

1 **R277. Education, Administration.**

2 **R277-210. Utah Professional Practices Advisory Commission (UPPAC),**

3 **Definitions.**

4 **R277-210-1. Authority and Purpose.**

5 (1) This rule is authorized by:

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

8 (b) Section 53A-6-306, which directs the Board to adopt rules regarding
9 UPPAC duties and procedures; and

10 (c) Section 53A-1-401, which allows the Board to ~~adopt rules in accordance~~
11 with its responsibilities]make rules to execute the Board’s duties and responsibilities
12 under the Utah Constitution and state law.

13 (2) The purpose of this rule is to establish definitions for terms in UPPAC
14 activities.

15 (3)(a) The definitions contained in this rule apply to Rules R277-210 through
16 R277-216.

17 (b) Any calculation of time called for by these rules shall be governed by Utah
18 R. Civ. P. 6.

19

20 **R277-210-2. Definitions.**

21 (1)(a) “Action” means a disciplinary action taken by the Board adversely
22 affecting an educator’s license.

23 (b) “Action” does not include a disciplinary letter.

24 (c) “Action” includes:

25 (i) a letter of reprimand;

26 (ii) probation;

27 (iii) suspension; and

28 (iv) revocation.

29 (2) “Administrative hearing” or “hearing” has the same meaning as that term
30 is defined in Section 53A-6-601.

31 (3) “Alcohol related offense” means:

32 (a) driving under the influence;

33 (b) alcohol-related reckless driving or impaired driving;
34 (c) intoxication;
35 (d) driving with an open container;
36 (e) unlawful sale or supply of alcohol;
37 (f) unlawful permitting of consumption of alcohol by minors;
38 (g) driving in violation of an alcohol or interlock restriction; and
39 (8) any offense under the laws of another state that is substantially equivalent
40 to the offenses described in Subsections(3)(a) through (g).

41 (4) “Allegation of misconduct” means a written report alleging that an
42 educator:

43 (a) has engaged in unprofessional or criminal conduct;
44 (b) is unfit for duty;
45 (c) has lost the educator’s license in another state due to revocation or
46 suspension, or through voluntary surrender or lapse of a license in the face of a
47 claim of misconduct; or
48 (d) has committed some other violation of standards of ethical conduct,
49 performance, or professional competence as provided in Rule R277-515.

50 (5) “Answer” means a written response to a complaint filed by USOE alleging
51 educator misconduct.

52 (6) “Applicant” means a person seeking:

53 (a) a new license;
54 (b) reinstatement of an expired, surrendered, suspended, or revoked license;

55 or

56 (c) clearance of a criminal background review from USOE at any stage of the
57 licensing process.

58 (7) “Chair” means the Chair of UPPAC.

59 (8) “Complaint” means a written allegation or charge against an educator filed
60 by USOE against the educator.

61 (9) “Complainant” means the Utah State Office of Education.

62 (10) “Comprehensive Administration of Credentials for Teachers in Utah
63 Schools (CACTUS)” means the electronic file developed by the USOE and
64 maintained on all licensed Utah educators.

65 (11)(a) “Conviction” means the final disposition of a judicial action for a
66 criminal offense, except in cases of a dismissal on the merits.

67 (b) “Conviction” includes:

68 (i) a finding of guilty by a judge or jury;

69 (ii) a guilty or no contest plea;

70 (iii) a plea in abeyance; and

71 (iv) for purposes of this rule, a conviction that has been expunged.

72 (12) “Criminal Background Review” means the process by which the
73 Executive Secretary, UPPAC, and the Board review information pertinent to:

74 (a) a charge revealed by a criminal background check;

75 (b) a charge revealed by a hit as a result of ongoing monitoring; or

76 (c) an educator or applicant’s self-disclosure.

77 (13)(a) “Disciplinary letter” means a letter issued to a respondent by the Board
78 as a result of an investigation into an allegation of educator misconduct.

79 (b) “Disciplinary letter” includes:

80 (i) a letter of admonishment;

81 (ii) a letter of warning; and

82 (iii) any other action that the Board takes to discipline an educator for
83 educator misconduct that does not rise to the level of an action as defined in this
84 section.

85 (14) “Drug” means controlled substance as defined in Section 58-37-2.

86 (15) “Drug related offense” means any criminal offense under:

87 (a) Title 58, Chapter 37;

88 (b) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

89 (c) Title 58, Chapter 37b, Imitation Controlled Substances Act;

90 (d) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act;

91 (e) Title 58, Chapter 37d, Clandestine Drug Lab Act; and

92 (f) Title 58, Chapter 37e, Drug Dealer’s Liability Act.

93 Sections 58-37 through 37e.

94 (16) “Educator Misconduct” means:

95 (a) unprofessional or criminal conduct;

96 (b) conduct that renders an educator unfit for duty; or

97 (c) conduct that is a violation of standards of ethical conduct, performance,
98 or professional competence as provided in Rule R277-515.

99 (17) “Executive Committee” means a subcommittee of UPPAC consisting of
100 the following members:

101 (a) Executive Secretary;

102 (b) Chair;

103 (c) Vice-Chair; and

104 (d) one member of UPPAC at large.

