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MEMORANDUM

TO: Members, Utah State Board of Education

FROM: Brad C. Smith
Chief Executive Officer

DATE: May 7-8, 2015

ACTION: Utah Professional Practices Advisory Commission (UPPAC) Rules
R686-100 through R686-105

Background:

H.B. 345S2 *Educator Abuse Policy* (2015 Legislative Session) changed rulemaking authority from UPPAC to the Board. New Board rules (R277) regarding UPPAC duties and responsibilities are proposed for consideration by the Board. It is therefore proposed that the Board consider repealing the following UPPAC rules:

- R686-100 *Utah Professional Practices Advisory Commission (UPPAC), Rules of Procedure: Notification to Educators, Complaints and Final Disciplinary Actions*
- R686-101 *UPPAC Hearing Procedures and Reports*
- R686-102 *Request for Licensure Reinstatement and Reinstatement Procedures*
- R686-103 *Utah Professional Practices Advisory Commission Review of License Due to Background Check Offenses*
- R686-104 *Alcohol Related Offenses*
- R686-105 *Drug Related Offenses*

Key Points:

Repeal all UPPAC rules (R686).

Anticipated Action:

It is proposed that the Law and Licensing Committee consider repealing R686-100, R686-101, R686-102, R686-103, R686-104, and R686-105 on first reading and, if approved by the Committee, the Board consider approving the rules on second reading.

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~~[R686. Professional Practices Advisory Commission, Administration.
R686-101. UPPAC Hearing Procedures and Reports.~~

~~R686-101-1. Definitions.~~

~~A. "Administrative hearing" means a formal adjudicative proceeding consistent with 53A-6-601. The Utah State Board of Education and Utah State Office of Education licensing process is not governed by the Utah Administrative Procedures Act, Title 63G, Chapter 4.~~

~~B. "Answer" means a written response to a complaint filed by USOE alleging educator misconduct. An answer must be filed within 30 days of receipt of a complaint. Failure to file an answer to a complaint shall result in a default, consistent with R686-100-5E.~~

~~C. "Board" means the Utah State Board of Education.~~

~~D. "Complaint" means a written allegation or charge against an educator filed by USOE against the educator.~~

~~E. "Complainant" means the Utah State Office of Education.~~

~~F. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file owned and maintained on all licensed Utah educators. The file includes information such as:~~

~~(1) personal directory information;~~

~~(2) educational background;~~

~~(3) endorsements;~~

~~(4) employment history; and~~

~~(5) a record of disciplinary action taken against the educator's license.~~

~~G. "Days": in calculating any period of time prescribed or allowed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included; the last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. Saturdays, Sundays and legal holidays shall not be included in calculating the period of time if the period prescribed or allowed is less than seven days, but shall be included in calculating periods of seven or more days.~~

~~H. "Educator" means a person who currently holds a license, held a license at the time of an alleged offense, is an applicant for a license, or is a person in training to obtain a license.~~

~~I. "Educator paper licensing file" means the file maintained securely by UPPAC on an educator. The file is opened following UPPAC's direction to investigate alleged misconduct. The file contains the original notification of misconduct, subsequent correspondence, the investigative report, and the final disposition of the case.~~

~~J. "Executive Secretary" means an employee of the Utah State Office of Education who is appointed by the State Superintendent of Public Instruction to serve as the executive officer, and a non-voting member, of UPPAC.~~

~~K. "Final action" means any action by UPPAC or the Board which~~

~~concludes an investigation of an allegation of misconduct against a licensed educator.~~

~~L. "Hearing" means an administrative proceeding held pursuant to Section 53A-6-601, is a formal adjudication in which allegations made in a complaint are examined before a hearing officer and UPPAC hearing panel, where each party has the opportunity to present witnesses and evidence relevant to the complaint and respond to witnesses or evidence presented by the other party. At the conclusion of a hearing, the hearing officer, after consulting with members of the UPPAC hearing panel, prepares a hearing report and submits it to the Executive Secretary.~~

~~M. "Hearing officer" means a person who is experienced in matters relating to administrative procedures, education and education law and is either a member of the Utah State Bar Association or a person not a member of the bar who has received specialized training in conducting administrative hearings, and is appointed by the Executive Secretary at the request of UPPAC to manage the proceedings of a hearing. The hearing officer may not be an acting member of UPPAC. The hearing officer has broad authority to regulate the course of the hearing and dispose of procedural requests but shall not have a vote as to the recommended disposition of a case.~~

~~N. "Hearing panel" means a hearing officer and three or more members of UPPAC agreed upon by UPPAC to assist the hearing officer in conjunction with the hearing panel in conducting a hearing and preparing a hearing report.~~

~~O. "Hearing report" means a report prepared by the hearing officer consistent with the recommendations of the hearing panel at the conclusion of a hearing. The report includes a recommended disposition, detailed findings of fact and conclusions of law, based upon the evidence presented in the hearing, relevant precedent, and applicable law and rule.~~

~~P. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.~~

~~Q. "License" means a teaching or administrative credential, including endorsements, which is issued by a state to signify authorization for the person holding the license to provide professional services in the state's public schools.~~

~~R. "Party" means the complainant or the respondent.~~

~~S. "Prosecutor" means the attorney designated by the USOE to represent the complainant and present evidence in support of the complaint. The prosecutor may also be the investigator, but does not have to be.~~

~~T. "Recommended disposition" means a recommendation provided by a UPPAC investigator for resolution of an allegation.~~

~~U. "Revocation" means a permanent invalidation of a Utah educator license consistent with R277-517.~~

~~V. "Respondent" means the party against whom a complaint is filed or an investigation is undertaken.~~

~~W. "Stipulated agreement" means an agreement between a respondent/educator and the USOE/Board or between a respondent/educator and UPPAC under which disciplinary action against an educator's license status shall be taken, in lieu of a hearing. At any time after an investigative letter has been sent, a stipulated agreement may be negotiated between the parties and becomes binding when approved by the Board, if necessary, or UPPAC if Board approval is not necessary.~~

~~X. "Suspension" means an invalidation of a Utah educator license. A suspension may include specific conditions that an educator shall satisfy and may identify a minimum time period that shall elapse before the educator can request a reinstatement hearing before UPPAC.~~

~~Y. "Utah Professional Practices Advisory Commission (UPPAC)" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, as established under Section 53A-6-301.~~

~~Z. "UPPAC disciplinary letters or action" means letters sent or action taken by UPPAC informing the educator of licensing disciplinary action not rising to the level of license suspension. Disciplinary letters and action include the following:~~

~~(1) Letter of admonishment is a letter sent by UPPAC to the educator cautioning the educator to avoid or take specific actions in the future;~~

~~(2) Letter of warning is a letter sent by UPPAC to an educator for misconduct that was inappropriate or unethical that does not warrant longer term or more serious discipline;~~

~~(3) Letter of reprimand is a letter sent by UPPAC to an educator for misconduct that was longer term or more seriously unethical or inappropriate than conduct warranting a letter of warning, but not warranting more serious discipline; a letter of reprimand may provide specific directives to the educator as a condition for removal of the letter, and shall appear as a notation on the educator's CACTUS file;~~

~~(4) Probation is an action directed by UPPAC that involves some monitoring or supervision for an indefinite or designated time period usually accompanied by a disciplinary letter. In this time period, the educator may be subject to additional monitoring by an identified person or entity and the educator may be asked to satisfy certain conditions in order to have the probation lifted. This discipline usually, but not always, is accompanied by a letter of warning or a letter of reprimand and shall appear as a notation on the educator's CACTUS file. Unless otherwise specified, the probationary period is at least two years and must be terminated through a formal petition by respondent.~~

~~AA. "USOE" means the Utah State Office of Education.~~

~~R686-101-2. Authority and Purpose.~~

~~A. This rule is authorized by Section 53A-6-306(1)(a) which directs UPPAC to adopt rules to carry out its responsibilities~~

