

HB0477S01 compared with HB0477

~~{deleted text}~~ shows text that was in HB0477 but was deleted in HB0477S01.

inserted text shows text that was not in HB0477 but was inserted into HB0477S01.

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~~{CRIMINAL INVESTIGATIONS OF SCHOOL EMPLOYEES}~~ Substituted by Daniel McCay to replace the McCay original Substitute bill:

SCHOOL EMPLOYEE CONDUCT AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: {}Kera Birkeland

Senate Sponsor: { _____ } Daniel McCay

LONG TITLE

General Description:

This bill ~~{requires}~~ enacts provisions regarding certain ~~{administrative leave for}~~ conduct by school employees ~~{who are the subject of}~~ in displaying flags on or in a ~~{criminal investigation}~~ public school.

Highlighted Provisions:

This bill:

- ▶ ~~{requires paid administrative leave for a school employee who is the subject of a criminal investigation;~~

—————▶ ~~if the criminal investigation substantiates wrongdoing, requires:~~

—————• ~~the local school board to take further employment action; and~~

—————• ~~the employee to pay back all salary compensation that the employee received during the leave period;~~ prohibits the display of certain flags on or in a public

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school by a school official or employee;

- ▶ establishes standing for certain parents to file a civil action in relation to the display of certain flags within a public school; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

~~{53G-11-202}~~53G-10-202, as ~~{renumbered and}~~last amended by Laws of Utah
~~{2018}~~2023, Chapter ~~{3}~~294

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

Section 1. Section 53G-10-202 is amended to read:

53G-10-202. Maintaining constitutional freedom in the public schools.

(1) Except as provided in this section and Section 53G-10-206, any instructional activity, performance, or display which includes examination of or presentations about religion, political or religious thought or expression, or the influence thereof on music, art, literature, law, politics, history, or any other element of the curriculum, including the comparative study of religions, which is designed to achieve academic educational objectives included within the context of a course or activity and conducted in accordance with applicable rules or policies of the state and LEA governing boards, may be undertaken in the public schools.

(2) No aspect of cultural heritage, political theory, moral theory, or societal value shall be included within or excluded from public school curricula for the primary reason that it affirms, ignores, or denies religious belief, religious doctrine, a religious sect, or the existence of a spiritual realm or supreme being.

(3) Public schools may not sponsor or deny the practice of prayer or religious devotionals.

(4) (a) As used in this Subsection (4), "display" means to exhibit or place anywhere students may see the object.

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(b) School officials and employees may not:

(i) use their positions to endorse, promote, or disparage a particular religious, denominational, sectarian, agnostic, or atheistic belief or viewpoint.

~~Section 1. Section 53G-11-202 is amended to read:~~

~~53G-11-202. Employment of school personnel -- Length of contract -- Termination for cause -- Individual contract of employment -- Employee acknowledgment of liability protection -- Leave pending criminal investigation.~~

~~(1) A local school board may enter into a written employment contract for a term not to exceed five years:~~

~~(2) Nothing in the terms of the contract shall restrict the power of a local school board to terminate the contract for cause at any time:~~

~~(3) (a) A local school board may not enter into a collective bargaining agreement that prohibits or limits individual contracts of employment:~~

~~(b) Subsection (3)(a) does not apply to an agreement that was entered into before May 5, 2003.~~

~~(4) Each local school board shall:~~

~~(a) ensure that each employment contract ; ; or~~

(ii) display a flag other than the following on or in a public school:

(A) the United States flag;

(B) the state flag described in Section 63G-1-501 or the historic state flag described in Section 63G-1-503;

(C) the POW/MIA flag described in Section 63G-1-702;

(D) a flag that represents an Indian tribe, as defined in 25 U.S.C. Sec. 5304;

(E) a flag that represents a municipality, county, or other political subdivision of the state;

(F) a flag that represents any unit, branch, or other division of the armed forces, including an ROTC program;

(G) the current, official flag of another country or a political subdivision of another country;

(H) a flag representing a college or university that the college or university officially licenses;

