

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement”) is entered into by the Utah State Board of Education (“Board”) and the Utah Education Association (“UEA”). UEA and the Board are jointly referred to as “the Parties.”

RECITALS

WHEREAS, UEA filed *Utah Education Association v. Utah State Board of Education*, case no. 150908947 in the Third District Court for the State of Utah (the “Court”) on December 21, 2015 (the “Lawsuit”), requesting injunctive relief and declaratory judgment regarding rules R277-200 through R277-207 (the “Rules,” attached as Exhibit 1);

WHEREAS, UEA believes that at least six of its members who are not parties to the Lawsuit or Settlement Agreement – Hannah Green, UPPAC case no. 15-1284 (“Green”); Shawn Hatfield, UPPAC case no. 14-1240 (“Hatfield”); Eric Kohler, UPPAC case no. 14-1241 (“Kohler”); Steven Smith, UPPAC case no. 12-1058 (“Smith”); Adam Hood, UPPAC case no. 15-1282 (“Hood”); and Heidi Tasso, UPPAC case no. 15-1294 (“Tasso”) (collectively, the “Non-Party UEA Members”) – may be or were irreparably harmed by the Rules;

WHEREAS, the Board disputes UEA’s claims and the relief sought in the Lawsuit;

WHEREAS, the Board is created by Article X, Section 3 of the Utah Constitution, and is comprised of 15 members elected by the citizens of Utah, the Board retains all of its authority to control and supervise public education;

WHEREAS, the Board initiated the repeal of the Rules and the adoption of new rules, R277-210 through R277-216 (the “New Rules,” attached as Exhibit 2);

WHEREAS, when adopting the New Rules, the Board held a voluntary public hearing, received a timely hearing officer report, and reviewed, considered, and evaluated verbal and written comments from UEA and other stakeholders;

WHEREAS, the process followed for adopting the New Rules complied with the Utah Administrative Rulemaking Act and the New Rules were published in the Utah State Bulletin;

WHEREAS, UEA has no current intention of making facial challenges to the New Rules; and

WHEREAS, the Parties, without any admission or final adjudication of the issues of fact or law with respect to UEA's claims in the Lawsuit, have reached a settlement that they consider to be a just, fair, adequate, and an equitable resolution of the Parties' disputes.

AGREEMENT

NOW, THEREFORE, in consideration of these promises and the agreements described below, the consideration of which the Parties stipulate is sufficient, the Parties agree as follows:

I. New Rules. As consideration for the promises and the agreements set forth in this Settlement Agreement:

- a. The Board agrees to repeal the Rules and adopt the New Rules; and
- b. UEA agrees to release and waive all procedural challenges that UEA may have relating to the Board's adoption of the New Rules.

II. UPPAC Cases. As consideration for the promises and the agreements set forth in this Settlement Agreement, the Parties agree as follows:

- a. Green. The Utah Professional Practices Advisory Commission (“UPPAC”) recommended Green receive a letter of reprimand. The Board agrees to enter into a Stipulated Agreement with Green, whereby the Board agrees to issue Green a Letter of Reprimand and flag her CACTUS file for two years from December 21, 2015, which is the date UEA’s Complaint was filed. (“Green’s Stipulated Agreement” and “Letter of Reprimand,” attached as Exhibit 3).
- b. Hatfield. UPPAC recommended that Hatfield receive a letter of warning. The Board agrees to accept UPPAC’s recommendation and issue Hatfield a letter of warning. (“Hatfield’s Letter of Warning,” attached as Exhibit 4).
- c. Kohler. The Parties agree that following the full execution of this Settlement Agreement, the stay on Kohler’s UPPAC case will be lifted and the case will proceed. If Kohler receives a letter of reprimand, is put on probation or is suspended as a result of his UPPAC case, the Board agrees to reduce the amount of time of any reprimand, probation, and/or suspension by an amount of time equivalent to the time from December 21, 2015, to the date of full execution of the Settlement Agreement.
- d. Smith. The Board agrees to enter into a Stipulated Agreement with Smith, whereby the Board agrees to accept a Voluntary Surrender from Smith and report to National Association of State Directors of Teacher Education and Certification (“NASDTEC”) and Local Education Agencies (“LEAs”) that Smith has a “voluntary surrender with allegations of unprofessional conduct.”

