

Utah Professional Practices Advisory Commission (UPPAC)

Summary of Findings

Chair Report
Joseph Kerry
March 31, 2026

This report was prepared by Joseph Kerry, in his capacity as a member of the Utah State Board of Education and Chair of its Law & Licensing Committee. The findings and conclusions set forth herein are those of Board Member Kerry, as neither the Committee nor the full board has reviewed or taken action on this report at this time.

History and Purpose

The Utah State Board of Education directed the Board's Law & Licensing Committee to review UPPAC's (Utah Professional Practices Advisory Commission) processes and procedures. As part of this directive, the Committee held three special committee meetings, and members followed up with additional one-on-one meetings with a variety of stakeholders and examined UPPAC's intake procedures, investigative practices, disciplinary decision-making structure, data systems, and related Board-level review processes. This system warrants a comprehensive review and reform of its processes and procedures.

The transcripts of the committee meetings do **not** depict a system lacking professionalism or good faith. To the contrary, many participants described dedicated investigators and conscientious commission members who are attempting to do difficult work under increasing pressure and limited resources. Those involved in UPPAC work hard, in a professional and ethical manner, in the execution of their duties, and these findings reflect, in part, opportunities for strengthened oversight by the Board. Where the Board investigates educators, flags their professional files, and influences whether they may remain in or return to the profession, the process must be timely, consistent, transparent, and reviewable.

The analysis does not assume that the current system is unconstitutional in every respect. Rather, it identifies procedural warning signs and potential failure points that repeatedly emerged from the transcripts. Some of these issues concern constitutional due process in the strict sense. Others concern procedural fairness, transparency, accountability, and administrative reliability. Together, they create a compelling case for change and for increased due-process protections for our teachers and educators.

Summary of Findings

A. Fundamental Due Process Concerns: Notice, and Early-Stage Fairness

1. Structural Due Process Concerns: Absence of Conflict of Interest and Privacy Safeguards

Testimony presented during the committee meetings indicated that UPPAC does not maintain a formal, written conflict-of-interest policy or a comprehensive written privacy policy governing its proceedings. This absence raises significant due process concerns and warrants immediate correction.

UPPAC recusal practices appear largely informal. Members may recuse, abstain, remain in the room, or step out depending on circumstances and custom. In a system that makes decisions affecting licensure and employability, that level of informality presents a structural concern.

At its core, due process requires not only fairness in outcome, but fairness in structure. Decision-making bodies must be neutral, and processes must be designed to prevent both actual bias and the appearance of bias. Written conflict-of-interest policies are a basic safeguard in administrative adjudication systems to ensure that individuals participating in investigations, recommendations, or decisions do not have prior involvement or interests that could compromise their neutrality.

Without a clearly defined and enforced conflict-of-interest framework, there is a heightened risk that individuals may participate in multiple roles in the same or related matters. Testimony raised concerns that UPPAC investigators, or those closely aligned with the investigative function, may later participate in proceedings in a manner that resembles advocacy against the respondent. When an individual who has previously gathered facts, formed impressions, or contributed to an investigative record is later positioned in a role that influences or supports disciplinary outcomes, it creates a structural imbalance and inherent unfairness in the process.

Even if unintentional, this blending of investigative and quasi-advocacy roles undermines the fundamental requirement of a neutral decision-making process. Courts have long recognized that combining investigative and adjudicative functions, without clear safeguards, can compromise due process. At a minimum, it creates the appearance that the process is weighted against the respondent, which erodes confidence in the system.

The absence of a written privacy policy further compounds these concerns. UPPAC proceedings involve sensitive information, including allegations, investigative materials, and personal data related to educators and, in some cases, students. Without clear, written standards governing how this information is handled, accessed, shared, and retained, there is an increased risk of inconsistent practices and potential misuse of confidential information. From a due process

standpoint, individuals must have confidence that the information used in proceedings is managed with integrity and that disclosures are controlled and appropriate.

These deficiencies are not merely technical. They go to the heart of procedural fairness. A system that lacks clear conflict-of-interest protections and defined privacy safeguards invites questions about impartiality, consistency, and accountability.

