

**R277. Education, Administration.**

**~~R277-210. [Utah Professional Practices Advisory Commission (UPPAC),]~~**

**Definitions, Educator Standards, and Related Disciplinary Presumptions.**

**R277-210-1. Authority, [and] Purpose, and Oversight Category.**

(1) This rule is authorized by:

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

~~[(b) Section 53E-6-506, which directs the Board to adopt rules regarding UPPAC duties and procedures; and]~~

~~[(e)b] Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law[-];~~

(c) Subsection 53E-3-501(1)(a), which directs the Board to establish rules and minimum standards for the qualification and certification of educators and for required school administrative and supervisory services;

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

(e) Title 53E, Chapter 6, Educator Licensing and Professional Practices Act, which provides all laws related to educator licensing and professional practices.

~~[(2) The purpose of this rule is to establish definitions for terms in UPPAC activities.]~~

(2) The purpose of this rule is to:

(a) establish definitions for terms related to educator standards, UPPAC activities, and related Board actions;

(b) recognize that educators are licensed professionals;

(c) establish standards to ensure an educator is fit for duty by not exhibiting behavior that is immoral, unprofessional, incompetent, unethical, or noncompliant with laws, rules, and policies; and

(d) establish presumptive penalties for violating educator standards and other legal requirements.

(3) The definitions contained in this rule apply to Rules R277-210 through R277-217.

(4) Any calculation of time called for by Rules R277-210 through R277-217 shall be governed by Utah R. Civ. P. 6.

(5) This rule is categorized as follows as described in Rule R277-111:

(a) Sections R277-210-2, R277-210-4, and R277-210-5 are categorized as exempt.

(b) Section R277-210-3, is categorized as Category 3.

#### **R277-210-2. Definitions.**

(1)~~[(a)]~~ "Action" means a disciplinary action taken by the Board ~~[adversely]~~ affecting an educator's license.

~~[(b) "Action" does not include a letter of warning or letter of education.~~

~~—(c) "Action" includes:~~

~~—(i) a reprimand;~~

~~—(ii) a suspension; and~~

~~—(iii) a revocation.]~~

(2) "Administrative hearing" or "hearing" has the same meaning as that term is defined in Section 53E-6-601, and which is based on a preponderance of evidence.

(3) "Alcohol related offense" means a violation of:

(a) Title 41, Chapter 6a. Part 5, Driving Under the Influence and Reckless Driving, except for offenses not involving alcohol;

(b) Section 76-9-701, Intoxication;

(c) Section 32B-4-403, Unlawful sale, offer for sale, or furnishing to minor; and

(d) any offense under the laws of another state that is substantially equivalent to the offenses described in Subsections (3)(a) through (c).

(4) "Answer" means a written response to a complaint ~~[filed by the Executive Secretary alleging educator misconduct.]~~ that is signed by a respondent or a respondent's attorney, which includes:

- (a) a request for hearing, if desired;
- (b) the file number of the complaint;
- (c) the name of the parties; and
- (d) the relief the respondent seeks at a hearing.

(5) "Applicant" means a person seeking:

- (a) a new license; or
- (b) clearance of a criminal background review from the Executive Secretary at any stage of the licensing process.

~~[(6)(a) "Boundary violation" means crossing verbal, physical, emotional, and social lines that an educator must maintain to ensure structure, security, and predictability in an educational environment.~~

~~—— (b) "Boundary violation" may include the following, depending on the circumstances:~~

- ~~—— (i) isolated, one-on-one interactions with students out of the line of sight of others;~~
- ~~—— (ii) meeting individually with students in rooms with covered or blocked windows;~~
- ~~—— (iii) telling risqué jokes or using profanity in the presence of a student;~~
- ~~—— (iv) employing favoritism to a student;~~
- ~~—— (v) inappropriate gift giving to individual students;~~
- ~~—— (vi) uninvited or inappropriate touching;~~
- ~~—— (vii) photographing individual students for a non-educational purpose or use;~~
- ~~—— (viii) engaging in inappropriate or unprofessional contact outside of educational program activities;~~
- ~~—— (ix) exchanging personal email or phone numbers with a student for a non-educational purpose or use;~~

- 84 ~~—— (x) interacting privately with a student through social media, computer, or~~  
85 ~~handheld devices;~~
- 86 ~~—— (xi) discussing with a student inappropriate details about:~~
- 87 ~~—— (A) an educator's personal life or personal issues; or~~
- 88 ~~—— (B) a student's personal life or personal issues;~~
- 89 ~~—— (xii) discussing issues restricted under Subsection 53E-9-203(1) without~~  
90 ~~authorization.~~
- 91 ~~—— (c) "Boundary violation" does not include:~~
- 92 ~~—— (i) offering praise, encouragement, or acknowledgment;~~
- 93 ~~—— (ii) offering rewards available to all who achieve;~~
- 94 ~~—— (iii) asking permission to touch for necessary purposes;~~
- 95 ~~—— (iv) giving pats on the back or a shoulder;~~
- 96 ~~—— (v) giving side hugs;~~
- 97 ~~—— (vi) giving handshakes or high fives;~~
- 98 ~~—— (vii) offering warmth and kindness;~~
- 99 ~~—— (viii) utilizing public social media alerts to groups of students and parents; or~~
- 100 ~~—— (ix) contact permitted by an IEP or 504 plan.~~
- 101 ~~—— (d) UPPAC and the Board may find "boundary violations" to be repetitive when~~  
102 ~~the misconduct occurs more than once.~~
- 103 ~~—— (e)(i) UPPAC and the Board may find a pattern of "boundary violations" when~~  
104 ~~there are multiple incidents of related misconduct that occur consistently over a~~  
105 ~~prolonged timeframe; and~~
- 106 ~~—— (ii) UPPAC and the Board find the educator's misconduct is aggravated by the~~  
107 ~~circumstances, including:~~
- 108 ~~—— (A) the misconduct involves more than one student;~~
- 109 ~~—— (B) the misconduct occurs in more than one physical setting; or~~
- 110 ~~—— (C) the misconduct includes multiple types of boundary violations.~~

~~—— (iii) UPPAC and the Board may find a pattern of "boundary violations" most readily when the educator's misconduct continues after documented warnings from administrators in the educator's LEA.~~

~~—— (iv) Notwithstanding the existence of the factors identified in this Subsection (e), UPPAC and the Board may find boundary violations are "repetitive" rather than a "pattern" when there are mitigating circumstances consistent with Section R277-215-3.]~~

(6)(a) "Boundary violation" means:

(i) not maintaining verbal, physical, emotional, social, virtual, or legal space that ensures structure, health, security, and predictability in environments with a student; or

(ii) restricting a parent's right to, and authority over, a child, except as stipulated by law or judicial order.

