

1 **R277. Education, Administration.**

2 **R277-214. Criminal Background Review.**

3 **R277-214-1. 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
10 the Board's duties and responsibilities under the Utah Constitution and state law.

11 (2) The purpose of this rule is to establish procedures for evaluation of a
12 licensure applicant's criminal background review.

13 (3) If a licensed educator is charged with a misdemeanor or felony after
14 receiving a license under Rule R277-301, the Executive Secretary shall review the
15 matter with UPPAC in accordance with Rule R277-211 to determine how to proceed.

16 (4) The standards and procedures of the Utah Administrative Procedures Act do
17 not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).

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

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20 **R277-214-2. Initial Submission and Evaluation of Information.**

21 (1) The Executive Secretary shall review all information received as part of a
22 criminal background review.

23 (2) The Executive Secretary may request any of the following information from
24 an educator in determining how to process a criminal background review:

25 (a) a letter of explanation for each reported offense that details the
26 circumstances, the final disposition, and any explanation for the offense the applicant
27 may want to provide UPPAC, including any advocacy for approving licensing;

28 (b) official documentation regarding each offense, including court records and
29 police reports for each offense, or if both court records and police reports are not

30 available, a letter [on official police or court stationery] from the appropriate court or
31 police department involved, explaining why the records are not available; and
32 (c) any other information that the Executive Secretary considers relevant under
33 the circumstances in a criminal background review.

34 (3)(a) The Executive Secretary may only process a criminal background review
35 after receipt of all letters of explanation and documentation requested in good faith by
36 the Executive Secretary.

37 (b) The Executive Secretary shall provide timely notice if the information
38 provided by an applicant is incomplete.

39 (4) If an applicant is under court supervision of any kind, including parole,
40 informal or formal probation, or plea in abeyance, the Executive Secretary may not
41 process the background check review until the Executive Secretary receives proof that
42 court supervision has terminated.

43 (5) It is the applicant's sole responsibility to provide any requested material to
44 the Executive Secretary.

45 (6) The Executive Secretary shall process criminal background reviews subject
46 to the following criteria:

47 (a) the Executive Secretary may clear a criminal background review without
48 further action if the arrest, citation, or charge resulted in a dismissal, unless the
49 dismissal resulted from a plea in abeyance agreement;

50 (b) the Executive Secretary shall forward a recommendation to clear the
51 following criminal background reviews directly to the Board:

52 (i) singular offenses committed by an applicant, excluding offenses identified in
53 Subsection(6)(c), if the offense occurred more than two years prior to the date of
54 submission to UPPAC for review;

55 (ii) two offenses committed by an applicant, excluding offenses identified in
56 Subsection(6)(c), if both offenses occurred more than two years prior to the date of
57 submission to UPPAC for review; or

58 (iii) more than two offenses committed by the applicant, excluding offenses

59 identified in Subsection(6)(c), if all offenses occurred more than five years prior to the
60 date of submission to UPPAC for review;

61 (c) the Executive Secretary shall forward the following criminal background
62 reviews to UPPAC, which shall make a recommendation to the Board for final action:

63 (i) any offense where the offense date occurred less than two years prior to the
64 date of submission to UPPAC;

65 (ii) more than two offenses where at least one offense occurred less than five
66 years prior to the date of submission to UPPAC;

67 (iii) any felony;

68 (vi) any sex-related or lewdness offense;

69 (v) any alcohol-related offense or drug-related offense where the offense date
70 was less than five years prior to the date of submission to UPPAC;

71 (vi) any offense involving children in any way; and

72 (vii) any other matter which in the Executive Secretary's discretion, warrants
73 review by UPPAC before consideration by the Board; and

74 (d) If a criminal background review involves a conviction for an offense identified
75 in Subsection 53E-6-603(2) or an applicant meeting the definition of sex offender under
76 Subsection ~~[77-41-102(17)]~~ 53-29-101(15), the Executive Secretary shall forward a
77 recommendation to the Board that clearance be denied.

