

EDUCATION ABUSE POLICY

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel McCay

Senate Sponsor: Aaron Osmond

LONG TITLE

General Description:

This bill modifies provisions related to school personnel employment and licensing procedures and student abuse reporting.

Highlighted Provisions:

This bill:

- ▶ modifies requirements for providing and obtaining employment and disciplinary history of school personnel;
- ▶ modifies requirements and procedures for educator licensing;
- ▶ gives rulemaking authority to the State Board of Education;
- ▶ modifies provisions related to mandatory reporting of student abuse; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:

53A-6-402, as repealed and reenacted by Laws of Utah 1999, Chapter 108

53A-6-502, as last amended by Laws of Utah 2003, Chapter 315

53A-6-604, as enacted by Laws of Utah 1999, Chapter 108

77-37-4, as last amended by Laws of Utah 2014, Chapter 90

30 REPEALS AND REENACTS:

31 **53A-6-306**, as last amended by Laws of Utah 2010, Chapter 283

32 **53A-6-307**, as enacted by Laws of Utah 1999, Chapter 108

33 **53A-6-405**, as enacted by Laws of Utah 1999, Chapter 108

34 **53A-6-501**, as last amended by Laws of Utah 2011, Chapter 320

35 **Utah Code Sections Affected by Coordination Clause:**

36 **53A-6-306**, as last amended by Laws of Utah 2010, Chapter 283



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

39 Section 1. Section **53A-6-306** is repealed and reenacted to read:

40 **53A-6-306. UPPAC duties and procedures.**

41 (1) The board may direct UPPAC to review a complaint about an educator and
42 recommend that the board:

43 (a) dismiss the complaint; or

44 (b) investigate the complaint in accordance with this section.

45 (2) (a) The board may direct UPPAC to:

46 (i) in accordance with this section, investigate a complaint's allegation or decision; or

47 (ii) hold a hearing.

48 (b) UPPAC may initiate a hearing as part of an investigation.

49 (c) Upon completion of an investigation or hearing, UPPAC shall:

50 (i) provide findings to the board; and

51 (ii) make a recommendation for board action.

52 (d) UPPAC may not make a recommendation described in Subsection (2)(c)(ii) to
53 adversely affect an educator's license unless UPPAC gives the educator an opportunity for a
54 hearing.

55 (3) (a) The board may:

56 (i) select an independent investigator to conduct a UPPAC investigation with UPPAC
57 oversight; or

58 (ii) authorize UPPAC to select and oversee an independent investigator to conduct an
59 investigation.

60 (b) In conducting an investigation, UPPAC or an independent investigator shall
61 conduct the investigation independent of and separate from a related criminal investigation.

62 (c) In conducting an investigation, UPPAC or an independent investigator may:

63 (i) in accordance with Section 53A-6-603 administer oaths and issue subpoenas; or

64 (ii) receive evidence related to an alleged offense, including sealed or expunged
65 records released to the board under Section 77-40-109.

66 (d) If UPPAC finds that reasonable cause exists during an investigation, UPPAC may
67 recommend that the board initiate a criminal background check on an educator.

68 (e) UPPAC has a rebuttable presumption that an educator committed a sexual offense
69 against a minor child if the educator voluntarily surrendered a license or certificate or allowed a
70 license or certificate to lapse in the face of a charge of having committed a sexual offense
71 against a minor child.

72 (4) The board may direct UPPAC to:

73 (a) recommend to the board procedures for:

74 (i) receiving and processing complaints;

75 (ii) investigating a complaint's allegation or decision;

76 (iii) conducting hearings; or

77 (iv) reporting findings and making recommendations to the board for board action;

78 (b) recommend to the board or a professional organization of educators:

79 (i) standards of professional performance, competence, and ethical conduct for
80 educators; or

81 (ii) suggestions for improvement of the education profession; or

82 (c) fulfill other duties the board finds appropriate.

83 (5) UPPAC may not participate as a party in a dispute relating to negotiations between:

84 (a) a school district and the school district's educators; or

85 (b) a charter school and the charter school's educators.

