

1 **R277. Education, Administration.**

2 **R277-212. UPPAC Hearing Procedures and Reports.**

3 **R277-212-1. Authority, [and] Purpose, and Oversight Category.**

4 (1) This rule is authorized by:

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

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

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

11 (2) The purpose of this rule is to establish procedures regarding UPPAC hearings
12 and hearing reports.

13 (3) The standards and procedures of Title 63G, Chapter 4, Administrative
14 Procedures Act do not apply to this rule under the exemption of Subsection 63G-4-
15 102(2)(d).

16 (4) Hearings conducted in accordance with this rule are formal adjudicatory
17 proceedings.

18 (5) This rule is categorized as exempt as described in Rule R277-111.

19

20 **R277-212-2. Scheduling a Hearing.**

21 (1)(a) Following receipt of an answer by a respondent requesting a hearing, or at
22 the direction of the Board to give the respondent an opportunity to have a hearing:

23 (i) UPPAC shall select panel members;

24 (ii) the Executive Secretary shall appoint a hearing officer from among a list of
25 hearing officers identified by the state procurement process and approved by UPPAC;
26 and

27 (iii) [UPPAC] the Executive Secretary shall schedule the date, time, and place for
28 the hearing.

29 (b) The Executive Secretary shall schedule a hearing for a date that is not less
30 than 45 days nor more than 180 days from the date the Executive Secretary receives the
31 answer unless otherwise stipulated by the parties.

32 (c) The required scheduling periods may be waived by mutual written consent of
33 the parties or by the hearing officer for good cause shown.

34 (2)(a) Any party may request a change of hearing date by submitting a request in
35 writing that shall:

36 (i) include a statement of the reasons for the request; and

37 (ii) be submitted to the hearing officer at least five days prior to the scheduled date
38 of the hearing.

39 (b) The hearing officer shall determine whether the reasons stated in the request
40 [~~is~~] are sufficient to warrant a change.

41 (c) If the hearing officer finds that the reasons for the request for a change of
42 hearing date [is] are sufficient, the hearing officer shall promptly direct the Executive
43 Secretary to reschedule the hearing and send notice to the parties.

44 (d) If the hearing officer does not find the reasons for the request for a change of
45 hearing date to be sufficient, the hearing officer shall immediately notify the parties that
46 the request has been denied.

47 (e) The hearing officer may, upon stipulation of the parties or upon motion, waive
48 the time period required for requesting a change of hearing date for good cause shown.

49 (3) An educator is entitled to a hearing on any matter in which an action is
50 recommended.

51 (4) An educator is not entitled to a hearing on a matter in which a letter of
52 education, [or] letter of warning, or dismissal is recommended.

53

54 R277-212-3. Appointment and Duties of the Hearing Officer and Hearing Panel.

55 (1)(a) The Executive Secretary shall appoint a hearing officer to chair the hearing
56 panel and conduct the hearing.

57 (b) The Executive Secretary shall select a hearing officer on a random basis from
58 a list of available contracted hearing officers, subject to availability and conflict of interest.

59 (c) The Executive Secretary shall provide such information about the case as
60 necessary to determine whether the hearing officer has a conflict of interest and shall
61 disqualify any hearing officer that cannot serve under the Utah Rules of Professional
62 Conduct.

63 (d) A hearing officer:

64 (i) may require the parties to submit a brief and a list of witnesses prior to the
65 hearing;

66 (ii) presides at the hearing and regulates the course of the proceeding;

67 (iii) administers an oath to a witness as follows: "Do you swear or affirm that the
68 testimony you will give is the truth?";

69 (iv) may take testimony, rule on a question of evidence, and ask a question of a
70 witness to clarify a specific issue; and

71 (v) prepares and submits a hearing report to the Executive Secretary at the
72 conclusion of the proceedings in consultation with panel members and the timelines of
73 this rule.

74 (2)(a) UPPAC shall select three or more individuals to serve as members of the
75 hearing panel.

76 (b) The majority of panel members shall be current UPPAC members.

77 (c) [As directed by UPPAC, a] A licensed educator or member of the community
78 may serve as a panel member, if needed.

79 (d) UPPAC shall select panel members on a rotating basis to the extent
80 practicable.

81 (e) UPPAC shall accommodate each prospective panel member based on the
82 availability of the panel member.