To address these concerns, the following questions need to be answered:

- Whether individuals involved in investigations are adequately separated from those participating in recommendations or final decisions;
- Whether formal recusal standards exist and are consistently applied;
- Whether any role overlap has occurred that could compromise neutrality;
- Whether privacy protections meet accepted standards for administrative proceedings involving sensitive information.

Establishing clear, written policies in these areas is not burdensome. It is standard practice in administrative and quasi-judicial bodies. Implementing these safeguards would strengthen the integrity of the UPPAC process, protect educators' due process rights, and reinforce public confidence that decisions are made fairly and without bias.

2. Educators may receive no direct notice of a UPPAC action until after a case has been opened.

UPPAC staff stated that educators generally are not notified when a referral is first received. Instead, notice is typically provided only after the commission determines that a case should be opened. Staff explained that this approach is intended to avoid unnecessary anxiety when a complaint may not ultimately lead to action. However, the practical effect is that a consequential government action, the opening of a formal case, may occur before the educator receives direct notice from UPPAC.

While staff suggested that, in most LEA-generated matters, the educator is already aware through local processes, this was acknowledged as an estimate rather than a tracked or verified fact. As a result, the system does not ensure that every educator receives timely and direct notice from the entity that ultimately exercises licensing authority.

From a due process perspective, this is a foundational concern. At a minimum, fairness requires that an individual be informed when a state-level complaint has been filed against them, particularly when that complaint may lead to licensure action, reputational harm, or employment consequences. Notice is not merely a procedural formality; it is the gateway to meaningful participation in the process.

Providing notice at the time of filing would be both simple and administratively feasible. UPPAC already receives and logs referrals. A standardized process could automatically generate a written notice to the educator upon receipt of any complaint, identifying:

- the existence of the complaint,
- the general nature of the allegation,
- non-confidential information surrounding the allegation, and
- an opportunity to submit an initial written response within a defined timeframe.

This would not require additional investigative burden. It ensures that the educator has the opportunity, at the earliest stage, to present their version of events, clarify misunderstandings, or provide context that may materially affect whether a case should be opened at all.

Early notice serves multiple purposes. It improves accuracy by ensuring that decision-makers are not relying solely on one-sided or incomplete information. It promotes efficiency by potentially resolving or narrowing issues before a full investigation is initiated. And most importantly, it reinforces the legitimacy of the process by ensuring that individuals are not subjected to Board action without awareness and an opportunity to be heard.

3. The case-opening decision may therefore occur before the educator has had a meaningful opportunity to respond directly to UPPAC.

Although information was provided that educator statements are often included in LEA materials, the meetings also made clear that not every educator has direct engagement with UPPAC prior to the case-opening decision. In practice, this means that UPPAC may rely on secondhand summaries, LEA-generated reports, or incomplete factual records when determining whether to initiate a formal case.

Where a system allows a case to be opened - and in some instances a CACTUS flag to be applied - before the affected educator has had a direct opportunity to respond to the decision-making body, it creates a significant early-stage due process concern. The risk is not simply theoretical. The opening of a case can carry immediate and tangible consequences, including reputational harm, employment limitations, and prolonged uncertainty.

Meaningful opportunity to be heard must occur at a time when it can still influence the outcome. If the educator's first direct engagement with UPPAC occurs only after a case has already been opened, then the most consequential threshold decision has already been made without their participation.

A modest procedural adjustment - providing notice and an opportunity for a brief written response prior to the case-opening decision - would materially strengthen the fairness of the system. It would ensure that UPPAC's initial determination is informed by both sides of the

issue, rather than relying primarily on referral materials that may be incomplete, inconsistent, or influenced by local investigative limitations.

Such a reform would not delay the process in any meaningful way. To the contrary, it may improve efficiency by reducing the number of cases opened unnecessarily and by sharpening the factual record at the outset. More importantly, it would align the process with core principles of fairness: that individuals should know when the State is considering action against them and should have a timely opportunity to respond before that action is taken.