105 (18) “Executive Secretary” means:

106 (a) an employee of USOE who:

107 (a) is appointed by the State Superintendent of Public Instruction to serve
108 as the UPPAC Director; and

109 (b) serves as a non-voting member of UPPAC, consistent with Section
110 53A-6-302; or

111 (b) the Executive Secretary’s designee.

112 (b) the Executive Secretary’s designee.

113 (19) “Expedited Hearing” means an informal hearing aimed at determining an
114 Educator’s fitness to remain in the classroom held as soon as possible following an
115 arrest, citation, or charge for a criminal offense requiring mandatory self-reporting
116 under Section R277-516-3.

117 (20) “Expedited Hearing Panel” means a panel of the following three
118 members:

119 (a) the Executive Secretary;

120 (b) a voting member of UPPAC; and

121 (c) a UPPAC [prosecutor]attorney.

122 (21) “Final action” means an action by the Board that concludes an
123 investigation of an allegation of misconduct against a licensed educator.

124 (22) “GRAMA” refers to the Government Records Access and Management
125 Act, Title 63G, Chapter 2, Government Records Access and Management Act.

126 (23) “Hearing officer” means a licensed attorney who:

127 (a) is experienced in matters relating to administrative procedures;

128 (b) is appointed by the Executive Secretary to manage the proceedings of a

129 hearing;
130 (c) is not an acting member of UPPAC;
131 (d) has authority, subject to the limitations of these rules, to regulate the
132 course of the hearing and dispose of procedural requests; and
133 (5) does not have a vote as to the recommended disposition of a case.
134 (24) “Hearing panel” means a panel of three or more individuals designated
135 to:
136 (a) hear evidence presented at a hearing;
137 (b) make a recommendation to UPPAC as to disposition; and
138 (c) collaborate with the hearing officer in preparing a hearing report.
139 (25) “Hearing report” means a report that:
140 (a) is prepared by the hearing officer consistent with the recommendations of
141 the hearing panel at the conclusion of a hearing; and
142 (b) includes:
143 (i) a recommended disposition;
144 (ii) detailed findings of fact and conclusions of law, based upon the evidence
145 presented in the hearing, relevant precedent; and
146 (iii) applicable law and rule.
147 (26) “Informant” means a person who submits information to UPPAC
148 concerning the alleged misconduct of an educator.
149 (27) “Investigator” means an employee of the USOE, or independent
150 investigator selected by the Board, who:
151 (a) is assigned to investigate allegations of educator misconduct under
152 UPPAC supervision;
153 (b) offers recommendations of educator discipline to UPPAC and the Board
154 at the conclusion of the investigation;
155 (c) provides an independent investigative report for UPPAC and the Board;
156 and
157 (d) may also be ~~the prosecutor~~ a UPPAC attorney but does not have to be.
158 (28) “Investigative report” means a written report of an investigation into
159 allegations of educator misconduct, prepared by an Investigator that:
160 (a) includes a brief summary of the allegations, the investigator's narrative,

161 and a recommendation for UPPAC and the Board;
162 (b) may include a rationale for the recommendation, and mitigating and
163 aggravating circumstances;
164 (c) is maintained in the UPPAC Case File; and
165 (d) is classified as protected under Subsection 63G-2-305(34).
166 (29) “LEA” or “local education agency” for purposes of this rule includes the
167 Utah Schools for the Deaf and the Blind.
168 (30) “Letter of admonishment” is a letter sent by the Board to an educator
169 cautioning the educator to avoid or take specific actions in the future.
170 (31) “Letter of reprimand” is a letter sent by the Board to an educator:
171 (a) for misconduct that was longer term or more seriously unethical or
172 inappropriate than conduct warranting a letter of warning, but not warranting more
173 serious discipline;
174 (b) that provides specific directives to the educator as a condition for removal
175 of the letter;
176 (c) appears as a notation on the educator's CACTUS file; and
177 (d) that an educator can request to be removed from the educator's CACTUS
178 file after two years, or after such other time period as the Board may prescribe in the
179 letter of reprimand.
180 (32) “Letter of warning” is a letter sent by the Board to an educator:
181 (a) for misconduct that was inappropriate or unethical; and
182 (b) that does not warrant longer term or more serious discipline.
183 (33) “License” means a teaching or administrative credential, including an
184 endorsement, which is issued by the Board to signify authorization for the person
185 holding the license to provide professional services in Utah’s public schools.
186 (34) “Licensed educator” means an individual issued a teaching or
187 administrative credential, including an endorsement, issued by the Board to signify
188 authorization for the individual holding the license to provide professional services
189 in Utah's public schools.
190 (35) “National Association of State Directors of Teacher Education and
191 Certification (NASDTEC) Educator Information Clearinghouse” means a database
192 maintained by NASDTEC for the members of NASDTEC regarding persons whose

193 licenses have been suspended or revoked.

194 (36) "Notification of Alleged Educator Misconduct" means the official UPPAC
195 form that may be accessed on UPPAC's internet website, and may be submitted by
196 any person, school, or LEA that alleges educator misconduct.