(b) A "boundary violation" environment may occur:

(i) at or during in-person or virtual school-related activities;

(ii) outside of in-person or virtual school-related activities;

(iii) during transport; or

(iv) during in-person or virtual interactions that are:

(A) private;

(B) isolated;

(C) one-on-one, or

(D) in rooms with covered windows, blocked windows, or no windows.

(c) A "boundary violation" of a student's verbal, physical, emotional, social, virtual, or legal space occurs when an educator engages in immoral, unethical, unprofessional, or non-compliant contact or actions in a boundary violation environment, including:

(i) exchanging personal email, phone numbers, social media contact information, or software application contact information for a non-educational purpose or use, or without a legitimate educational purpose or use;

(ii) interacting through social media, computer, software applications, or handheld devices for a non-educational purpose or use, or without a legitimate educational purpose or use;

(iii) discussing items restricted under Subsection 53E-9-203(1) without authorization;

(iv) discussing inappropriate or intimate issues or details about:

(A) an educator's personal life or personal issues; or

(B) a student's personal or personal issues;

(v) requiring or engaging in prohibited submissions, prohibited training, and prohibited practices as set forth in Sections 53G-2-103 through 53G-2-105 and Section 53G-10-206;

(vi) using profanity or implied profanity;

(vii) telling immoral, unethical, or unprofessional jokes;

(viii) employing favoritism;

(ix) receiving or giving immoral, unethical, or unprofessional gifts or favors;

(x) receiving gifts or favors in excess of the statutory maximum;

(xi) touching that is uninvited, immoral, unethical, unprofessional, or in contravention of a student's stated desire;

(xii) photographing or recording a student for a non-academic purpose, including:

(A) marketing;

(B) publicity;

(C) commercial use;

(D) political use;

(E) fundraising; or

(F) personal use or gain;

(xiii) transporting a student or requiring a student to provide their own transportation in a non-emergency situation without authorization, appropriate insurance, and LEA-required training;

(xiv) bullying, cyberbullying, hazing, harassment, retaliation, or abusive conduct;  
(xv) interviewing or surveying a student without informed consent or  
authorization, unless stipulated by law or judicial order;

(xvi) advertising, recommending, or providing medical treatments, mental health  
services, or preventative measures except as allowed by law or informed consent; or

(xvii) soliciting, compelling, rewarding, or otherwise influencing agreement with  
an expressed attestation, signed agreement, statement, contractual obligation, or  
consent authorization without parent consent.

(d) A "boundary violation" of a student's verbal, physical, emotional, social,  
virtual, or legal space does not include:

(i) offering praise, encouragement, or acknowledgment;

(ii) offering rewards available to all who achieve, as allowed by law or policy;

(iii) asking permission to touch for necessary purposes;

(iv) giving pats on the back or a shoulder;

(v) giving side hugs;

(vi) giving handshakes or high fives;

(vii) offering warmth and kindness;

(viii) utilizing public social media alerts to groups of students and parents; or

(ix) contact permitted by a student's IEP or 504 plan.

(7) "Complaint" means a written allegation or charge against an educator filed by  
the Executive Secretary against the educator.

(8) "Complainant" means the Executive Secretary.

(9) "Comprehensive Administration of Credentials for Teachers in Utah Schools"  
or [{"CACTUS"}] means the electronic file developed by the Superintendent and  
maintained on all licensed Utah educators.

(10) "Conflict of interest" means a business, family, monetary, decision-making  
or advisory relationship concern that may cause a reasonable educator to be unduly  
influenced or that creates the appearance of undue influence.

(11) “Consensual sexual activity” means sexually explicit conduct involving an individual or consenting adults.

~~[(14)]12~~ “Consent to discipline” means an agreement between a respondent and the Board:

(a) under which disciplinary action is taken against the educator in lieu of a hearing;

(b) that may be negotiated between the parties and becomes binding:

(i) when approved by the Board; and

(ii) at any time after an investigative letter has been sent;

(c) is a public document under GRAMA unless it contains specific information that requires redaction or separate classification of the agreement.

~~[(12)]13~~(a) “Conviction” means the final disposition of a judicial action for a criminal offense, except in cases of a dismissal on the merits.

(b) “Conviction” includes:

(i) a finding of guilty by a judge or jury;

(ii) a guilty or no contest plea;

(iii) a plea in abeyance or diversion agreement; and

(iv) for purposes of Rule R277-214, a conviction that has been expunged.

(c) A “conviction” is prima facie evidence that an educator engaged in or committed the allegations or elements necessary to support the basis of any criminal charge or violation of federal or state law.

~~[(13)]14~~ “Criminal background review” means the process by which the Executive Secretary, UPPAC, and the Board review information pertinent to:

(a) a charge revealed by a criminal background check;

(b) a charge revealed by a hit as a result of ongoing monitoring; or

(c) an educator or applicant's self-disclosure.

(15) “Critical” means an intent level four and the preponderance of evidence indicates physical, mental, emotional, compliance, or financial impact that is harmful to



one or more individuals, students, members of the profession, or public education system, or taxpayers resulting from negligent, irresponsible, or deliberate disregard for an educator's position of trust or the educator standards.

(16) "Diversion" has the same meaning as defined in Section 77-2-2.

~~[(14)]17~~ "Drug" means controlled substance as defined in Section 58-37-2.

~~[(15)]18~~ "Drug related offense" means any criminal offense under:

(a) Title 58, Chapter 37, Utah Controlled Substances Act;

(b) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(c) Title 58, Chapter 37b, Imitation Controlled Substances Act;

(d) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act;

(e) Title 58, Chapter 37d, Clandestine Drug Lab Act; and

(f) Title 58, Chapter 37e, Drug Dealer's Liability Act.

~~[(16)]19~~(a) "Educator" means a person who:

(i) currently holds a Utah educator license or certificate issued by the Board; or

(ii) held a license or certificate at the time of an alleged offense.

(b) "Educator" does not include ~~[a paraprofessional,]~~ a volunteer~~[, or an unlicensed teacher in a classroom].~~

~~[(17)]20~~ "Educator misconduct" means:

~~[(a)] unprofessional conduct;~~

~~— [(b)] conduct that renders an educator unfit for duty; or~~

~~— [(c)] conduct that is a violation of standards of ethical conduct, performance, or professional competence as provided in Rule R277-217.]~~

(a) conduct that is immoral, unethical, or unprofessional;

(b) conduct that violates standards established in Section R277-210-3 and Rule R277-330;

(c) conduct that does not adhere to federal, state, or local laws, or policies; or

(d) conduct that renders an educator unfit or incompetent for duty.