86 (6) The board shall make rules establishing UPPAC duties and procedures.

87 Section 2. Section **53A-6-307** is repealed and reenacted to read:

88 **53A-6-307. Licensing power of the board -- Licensing final action -- Appeal rights.**

89 (1) The board holds the power to license educators.

90 (2) (a) The board shall take final action with regard to an educator license.

91 (b) An entity other than the board may not take final action with regard to an educator
92 license.

93 (3) (a) In accordance with Subsection (3)(b), a license applicant or an educator may
94 seek judicial review of a final action made by the board under this chapter.

95 (b) A license applicant or educator may file a petition for judicial review of the board's
96 final action if the license applicant or educator files a petition within 30 days after the day on
97 which the license applicant or educator received notice of the final action.

98 Section 3. Section **53A-6-402** is amended to read:

99 **53A-6-402. Evaluation information on current or prospective school employees --**
100 **Notice to employee -- Mandatory employment history check -- Exemption from liability.**

101 (1) (a) The [~~office's administrator of teacher licensing may~~] board shall provide the
102 appropriate administrator of a public or private school or of an agency outside the state [~~which~~
103 that is responsible for licensing or [~~certification of educators with any~~] certifying educational
104 personnel with a recommendation or other information possessed by the [~~office which~~] board
105 that has significance in evaluating the employment or license of:

106 (i) a current or prospective school employee[~~, license holder, or applicant for~~
107 licensing.];

108 (ii) an educator or education license holder; or

109 (iii) a license applicant.

110 (b) Information supplied under Subsection (1)(a) [~~may~~] shall include:

111 (i) the complete record of a hearing [~~or~~]; and

112 (ii) the investigative report for matters [~~which~~] that:

113 [~~(i)~~] (A) the educator has had an opportunity to contest; and

114 ~~[(it)]~~ (B) did not proceed to a hearing.

115 (2) At the request of the ~~[office's administrator of teacher licensing,]~~ board, an
116 administrator of a public school or school district shall, and an administrator of a private school
117 may, provide ~~[any]~~ a recommendation or other information possessed by the school or school
118 district ~~[which]~~ that has significance in evaluating the employment or licensure of:

119 (a) a current or prospective school employee~~[- license holder, or applicant for~~
120 ~~licensing-];~~

121 (b) an educator or education license holder; or

122 (c) a license applicant.

123 (3) If a decision is made to deny licensure, to not hire a prospective employee, or to
124 take action against a current employee or educator based upon information provided under this
125 section, the affected individual shall receive notice of the information and be given an
126 opportunity to respond to the information.

127 (4) A local school board, a charter school governing board, or the Utah Schools for the
128 Deaf and the Blind shall obtain references and a discipline record from prior employers of an
129 individual before hiring the individual to work:

130 (a) as an educator; or

131 (b) in a public school, if the individual would have significant unsupervised access to
132 students.

133 ~~[(4)]~~ (5) A person who, in good faith, provides a recommendation or discloses or
134 receives information under this section is exempt from civil and criminal liability relating to
135 that recommendation, receipt, or disclosure.

136 ~~[(5)]~~ (6) For purposes of this section, "employee" includes a volunteer.

137 Section 4. Section **53A-6-405** is repealed and reenacted to read:

138 **53A-6-405. Ineligibility for educator license.**

139 (1) The board may refuse to issue a license to a license applicant if the board finds
140 good cause for the refusal, including behavior of the applicant:

141 (a) found pursuant to a criminal, civil, or administrative matter after reasonable

142 opportunity for the applicant to contest the allegation; and

143 (b) considered, as behavior of an educator, to be:

144 (i) immoral, unprofessional, or incompetent behavior; or

145 (ii) a violation of standards of ethical conduct, performance, or professional

146 competence.

