

**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 in a position of special trust;

(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) "Administrator" has the same meaning as defined in Subsection 53G-11-501(1).

~~[(3)]~~(4) "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]5) "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]6) "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;~~

- 80 ~~—— (v) inappropriate gift giving to individual students;~~  
81 ~~—— (vi) uninvited or inappropriate touching;~~  
82 ~~—— (vii) photographing individual students for a non-educational purpose or use;~~  
83 ~~—— (viii) engaging in inappropriate or unprofessional contact outside of educational~~  
84 ~~program activities;~~  
85 ~~—— (ix) exchanging personal email or phone numbers with a student for a non-~~  
86 ~~educational purpose or use;~~  
87 ~~—— (x) interacting privately with a student through social media, computer, or~~  
88 ~~handheld devices;~~  
89 ~~—— (xi) discussing with a student inappropriate details about:~~  
90 ~~—— (A) an educator's personal life or personal issues; or~~  
91 ~~—— (B) a student's personal life or personal issues;~~  
92 ~~—— (xii) discussing issues restricted under Subsection 53E-9-203(1) without~~  
93 ~~authorization.~~  
94 ~~—— (c) "Boundary violation" does not include:~~  
95 ~~—— (i) offering praise, encouragement, or acknowledgment;~~  
96 ~~—— (ii) offering rewards available to all who achieve;~~  
97 ~~—— (iii) asking permission to touch for necessary purposes;~~  
98 ~~—— (iv) giving pats on the back or a shoulder;~~  
99 ~~—— (v) giving side hugs;~~  
100 ~~—— (vi) giving handshakes or high fives;~~  
101 ~~—— (vii) offering warmth and kindness;~~  
102 ~~—— (viii) utilizing public social media alerts to groups of students and parents; or~~  
103 ~~—— (ix) contact permitted by an IEP or 504 plan.~~  
104 ~~—— (d) UPPAC and the Board may find "boundary violations" to be repetitive when~~  
105 ~~the misconduct occurs more than once.~~

~~\_\_\_\_\_ (e)(i) UPPAC and the Board may find a pattern of "boundary violations" when there are multiple incidents of related misconduct that occur consistently over a prolonged timeframe; and~~

~~\_\_\_\_\_ (ii) UPPAC and the Board find the educator's misconduct is aggravated by the circumstances, including:~~

~~\_\_\_\_\_ (A) the misconduct involves more than one student;~~

~~\_\_\_\_\_ (B) the misconduct occurs in more than one physical setting; or~~

~~\_\_\_\_\_ (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.]~~

(7)(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 ~~life~~ 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]~~ foul, abusive, or profane language;

(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  
as required by Section 53E-9-203, 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.

(8) "Competence" means the capability to carry out assigned responsibilities, including relevant knowledge, skills, and abilities.

~~(7)~~9 "Complaint" means a written allegation or charge against an educator filed by the Executive Secretary against the educator.

~~(8)~~10 "Complainant" means the Executive Secretary.

~~(9)~~11 "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)~~12 "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.

(13) "Consensual sexual activity" means sexually explicit conduct involving an individual or consenting adults.

~~(14)~~14 "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.

~~(15)~~15(a) "Conviction" means the final disposition of a judicial action for a criminal offense, except in cases of a dismissal on the merits.

- 213 (b) "Conviction" includes:
- 214 (i) a finding of guilty by a judge or jury;
- 215 (ii) a guilty or no contest plea;
- 216 (iii) a plea in abeyance [or diversion agreement]; and
- 217 (iv) for purposes of Rule R277-214, a conviction that has been expunged.
- 218 (c) A "conviction" is prima facie evidence that an educator engaged in or
- 219 committed the allegations or elements necessary to support the basis of any criminal
- 220 charge or violation of federal or state law.
- 221 ([13]16) "Criminal background review" means the process by which the
- 222 Executive Secretary, UPPAC, and the Board review information pertinent to:
- 223 (a) a charge revealed by a criminal background check;
- 224 (b) a charge revealed by a hit as a result of ongoing monitoring; or
- 225 (c) an educator or applicant's self-disclosure.
- 226 (17) "Critical" means an intent level four and the preponderance of evidence
- 227 indicates physical, mental, [emotional] psychological, compliance, or financial impact
- 228 that is harmful to one or more individuals, students, members of the profession, or
- 229 public education system, or taxpayers resulting from negligent, irresponsible, or
- 230 deliberate disregard for an educator's position of trust or the educator standards.
- 231 (18) "Diversion" has the same meaning as defined in Section 77-2-2.
- 232 ([14]19) "Drug" means controlled substance as defined in Section 58-37-2.
- 233 ([15]20) "Drug related offense" means any criminal offense under:
- 234 (a) Title 58, Chapter 37, Utah Controlled Substances Act;
- 235 (b) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- 236 (c) Title 58, Chapter 37b, Imitation Controlled Substances Act;
- 237 (d) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act;
- 238 (e) Title 58, Chapter 37d, Clandestine Drug Lab Act; and
- 239 (f) Title 58, Chapter 37e, Drug Dealer's Liability Act.