(21) “Egregious” means an intent level five and the preponderance of evidence indicates physical, mental, emotional, compliance, or financial impact that is harmful to one or more individuals, students, members of the profession, or public education system, or taxpayers resulting from negligent, irresponsible, or deliberate disregard for an educator’s position of trust or the educator standards.

([48]22) “Executive Secretary” means

(a) an employee of the Board appointed by the Superintendent to serve as a non-voting member of UPPAC, consistent with Section 53E-6-502; or

(b) the Executive Secretary's designee.

([49]23) “Expedited hearing” means an informal hearing aimed at determining if allegations of educator misconduct can be summarily resolved or if an investigation by UPPAC is warranted.

([20]24) “Expedited hearing panel” means a panel of the following:

(a) the Executive Secretary or the Executive Secretary's designee, who acts as a non-voting hearing officer; and

(b)(i) three voting members of UPPAC; or

(ii) two voting members of UPPAC and a licensed educator with appropriate skills and training to assist on the panel.

([24]25) “Final action” means an action by the Board that concludes an investigation of an allegation of misconduct against a licensed educator, which may result in formal adjudicative proceedings, and for which the Board takes disciplinary action that results in a:

(a) letter of warning;

(b) reprimand;

(c) suspension; or

(d) revocation.

([22]26) “GRAMA” means Title 63G, Chapter 2, Government Records Access and Management Act.

(27) "Harassment" means conduct that is unwelcome, pervasive, demeaning, ridiculing, derisive, or coercive, and results in a hostile, offensive, or intimidating work or education environment.

(~~[23]~~28) "Hearing officer" means a licensed attorney who:

- (a) is experienced in matters relating to administrative procedures;
- (b) is appointed by the Executive Secretary to manage the proceedings of a hearing;
- (c) is not an acting member of UPPAC;
- (d) has authority, subject to the limitations of Board rule, to regulate the course of the hearing and dispose of procedural requests;
- (e) drafts a hearing report reflecting the findings and recommendations of the hearing panel; and
- (f) does not have a vote as to the recommended disposition of a case.

(~~[24]~~29) "Hearing panel" means a panel of three or more individuals designated to:

- (a) hear evidence presented at a hearing;
- (b) make a recommendation to UPPAC as to disposition consistent with the rebuttable presumptions in ~~[Rule R277-215]~~ Section R277-210-4; and
- (c) collaborate with the hearing officer in preparing a hearing report.

(~~[25]~~30) "Hearing report" means a report that:

- (a) is prepared by the hearing officer consistent with the recommendations of the hearing panel at the conclusion of a hearing; and
- (b) includes:
  - (i) a recommended disposition;
  - (ii) detailed findings of fact and conclusions of law, based upon the evidence presented in the hearing, relevant precedent; and
  - (iii) applicable law and rule.

(~~[26]~~31) "Illegal drug" means a substance included in:

- 305 (a) Schedules I, II, III, IV, or V established in Section 58-37-4;
- 306 (b) Schedules I, II, III, IV, or V of the federal Controlled Substances Act, Title II,
- 307 Pub. L. No. 91-513; or
- 308 (c) any controlled substance analog.
- 309 ([27]32) "Informant" means a person who submits information to UPPAC
- 310 concerning the alleged misconduct of an educator.
- 311 ([28]33)(a) "Investigative letter" means a letter sent by the Executive Secretary
- 312 to an educator notifying the educator:
- 313 (i) that an allegation of misconduct has been received against the educator;
- 314 (ii) that UPPAC or the Board has directed that an investigation of the educator's
- 315 alleged actions take place; and
- 316 (iii) if applicable, that the Executive Secretary will place a flag on the educator's
- 317 CACTUS file.
- 318 (b) An "investigative letter" is not evidence of unprofessional conduct.
- 319 ([29]34) "Investigative report" means a written report of an investigation
- 320 addressing allegations of educator misconduct, prepared by an investigator that:
- 321 ~~[(a) includes a brief summary of the allegations, the investigator's narrative, a~~
- 322 ~~summary of the evidence, and a recommendation for UPPAC;~~
- 323 ~~—(b) may include a rationale for the recommendation, and mitigating and~~
- 324 ~~aggravating circumstances;]~~
- 325 (a) includes a cover sheet with:
- 326 (i) case identifying information, the criteria in Utah Code, Utah Administrative
- 327 Code, or policy that UPPAC should weight the allegations against;
- 328 (ii) a brief summary of the allegations for each criteria;
- 329 (iii) applicable aggravating or mitigating circumstances; and
- 330 (iv) possible actions for UPPAC to recommend supported by this rule or Section
- 331 53G-6-604;
- 332 (b) includes a report with:

333 (i) the investigator's narrative specific to the criteria and allegations;  
334 (ii) a summary of the evidence; and  
335 (iii) possible action for UPPAC to recommend supported by this rule or Section  
336 53G-6-604;  
337 (c) is maintained in the UPPAC case file; and  
338 (d) is classified as protected under Subsection 63G-2-305(34).  
339 ([30]35) "Investigator" means an employee of the Board, or independent  
340 investigator selected in accordance with Subsection 53E-6-506(3), who:  
341 (a) is assigned to conduct an independent and objective investigation into  
342 allegations of educator misconduct under UPPAC ~~[supervision]~~ oversight;  
343 (b) offers recommendations of ~~[educator discipline]~~ actions to UPPAC,  
344 supported by ~~[Rule R277-215]~~ this rule and Section 53G-6-604, and the evidence, at the  
345 conclusion of the investigation;  
346 (c) provides an independent and objective investigative report for UPPAC and  
347 the Board; and  
348 (d) may also be a UPPAC attorney but does not have to be.  
349 ([34]36) "LEA" or "local education agency" for purposes of Rules R277-210  
350 through R277-217 includes the Utah Schools for the Deaf and the Blind.  
351 ~~[(32) "Letter of education" is a letter sent by the Board to an educator to instruct~~  
352 ~~and caution the educator in an area of professional conduct when the evidence does~~  
353 ~~not show a violation of the educator standards in Rule R277-217, but the evidence may~~  
354 ~~show conduct that could lead to a violation of the standards in the future.]~~  
355 ([33]37) "Letter of warning" is a letter sent by the Board to an educator[;  
356 ~~—(a) for misconduct that was inappropriate or unethical; and~~  
357 ~~—(b) that does not warrant longer term or more serious discipline.] with a license  
358 or certificate issued by the Board to instruct and caution an educator for minor violations  
359 of or standards regarding the educator's conduct.~~

360 ([34]38) "License" means a teaching or administrative credential, including an  
361 endorsement, which is issued by the Board to signify authorization for the person  
362 holding the license to provide professional services in Utah's public schools.