83 (f) If the respondent is a teacher, at least one panel member shall be a current
84 classroom teacher.

85 (g) If the respondent is a non-teacher licensed educator, at least one panel
86 member shall be a non-teacher licensed educator.

87 (3) The requirements of Subsection (2) may be waived only upon the stipulation
88 of both the UPPAC attorney and the respondent.

89 (4)(a) A UPPAC panel member shall:

90 (i) assist a hearing officer by providing information concerning professional
91 standards and practices of educators in the respondent's particular field of practice and
92 in the situations alleged;

93 (ii) ask a question of a witness to clarify a specific issue;

94 (iii) review all evidence and briefs, if any, presented at the hearing;

95 (iv) make a recommendation to UPPAC as to the suggested disposition of a
96 complaint; and

97 (v) assist the hearing officer in preparing the hearing report.

98 (b) A panel member may only consider the evidence approved for admission by
99 the hearing officer.

100 (c) The Executive Secretary may make an emergency substitution of a panel
101 member for good cause shown or with the consent of the parties.

102 (d) An agreement to substitute a panel member shall be in writing.

103 (e) Parties may agree to a two-member UPPAC panel in an emergency situation.

104 (5)(a) A party may request that the Executive Secretary disqualify a hearing officer
105 by submitting a written request for disqualification to the Executive Secretary.

106 (b) A party shall submit a request to disqualify a hearing officer to the Executive
107 Secretary at least 15 days before a scheduled hearing.

108 (6)(a) The Executive Secretary shall review a request described in Subsection (5)
109 and supporting evidence to determine whether the reasons for the request are substantial
110 and compelling.

111 (b) If the Executive Secretary determines that the hearing officer should be
112 disqualified, the Executive Secretary shall appoint a new hearing officer and, if necessary,
113 reschedule the hearing.

114 (7) A hearing officer [may] shall recuse himself or herself from a hearing if [, in the
115 ~~hearing officer's opinion,~~] the hearing officer's participation would violate any of the Utah
116 Rules of Professional Conduct consistent with the Supreme Court Rules of Professional
117 Practice.

118 (8)(a) If the Executive Secretary denies a request to disqualify a hearing officer
119 described in Subsection (5), the Executive Secretary shall notify the party within ten days
120 prior to the date of the hearing.

121 (b) The requesting party may submit a written appeal of the Executive Secretary's
122 denial to the Superintendent no later than five days prior to the hearing date.

123 (c) If the Superintendent finds that the appeal is justified, the Superintendent shall
124 direct the Executive Secretary to appoint a new hearing officer and, if necessary,
125 reschedule the hearing.

126 (d) The decision of the Superintendent described in Subsection (8)(c) is final.

127 (e) If a party fails to file an appeal within the time requirements of Subsection
128 (8)(b), the appeal shall be deemed denied.

129 (f) If the Executive Secretary fails to meet the time requirements described in
130 Subsection (6) or (8), the request or appeal is approved.

131 (9)(a) A UPPAC member shall recuse himself or herself as a panel member due
132 to any known financial or personal interest, prior relationship, personal and independent
133 knowledge of the persons or issues in the case, or other association that the panel
134 member believes would compromise the panel member's ability to make an impartial
135 decision.

136 (b) A party may request that a UPPAC panel member be disqualified by submitting
137 a written request to the hearing officer.

138 (c) A party shall submit a request described in Subsection (9)(b) no less than 15
139 days before a scheduled hearing.

140 (d) The hearing officer shall:

141 (i) review a request described in Subsection (9)(b) and supporting evidence to
142 determine whether the reasons for the request are substantial and compelling enough to
143 disqualify the panel member; and

144 (ii) if the reasons for the request described in Subsection (9)(b) are substantial
145 and compelling, disqualify the panel member.

146 (e) If a panel member is disqualified:

147 (i) UPPAC shall appoint a replacement; and

148 (ii) the Executive Secretary shall, if necessary, reschedule the hearing.

149 (f) If a request described in Subsection (9)(b) is denied, the hearing officer, shall
150 notify the party requesting the panel member's disqualification no less than ten days prior
151 to the date of the hearing.

152 (10) The Executive Secretary may, at the time the Executive Secretary selects a
153 hearing officer or panel member, select an [alternative] alternate hearing officer or panel
154 member following the process for selecting those individuals.