- 240 ([16]21)(a) "Educator" means a person who:
- 241 (i) currently holds a Utah educator license [or certificate]
- 242 (ii) held a license [or certificate] at the time of an alleged offense.
- 243 ~~[(b) "Educator" does not include a paraprofessional, a volunteer, or an~~
- 244 ~~unlicensed teacher in a classroom].~~
- 245 ([17]22) "Educator misconduct" means:
- 246 ~~[(a) unprofessional conduct;~~
- 247 ~~— (b) conduct that renders an educator unfit for duty; or~~
- 248 ~~— (c) conduct that is a violation of standards of ethical conduct, performance, or~~
- 249 ~~professional competence as provided in Rule R277-217.]~~
- 250 (a) conduct that is immoral, unethical, or unprofessional;
- 251 (b) conduct that violates standards established in Section R277-210-3 ~~[and Rule~~
- 252 R277-330];
- 253 (c) conduct that does not adhere to federal, state, or local laws, or policies; or
- 254 (d) conduct that renders an educator unfit or incompetent for duty.
- 255 (23) "Egregious" means an intent level five and the preponderance of evidence
- 256 indicates physical, mental, ~~[emotional]~~ psychological, compliance, or financial impact
- 257 that is harmful to one or more individuals, students, members of the profession, or
- 258 public education system, or taxpayers resulting from ~~[negligent, irresponsible, or~~
- 259 ~~deliberate]~~ ~~flagrant, reckless, or blatant~~ disregard for an educator's position of trust or
- 260 flouting the educator standards.
- 261 ([18]24) "Executive Secretary" means
- 262 (a) an employee of the Board appointed by the Superintendent to serve as a
- 263 non-voting member of UPPAC, consistent with Section 53E-6-502; or
- 264 (b) the Executive Secretary's designee.

(~~[19]~~25) "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]~~26) "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]~~27) "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]~~28) "GRAMA" means Title 63G, Chapter 2, Government Records Access and Management Act.

(29) "Harassment" or "harass" means conduct or to engage in conduct that is unwelcome, ~~[pervasive,]~~ demeaning, ridiculing, derisive, or coercive, and results in a hostile, offensive, or intimidating work or education environment.

(~~[23]~~30) "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)]~~31) "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)]~~32) "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)]~~33) "Illegal drug" means a substance included in:

(a) Schedules I, II, III, IV, or V established in Section 58-37-4;

(b) Schedules I, II, III, IV, or V of the federal Controlled Substances Act, Title II, Pub. L. No. 91-513; or

(c) any controlled substance analog.

~~[(27)]~~34) "Informant" means a person who submits information to UPPAC concerning the alleged misconduct of an educator.

(~~[28]~~35)(a) "Investigative letter" means a letter sent by the Executive Secretary to an educator notifying the educator:

- (i) that an allegation of misconduct has been received against the educator;
- (ii) that UPPAC or the Board has directed that an investigation of the educator's alleged actions take place; and
- (iii) if applicable, that the Executive Secretary will place a flag on the educator's CACTUS file.

(b) An "investigative letter" is not evidence of unprofessional conduct.

(~~[29]~~36) "Investigative report" means a written report of an investigation addressing allegations of educator misconduct, prepared by an investigator that:

(a) includes a brief summary of the allegations, the investigator's narrative, a summary of the evidence, and a recommendation for UPPAC;

~~—(b) may include a rationale for the recommendation, and mitigating and aggravating circumstances;~~

~~[(a) includes a cover sheet with:~~

~~(i) case identifying information, the criteria in Utah Code, Utah Administrative Code, or policy that UPPAC should weight the allegations against;~~

~~(ii) a brief summary of the allegations for each criteria;~~

~~(iii) applicable aggravating or mitigating circumstances; and~~

~~(iv) possible actions for UPPAC to recommend supported by this rule or Section 53G-6-604;~~

~~(b) includes a report with:~~

~~(i) the investigator's narrative specific to the criteria and allegations;~~

~~(ii) a summary of the evidence; and~~

~~(iii) possible action for UPPAC to recommend supported by this rule or Section 53G-6-604;]~~

(c) is maintained in the UPPAC case file; and

(d) is classified as protected under Subsection 63G-2-305(34).