("Smith's Stipulated Agreement" and the "Notice" to NASDTEC and LEAs, attached as Exhibit 5).

- e. Hood. The Board agrees to enter into a Stipulated Agreement with Hood, whereby the Board agrees to accept a Voluntary Surrender from Hood and report to NASDTEC and LEAs that Hood has a "voluntary surrender with allegations of unprofessional conduct." ("Hood's Stipulated Agreement" and the "Notice" to NASDTEC and LEAs, attached as Exhibit 6).
- f. Tasso. The Board agrees to enter into a Stipulated Agreement with Tasso, whereby the Board agrees to revoke Tasso's educator license, close Tasso's case with no additional investigation, and report to NASDTEC and LEAs that Tasso's revocation resulted from "allegations of unprofessional conduct." ("Tasso's Stipulated Agreement" and the "Notice" to NASDTEC and LEAs, attached as Exhibit 7).

III. No Third Party Beneficiaries. The parties agree and understand that only UEA and the Board may enforce this Settlement Agreement. For the purposes of enforcement, the Parties agree there are no express or implied third party beneficiaries to this Settlement Agreement. Nothing in this Settlement Agreement shall be construed to create individual rights in, or grant any cause of action to, a third party in this Settlement Agreement, including the Non-Party UEA Members.

IV. No Admission. The Parties agree that this Settlement Agreement was negotiated and entered into in good faith and constitutes a settlement of claims that were vigorously contested, denied, and disputed. This Settlement Agreement reflects a compromise to resolve

UEA's claims, which the Board disputes are valid, and this Settlement Agreement shall not be construed as an admission by the Board. This Settlement Agreement has no precedential value and shall not be used as evidence in any other litigation.

V. Settlement Procedure. The Parties agree to the following procedure for the Settlement Agreement:

- a. Prior to the Board's August 12, 2016 meeting, UEA shall provide to the Board's counsel executed copies of the Settlement Agreement and the Stipulated Agreements of the Non-Party UEA Members.
- b. The Board shall consider approving the Settlement Agreement at its next regularly scheduled meeting on August 12, 2016.
- c. If this Stipulated Agreement is approved by the Board during its August 12, 2016 meeting, then within fifteen (15) business days thereafter, the Board shall: (i) execute the Settlement Agreement, the Stipulated Agreements of the Non-Party UEA Members, and all documents referenced in Paragraph II above; and (ii) cause to be filed with the Office of Administrative Rules the notice of effective date for the New Rules.

VI. Court Approval. Within twenty (20) business days after this Settlement Agreement is fully executed by the Parties, the Parties agree to file with the Court a Stipulated Motion requesting the Court's approval of the Settlement Agreement. However, in the event the Court does not approve this Settlement Agreement and the Parties in good faith have performed the terms agreed to in the Settlement Agreement, then the Parties agree to comply with the Settlement Agreement without judicial approval.

VII. Dismissal of Lawsuit. Within twenty (20) business days after this Settlement Agreement is fully executed by the Parties, the Parties agree to file with the Court a Stipulated Motion requesting dismissal with prejudice of the Lawsuit and all claims and defenses raised therein, with each party to bear its own attorneys' fees and costs associated therewith.

VIII. Enforcement. The Parties hereby stipulate and agree that the Court retain jurisdiction for the limited purpose of interpretation and enforcement of this Settlement Agreement.

- a. In the event either of the Parties disagrees on the interpretation of this Settlement Agreement or claims that a party has failed to comply with any term or condition of this Settlement Agreement, the party shall provide the other party with notice.
- b. After fifteen days from the notice, the aggrieved party may file with the Court a motion to interpret or enforce the Settlement Agreement.
- c. If either party files for the Court to interpret or enforce the Settlement Agreement, the prevailing party's attorney fees and costs shall be paid by the non-prevailing party.