155 (11) The Executive Secretary may substitute a panel member with an [alternative]
156 alternate panel member if the Executive Secretary notifies the parties of the substitution.

158 R277-212-4. Preliminary Instructions to Parties to a Hearing.

159 (1) A hearing shall be scheduled no less than 45 days after receipt of an answer,
160 unless otherwise stipulated by the parties.

161 (2) No later than 25 days before the date of a hearing, the Executive Secretary
162 shall provide the parties with the following information:

163 (a) date, time, and location of the hearing;

164 (b) names and LEA affiliations of each panel member, and the name of the hearing
165 officer; and

166 (c) instructions for accessing these rules.

167 (3) No later than 20 days before the date of the hearing, the respondent and the
168 complainant shall provide the following to the other party and to the hearing officer:

169 (a) a brief, if requested by the hearing officer containing:

170 (i) any procedural and evidentiary motions along with the party's position regarding
171 the allegations; and

172 (ii) relevant laws, rules, and precedent;

173 (b) the name of the person who will represent the party at the hearing;

174 (c) a list of witnesses expected to be called, including a summary of the testimony
175 that each witness is expected to present;

176 (d) a summary of documentary evidence that the party intends to submit; and

177 (e) following receipt of the other party's witness list, a list of anticipated rebuttal
178 witnesses and evidence no later than ten days prior to the hearing.

179 (4)(a) Except as provided in Subsection (4)(b), a party may not present a witness
180 or evidence at the hearing if the witness or evidence has not been disclosed to the other
181 party as required in Subsection (3).

182 (b) A party may present a witness or evidence at the hearing even if the witness
183 or hearing has not been disclosed to the other party if:

184 (i) the parties stipulate to the presentation of the witness or evidence at the
185 hearing; or

186 (ii) the hearing officer makes a determination of good cause to allow the witness
187 or evidence.

188 (5) If a party fails to comply in good faith with a directive of the hearing officer,
189 including time requirements, the hearing officer may prohibit introduction of the testimony
190 or evidence or take other steps reasonably appropriate under the circumstances.

191 (6) A party shall provide materials to the hearing officer, panel members, and
192 UPPAC as directed by the hearing officer.

193

194 R277-212-5. Hearing Parties' Representation.

195 (1) A UPPAC attorney shall represent the complainant.

196 (2) A respondent may represent himself or herself or be represented, at the
197 respondent's own cost, by legal counsel.

198 (3) An informant has no right to:

199 (a) individual representation at the hearing; or
200 (b) to be present or heard at the hearing unless called as a witness.
201 (4) A respondent shall notify the Executive Secretary in a timely manner and in
202 writing if the respondent chooses to be represented by legal counsel.

203

204 **R277-212-6. Discovery Prior to a Hearing.**

205 (1) Discovery is permitted to the extent necessary to obtain relevant information
206 necessary to support claims or defenses, as determined by the hearing officer.

207 (2) Unduly burdensome legalistic discovery may not be used to delay a hearing.

208 (3) A hearing officer may limit discovery:

209 (a) at the discretion of the hearing officer; or

210 (b) upon a motion by either party.

211 (4) A hearing officer rules on all discovery requests and motions.

212 (5) The Executive Secretary shall issue a subpoena ~~[or other order]~~ to secure the
213 attendance of a witness pursuant to Subsection 53E-6-606(1) if:

214 (a) requested by either party; and

215 (b) notice of intent to call the witness has been timely provided as required by
216 Section R277-212-4.

217 (6) The Executive Secretary shall issue a subpoena to produce evidence if timely
218 requested by either party.

219 (7)(a) A party may not present an expert witness report or expert witness testimony
220 at a hearing unless the requirements of Section R277-212-10 have been met.

221 (b) A respondent may not subpoena the UPPAC attorney or investigator as an
222 expert witness.

223

224 **R277-212-7. Burden and Standard of Proof for UPPAC Proceedings.**

225 (1) In matters other than those involving applicants for licensing, and excepting
226 the presumptions under Subsection R277-212-11, the Board shall have the burden of
227 proving that an action against the license is appropriate.

228 (2) An applicant for licensing has the burden of proving that licensing is
229 appropriate.

230 (3) The standard of proof in all UPPAC hearings is a preponderance of the
231 evidence.

232 (4) The Utah Rules of Evidence are not applicable to UPPAC proceedings.

