

**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;
- ▶ provides for a public hearing on an appeal or re-hearing;
- ▶ allows certain rulings, including:
  - requiring 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



26 board for a period of time;

- 27       ▶ requires a local school board to comply with a ruling of the panel;
- 28       ▶ grants the state board authority to make rules regarding appeals and hearings; and
- 29       ▶ makes technical and conforming changes.

30 **Money Appropriated in this Bill:**

31       None

32 **Other Special Clauses:**

33       None

34 **Utah Code Sections Affected:**

35 AMENDS:

36       **53E-3-401**, as last amended by Laws of Utah 2020, Chapters 253 and 408

37 ENACTS:

38       **53G-4-1101**, Utah Code Annotated 1953

39       **53G-4-1102**, Utah Code Annotated 1953

40       **53G-4-1103**, Utah Code Annotated 1953



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

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

44       **53E-3-401. Powers of the state board -- Adoption of rules -- Enforcement --**

45 **Attorney.**

46       (1) As used in this section:

47       (a) "Education entity" means:

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

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

52       (iii) a school district;

53       (iv) a charter school; or

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

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

57 (i) this public education code; or

58 (ii) a rule, made in accordance with Title 63G, Chapter 3, Utah Administrative

59 Rulemaking Act, and authorized under this public education code.

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

62 (b) ~~["General control and supervision" as]~~ As used in Utah Constitution, Article X,  
63 Section 3, and the Utah Code, "general control and supervision" means that the state board is  
64 responsible for the management of the public education system, except as provided in Section  
65 53G-4-1103, directed to the whole system[-], that the Legislature establishes and maintains in  
66 statute.

67 (c) The state board may:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

116 (10) The state board may require, by rule made in accordance with Title 63G, Chapter  
117 3, Utah Administrative Rulemaking Act, that if an LEA contracts with a [third party]  
118 third-party contractor for an educational good or service, the LEA shall require in the contract

119 that the ~~[third party]~~ third-party contractor shall provide, upon request of the LEA, information  
120 necessary for the LEA to verify that the educational good or service complies with:

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

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

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

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

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

130 or

131 (iii) issue formal legal opinions.

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

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

136 **53G-4-1101. Definitions.**

137 As used in this part:

138 (1) "Public Education Appeals Panel" or "panel" means the appeal authority created in  
139 Section [53G-4-1102](#).

140 (2) (a) "Qualifying local board decision or policy" means a decision or policy that:

141 (i) a majority vote of the local school board established; and

142 (ii) a local board makes regarding the operation of a school district that creates a  
143 substantial risk of immediate harm to the students' ability to learn and progress in the students'  
144 education, according to state standards.

145 (b) "Qualifying local board decision or policy" does not include:

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

147 (ii) disciplinary actions regarding an individual student;

148 (iii) a decision regarding curriculum;

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

- 150 (v) a decision regarding school district or school boundaries;
- 151 (vi) budgetary decisions, including bonding and the levying of a property tax; or
- 152 (vii) a decision regarding a school name or school mascot.

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

154 **53G-4-1102. Public Education Appeals Panel.**

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

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

- 158 (i) one individual whom the state board appoints;
- 159 (ii) one individual whom the Utah School Superintendents Association appoints;
- 160 (iii) one individual whom the governor appoints;
- 161 (iv) one individual whom the speaker of the House of Representatives appoints; and
- 162 (v) one individual whom the president of the Senate appoints.

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

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

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

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

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

- 174 (i) reappointing the panel member whose term expires under Subsection (3); or
- 175 (ii) appointing a new panel member.

176 (5) (a) A panel member who is not a legislator or member of the state board:

- 177 (i) may not receive compensation or benefits for the member's service on the panel; and
- 178 (ii) may receive per diem and reimbursement for travel expenses that the panel member  
179 incurs as a panel member at the rates that the Division of Finance establishes under:

180 (A) Sections [63A-3-106](#) and [63A-3-107](#); and

181 (B) rules that the Division of Finance makes under Sections 63A-3-106 and  
182 63A-3-107.

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

185 (c) Compensation and expenses of a panel member who is a member of the state board  
186 are governed by Section 53E-3-202.

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

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

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

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

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

193 **53G-4-1103. Public education appeal.**

194 (1) (a) Parents of students who constitute the percentage of the total enrollment of a  
195 school district described in Subsection (1)(b) may petition the local school board for a reversal  
196 of a local board policy or decision that the parents argue constitutes a qualifying local board  
197 policy or decision by:

198 (i) submitting to the local school board a petition that:

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

200 (B) defines in reasonable specificity the local board policy or decision at issue;

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

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

203 (b) Within 10 days after the day on which a local school board receives a petition  
204 described in Subsection (1)(a), the local school board shall:

205 (i) (A) verify that each signature on the petition corresponds to a parent of a student  
206 within the school district;

207 (B) remove any signature from the petition that is not a valid signature of a parent of a  
208 student within the school district;

