

PUBLIC SCHOOL TEACHER TENURE MODIFICATIONS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Howard A. Stephenson

House Sponsor: _____

LONG TITLE

General Description:

This bill amends the Utah Orderly School Termination Procedures Act to require certain results on performance evaluations for certain employees to obtain, retain, or regain career employee status.

Highlighted Provisions:

This bill:

- ▶ requires the State Board of Education to create an evaluation system to evaluate school district employee performance;
- ▶ requires a provisional employee to receive a certain result on the employee's performance evaluation for three consecutive years to obtain career employee status;
- ▶ provides that a career employee shall lose career employee status if the career employee is a low performing educator;
- ▶ provides a low performing educator with an opportunity for a hearing before losing the employee's career employee status due to low performance;
- ▶ prohibits a school district from utilizing a last-hired, first-fired layoff policy when reducing staff;
- ▶ defines terms; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **53A-8-102**, as last amended by Laws of Utah 2007, Chapter 348

33 **53A-8-106**, as last amended by Laws of Utah 2010, Chapter 183

34 **53A-8-107**, as last amended by Laws of Utah 1999, Chapter 324

35 ENACTS:

36 **53A-8-106.5**, Utah Code Annotated 1953



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

39 Section 1. Section **53A-8-102** is amended to read:

40 **53A-8-102. Definitions.**

41 As used in this chapter:

42 (1) "Career employee" means an employee of a school district who has:

43 (a) obtained a reasonable expectation of continued employment based upon:

44 (i) Section 53A-8-106; and

45 (ii) an agreement with the employee or the employee's association, district practice, or
46 policy[-]; and

47 (b) met the requirements to obtain, regain, or retain status as a career employee as
48 defined in Sections 53A-8-106 and 53A-8-106.5.

49 (2) "Contract term" or "term of employment" means the period of time during which an
50 employee is engaged by the school district under a contract of employment, whether oral or
51 written.

52 (3) "Dismissal" or "termination" means:

53 (a) termination of the status of employment of an employee;

54 (b) failure to renew or continue the employment contract of a career employee beyond
55 the then-current school year;

56 (c) reduction in salary of an employee not generally applied to all employees of the
57 same category employed by the school district during the employee's contract term; or

58 (d) change of assignment of an employee with an accompanying reduction in pay,

59 unless the assignment change and salary reduction are agreed to in writing.

60 (4) "Employee" means a career or provisional employee of a school district, but does
61 not include:

62 (a) the district superintendent, or the equivalent at the Schools for the Deaf and the
63 Blind;

64 (b) the district business administrator or the equivalent at the Schools for the Deaf and
65 the Blind; or

66 (c) a temporary employee.

67 (5) "Last-hired, first-fired layoff policy" means a staff reduction policy that mandates
68 the termination of an employee who started to work for the district most recently before
69 terminating a more senior employee.

70 (6) "Low performing educator" means an educator whose students, based upon prior
71 year scores on a statewide assessment of student achievement, were in the lowest performing
72 5% of students in the state.

73 (7) "Performance evaluation" means an evaluation of an employee's performance as
74 described in Section 53A-8-106.5.

75 (8) "Proficient educator" means an educator whose students, based upon prior year
76 scores on a statewide assessment of student achievement, were in the highest performing 95%
77 of students in the state.

78 [~~5~~] (9) "Provisional employee" means an individual, other than a career employee or
79 a temporary employee, who is employed by a school district.

80 [~~6~~] (10) "School board" or "board" means a [~~district~~] local school board or its
81 equivalent at the Schools for the Deaf and the Blind.

82 [~~7~~] (11) "School district" or "district" means:

83 (a) a public school district; or

84 (b) the Schools for the Deaf and the Blind.

85 [~~8~~] (12) "Temporary employee" means an individual who is employed on a temporary
86 basis as defined by policies adopted by the local board of education. If the class of employees
87 in question is represented by an employee organization recognized by the local board, the board
88 shall adopt its policies based upon an agreement with that organization. Temporary employees
89 serve at will and have no expectation of continued employment.

90 Section 2. Section **53A-8-106** is amended to read:

91 **53A-8-106. Career employee status for provisional employees.**

92 (1) (a) [~~A~~] To obtain career employee status, a provisional employee must:

93 (i) work for a school district on at least a half-time basis for three consecutive years [~~to~~
94 ~~obtain career employee status.~~]; and

95 (ii) beginning on or after July 1, 2012, if the employee is an educator, be a proficient
96 educator as described in Section 53A-8-106.5 for each of the three consecutive years described
97 in Subsection (1)(a)(i).