233 (5) The criteria to decide an evidentiary question are:

234 (a) reasonable reliability of the offered evidence;

235 (b) fairness to both parties; and

236 (c) usefulness to UPPAC in reaching a decision.

237 (6) The hearing officer has the sole responsibility to determine the application of
238 the hearing rules and the admissibility of evidence.

239

240 R277-212-8. Deportment.

241 (1) Parties, their representatives, witnesses, and other persons present during a
242 hearing shall conduct themselves in an appropriate manner during a hearing, giving due
243 respect to members of the hearing panel and complying with the instructions of the
244 hearing officer.

245 (2) A hearing officer may exclude a person from the hearing room who fails to
246 conduct himself or herself in an appropriate manner and may, in response to extreme
247 instances of noncompliance, disallow the person's testimony.

248 (3) Parties, attorneys for parties, or other participants in the professional practices
249 investigation and hearing process may not harass, intimidate, or pressure witnesses or
250 other hearing participants, nor may they direct others to harass, intimidate, or pressure
251 witnesses or participants.

252

253 R277-212-9. Hearing Record.

254 (1) A hearing shall be recorded at UPPAC's expense, and the recording shall
255 become part of the UPPAC case file, unless otherwise agreed upon by all parties.

256 (2) An individual party may, at the party's own expense, make a recording or
257 transcript of the proceedings if the party provides notice to the Executive Secretary.

258 (3) If an exhibit is admitted as evidence, the record shall reflect the contents of the
259 exhibit.

260 (4) All evidence and statements presented at a hearing shall become part of the
261 UPPAC case file and may not be removed except by direction of the Executive Secretary
262 or by order of the Board.

263 (5)(a) Upon request of an educator, UPPAC will provide an electronic or paper
264 copy of the UPPAC case file to the educator.

265 (b) UPPAC may charge fees in accordance with Rule R277-103-5 if the educator
266 requests a paper copy.

267

268 R277-212-10. Expert Witnesses in UPPAC Proceedings.

269 (1) A hearing officer may allow testimony by an expert witness.

270 (2) A party may call an expert witness at the party's own expense.

271 (3) A party shall provide a hearing officer and the opposing party with the following
272 information at least 15 days prior to the hearing date:

273 (a) notice of intent of a party to call an expert witness;

274 (b) the identity and qualifications of an expert witness;

275 (c) the purpose for which the expert witness is to be called; and

276 (d) any prepared expert witness report.

277 (4) Defects in the qualifications of an expert witness, once a minimum threshold
278 of expertise is established, go to the weight to be given the testimony and not to its
279 admissibility.

280 (5) An expert witness who is a member of the complainant's staff or staff of an
281 LEA may testify and have the testimony considered as part of the record in the same
282 manner as the testimony of any other expert.

283

284 R277-212-11. Evidence and Participation in UPPAC Proceedings.

285 (1) A hearing officer may not exclude evidence solely because the evidence is
286 hearsay.

287 (2) Each party has a right to call witnesses, present evidence, argue, respond,
288 cross-examine witnesses who testify in person at the hearing, and submit rebuttal
289 evidence.

290 (3) Testimony presented at the hearing shall be given under oath if the testimony
291 is offered as evidence to be considered in reaching a decision on the merits.

292 (4) On the hearing officer's own motion or upon objection by a party, the hearing
293 officer:

294 (a) may exclude evidence that the hearing officer determines to be irrelevant,
295 immaterial, or unduly repetitious;

296 (b) shall exclude evidence that is privileged under law applicable to administrative
297 proceedings in the state unless waived;

298 (c) may receive documentary evidence in the form of a copy or excerpt if the copy
299 or excerpt contains all pertinent portions of the original document;

300 (d) may take official notice of any facts that could be judicially noticed under judicial
301 or administrative laws of the state, or from the record of other proceedings before the
302 agency.

303 (5)(a) In addition to a rebuttable presumption described in Subsection 53E-6-
304 506(3)(e), a rebuttable evidentiary presumption exists that a person has committed a
305 sexual offense against a minor if the person has:

306 (i) been found, pursuant to a criminal, civil, or administrative action to have
307 committed a sexual offense against a minor; or

308 (ii) failed to defend himself or herself against the charge when given a reasonable
309 opportunity to do so.