IX. No Future Lawsuits. As consideration for the promises and the agreements set forth in this Settlement Agreement, UEA agrees neither to sue the Board, nor to represent, encourage, or pay legal fees for anyone to file lawsuits against the Board: (i) for claims accrued during this Lawsuit on the basis of the Rules; or (ii) for procedural challenges relating to the Board's adoption of the New Rules..

X. Entire Agreement. The Parties agree that this Settlement Agreement is an integrated agreement and represents the entire understanding of the Parties relative to the subject matter described herein. The Parties understand and agree that this Settlement Agreement may be executed in multiple counterparts, each of which shall be deemed an original for all purposes. A fax, photocopy, or electronic signature in PDF shall be as valid as an original.

XI. Settlement Agreement Not Construed in Favor of Either Party. The Parties were represented by legal counsel at the time of this Settlement Agreement. Therefore, the terms will not be construed in favor of the non-drafting party.

XII. Governing Law. This Settlement Agreement shall be construed in accordance with, and governed by, the laws of the State of Utah.

XIII. Authority to Enter Into Agreement.

a. UEA asserts that it has the capacity to enter into this Settlement Agreement, that its legal counsel has explained to it all terms of the Settlement Agreement, and that it understands and agrees to each term. UEA, and its successors or assigns, shall comply with this Settlement Agreement. To the extent the terms include Stipulated Agreements with the Non-Party UEA Members, UEA asserts that the Non-Party UEA Members have agreed to those terms in the Stipulated Agreements.

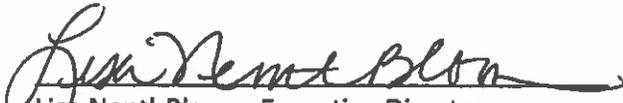
b. The Board asserts that it has the capacity to enter into this Settlement Agreement, that its legal counsel has explained to it all terms of the Settlement Agreement, and that it understands and agrees to each term. The Board has

authority to enter into this Settlement Agreement, and its successors or assigns shall comply with this Settlement Agreement.

The undersigned representatives of each party certify that they are fully authorized by the party they represent to agree to the terms and conditions of this Settlement Agreement and do hereby agree to the terms herein.

David Crandall, Chairman
Utah State Board of Education

Date


Lisa Nentl-Bloom, Executive Director
Utah Education Association

8/9/14
Date

EXHIBIT 1

R277. Education, Administration.

**R277-200. Utah Professional Practices Advisory Commission (UPPAC),
Definitions.**

R277-200-1. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, by Section 53A-6-306 which directs the Board to adopt rules regarding UPPAC duties and procedures, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish definitions for terms in UPPAC activities.

C. The definitions contained in this rule apply to rules R277-200 through R277-206. Any calculation of time called for by these rules shall be governed by Utah R. Civ. P. 6.

R277-200-2. Definitions.

A(1) "Action" means a disciplinary action taken by the Board adversely affecting an educator's license.

(2) "Action" does not include a disciplinary letter.

(3) "Action" includes:

(a) a letter of reprimand;

(b) probation;

(c) suspension; and

(d) revocation.

B. "Administrative hearing" or "hearing" has the same meaning as that term is defined in Section 53A-6-601.

C. "Alcohol related offense" means:

(1) driving under the influence;

(2) alcohol-related reckless driving or impaired driving;

(3) intoxication;

(4) driving with an open container;

(5) unlawful sale or supply of alcohol;

(6) unlawful permitting of consumption of alcohol by minors;

(7) driving in violation of an alcohol or interlock restriction;

and

(8) any offense under the laws of another state that is substantially equivalent to the offenses described in R277-200-2C(1) through (7).

D. "Allegation of misconduct" means a written report alleging that an educator:

(1) has engaged in unprofessional or criminal conduct;

(2) is unfit for duty;

(3) has lost the educator's 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

(4) has committed some other violation of standards of ethical conduct, performance, or professional competence as provided in R277-515.