~~under the law.~~

~~B. The purpose of this rule is to establish procedures regarding UPPAC hearings and hearing reports.~~

~~**R686-101-3. Scheduling a Hearing.**~~

~~A. Scheduling the hearing: Following receipt of an answer by respondent requesting a hearing:~~

~~(1) UPPAC shall select panel members.~~

~~(2) The Executive Secretary shall appoint a hearing officer from among a list of hearing officers identified by the state procurement process and approved by UPPAC.~~

~~(3) UPPAC shall schedule the date, time, and place for the hearing.~~

~~(4) The date for the hearing shall be scheduled not less than 25 days nor more than 180 days from the date the answer is received by the Executive Secretary. The required scheduling periods may be waived by mutual written consent of the parties or by UPPAC for good cause shown.~~

~~B. Change of hearing date:~~

~~(1) A request for change of hearing date by any party shall be submitted in writing, include a statement of the reasons for the request, and be received by the Executive Secretary at least five days prior to the scheduled date of the hearing.~~

~~(2) The Executive Secretary shall determine whether the cause stated in the request is sufficient to warrant a change.~~

~~(a) If the cause is found to be sufficient, the Executive Secretary shall promptly notify all parties of the new time, date, and place for the hearing.~~

~~(b) If the cause is found to be insufficient, the Executive Secretary shall immediately notify the parties that the request has been denied.~~

~~(c) The Executive Secretary and the parties may waive the time period required for requesting a change of hearing date for compelling circumstances.~~

~~**R686-101-4. Appointment and Duties of the Hearing Officer and Hearing Panel.**~~

~~A. Hearing officer: The Executive Secretary shall appoint a hearing officer at the request of UPPAC to chair the hearing panel and conduct the hearing.~~

~~(1) The selection of hearing officers shall be on a rotating basis, to the extent practicable, from the list of available hearing officers.~~

~~(2) The selection of a hearing officer shall be made based on availability of individual hearing officers and whether any financial or personal interest or prior relationship with parties might affect the hearing officer's impartiality or otherwise constitute a conflict of interest.~~

~~(3) The Executive Secretary shall provide such information about the case as necessary to determine whether the hearing~~

~~officer has a conflict of interest and shall disqualify any hearing officer that cannot serve under the Utah Rules of Professional Conduct.~~

~~(4) Duties of a hearing officer. A hearing officer:~~

~~(a) may require the parties to submit briefs and lists of witnesses prior to the hearing;~~

~~(b) presides at the hearing and regulates the course of the proceedings;~~

~~(c) administers oaths to witnesses as follows: "Do you swear or affirm that the testimony you will give is the truth?";~~

~~(d) may take testimony, rule on questions of evidence, and ask questions of witnesses to clarify specific issues;~~

~~(e) prepares and submits a hearing report at the conclusion of the proceedings in consultation with panel members and the timelines of this rule.~~

~~B. UPPAC panel members: UPPAC shall agree upon three or more UPPAC members to serve as members of the hearing panel. As directed by UPPAC, former UPPAC members who have served on UPPAC within the three years prior to the date set for the hearing may be used as panel members. The majority of panel members shall be current UPPAC members.~~

~~(1) The selection of panel members shall be on a rotating basis to the extent practicable. However, the selection shall also accommodate the availability of panel members.~~

~~(2) If the respondent is a teacher, at least one panel member shall be a teacher. If the respondent is a non-teacher educator, at least one panel member shall be a non-teacher educator unless the respondent accepts a different configuration.~~

~~(3) Duties of UPPAC panel members include:~~

~~(a) assisting the hearing officer by providing information concerning professional standards and practices of educators in the respondent's particular field of practice and in the situations alleged;~~

~~(b) asking questions of all witnesses to clarify specific issues;~~

~~(c) reviewing all evidence and briefs, if any, presented at the hearing;~~

~~(d) assisting the hearing officer in preparing the hearing report.~~

~~(4) The panel members may receive documents or information no more than 30 minutes prior to the hearing, including the complaint and response, and a list of witnesses who shall participate in the hearing, other materials as directed by the hearing officer, or additional materials agreed to by the parties.~~

~~(5) The Executive Secretary may make an emergency substitution of a panel member for cause with the consent of the parties. The agreement should be in writing. Parties may agree to a two-member UPPAC panel in an emergency situation. If parties do not agree, the hearing shall be rescheduled.~~

~~C. Disqualification of the hearing officer or a panel member:~~

~~—— (1) Hearing officer:~~

~~—— (a) A party may seek disqualification of a hearing officer by submitting a written request for disqualification to the Executive Secretary, which request must be received not less than 15 days before a scheduled hearing. The Executive Secretary shall review the request and supporting evidence and, upon a finding that the reasons for the request are substantial and sufficient, shall appoint a new hearing officer and, if necessary, reschedule the hearing. A hearing officer may recuse himself from a hearing if, in the hearing officer's opinion, his participation would violate any of the Utah Rules of Professional Conduct consistent with the Supreme Court Rules of Professional Practice.~~

~~—— (b) If the Executive Secretary denies the request, the party requesting the disqualification shall be notified not less than ten days prior to the date of the hearing. The requesting party may submit a written appeal of the denial to the State Superintendent, which request must be received not less than five days prior to the hearing date. If the State Superintendent finds that the appeal is justified, the State Superintendent shall direct the Executive Secretary to appoint a new hearing officer and, if necessary, reschedule the hearing.~~

~~—— (c) The decision of the State Superintendent is final.~~

~~—— (d) Failure of a party to meet the time requirements of R686-101-4C(1)(b) shall result in denial of the request or appeal; if the Executive Secretary fails to meet the time requirements, the request or appeal shall be approved.~~

~~—— (2) UPPAC panel member:~~

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

~~—— (b) A party may seek disqualification of a UPPAC panel member by submitting a written request for disqualification to the hearing officer, or the Executive Secretary if there is no hearing officer; the request shall be received not less than 15 days before a scheduled hearing. The hearing officer, or the Executive Secretary, if there is no hearing officer, shall review the request and supporting evidence and, upon a finding that the reasons for the request are substantial and compelling, shall disqualify the panel member. If the disqualification leaves the hearing panel with fewer than three UPPAC panel members, UPPAC shall appoint a replacement and the Executive Secretary shall, if necessary, reschedule the hearing.~~

~~—— (c) If the request is denied, the party requesting the disqualification shall be notified not less than ten days prior to the date of the hearing. The requesting party may file a written appeal of the denial to the State Superintendent, which request shall be received not less than five days prior to the hearing~~

~~date. If the State Superintendent finds that the appeal is justified, he shall direct the hearing officer, or the Executive Secretary if there is no hearing officer, to replace the panel member.~~

~~(d) If a disqualification leaves the hearing panel with fewer than three UPPAC panel members, UPPAC shall agree upon a replacement and the Executive Secretary shall, if necessary, reschedule the hearing.~~

~~(e) The decision of the State Superintendent is final.~~

~~(f) Failure of a party to meet the time requirements of R686-101-4C(2)(c) shall result in denial of the request or appeal; if the hearing officer fails to meet the time requirements, the request or appeal shall be approved.~~

~~D. The Executive Secretary may, at the time he selects the hearing officer or panel members, select alternative hearing officers or panel members following the process for selecting those individuals. Substitution of alternative panel members requires only notice to both parties.~~

~~R686-101-5. Preliminary Instructions to Parties to a Hearing.~~

~~A. Not less than 25 days before the date of a hearing the Executive Secretary shall provide the parties with the following information:~~

~~(1) Date, time, and location of the hearing;~~

~~(2) Names and LEA affiliations of the panel members, and the name of the hearing officer;~~