310 (b) A rebuttable evidentiary presumption exists that a person is unfit to serve as
311 an educator if the person has been found pursuant to a criminal, civil, or administrative
312 action to have exhibited behavior evidencing unfitness for duty, including immoral,

313 unprofessional, or incompetent conduct, or other violation of standards of ethical conduct,
314 performance, or professional competence.

315 (c) Evidence of behavior described in Subsection (11)(b) may include:

316 (i) conviction of a felony;

317 (ii) a felony charge and subsequent conviction for a lesser related charge pursuant
318 to a plea bargain or plea in abeyance;

319 (iii) an investigation of an educator's license, certificate, or authorization in another
320 state; or

321 (iv) the expiration, surrender, suspension, revocation, or invalidation of an
322 educator's license for any reason.

323

324 R277-212-12. Testimony of a Minor Victim or Witness.

325 (1) For purposes of this section, a "minor victim or witness" is an individual who is
326 less than 18 years old at the time of hearing.

327 (2) If a case involves allegations of child abuse or of a sexual offense against a
328 minor under applicable federal or state law, either party, or the hearing officer, may
329 request that a minor victim or witness be allowed to testify outside of the respondent's
330 presence.

331 (3) If the hearing officer determines that a minor victim or witness would suffer
332 undue emotional or mental harm, or that the minor victim or witness's testimony in the
333 presence of the respondent would be unreliable, the minor victim or witness's testimony
334 may be admitted as described in this section.

335 (4) An oral statement of a minor victim or witness that is recorded prior to the filing
336 of a complaint is admissible as evidence in a hearing regarding the offense if:

337 (a) no attorney for either party is in the minor victim or witness's presence when
338 the statement is recorded;

339 (b) the recording is visual and aural and is recorded;

340 (c) the recording equipment is capable of making an accurate recording;

341 (d) the operator of the equipment is competent;

342 (e) the recording is accurate and has not been altered; and
343 (f) each voice in the recording is identified.

344 (5) The testimony of a minor victim or witness may be taken in a room other than
345 the hearing room, and may be transmitted by closed circuit equipment to another room
346 where it can be viewed by the respondent if:

347 (a) only the hearing officer, hearing panel members, attorneys for each party,
348 persons necessary to operate equipment, and a person approved by the hearing officer
349 whose presence contributes to the welfare and emotional well-being of the minor victim
350 or witness may be with the minor victim or witness during the testimony;

351 (b) the respondent is not present during the minor victim or witness's testimony;

352 (c) the hearing officer ensures that the minor victim or witness cannot hear or see
353 the respondent;

354 (d) the respondent is permitted to observe and hear, but not communicate with
355 the minor victim or witness; and

356 (e) only hearing panel members, the hearing officer, and the attorneys question
357 the minor victim or witness.

358 (6)(a) If a witness testifies under circumstances described in Subsection (5), a pro
359 se educator, may submit written questions to the hearing officer to ask on the educator's
360 behalf.

361 (b) A hearing officer shall take appropriate recesses to ensure a pro se educator
362 is allowed to ask all needed follow up questions.

363 (7) If the hearing officer determines that the testimony of a minor victim or witness
364 may be taken consistent with Subsections (2) through (5), the minor victim or witness may
365 not be required to testify in any proceeding where the recorded testimony is used.

366

367 **R277-212-13. Hearing Report.**

368 (1) Within 20 days after the hearing, or within 20 days after the deadline imposed
369 for the filing of any post-hearing materials as permitted by the hearing officer, the hearing

370 officer shall sign and issue a hearing report consistent with the recommendations of the
371 panel that includes:

372 (a) detailed findings of fact and conclusions of law based upon the evidence of
373 record or on facts officially noted;

374 (b) a statement of relevant precedent, if available;

375 (c) a statement of applicable law and rule;

376 (d) presumptions applied by UPPAC;

377 (e) mitigating and aggravating circumstances considered by UPPAC;

378 (f) a recommended disposition of UPPAC panel members that shall be one of the
379 following:

380 (i) dismissal of the complaint;

381 (ii) letter of education;

382 (iii) letter of warning;

383 (iv) reprimand;

384 (vii) suspension, to include the following terms and conditions:

385 (A) a recommended minimum time period consistent with R277-215 after which
386 an educator may request a reinstatement hearing under Rule R277-213; and

387 (B) any recommended conditions precedent to requesting a reinstatement hearing
388 under Section R277-213-2; or

389 (viii) revocation; and

390 (g) notice that UPPAC's recommendation is subject to approval by the Board and
391 judicial review as may be allowed by law.