~~[(30)]37~~ "Investigator" means an employee of the Board, or independent investigator selected in accordance with Subsection 53E-6-506(3), who:

(a) is assigned to conduct an independent and objective investigation into allegations of educator misconduct under UPPAC ~~[supervision]~~ oversight;

(b) offers recommendations of ~~[educator discipline]~~ actions to UPPAC, supported by ~~[Rule R277-215]~~ this rule and Section 53G-6-604, and the evidence, at the conclusion of the investigation;

(c) provides an independent and objective investigative report for UPPAC and the Board; and

(d) may also be a UPPAC attorney but does not have to be.

~~[(34)]38~~ "LEA" or "local education agency" for purposes of Rules R277-210 through R277-217 includes the Utah Schools for the Deaf and the Blind.

~~[(32)] "Letter of education" is a letter sent by the Board to an educator to instruct and caution the educator in an area of professional conduct when the evidence does not show a violation of the educator standards in Rule R277-217, but the evidence may show conduct that could lead to a violation of the standards in the future.]~~

(39) "Letter of Education" means a letter sent by the Executive Secretary in a case where the Board takes no action to caution and instruct the educator in an effort to prevent future misconduct.

~~[(33)]40~~ "Letter of warning" is a letter sent by the Board to an educator[:

~~—— (a) for misconduct that was inappropriate or unethical; and~~

~~—— (b) that does not warrant longer term or more serious discipline.]~~ with a license

~~[or certificate]~~ issued by the Board to instruct and caution an educator for minor violations of or standards regarding the educator's conduct.

(~~[34]~~41) "License" means a teaching or administrative credential, including an endorsement, which is issued by the Board to signify authorization for the person holding the license to provide professional services in Utah's public schools.

(42) "Mental health services" means the same as "practicing mental health therapy" in Section 58-60-102.

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

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

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

(~~[35]~~43) "Misdemeanor offense," for purposes of Board rule, does not include:

(a) violations of municipal ordinances; or

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

(44)(a) "Minor" means intent level one and the preponderance of evidence indicates, physical, mental, ~~[emotional]~~ psychological, 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 inadvertent, incidental, and singular in nature; or

(b) "Minor" means:

(a) an individual under the age of 18; or

(b) an individual who an educator reasonably believes is under the age of 18 under the circumstances of the interaction.

(45) "Moderate" means intent level two and the preponderance of evidence indicates, physical, mental, ~~[emotional]~~ psychological,, compliance or financial impact that is harmful to one individual, student, member of the profession or public education system, or taxpayer that is thoughtless, inconsiderate, and limited.

(~~[36]~~46) "National Association of State Directors of Teacher Education and Certification Educator Information Clearinghouse" or "NASDTEC Clearinghouse" means a database maintained by NASDTEC for the members of NASDTEC regarding persons who:

- (a) had their license suspended or revoked;
- (b) have been placed on probation; or
- (c) have received a reprimand.

(47) "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]~~48) "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]~~49) "Party" means the complainant or a respondent.

(50) "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; or
- (e) continues after documented warnings or action from administrators in the

educator's LEA or the Board.

(51) "Personal identifiers" means:

- (a) race;
- (b) color;
- (c) sex;
- (d) sexual orientation;
- (e) national origin;

424 (f) ethnic background;  
425 (g) marital status;  
426 (h) age;  
427 (i) political or religious belief;  
428 (j) physical or mental condition;  
429 (k) disability; or  
430 (l) family, social, or cultural background.  
431 ([39]52) "Petitioner" means an individual seeking:  
432 (a) an educator license following a denial of a license; or  
433 (b) reinstatement following a license suspension.  
434 ([40]53) "Plea in abeyance" means the same as described in Subsection 77-2a-  
435 1(1).  
436 ([44]54) "Pornographic or indecent material" means the same as the term is  
437 defined in Subsection 76-[10-1235(1)(a)]5c-208.  
438 (55) "Preponderance of evidence" means that based on the evidence, the fact is  
439 more likely to be true than not, or stated differently, proof by the greater weight of the  
440 evidence, however slight.  
441 (56) "Psychological harm" means impairment of an individual's mental health, as  
442 established by competent evidence.  
443 (57) "Recent graduate" means an individual within six months of graduating or  
444 officially exiting from high school.  
445 ([42]58) "Reprimand" is ~~[an action by the Board]~~ a disciplinary action~~[, which]~~  
446 that:  
447 ~~[(a) is imposed for misconduct that was longer term or more seriously unethical~~  
448 ~~or inappropriate than conduct warranting a letter of warning, but not warranting~~  
449 ~~invalidation of the educator's license;]~~