~~(3) Procedures for objecting to any member of the hearing panel; and~~

~~(4) Procedures for requesting a change in the hearing date.~~

~~B. Not less than 20 days before the date of the hearing, the respondent and the complainant shall provide the following to the other party and to the hearing officer:~~

~~(1) A brief, if requested by the hearing officer, containing any procedural and evidentiary motions along with that party's position regarding the allegations. Submitted briefs shall include relevant laws, rules, and precedent;~~

~~(2) The name of the person who shall represent the party at the hearing, a list of witnesses expected to be called, a summary of the testimony which each witness is expected to present, and a summary of documentary evidence which shall be submitted.~~

~~(3) Following receipt of each party's witness list, each party may provide a list of anticipated rebuttal witnesses and evidence no later than 10 days prior to the hearing.~~

~~(4) No witness or evidence may be presented at the hearing if the opposing party has requested to be notified of such information and has not been fairly apprised at least 20 days prior to the hearing, or 10 days prior to the hearing if the witness or evidence is to be used for rebuttal purposes. The timeliness requirement may be waived by agreement of the parties or by the hearing officer upon a showing of good cause or by the hearing officer's~~

determination that no prejudice has occurred to the opposing party. This restriction shall not apply to rebuttal witnesses whose testimony cannot reasonably be anticipated before the time of the hearing.

~~C. Not less than 10 days before the date of the hearing, the respondent and the complainant shall provide to the other party and the hearing officer the documents referenced on the summary of documentary evidence previously provided, to be entered as evidence in the hearing.~~

~~D. If a party fails to comply in good faith with a directive of the hearing officer, including time requirements, the hearing officer may prohibit introduction of the testimony or evidence or take other steps reasonably appropriate under the circumstances including, in extreme cases of noncompliance, entry of a default against the offending party. Nothing in this Section prevents the use of rebuttal witnesses.~~

~~E. Parties shall provide materials to the hearing officer, panel members and UPPAC as directed by the hearing officer.~~

~~R686-101-6. Hearing Parties' Representation.~~

~~A. Complainant: The complainant shall be represented by a person appointed by the USOE prosecutor.~~

~~B. Respondent: A respondent may represent himself or be represented, at his own cost, by another person.~~

~~C. The informant has no right to individual representation at the hearing or to be present or heard at the hearing unless called as a witness.~~

~~D. The Executive Secretary shall receive timely notice in writing of representation by anyone other than the respondent.~~

~~R686-101-7. Discovery Prior to a Hearing.~~

~~A. Discovery is permitted to the extent necessary to obtain relevant information necessary to support claims or defenses, as determined by the appointed hearing officer.~~

~~B. Discovery, especially burdensome or unduly legalistic discovery, may not be used to delay a hearing.~~

~~C. Discovery may be limited by the hearing officer at his discretion or upon a motion by either party. The hearing officer rules on all discovery requests and motions.~~

~~D. Subpoenas and other orders to secure the attendance of witnesses or the production of evidence shall be issued pursuant to Section 53A-6-306(2)(c) if requested by either party at least five working days prior to the hearing.~~

~~E. No expert witness report or testimony may be presented at the hearing unless the requirements of R686-101-11 have been met.~~

~~R686-101-8. Burden and Standard of Proof for UPPAC Proceedings.~~

~~A. In matters other than those involving applicants for licensing, and excepting the presumptions under R686-101-12F, the complainant shall have the burden of proving that action against~~

~~the license is appropriate.~~

~~— B. An applicant for licensing has the burden of proving that licensing is appropriate.~~

~~— C. Standard of proof: The standard of proof in all UPPAC hearings is a preponderance of the evidence.~~

~~— D. Evidence: The Utah Rules of Evidence are not applicable to UPPAC proceedings. The criteria to decide evidentiary questions shall be:~~

~~— (1) reasonable reliability of the offered evidence;~~

~~— (2) fairness to both parties; and~~

~~— (3) usefulness to UPPAC in reaching a decision.~~

~~— E. The hearing officer has the sole responsibility to determine the application of the hearing rules and the admissibility of evidence.~~

~~R686-101-9. Department.~~

~~— A. Parties, their representatives, witnesses, and other persons present during a hearing shall conduct themselves in an appropriate manner during hearings, giving due respect to members of the hearing panel and complying with the instructions of the hearing officer. The hearing officer may exclude persons from the hearing room who fail to conduct themselves in an appropriate manner and may, in response to extreme instances of noncompliance, disallow testimony or declare an offending party to be in default.~~

~~— B. Parties, attorneys for parties, or other participants in the professional practices investigation and hearing process shall not harass, intimidate or pressure witnesses or other hearing participants, nor shall they direct others to harass, intimidate or pressure witnesses or participants.~~

~~R686-101-10. Hearing Record.~~

~~— A. The hearing shall be recorded at UPPAC's expense, and the recording shall become part of the permanent case record, unless otherwise agreed upon by all parties.~~

~~— B. Individual parties may, at their own expense, make recordings or transcripts of the proceedings with notice to the Executive Secretary.~~

~~— C. If an exhibit is admitted as evidence, the record shall reflect the contents of the exhibit.~~

~~— D. All evidence and statements presented at a hearing shall become part of the permanent case file and shall not be removed except by direction of the hearing officer or order of the Board.~~

~~— E. The USOE record of the proceedings may be reviewed upon request of a party under supervision of the Executive Secretary and only at the USOE.~~

~~R686-101-11. Expert Witnesses in UPPAC Proceedings.~~

~~— A. A party may call an expert witness at its own expense. Notice of intent of a party to call an expert witness, the identity and qualifications of such expert witness and the purpose for which~~

~~the expert witness is to be called shall be provided to the hearing officer and the opposing party at least 15 days prior to the hearing date.~~

~~— B. The hearing officer may appoint any expert witness agreed upon by the parties or of the hearing officer's own selection. An expert so appointed shall be informed of his duties by the hearing officer in writing, a copy of which shall become part of the permanent case file. The expert shall advise the hearing panel and the parties of his findings and may thereafter be called to testify by the hearing panel or by any party. He may be examined by each party or by any of the hearing panel members.~~

~~— C. Defects in the qualifications of expert witnesses, once a minimum threshold of expertise is established, go to the weight to be given the testimony and not to its admissibility.~~

~~— D. Experts who are members of the complainant's staff or an LEA staff may testify and have their testimony considered as part of the record along with that of any other expert.~~

~~— E. Any report of an expert witness which a party intends to introduce into evidence shall be provided to the opposing party at least 15 days prior to the hearing date.~~

~~— F. The hearing officer may allow testimony by expert witnesses by mutual agreement of the parties or if the hearing officer allows the testimony.~~

~~R686-101-12. Evidence and Participation in UPPAC Proceedings.~~

~~— A. The hearing officer may not exclude evidence solely because it is hearsay.~~

~~— B. Each party has the right to call witnesses, present evidence, argue, respond, cross-examine witnesses who testify in person at the hearing, and submit rebuttal evidence.~~

~~— C. All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.~~

~~— D. If a case involves allegations of child abuse or of a sexual offense against a child, either party or a member of the hearing panel, the hearing officer may request that a minor be allowed to testify outside of the respondent's presence. If the hearing officer determines that the minor would suffer serious emotional or mental harm or that the minor's testimony in the presence of the respondent would be unreliable, the minor's testimony may be admitted in one of the following ways:~~

~~— (1) An oral statement of a victim or witness younger than 18 years of age which is recorded prior to the filing of a complaint shall be admissible as evidence in a hearing regarding the offense if:~~

~~— (a) No attorney for either party is in the minor's presence when the statement is recorded;~~

~~— (b) The recording is visual and aural and is recorded;~~

~~— (c) The recording equipment is capable of making an accurate recording, the operator of the equipment is competent, and the~~

~~recording is accurate and has not been altered; and~~

~~— (d) Each voice in the recording is identified.~~

~~— (2) The testimony of any witness or victim younger than 18 years of age may be taken in a room other than the hearing room, and be transmitted by closed circuit equipment to another room where it can be viewed by the respondent. All of the following conditions shall be observed:~~