392 (2) Findings of fact may not be based solely upon hearsay, and conclusions shall
393 be based upon competent evidence.

394 (3)(a) A hearing officer shall circulate a draft report to hearing panel members prior
395 to the 20 day completion deadline of the hearing report.

396 (b) Hearing panel members shall notify the hearing officer of any changes to the
397 report:

398 (i) as soon as possible after receiving the report; and

399 (ii) prior to the 20 day completion deadline of the hearing report.

400 (c) The hearing officer shall file the completed hearing report with the Executive

401 Secretary, who shall review the report with UPPAC.

402 (d) The Executive Secretary may participate in UPPAC's deliberation as a
403 resource to UPPAC in explaining the hearing report and answering any procedural
404 questions raised by UPPAC members.

405 (e) The hearing officer may confer with the Executive Secretary or the panel
406 members or both while preparing the hearing report.

407 (f) The hearing officer may request the Executive Secretary to confer with the
408 hearing officer and panel following the hearing.

409 (g) The Executive Secretary may return a hearing report to a hearing officer if the
410 report is incomplete, unclear, or unreadable, or missing essential components or
411 information.

412 (h) UPPAC shall vote to uphold the hearing officer's and panel's report if UPPAC
413 finds that:

414 (i) there are no significant procedural errors;

415 (ii) the hearing [officer's] panel's recommendations are based upon a
416 preponderance of the evidence presented at the hearing; and

417 (iii) that all issues explained in the hearing report are adequately addressed in the
418 conclusions of the report.

419 (i) After the UPPAC review, the Executive Secretary shall send a copy of the
420 hearing report to:

- (i) the Board for further action;
- (ii) the respondent; and
- (iii) the UPPAC case file.

424 (4) If the Board does not approve a UPPAC hearing report, the Board may:

425 (a) remand the case to UPPAC with direction to cure due process issues; or

426 (b) direct the Executive Secretary to make other evidence available pursuant to

427 Section R277-212-14 before issuing a final decision with official findings; or

428 (c) issue findings based on the UPPAC hearing record and report:
429 (i) specifying the reasons, including the evidence, presumptions, and the
430 mitigating and aggravating circumstances the Board considered, for the Board's failure to
431 accept the hearing report;

432 (ii) adopting the Board's decision on the matter; and
433 (iii) directing the Executive Secretary to include the findings as an addendum to

435 (d) take other appropriate action consistent with due process and R277-215

436 (5) Following Board adoption of a hearing report or the Board's decision under
437 Subsection (4)(c), the Executive Secretary shall:

438 (a) notify the educator;

438 (a) notify the educator;
439 (b) notify the educator's employer;
440 (c) update CACTUS or USIMS to reflect the Board's action; and
441 (d) report the action to the NASDTEC Educator Information Clearing house if the
442 action results in:

443 (i) a revocation;
444 (ii) a suspension; or
445 (iii) reprimand.

446 (6) The hearing report is a public document under Title 63G, Chapter 2,
447 Government Records Access and Management Act after final action is taken in the case,
448 but may be redacted if it is determined that the hearing report contains particular
449 information, the dissemination of which is otherwise restricted under the law.

450 (7) A respondent's failure to comply with the terms of a final disposition may result
451 in additional discipline against the educator license.

452 (8) If a hearing officer fails to satisfy the hearing officer's responsibilities under this
453 rule, the Executive Secretary may:

454 (a) notify the Utah State Bar of the failure;
455 (b) reduce the hearing officer's compensation consistent with the failure;
456 (c) take timely action to avoid disadvantaging either party; or

457 (d) preclude the hearing officer from further employment by the Board for UPPAC
458 purposes.

459 (9) The Executive Secretary may waive the deadlines within this section if the
460 Executive Secretary finds good cause.

461 (10) All criteria of letters of warning and reprimand, probation, suspension, and
462 revocation apply to the comparable sections of the final hearing report.

463

464 R277-212-14. Additional Relevant Evidence.

465 (1) If the Board directs the Executive Secretary to make additional relevant
466 evidence available to the Board for review, before the Board issues a final decision with
467 official findings, the Executive Secretary shall give the educator a notice that includes:

468 (a) what additional relevant evidence the Board directed UPPAC to make available
469 to review;

470 (b) the opportunity to file a response described in Subsection (2); and

471 (c) a statement that the educator's failure to file either a timely written response or
472 request for hearing would be a waiver of the right to either respond, or request a hearing.