E. "Answer" means a written response to a complaint filed by USOE

alleging educator misconduct.

F. "Applicant" means a person seeking:

(1) a new license;

(2) reinstatement of an expired, surrendered, suspended, or revoked license; or

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

G. "Board" means the Utah State Board of Education.

H. "Chair" means the Chair of UPPAC.

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

J. "Complainant" means the Utah State Office of Education.

K. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file developed by the USOE and maintained on all licensed Utah educators.

L(1) "Conviction" means the final disposition of a judicial action for a criminal offense, except in cases of a dismissal on the merits.

(2) "Conviction" includes:

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

(b) a guilty or no contest plea;

(c) a plea in abeyance; and

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

M. "Criminal Background Review" means the process by which the Executive Secretary, UPPAC, and the Board review information pertinent to:

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

(2) a charge revealed by a hit as a result of ongoing monitoring;

or

(3) an educator or applicant's self-disclosure.

N(1) "Disciplinary letter" means a letter issued to a respondent by the Board as a result of an investigation into an allegation of educator misconduct.

(2) "Disciplinary letter" includes:

(1) a letter of admonishment;

(2) a letter of warning; and

(3) any other action that the Board takes to discipline an educator for educator misconduct that does not rise to the level of an action as defined in this R277-200-2.

O. "Drug" means controlled substance as defined in Section 58-37-2.

P. "Drug related offense" means any criminal offense under:

(1) Title 58, Chapter 37;

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

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

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

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

(6) Title 58, Chapter 37e, Drug Dealer's Liability Act.

Sections 58-37 through 37e.

Q. "Educator" means a person:

- (1) who currently holds a license;
- (2) who held a license at the time of an alleged offense;
- (3) is a person who is student teaching in anticipation of seeking a license;
- (4) is an applicant for a license;
- (5) is a licensure candidate through the Alternate Route to Licensure, "ARL," program; or
- (6) who has applied to the Alternate Route to Licensure, "ARL" program.

R. "Educator Misconduct" means:

- (1) unprofessional or criminal conduct;
- (2) conduct that renders an educator unfit for duty; or
- (3) conduct that is a violation of standards of ethical conduct, performance, or professional competence as provided in R277-515.

S. "Executive Committee" means a subcommittee of UPPAC consisting of the following members:

- (1) Executive Secretary;
- (2) Chair;
- (3) Vice-Chair; and
- (4) one member of UPPAC at large.

T. "Executive Secretary" means an employee of USOE who:

- (1) is appointed by the State Superintendent of Public Instruction to serve as the UPPAC Director; and
- (2) serves as a non-voting member of UPPAC, consistent with Section 53A-6-302.

U. "Expedited Hearing" means an informal hearing aimed at determining an Educator's fitness to remain in the classroom held as soon as possible following an arrest, citation, or charge for a criminal offense requiring mandatory self-reporting under R277-516-3.

V. "Expedited Hearing Panel" means a panel of the following three members:

- (1) the Executive Secretary;
- (2) a voting member of UPPAC; and
- (3) a UPPAC prosecutor.

W. "Final action" means an action by the Board that concludes an investigation of an allegation of misconduct against a licensed educator.

X. "GRAMA" refers to the Government Records Access and Management Act, Title 63G, Chapter 2, Government Records Access and Management Act.

Y. "Hearing officer" means a licensed attorney who:

- (1) is experienced in matters relating to administrative procedures;
- (2) is appointed by the Executive Secretary to manage the proceedings of a hearing;
- (3) is not an acting member of UPPAC;
- (4) has authority, subject to the limitations of these rules,

to regulate the course of the hearing and dispose of procedural requests; and

(5) does not have a vote as to the recommended disposition of a case.

Z. "Hearing panel" means a panel of three or more individuals designated to:

(1) hear evidence presented at a hearing;

(2) make a recommendation to UPPAC as to disposition; and

(3) collaborate with the hearing officer in preparing a hearing report.