~~— (a) Only the hearing panel members, attorneys for each party, persons necessary to operate equipment, and a person approved by the hearing officer whose presence contributes to the welfare and emotional well-being of the minor may be with the minor during the testimony.~~

~~— (b) The respondent may not be present during the minor's testimony;~~

~~— (c) The hearing officer shall ensure that the minor cannot hear or see the respondent;~~

~~— (d) The respondent shall be permitted to observe and hear, but not communicate with the minor; and~~

~~— (e) Only hearing panel members, the hearing officer and the attorneys may question the minor.~~

~~— (3) If the hearing officer determines that the testimony of a minor shall be taken consistent with R686-101-12D, the child may not be required to testify in any proceeding where the recorded testimony is used.~~

~~— E. On his own motion or upon objection by a party, the hearing officer:~~

~~— (1) May exclude evidence that the hearing officer determines to be irrelevant, immaterial, or unduly repetitious;~~

~~— (2) Shall exclude evidence that is privileged under law applicable to administrative proceedings in Utah unless waived;~~

~~— (3) May receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent portions of the original document;~~

~~— (4) May take official notice of any facts that could be judicially noticed under judicial or administrative laws of Utah, or from the record of other proceedings before the agency.~~

~~— F. Presumptions:~~

~~— (1) A rebuttable evidentiary presumption exists that a person has committed a sexual offense against a minor if the person has:~~

~~— (a) Been found, pursuant to a criminal, civil, or administrative action to have committed a sexual offense against a minor;~~

~~— (b) Failed to defend himself against such a charge when given a reasonable opportunity to do so; or~~

~~— (c) Voluntarily surrendered a license or allowed a license to lapse in the face of a charge of having committed a sexual offense against a minor.~~

~~— (2) A rebuttable evidentiary presumption exists that a person is unfit to serve as an educator if the person has been found pursuant to a criminal, civil, or administrative action to have~~

~~exhibited behavior evidencing unfitness for duty, including immoral, unprofessional, or incompetent conduct, or other violation of standards of ethical conduct, performance, or professional competence. Evidence of such behavior may include:~~

- ~~— (a) conviction of a felony;~~
- ~~— (b) a felony charge and subsequent conviction for a lesser related charge pursuant to a plea bargain or plea in abeyance;~~
- ~~— (c) an investigation of an educator's license, certificate or authorization in another state; or~~
- ~~— (d) the expiration, surrender, suspension, revocation, or invalidation for any reasons of an educator license.~~

~~R686-101-13. Hearing Report.~~

~~A. Within 20 days after the hearing, or within 20 days after the deadline imposed for the filing of any post-hearing materials permitted by the hearing officer, the hearing officer shall sign and issue a hearing report consistent with the recommendations of the panel that includes:~~

~~— (1) A detailed findings of fact and conclusions of law based upon the evidence of record or on facts officially noted. Findings of fact may not be based solely upon hearsay, and conclusions shall be based upon competent evidence;~~

~~— (2) A statement of relevant precedent, if available;~~

~~— (3) A statement of applicable law and rule;~~

~~— (4) A recommended disposition of UPPAC panel members which shall be one or an appropriate combination of the following:~~

~~— (a) Dismissal of the complaint: The hearing report shall indicate that the complaint should be dismissed and that no further action should be taken.~~

~~— (b) Letter of admonishment: the hearing report shall indicate that respondent's conduct is of concern and shall direct the Executive Secretary to write a letter of admonishment, consistent with R277-517, to the respondent.~~

~~— (c) Letter of warning: the hearing report shall indicate that respondent's conduct is deemed unprofessional and shall direct the Executive Secretary to write a letter of warning, consistent with R277-517, to the respondent.~~

~~— (d) Letter of reprimand: the hearing report shall indicate that respondent's conduct is deemed unprofessional and shall direct the Executive Secretary to write a letter of reprimand, consistent with R277-517, to the respondent.~~

~~— (e) Probation: The hearing report shall determine whether the respondent's conduct was unprofessional, that the respondent shall not lose his license, but that a probationary period is appropriate. If the report recommends probation, the report shall designate:~~

~~— (i) it is the respondent's responsibility to petition UPPAC for removal of probation and letter of reprimand from the respondent's active licensing and CACTUS files;~~

~~— (ii) a probationary time period or specifically designate an~~

~~indefinite period;~~

~~— (iii) conditions that can be monitored;~~

~~— (iv) if recommended by the panel, a person or entity to monitor a respondent's probation;~~

~~— (v) a statement providing for costs of probation;~~

~~— (vi) whether or not the respondent may work in any capacity in public education during the probationary period.~~

~~— (vii) a probation may be imposed substantially in the form of a plea in abeyance. The respondent's penalty is stayed subject to the satisfactory completion of probationary conditions. The decision shall provide for appropriate or presumed discipline should the probationary conditions not be fully satisfied.~~

~~— (f) Suspension: The hearing report shall recommend to the Board that the license of the respondent be suspended for a specific or indefinite period of time and until specified reinstatement conditions have been met before respondent may petition for reinstatement of his license.~~

~~— (g) Revocation: The hearing report may recommend to the State Board of Education that the license of the respondent be revoked.~~

~~— (5) Notice of the right to appeal; and~~

~~— (6) Time limits applicable to appeal.~~

~~— B. Processing the hearing report:~~

~~— (1) The hearing officer shall circulate the draft report to hearing panel members prior to the 20 day completion deadline of the hearing report.~~

~~— (2) Hearing panel members shall notify the hearing officer of any changes to the report as soon as possible after receiving the report and prior to the 20 day completion deadline of the hearing report.~~

~~— (3) The hearing officer shall file the completed hearing report with the Executive Secretary, who shall review the report with UPPAC.~~

~~— (4) The Executive Secretary may participate in UPPAC's deliberation as a resource to UPPAC in explaining the hearing report and answering any procedural questions raised by UPPAC members.~~

~~— (5) The hearing officer may confer with the Executive Secretary or the panel members or both while preparing the hearing report. The hearing officer may request the Executive Secretary to confer with the hearing officer and panel following the hearing.~~

~~— (6) The Executive Secretary may return a hearing report to a hearing officer if the Report is incomplete, unclear, or unreadable, or missing essential components or information.~~

~~— (7) If UPPAC finds that there have not been significant procedural errors, that recommendations are based upon a reasonable interpretation of the evidence presented at the hearing, and that all issues explained in the hearing report are adequately addressed in the conclusions of the report, UPPAC shall vote to uphold the hearing officer's and panel's report and do one of the following:~~

~~_____ (a) If the recommendation is for final action to be taken by UPPAC, UPPAC shall direct the Executive Secretary to prepare a corresponding final order and provide all parties with a copy of the order and hearing report. A copy of the order and the hearing report shall be placed in and become part of the permanent case file. The order shall be effective upon approval by UPPAC.~~

~~_____ (b) If the recommendation is for final action to be taken by the Board, the Executive Secretary shall forward a copy of the hearing report to the Board for its further action. A copy of the hearing report shall also be placed in and become part of the permanent case file.~~

~~_____ (8) If UPPAC determines that:~~

~~_____ (a) the hearing process had procedural errors;~~

~~_____ (b) the hearing officer's report is not based upon a reasonable interpretation of the evidence presented at the hearing;~~

~~_____ (c) that the conclusions and findings of the hearing report do not provide adequate guidance to the educator; or~~

~~_____ (d) that the findings or conclusions of the hearing report do not adequately address the evidence as outlined in the hearing report, the Board or UPPAC may:~~

~~_____ (i) direct the Executive Secretary to schedule the matter for rehearing before a hearing officer and panel; or~~