363 (39) "Mental health services" means:

364 (a) referring or treating students for mental health evaluation, screening,  
365 individual or group therapy, or interventions, such as circles, affinity groups, or other  
366 similar strategies;

367 (b) diagnosing, evaluating, counseling or treating students for gender dysphoria;  
368 or

369 (c) acting in a psychological counseling or diagnostic capacity.

370 ([35]40) "Misdemeanor offense," for purposes of Board rule, does not include:

371 (a) violations of municipal ordinances; or

372 (b) Class C Misdemeanors or Infractions in violation of Title 41, Utah Motor  
373 Vehicle Code.

374 (41) "Minor" means intent level one and the preponderance of evidence  
375 indicates, physical, mental, emotional, compliance or financial impact that is harmful to  
376 one or more individuals, students, members of the profession or public education  
377 system, or taxpayers that is inadvertent, incidental, and singular in nature.

378 (42) "Moderate" means intent level two and the preponderance of evidence  
379 indicates, physical, mental, emotional, compliance or financial impact that is harmful to  
380 one individual, student, member of the profession or public education system, or  
381 taxpayer that is thoughtless, inconsiderate, and limited.

382 ([36]43) "National Association of State Directors of Teacher Education and  
383 Certification Educator Information Clearinghouse" or "NASDTEC Clearinghouse" means  
384 a database maintained by NASDTEC for the members of NASDTEC regarding persons  
385 who:

386 (a) had their license suspended or revoked;

387 (b) have been placed on probation; or

(c) have received a reprimand.

(44) “New to the profession” means an educator is in:

(a) the educator’s first or second year of service in the profession; or

(b) the educator’s first year of service in the state.

~~([37]~~45) “Notification of alleged educator misconduct” means the official UPPAC form that may be accessed on UPPAC’s internet website, and may be submitted by any person, school, or LEA that alleges educator misconduct.

~~([38]~~46) “Party” means the complainant or a respondent.

(47) “Pattern” or “Repetitive” means misconduct that:

(a) occurs more than once or regularly over a prolonged timeframe;

(b) involves more than one student or individual;

(c) occurs in more than one setting, including physical and virtual settings;

(d) includes multiple types of misconduct; and

(e) continues after documented warnings or action from administrators in the educator’s LEA or the Board.

(48) “Personal identifiers” means:

(a) race;

(b) color;

(c) sex;

(d) sexual orientation;

(e) national origin;

(f) ethnic background;

(g) marital status;

(h) age;

(i) political or religious belief;

(j) physical or mental condition;

(k) disability; or

(l) family, social, or cultural background.

416 ([39]49) "Petitioner" means an individual seeking:  
417 (a) an educator license following a denial of a license; or  
418 (b) reinstatement following a license suspension.  
419 ([40]50) "Plea in abeyance" means the same as described in Subsection 77-2a-  
420 1(1).  
421 ([44]51) "Pornographic or indecent material" means the same as the term is  
422 defined in Subsection 76-10-1235(1)(a).  
423 (52) "Preponderance of evidence" means that based on the evidence, the fact is  
424 more likely to be true than not, or stated differently, proof by the greater weight of the  
425 evidence, however slight.  
426 (53) "Psychological harm" impairment of an individual's mental health, as  
427 established by competent evidence.  
428 (54) "Recent graduate" means an individual within six months of graduating or  
429 officially exiting from high school.  
430 ([42]55) "Reprimand" is ~~[an action by the Board]~~ a disciplinary action~~[, which]~~  
431 that:  
432 ~~[(a) is imposed for misconduct that was longer term or more seriously unethical~~  
433 ~~or inappropriate than conduct warranting a letter of warning, but not warranting~~  
434 ~~invalidation of the educator's license;]~~  
435 (a) is a sanction sent by the Board criticizing or rebuking an educator for  
436 moderate violations of law or standards;  
437 (b) is accompanied by a flag on the educator's CACTUS file, which the educator  
438 may request the Board remove from the educator's CACTUS file two years from the  
439 date the educator's CACTUS file was flagged for investigation, or after such other time  
440 period as prescribed by the Board; and  
441 (c) may include specific directives that the educator must complete before  
442 requesting the flag be removed from the educator's CACTUS file ~~[under Subsection~~  
443 ~~(43)(b)]~~.



(56) "Reasonable" means:

(a) just, proper, ordinary, or usual; or

(b) fit and appropriate to the end in view.

(57) "Resource abuse" means when an individual behaves improperly,

imprudently, or unreasonably, or misuses a position of authority, including intentional destruction, diversion, manipulation, or excessive use of government resources.

([43]58) "Respondent" means an educator against whom:

(a) a complaint is filed; or

(b) an investigation is undertaken.

([44]59)(a) "Revocation" means a ~~[permanent invalidation of a Utah educator license]~~ sanction by the Board permanently invalidating a license or certificate issued by the Board for egregious violations of law or standards.

(b) A license or certificate subject to revocation may not be reinstated.

([45]60) "School-related activity" means a class, event, activity, or program and transportation to or from a class, event, activity, or program:

(a) occurring at the school before, during, or after school hours; or

(b) that a student attends at a remote location as a representative of the school or with the school's authorization.

(61) "Serious" means intent level three and the preponderance of evidence indicates physical, mental, emotional, compliance, or financial impact that is harmful to one or more individuals, students, members of the profession or public education system, or taxpayers that is disrespectful or shows indifference for the educator's position of trust or standards.

([46]62) "Serve" or "service," as used to refer to the provision of notice to a person, means:

(a) delivery of a written document to a respondent; and

(b) delivery that may be made in person, by mail, by electronic correspondence, or by any other means reasonably calculated, under all of the circumstances, to notify a

respondent to the extent reasonably practical or practicable of the information contained in the document.

([47]63) "Sexually explicit conduct" means the same as that term is defined in Section 76-5b-103.

([48]64)(a) "Suspension" means a sanction by the Board invalidating the license or certificate issued by the Board for moderate, serious, or critical violations of law or standards. ~~[an invalidation of a Utah educator license, which may be reinstated after:]~~

(b) A license subject to "suspension" may be reinstated after:

([a]i) the educator completes specific conditions identified in the consent to discipline or hearing report;

([b]ii) the passage of the time specified in the consent to discipline or hearing report; and

([e]iii) Board action to reinstate the license following a reinstatement hearing as described in Rule R277-213.

(65) "Timely" means as soon as possible, but no later than two working days.