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(I) a flag representing a professional sports league or team that the professional sports league or team officially licenses;

(J) a flag that is displayed temporarily as part of a course curriculum that the LEA approves and that complies with ~~the requirements of Section 34-32-1.1;~~

~~— (b) comply with the requirements of Section 34-32-1.1 in employing any personnel, whether by employment contract or otherwise; and~~

~~— (c) ensure that at the time an employee enters into an employment contract, the employee shall sign a separate document acknowledging that the employee:~~

~~— (i) has received:~~

~~— (A) the disclosure required under Subsection 63A-4-204(4)(d) if the school district participates in the Risk Management Fund; or~~

~~— (B) written disclosure similar to the disclosure required under Section 63A-4-204 if the school district does not participate in the Risk Management Fund; and~~

~~— (ii) understands the legal liability protection provided to the employee and what is not covered, as explained in the disclosure.~~

~~— (5) (a) (i) If a local school board has actual or constructive knowledge that an employee is the subject of an ongoing criminal investigation related to an offense against a minor described in Subsection 30-5a-103(10), the local school board shall place the employee on administrative leave.~~

~~— (ii) If a local school board places an employee on administrative leave as~~ curriculum standards that the state board adopts;

(K) an official school flag; or

(L) the flag of an organization duly authorized to use a public school building only at the time and place that the organization is authorized to use school property.

(c) (i) This Subsection (4) applies only to the extent that Utah Constitution, Article I, Sec. 15, and the First Amendment to the United States Constitution permit.

(ii) The provisions of this Subsection (4) are severable.

(iii) The severing of any provision in this Subsection (4) that a court holds to violate the constitutional provisions described in Subsection ~~(5) (4) (a) (i), the local school board shall:~~

~~— (A) maintain the confidentiality of the reason for the administrative leave; and~~

~~— (B) ensure that the employee remains on administrative leave until the local school~~

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~~board alters the employment circumstances under Subsection (5)(b) or (c):~~

~~—— (b) The local school board shall provide the employee the opportunity to return to regular work if the investigation described in Subsection (5)(a):~~

~~—— (i) concludes without leading to criminal charges; or~~

~~—— (ii) does not result in the conviction of the employee.~~

~~—— (c) If the investigation results in the conviction of the employee:~~

~~—— (i) the local school board shall take further employment action in response to the conviction, including leave without pay or termination; and~~

~~—— (ii) the employee shall pay back all salary compensation that the employee received during the paid administrative leave period described in Subsection (5)(a):~~

~~—— (6) There is a rebuttable presumption that the administrative leave described in Subsection (5)(a) is paid leave, unless the local school board has established criteria regarding the circumstances under which the administrative leave may be unpaid leave.~~

~~—— (7) (a) Nothing in this section restricts the power of a local school board to take employment; c)(i) has no affect on the remaining provisions of this Subsection (4).~~

~~(d) A parent of a student who is enrolled in an LEA, or of a child who is eligible to enroll in an LEA, has standing to file a civil action against the {employee beyond the action described in Subsection (5) while the employee is under criminal investigation, regardless of whether the employment action is related to the basis for the criminal investigation, including termination for cause based on:~~

~~—— (i) a violation of work policies;~~

~~—— (ii) a violation of local school board policies, state board rule, or law;~~

~~—— (iii) a violation of standards of ethical, moral, or professional conduct; or~~

~~—— (iv) insubordination;~~

~~—— (b) If the local school board determines that the actions of the employee justify termination for cause, the local school board may terminate the employee and cease paid leave upon the termination; LEA to enforce this Subsection (4) if the parent first:~~

~~(i) provides written notice of the alleged violation of this Subsection (4) to the LEA;~~

~~and~~

~~(ii) allows the LEA 10 school days to remedy the alleged violation.~~

Section 2. **Effective date.**

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~~{If approved by two-thirds of all the members elected to each house, this}~~ This bill takes effect ~~{upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.~~

~~{~~ on July 1, 2024.