(a) is a sanction sent by the Board criticizing or rebuking an educator for moderate violations of law or standards;

(b) is accompanied by a flag on the educator's CACTUS file, which the educator may request the Board remove from the educator's CACTUS file two years from the date the educator's CACTUS file was flagged for investigation, or after such other time period as prescribed by the Board; and

(c) may include specific directives that the educator must complete before requesting the flag be removed from the educator's CACTUS file ~~[under Subsection (43)(b)]~~.

~~[(56) "Reasonable" means:~~

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

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

(59) "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)60]~~ "Respondent" means an educator against whom:

(a) a complaint is filed; or

(b) an investigation is undertaken.

~~[(44)61](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)62]~~ "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.

(63) “Serious” means intent level three and the preponderance of evidence indicates physical, mental, ~~[emotional]~~ psychological, 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]64) "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]65) "Sexually explicit conduct" means the same as that term is defined in Section 76-5b-103.

([48]66)(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]67)(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.

~~[(50)]68~~ "Utah Professional Practices Advisory Commission" or "UPPAC" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, established in Section 53E-6-501.

~~[(54)]69~~ "UPPAC attorney file" means a file:

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

(i) the attorney's notes; and

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

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

~~[(52)]70~~ "UPPAC background check file" means a file maintained securely by UPPAC on a criminal background review that:

(a) contains information obtained from:

(i) BCI; and

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

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

~~[(53)]~~71) "UPPAC case file" means a file:

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

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

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

(d) 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

(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)]~~72) "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.

(73) “Vulnerable” means that a student has a disability or has been subjected to abuse, neglect, bullying, or other ~~[emotional]~~ psychological

(74) “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.

(75) “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:

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

~~[(b) shall possess and demonstrate the ability and skill necessary to satisfactorily complete professional duties;]~~

(b) shall complete professional duties with competence;

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

(c) shall create academic, physical, environmental conditions with emphasis on academic performance;

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

~~[(f) shall demonstrate clarity in organizing and sequencing instruction and effective planning for learning and student engagement;]~~

(d) shall preview all classroom content;

~~[(h) shall meet the learning needs of each student;]~~

- 584 (e) shall keep records for which the educator is responsible in accordance with  
585 law and policies in a timely manner;
- 586 (f) shall communicate accurately and in a timely manner;
- 587 (g) may not interfere with the legitimate exercise of constitutional, legal, or civil  
588 rights and responsibilities of students, colleagues, school patrons, or school board  
589 members;
- 590 (h) may not use coercive means, promises, or provide special treatment to  
591 students, colleagues, school patrons, or school board members to influence  
592 professional decisions;
- 593 (i) may not make any fraudulent statement or falsify any documentation for which  
594 the educator is responsible, including failing to disclose material facts or relevant  
595 information or evidence;
- 596 (j) may not exploit professional relationships with students, colleagues, parents,  
597 school patrons, or school board members for personal gain or private advantage;
- 598 (k) may not physically, ~~[emotionally,]~~ psychologically, or sexually harass  
599 students, parents, school patrons, school employees, or school board members;
- 600 (l) may not engage in conduct involving dishonesty, noncompliance, fraud,  
601 deceit, misappropriation, or misrepresentation in the performance of professional duties;
- 602 (m) may not retaliate against anyone for reporting a violation of law;
- 603 (n) may not use or attempt to use the educator's position, through instruction,  
604 materials, or symbols, to endorse, promote, or disparage a partisan, religious,  
605 denominational, sectarian, agnostic, or atheistic belief or viewpoint, in a manner  
606 inconsistent with state law ~~[or local policy]~~;
- 607 (o) may not knowingly possess, while at school, or at any school-related activity,  
608 any pornographic or indecent material in any form;
- 609 (p) may not use or attempt to use school equipment or systems to:

610 (i) create, distribute, or intentionally view pornographic or indecent material in any  
611 form; or  
612 (ii) access information that may be detrimental to students or inconsistent with  
613 the an educator’s role model responsibility;  
614 (q) may not engage in consensual sexual activity on school grounds, during  
615 contract hours, or while actively responsible for supervising students;  
616 (r) may not knowingly engage in sexually explicit conduct with a recent graduate  
617 from the educator’s school;  
618 (s) may not attend school or a school-related activity in an assigned employment-  
619 related capacity;  
620 (i) while possessing, using, or under the influence of alcohol or an illegal drug; or  
621 (ii) after exceeding the prescribed dosage of a prescription medication that may  
622 impair the educator; and  
623 (t) may not leave students unattended during class or a school-related activity for  
624 which the educator has oversight, coaching, or administrative responsibility, unless  
625 another educator or authorized and background checked adult is present.  
626 (u) may not violate, or facilitate a violation by another individual, of a judicial  
627 custody order, stalking injunction, or protective order.  
628 (2) An administrator:  
629 ~~[(a) shall possess the knowledge and skills to lead the work of educators, staff,~~  
630 ~~and volunteers, including finances, data, and systems;]~~  
631 (a) shall act with, and ensure, a system of integrity, fairness, and ethical  
632 behavior, and document and report lapses as required by federal, state, and local law  
633 and policy;  
634 (b) shall supervise others in accordance with federal, state, and local law and  
635 policy;

(c) shall ensure that direct report employees comply with the Effective Educator Standards in Rule R277-330;

(d) shall make reasonable and appropriate assignment of tasks and duties given individual licensing and endorsements, abilities and specialties, and available personnel resources;

(e) shall check with prior employers as required by Section 53G-11-410 when hiring for positions;

~~[(e) shall collaborate with faculty, staff, parents, and community members;~~

~~(f) shall facilitate the development, articulation, implementation, and stewardship of a culture of learning;]~~

~~[(g) shall advocate, nurture, and sustain a school focused on teaching and learning conducive to student, faculty, and staff growth while recognizing parents have the primary responsibility for the education of their children;]~~

~~[(h) shall manage the organization, organizational operations, finances, resources, and data for a safe, healthy, honest, efficient, and effective environment;~~

~~(i) shall understand and contribute to interrelated systems of education;]~~ and

(f) shall document and address allegations and concerns in a timely manner consistent with federal, state, and local laws and policies.

(3) In fulfillment of an educator's obligation for professional employment practices, an educator:

~~[(a) shall regard the employment agreement as a pledge to be executed both in spirit and in fact;~~

~~(b) shall practice that sound personnel relationships are built upon personal integrity, dignity, and mutual respect;]~~

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

662 ~~[(d) shall give prompt notice to an employer of any change in availability of~~  
663 ~~service;~~  
664 ~~(e) shall use time on duty and leave time for the purpose for which it is intended;]~~  
665 (b) shall provide truthful, accurate, and complete information in:  
666 (i) licensing, transfer, and employment applications or other documentation;  
667 (ii) evaluations of the educator, other educators or support staff, substitutes, or  
668 students;  
669 (iii) proceedings related to educator licensure, employment, or related benefits;  
670 and  
671 (iv) student IEP plans and related special education documentation;  
672 ~~[(g) shall conduct professional business through designated procedures, when~~  
673 ~~available that the educator's employing LEA has approved;]~~  
674 (c) may not assign tasks to unqualified personnel, for which the educator is  
675 responsible;  
676 (d) may not accept an assignment for which the educator is unlicensed;  
677 (e) may not permit commercial or personal exploitation of the educator's  
678 professional position; and  
679 (f) may not withhold information regarding a position from an applicant or  
680 employer or misrepresent an assignment or conditions of employment.  
681 (4) In fulfillment of an educator's obligation to the profession, an educator:  
682 ~~[(a) shall exert every effort to:~~  
683 ~~(i) raise professional standards;~~  
684 ~~(ii) improve service;~~  
685 ~~(iii) promote a culture in which encourages the exercise of professional judgment;~~  
686 and  
687 ~~(iv) achieve conditions that attract persons worthy of the trust for careers in~~  
688 ~~education;]~~