([49]66)(a) "Under the influence of alcohol or an illegal drug" means that a person:

(i) is under the influence of alcohol, an illegal drug, or the combined influence of alcohol and drugs to a degree that renders the person incapable of effectively working in a public school;

(ii) has sufficient alcohol in the person's body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of .05 grams or greater at the time of the test; or

(iii) has a blood or breath alcohol concentration of .05 grams or greater during work hours at a public school.

(b) An educator is presumed to be "under the influence of alcohol or an illegal drug" if the educator refuses a lawful request, made with reasonable suspicion by the educator's LEA, to submit to a drug or alcohol test.

500           ~~([50]67)~~ "Utah Professional Practices Advisory Commission" or "UPPAC" means  
501 an advisory commission established to assist and advise the Board in matters relating  
502 to the professional practices of educators, established in Section 53E-6-501.

503           ~~([54]68)~~ "UPPAC attorney file" means a file:

504           (a) that is kept by the attorney assigned by UPPAC to investigate or prosecute a  
505 case that contains:

506           (i) the attorney's notes; and

507           (ii) other documents prepared by the attorney in anticipation of an eventual  
508 hearing; and

509           (b) that is classified as protected pursuant to Subsection 63G-2-305(18).

510           ~~([52]69)~~ "UPPAC background check file" means a file maintained securely by  
511 UPPAC on a criminal background review that:

512           (a) contains information obtained from:

513           (i) BCI; and

514           (ii) letters, police reports, court documents, and other materials provided by an  
515 applicant; and

516           (b) is classified as private under Subsection 63G-2-302(2).

517           ~~([53]70)~~ "UPPAC case file" means a file:

518           (a) maintained securely by UPPAC on an investigation into educator  
519 misconduct;

520           (b) opened following UPPAC's direction to investigate alleged misconduct;

521           (c) that contains the original notification of alleged misconduct with supporting  
522 documentation, correspondence with the Executive Secretary, the investigative report,  
523 the stipulated agreement, the hearing report, and the final disposition of the case;

524           (d) that is classified as protected under Subsection 63G-2-305(10) until the  
525 investigation and any subsequent proceedings before UPPAC and the Board are  
526 completed; and

(e) that after a case proceeding is closed, is considered public under GRAMA, unless specific documents contained therein contain non-public information or have been otherwise classified as non-public under GRAMA, in which case the file may be redacted or partially or fully restricted.

(~~[54]~~71) "UPPAC evidence file" means a file:

(a) maintained by UPPAC investigator containing materials, written or otherwise, obtained by the UPPAC investigator during the course of the investigation;

(b) that contains correspondence between the investigator and the educator or the educator's counsel;

(c) that is classified as protected under Subsection 63G-2-305(10) until the investigation and any subsequent proceedings before UPPAC and the Board are completed; and

(d) that is considered public under GRAMA after case proceedings are closed, unless specific documents contained therein contain non-public information or have been otherwise classified as non-public under GRAMA.

(72) "Vulnerable" means that a student has a disability or has been subjected to abuse, neglect, bullying, or other emotional harm or diagnosed trauma.

(73) "Waste" means to expend government funds carelessly, extravagantly, without adequate purpose, or unnecessarily, including expenditures made unnecessarily due to inefficient or ineffective practices, systems, or controls.

(~~[55]~~74) "Weapon" means an item that in the manner of the item's use or intended use is capable of causing death or serious bodily injury.

### **R277-210-3. Educator Standards of Ethical, Moral, and Professional Conduct, Performance, and Competence.**

(1) In fulfillment of an educator's contractual and professional responsibilities, an educator:

554 (a) shall perform job duties consistently and in compliance with all federal, state,  
555 and local laws and policies;

556 (b) shall possess and demonstrate the ability and skill necessary to satisfactorily  
557 complete professional duties;

558 (c) shall exhibit good moral character, maintain high standards of performance,  
559 and promote equality of opportunity;

560 (d) shall create academic, physical, environmental conditions with emphasis on  
561 academic performance;

562 (e) shall demonstrate attention to the impact of unique learner characteristics on  
563 development and growth;

564 (f) shall demonstrate clarity in organizing and sequencing instruction and  
565 effective planning for learning and student engagement;

566 (g) shall preview all classroom content;

567 (h) shall meet the learning needs of each student;

568 (i) shall keep records for which the educator is responsible in accordance with  
569 law and policies in a timely manner;

570 (j) shall communicate accurately and in a timely manner;

571 (k) may not interfere with the legitimate exercise of constitutional, legal, or civil  
572 rights and responsibilities of students, colleagues, school patrons, or school board  
573 members;

574 (l) may not use coercive means, promises, or provide special treatment to  
575 students, colleagues, school patrons, or school board members to influence  
576 professional decisions;

577 (m) may not make any fraudulent statement or falsify any documentation for  
578 which the educator is responsible, including not failing to disclose material facts or  
579 relevant information or evidence;

580 (n) may not exploit professional relationships with students, colleagues, parents,  
581 school patrons, or school board members for personal gain or private advantage;

(o) may not physically, emotionally, or sexually harass students, parents, school patrons, school employees, or school board members;

(p) may not engage in conduct involving dishonesty, noncompliance, fraud, deceit, misappropriation, or misrepresentation in the performance of professional duties;

(q) may not retaliate against anyone for reporting a violation of law;

(r) may not use or attempt to use the educator's position, through instruction, materials, or symbols, to endorse, promote, or disparage a partisan, religious, denominational, sectarian, agnostic, or atheistic belief or viewpoint, in a manner inconsistent with state law or local policy;

(s) may not knowingly possess, while at school, or at any school-related activity, any pornographic or indecent material in any form;

(t) may not use or attempt to use school equipment or systems to:

(i) create, distribute, or intentionally view pornographic or indecent material in any form; or

(ii) access information that may be detrimental to students or inconsistent with the an educator's role model responsibility;

(u) may not engage in consensual sexual activity on school grounds, during contract hours, or while actively responsible for supervising students;

(v) may not knowingly engage in sexually explicit conduct with a recent graduate from the educator's school;

(w) may not attend school or a school-related activity in an assigned employment-related capacity;

(i) while possessing, using, or under the influence of alcohol or an illegal drug; or

(ii) after exceeding the prescribed dosage of a prescription medication that may impair the educator; and

(x) may not leave students unattended during class or a school-related activity for which the educator has oversight, coaching, or administrative responsibility, unless another educator or authorized and background checked adult is present.

