

1 **[R277. Education, Administration.]**

2 **R277-215. Utah Professional Practices Advisory Commission (UPPAC),**
3 **Disciplinary Rebuttable Presumptions.**

4 **R277-215-1. Authority and Purpose.**

5 _____ (1) This rule is authorized by:

6 _____ (a) Utah Constitution Article X, Section 3, which vests general control and
7 supervision over public education in the Board;

8 _____ (b) Section 53E-6-506, which directs the Board to adopt rules regarding UPPAC
9 duties and procedures; and

10 _____ (c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the
11 Board's duties and responsibilities under the Utah Constitution and state law.

12 _____ (2) The purpose of this rule is to establish rebuttable presumptions for UPPAC
13 and Board review of UPPAC cases.

14

15 **R277-215-2. Rebuttable Presumptions.**

16 _____ (1) UPPAC and the Board shall consider the rebuttable presumptions in this
17 section when evaluating a case of educator misconduct.

18 _____ (2) Revocation is presumed appropriate if an educator:

19 _____ (a) is subject to mandatory revocation under Subsection 53E-6-604(5)(b);
20 _____ (b) is convicted of, admits to, or is found pursuant to an evidentiary hearing to
21 have engaged in viewing or distributing child pornography, whether real or simulated, on
22 or off school property;

23 _____ (c) is convicted of an offense that requires the educator to register as a sex
24 offender under Subsection 77-41-105(3);

25 _____ (d) intentionally provides alcohol or illegal drugs to a minor;

26 _____ (e) is convicted of a violation of:

27 _____ (i) Section 76-5-202;

28 _____ (ii) Section 76-5-203;

29 _____ (iii) Section 76-5-205; or

30 (iv) Section 76-5-208.

31 (3)(a) Suspension of ten years or more is presumed appropriate if an educator is
32 convicted of any felony not specified in Subsection (2).

33 (b) An educator who is suspended based on a felony conviction under Subsection
34 (3)(a) may apply for a reinstatement hearing early if the educator's felony:
35 (i) is expunged; or
36 (ii) is reduced pursuant to Section 76-3-402.

37 (4) Suspension of three years or more is presumed appropriate if an educator:
38 (a) engages in a boundary violation that is sexual in nature that is not sexually
39 explicit conduct;
40 (b) is convicted of using physical force with a minor if the conduct results in a
41 conviction of a class A misdemeanor;
42 (c) is convicted of an offense that results in the educator being placed on court
43 supervision for three or more years;
44 (d) is convicted of theft or intentional misappropriation of public funds; or
45 (e) intentionally misappropriates public funds or property in an amount of \$500 or
46 more.

47 (5) Suspension of one to three years is presumed appropriate, if an educator:
48 (a) willfully or knowingly creates, views, or gains access to sexually inappropriate
49 material on school property or using school equipment;
50 (b) is convicted of one or more class A misdemeanor violence offenses under Title
51 76, Chapter 5, Offenses Against the Person, or a comparable statute from a jurisdiction
52 outside of Utah;
53 (c) is convicted of two or more misdemeanor violence offenses under Title 76,
54 Chapter 5, Offenses Against the Person, or a comparable statute from a jurisdiction
55 outside of Utah, in the last three years;
56 (d) is convicted of using physical force with a minor if:
57 (i) the conviction is a class B misdemeanor or lower; and
58 (ii) the minor is a student in the educator's school;