197 (37) "Party" means a complainant or a respondent.

198 (38) "Petitioner" means an individual seeking:

199 (a) an educator license following a denial of a license;

200 (b) reinstatement following a license suspension; or in the event of compelling
201 circumstances, reinstatement following a license revocation.

202 (39) "Probation" is an action directed by the Board that:

203 (a) involves monitoring or supervision for a designated time period, usually
204 accompanied by a disciplinary letter;

205 (b) may require the educator to be subject to additional monitoring by an
206 identified person or entity;

207 (c) may require the educator to be asked to satisfy certain conditions in order
208 to have the probation lifted;

209 (d) may be accompanied by a letter of reprimand, which shall appear as a
210 notation on the educator's CACTUS file; and

211 (e) unless otherwise specified, lasts at least two years and may be terminated
212 through a formal petition to the Board by the respondent.

213 ~~[(40) "Prosecutor" means an attorney who:~~

214 ~~(a) is designated by the Superintendent to represent the complainant and~~
215 ~~present evidence in support of the complaint; and~~

216 ~~(b) may also be the investigator, but does not have to be.]~~

217 (40) "Revocation" means a permanent invalidation of a Utah educator license
218 consistent with Rule R277-517.

219 (41) "Respondent" means an educator against whom:

220 (a) a complaint is filed; or

221 (b) an investigation is undertaken.

222 (42) "Serve" or "service," as used to refer to the provision of notice to a
223 person, means:

224 (a) delivery of a written document or its contents to the person or persons in

225 question; and
226 (b) delivery that may be made in person, by mail, by electronic
227 correspondence, or by any other means reasonably calculated, under all of the
228 circumstances, to notify an interested person or persons to the extent reasonably
229 practical or practicable of the information contained in the document.

230 (43) “Sexually explicit conduct” means the same as that term is defined in
231 Section 76-5b-103.

232 (44) “Stipulated agreement” means an agreement between a respondent and
233 the Board:

234 (a) under which disciplinary action is taken against the educator in lieu of a
235 hearing;

236 (b) that may be negotiated between the parties and becomes binding:

237 (i) when approved by the Board; and

238 (ii) at any time after an investigative letter has been sent;

239 (c) is a public document under GRAMA unless it contains specific information
240 that requires redaction or separate classification of the agreement.

241 (45)(a) “Suspension” means an invalidation of a Utah educator license.

242 (b) “Suspension” may:

243 (i) include specific conditions that an educator must satisfy; and

244 (ii) may identify a minimum time period that must elapse before the educator
245 may request a reinstatement hearing before UPPAC.

246 (46) “Utah Professional Practices Advisory Commission” or “UPPAC” means
247 an advisory commission established to assist and advise the Board in matters
248 relating to the professional practices of educators, established in Section 53A-6-301.

249 (47) “UPPAC [Prosecutor]Attorney File” means a file:

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

252 (i) the attorney's notes prepared in the course of investigation; and

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

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

256 (48) “UPPAC Background Check File” means a file maintained securely by

257 UPPAC on a criminal background review that:
258 (a) contains information obtained from:
259 (i) BCI; and
260 (ii) letters, police reports, court documents, and other materials as provided
261 by an educator; and
262 (b) is classified as private under Subsection 63G-2-302(2).
263 (49) "UPPAC Case File" means a file:
264 (a) maintained securely by UPPAC on an investigation into educator
265 misconduct;
266 (b) opened following UPPAC's direction to investigate alleged misconduct;
267 (c) that contains the original notification of misconduct with supporting
268 documentation, correspondence with the Executive Secretary, the investigative
269 report, the stipulated agreement, the hearing report, and the final disposition of the
270 case;
271 (d) that is classified as protected under Subsection 63G-2-305(10) until the
272 investigation and any subsequent proceedings before UPPAC and the Board are
273 completed; and
274 (e) that after a case proceeding is closed, is considered public under GRAMA,
275 unless specific documents contained therein contain non-public information or have
276 been otherwise classified as non-public under GRAMA, in which case the file may
277 be redacted or partially or fully restricted.
278 (50) "UPPAC Evidence File" means a file:
279 (a) maintained by the attorney assigned by UPPAC to investigate a case
280 containing materials, written or otherwise, obtained by the UPPAC investigator
281 during the course of the attorney's investigation;
282 (b) that contains correspondence between the Investigator and the educator
283 or the educator's counsel;
284 (c) that is classified as protected under Subsection 63G-2-305(10) until the
285 investigation and any subsequent proceedings before UPPAC and the Board are
286 completed; and
287 (d) that is considered public under GRAMA after case proceedings are closed,
288 unless specific documents contained therein contain non-public information or have

289 been otherwise classified as non-public under GRAMA.

290 (51) "UPPAC investigative letter" means a letter sent by UPPAC to an
291 educator notifying the educator that an allegation of misconduct has been received
292 against him and that UPPAC or the Board has directed that an investigation of the
293 educator's alleged actions take place.

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

295 **Date of Enactment or Last Substantive Amendment: 2016**

296 **Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-**

297 **1-401**