~~_____ (ii) direct the Executive Secretary to amend the hearing report to reflect the UPPAC decision.~~

~~_____ C. Consistent with Section 63G-2-301(2)(c), the final administrative disposition of all administrative proceedings of UPPAC contained in the recommended disposition section of the hearing report shall be public.~~

~~_____ D. A respondent's failure to comply with the terms of a final disposition that includes a probation or suspension of the respondent's license may result in additional discipline against the educator license.~~

~~_____ E. If a hearing officer fails to satisfy the responsibilities under this rule, UPPAC may:~~

~~_____ (1) notify the Utah State Bar of the failure;~~

~~_____ (2) reduce the hearing officer's compensation consistent with the failure;~~

~~_____ (3) take timely action to avoid disadvantaging either party; and~~

~~_____ (4) preclude the hearing officer from further employment by the Board for UPPAC purposes.~~

~~_____ F. Deadlines within this Section may be waived by the Executive Secretary or UPPAC for good cause shown.~~

~~_____ G. All criteria of letters of warning and reprimand, probation, suspension and revocation shall also apply to the comparable sections of the final hearing reports.~~

~~R686-101-14. Default.~~

~~_____ A. The hearing officer may prepare an order of default in a hearing report including a statement of the grounds for default and~~

~~the recommended disposition if:~~

~~—— (1) the respondent fails to attend or participate in a properly scheduled hearing after receiving proper notice. The hearing officer may determine that the respondent has failed to attend a properly scheduled hearing if the respondent has not appeared within 30 minutes of the appointed time for the hearing to begin, unless the respondent shows good cause for failing to appear in a timely manner;~~

~~—— (2) the respondent or the respondent's representative commits misconduct during the course of the hearing process.~~

~~—— B. The recommendation of default may be executed by the Executive Secretary following all applicable time periods, without further action by UPPAC.~~

~~—— C. Except as provided in R686-101, a default judgment shall result in a recommendation to the Board for a suspension of no less than five years.~~

~~—— D. A default judgment shall result in a recommendation to the Board for a revocation if the alleged misconduct is conduct identified in 53A-6-501(2).~~

~~**R686-101-15. Appeal.**~~

~~—— A. UPPAC shall notify a respondent of a UPPAC recommendation for a suspension of two years or more or a revocation immediately following the UPPAC meeting finalizing the UPPAC recommendation.~~

~~—— B. Either party may appeal a final recommendation of UPPAC for a suspension of the respondent's license for two or more years or a revocation to the State Superintendent. A request for review by the State Superintendent shall follow the procedures in R277-514-3 and be submitted in writing within 15 days from the date that UPPAC sends written notice to the parties of its recommendation.~~

~~—— C. Either party may appeal the Superintendent's decision to the Board following the procedures in R277-514-4.~~

~~—— D. A request for appeal to the State Superintendent or the Board shall include:~~

~~—— (1) name, position, and address of appellant;~~

~~—— (2) issue(s) being appealed; and~~

~~—— (3) signature of appellant.~~

~~**R686-102-16. Temporary Suspension of License Pending a Hearing.**~~

~~—— A. If the Executive Secretary determines, after affording respondent an opportunity to discuss allegations of misconduct, that reasonable cause exists to believe that the charges will be proven to be correct and that permitting the respondent to retain his license prior to hearing would create unnecessary and unreasonable risks for children, then the Executive Secretary may order immediate suspension of the Respondent's license pending final Board action.~~

~~—— B. The formal UPPAC recommendation and evidence of the temporary suspension may not be introduced at the hearing.~~

~~C. Notice of the temporary suspension shall be provided to other states under R277-514.~~

~~**R686-101-17. Remedies for Individuals Beyond UPPAC Actions.**~~

~~Despite UPPAC or Board actions, informants or other injured parties who feel that their rights have been compromised, impaired or not addressed by the provisions of this rule, may appeal directly to district court.~~

~~**KEY: hearings, reports**~~

~~**Date of Enactment or Last Substantive Amendment: November 7, 2013**~~

~~**Authorizing, and Implemented or Interpreted Law: 53A-6-306(1)(a)]**~~

~~[R686. Professional Practices Advisory Commission, Administration.
R686-102. Request for Licensure Reinstatement and Reinstatement
Procedures.~~

~~R686-102-1. Definitions.~~

~~A. "Administrative hearing" means a formal adjudicative proceeding consistent with 53A-6-601. The Utah State Board of Education and Utah State Office of Education licensing process is not governed by the Utah Administrative Procedures Act, Title 63G, Chapter 4.~~

~~B. "Allegation of misconduct" means a written or oral report alleging that an educator has engaged in unprofessional or criminal conduct; is unfit for duty; has lost his license in another state due to revocation or suspension, or through voluntary surrender or lapse of a license in the face of a claim of misconduct; or has committed some other violation of standards of ethical conduct, performance, or professional competence as provided in R277-515.~~

~~C. "Board" means the Utah State Board of Education.~~

~~D. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file owned and maintained on all licensed Utah educators. The file includes information such as:~~

~~(1) personal directory information;~~

~~(2) educational background;~~

~~(3) endorsements;~~

~~(4) employment history; and~~

~~(5) a record of disciplinary action taken against the educator's license.~~

~~E. "Executive Secretary" means an employee of the Utah State Office of Education who is appointed by the State Superintendent of Public Instruction to serve as the executive officer, and a non-voting member, of UPPAC.~~

~~F. "Hearing" means an administrative proceeding held pursuant to Section 53A-6-601, is a formal adjudication in which allegations made in a complaint are examined before a hearing officer and UPPAC hearing panel, where each party has the opportunity to present witnesses and evidence relevant to the complaint and respond to witnesses or evidence presented by the other party. At the conclusion of a hearing, the hearing officer, after consulting with members of the UPPAC hearing panel, prepares a hearing report and submits it to the Executive Secretary.~~

~~G. "Hearing officer" means a person who is experienced in matters relating to administrative procedures, education and education law and is either a member of the Utah State Bar Association or a person not a member of the bar who has received specialized training in conducting administrative hearings, and is appointed by the Executive Secretary at the request of UPPAC to manage the proceedings of a hearing. The hearing officer may not be an acting member of UPPAC. The hearing officer has broad authority to regulate the course of the hearing and dispose of procedural requests but shall not have a vote as to the recommended~~

~~disposition of a case.~~

~~H. "Hearing panel" means a hearing officer and three or more members of UPPAC agreed upon by UPPAC to assist the hearing officer in conjunction with the hearing panel in conducting a hearing and preparing a hearing report.~~

~~I. "Hearing report" means a report prepared by the hearing officer consistent with the recommendations of the hearing panel at the conclusion of a hearing. The report includes a recommended disposition, detailed findings of fact and conclusions of law, based upon the evidence presented in the hearing, relevant precedent, and applicable law and rule.~~

~~J. "License" means a teaching or administrative credential, including endorsements, which is issued by a state to signify authorization for the person holding the license to provide professional services in the state's public schools.~~

~~K. "Petitioner" means the individual seeking an educator license following denial of a license or seeking reinstatement following license suspension or in the event of compelling circumstances, following revocation.~~

~~L. "Prosecutor" means the attorney designated by the USOE to represent the complainant and present evidence in support of the complaint. The prosecutor may also be the investigator, but does not have to be.~~

~~M. "Suspension" means an invalidation of a Utah educator license. A suspension may include specific conditions that an educator shall satisfy and may identify a minimum time period that shall elapse before the educator can request a reinstatement hearing before UPPAC.~~

~~N. "Utah Professional Practices Advisory Commission (UPPAC)" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, as established under Section 53A-6-301.~~

~~O. "USOE" means the Utah State Office of Education.~~

~~R686-102-2. Authority and Purpose.~~

~~A. This rule is authorized by Section 53A-6-306(1)(a) directing UPPAC to adopt rules to carry out its responsibilities under the law.~~