147 (2) The board may not issue, renew, or reinstate an educator license if the license

148 applicant or educator:

149 (a) was convicted of a felony of a sexual nature;

150 (b) pled guilty to a felony of a sexual nature;

151 (c) entered a plea of no contest to a felony of a sexual nature;

152 (d) entered a plea in abeyance to a felony of a sexual nature;

153 (e) was convicted of a sexual offense under Title 76, Chapter 5, Part 4, Sexual

154 Offenses, against a minor child;

155 (f) engaged in sexually explicit conduct, as defined in Section [76-5b-103](#), with a
156 student who is a minor;

157 (g) engaged in sexually explicit conduct, as defined in Section [76-5b-103](#), with a
158 student who is:

159 (i) not a minor; and

160 (ii) enrolled in a school where the license applicant or educator is or was employed; or

161 (h) admits to the board or UPPAC that the license applicant or educator committed
162 conduct that amounts to:

163 (i) a felony of a sexual nature; or

164 (ii) a sexual offense or sexually explicit conduct described in Subsection (2)(e), (f), or
165 (g).

166 (3) If an individual is ineligible for licensure under Subsection (1) or (2), a public
167 school may not:

168 (a) employ the person in the public school; or

169 (b) allow the person to volunteer in the public school.

170 (4) (a) If the board denies licensure under this section, the board shall immediately
171 notify the applicant of:

172 (i) the denial; and

173 (ii) the applicant's right to request a hearing before UPPAC.

174 (b) Upon receipt of a notice described in Subsection (4)(a), an applicant may, within 30
175 days after the day on which the applicant received the notice, request a hearing before UPPAC
176 for the applicant to review and respond to all evidence upon which the board based the denial.

177 (c) If the board receives a request for a hearing described in Subsection (4)(b), the
178 board shall direct UPPAC to hold a hearing.

179 Section 5. Section **53A-6-501** is repealed and reenacted to read:

180 **53A-6-501. Board disciplinary action of an educator.**

181 (1) (a) The board shall direct UPPAC to investigate an allegation, administrative
182 decision, or judicial decision that evidences an educator is unfit for duty because the educator
183 exhibited behavior that:

184 (i) is immoral, unprofessional, or incompetent; or

185 (ii) violates standards of ethical conduct, performance, or professional competence.

186 (b) If the board determines an allegation or decision described in Subsection (1)(a)
187 does not evidence an educator's unfitness for duty, the board may dismiss the allegation or
188 decision without an investigation or hearing.

189 (2) The board shall direct UPPAC to investigate and allow an educator to respond in a
190 UPPAC hearing if the board receives an allegation that the educator:

191 (a) was charged with a felony of a sexual nature;

192 (b) was convicted of a felony of a sexual nature;

193 (c) pled guilty to a felony of a sexual nature;

194 (d) entered a plea of no contest to a felony of a sexual nature;

195 (e) entered a plea in abeyance to a felony of a sexual nature;

196 (f) was convicted of a sexual offense under Title 76, Chapter 5, Part 4, Sexual
197 Offenses, against a minor child;

198 (g) engaged in sexually explicit conduct, as defined in Section 76-5b-103, with a
199 student who is a minor; or

200 (h) engaged in sexually explicit conduct, as defined in Section 76-5b-103, with a
201 student who is:

202 (i) not a minor; and

203 (ii) enrolled in a school where the educator is or was employed.

204 (3) Upon notice that an educator allegedly violated Section 53A-6-502, the board shall
205 direct UPPAC to:

206 (a) investigate the alleged violation; and

207 (b) hold a hearing to allow the educator to respond to the allegation.

208 (4) Upon completion of an investigation or hearing described in this section, UPPAC
209 shall:

210 (a) provide findings to the board; and

211 (b) make a recommendation for board action.

212 (5) (a) Except as provided in Subsection (5)(b), upon review of UPPAC's findings and
213 recommendation, the board may:

214 (i) revoke the educator's license;

215 (ii) suspend the educator's license;

216 (iii) restrict or prohibit the educator from renewing the educator's license;

217 (iv) warn or reprimand the educator;

218 (v) enter into a written agreement with the educator that requires the educator to
219 comply with certain conditions;

220 (vi) direct UPPAC to further investigate or gather information; or

221 (vii) take other action the board finds to be appropriate for and consistent with the
222 educator's behavior.