B. Standards for Opening Cases

4. No defined standard of review governs the opening of a case.

One of the clearest facts established in the meetings is that UPPAC does not use a formally defined standard of review at the opening stage. Staff stated that the law and rules do not prescribe a burden akin to preponderance or clear and convincing evidence at that point. Instead, the commission reviews the available material and determines whether to pursue the matter. The absence of a defined threshold creates substantial risk of inconsistency, arbitrariness, and inability to explain outcomes across similar cases.

5. The system appears to blur the distinction between allegations and known facts.

The governing rule refers to 'known facts and circumstances,' but the testimony suggested that, in practice, commissioners review whatever materials are available, including allegations, summaries, witness statements, and LEA findings, without a clear distinction between verified facts and untested assertions. That may be administratively understandable at the intake stage, but it is a warning sign where the opening decision carries real reputational and employment consequences.

6. Without a defined opening standard and without recorded reasons, similarly situated educators may not be reliably treated alike.

Staff said UPPAC tries to be consistent and sometimes consults comparable cases. However, if there is no formal threshold and no stated rationale is recorded when cases are opened or declined, later reviewers cannot meaningfully verify that comparable matters were handled comparably.

C. Pre-Adjudication Consequences

7. A full investigation can trigger serious professional harm before findings are complete.

The transcripts repeatedly show that opening a full investigation is not a neutral procedural event. It can trigger a CACTUS flag, impair employability, extend uncertainty for months, and place significant emotional and economic pressure on the educator. Those effects occur before the investigation is complete and before final discipline is imposed.

8. Delay itself functions as a form of penalty.

Even if a case eventually results in little or no discipline, the educator may already have endured months of stigma and lost opportunities. Several speakers emphasized that for many teachers, by the time the process ends, the practical damage is already done. Any audit should therefore examine not only final outcomes but also the burdens imposed by the pendency of a case.

9. The expedited-hearing structure may create systemic pressure to accept quicker resolutions rather than insist on a fuller process.

Multiple witnesses described expedited hearings as valuable in appropriate cases. At the same time, the structure may place educators under practical pressure: accept the faster path with fewer immediate consequences, or face a longer flagged investigation and the possibility of a more burdensome hearing process. That dynamic may influence decisions in ways that resemble coercion even if no one intends it that way.

D. Record Integrity and Reliability of the Investigative Process

10. Investigative interviews are not consistently preserved through full recordings or transcripts.

Committee discussion reflected concern that later disputes often arise over what was said, how a witness's statement was characterized, or whether the investigator's summary fully captured nuance. Several complainants reportedly raised similar concerns despite not knowing one another. Yet the record often relies on summaries rather than verbatim recordings or transcripts. That creates avoidable uncertainty in a process where details matter. Investigative interviews should be recorded unless the respondent objects.

11. The system relies heavily on LEA investigations whose quality may vary substantially.

Current and former participants testified that some LEA investigations are excellent while others are poor. If UPPAC is receiving a materially different quality of factual development from different LEAs, then the fairness of intake and opening decisions can vary by district, by investigator, or by local practice rather than by the merits alone.

12. UPPAC Investigations

Currently, UPPAC appears to rely heavily on LEA investigations and UPPAC may benefit from a more robust and independent investigative function.

E. Transparency, Reasoned Decision-Making, and the Final Board Stage

13. The final Board decision is opaque.

UPPAC's internal process is described as lengthy, deliberative, matrix-informed, and grounded in presumptions and comparative review. By contrast, the final Board stage can yield a different outcome without a correspondingly visible explanation. This opaqueness needs to be remedied.

14. The Board may modify discipline without making its reasoning part of the accessible record.

This represents one of the most significant concerns identified in the record. If the Board increases a recommendation from one year to three years, or materially changes a sanction in either direction, affected educators and the public may have no way to know why. The absence of stated reasons undermines transparency, weakens accountability, and makes consistency hard to evaluate. Any audit needs to address this lack of transparency.

15. Closed-session decision-making without a robust explanatory record invites distrust.

The problem is not simply that some discussions occur in executive session. The problem is that where the final result differs from the recommendation, the affected educator may be left without a reasoned explanation and without confidence that the same care applied at the UPPAC stage was applied at the Board stage.