~~B. The purpose of this rule is to establish procedures regarding educator license reinstatement.~~

~~R686-102-3. Application for Licensing Following Denial or Loss of License.~~

~~A. An individual who has been denied licensing or lost his license through suspension, or through surrender of a license or allowing a license to lapse in the face of an allegation of misconduct, may request review to consider reinstatement of a license. The request for review shall be in writing and addressed to the UPPAC Executive Secretary at the USOE mailing address, and shall have the following information:~~

~~_____ (1) name and address of the individual requesting review;~~

~~_____ (2) action being requested;~~

~~_____ (3) specific evidence and documentation of compliance with terms and conditions of any remedial or disciplinary requirements or recommendations from UPPAC or the Board;~~

~~_____ (4) reason(s) that individual seeks reinstatement;~~

~~_____ (5) signature of person requesting review.~~

~~_____ B. The Executive Secretary shall review the request with UPPAC.~~

~~_____ (1) If UPPAC determines that the request is incomplete or invalid, the person requesting reinstatement shall be notified of the denial.~~

~~_____ (2) If UPPAC determines that the request is complete, timely and appropriate, a hearing shall be scheduled and held as provided under Section R686-102-4.~~

~~_____ C. Burden of Proof: The burden of proof for recommending or granting reinstatement of a license shall fall on the individual seeking the reinstatement.~~

~~_____ (1) Individuals requesting reinstatement of a suspended license shall:~~

~~_____ (a) show sufficient evidence of compliance with any conditions imposed in the past disciplinary action;~~

~~_____ (b) provide sufficient evidence to the reinstatement hearing panel that the educator shall not engage in recurrences of the actions that gave rise to the suspension and that reinstatement is appropriate;~~

~~_____ (c) undergo a criminal background check consistent with Utah law and R277-517; and~~

~~_____ (d) provide materials for review by the hearing panel that demonstrate petitioner's compliance with directives from UPPAC or the Board found in petitioner's original stipulated agreement or hearing report.~~

~~_____ (2) Individuals requesting licensing following denial shall show sufficient evidence of completion of a rehabilitation or remediation program, if applicable, when requesting reinstatement.~~

~~_____ D. An individual whose license has been suspended or revoked in another state shall seek reinstatement in the other state prior to approval of a request for a reinstatement hearing.~~

~~**R686-102-4. Reinstatement Hearing Procedures.**~~

~~_____ A. The individual seeking reinstatement of his license shall be the petitioner.~~

~~_____ B. A hearing officer shall preside over the hearing and shall rule on all procedural issues as they arise.~~

~~_____ C. A hearing panel, made up of three members of UPPAC, shall hear the evidence and along with the prosecutor and hearing officer, question the petitioner regarding the appropriateness of reinstatement.~~

~~_____ D. A petitioner may be represented by counsel and may present evidence and witnesses.~~

~~E. Presentation of evidence and witnesses by either party shall be consistent with R686-101.~~

~~F. The hearing officer shall direct one or both parties to explain the background of a case to provide necessary information about the initial misconduct and subsequent UPPAC and Board action to panel members at the beginning of the hearing.~~

~~G. The petitioner shall present documentation or evidence that supports reinstatement.~~

~~H. The State, represented by the UPPAC prosecutor, shall present any evidence or documentation that explains and supports the State's recommendation in the matter.~~

~~I. Other evidence or witnesses may be presented by either party and shall be presented consistent with R686-101.~~

~~J. The petitioner shall:~~

~~(1) focus on the petitioner's actions and rehabilitative efforts and performance following license denial or suspension;~~

~~(2) explain item by item how each condition of the hearing report or stipulated agreement was satisfied;~~

~~(3) provide documentation in the form of evaluations, reports, or plans, as directed by the hearing report or stipulated agreement, of satisfaction of all required and outlined conditions;~~

~~(4) be prepared to completely and candidly respond to the UPPAC prosecutor and hearing panel questions about the misconduct that caused the license suspension, subsequent rehabilitation activities, any counseling or therapy related to the original misconduct, and work and professional actions and behavior between the suspension and reinstatement request;~~

~~(5) present and be prepared to question witnesses (including counselors, current employers, support group members) at the hearing who can provide substantive corroboration of rehabilitation or current professional fitness to be an educator;~~

~~(6) provide copies of all reports and documents to the UPPAC prosecutor and hearing officer at least five days before a reinstatement hearing; and~~

~~(7) bring eight copies of all documents or materials that shall be introduced at the hearing to the hearing.~~

~~K. The UPPAC prosecutor, the hearing panel and hearing officer shall thoroughly question the petitioner as to the petitioner's:~~

~~(1) specific and exact compliance with reinstatement requirements;~~

~~(2) counseling, if required for reinstatement. Petitioner shall state, under oath, that he provided all relevant information and background to his counselor or therapist;~~

~~(3) specific plans for avoiding previous misconduct; and~~

~~(4) demeanor and changed understanding of petitioner's professional integrity and actions consistent with R277-515.~~

~~L. The appointed hearing officer shall rule on procedural issues in a reinstatement hearing in a timely manner as they arise.~~

~~M. No more than 20 days following a reinstatement hearing, the hearing officer, with the assistance of the hearing panel, shall~~

~~prepare a hearing report, which shall comply with the requirements set forth in R686-102-5, and which shall be provided to the UPPAC Executive Secretary.~~

~~(1) The hearing report shall be submitted to UPPAC at the next meeting following receipt by the Executive Secretary.~~

~~(2) If the recommendation in the hearing report is for reinstatement of an educator license that was suspended, UPPAC may do the following upon receipt of the hearing report:~~

~~(a) accept the recommendation as prepared in the hearing report;~~

~~(b) amend the recommendation with conditions or modifications to the panel's recommendation which shall be directed by UPPAC and prepared by the UPPAC Executive Secretary and attached to the hearing report;~~

~~(c) reject the recommendation.~~

~~(3) If UPPAC rejects a recommendation for reinstatement of an educator license, the Executive Secretary shall notify the educator within 20 working days of the UPPAC meeting in which the recommendation was rejected.~~

~~**R686-102-5. Reinstatement Hearing Report.**~~

~~A. A reinstatement hearing report shall:~~

~~(1) provide a summary of the background of the original disciplinary action;~~

~~(2) provide adequate information, including summary statements of evidence presented, documents provided, and petitioner's testimony and demeanor for both UPPAC and the Board to evaluate petitioner's progress and rehabilitation since petitioner's original disciplinary action;~~

~~(3) specifically address petitioner's appropriateness and fitness to be a public school educator again; and~~

~~(4) provide a statement that the hearing panel's recommendation to UPPAC was unanimous or provide the panel's vote concerning reinstatement.~~

~~B. The conclusions section of a reinstatement hearing report is public information. Other parts of the hearing report are protected.~~

~~C. If a license is reinstated, an educator's CACTUS file shall show that the educator's license was reinstated and the date of formal Board action reinstating the license.~~

~~**KEY: licensure, reinstatement, hearings**~~

~~**Date of Enactment or Last Substantive Amendment: November 7, 2013**~~

~~**Authorizing, and Implemented or Interpreted Law: 53A-6-306(1)(a)]**~~

~~[R686. Professional Practices Advisory Commission.~~

~~R686-103. Utah Professional Practices Advisory Commission Review of License Due to Background Check Offenses.~~

~~R686-103-1. Definitions.~~

~~— A. "Applicant" means an individual seeking a clearance of a criminal background check pursuant to approval for an educational license at any stage of the licensing process from the USOE, including license renewal.~~

~~— B. "Arrest" means a seizure or forcible restraint; the taking or keeping of a person in custody by legal authority, especially in response to a criminal charge; specifically the apprehension of someone for the purpose of securing the administration of the law. For purposes of this rule, "arrest" also means fingerprinting at the time of restraint or at a later time related to the cause for restraint.~~