AA. "Hearing report" means a report that:

(1) is prepared by the hearing officer consistent with the recommendations of the hearing panel at the conclusion of a hearing; and

(2) includes:

(a) a recommended disposition;

(b) detailed findings of fact and conclusions of law, based upon the evidence presented in the hearing, relevant precedent; and

(c) applicable law and rule.

BB. "Informant" means a person who submits information to UPPAC concerning the alleged misconduct of an educator.

CC. "Investigator" means an employee of the USOE, or independent investigator selected by the Board, who:

(1) is assigned to investigate allegations of educator misconduct under UPPAC supervision;

(2) offers recommendations of educator discipline to UPPAC and the Board at the conclusion of the investigation;

(3) provides an independent investigative report for UPPAC and the Board; and

(4) may also be the prosecutor but does not have to be.

DD. "Investigative report" means a written report of an investigation into allegations of educator misconduct, prepared by an Investigator that:

(1) includes a brief summary of the allegations, the investigator's narrative, and a recommendation for UPPAC and the Board;

(2) may include a rationale for the recommendation, and mitigating and aggravating circumstances;

(3) is maintained in the UPPAC Case File; and

(4) is classified as protected under Section 63G-2-305(34).

EE. "LEA" or "local education agency" means a school district, charter school or, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

FF. "Letter of admonishment" is a letter sent by the Board to an educator cautioning the educator to avoid or take specific actions in the future.

GG. "Letter of reprimand" is a letter sent by the Board to an educator:

(1) 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;

(2) that provides specific directives to the educator as a condition for removal of the letter;

(3) appears as a notation on the educator's CACTUS file; and

(4) that an educator can request to be removed from the educator's CACTUS file after two years, or after such other time period as the Board may prescribe in the letter of reprimand.

HH. "Letter of warning" is a letter sent by the Board to an educator:

(1) for misconduct that was inappropriate or unethical; and

(2) that does not warrant longer term or more serious discipline.

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

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

KK. "National Association of State Directors of Teacher Education and Certification (NASDTEC) Educator Information Clearinghouse" means a database maintained by NASDTEC for the members of NASDTEC regarding persons whose licenses have been suspended or revoked.

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

MM. "Party" means a complainant or a respondent.

NN. "Petitioner" means an individual seeking:

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

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

OO. "Probation" is an action directed by the Board that:

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

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

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

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

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

PP. "Prosecutor" means an attorney who:

(1) is designated by the Superintendent to represent the complainant and present evidence in support of the complaint; and

(2) may also be the investigator, but does not have to be.

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

RR. "Respondent" means an educator against whom:

- (1) a complaint is filed; or
- (2) an investigation is undertaken.

SS. "Serve" or "service," as used to refer to the provision of notice to a person, means:

(1) delivery of a written document or its contents to the person or persons in question; and

(2) delivery that may be made in person, by mail, by electronic correspondence, or by any other means reasonably calculated, under all of the circumstances, to notify an interested person or persons to the extent reasonably practical or practicable of the information contained in the document.

TT. "Stipulated agreement" means an agreement between a respondent and the Board:

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

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

(a) when approved by the Board; and

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

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

UU. "Superintendent" means the State Superintendent of Public Instruction or the Superintendent's designee.

VV(1) "Suspension" means an invalidation of a Utah educator license.

(2) "Suspension" may:

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

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

WW. "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, established in Section 53A-6-301.

XX. "UPPAC Background Check File" means a file maintained securely by UPPAC on a criminal background review that:

(1) contains information obtained from:

(a) BCI; and

(b) letters, police reports, court documents, and other materials as provided by an educator; and

(2) is classified as private under Section 63G-2-302(2).