16. A system that allows the final decision-maker to depart from the recommending body without a written explanation is difficult to defend as consistent and reviewable.

The issue is not whether the Board lacks authority to differ. The issue is whether that authority is exercised through a process that is transparent, reasoned, and bounded by the same record and fairness norms that govern the rest of the system. The testimony suggests there is substantial room for concern on that point.

17. The Board's review is constrained by reliance on summary reports rather than the full evidentiary record.

The record reflects that the Board typically receives UPPAC hearing summaries rather than the full evidentiary file reviewed by UPPAC. These summaries generally describe the allegations, outline key facts as characterized by UPPAC, and present the recommended disposition. However, they do not include the underlying exhibits, witness statements, documentary evidence, or other materials upon which UPPAC relied in reaching its conclusions.

This structure creates a significant limitation on the Board's ability to perform a truly independent review. By design, the Board is the final decision-maker and is charged with affirming, modifying, or rejecting UPPAC's recommendations. That responsibility presupposes access to the same evidentiary record considered by the recommending body. When the Board is instead reviewing a summarized version of that record, filtered through another layer of analysis, it is effectively being asked to evaluate conclusions without direct access to the underlying evidence.

From a due-process perspective, this highlights two related concerns. First, it weakens the reliability of final decision-making. Without access to primary materials, the Board cannot independently assess credibility, weigh competing evidence, or determine whether key facts have been fully and fairly represented. Second, it creates a structural tension in the system: the Board

has authority to modify discipline, yet may not have the evidentiary foundation necessary to do so with the same level of rigor applied by UPPAC.

This limitation also intersects with earlier concerns regarding transparency and explanation of final decisions. If the Board departs from UPPAC's recommendation, but has relied on a summarized rather than complete record, it becomes even more difficult to determine whether that departure was grounded in the same evidentiary framework or influenced by factors not fully reflected in the summary.

A system that entrusts final disciplinary authority to the Board should ensure that the Board has access to the complete evidentiary record or, at a minimum, a clearly defined mechanism to review underlying materials when needed. Without that access, the Board's ability to meet its duty of independent review is constrained, and the overall integrity of the decision-making process is diminished.

An audit should examine whether the Board's current level of access to evidentiary materials is sufficient to support meaningful independent review, and whether additional safeguards are needed to ensure that final decisions are grounded in the full record. Additionally, the audit should address whether a smaller number of Board members themselves make the initial determination, which is then reviewed and affirmed/denied by the full Board.

18. Subpoena-Only Non-Disclosure Agreements.

The use of subpoena-only nondisclosure agreements may limit individuals subject to them from sharing information that could inform system improvements related to student, educator, and school safety. The use of subpoena-only non-disclosure agreements in a public school should be carefully reviewed.

19. The Respondent is not afforded a meaningful opportunity to present a written brief to the Board at the final decision stage.

The process reflects that UPPAC submits its report and recommendation to the Board, summarizing its findings and proposed discipline. However, the Respondent is not afforded a parallel opportunity to submit a written brief directly to the Board addressing those findings, clarifying the record, or responding to UPPAC's conclusions prior to final action.

This creates an asymmetry at the most consequential stage of the process. The Board, as the final decision-maker, receives a structured presentation of the case through UPPAC's report, but does not receive a correspondingly structured submission from the Respondent unless the educator has pursued a more burdensome procedural avenue such as a full hearing. As a result, the Respondent's position may be reflected only indirectly through summaries contained in the investigative materials or UPPAC's characterization of the case.

From a due process perspective, this limitation is significant. When the State is making a final determination that may affect licensure, employability, and professional reputation, fairness requires that the affected individual have a meaningful opportunity to be heard at that stage in a manner that is practical and accessible. The absence of a direct briefing opportunity reduces the Respondent's ability to correct factual inaccuracies, highlight mitigating factors, or challenge the interpretation of evidence relied upon in the recommendation.

This concern is compounded by the Board's reliance on summary reports rather than the full evidentiary record. Where the Board is not reviewing underlying exhibits and the Respondent is not permitted to submit a written response to the recommendation, the decision-making process risks becoming one-sided at the final stage. In such a structure, the accuracy and completeness of the UPPAC report become disproportionately important, as it may be the primary lens through which the Board understands the case.

