

**Representative Steve Eliason** proposes the following substitute bill:

**SCHOOL MENTAL HEALTH FUNDING AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Steve Eliason**

Senate Sponsor: Ann Millner

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**LONG TITLE**

**General Description:**

This bill addresses provisions relating to school-based mental health support.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ prohibits mental health screening without parental consent;
- ▶ provides that data collected from a mental health screening may not be included in a student's Student Achievement Backpack;
- ▶ sets standards for participating local education agencies (LEAs) to implement approved mental health screening programs for participating students;
- ▶ requires the State Board of Education (state board) to:
  - in consultation with the Division of Substance Abuse and Mental Health, approve an evidence-based mental health screening program to be administered annually to students in a participating LEA; and
  - annually report on the screening programs to the State Suicide Prevention Coalition and the Education Interim Committee;
- ▶ permits an LEA to use Teacher and Student Support Program money to match money distributed to an LEA for school-based student support;



26           ▶ removes the fund matching requirement for an LEA that has a school-based student  
27 support plan that is approved by the state board after a certain date; and  
28           ▶ permits the state board to use funds appropriated for school-based student support to  
29 pay an employee to administer the program and oversee mental health personnel in  
30 LEAs.

31 **Money Appropriated in this Bill:**

32           None

33 **Other Special Clauses:**

34           None

35 **Utah Code Sections Affected:**

36 AMENDS:

37           **53E-9-203**, as last amended by Laws of Utah 2019, Chapter 186

38           **53F-2-415**, as enacted by Laws of Utah 2019, Chapter 446

39 ENACTS:

40           **53F-2-522**, Utah Code Annotated 1953

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

43           Section 1. Section **53E-9-203** is amended to read:

44           **53E-9-203. Activities prohibited without prior written consent -- Validity of**  
45 **consent -- Qualifications -- Training on implementation.**

46           (1) Except as provided in Subsection (7), Section **53G-9-604**, and Section **53G-9-702**,  
47 policies adopted by a school district or charter school under Section **53E-9-202** shall include  
48 prohibitions on the administration to a student of any psychological or psychiatric examination,  
49 test, or treatment, or any survey, analysis, or evaluation without the prior written consent of the  
50 student's parent, in which the purpose or evident intended effect is to cause the student to  
51 reveal information, whether the information is personally identifiable or not, concerning the  
52 student's or any family member's:

53           (a) political affiliations or, except as provided under Section **53G-10-202** or rules of  
54 the state board, political philosophies;

55           (b) mental or psychological problems;

56           (c) sexual behavior, orientation, or attitudes;

- (d) illegal, anti-social, self-incriminating, or demeaning behavior;
- (e) critical appraisals of individuals with whom the student or family member has close family relationships;
- (f) religious affiliations or beliefs;
- (g) legally recognized privileged and analogous relationships, such as those with lawyers, medical personnel, or ministers; and
- (h) income, except as required by law.
- (2) Prior written consent under Subsection (1) is required in all grades, kindergarten through grade 12.
- (3) Except as provided in Subsection (7), Section 53G-9-604, and Section 53G-9-702, the prohibitions under Subsection (1) shall also apply within the curriculum and other school activities unless prior written consent of the student's parent has been obtained.
- (4) (a) Written parental consent is valid only if a parent has been first given written notice, including notice that a copy of the educational or student survey questions to be asked of the student in obtaining the desired information is made available at the school, and a reasonable opportunity to obtain written information concerning:
- (i) records or information, including information about relationships, that may be examined or requested;
  - (ii) the means by which the records or information shall be examined or reviewed;
  - (iii) the means by which the information is to be obtained;
  - (iv) the purposes for which the records or information are needed;
  - (v) the entities or persons, regardless of affiliation, who will have access to the personally identifiable information; and
  - (vi) a method by which a parent of a student can grant permission to access or examine the personally identifiable information.
- (b) For a survey described in Subsection (1), written notice described in Subsection (4)(a) shall include an Internet address where a parent can view the exact survey to be administered to the parent's student.
- (5) (a) Except in response to a situation which a school employee reasonably believes to be an emergency, or as authorized under Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting Requirements, or by order of a court, disclosure to a parent must be given at

least two weeks before information protected under this section is sought.

(b) Following disclosure, a parent may waive the two week minimum notification period.

(c) Unless otherwise agreed to by a student's parent and the person requesting written consent, the authorization is valid only for the activity for which it was granted.

(d) A written withdrawal of authorization submitted to the school principal by the authorizing parent terminates the authorization.