223 (b) Upon review of UPPAC's findings and recommendation, the board shall revoke the
224 license of an educator who:

225 (i) was convicted of a felony of a sexual nature;

- 226 (ii) pled guilty to a felony of a sexual nature;
- 227 (iii) entered a plea of no contest to a felony of a sexual nature;
- 228 (iv) entered a plea in abeyance to a felony of a sexual nature;
- 229 (v) was convicted of a sexual offense under Title 76, Chapter 5, Part 4, Sexual
- 230 Offenses, against a minor child;
- 231 (vi) engaged in sexually explicit conduct, as defined in Section 76-5b-103, with a
- 232 student who is a minor;
- 233 (vii) engaged in sexually explicit conduct, as defined in Section 76-5b-103, with a
- 234 student who is:
 - 235 (A) not a minor; and
 - 236 (B) enrolled in a school where the educator is or was employed; or
 - 237 (viii) admits to the board or UPPAC that the applicant committed conduct that amounts
 - 238 to:
 - 239 (A) a felony of a sexual nature; or
 - 240 (B) a sexual offense or sexually explicit conduct described in Subsection (5)(b)(v), (vi),
 - 241 or (vii).
- 242 (c) The board may not reinstate a revoked license.
- 243 (d) Before the board takes adverse action against an educator under this section, the
- 244 board shall ensure that the educator had an opportunity for a UPPAC hearing.

245 Section 6. Section 53A-6-502 is amended to read:

246 **53A-6-502. Mandatory reporting of physical or sexual abuse of students.**

247 (1) For purposes of this section, "educator" means, in addition to a person included
248 under Section 53A-6-103, a person, including a volunteer or temporary employee, who at the
249 time of an alleged offense was performing a function in a private school for which a license
250 would be required in a public school.

251 (2) In addition to any duty to report suspected cases of child abuse or neglect under
252 Section 62A-4a-403, an educator who has reasonable cause to believe that a student may have
253 been physically or sexually abused by a school employee shall immediately report the belief

254 and all other relevant information to the school principal, to the superintendent, or to the
255 [~~office~~] board.

256 (3) A school administrator who has received a report under Subsection (2) or who
257 otherwise has reasonable cause to believe that a student may have been physically or sexually
258 abused by an educator shall immediately report that information to the [~~office~~] board.

259 [~~(4) Failure to comply with Subsection (2) or (3) shall be considered unprofessional~~
260 ~~conduct.~~]

261 (4) Upon notice that an educator allegedly violated Subsection (2) or (3), the board
262 shall direct UPPAC to investigate the educator's alleged violation as described in Section
263 53A-6-501.

264 (5) A person who makes a report under this section in good faith shall be immune from
265 civil or criminal liability that might otherwise arise by reason of that report.

266 Section 7. Section **53A-6-604** is amended to read:

267 **53A-6-604. Rules for conducting hearings -- Standard of proof.**

268 (1) The board[;] and each local school board[; ~~and UPPAC~~] shall [~~each~~] adopt rules for
269 the conduct of hearings to ensure that requirements of due process are met.

270 (2) An accused party shall be provided not less than 15 days before a hearing with:

271 (a) notice of the hearing;

272 (b) the law, rule, or policy alleged to have been violated;

273 (c) sufficient information about the allegations and the evidence to be presented in
274 support of the allegations to permit the accused party to prepare a meaningful defense; and

275 (d) a copy of the rules under which the hearing will be conducted.

276 (3) If an accused party fails to request a hearing within 30 days after written notice is
277 sent to the party's address as shown on the records of the local board, for actions taken under
278 the auspices of a local board, or on the records of the [~~office~~] board, for actions taken under the
279 auspices of [~~UPPAC or~~] the [~~state~~] board, then the accused party shall be considered to have
280 waived the right to a hearing and the action may proceed without further delay.

281 (4) Hearing fact finders shall use the preponderance of evidence standard in deciding

282 all questions unless a higher standard is required by law.

