

**EDUCATION AUDIT AND MONITORING AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: V. Lowry Snow**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE****General Description:**

This bill amends provisions related to auditing and monitoring a public school's use of state and federal funds.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ specifies the standards the State Board of Education (state board) shall use when monitoring a state-funded program;
- ▶ provides procedures for the state board to recover state or federal funds that are misused by a charter school; and
- ▶ requires a charter school or education service provider to submit certain financial reports when a charter school enters a new contract with an education service provider.

**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 2019, Chapter 186



53G-5-406, as last amended by Laws of Utah 2019, Chapter 293

ENACTS:

53G-5-414, Utah Code Annotated 1953

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*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 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; or

(iv) a charter school.

(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 authorized under this public education code.

(2) (a) The state board has general control and supervision of the state's public education system.

(b) "General control and supervision" as used in Utah Constitution, Article X, Section 3, means directed to the whole system.

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

(4) (a) 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) 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) 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 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 that if an LEA contracts with a third party contractor for an educational good or service, the LEA shall require in the contract that the 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.

(13) Unless otherwise provided in this public education code or state board rule, the state board shall use federal monitoring standards when monitoring state-funded programs and the expenditure of state funds.

Section 2. Section 53G-5-406 is amended to read:

**53G-5-406. Accountability -- Rules.**

(1) The state board shall, after consultation with chartering entities, make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

121           ~~[(1)]~~ (a) require a charter school to develop an accountability plan, approved by its  
122 charter school authorizer, during its first year of operation;  
123           ~~[(2)]~~ (b) require an authorizer to:  
124           ~~[(a)]~~ (i) visit a charter school at least once during:  
125           ~~[(i)]~~ (A) its first year of operation; and  
126           ~~[(ii)]~~ (B) the review period described under Subsection ~~[(3)]~~ (1)(c); and  
127           ~~[(b)]~~ (ii) provide written reports to its charter schools after the visits; and  
128           ~~[(3)]~~ (c) establish a review process that is required of a charter school once every five  
129 years by ~~[its]~~ the charter school's authorizer.

130           (2) An authorizer has a fiduciary responsibility for a charter school the authorizer  
131 authorizes.

132           (3) (a) An authorizer shall ensure that a charter school uses funds appropriated by the  
133 Legislature or the federal government for the purpose intended by the Legislature or the federal  
134 government.

135           (b) If an internal audit, audit by the state board, or audit by an external auditor finds  
136 that a charter school has misused an appropriation described in Subsection (3)(a):

137           (i) the state board shall collect the misused funds owed to the state or federal  
138 government described in Subsection (3)(b) from the charter school; or

139           (ii) notwithstanding Subsection [53G-5-303\(3\)\(g\)\(iii\)](#), if the charter school does not  
140 return misused funds under Subsection (3)(b)(i), the state board may collect the amount of the  
141 misused funds described in Subsection (3)(b) from the authorizer.

142           (c) If the amount of misused funds owed to the state or federal government described  
143 in Subsection (3)(b) exceeds the budget of the charter school or the authorizer:

144           (i) for misuse of federal funds, the state board may seek an appropriation from the  
145 Legislature to pay the federal government; or

146           (ii) for misuse of state funds, the authorizer shall provide a verbal report, accompanied  
147 by a written report, to the state board and the Public Education Appropriations Subcommittee,  
148 that includes:

149           (A) the amount of misused funds not returned under Subsection (3)(c);

150           (B) corrective action the authorizer imposed, or plans to impose, on the charter school;  
151 and

(C) preventive measures the authorizer will implement to avoid future misuse of state funds.

Section 3. Section **53G-5-414** is enacted to read:

**53G-5-414. Requirements for transition of education service providers.**

(1) As used in this section, "education service provider" means the recipient of a contract with an LEA to provide education-related services, including:

(a) instructional services;

(b) the duties performed in a school district by a business administrator as described in Section [53G-4-303](#);

(c) information technology services; or

(d) data and statistics management services.

(2) (a) When a charter school that does not have a contract with an education service provider enters into a contract with an education service provider, the charter school shall submit a written report on the financial condition of the charter school to:

(i) the education service provider;

(ii) the charter school's authorizer; and

(iii) if requested by the state board, the state board.

(b) If a charter school does not renew or terminates a contract with an education service provider, the education service provider shall submit a written report on the financial condition of the charter school at the end or termination of the contract to:

(i) the charter school's governing board;

(ii) the charter school's authorizer;

(iii) if requested by the state board, the state board; and

(iv) the new education service provider, if the charter school enters into a contract with a new education service provider.

(c) The report described in Subsections (2)(a) and (b) shall:

(i) identify risks related to the financial viability of the charter school; and

(ii) attest that funds managed by the charter school, or an education service provider under a contract with the charter school, were used for intended and permitted purposes.

(3) An education service provider that enters into a contract with a charter school shall submit to the charter school's authorizer and the state board a written attestation that the

183 education service provider received the report described in Subsection (2).  
184 (4) The state board shall make rules in accordance with Title 63G, Chapter 3, Utah  
185 Administrative Rulemaking Act, for:  
186 (a) procedures for submitting the report described in Subsection (2);  
187 (b) specific documentation to meet the requirements of the report described in  
188 Subsection (2)(c);  
189 (c) procedures for submitting the attestation described in Subsection (3); and  
190 (d) the contents of the attestation described in Subsection (3).