(a) shall practice the profession only with proper licensing and endorsements  
~~[and shall oppose the practice of the profession by unqualified individuals;~~  
~~(c) shall attend to the duties of the educator's professional position with~~  
~~reasonable diligence;~~  
~~(d) shall be aware of current developments in the educator's field;]~~  
(b) shall ensure that the educator's dress, grooming, and personal presentation is  
professional and does not distract from the academic purpose of the school and  
classroom environment;  
(c) may not cheat, engage in academic dishonesty, or misrepresent the  
educator's educational pursuits or professional qualifications;  
(d) shall notify the Superintendent at the time of licensure of:  
(i) current investigations involving professional misconduct in another jurisdiction;  
(ii) prior licensing disciplinary action in another jurisdiction; and  
(iii) past criminal convictions;  
(e) may not misrepresent the professional qualifications of colleagues;  
~~[(i) shall be forthcoming with truthful, accurate and complete information to an~~  
~~appropriate authority regarding known misconduct by another school employee, school~~  
~~or LEA contractor or vendor, or volunteer that could adversely affect performance of the~~  
~~individual's responsibilities;]~~  
(f) subject to the educator's constitutional rights against self-incrimination, shall  
fully cooperate with criminal or civil law enforcement and LEA investigations involving a  
student or employee of the educator's LEA by:  
(i) responding truthfully and promptly to lawful inquiries by law enforcement;  
(ii) providing relevant information within the educator's knowledge or possession;  
and  
(iii) complying with lawful subpoenas, warrants, or other compulsory processes;  
and

716 (g) May not use create, distribute, store, or intentionally view pornographic or  
717 indecent material involving children.

718 (5) To promote effective human and interpersonal relations, an educator:  
719 ~~[(a) shall communicate professionally, ethically, accurately, and in a timely~~  
720 ~~manner;~~

721 ~~(b) shall allow others who hold and express differing opinions or ideas to freely~~  
722 ~~express such ideas;~~

723 ~~(c) shall provide leadership and direction for others by appropriate example;~~  
724 ~~(d) shall offer constructive criticism when necessary;~~

725 ~~(e) shall comply with reasonable requests and orders given by and without~~  
726 ~~proper authority;~~

727 ~~(f) shall demonstrate self-confidence and self-sufficiency in exercising authority;]~~

728 (a) may not comply with unlawful requests or orders even if given by and with  
729 proper authority;

730 (b) may not knowingly misrepresent the statements of others;

731 (c) may not assign unreasonable tasks;

732 (d) may not engage in immoral, unethical, or unprofessional contact or  
733 communication of any method; and

734 (e) may not engage in bullying, cyberbullying, hazing, retaliation, or abusive  
735 conduct.

736 (6) In fulfillment of an educator's obligation to the public, an educator:

737 (a) shall instill an understanding of, and confidence in, the rule of law and a  
738 respect for individual freedom in accordance with Section 53G-10-206;

739 (b) shall comply with all federal, state, and local laws, including:

740 (i) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act;  
741 (ii) Title 53E, Chapter 9, Student Data Privacy and Data Protection;

(iii) Sections 53G-10-401 through 53G-10-403, Rule 474, and other Utah laws regarding sex education;

(iv) Sections 53G-2-103 through 53G-2-105, Prohibited Submissions, Training, Discriminatory Practices;

(v) Rule R277-107, Educational Services Outside of an Educator’s Regular Employment;

(vi) Section R277-120-5, Classroom Materials Developed by Utah Educators;

(vii) Rule R277-401, Child Abuse-Neglect Reporting by Education Personnel;

~~[(c) shall promote respect by the public for the integrity of the profession;]~~

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

(d) 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;

(e) 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;]~~

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

(g) 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 each student;~~

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

\_\_\_\_\_ (a) 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;]~~

\_\_\_\_\_ (b) 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;

\_\_\_\_\_ (c) shall maintain appropriate verbal, physical, ~~[emotional]~~ psychological, legal, and social boundaries;

~~\_\_\_\_\_ [(g) shall conduct professional educational activities in accordance with sound educational practices that are in the best interests of students;]~~

\_\_\_\_\_ (d) shall resolve discipline and behavior problems in accordance with federal, state, and local law and policy;

\_\_\_\_\_ (e) may not engage in boundary violations;

\_\_\_\_\_ (f) may not solicit, encourage, or consummate an inappropriate relationship with a student or minor;

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

\_\_\_\_\_ (h) may not deliberately suppress or distort subject matter for which the educator is responsible, subject to related law and policy;

\_\_\_\_\_ (i) may not provide alcohol or unauthorized drugs to a student or allow a student under the educator's supervision or control to consume or obtain alcohol or unauthorized drugs;