YY. "UPPAC Case File" means a file:

(1) maintained securely by UPPAC on an investigation into educator misconduct;

(2) opened following UPPAC's direction to investigate alleged misconduct;

(3) that contains the original notification of misconduct with supporting documentation, correspondence with the Executive Secretary, the investigative report, the stipulated agreement, the hearing report, and the final disposition of the case;

(4) that is classified as protected under Section 63G-2-305(10) until the investigation and any subsequent proceedings before UPPAC and the Board are completed; and

(5) that after a case proceeding is closed, is considered public under GRAMA, unless specific documents contained therein contain non-public information or have been otherwise classified as non-public under GRAMA, in which case the file may be redacted or partially or fully restricted.

ZZ. "UPPAC Evidence File" means a file:

(1) maintained by the attorney assigned by UPPAC to investigate a case containing materials, written or otherwise, obtained by the UPPAC investigator during the course of the attorney's investigation;

(2) that contains correspondence between the Investigator and the educator or the educator's counsel;

(3) that is classified as protected under Section 63G-2-305(10) until the investigation and any subsequent proceedings before UPPAC and the Board are completed; and

(4) that is considered public under GRAMA after case proceedings are closed, unless specific documents contained therein contain non-public information or have been otherwise classified as non-public under GRAMA.

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

BBB. "UPPAC Prosecutor File" means a file:

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

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

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

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

CCC. "USOE" means the Utah State Office of Education.

KEY: professional practices, definitions, educators

Date of Enactment or Last Substantive Amendment: 2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)

R277. Education, Administration.

R277-200. Utah Professional Practices Advisory Commission (UPPAC), Definitions.

R277-200-1. Authority and Purpose.

~~[A-]~~(1) This rule is authorized ~~[under]~~by:

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

(b) ~~[by]~~Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures; and

(c) ~~[by]~~Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.

~~[B-]~~(2) The purpose of this rule is to establish definitions for terms in UPPAC activities.

~~[C-]~~(3) The definitions contained in this rule apply to ~~[f]~~Rules R277-200 through R277-20~~[6]~~7. Any calculation of time called for by these rules shall be governed by Utah R. Civ. P. 6.

R277-200-2. Definitions.

~~[A]~~(1)(a) "Action" means a disciplinary action taken by the Board adversely affecting an educator's license.

~~[2]~~(b) "Action" does not include a disciplinary letter.

~~[3]~~(c) "Action" includes:

~~[a]~~(i) a letter of reprimand;

~~[b]~~(ii) probation;

~~[e]~~(iii) suspension; and

~~[d]~~(iv) revocation.

~~[B-]~~(2) "Administrative hearing" or "hearing" has the same meaning as that term is defined in Section 53A-6-601.

~~[C-]~~(3) "Alcohol related offense" means:

~~[1]~~(a) driving under the influence;

~~[2]~~(b) alcohol-related reckless driving or impaired driving;

~~[3]~~(c) intoxication;

~~[4]~~(d) driving with an open container;

~~[5]~~(e) unlawful sale or supply of alcohol;

~~[6]~~(f) unlawful permitting of consumption of alcohol by minors;

~~[7]~~(g) driving in violation of an alcohol or interlock restriction; and

(8) any offense under the laws of another state that is substantially equivalent to the offenses described in Subsections ~~[R277-200-2C(1) through (7)]~~(3)(a) through (g).

~~[D-]~~(4) "Allegation of misconduct" means a written report alleging that an educator:

~~[1]~~(a) has engaged in unprofessional or criminal conduct;

~~[2]~~(b) is unfit for duty;

~~[3]~~(c) has lost the educator's 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

~~[4]~~(d) has committed some other violation of standards of ethical conduct, performance, or professional competence as provided in Rule R277-515.

~~[E.](5)~~ “Answer” means a written response to a complaint filed by USOE alleging educator misconduct.

~~[F.](6)~~ “Applicant” means a person seeking:

~~(1)a~~ a new license;

~~(2)b~~ reinstatement of an expired, surrendered, suspended, or revoked license;

or

~~(3)c~~ clearance of a criminal background review from USOE at any stage of the licensing process.

~~[G. “Board” means the Utah State Board of Education.]~~

~~[H.](7)~~ “Chair” means the Chair of UPPAC.

~~[I.](8)~~ “Complaint” means a written allegation or charge against an educator filed by USOE against the educator.