78 (7) If, as a result of a criminal background review, it is discovered that an
79 applicant has been convicted of a misdemeanor offense, there is a rebuttable
80 presumption that the following shall apply:

81 (a) for a single conviction, the individual shall be denied clearance for a period of
82 one year from the date of the conduct giving rise to the charge;

83 (b) for two convictions:

84 (i) the individual shall be denied clearance for a period of two years from the
85 date of the conduct giving rise to the most recent charge; and

86 (ii) if both offenses are alcohol-related offenses or drug-related offenses, the
87 applicant shall present documentation of clinical assessment and recommended

88 treatment before being considered for clearance; and
89 (c) for three convictions:
90 (i) the applicant shall be denied clearance for a period of five years from the date
91 of the conduct giving rise to the most recent charge; and
92 (ii) if two or more of the offenses are alcohol-related offense or drug-related
93 offenses, the applicant shall present documentation of clinical assessment and
94 recommended treatment before being considered for clearance.

95 (8) UPPAC or the Board may deviate from the presumptions specified in
96 Subsection (7) if aggravating or mitigating circumstances apply, as set forth in Section
97 R277-215-3.

98 (9) The Executive Secretary shall use reasonable discretion to interpret the
99 information received from the Bureau of Criminal Identification to comply with the
100 provisions of this rule.

101 (10) If a criminal background review arises as a result of conduct that was
102 cleared in a prior criminal background review by the Executive Secretary, UPPAC, or
103 the Board, the prior action shall be deemed final, and the Executive Secretary shall
104 clear the criminal background review.

105

106 **R277-214-3. Board Review and Appeals.**

107 (1) In Board consideration of recommendations of the Executive Secretary and
108 UPPAC for a criminal background review, the following shall apply:

109 (a) the Board shall consider a criminal background review in accordance with the
110 standards described in Section 53E-6-603;

111 (b) the Board may uphold the recommendation of the Executive Secretary or
112 UPPAC; or

113 (c) the Board may substitute its own judgment in lieu of the recommendation of
114 the Executive Secretary or UPPAC.

115 (2) If a criminal background review results in an applicant's denial, the Executive
116 Secretary shall provide notice as required by Subsection 53E-6-603(4)(a).

117 (3) If an applicant requests a hearing in accordance with Subsection 53E-6-
118 603(4)(b), the Executive Secretary shall schedule a hearing within 90 days.

119 (4) During a hearing on a criminal background review a hearing panel,
120 composed in the same manner as provided for expedited hearings in Subsection R277-
121 210-2(21) shall hear the evidence.

122 (5) the applicant, or applicant's attorney, and a UPPAC attorney, may present
123 evidence at a hearing, including:

124 (a) documents submitted to the Executive Secretary in accordance with
125 Subsection R277-214-2(2); and

126 (b) relevant evidence or witnesses related to:
127 (i) the facts surrounding the criminal offenses at issue; and
128 (ii) the applicant's character and conduct since the time of t

129 (6) The applicant shall have the burden of persuasion by a preponderance of
130 evidence that the applicant is fit for licensure as an educator.

134 (8)(a) The Executive Secretary shall submit the matter to UPPAC at the next
135 available meeting following preparation of the report.

136 (b) UPPAC may:

137 (i) approve the hearing report; or

138 (ii) direct the Executive Secretary to prepare an addendum modifying the
139 hearing recommendation and specifying the evidence supporting the modification.

140 (9) Following UPPAC's recommendation under Subsection (6), the Executive
141 Secretary shall forward the hearing report to the Board.

142 (10) The Board shall consider the recommendation submitted under Subsection
143 (7) and within a reasonable time shall:

144 (a) adopt the UPPAC recommendation; or

145 (b) issue an alternate written determination and action based on the findings of

146 fact made in the hearing report, if the Board disagrees with the UPPAC
147 recommendation.

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149 **KEY: educator licenses, background reviews, background checks**

150 **Date of Enactment or Last Substantive Amendment: May 24, 2021**

151 **Notice of Continuation: March 15, 2021**

152 **Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-6-506; 53E-3-
153 401(4)**

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