- 795 (j) may not permit unauthorized collection sharing, or use of student data;  
796 (k) may not cheat or engage in academic dishonesty on behalf of a student;  
797 (l) may not on the basis of a student's personal identifiers:  
798 (i) discriminate against a student;  
799 (ii) harass a student;  
800 (iii) exclude a student from participating in any program;  
801 (iv) deny or grant a benefit to any student; or  
802 (v) encourage a student to develop a prejudice;  
803 (m) may not invite, suggest, or encourage a student to reconsider or change the  
804 student's sexual orientation or gender identity;  
805 (n) may not allow a student to violate state law or local policy concerning  
806 possession of, or access to, a weapon, including a firearm, while on school property or  
807 at a school-related activity; and  
808 (o) may not expose a student to sensitive materials as defined in Section 53G-  
809 10-103, and as determined by the educator's LEA.  
810  
811 **R277-210-4. Rebuttable Disciplinary Presumptions.**  
812 (1) UPPAC and the Board shall consider the rebuttable presumptions in this  
813 section when evaluating a case of educator misconduct.  
814 (2) When considering the rebuttable presumptions in this section, UPPAC and  
815 the Board shall recognize that:  
816 (a) an educator holds a position of special trust specific to students and their  
817 families;  
818 (b) an educator hold a position of fiduciary trust specific to taxpayers; and  
819 (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>
		<u>Suspension of five to ten years</u>
<u>Serious</u>	<u>Three</u>	<u>Suspension of two to five years</u>
		<u>Suspension of one to two years</u>
<u>Moderate</u>	<u>Two</u>	<u>Suspension of up to six months</u>
		<u>Reprimand</u>
<u>Minor</u>	<u>One</u>	<u>Letter of Warning</u>

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

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

847 (i) a single charge of driving under the influence of alcohol or drugs under  
848 Section 41-6a-502;  
849 (ii) a single charge of impaired driving under Section 41-6a-502.5;  
850 (iii) a single charge that contains identical or substantially similar elements to the  
851 state's driving under the influence of alcohol or drugs law, or under the law of another  
852 state or territory; and  
853 (b) A reprimand is presumed appropriate if an educator is convicted of one or two  
854 misdemeanor offenses not otherwise listed, except for a class C misdemeanor under  
855 Title 41, Motor Vehicles.  
856 (8) A suspension of up to six months is presumed appropriate for moderate  
857 violations of the educator standards or if an educator:  
858 (a) fails to make a report to UPPAC required by Rule R277-217;  
859 (b)(i) uses physical force with a ~~student~~ or minor resulting in a conviction of a  
860 class B misdemeanor or lower; or  
861 (ii) uses physical force with a ~~student~~ or minor to commit an act that would  
862 constitute a class B misdemeanor or lower offense;  
863 (c) violates a requirement or procedure in an individualized education plan or 504  
864 plan;  
865 (d) violates or ignores a requirement or procedure for investigating or handling  
866 bullying, cyberbullying, hazing, retaliation, or abusive conduct;  
867 ~~(e) violates a standardized testing protocol;~~  
868 (e) collects or release information from standardized tests, which damages the  
869 integrity of the test;  
870 (f) cheats or engages in academic dishonesty in the educator's own educational  
871 pursuits or on behalf of a student;

872 (g) on the basis of personal identifiers, discriminates against, harasses, excludes  
873 from participation in any program, denies or grants a benefit to, a student, or  
874 encourages a student to develop a prejudice; or  
875 (h) engages in waste or resource abuse valued at up to \$500.  
876 (9) A suspension of one to two years is presumed appropriate for serious  
877 violations of the educator standards, or if an educator:  
878 (a)(i) engages in misconduct that carries a presumption of a less severe penalty;  
879 and  
880 (ii) has previously received two or more disciplinary actions from the Board  
881 related to similar incidents of misconduct;  
882 (b) teaches, counsels, or assists a minor student in a manner that disregards a  
883 legal, written directive, such as a court order or an approved college and career  
884 readiness plan;  
885 (c) invites suggests, or encourages a student to reconsider or change the  
886 student's sexual orientation or gender identity;  
887 (d) allows a student to violate state law or local policy concerning possession of,  
888 or access to, a weapon, including a firearm, while on school property or at a school-  
889 related activity; or  
890 (e) engages in waste or resource abuse valued at greater than \$500.  
891 (10) A suspension of two to five years is presumed appropriate for serious  
892 violations of the educator standards, or if an educator:  
893 (a) creates, stores, gains access to, or intentionally views, sexually inappropriate  
894 material on school property or using school equipment;  
895 (b) commits one or more class A misdemeanor violence offenses under Title 76,  
896 Chapter 5, Offenses Against the Person, or a comparable statute from a jurisdiction  
897 outside of Utah;