Providing a limited, structured opportunity for Respondents to submit a written brief prior to final Board action would not materially burden the process. To the contrary, it would enhance decision-making quality, promote fairness, and reinforce confidence that final determinations are based on a balanced, fully informed record.

20. The current structure may place administrators in the unenviable position of investigating matters in which they or their institutions have a direct interest.

Testimony and committee discussion highlighted a structural tension in which LEAs are often responsible for conducting initial investigations, including in matters involving administrators or institutional decision-making. While safeguards such as recusal and supervisory review may exist in some cases, the system can nonetheless place administrators in the difficult and potentially conflicted position of investigating conduct within their own chain of command or organizational structure.

This dynamic raises both practical and due process concerns. First, it creates the risk, whether actual or perceived, that investigations may be influenced by institutional interests, including liability exposure, reputational considerations, or internal personnel dynamics. Even when investigations are conducted in good faith, the appearance of self-investigation can undermine confidence in the process's objectivity. Second, inconsistent investigative capacity across LEAs, as noted in testimony, means that the quality, scope, and neutrality of investigations may vary significantly from district to district. This variability can lead to uneven factual development at the intake stage, which in turn affects whether and how UPPAC opens cases and evaluates allegations.

These concerns are particularly important in matters involving administrators, where power dynamics may discourage reporting and where internal investigators may have direct or indirect relationships with the subject of the investigation. In such cases, reliance on local investigation

alone may not provide the level of independence necessary to ensure both fairness to the educator and protection for students. Current processes to avoid this situation appear to be less robust and effectual as required.

For these reasons, it may be appropriate to evaluate whether UPPAC, or another independent body, should take a more direct role in investigating allegations involving administrators or other high-level personnel. An independent investigative function could promote greater consistency in fact development, reduce the appearance of institutional bias, and ensure that sensitive matters are handled with the level of neutrality expected in a statewide licensure system. An audit should examine the feasibility, scope, and potential benefits of such an approach, including whether certain categories of cases should be presumptively handled by independent investigators rather than by the employing entity.

21. The consolidation of investigative, advocacy, and adjudicative functions within UPPAC may implicate neutrality and structural fairness.

The record reflects that UPPAC, through its staff and processes, plays multiple roles across the lifecycle of a case, including investigating allegations, developing and presenting findings and recommendations, and participating in the adjudicative process that ultimately leads to disciplinary outcomes.

Fundamental principles of fairness favor a clear separation between those who gather facts, those who advance a position based on those facts, and those who make the final determination. When these functions are combined within a single system or closely aligned actors, it can create, at a minimum, the appearance of one-sidedness. At worst, it risks producing a process in which the structure itself may unintentionally favor the recommending authority over the respondent.

This concern is not a reflection on the professionalism or good faith of those involved. To the contrary, testimony consistently described investigators and commission members as conscientious and dedicated. The issue is structural. Even well-intentioned systems benefit from safeguards that ensure neutrality is both actual and visible.

The impact of this consolidation is compounded by other features identified in the record, including limited direct access by the Respondent to final decision-makers, reliance on summary reports, and the absence of a parallel opportunity for the Respondent to submit a written brief. Together, these elements may create the perception that the process is weighted in one direction at critical stages.

An audit should therefore examine whether greater structural separation of functions, such as clearer distinctions between investigative roles, recommendation development, and adjudicative decision-making, would enhance both fairness and public confidence. Many administrative systems employ such separations precisely to avoid the risks identified here. Evaluating whether

similar safeguards are appropriate in this context would be a prudent step in strengthening the integrity of the process.

F. Access to Process Rights

22. Full hearings may be cost-prohibitive for many educators.

One attorney estimated that a hearing could cost tens of thousands of dollars in attorney time, depending on its complexity. Even if that figure varies, the broader point stands: a formal right to a hearing may be inaccessible for many educators. A right that exists on paper but cannot be reasonably exercised is a weakened protection.