610 (2) An administrator:  
611 (a) shall possess the knowledge and skills to lead the work of educators, staff,  
612 and volunteers, including finances, data, and systems;  
613 (b) shall act with, and ensure, a system of integrity, fairness, and ethical  
614 behavior, and document and report lapses as required by federal, state, and local law  
615 and policy;  
616 (c) shall supervise others in accordance with federal, state, and local law and  
617 policy;  
618 (d) shall make reasonable and appropriate assignment of tasks and duties given  
619 individual licensing and endorsements, abilities and specialties, and available personnel  
620 resources;  
621 (e) shall collaborate with faculty, staff, parents, and community members;  
622 (f) shall facilitate the development, articulation, implementation, and stewardship  
623 of a culture of learning;  
624 (g) shall advocate, nurture, and sustain a school focused on teaching and  
625 learning conducive to student, faculty, and staff growth while recognizing parents have  
626 the primary responsibility for the education of their children;  
627 (h) shall manage the organization, organizational operations, finances,  
628 resources, and data for a safe, healthy, honest, efficient, and effective environment;  
629 (i) shall understand and contribute to interrelated systems of education; and  
630 (j) shall document and address allegations and concerns in a timely manner  
631 consistent with federal, state, and local laws and policies.  
632 (3) In fulfillment of an educator's obligation for professional employment  
633 practices, an educator:  
634 (a) shall regard the employment agreement as a pledge to be executed both in  
635 spirit and in fact;  
636 (b) shall practice that sound personnel relationships are built upon personal  
637 integrity, dignity, and mutual respect;

(c) shall apply for, accept, offer, or assign a position of responsibility on the basis of professional preparation and legal qualifications;

(d) shall give prompt notice to an employer of any change in availability of service;

(e) shall use time on duty and leave time for the purpose for which it is intended;

(f) shall provide truthful, accurate, and complete information in:

(i) licensing, transfer, and employment applications or other documentation;

(ii) evaluations of the educator, other educators or support staff, substitutes, or students;

(iii) proceedings related to educator licensure, employment, or related benefits; and

(iv) student IEP plans and related special education documentation;

(g) shall conduct professional business through designated procedures, when available that the educator's employing LEA has approved;

(h) may not assign tasks to unqualified personnel, for which the educator is responsible;

(i) may not accept an assignment for which the educator is unlicensed;

(j) may not permit commercial or personal exploitation of the educator's professional position; and

(k) may not withhold information regarding a position from an applicant or employer or misrepresent an assignment or conditions of employment.

(4) In fulfillment of an educator's obligation to the profession, an educator:

(a) shall exert every effort to:

(i) raise professional standards;

(ii) improve service;

(iii) promote a culture in which encourages the exercise of professional judgment; and



665 (iv) achieve conditions that attract persons worthy of the trust for careers in  
666 education;

667 (b) shall practice the profession only with proper licensing and endorsements and  
668 shall oppose the practice of the profession by unqualified individuals;

669 (c) shall attend to the duties of the educator’s professional position with  
670 reasonable diligence;

671 (d) shall be aware of current developments in the educator’s field;

672 (e) shall ensure that the educator’s dress, grooming, and personal presentation is  
673 professional and does not distract from the academic purpose of the school and  
674 classroom environment;

675 (f) may not cheat, engage in academic dishonesty, or misrepresent the  
676 educator’s educational pursuits or professional qualifications;

677 (g) shall notify the Superintendent at the time of licensure of:

678 (i) current investigations involving professional misconduct in another jurisdiction;  
679 (ii) prior licensing disciplinary action in another jurisdiction; and  
680 (iii) past criminal convictions;

681 (h) may not misrepresent the professional qualifications of colleagues;

682 (i) shall be forthcoming with truthful, accurate and complete information to an  
683 appropriate authority regarding known misconduct by another school employee, school  
684 or LEA contractor or vendor, or volunteer that could adversely affect performance of the  
685 individual’s responsibilities; and

686 (j) May not use create, distribute, store, or intentionally view pornographic or  
687 indecent material involving children.

688 (5) To promote effective human and interpersonal relations, an educator:

689 (a) shall communicate professionally, ethically, accurately, and in a timely  
690 manner;

691 (b) shall allow others who hold and express differing opinions or ideas to freely  
692 express such ideas;

- 693 (c) shall provide leadership and direction for others by appropriate example;  
694 (d) shall offer constructive criticism when necessary;  
695 (e) shall comply with reasonable requests and orders given by and without  
696 proper authority;  
697 (f) shall demonstrate self-confidence and self-sufficiency in exercising authority;  
698 (g) may not comply with unlawful requests or orders even if given by and with  
699 proper authority;  
700 (h) may not knowingly misrepresent the statements of others;  
701 (i) may not assign unreasonable tasks;  
702 (j) may not engage in immoral, unethical, or unprofessional contact or  
703 communication of any method; and  
704 (k) may not engage in bullying, cyberbullying, hazing, retaliation, or abusive  
705 conduct.  
706 (6) In fulfillment of an educator’s obligation to the public, an educator:  
707 (a) shall instill an understanding of, and confidence in, the rule of law and a  
708 respect for individual freedom in accordance with Section 53G-10-206;  
709 (b) shall comply with all federal, state, and local laws, including:  
710 (i) Title 67, Chapter 16, Utah Public Officers’ and Employees’ Ethics Act;  
711 (ii) Title 53E, Chapter 9, Student Data Privacy and Data Protection;  
712 (iii) Sections 53G-10-401 through 53G-10-403, Rule 474, and other Utah laws  
713 regarding sex education;  
714 (iv) Sections 53G-2-103 through 53G-2-105, Prohibited Submissions, Training,  
715 Discriminatory Practices;  
716 (v) Rule R277-107, Educational Services Outside of an Educator’s Regular  
717 Employment;  
718 (vi) Section R277-120-5, Classroom Materials Developed by Utah Educators;  
719 (vii) Rule R277-401, Child Abuse-Neglect Reporting by Education Personnel;  
720 (c) shall promote respect by the public for the integrity of the profession;

(d) shall support the principle of due process and protect the constitutional, legal, and natural rights of all individuals;

(e) shall conduct financial activities with integrity by:

(ii) honestly accounting for all funds and assets committed to the educator's charge consistent with federal, state, and local law and policy; and

(i) ensuring funds are not used for, or subject to, fraud, waste, or resource abuse;

(f) may not misrepresent an institution with which the educator is affiliated;

(g) shall take added precautions to distinguish between the educator's personal and institutional views;

(h) may not use institutional privileges for private gain or to promote political candidates, political issues, or partisan political activities;

(i) may neither offer, nor accept, gifts or favors that will impair the educator's professional judgment, or violate federal, state, or local law or policy; and

(j) may not commit any act of moral turpitude.