98 (b) A school district may extend the provisional status of an employee up to an
99 additional two consecutive years in accordance with a written policy adopted by the district's
100 school board that specifies the circumstances under which an employee's provisional status
101 may be extended.

102 (2) Policies of an employing school district shall determine the status of a career
103 employee in the event of the following:

104 (a) the employee accepts a position which is substantially different from the position in
105 which career status was achieved; or

106 (b) the employee accepts employment in another school district.

107 (3) If an employee who is under an order of probation or remediation in one
108 assignment in a school district is transferred or given a new assignment in the district, the order
109 shall stand until its provisions are satisfied.

110 (4) An employee who is given extra duty assignments in addition to a primary
111 assignment, such as a teacher who also serves as a coach or activity advisor, is a temporary
112 employee in those extra duty assignments and may not acquire career status beyond the primary
113 assignment.

114 (5) A person is an at-will employee and is not eligible for career employee status if the
115 person:

116 (a) is a teacher who holds a competency-based license pursuant to Section 53A-6-104.5
117 and does not hold a level 1, 2, or 3 license as defined in Section 53A-6-103; or

118 (b) holds an administrative/supervisory letter of authorization pursuant to Section
119 53A-6-110.

120 Section 3. Section **53A-8-106.5** is enacted to read:

121 **53A-8-106.5. Performance evaluation system for school district educators --**
122 **Requirements to obtain, retain, or regain status as a career employee -- Notice to a low**
123 **performing educator -- Hearing.**

124 (1) (a) On or before June 30, 2012, in accordance with Title 63G, Chapter 3, Utah
125 Administrative Rulemaking Act, the State Board of Education shall make rules establishing an
126 evaluation system for a school district to measure the performance level of an educator for
127 purposes of the educator:

128 (i) obtaining or regaining career employee status as described in Section 53A-8-106; or

129 (ii) retaining career employee status as described in Subsection (2).

130 (b) The performance evaluation system shall:

131 (i) require an educator's performance evaluation to be determined by the achievement
132 or academic growth of the educator's students;

133 (ii) include measures of student achievement or academic growth;

134 (iii) where available, include assessments of the learning gains of an educator's
135 students; and

136 (iv) define an educator's performance evaluation result as:

137 (A) a proficient educator; or

138 (B) a low performing educator.

139 (2) (a) Beginning on July 1, 2012, a school district shall annually conduct a
140 performance evaluation of each employee who is an educator.

141 (b) Beginning on or after July 1, 2012, a career employee must receive a performance
142 evaluation result of a proficient educator to retain the employee's career employee status.

143 (3) (a) Beginning on or after July 1, 2012, a career employee who is an educator shall
144 lose the employee's career employee status if the educator receives a performance evaluation
145 result of low performing educator.

146 (b) An educator who loses career employee status as described in Subsection (3)(a):

147 (i) shall be considered a provisional employee; and

148 (ii) must meet the requirements of Subsection 53A-8-106(1) for three years after losing
149 the employee's career employee status to regain career employee status.

150 (4) A district shall notify a low performing educator that the employee:

151 (a) is a low performing educator;

- 152 (b) will lose the employee's career employee status:
- 153 (i) 15 days after the employee is notified of the employee's loss of career employee
- 154 status in accordance with this section; or
- 155 (ii) if the educator requests a hearing described in Subsection (5), according to a
- 156 decision of a hearing officer; and
- 157 (c) has a right to a fair hearing and that the hearing is waived if it is not requested
- 158 within 15 days after the employee receives the notice of loss of career employee status.
- 159 (5) A hearing regarding an employee's loss of career employee status under this section
- 160 shall be conducted in accordance with Section 53A-8-105.

Section 4. Section **53A-8-107** is amended to read:

53A-8-107. Necessary staff reduction not precluded -- Last-hired, first-fired layoffs prohibited.

(1) Nothing in this chapter prevents staff reduction if necessary to reduce the number of employees because of the following:

- 166 [~~1~~] (a) declining student enrollments in the district;
- 167 [~~2~~] (b) the discontinuance or substantial reduction of a particular service or program;
- 168 [~~3~~] (c) the shortage of anticipated revenue after the budget has been adopted; or
- 169 [~~4~~] (d) school consolidation.

(2) A school district may not utilize a last-hired, first-fired layoff policy when terminating school district employees.

(3) A school district may consider the following factors when terminating a school district employee:

- 174 (a) the results of an employee's performance evaluation described in Section
- 175 53A-8-106.5; and
- 176 (b) a school's personnel needs.

Legislative Review Note
as of **2-11-11 2:20 PM**

Office of Legislative Research and General Counsel