23. Consent-to-discipline outcomes may not always reflect genuinely voluntary agreement.

Where the alternatives are a long-flagged investigation, substantial expense, delayed employability, and emotional exhaustion, it is fair to question how voluntary a 'consent' truly is. Again, this does not prove coercion in every case. It does indicate a structural pressure that should be examined.

24. Educators do not directly address the final decision-makers except through more burdensome procedural avenues.

Several witnesses said this contributes significantly to the sense of unfairness. An audit should examine whether current opportunities to be heard are adequate in light of the seriousness of the interests at stake and the degree of Board discretion at the final stage.

G. Conflicts, Neutrality, and Internal Safeguards

25. The absence of formalized recusal procedures weakens visible assurance of neutrality.

Neutral decision-makers are a central component of due process. Informal, unwritten conflict management may sometimes work in practice, but it is not an adequate substitute for clear written standards and consistent documentation.

26. Privacy and confidentiality safeguards also appeared underdeveloped in formal written policy.

Participants defended the culture of confidentiality, and there was testimony that files are handled with care. But a culture of seriousness is not the same as a clearly auditable system of written safeguards. Where professional licensure and sensitive allegations are involved, informality is not enough.

H. Data, Auditability, and Systemic Fairness

27. The system presently does not generate the accessible data necessary to verify fairness and consistency in real time.

An additional concern identified throughout the review is the apparent reliance on an antiquated, fragmented data retrieval system, resulting in prolonged delays even for relatively straightforward data requests. Staff must rely on information spread across multiple systems, spreadsheets, agendas, and files, requiring manual compilation to produce meaningful results. This lack of modern, integrated data infrastructure not only limits transparency and accountability but also impairs the system's ability to self-monitor for consistency, identify trends, and respond efficiently to policy questions.

From a due process standpoint, the inability to quickly access and analyze core data makes it difficult to verify whether similarly situated educators are treated alike, whether delays are systemic or isolated, and whether disciplinary outcomes are applied consistently across the state. Modernizing data systems is therefore not simply an administrative improvement; it is a necessary component of a fair, auditable, and reliable process that serves both students and educators.

28. Referral-source disparities remain insufficiently explained and insufficiently measurable.

Information provided to the Committee suggested that while 80% of LEA-originated complaints move to the investigative stage, only 20% of those initiated by parents and teachers are ever investigated. There may be legitimate explanations for that disparity. The problem is that the current recordkeeping practices do not allow those explanations to be tested quickly and confidently.

29. Inconsistent LEA reporting practices may distort the statewide picture.

Stakeholders testified that LEAs differ in whether they screen parent complaints, how they classify them, how much detail they provide, and when they forward them. That means statewide data may reflect local reporting habits as much as actual misconduct patterns. Without standardized intake architecture, comparisons may be misleading.

30. Lack of structured data also impedes student protection.

This point is critical. A fair process is not only for educators. If the system cannot easily identify recurring problem patterns, district outliers, administrator failures to report, or complaint classes that reveal gaps in training, then students are not as protected as they should be either. Better data protects everyone.

I. Retaliation, Reporting, and Suppressed Information

31. Fear of retaliation may discourage educators from reporting serious misconduct.

A current UPPAC member testified that educators frequently fear retaliation if they report colleagues or administrators. She stated that many educators she consulted had either refrained from reporting, experienced retaliation, or feared retaliation. If that testimony is representative, then the State may not be receiving a full and honest picture of misconduct in schools.

32. Weak practical whistleblower protections may undermine both fairness and student safety.

Late in the meeting, it was acknowledged that statutory whistleblower protections may technically apply, but may be difficult to use effectively. A system in which front-line educators reasonably fear retaliation is a system in which serious misconduct may remain hidden longer than it should.

Conclusion

Taken together, these findings do not suggest a lack of dedication or professionalism among those administering the system. Rather, they identify structural and procedural gaps that, if addressed, would strengthen fairness, transparency, and public confidence.

The issues identified warrant careful legislative and administrative review to ensure that Utah's educator licensing and discipline system reflects both the highest standards of due process and the Board's commitment to protecting students and supporting educators.