~~— C. "Board" means the Utah State Board of Education.~~

~~— D. "Conviction" means the act or process of judicially finding someone guilty of a crime.~~

~~— E. "Executive Committee" means a subcommittee of UPPAC consisting of the Executive Secretary, Chair, Vice-Chair, and one member of UPPAC at large. All Executive Committee members, excluding the Executive Secretary, shall be selected by UPPAC. Substitutes may be appointed from within UPPAC by the Executive Secretary as needed.~~

~~— F. "Executive Secretary" means an employee of the Utah State Office of Education who is appointed by the State Superintendent of Public Instruction to serve as the executive officer, and a non-voting member, of UPPAC.~~

~~— G. "License" means a teaching or administrative credential, including endorsements, which is issued by the Board to signify authorization for the person holding the license to provide professional services in Utah's public schools.~~

~~— H. "Utah Professional Practices Advisory Commission (UPPAC)" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, as establishing under Section 53A-6-301.~~

~~— I. "USOE" means the Utah State Office of Education.~~

~~R686-103-2. Authority and Purpose.~~

~~— A. This rule is authorized by Section 53A-6-306(1)(a) which directs UPPAC to adopt rules to carry out its responsibilities under the law.~~

~~— B. The purpose of this rule is to establish procedures for an applicant to proceed toward licensing or be denied to continue when an application or recommendation for licensing or renewal identifies offenses in the applicant's criminal background check. The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Section 63G-4-102(2)(d).~~

~~R686-103-3. Initial Submission and Evaluation of Information.~~

~~A. Upon receipt of information as the result of a fingerprint check of all applicable state, regional, and national criminal records files pursuant to Section 53A-6-401, the Executive Secretary shall make a determination to approve the applicant's request for criminal background check clearance based on time passed since offense, violent nature of the offense (student safety), involvement or non-involvement of students or minors in the offense, and other relevant factors, or refer the application to UPPAC for a decision and request further information and explanation from the applicant. The Executive Secretary may require the applicant to provide additional information, including:~~

~~(1) a letter of explanation for each reported offense that details the circumstances, the final disposition, and any explanation for the offense the applicant may want to provide UPPAC, including any advocacy for approving licensing.~~

~~(2) official documentation regarding each offense, including court records and police reports for each offense, or if both court records and police reports are not available, a letter on official police or court stationery from the appropriate court or police department involved, explaining why the records are not available.~~

~~B. UPPAC shall only consider an applicant's licensing request after receipt of all letters of explanation and documentation requested in good faith by the Executive Secretary.~~

~~C. If an applicant is under court supervision of any kind, including parole, informal or formal probation or plea in abeyance, there is a presumption that the individual shall not be approved for licensing until the supervision is successfully terminated.~~

~~D. It is the applicant's sole responsibility to provide the requested material to UPPAC.~~

~~E. Upon receipt of any requested documentation, including the applicant's written letters of explanation and advocacy, UPPAC shall either approve the applicant's request for criminal background check clearance; deny the applicant's licensing request; or seek further information, personally from the applicant or other sources, at the first possible meeting of UPPAC.~~

~~F. UPPAC has directed the Executive Secretary to approve the following without additional UPPAC review:~~

~~(1) singular offenses committed by an applicant, excluding offenses identified in R686-103-4G, if the arrest occurred more than two years prior to the date of submission to UPPAC for review;~~

~~(2) more than two offenses committed by the applicant, excluding offenses identified in R686-103-4G, if at least one arrest occurred more than five years prior to the date of submission to UPPAC for review; or~~

~~(3) more than two offenses committed by the applicant, excluding offenses identified in R686-103-4G, if all arrests for the offenses occurred more than 10 years prior to the date of submission to UPPAC for review.~~

~~G. UPPAC shall review all arrests and convictions for the~~

following:

~~— (1) convictions or pleas in abeyance for any offense where the arrest occurred less than two years prior to the date of submission to UPPAC;~~

~~— (2) conviction(s) for felonies;~~

~~— (3) arrests or convictions for sex-related or lewdness offenses;~~

~~— (4) arrests or convictions for drug-related offenses where the charge or conviction is for a class A misdemeanor or higher; and~~

~~— (5) convictions involving children in any way.~~

~~H. UPPAC directs the Executive Secretary to use reasonable discretion to interpret the information received from the Bureau of Criminal Identification (BCI) provided to BCI from multiple jurisdictions to comply with the provisions of R686-103-4F and G and to interpret strictly the provisions of R686-103-4F and G.~~

~~R686-103-4. Appeal.~~

~~A. Should UPPAC deny an applicant's licensing request, UPPAC shall inform the applicant in writing that the application for licensing has been denied and notify the applicant of the right to appeal that decision under this Rule.~~

~~B. The applicant shall have 30 days from notice provided under R686-103-3A to make formal written request for an appeal.~~

~~C. An applicant's request to appeal the denial of clearance shall follow the application criteria and format contained in R686-101 and shall include:~~

~~— (1) name and address of the individual requesting review;~~

~~— (2) action being requested;~~

~~— (3) the grounds for the appeal, which are limited to:~~

~~— (a) a mistake of identity;~~

~~— (b) a mistake of fact regarding the information relied upon by UPPAC in making its decision;~~

~~— (c) information that could not, with reasonable diligence, have been discovered and produced by the applicant previously and provided previously to UPPAC; or~~

~~— (d) compelling circumstances that in the judgment of the Executive Committee warrant an appeal.~~

~~— (4) signature of person requesting review.~~

~~D. The Executive Secretary shall make a determination regarding the grounds for appeal in a timely manner, inform the applicant in writing of the decision, and, if necessary, schedule an appeal hearing at the earliest possible date, consistent with the standard UPPAC meetings.~~

~~R686-103-5. Appeal Procedure.~~

~~A. An applicant shall have the right to be represented by an attorney at an appeal hearing under this Rule. UPPAC shall be represented by a person appointed by the Investigations Unit of the USOE.~~

~~B. The burden of proof at an appeal hearing shall be on the~~

~~applicant to show that the actions of UPPAC in denying the applicant's licensing request were based on the grounds enumerated in R686-103-3C.~~

~~C. The hearing shall be heard before a panel (three members) of UPPAC or UPPAC, chosen under the same procedures and having the same duties as delineated in R686-101.~~

~~D. The Executive Secretary or UPPAC Chair shall conduct the hearing and act as hearing officer. The hearing officer's duties shall be the same duties as delineated in R686-101.~~

~~E. At the sole discretion of the hearing officer, the hearing shall be conducted consistent with R686-101, as applicable. All procedural matters shall be at the discretion of the hearing officer and the Executive Secretary who has the right to limit witnesses and evidence presented by the applicant in support of the appeal.~~

~~F. Within 20 days after the hearing, the Executive Secretary or UPPAC Chair shall issue a written report containing:~~

~~(1) detailed findings of fact related to the factual basis for the appeal;~~

~~(2) the decision and rationale of the hearing panel concerning the applicant's clearance of criminal background check request; and~~

~~(3) any time-line or conditions recommended by the panel for a reapplication for clearance by the applicant.~~

~~G. The panel's recommendation shall be reviewed by UPPAC at the first reasonable opportunity.~~

~~H. UPPAC's decision, upon review of the panel's recommendation, is the final administrative decision.~~