(e) A general consent used to approve admission to school or involvement in special education, remedial education, or a school activity does not constitute written consent under this section.

(6) (a) This section does not limit the ability of a student under Section 53G-10-203 to spontaneously express sentiments or opinions otherwise protected against disclosure under this section.

(b) (i) If a school employee or agent believes that a situation exists which presents a serious threat to the well-being of a student, that employee or agent shall notify the student's parent without delay.

(ii) If, however, the matter has been reported to the Division of Child and Family Services within the Department of Human Services, it is the responsibility of the division to notify the student's parent of any possible investigation, prior to the student's return home from school.

(iii) The division may be exempted from the notification requirements described in this Subsection (6)(b)(ii) only if it determines that the student would be endangered by notification of the student's parent, or if that notification is otherwise prohibited by state or federal law.

(7) (a) If a school employee, agent, or school resource officer believes a student is at-risk of attempting suicide, physical self-harm, or harming others, the school employee, agent, or school resource officer may intervene and ask a student questions regarding the student's suicidal thoughts, physically self-harming behavior, or thoughts of harming others for the purposes of:

(i) referring the student to appropriate prevention services; and

(ii) informing the student's parent.

(b) On or before September 1, 2014, a school district or charter school shall develop

and adopt a policy regarding intervention measures consistent with Subsection (7)(a) while requiring the minimum degree of intervention to accomplish the goals of this section.

(8) Local school boards and charter school governing boards shall provide inservice for teachers and administrators on the implementation of this section.

(9) The state board shall provide procedures for disciplinary action for violations of this section.

(10) Data collected from a survey described in Subsection (1):

(a) is a private record as provided in Subsection 63G-2-302(6);

(b) may not be shared except in accordance with the Family Educational Rights and Privacy Act, 20 U.S.C. Sec. 1232g; and

(c) may not be included in a student's Student Achievement Backpack, as that term is defined in Section 53E-3-511.

Section 2. Section **53F-2-415** is amended to read:

**53F-2-415. Student health and counseling support -- Qualifying personnel -- Distribution formula -- Rulemaking.**

(1) As used in this section~~["qualifying"]~~:

(a) "Qualifying personnel" means a school counselor or other counselor, school psychologist or other psychologist, school social worker or other social worker, or school nurse who:

~~[(a)]~~ (i) is licensed; and

~~[(b)]~~ (ii) collaborates with educators and a student's parent on:

~~[(i)]~~ (A) early identification and intervention of the student's academic and mental health needs; and

~~[(ii)]~~ (B) removing barriers to learning and developing skills and behaviors critical for the student's academic achievement.

(b) "Telehealth services" means the same as that term is defined in Section 26-60-102.

(2) (a) Subject to legislative appropriations, and in accordance with Subsection (2)(b), the state board shall distribute money appropriated under this section to LEAs to provide in a school targeted school-based mental health support, including clinical services and trauma-informed care, through:

(i) employing qualifying personnel; or

150           (ii) entering into contracts for services provided by qualifying personnel, including  
151 telehealth services.

152           (b) (i) The state board shall, after consulting with LEA governing boards, develop a  
153 formula to distribute money appropriated under this section to LEAs.

154           (ii) The state board shall ensure that the formula described in Subsection (2)(b)(i)  
155 incentivizes an LEA to provide school-based mental health support in collaboration with the  
156 local mental health authority of the county in which the LEA is located.

157           (3) To qualify for money under this section, an LEA shall submit to the state board a  
158 plan that includes:

159           (a) measurable goals approved by the LEA governing board on improving student  
160 safety, student engagement, school culture, or academic achievement;

161           (b) how the LEA intends to meet the goals described in Subsection (3)(a) through the  
162 use of the money;

163           (c) how the LEA is meeting the requirements related to parent education described in  
164 Section [53G-9-703](#); and

165           (d) whether the LEA intends to provide school-based mental health support in  
166 collaboration with the local mental health authority of the county in which the LEA is located.

167           (4) The state board shall distribute money appropriated under this section to an LEA  
168 that qualifies under Subsection (3):

169           (a) based on the formula described in Subsection (2)(b); and

170           (b) if the state board approves the LEA's plan before April 1, 2020, in an amount of  
171 money that the LEA equally matches using local [or] money, unrestricted state money, or  
172 money distributed to the LEA under Section [53G-7-1303](#).

173           (5) An LEA may not use money distributed by the state board under this section to  
174 supplant federal, state, or local money previously allocated to:

175           (a) employ qualifying personnel; or

176           (b) enter into contracts for services provided by qualified personnel, including  
177 telehealth services.