~~[J.](9)~~ “Complainant” means the Utah State Office of Education.

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

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

~~(2)b~~ “Conviction” includes:

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

~~(b)ii~~ a guilty or no contest plea;

~~(e)iii~~ a plea in abeyance; and

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

~~[M.](12)~~ “Criminal Background Review” means the process by which the Executive Secretary, UPPAC, and the Board review information pertinent to:

~~(1)a~~ a charge revealed by a criminal background check;

~~(2)b~~ a charge revealed by a hit as a result of ongoing monitoring; or

~~(3)c~~ an educator or applicant’s self-disclosure.

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

~~(2)b~~ “Disciplinary letter” includes:

~~(1)i~~ a letter of admonishment;

~~(2)ii~~ a letter of warning; and

~~(3)iii~~ any other action that the Board takes to discipline an educator for educator misconduct that does not rise to the level of an action as defined in this ~~[R277-200-2]section.~~

~~[O.](14)~~ “Drug” means controlled substance as defined in Section 58-37-2.

~~[P.](15)~~ “Drug related offense” means any criminal offense under:

~~(1)a~~ Title 58, Chapter 37;

~~(2)b~~ Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

~~(3)c~~ Title 58, Chapter 37b, Imitation Controlled Substances Act;

~~(4)d~~ Title 58, Chapter 37c, Utah Controlled Substance Precursor Act;

~~(5)e~~ Title 58, Chapter 37d, Clandestine Drug Lab Act; and

~~(6)f~~ Title 58, Chapter 37e, Drug Dealer’s Liability Act.

Sections 58-37 through 37e.

~~[Q. “Educator” means a person:~~

~~———(1) who currently holds a license;~~

- ~~— (2) who held a license at the time of an alleged offense;~~
- ~~— (3) is a person who is student teaching in anticipation of seeking a license;~~
- ~~— (4) is an applicant for a license;~~
- ~~— (5) is a licensure candidate through the Alternate Route to Licensure, “ARL,” program; or~~
- ~~— (6) who has applied to the Alternate Route to Licensure, “ARL” program.]~~

~~[R.](16) “Educator Misconduct” means:~~

- ~~(1)a unprofessional or criminal conduct;~~
- ~~(2)b conduct that renders an educator unfit for duty; or~~
- ~~(3)c conduct that is a violation of standards of ethical conduct, performance, or professional competence as provided in Rule R277-515.~~

~~[S.](17) “Executive Committee” means a subcommittee of UPPAC consisting of the following members:~~

- ~~(1)a Executive Secretary;~~
- ~~(2)b Chair;~~
- ~~(3)c Vice-Chair; and~~
- ~~(4)d one member of UPPAC at large.~~

~~[T.](18) “Executive Secretary” means an employee of USOE who:~~

- ~~(1)a is appointed by the State Superintendent of Public Instruction to serve as the UPPAC Director; and~~
- ~~(2)b serves as a non-voting member of UPPAC, consistent with Section 53A-6-302.~~

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

~~[V.](20) “Expedited Hearing Panel” means a panel of the following three members:~~

- ~~(1)a the Executive Secretary;~~
- ~~(2)b a voting member of UPPAC; and~~
- ~~(3)c a UPPAC prosecutor.~~

~~[W.](21) “Final action” means an action by the Board that concludes an investigation of an allegation of misconduct against a licensed educator.~~

~~[X.](22) “GRAMA” refers to the Government Records Access and Management Act, Title 63G, Chapter 2, Government Records Access and Management Act.~~

~~[Y.](23) “Hearing officer” means a licensed attorney who:~~

- ~~(1)a is experienced in matters relating to administrative procedures;~~
- ~~(2)b is appointed by the Executive Secretary to manage the proceedings of a hearing;~~
- ~~(3)c is not an acting member of UPPAC;~~
- ~~(4)d has authority, subject to the limitations of these rules, to regulate the course of the hearing and dispose of procedural requests; and~~
- ~~(5) does not have a vote as to the recommended disposition of a case.~~

~~[Z.](24) “Hearing panel” means a panel of three or more individuals designated to:~~

- ~~(1)a hear evidence presented at a hearing;~~
- ~~(2)b make a recommendation to UPPAC as to disposition; and~~

([3]c) collaborate with the hearing officer in preparing a hearing report.

