chapters 253 and 408

33 ENACTS:

34 **53G-4-1101**, Utah Code Annotated 1953

35 **53G-4-1102**, Utah Code Annotated 1953

36 **53G-4-1103**, Utah Code Annotated 1953



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

39 Section 1. Section **53E-3-401** is amended to read:

40 **53E-3-401. Powers of the state board -- Adoption of rules -- Enforcement --**

41 **Attorney.**

42 (1) As used in this section:

43 (a) "Education entity" means:

44 (i) an entity that receives a distribution of state funds through a grant program managed
45 by the state board under this public education code;

46 (ii) an entity that enters into a contract with the state board to provide an educational
47 good or service;

48 (iii) a school district;

49 (iv) a charter school; or

50 (v) a regional education service agency, as that term is defined in Section **53G-4-410**.

51 (b) "Educational good or service" means a good or service that is required or regulated
52 under:

53 (i) this public education code; or

54 (ii) a rule, made in accordance with Title 63G, Chapter 3, Utah Administrative
55 Rulemaking Act, and authorized under this public education code.

56 (2) (a) ~~[The]~~ As established in Utah Constitution, Article X, Section 3, the state board
57 has general control and supervision of the state's public education system.

58 (b) ~~["General control and supervision" as]~~ As used in Utah Constitution, Article X,

59 Section 3, and the Utah Code, "general control and supervision" means that the state board is
60 responsible for the management of the public education system, directed to the whole
61 system[-], that the Legislature establishes and maintains in statute.

62 (c) The state board may:

63 (i) delegate the board's general control and supervision authority by board rule; and

64 (ii) may recall a delegation that the board makes under Subsection (2)(c) at any time.

65 (3) The state board may not govern, manage, or operate school districts, institutions,
66 and programs, unless granted that authority by statute.

67 (4) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
68 the state board may make rules to execute the state board's duties and responsibilities under the
69 Utah Constitution and state law.

70 (b) The state board may delegate the state board's statutory duties and responsibilities
71 to state board employees.

72 (5) (a) The state board may sell any interest it holds in real property upon a finding by
73 the state board that the property interest is surplus.

74 (b) The state board may use the money it receives from a sale under Subsection (5)(a)
75 for capital improvements, equipment, or materials, but not for personnel or ongoing costs.

76 (c) If the property interest under Subsection (5)(a) was held for the benefit of an agency
77 or institution administered by the state board, the money may only be used for purposes related
78 to the agency or institution.

79 (d) The state board shall advise the Legislature of any sale under Subsection (5)(a) and
80 related matters during the next following session of the Legislature.

81 (6) The state board shall develop policies and procedures related to federal educational
82 programs in accordance with Part 8, Implementing Federal or National Education Programs.

83 (7) On or before December 31, 2010, the state board shall review mandates or
84 requirements provided for in state board rule to determine whether certain mandates or
85 requirements could be waived to remove funding pressures on public schools on a temporary
86 basis.

87 (8) (a) If an education entity violates this public education code or rules authorized
88 under this public education code, the state board may, in accordance with the rules described in
89 Subsection (8)(c):

90 (i) require the education entity to enter into a corrective action agreement with the state
91 board;

92 (ii) temporarily or permanently withhold state funds from the education entity;

93 (iii) require the education entity to pay a penalty; or

94 (iv) require the education entity to reimburse specified state funds to the state board.

95 (b) Except for temporarily withheld funds, if the state board collects state funds under
96 Subsection (8)(a), the state board shall pay the funds into the Uniform School Fund.

97 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
98 state board shall make rules:

99 (i) that require notice and an opportunity to be heard for an education entity affected by
100 a state board action described in Subsection (8)(a); and

101 (ii) to administer this Subsection (8).

102 (d) (i) An individual may bring a violation of statute or state board rule to the attention
103 of the state board in accordance with a process described in rule adopted by the state board.

104 (ii) If the state board identifies a violation of statute or state board rule as a result of the
105 process described in Subsection (8)(d)(i), the state board may take action in accordance with
106 this section.