(7) In fulfillment of an educator's obligation to students, an educator:

(a) shall practice the profession with genuine interest, concern, respect, and consideration for the each student;

(b) shall work to stimulate the spirit of inquiry, the acquisition of knowledge and understanding, and the thoughtful formulation of worthy goals;

(c) shall permit a student to pursue reasonable independent scholastic effort, and shall permit a student access to varying points of view;

(d) shall take prompt and appropriate action to protect a student from conditions that interfere with the learning process or are detrimental to the student's physical health, mental health, and safety;

(e) shall take prompt and appropriate action to stop, mitigate, and prevent harassment or discriminatory conduct towards a student, school employee, or other individual at a school-related activity that the educator knows or should know may result in a hostile, intimidating, abusive, offensive, or oppressive environment;

749 (f) shall maintain appropriate verbal, physical, emotional, and social boundaries;

750 (g) shall conduct professional educational activities in accordance with sound  
751 educational practices that are in the best interests of students;

752 (h) shall resolve discipline and behavior problems in accordance with federal,  
753 state, and local law and policy;

754 (i) may not engage in boundary violations;

755 (j) may not solicit, encourage, or consummate an inappropriate relationship with  
756 a student;

757 (k) may not use corporal punishment, excessive force, or inappropriate physical  
758 restraint, except as provided in Section 53G-8-302 and Rule R277-608;

759 (l) may not deliberately suppress or distort subject matter for which the educator  
760 is responsible, subject to related law and policy;

761 (m) may not provide alcohol or unauthorized drugs to a student or allow a student  
762 under the educator's supervision or control to consume or obtain alcohol or  
763 unauthorized drugs;

764 (n) may not permit unauthorized collection sharing, or use of student data;

765 (o) may not cheat or engage in academic dishonesty on behalf of a student;

766 (p) may not on the basis of a student's personal identifiers:

767 (i) discriminate against a student;

768 (ii) harass a student;

769 (iii) exclude a student from participating in any program;

770 (iv) deny or grant a benefit to any student; or

771 (v) encourage a student to develop a prejudice;

772 (q) may not invite, suggest, or encourage a student to reconsider or change the  
773 student's sexual orientation or gender identity;

774 (r) may not allow a student to violate state law or local policy concerning  
775 possession of, or access to, a weapon, including a firearm, while on school property or  
776 at a school-related activity; and

(s) may not expose a student to sensitive materials as defined in Section 53G-10-103, and as determined by the educator’s LEA.

**R277-210-4. Rebuttable Disciplinary Presumptions.**

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

(2) When considering the rebuttable presumptions in this section, UPPAC and the Board shall recognize that:

(a) an educator holds a position of special trust specific to students and their families;

(b) an educator hold a position of fiduciary trust specific to taxpayers; and

(c) being licensed is a privilege, not a right.

(3) The presumptions in this section apply regardless of whether an educator is convicted, admits to, or is found pursuant to an administrative hearing to have committed or engaged in the conduct described herein or under applicable law or rule.

(4) A suspension or revocation are presumed appropriate for behavior that is found based on a preponderance of the evidence to violate Section R277-210-3 and is egregious or repetitive;

(5) With the exception of specific presumptions identified in Subsections (6) through (14) below, the penalties specified in Table One, are presumed appropriate for behavior that is found based on a preponderance of the evidence to violate Section R277-210-3.

**Table One**

<u>Level of Violation</u>	<u>Level of Intent</u>	<u>Presumption</u>
<u>Egregious</u>	<u>Five</u>	<u>Revocation</u>
<u>Critical</u>	<u>Four</u>	<u>Suspension of ten or more years</u>

805		<u>Suspension of five to ten years</u>
806	<u>Serious</u>	<u>Three</u> <u>Suspension of two to five years</u>
807		<u>Suspension of one to two years</u>
808	<u>Moderate</u>	<u>Two</u> <u>Suspension of up to six months</u>
809		<u>Reprimand</u>
810	<u>Minor</u>	<u>One</u> <u>Letter of Warning</u>

811

812 (6) A letter of warning is presumed appropriate for minor violations.

813 (7)(a) A reprimand is presumed appropriate for moderate violates of the educator  
814 standards, or if an educator is convicted of one of the following, with or without court  
815 probation:

816 (i) a single charge of driving under the influence of alcohol or drugs under  
817 Section 41-6a-502;

818 (ii) a single charge of impaired driving under Section 41-6a-502.5;

819 (iii) a single charge that contains identical or substantially similar elements to the  
820 state's driving under the influence of alcohol or drugs law, or under the law of another  
821 state or territory; and

822 (b) A reprimand is presumed appropriate if an educator is convicted of one or two  
823 misdemeanor offenses not otherwise listed, except for a class C misdemeanor under  
824 Title 41, Motor Vehicles.

825 (8) A suspension of up to six months is presumed appropriate for moderate  
826 violations of the educator standards or if an educator:

827 (a) fails to make a report to UPPAC required by Rule R277-217;

828 (b)(i) uses physical force with a minor resulting in a conviction of a class B  
829 misdemeanor or lower; or

830 (ii) uses physical force with a minor to commit an act that would constitute a class  
831 B misdemeanor or lower offense;

832 (c) violates a requirement or procedure in an individualized education plan or 504  
833 plan;

834 (d) violates or ignores a requirement or procedure for investigating or handling  
835 bullying, cyberbullying, hazing, retaliation, or abusive conduct;

836 (e) violates a standardized testing protocol;

837 (f) cheats or engages in academic dishonesty in the educator’s own educational  
838 pursuits or on behalf of a student;

839 (g) on the basis of personal identifiers, discriminates against, harasses, excludes  
840 from participation in any program, denies or grants a benefit to, a student, or  
841 encourages a student to develop a prejudice; or

842 (h) engages in waste or resource abuse valued at up to \$500.

843 (9) A suspension of one to two years is presumed appropriate for serious  
844 violations of the educator standards, or if an educator:

845 (a)(i) engages in misconduct that carries a presumption of a less severe penalty;  
846 and

847 (ii) has previously received two or more disciplinary actions from the Board  
848 related to similar incidents of misconduct;

849 (b) teaches, counsels, or assists a minor student in a manner that disregards a  
850 legal, written directive, such as a court order or an approved college and career  
851 readiness plan;

852 (c) invites suggests, or encourages a student to reconsider or change the  
853 student’s sexual orientation or gender identity;

854 (d) allows a student to violate state law or local policy concerning possession of,  
855 or access to, a weapon, including a firearm, while on school property or at a school-  
856 related activity; or

857 (e) engages in waste or resource abuse valued at greater than \$500.