209 (C) total the number of students that the valid signatures represent; and

210 (D) notify the spokesperson the petition identifies whether the number of the signatures  
211 on the petition meets the threshold described in Subsection (1)(b)(ii); and

212 (ii) hold a public hearing if the board determines that the number of students described  
213 in Subsection (1)(b)(i)(C) constitutes at least the following percentage of the total enrollment  
214 of the school district:

- 215 (A) for a school district with an enrollment above 30,000, 4%;
- 216 (B) for a school district with an enrollment of 18,001 to 30,000, 5%;
- 217 (C) for a school district with an enrollment of 9,001 to 18,000, 7%;
- 218 (D) for a school district with an enrollment of 4,001 to 9,000, 9%;
- 219 (E) for a school district with an enrollment of 2,000 to 4,000, 15%; or
- 220 (F) for a school district with an enrollment below 2,000, 25%.

221 (c) (i) The county clerk of the county in which the school district is located shall  
222 review the decisions the local school board makes regarding signatures under Subsection  
223 (1)(b)(i) if:

- 224 (A) the local school board determines that the total number of students represented by  
225 signatures on the petition are insufficient under Subsection (1)(b); and
- 226 (B) the spokesperson whom the petition identifies makes a written request to the  
227 county clerk for a review under this Subsection (1)(c) within five business days after the day on  
228 which the local school board gives the notice described in Subsection (1)(b)(i)(D).

229 (ii) If the county clerk determines, after a review described in Subsection (1)(c)(i), that  
230 the total number of students represented by the signatures on the petition are sufficient under  
231 Subsection (1)(b)(ii), the local school board shall hold a public hearing within 10 days after the  
232 day on which the county clerk makes the determination.

233 (d) The local school board shall render a decision regarding whether the local school  
234 board reverses the policy or decision in question within five days after the day of the hearing  
235 described in Subsection (1)(b)(ii) or, if applicable, (1)(c)(ii).

236 (2) (a) Parents of students within a school district may appeal a decision of a local  
237 school board described in Subsection (1)(d) by:

- 238 (i) submitting to the panel a petition:
  - 239 (A) in the same form as the petition described in Subsection (1)(a); and
  - 240 (B) for which the local school board verifies signatures in accordance with Subsection  
241 (1)(b);
- 242 (ii) submitting to the panel a written brief that:



243 (A) addresses whether the local school board's decision or policy constitutes a  
244 qualifying local school board decision or policy; and  
245 (B) complies with any requirements in state board rule; and  
246 (iii) providing written notice of the appeal to the local school board within five  
247 business days after the day on which the parents make the submissions to the panel described in  
248 this Subsection (2)(a).

249 (b) The local school board and, if applicable, the county clerk shall:

250 (i) verify the signatures for a petition described in Subsection (2)(a) following the  
251 procedures described in Subsections (1)(b) and (c); and

252 (ii) give notice to the panel regarding the sufficiency of the signatures on the petition.

253 (c) Within 10 days after the day on which the panel receives the notification described  
254 in Subsection (2)(b)(ii), the panel shall determine whether to hear the appeal based on the  
255 likelihood that the local school board's policy or decision creates a substantial risk of  
256 immediate harm to the students' ability to learn and progress in the students' education,  
257 according to accepted state standards.

258 (3) Within 10 days after the day on which the local board receives the notice of the  
259 appeal described in Subsection (2)(a), the local board may submit a written brief responding to  
260 the petition that:

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

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

264 (4) The panel shall hold a public hearing on an appeal described in Subsection (1) that  
265 includes:

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

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

269 (c) questions from the panel.

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

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

274 (b) if the panel finds that the local board's decision or policy is not reasonably in the  
275 best interest of students:  
276 (i) require the local board to reverse the decision or policy;  
277 (ii) require the local board to:  
278 (A) modify the decision or policy; and  
279 (B) submit the modified decision or policy to the state board for review and, if the state  
280 board determines that the modified decision or policy follows the panel's ruling, approval; or  
281 (iii) if the panel, in consultation with the governor, the speaker of the House of  
282 Representatives, the president of the Senate, and the chair of the state board, determines that  
283 circumstances necessitate:  
284 (A) revoke the authority of the local school board; and  
285 (B) until the panel and the state board jointly determine that withdrawing the  
286 revocation described in Subsection (4)(b)(iii)(A) is in the best interest of the students within  
287 the school district, assign all duties and responsibilities of the local school board to another  
288 local school board or the state board.  
289 (6) A local board:  
290 (a) shall comply with the ruling of the panel described in Subsection (4); and  
291 (b) may not enforce a decision or policy described in Subsection (4)(b)(ii) unless the  
292 state board approves the modified decision or policy.  
293 (7) The state board may make rules, in accordance with Title 63G, Chapter 3, Utah  
294 Administrative Rulemaking Act, to establish rules of procedure or evidence related to the  
295 submission of an appeal or to a hearing under this section.