107 (e) The state board shall report criminal conduct of an education entity to the district
108 attorney of the county where the education entity is located.

109 (9) The state board may audit the use of state funds by an education entity that receives
110 those state funds as a distribution from the state board.

111 (10) The state board may require, by rule made in accordance with Title 63G, Chapter
112 3, Utah Administrative Rulemaking Act, that if an LEA contracts with a [~~third party~~]
113 third-party contractor for an educational good or service, the LEA shall require in the contract
114 that the [~~third party~~] third-party contractor shall provide, upon request of the LEA, information
115 necessary for the LEA to verify that the educational good or service complies with:

116 (a) this public education code; and

117 (b) state board rule authorized under this public education code.

118 (11) (a) The state board may appoint an attorney to provide legal advice to the state
119 board and coordinate legal affairs for the state board and the state board's employees.

120 (b) An attorney described in Subsection (11)(a) shall cooperate with the Office of the

121 Attorney General.

122 (c) An attorney described in Subsection (11)(a) may not:

123 (i) conduct litigation;

124 (ii) settle claims covered by the Risk Management Fund created in Section [63A-4-201](#);

125 or

126 (iii) issue formal legal opinions.

127 (12) The state board shall ensure that any training or certification that an employee of

128 the public education system is required to complete under this title or by rule complies with

129 Title 63G, Chapter 22, State Training and Certification Requirements.

130 Section 2. Section **53G-4-1101** is enacted to read:

131 **53G-4-1101. Definitions.**

132 As used in this part:

133 (1) (a) "Local board" means a local school board or a charter school governing board.

134 (b) "Local board decision or policy" means a decision or policy that a local board

135 makes regarding the operation of an LEA.

136 (c) "Local board decision or policy" does not include:

137 (i) employment actions regarding a teacher, coach or staff;

138 (ii) disciplinary actions regarding a student;

139 (iii) a decision regarding curriculum;

140 (iv) a decision regarding the permanent closure of a school;

141 (v) a decision regarding LEA or school boundaries; or

142 (vi) budgetary decisions, including bonding and the levying of a property tax.

143 (2) "Public Education Appeals Panel" or "panel" means the appeal authority

144 established in Section [53G-4-1102](#).

145 Section 3. Section **53G-4-1102** is enacted to read:

146 **53G-4-1102. Public Education Appeals Panel.**

147 (1) There is created the Public Education Appeals Panel to resolve appeals brought

148 under this part regarding decisions of local boards.

149 (2) (a) The panel consists of the following five members:

150 (i) one individual whom the state board appoints;

151 (ii) one individual whom the Utah School Superintendents Association appoints;

152 (iii) one individual whom the governor appoints;
153 (iv) one individual, who is not a legislator, whom the speaker of the House of
154 Representatives appoints; and
155 (v) one individual, who is not a legislator, whom the president of the Senate appoints.
156 (b) The speaker of the House of Representatives and the president of the Senate shall
157 jointly appoint the chair of the panel from among the members appointed under Subsection
158 (2)(a).
159 (3) (a) Except as provided in Subsection (3)(b), the members of the panel shall serve
160 terms of four years.
161 (b) The members of the panel described in Subsections (2)(a) and (b) who are
162 appointed in 2021 shall serve an initial term of two years.
163 (4) The appointing authorities described in Subsection (2) shall:
164 (a) make the initial appointments before July 1, 2021; and
165 (b) make appointments for subsequent terms for the panel positions before July 1 of
166 each odd-numbered year, by:
167 (i) reappointing the panel member whose term expires under Subsection (3); or
168 (ii) appointing a new panel member.
169 (5) A panel member:
170 (a) may not receive compensation or benefits for the member's service on the panel;
171 and
172 (b) may receive per diem and reimbursement for travel expenses that the panel member
173 incurs as a panel member at the rates that the Division of Finance establishes under:
174 (i) Sections [63A-3-106](#) and [63A-3-107](#); and
175 (ii) rules that the Division of Finance makes under Sections [63A-3-106](#) and [63A-3-107](#).
176 (6) (a) A majority of the panel members constitutes a quorum.
177 (b) The action of a majority of a quorum constitutes an action of the panel.
178 (7) The panel shall meet no more than quarterly to address appeals that the panel
179 receives under Section [53G-4-1103](#).
180 (8) The state board shall provide staff support to the panel.
181 Section 4. Section **53G-4-1103** is enacted to read:
182 **53G-4-1103. Public education appeal.**