858 (10) A suspension of two to five years is presumed appropriate for serious  
859 violations of the educator standards, or if an educator:

(a) creates, stores, gains access to, or intentionally views, sexually inappropriate material on school property or using school equipment;

(b) commits one or more class A misdemeanor violence offenses under Title 76, Chapter 5, Offenses Against the Person, or a comparable statute from a jurisdiction outside of Utah;

(c) commits two or more class B misdemeanor violence offenses under Title 76, Chapter 5, Offenses Against the Person, or a comparable statute from a jurisdiction outside of Utah, in the last five years;

(d)(i) uses physical force with minor;

(ii) commits a class B misdemeanor or lower offense or commits an act that would constitute a class B misdemeanor or lower; and

(iii) the minor is a student;

(e) attends a school or school-related activity in an assigned employment-related capacity while:

(i) possessing, using, or under the influence of alcohol or illegal drugs; or

(ii) after exceeding the prescribed dosage of prescription medication that impairs the educator;

(f) commits two misdemeanor drug-related offenses or alcohol-related offenses in the last three years;

(g) engages in a boundary violation;

(h) commits fraud, theft, or misappropriation of public funds valued at up to \$500;

(i) as an educator with a non-administrative assignment, fails to immediately report suspected child abuse or neglect as required by Rule R277-401;

(j) engages in consensual sexual activity on school grounds, during contract hours, or while actively responsible for supervising students; or

(k) knowingly engages in sexually explicit conduct with a recent graduate from the educator's school.



(11) Suspension of five to ten years is presumed appropriate for critical violations of the educator standards, or if an educator:

(a)(i) uses physical force with a minor; and

(ii) commits a class A misdemeanor offense or commits an act that would constitute a class A misdemeanor;

(b) commits an offense that results in the educator being placed on court supervision or probation for more than twelve months;

(c) commits fraud, theft, or misappropriation of public funds or assets valued at greater than \$500, but less than \$1500;

(d) engages in an incident of excessive physical force or discipline of a student that does not meet the circumstances described in Subsection 53G-8-302(2); or

(e) as an educator with administrative assignment or license area of concentration, fails to immediately report suspected child abuse or neglect as required by Rule R277-401.

(12) A suspension of ten years or more is presumed appropriate for critical violations of the educator standards, or if an educator:

(a) commits any felony not subject to revocation under Subsection (14);

(b) engages in a boundary violation that is sexual in nature, but that does not involve sexually explicit conduct; and

(c) commits fraud, theft, or misappropriation of public funds valued at greater than \$1500.

(13) An educator who is suspended based on committing a felony under Subsection (12)(a) may apply for a reinstatement hearing early if the educator's felony:

(a) is expunged;

(b) is reduced pursuant to Section 76-3-402; or

(c) no criminal charges have been filed and the educator would be eligible to have the charges expunged pursuant to Title 77, Chapter 40a, Expungement of Criminal Records, if charges had been filed.

(14) Revocation is presumed appropriate for egregious violations of the educator standards, or if an educator:

(a) is subject to mandatory revocation under Subsection 53E-6-604(5)(b);

(b) commits or engages in accessing, viewing, creating, distributing, or storing child pornography or indecent material, whether real or simulated, on or off school property;

(c) commits an offense that requires the educator to register as a sex offender or that would require an educator to register as a sex offender if charges were filed under Subsection 77-41-105(3);

(d) commits a violation of:

(i) Section 76-5-202;

(ii) Section 76-5-203;

(iii) Section 76-5-205; or

(iv) Section 76-5-208;

(e) intentionally, recklessly, or with criminal negligence, provides alcohol or illegal drugs to a minor; or

(f) intentionally, recklessly, or with criminal negligence commits fraud, theft or misappropriation of public funds valued at greater than \$5,000.

#### **R277-210-5. Aggravating and Mitigating Circumstances.**

(1) While evaluating a presumption described in this rule, UPPAC and the Board may not consider deviating from the presumption, if the presumption involves a revocation mandated by statute.

(2) While evaluating a presumption described in this rule, UPPAC and the Board may not deviate downward from a presumption by more than one level as a result aggravating or mitigating circumstances.

(3)(a) The Board has sole discretion to determine the weight afforded to any aggravating or mitigating circumstance.

(b) The weight the Board gives an aggravating or mitigating circumstance may vary in each case and any one aggravating or mitigating circumstance may outweigh some or all other aggravating or mitigating circumstances.

(4) An aggravating circumstance may include evidence of the following:

(a) the educator serves in a role where the educator has direct reports or issues feedback or directives to personnel, whether formal or informal;

(b) the educator has engaged in prior misconduct;

(c) the educator presents a serious threat to a student or students;

(d) the educator’s misconduct involved a vulnerable student;

(e) the educator’s misconduct resulted in physical or psychological harm to a student;

(f) the educator’s misconduct continued after investigation by the LEA or UPPAC;

(g) the educator’s misconduct had a significant impact on the LEA or the community;

(h) the educator’s misconduct was witnessed or could have been witnessed by a student;

(i) the educator’s misconduct was repetitive or part of a pattern;

(j) the educator’s attitude exhibits indifference, flippancy, disregard, or defiance towards the allegations or the consequences of the misconduct;

(k) the educator was not honest or cooperative in the course of UPPAC’s investigation;

(l) the educator was convicted of a crime as a result of the misconduct;

(m) the educator is on criminal probation or parole;

(n) the Executive Secretary has issued an order of default on the educator’s case as described in Rules R277-211 and R277-212; or

(o) any other factor that, in the view of UPPAC or the Board, warrants a more serious consequence for the educator’s misconduct.

(5) A mitigating circumstances may include evidence of the following:

- 971 (a) the educator was new to the profession;
- 972 (b) the educator has little or no prior disciplinary history;
- 973 (c) the educator was a less active participant in an offense;
- 974 (d) the educator’s misconduct was directed or approved, whether implicitly or  
975 explicitly, by a supervisor or person in authority over the educator;
- 976 (e) the educator has voluntarily sought treatment, counseling, or training specific  
977 to the misconduct;
- 978 (f) the educator has made a good faith effort to make restitution or rectify the  
979 consequences of the educator’s misconduct over a reasonable timeline;
- 980 (g) there are substantial grounds to partially excuse or justify the educator’s  
981 behavior though failing to fully excuse the violation;
- 982 (h) any other factor that, in the view of UPPAC and the Board, contributes to the  
983 consideration of a less serious consequence for the educator’s misconduct.

984

985 **KEY: professional practices, definitions, educators**

986 **Date of Last Change: January 10, 2024**

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

988 **Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-6-506; 53E-3-**  
989 **401**