898 (c) commits two or more class B misdemeanor violence offenses under Title 76,  
899 Chapter 5, Offenses Against the Person, or a comparable statute from a jurisdiction  
900 outside of Utah, in the last five years;  
901 (d)(i) uses physical force with minor;  
902 (ii) commits a class B misdemeanor or lower offense or commits an act that  
903 would constitute a class B misdemeanor or lower; and  
904 (iii) the minor is a student;  
905 (e) attends a school or school-related activity in an assigned employment-related  
906 capacity while:  
907 (i) possessing, using, or under the influence of alcohol or illegal drugs; or  
908 (ii) after exceeding the prescribed dosage of prescription medication that impairs  
909 the educator;  
910 (f) commits two misdemeanor drug-related offenses or alcohol-related offenses in  
911 the last three years;  
912 ~~(g) engages in a boundary violation;~~  
913 (g) commits fraud, theft, or misappropriation of public funds valued at up to \$500;  
914 (h) as an educator with a non-administrative assignment, fails to immediately  
915 report suspected child abuse or neglect as required by Rule R277-401;  
916 (i) engages in consensual sexual activity on school grounds, during contract  
917 hours, or while actively responsible for supervising students; or  
918 (j) knowingly engages in sexually explicit conduct with a recent graduate from the  
919 educator's school.  
920 (11) Suspension of five to ten years is presumed appropriate for critical violations  
921 of the educator standards, or if an educator:  
922 (a)(i) uses physical force with a minor; and  
923 (ii) commits a class A misdemeanor offense or commits an act that would  
924 constitute a class A misdemeanor;

925 (b) commits an offense that results in the educator being place on court  
926 supervision or probation for more than twelve months;  
927 (c) commits fraud, theft, or misappropriation of public funds or assets valued at  
928 greater than \$500, but less than \$1500;  
929 (d) engages in an incident of excessive physical force or discipline of a student  
930 that does not meet the circumstances described in Subsection 53G-8-302(2); or  
931 (e) as an educator with administrative assignment or license area of  
932 concentration, fails to immediately report suspected child abuse or neglect as required  
933 by Rule R277-401.  
934 (12) A suspension of ten years or more is presumed appropriate for critical  
935 violations of the educator standards, or if an educator:  
936 (a) commits any felony not subject to revocation under Subsection (14);  
937 (b) engages in a boundary violation is sexual in nature, but that does not involve  
938 sexually explicit conduct; and  
939 (c) commits fraud, theft, or misappropriation of public funds valued at greater  
940 than \$1500.  
941 (13) An educator who is suspended based on a committing a felony under  
942 Subsection (12)(a) may apply for a reinstatement hearing early if the educator's felony:  
943 (a) is expunged;  
944 (b) is reduced pursuant to Section 76-3-402; or  
945 (c) no criminal charges have been filed and the educator would be eligible to  
946 have the charges expunged pursuant to Title 77, Chapter 40a, Expungement of  
947 Criminal Records, if charges had been filed.  
948 (14) Revocation is presumed appropriate for egregious violations of the educator  
949 standards, or if an educator:  
950 (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.

- 1003 (5) A mitigating circumstances may include evidence of the following:
- 1004 (a) the educator was new to the profession;
- 1005 (b) the educator has little or no prior disciplinary history;
- 1006 (c) the educator was a less active participant in an offense;
- 1007 (d) the educator’s misconduct was directed or approved, whether implicitly or
- 1008 explicitly, by a supervisor or person in authority over the educator;
- 1009 (e) the educator has voluntarily sought treatment, counseling, or training specific
- 1010 to the misconduct;
- 1011 (f) the educator has made a good faith effort to make restitution or rectify the
- 1012 consequences of the educator’s misconduct over a reasonable timeline;
- 1013 (g) there are substantial grounds to partially excuse or justify the educator’s
- 1014 behavior though failing to fully excuse the violation;
- 1015 (h) any other factor that, in the view of UPPAC and the Board, contributes to the
- 1016 consideration of a less serious consequence for the educator’s misconduct.

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1018 **KEY: professional practices, definitions, educators**

1019 **Date of Last Change: January 10, 2024**

1020 **Notice of Continuation: February 10, 2021**

1021 **Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-6-506; 53E-3-**

1022 **401**