178           (6) The state board shall make rules that establish:

179           (a) procedures for submitting a plan for and distributing money under this section;

180           (b) the formula the state board will use to distribute money to LEAs described in

Subsection (2)(b); and

(c) in accordance with Subsection (7), annual reporting requirements for an LEA that receives money under this section.

(7) An LEA that receives money under this section shall submit an annual report to the state board, including:

(a) progress toward achieving the goals submitted under Subsection (3)(a);

(b) if the LEA discontinues a qualifying personnel position, the LEA's reason for discontinuing the position; and

(c) how the LEA, in providing school-based mental health support, complies with the provisions of Section 53E-9-203.

(8) Beginning on or before July 1, 2019, the state board shall provide training that instructs school personnel on the impact of childhood trauma on student learning, including information advising educators against practicing medicine, giving a diagnosis, or providing treatment.

(9) The state board may use up to 2% of an appropriation under this section for costs related to the administration of the provisions of this section.

(10) Notwithstanding the provisions of this section, money appropriated under this section may be used, as determined by the state board, for:

(a) the SafeUT Crisis Line described in Section 53B-17-1202; or

(b) youth suicide prevention programs described in Section 53G-9-702.

Section 3. Section 53F-2-522 is enacted to read:

**53F-2-522. Public Education Mental Health Screening.**

(1) As used in this section:

(a) "Division" means the Division of Substance Abuse and Mental Health.

(b) "Participating LEA" means an LEA that has an approved screening program described in this section.

(c) "Participating student" means a student in a participating LEA who participates in a mental health screening program.

(d) "Qualifying parent" means a parent:

(i) of a participating student who, based on the results of a screening program, would benefit from resources that cannot be provided to the participating student in the school setting;

212 and

213 (ii) who qualifies for financial assistance to pay for the resources under rules made by  
214 the state board.

215 (e) "Screening program" means a student mental health screening program selected by  
216 a participating LEA and approved by the state board in consultation with the division.

217 (2) A participating LEA may implement a mental health screening for participating  
218 students using an evidence-based screening program.

219 (3) The state board shall:

220 (a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative  
221 Rulemaking Act, to establish:

222 (i) a process for a participating LEA to submit a selected screening program to the state  
223 board for approval;

224 (ii) in accordance with Title 53E, Chapter 9, Student Privacy and Data Protection, and  
225 the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g, who may access and use a  
226 participating student's screening data; and

227 (iii) a requirement and a process for appropriate LEA or school personnel to attend  
228 annual training related to administering the screening program;

229 (b) in consultation with the division, approve an evidence-based student mental health  
230 screening program selected by a participating LEA that:

231 (i) is age appropriate for each grade in which the screening program is administered;

232 (ii) screens for the mental health conditions determined by the state board and division;

233 and

234 (iii) is an effective tool for identifying whether a student has a mental health condition  
235 that requires intervention; and

236 (c) on or before November 30 of each year, submit a report on the screening programs  
237 to:

238 (i) the State Suicide Prevention Coalition created under Subsection [62A-15-1101\(2\)](#);

239 and

240 (ii) the Education Interim Committee in accordance with Section [53E-1-201](#).

241 (4) A participating LEA shall:

242 (a) in accordance with rules made by the state board under Subsection (3)(a), submit a



selected screening program to the state board for approval;

(b) administer a screening program to participating students in the participating LEA;

(c) obtain prior written consent from a student's parent, that complies with Section 53E-9-203, and the Family Educational Rights and Privacy Act, 20 U.S.C. Sec. 1232g, before the participating LEA administers the screening program to a participating student; and

(d) if results of a participating student's screening indicate a potential mental health condition, notify the parent of the participating student of:

(i) the participating student's results; and

(ii) resources available to the participating student, including any services that can be provided by the school mental health provider or by a partnering entity.

(5) (a) Within appropriations made by the Legislature for this purpose, the state board may distribute funds to a participating LEA to use to assist a qualifying parent to pay for resources described in Subsection (4)(d)(ii) that cannot be provided by a school mental health professional in the school setting.

(b) The state board shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for:

(i) determining whether a parent is eligible to receive the financial support described in Subsection (5)(a); and

(ii) applying for and distributing the financial support described in Subsection (5)(a).

(6) A school employee trained in accordance with rules made by the state board under Subsection (3)(a)(iii), who administers an approved mental health screening in accordance with this section in good faith, is not liable in a civil action for an act taken or not taken under this section.