473 (2) An educator who receives a notice described in Subsection (1) may submit
474 one of the following within 30 days of the notice described in Subsection (1) was sent:

475 (a) a written response to the additional relevant evidence that the Board directed
476 the Executive Secretary to make available for review; or

477 (b) a written request for a hearing before the Board to respond to the additional
478 relevant evidence.

479 (3) If the educator fails to timely respond as provided in Subsection (2):

480 (a) the Executive Secretary shall notify the respondent that the respondent waived
481 the right to respond or request a hearing; and

482 (b) the Board may proceed to view the additional relevant evidence.

483 (4) If the educator files a timely written response, the Executive Secretary shall
484 submit the written response to the Board for consideration before the Board issues a final
485 decision.

486 (5) If the educator files a timely hearing request, before the Board issues a final
487 decision, the Executive Secretary shall:

488 (a) request a hearing before the Board, as described in Subsection (7);

489 (b) provide the respondent notice of the hearing meeting the requirements of
490 Section 53E-6-607;

491 (c) include a copy of the Board rules that apply; and

492 (d) notify the respondent that if the respondent fails to attend or participate in the
493 hearing:

494 (i) that the respondent has waived the right to appear and respond to the additional
495 relevant evidence; and

496 (ii) that the Board may proceed to review the additional relevant evidence.

497 (6) The Board shall schedule a hearing described in Subsection (5)(b) within no
498 less than 45 days and no more than 90 days from the date the Executive Secretary
499 receives the respondent's written request for a hearing.

502 (8) The Executive Secretary shall issue a subpoena [or other order] to secure the
503 attendance of a witness pursuant to Subsection 53E-6-506(3)(c)(i) if:

504 (a) requested by either party; and

505 (b) notice of intent to call the witness has been timely provided as required by
506 Section R277-212-4.

507 (9) Subsection R277-212-3(1) governs the appointment of a hearing officer to
508 conduct a hearing under this section, but no hearing report is required.

509 (10) After the hearing or viewing the additional relevant evidence, the Board will
510 prepare findings that support the reasons for the Board's decision, including the
511 presumptions and mitigating and aggravating circumstances described in Rule R277-215
512 that the Board applied.

513 (11) Findings issued by the Board as described in Subsection (11) may not be
514 based solely upon hearsay.

515

516 **R277-212-15. Default.**

517 (1)(a) The Executive Secretary shall prepare an order of default if:

518 (i) the respondent fails to file an answer as described in Subsection R277-211-
519 6(4);

520 (ii) the respondent fails to attend or participate in a properly scheduled hearing
521 after receiving proper notice; or

522 (iii) the hearing officer recommends default as a sanction as a result of misconduct
523 by the respondent or the respondent's representative during the course of the hearing
524 process.

525 (b) The hearing officer may determine that the respondent has failed to attend a
526 properly scheduled hearing if the respondent has not appeared within 30 minutes of the
527 appointed time for the hearing to begin, unless the respondent shows good cause for
528 failing to appear in a timely manner.

529 (2) The recommendation of default may be executed by the Executive Secretary
530 following all applicable time periods, without further action by UPPAC.

531 (3) The Executive Secretary shall make a recommendation to the Board for
532 discipline in accordance with Rule R277-215.

533

534 **R277-212-16. Rights of Victims at Hearings.**

535 (1) If the allegations that gave rise to the underlying allegations involve abuse of
536 a sexual or physical nature, UPPAC shall make reasonable efforts to:

537 (a) advise the alleged victim that a hearing has been scheduled;

538 (b) notify the alleged victim of the date, time, and location of the hearing; and

539 (c) notify the alleged victim of the right to attend the hearing alone or with a victim
540 advocate present.

541 (2) An alleged victim or guardian entitled to notification of a hearing is permitted,
542 but is not required, to attend the hearing.

543 (3) An alleged victim or witness may have a criminal justice victim advocate or
544 support person attend the hearing with them.

545

546 **KEY: hearings, reports, educators**

547 **Date of Enactment or Last Substantive Amendment: February 7, 2020**

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

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

550 **401(4)**

551

552