283 (5) Unless otherwise provided in [~~Title 53A~~] this title, the decisions of state and local
284 boards are final determinations under this section, appealable to the appropriate court for
285 review.

286 Section 8. Section ~~77-37-4~~ is amended to read:

287 **77-37-4. Additional rights -- Children.**

288 In addition to all rights afforded to victims and witnesses under this chapter, child
289 victims and witnesses shall be afforded these rights:

290 (1) Children have the right to protection from physical and emotional abuse during
291 their involvement with the criminal justice process.

292 (2) Children are not responsible for inappropriate behavior adults commit against them
293 and have the right not to be questioned, in any manner, nor to have allegations made, implying
294 this responsibility. Those who interview children have the responsibility to consider the
295 interests of the child in this regard.

296 (3) Child victims and witnesses have the right to have interviews relating to a criminal
297 prosecution kept to a minimum. All agencies shall coordinate interviews and ensure that they
298 are conducted by persons sensitive to the needs of children.

299 (4) Child victims have the right to be informed of available community resources that
300 might assist them and how to gain access to those resources. Law enforcement and prosecutors
301 have the duty to ensure that child victims are informed of community resources, including
302 counseling prior to the court proceeding, and have those services available throughout the
303 criminal justice process.

304 (5) (a) Child victims have the right, once an investigation has been initiated by law
305 enforcement or the Division of Child and Family Services, to keep confidential their interviews
306 that are conducted at a Children's Justice Center, including video and audio recordings, and
307 transcripts of those recordings. Except as provided in Subsection (6), recordings and
308 transcripts of interviews may not be distributed, released, or displayed to anyone without a
309 court order.

- 310 (b) A court order described in Subsection (5)(a):
- 311 (i) shall describe with particularity to whom the recording or transcript of the interview
- 312 may be released and prohibit further distribution or viewing by anyone not named in the order;
- 313 and
- 314 (ii) may impose restrictions on access to the materials considered reasonable to protect
- 315 the privacy of the child victim.
- 316 (c) A parent or guardian of the child victim may petition a juvenile or district court for
- 317 an order allowing the parent or guardian to view a recording or transcript upon a finding of
- 318 good cause. The order shall designate the agency that is required to display the recording or
- 319 transcript to the parent or guardian and shall prohibit viewing by anyone not named in the
- 320 order.
- 321 (d) Following the conclusion of any legal proceedings in which the recordings or
- 322 transcripts are used, the court shall order the recordings and transcripts in the court's file sealed
- 323 and preserved.
- 324 (6) (a) The following offices and their designated employees may distribute and receive
- 325 a recording or transcript to and from one another without a court order:
- 326 (i) the Division of Child and Family Services;
- 327 (ii) administrative law judges employed by the Department of Human Services;
- 328 (iii) Department of Human Services investigators investigating the Division of Child
- 329 and Family Services or investigators authorized to investigate under Section [62A-4a-202.6](#);
- 330 (iv) an office of the city attorney, county attorney, district attorney, or attorney general;
- 331 (v) a law enforcement agency;
- 332 (vi) a Children's Justice Center established under Section [67-5b-102](#); or
- 333 (vii) the attorney for the child who is the subject of the interview.
- 334 (b) In a criminal case or in a juvenile court in which the state is a party:
- 335 (i) the parties may display and enter into evidence a recording or transcript in the
- 336 course of a prosecution;
- 337 (ii) the state's attorney may distribute a recording or transcript to the attorney for the

338 defendant, pro se defendant, respondent, or pro se respondent pursuant to a valid request for
339 discovery;

340 (iii) the attorney for the defendant or respondent may do one or both of the following:

341 (A) release the recording or transcript to an expert retained by the attorney for the
342 defendant or respondent if the expert agrees in writing that the expert will not distribute,
343 release, or display the recording or transcript to anyone without prior authorization from the
344 court; or

345 (B) permit the defendant or respondent to view the recording or transcript, but may not
346 distribute or release the recording or transcript to the defendant or respondent; and

347 (iv) the court shall advise a pro se defendant or respondent that a recording or
348 transcript received as part of discovery is confidential and may not be distributed, released, or
349 displayed without prior authorization from the court.

