

HB0428S03 compared with HB0428S02

~~deleted text~~ shows text that was in HB0428S02 but was deleted in HB0428S03.

inserted text shows text that was not in HB0428S02 but was inserted into HB0428S03.

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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: _____

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), under the supervision of the state board, 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

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within a local education agency to ~~{submit an}~~ petition for local board review and a subsequent 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 board for a period of time, subject to review by the state board;
- ▶ 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}~~ 53E-3-1001, Utah Code Annotated 1953

~~{53G-4-1102}~~ 53E-3-1002, Utah Code Annotated 1953

~~{53G-4-1103}~~ 53E-3-1003, Utah Code Annotated 1953

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

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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 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~~[-],~~ except as provided in Section 53E-3-1003, 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)

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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 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

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this section.

(e) The state board shall report criminal conduct of an education entity to the district 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}~~53E-3-1001 is enacted to read:

Part 10. Public Education Appeals Panel

~~{53G-4-1101}~~53E-3-1001. **Definitions.**

As used in this part:

(1) "Public Education Appeals Panel" or "panel" means the appeal authority created in Section ~~{53G-4-1102}~~53E-3-1002.

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

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

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

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

(ii) disciplinary actions regarding an individual student;

(iii) a decision regarding curriculum;

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

(v) a decision regarding school district or school boundaries;

(vi) budgetary decisions, including bonding and the levying of a property tax; or

(vii) a decision regarding a school name or school mascot.

(3) "Signature threshold" means the number of signatures of parents of students who constitute the percentage of the total enrollment of a school district:

(a) that the state board establishes in rule under Section 53E-3-1003; and

(b) that is required for a petition under this part.

Section 3. Section ~~{53G-4-1102}~~53E-3-1002 is enacted to read:

~~{53G-4-1102}~~53E-3-1002. **Public Education Appeals Panel.**

(1) There is created the Public Education Appeals Panel, under supervision of the state board, to resolve appeals brought under this part regarding qualifying local board decisions or policies 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}~~ state superintendent of public instruction appoints;

(iii) one individual whom the governor appoints;

(iv) one individual whom the speaker of the House of Representatives appoints; and

(v) one individual whom the president of the Senate appoints.

(b) The individuals and the state board making appointments under Subsection (2)(a) may not appoint a member of the state board or a legislator to the panel.

~~{b}~~c The speaker of the House of Representatives and the president of the Senate

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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

(ii) appointing a new panel member.

(5) ~~{(a)}~~ A panel member ~~{ who is not a legislator or member of the state board};~~

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

~~{(ii)b}~~ 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:

~~{A}i~~ Sections 63A-3-106 and 63A-3-107; and

~~{B}ii~~ rules that the Division of Finance makes under Sections 63A-3-106 and 63A-3-107.

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

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

~~†~~ (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}~~ 53E-3-1003.

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

Section 4. Section ~~{53G-4-1103}~~ 53E-3-1003 is enacted to read:

~~{53G-4-1103}~~ 53E-3-1003. Public education appeal.

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(1) (a) ~~Parents of students who constitute the percentage of the total enrollment of a school district described in Subsection (1)(b);~~ Beginning March 1, 2022, parents may petition the local school board for a reversal of a local board policy or decision that the parents argue constitutes a qualifying local board policy or decision by:

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

(A) is signed by ~~the~~ a number of parents ~~described in Subsection (1)(b);~~ that exceeds the signature threshold;

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

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

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

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

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

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

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

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

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

~~— (A) for a school district with an enrollment above 30,000, 4%;~~

~~— (B) for a school district with an enrollment of 18,001 to 30,000, 5%;~~

~~— (C) for a school district with an enrollment of 9,001 to 18,000, 7%;~~

~~— (D) for a school district with an enrollment of 4,001 to 9,000, 9%;~~

~~— (E) for a school district with an enrollment of 2,000 to 4,000, 15%; or~~

~~— (F) for a school district with an enrollment below 2,000, 25%;~~ exceeds the signature threshold.

(c) (i) The county clerk of the county in which the school district is located shall review the decisions the local school board makes regarding signatures under Subsection

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(1)(b)~~(i)~~ if:

(A) the local school board determines that the total number of students represented by signatures on the petition ~~fare insufficient under Subsection (1)(b)~~ **does not exceed the signature threshold**; and

(B) the spokesperson whom the petition identifies makes a written request to the county clerk for a review under this Subsection (1)(c) within five business days after the day on which the local school board gives the notice described in Subsection (1)(b)(i)(D).

(ii) If the county clerk determines, after a review described in Subsection (1)(c)(i), that the total number of students represented by the signatures on the petition ~~fare sufficient under Subsection (1)(b)(ii)~~ **do not exceed the signature threshold**, the local school board shall hold a public hearing within 10 days after the day on which the county clerk makes the determination.

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

(2) (a) ~~Parents~~ **Beginning March 1, 2022, parents** of students within a school district may appeal a ~~decision~~ **ruling** of a local school board described in Subsection (1)(d) by:

(i) submitting to the panel a petition:

(A) in the same form as the petition described in Subsection (1)(a); and

(B) for which the local school board verifies signatures in accordance with Subsection

(1)(b);

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

(A) addresses whether the local school board's decision or policy constitutes a **qualifying local school board decision or policy**; and

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

(iii) **providing written notice of the appeal to the local school board within five business days after the day on which the parents make the submissions to the panel described in this Subsection (2)(a).**

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

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

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

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

(3) Within 10 days after the day on which the local board receives the notice of the appeal described in Subsection (2)(a), 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; and

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

(4) The panel shall hold a public hearing on an appeal described in Subsection (1) 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.

(5) Within 5 business days after the day of the hearing described in Subsection (~~3~~4), 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, 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:

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

(ii) require the local board to:

(A) modify the decision or policy; and

(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; 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, and subject to the approval of the state board described in

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Subsection (7)(b):

(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)5~~)(b)(iii)(A) is in the best interest of the students within the school district, and notwithstanding statutory powers and duties assigned to the local school board, assign all duties and responsibilities of the local school board to ~~another local school board or~~ the state board.

(6) The panel shall provide a written ruling described in Subsection (5) to the state board.

(~~(6)7~~) (a) The state board may overturn or amend a written ruling described in Subsection (5)(a), (b)(i), or (b)(ii).

(b) If the state board receives a written ruling related to a local school board's authority described in Subsection (5)(b)(iii), the state board shall, within 30 days of receiving the written ruling:

(i) approve the written ruling; or

(ii) overturn the written ruling.

(8) A local board:

(a) shall comply with the ruling of the panel described in Subsection (4) unless the state board overturns the ruling in accordance with Subsection (7); and

(b) may not enforce a decision or policy described in Subsection (~~(4)5~~)(b)(ii) unless the state board approves the modified decision or policy.

(~~(7)9~~) ~~{The state board may make rules, in}~~ In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the state board:

(a) before March 1, 2022, and in consultation with the chairs of the Education Interim Committee, shall make rules to establish the signature threshold; and

(b) may make rules to establish rules of procedure or evidence related to the submission of ~~an~~ a review or appeal or to a hearing under this section.