~~KEY: educator license, appeal~~

~~Date of Enactment or Last Substantive Amendment: November 7, 2013~~

~~Notice of Continuation: October 5, 2012~~

~~Authorizing, and Implemented or Interpreted Law: 53A-6-306(1)]~~

~~[R686. Professional Practices Advisory Commission, Administration.~~

~~R686-104. Alcohol Related Offenses.~~

~~R686-104-1. Definitions.~~

- ~~A. "Alcohol related offense" means:~~
- ~~(1) driving while intoxicated;~~
 - ~~(2) alcohol-related reckless driving;~~
 - ~~(3) public intoxication;~~
 - ~~(4) driving with an open container;~~
 - ~~(5) unlawful sale or supply of alcohol;~~
 - ~~(6) unlawful purchase, possession, or consumption of alcohol;~~
 - ~~(7) unlawful permitting of consumption of alcohol by minors;~~
 - ~~(8) unlawful consumption of alcohol in public places.~~
- ~~B. "Applicant" means an individual seeking a clearance of a criminal background check pursuant to approval for an education license at any stage of the licensing process from the USOE.~~
- ~~C. "Board" means the Utah State Board of Education.~~
- ~~D. "Licensed educator means an individual issued a teaching or administrative credential, including endorsements, issued by the Board to signify authorization for the person holding the license to provide professional services in the Utah's public schools.~~
- ~~E. "Utah Professional Practices Advisory Commission (UPPAC)" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, as established under Section 53A-6-301.~~

~~R686-104-2. Authority and Purpose.~~

- ~~A. This rule is authorized by Section 53A-6-306(1)(a) which directs UPPAC to adopt rules to carry out its responsibilities under the law.~~
- ~~B. The purpose of this rule is to establish procedures for disciplining educators regarding alcohol related offenses.~~

~~R686-104-3. Action by UPPAC if a Licensed Educator Has Been Convicted of an Alcohol Related Offense.~~

- ~~A. If as a result of a background check, it is discovered that a licensed educator has been convicted of an alcohol related offense in the previous five years, the following minimum conditions shall apply:~~
- ~~(1) One conviction--a letter shall be sent to the educator informing the educator of the provisions of this rule;~~
 - ~~(2) Two convictions--a letter shall be sent to the educator informing the educator of the provisions of this rule and requiring documentation of clinical treatment following the second conviction. If the educator is currently employed, UPPAC shall also send a letter of reprimand to the educator regarding the convictions with a copy to the educator's employer.~~
 - ~~(3) Three convictions--UPPAC shall recommend to the Board suspension of the educator's license.~~
- ~~B. This rule does not preclude more serious or additional action by UPPAC against an educator for other related or unrelated offenses.~~

~~R686-104-4. UPPAC Action Towards an Individual Who Does Not Hold~~

~~Licensing.~~

~~If as a result of a background check, it is discovered that an individual inquiring about educator licensing, seeking information about educator licensing, or placed in a public school for a variety of purposes has been convicted of an alcohol related offense within five years of the date of the background check, the following minimum conditions shall apply:~~

~~A. One conviction--the individual shall be denied UPPAC clearance for a period of one year from the date of the arrest;~~

~~B. Two convictions--the individual shall be denied UPPAC clearance for a period of two years from the date of the most recent arrest and the applicant shall present documentation of clinical treatment before UPPAC clearance shall be considered; and~~

~~C. Three convictions--UPPAC shall recommend denial of clearance.~~

~~R686-104-5. Previous Clearance.~~

~~If the applicant or licensed educator presents documentation to UPPAC that recently discovered conviction(s) have previously been addressed by the UPPAC, UPPAC need not reconsider the conviction(s) absent additional convictions of the applicant or licensed educator.~~

~~KEY: educators, disciplinary actions~~

~~Date of Enactment or Last Substantive Amendment: September 10, 2013~~

~~Notice of Continuation: May 16, 2013~~

~~Authorizing, and Implemented or Interpreted Law: 53A-6-306(1)(a)]~~

~~[R686. Professional Practices Advisory Commission, Administration.~~

~~R686-105. Drug Related Offenses.~~

~~R686-105-1. Definitions.~~

~~A. "Applicant" means an individual seeking a clearance of a criminal background check pursuant to approval for an education license at any stage of the licensing process from the USOE.~~

~~B. "Board" means the Utah State Board of Education.~~

~~C. "Conviction" means the final disposition of a judicial action for a drug related offense defined under 58-37 through 37e. It includes no contest pleas, pleas in abeyance, expunged convictions and drug related offenses that are plead down to lesser convictions.~~

~~D. "Drug" means any controlled substance designated as such in Section 58-37-4.~~

~~E. "Drug related offense" means any offense designated in Section 58-37 through 37e.~~

~~F. "Licensed educator" means an individual issued a teaching or administrative credential, including endorsements, issued by the Board to signify authorization for the person holding the license to provide professional services in the Utah's public schools.~~

~~G. "Utah Professional Practices Advisory Commission (UPPAC)" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, as established under Section 53A-6-301.~~

~~R686-105-2. Authority and Purpose.~~

~~A. This rule is authorized by Section 53A-6-306(1)(a) which directs UPPAC to adopt rules to carry out its responsibilities under the law.~~

~~B. The purpose of this rule is to establish procedures for disciplining educators regarding drug related offenses.~~

~~R686-105-3. Action by UPPAC if a Licensed Educator Has Been Convicted of an Drug Related Offense.~~

~~A. If as a result of a background check, it is discovered that a licensed educator has been convicted of a drug related offense in the previous ten years, the following minimum conditions shall apply:~~

~~(1) One conviction--a letter shall be sent to the educator informing the educator of the provisions of this rule;~~

~~(2) Two convictions--a letter shall be sent to the educator informing the educator of the provisions of this rule and requiring documentation of clinical treatment following the second conviction.~~

~~(a) If the most recent conviction was more than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical treatment, UPPAC shall send a letter of warning to the educator.~~

~~(b) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical treatment, UPPAC shall send a letter of reprimand to the educator and a letter to the district with notice of treatment.~~

~~(c) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides no documentation of clinical treatment, UPPAC shall send a letter of reprimand to the educator and a copy of the letter of reprimand to the educator's employer and UPPAC may initiate an investigation of the educator based upon the drug offenses.~~

~~(3) Three convictions--a letter shall be sent to the educator informing the educator of the provisions of this rule and requiring documentation of clinical treatment following the third conviction.~~

~~(a) If the most recent conviction was more than five years prior to the discovery of the conviction(s) and the educator provides documentation of clinical treatment, UPPAC shall send a letter of warning to the educator.~~

~~(b) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical treatment, UPPAC shall send a letter of reprimand to the educator and send a copy of the letter of reprimand to the educator's employer.~~

~~(c) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides no documentation of clinical treatment, UPPAC shall recommend suspension of the educator's license to the Board.~~

~~B. This rule does not preclude more serious or additional action by UPPAC against an educator for other related or unrelated offenses.~~

~~R686-105-4. UPPAC Action Towards an Individual Who Does Not Hold Licensing.~~

~~If as a result of a background check, it is discovered that an individual inquiring about educator licensing, seeking information about educator licensing, or placed in a public school for a variety of purposes has been convicted of an drug related offense within ten years of the date of the background check, the following minimum conditions shall apply:~~

~~A. One conviction--the individual shall be denied UPPAC clearance for a period of one year from the date of the arrest.~~

~~B. Two convictions--the individual shall be denied UPPAC clearance for a period of three years from the date of the most recent arrest and the applicant shall present documentation of clinical treatment before UPPAC clearance shall be considered.~~

~~C. Three convictions--the individual shall be denied UPPAC clearance for a period of five years from the date of the most recent arrest. UPPAC shall require the applicant to present documentation of clinical treatment and may recommend denial of clearance.~~

~~R686-105-5. Previous Clearance.~~

~~If the applicant or licensed educator presents documentation to UPPAC that recently discovered conviction(s) have previously been addressed by UPPAC, UPPAC need not reconsider the conviction(s) absent additional convictions of the applicant or licensed educator.~~

~~KEY: educators, disciplinary actions~~

~~Date of Enactment or Last Substantive Amendment: September 10, 2013~~
~~Notice of Continuation: May 16, 2013~~
~~Authorizing, and Implemented or Interpreted Law: 53A-6-306(1)(a)]~~