Repeal
July 22, 2025

- 59 (e) engages in repeated incidents of or a single egregious incident of excessive
60 physical force or discipline to a student that does not meet the circumstances described
61 in Subsection 53G-8.302(2);
62 (f) bullies or threatens a student physically, verbally, or electronically;
63 (g) engages in a pattern of boundary violations with a student under a
64 circumstance not described in Subsection (4)(a);
65 (h) engages in multiple incidents or a pattern of theft or misappropriation of public
66 funds that does not result in a criminal conviction;
67 (i) attends a school or school related activity in an assigned employment related
68 capacity while possessing, using, or under the influence of alcohol or illegal drugs;
69 (j) is convicted of two drug related offenses or alcohol related offenses in the three
70 years previous to the most recent conviction;
71 (k) engages in a pattern of or a single egregious incident of:
72 (i) harassing;
73 (ii) bullying; or
74 (iii) threatening a co-worker or community member; or
75 (l) knowingly and deliberately falsifies or misrepresents information on an
76 education related document.
77 (6) A suspension of up to one year is presumed appropriate if an educator:
78 (a)(i) engages in inappropriate conduct that warrants lesser discipline; and
79 (ii) has previously received two or more disciplinary letters or actions from UPPAC,
80 including a letter of admonishment, education or warning, related to similar incidents of
81 inappropriate conduct;
82 (b) fails to report to appropriate authorities suspected child or sexual abuse; or
83 (c) knowingly teaches, counsels, or assists a minor student in a manner that
84 disregards a legal, written directive, such as a court order or an approved college and
85 career ready plan.
86 (7) A reprimand is presumed appropriate if an educator:

Repeal
July 22, 2025

87 (a) engages in conduct described in Subsection (8) that is more egregious or
88 repetitive than the conduct described in Subsection (8); or
89 (b)(i) engages in reportable inappropriate conduct that warrants lesser discipline;
90 and
91 (ii) within the previous ten years, has received two or more written disciplinary
92 actions from the same LEA for similar inappropriate conduct related to a violation of Board
93 rule or LEA policy.

94 (8) A letter of warning is presumed appropriate if an educator:

95 (a) engages in a miscellaneous minimal boundary violation with a student or
96 minor, whether physical, electronic, or verbal;

97 (b) engages in minimal inappropriate physical contact with a student;

98 (c) engages in unprofessional communications or conduct with a student, co-
99 worker, community member, or parent;

100 (d) engages in an inappropriate discussion with a student that violates state or
101 federal law;

102 (e) knowingly violates a requirement or procedure for special education needs;

103 (f) knowingly violates a standardized testing protocol;

104 (g) is convicted of one of the following with or without court probation:

105 (i) a single driving under the influence of alcohol or drugs offense under Section
106 41-6a-502;

107 (ii) impaired driving under Section 41-6a-502.5; or

108 (iii) a charge that contains identical or substantially similar elements to the state's
109 driving under the influence of alcohol or drugs law or under the law of another state or
110 territory;

111 (h) carelessly mismanages public funds or fails to accurately account for receipt
112 and expenditure of public funds entrusted to the educator's care;

113 (i) fails to make a report required by Rule R277-217;

114 (j) except for a class C misdemeanor under Title 41, Motor Vehicles, is convicted
115 of one or two misdemeanor offenses not otherwise listed;

116 (k) engages in an activity that constitutes a conflict of interest;
117 (l)(i) is convicted of using physical force with a minor if the conduct results in a
118 conviction of a class B misdemeanor or lower; and
119 (ii) the inappropriate conduct does not involve a student at the educator's school;
120 or
121 (m) engages in other minor violations of the Utah Educator Standards in Rule
122 R277-217.
123 (9) A letter of education is presumed appropriate if the evidence does not show a
124 violation of the educator standards in Rule R277-217, but the evidence may show conduct
125 that could lead to a violation of the standards in the future.

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R277-215-3. Aggravating and Mitigating Circumstances.

