

## HB0428S01 compared with HB0428

~~deleted text~~ shows text that was in HB0428 but was deleted in HB0428S01.

inserted text shows text that was not in HB0428 but was inserted into HB0428S01.

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Representative Steve Waldrip proposes the following substitute bill:

### PUBLIC EDUCATION GOVERNANCE AND APPEALS

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Steve Waldrip**

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

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#### 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;

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- ▶ provides for a public hearing on an appeal or re-hearing;
- ▶ allows certain rulings, including ~~( )~~:
  - requiring ~~(an)~~a local school board to seek state board ratification of a modified decision or policy; or
  - revoking a local school board's authority over a school district and assigning management of the school district to another local school board or the state board for a period of time;
- ▶ 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

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

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

ENACTS:

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

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

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

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

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

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

**Attorney.**

(1) As used in this section:

(a) "Education entity" means:

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

(ii) an entity that enters into a contract with the state board to provide an educational

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good or service;

- (iii) a school district;
  - (iv) a charter school; or
  - (v) a regional education service agency, as that term is defined in Section 53G-4-410.
- (b) "Educational good or service" means a good or service that is required or regulated

under:

- (i) this public education code; or
- (ii) a rule, made in accordance with Title 63G, Chapter 3, Utah Administrative

Rulemaking Act, and authorized under this public education code.

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

(b) ~~["General control and supervision" as]~~ As used in Utah Constitution, Article X, Section 3, and the Utah Code, "general control and supervision" means that the state board is responsible for the management of the public education system, **except as provided in Section 53G-4-1103**, directed to the whole system[-], that the Legislature establishes and maintains in statute.

(c) The state board may:

- (i) delegate the board's general control and supervision authority by board rule; and
- (ii) may recall a delegation that the board makes under Subsection (2)(c) at any time.

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

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

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

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

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

(c) If the property interest under Subsection (5)(a) was held for the benefit of an agency

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or institution administered by the state board, the money may only be used for purposes related to the agency or institution.

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

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

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

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

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

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

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

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

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

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

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

(ii) to administer this Subsection (8).

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

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

(e) The state board shall report criminal conduct of an education entity to the district

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attorney of the county where the education entity is located.

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

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

- (a) this public education code; and
- (b) state board rule authorized under this public education code.

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

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

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

- (i) conduct litigation;
- (ii) settle claims covered by the Risk Management Fund created in Section 63A-4-201;

or

(iii) issue formal legal opinions.

(12) The state board shall ensure that any training or certification that an employee of the public education system is required to complete under this title or by rule complies with Title 63G, Chapter 22, State Training and Certification Requirements.

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

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

As used in this part:

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

~~(b) "Local board decision or policy" means a decision or policy that a local board makes regarding the operation of ~~an LEA~~ a school district.~~

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

- ~~(i) employment actions regarding a teacher, coach or staff;~~
- ~~(ii) disciplinary actions regarding a student;~~

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- (iii) a decision regarding curriculum;
- (iv) a decision regarding the permanent closure of a school;
- (v) a decision regarding ~~{LEA}~~ school district or school boundaries; ~~{or}~~
- (vi) budgetary decisions, including bonding and the levying of a property tax ~~{,};~~ or
- (vii) a decision regarding a school name or school mascot.

(2) "Public Education Appeals Panel" or "panel" means the appeal authority established in Section 53G-4-1102.

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

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

(1) There is created the Public Education Appeals Panel to resolve appeals brought under this part regarding decisions of local boards.

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

- (i) one individual whom the state board appoints;
- (ii) one individual whom the Utah School Superintendents Association appoints;
- (iii) one individual whom the governor appoints;
- (iv) one individual ~~{, who is not a legislator,}~~ whom the speaker of the House of

Representatives appoints; and

(v) one individual ~~{, who is not a legislator,}~~ whom the president of the Senate appoints.

(b) The speaker of the House of Representatives and the president of the Senate shall jointly appoint the chair of the panel from among the members appointed under Subsection (2)(a).

(3) (a) Except as provided in Subsection (3)(b), the members of the panel shall serve terms of four years.

(b) The members of the panel described in Subsections (2)(a) and (b) who are appointed in 2021 shall serve an initial term of two years.

(4) The appointing authorities described in Subsection (2) shall:

- (a) make the initial appointments before July 1, 2021; and
- (b) make appointments for subsequent terms for the panel positions before July 1 of each odd-numbered year, by:

(i) reappointing the panel member whose term expires under Subsection (3); or

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(ii) appointing a new panel member.

(5) (a) A panel member who is not a legislator:

(~~f~~a*i*) may not receive compensation or benefits for the member's service on the panel;

and

(~~f~~b*ii*) may receive per diem and reimbursement for travel expenses that the panel member incurs as a panel member at the rates that the Division of Finance establishes under:

(~~f~~i*A*) Sections 63A-3-106 and 63A-3-107; and

(~~f~~i*B*) rules that the Division of Finance makes under Sections 63A-3-106 and 63A-3-107.

(b) Compensation and expenses of a participant who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

(6) (a) A majority of the panel members constitutes a quorum.

(b) The action of a majority of a quorum constitutes an action of the panel.

(7) The panel shall meet no more than quarterly to address appeals that the panel receives under Section 53G-4-1103.

(8) The state board shall provide staff support to the panel.

Section 4. Section **53G-4-1103** is enacted to read:

### **53G-4-1103. Public education appeal.**

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

(i) submitting to the panel a petition that:

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

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

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

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

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

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

(A) addresses whether the local board's decision or policy is reasonably in the best interest of students or the ~~f~~LEA school district; and

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

(iii) within 5 business days the submission described in Subsection (1)(a), providing a

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copy of the written brief described in Subsection (1)(a) to the local board.

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

- (i) for {an LEA} a school district with an enrollment above 30,000, 4%;
- (ii) for {an LEA} a school district with an enrollment of 18,001 to 30,000, 5%;
- (iii) for {an LEA} a school district with an enrollment of 9,001 to 18,000, 7%;
- (iv) for {an LEA} a school district with an enrollment of 4,001 to 9,000, 9%;
- (v) for {an LEA} a school district with an enrollment of 2,000 to 4,000, 15%; or
- (vi) for {an LEA} a school district with an enrollment below 2,000, 25%.

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

(a) addresses whether the local board's decision or policy is reasonably in the best interest of students or the {LEA} school district; and

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

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

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

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

(c) questions from the panel.

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

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

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

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

(ii) require the local board to:

(A) modify the decision or policy; and



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(B) submit the modified decision or policy to the state board for review and, if the state board determines that the modified decision or policy follows the panel's ruling, approval ~~(4)~~; or

(iii) if the panel, in consultation with the governor, the speaker of the House of Representatives, the president of the Senate, and the chair of the state board, determines that circumstances necessitate:

(A) revoke the authority of the local school board; and

(B) until the panel and the state board jointly determine that withdrawing the revocation described in Subsection (4)(b)(iii)(A) is in the best interest of the students within the school district, assign the management of the school district to another local school board or the state board.

(5) A local board:

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

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

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

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