350 (c) A court's failure to advise a pro se defendant or respondent that a recording or
351 transcript received as part of discovery is confidential and may not be used as a defense to
352 prosecution for a violation of the disclosure rule.

353 (d) In an administrative case, pursuant to a written request, the Division of Child and
354 Family Services may display, but may not distribute or release, a recording or transcript to the
355 respondent or to the respondent's designated representative.

356 (e) (i) Within two business days of a request from a parent or guardian of a child
357 victim, an investigative agency shall allow the parent or guardian to view a recording after the
358 conclusion of an interview, unless:

359 (A) the suspect is a parent or guardian of the child victim;

360 (B) the suspect resides in the home with the child victim; or

361 (C) the investigative agency determines that allowing the parent or guardian to view
362 the recording would likely compromise or impede the investigation.

363 (ii) If the investigative agency determines that allowing the parent or guardian to view
364 the recording would likely compromise or impede the investigation, the parent or guardian may
365 petition a juvenile or district court for an expedited hearing on whether there is good cause for

366 the court to enter an order allowing the parent or guardian to view the recording in accordance
367 with Subsection (5)(c).

368 (iii) A Children's Justice Center shall coordinate the viewing of the recording described
369 in this Subsection (6)(e).

370 (f) A multidisciplinary team assembled by a Children's Justice Center or an
371 interdisciplinary team assembled by the Division of Child and Family Services may view a
372 recording or transcript, but may not receive a recording or transcript.

373 (g) A Children's Justice Center:

374 (i) may distribute or display a recording or transcript to an authorized trainer or
375 evaluator for purposes of training or evaluation; and

376 (ii) may display, but may not distribute, a recording or transcript to an authorized
377 trainee.

378 (h) An authorized trainer or instructor may display a recording or transcript according
379 to the terms of the authorized trainer's or instructor's contract with the Children's Justice Center
380 or according to the authorized trainer's or instructor's scope of employment.

381 (i) (i) In an investigation under Section 53A-6-306, in which a child victim who is the
382 subject of the recording or transcript has alleged criminal conduct against an educator, a law
383 enforcement agency may distribute or release the recording or transcript to an investigator
384 operating under [UPPAC] State Board of Education authorization, upon the investigator's
385 written request.

386 (ii) If the respondent in a case investigated under Section 53A-6-306 requests a hearing
387 authorized under that section, the investigator operating under [UPPAC] State Board of
388 Education authorization may display, release, or distribute the recording or transcript to the
389 prosecutor operating under [UPPAC] State Board of Education authorization or to an expert
390 retained by an investigator.

391 (iii) Upon request for a hearing under Section 53A-6-306, a prosecutor operating under
392 [UPPAC] State Board of Education authorization may display the recording or transcript to a
393 pro se respondent, to an attorney retained by the respondent, or to an expert retained by the

394 respondent.

395 (iv) The parties to a hearing authorized under Section [53A-6-306](#) may display and enter
396 into evidence a recording or transcript in the course of a prosecution.

397 (7) Except as otherwise provided in this section, it is a class B misdemeanor for any
398 individual to distribute, release, or display any recording or transcript of an interview of a child
399 victim conducted at a Children's Justice Center.

400 Section 9. **Effective date.**

401 This bill takes effect on July 1, 2015.

402 Section 10. **Coordinating H.B. 345 with H.B. 124 -- Substantive amendment.**

403 If this H.B. 345 and H.B. 124, Education Background Check Amendments, both pass
404 and become law, it is the intent of the Legislature that the Office of Legislative Research and
405 General Counsel, in preparing the Utah Code database for publication, amend Subsection
406 [53A-6-306\(3\)\(d\)](#) to read:

407 "(d) If UPPAC finds that reasonable cause exists during an investigation, UPPAC may
408 recommend that the board initiate a background check on an educator as described in Section
409 [53A-15-1504.](#)"