128 (1) In the course of evaluating a presumption described in this rule, UPPAC or the
129 Board may consider deviating from the presumptions if:
130 (a) the presumption does not involve a revocation mandated by statute; and
131 (b) relevant aggravating or mitigating factors exist.
132 (2) An aggravating factor may include evidence of the following:
133 (a) the educator has engaged in prior misconduct;
134 (b) the educator presents a serious threat to a student;
135 (c) the educator's misconduct directly involved a student;
136 (d) the educator's misconduct involved a particularly vulnerable student;
137 (e) the educator's misconduct resulted in physical or psychological harm to a
138 student;
139 (f) the educator violated multiple standards of professional conduct;
140 (g) the educator's attitude exhibits indifference, flippancy, disregard, or defiance
141 towards the allegations or the consequences;
142 (h) the educator's misconduct continued after investigation by the LEA or UPPAC;
143 (i) the educator holds a position of heightened authority as an administrator;

144 (j) the educator's misconduct had a significant impact on the LEA or the
145 community;
146 (k) the educator's misconduct was witnessed by a student;
147 (l) the educator was not honest or cooperative in the course of UPPAC's
148 investigation;
149 (m) the educator was convicted of crime as a result of the misconduct;
150 (n) any other factor that, in the view of UPPAC or the Board, warrants a more
151 serious consequence for the educator's misconduct; and
152 (o) the educator is on criminal probation or parole; or
153 (p) the Executive Secretary has issued an order of default on the educator's case
154 as described in Rules R277-211 or R277-212.

155 (3) A mitigating factor may include evidence of the following:
156 (a) the educator's misconduct was the result of strong provocation;
157 (b) the educator was young and new to the profession;
158 (c) the educator's attitude reflects recognition of the nature and consequences of
159 the misconduct and demonstrates a reasonable expectation that the educator will not
160 repeat the misconduct;
161 (d) the educator's attitude suggests amenability to supervision and training;
162 (e) the educator has little or no prior disciplinary history;
163 (f) since the misconduct, the educator has an extended period of misconduct-free
164 classroom time;
165 (g) the educator was a less active participant in a larger offense;
166 (h) the educator's misconduct was directed or approved, whether implicitly or
167 explicitly, by a supervisor or person in authority over the educator;
168 (i) the educator has voluntarily sought treatment, counseling or training specific to
169 the misconduct;
170 (j) the educator has made a timely, good faith effort to make restitution or rectify
171 the consequences of the educator's misconduct;

172 (k) there was insufficient training or other policies that might have prevented the
173 misconduct;
174 (l) there are substantial grounds to partially excuse or justify the educator's
175 behavior though failing to fully excuse the violation;
176 (m) the educator self-reported the misconduct;
177 (n) the educator received a plea in abeyance from the court for criminal charges
178 stemming from the alleged misconduct;
179 (o) any other factor that, in the view of UPPAC or the Board, warrants a less
180 serious consequence for the educator's misconduct.
181 (4)(a) UPPAC and the Board have sole discretion to determine the weight they
182 give to an aggravating or mitigating factor.
183 (b) The weight UPPAC or the Board give an aggravating or mitigating factor may
184 vary in each case and any one aggravating or mitigating factor may outweigh some or all
185 other aggravating or mitigating factors.

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187 **R277-215-4. Circumstances Warranting Consideration of Deviation from
188 Presumptions.**

189 (1) UPPAC and the Board shall consider reducing a presumed suspension under
190 this Rule R277-215 if the evidence shows that:
191 (a) the educator's misconduct resulted in a disproportionate period of missed
192 classroom time; or
193 (b) UPPAC's investigation into a matter with no pending criminal charges took
194 more than six months to present to UPPAC under Subsection R277-211-3(3)(e) due to
195 circumstances beyond the educator's control.
196 (2) UPPAC and the Board may consider reducing a presumed suspension period
197 to correspond to a probationary period in an educator's court plea in abeyance agreement
198 if the plea results from charges stemming from the educator's alleged misconduct.

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200 **KEY: educators, disciplinary presumptions**

Repeal
July 22, 2025

201 **Date of Enactment or Last Substantive Amendment: April 8, 2021**

202 **Notice of Continuation: February 10, 2021**

203 **Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-6-506; 53E-3-**

204 **401(4)]**

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