183 (1) (a) Parents may appeal a local board policy or decision that required a majority vote
184 of the local board by:

185 (i) submitting to the panel a petition that:

186 (A) is signed by the parents described in Subsection (1)(b);

187 (B) defines in reasonable specificity the local board policy or decision being appealed;

188 (C) may be circulated electronically or in hard copy;

189 (D) appoints a spokesperson and up to three individuals to assist the spokesperson; and

190 (E) a written brief that complies with requirements in state board rule;

191 (ii) submitting to the panel a written brief that:

192 (A) addresses whether the local board's decision or policy is reasonably in the best
193 interest of students or the LEA; and

194 (B) complies with any requirements in state board rule; and

195 (iii) within 5 business days the submission described in Subsection (1)(a), providing a
196 copy of the written brief described in Subsection (1)(a) to the local board.

197 (b) The panel may not entertain an appeal unless parents who are parents of students
198 who constitute the following percentage of the total enrollment of the LEA sign the petition
199 described in Subsection (1)(a)(i):

200 (i) for an LEA with an enrollment above 30,000, 4%;

201 (ii) for an LEA with an enrollment of 18,001 to 30,000, 5%;

202 (iii) for an LEA with an enrollment of 9,001 to 18,000, 7%;

203 (iv) for an LEA with an enrollment of 4,001 to 9,000, 9%;

204 (v) for an LEA with an enrollment of 2,000 to 4,000, 15%; or

205 (vi) for an LEA with an enrollment below 2,000, 25%.

206 (2) Within 30 days after the day on which the local board receives the copy of the
207 appeal brief described in Subsection (1)(a)(iii), the local board may submit a written brief
208 responding to the petition that:

209 (a) addresses whether the local board's decision or policy is reasonably in the best
210 interest of students or the LEA; and

211 (b) complies with any requirements in state board rule.

212 (3) The panel shall hold a public hearing on an appeal described in Subsection (1) or a
213 re-hearing described in Subsection (6) that includes:

214 (a) presentation by the spokesperson and, if desired, the assisting individuals identified
215 in the petition described in Subsection (1)(a)(i);

216 (b) presentation by the local board or the local board's designee; and

217 (c) questions from the panel.

218 (4) Within 5 business days after the day of the hearing described in Subsection (3), the
219 panel shall issue a written ruling to:

220 (a) if the panel finds that the local board's decision or policy is reasonably in the best
221 interest of students or the LEA, affirm the decision or policy; or

222 (b) if the panel finds that the local board's decision or policy is not reasonably in the
223 best interest of students or the LEA:

224 (i) require the local board to reverse the decision or policy; or

225 (ii) require the local board to:

226 (A) modify the decision or policy; and

227 (B) submit the modified decision or policy to the state board for review and, if the state
228 board determines that the modified decision or policy follows the panel's ruling, approval.

229 (5) A local board:

230 (a) shall comply with the ruling of the panel described in Subsection (4); and

231 (b) may not enforce a decision or policy described in Subsection (4)(b)(ii) unless the
232 state board approves the modified decision or policy.

233 (6) The spokesperson may seek a re-hearing by submitting a request to the panel within
234 5 business days after the day on which the panel issues the ruling described in Subsection
235 (4)(b).

236 (7) The state board may make rules, in accordance with Title 63G, Chapter 3, Utah
237 Administrative Rulemaking Act, to establish rules of procedure or evidence related to the
238 submission of an appeal or to a hearing under this section.