[AA.](25) "Hearing report" means a report that:

([1]a) is prepared by the hearing officer consistent with the recommendations of the hearing panel at the conclusion of a hearing; and

([2]b) includes:

([a]i) a recommended disposition;

([b]ii) detailed findings of fact and conclusions of law, based upon the evidence presented in the hearing, relevant precedent; and

([c]iii) applicable law and rule.

[BB.](26) "Informant" means a person who submits information to UPPAC concerning the alleged misconduct of an educator.

[CC.](27) "Investigator" means an employee of the USOE, or independent investigator selected by the Board, who:

([1]a) is assigned to investigate allegations of educator misconduct under UPPAC supervision;

([2]b) offers recommendations of educator discipline to UPPAC and the Board at the conclusion of the investigation;

([3]c) provides an independent investigative report for UPPAC and the Board; and

([4]d) may also be the prosecutor but does not have to be.

[DD.](28) "Investigative report" means a written report of an investigation into allegations of educator misconduct, prepared by an Investigator that:

([1]a) includes a brief summary of the allegations, the investigator's narrative, and a recommendation for UPPAC and the Board;

([2]b) may include a rationale for the recommendation, and mitigating and aggravating circumstances;

([3]c) is maintained in the UPPAC Case File; and

([4]d) is classified as protected under Subsection 63G-2-305(34).

[EE.](29) "LEA" or "local education agency" [~~means a school district, charter school or,~~] for purposes of this rule[,] includes the Utah Schools for the Deaf and the Blind.

[FF.](30) "Letter of admonishment" is a letter sent by the Board to an educator cautioning the educator to avoid or take specific actions in the future.

[GG.](31) "Letter of reprimand" is a letter sent by the Board to an educator:

([1]a) 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;

([2]b) that provides specific directives to the educator as a condition for removal of the letter;

([3]c) appears as a notation on the educator's CACTUS file; and

([4]d) that an educator can request to be removed from the educator's CACTUS file after two years, or after such other time period as the Board may prescribe in the letter of reprimand.

[HH.](32) "Letter of warning" is a letter sent by the Board to an educator:

([1]a) for misconduct that was inappropriate or unethical; and

([2]b) that does not warrant longer term or more serious discipline.

[I.](33) "License" means a teaching or administrative credential, including an

endorsement, which is issued by the Board to signify authorization for the person holding the license to provide professional services in Utah's public schools.

~~[JJ.]~~(34) "Licensed educator" means an individual issued a teaching or administrative credential, including an endorsement, issued by the Board to signify authorization for the individual holding the license to provide professional services in Utah's public schools.

~~[KK.]~~(35) "National Association of State Directors of Teacher Education and Certification (NASDTEC) Educator Information Clearinghouse" means a database maintained by NASDTEC for the members of NASDTEC regarding persons whose licenses have been suspended or revoked.

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

~~[MM.]~~(37) "Party" means a complainant or a respondent.

~~[NN.]~~(38) "Petitioner" means an individual seeking:

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

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

~~[OO.]~~(39) "Probation" is an action directed by the Board that:

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

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

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

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

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

~~[PP.]~~(40) "Prosecutor" means an attorney who:

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

(2)b may also be the investigator, but does not have to be.

~~[QQ.]~~(41) "Revocation" means a permanent invalidation of a Utah educator license consistent with Rule R277-517.

~~[RR.]~~(42) "Respondent" means an educator against whom:

(1)a a complaint is filed; or

(2)b an investigation is undertaken.

~~[SS.]~~(43) "Serve" or "service," as used to refer to the provision of notice to a person, means:

(1)a delivery of a written document or its contents to the person or persons in question; and

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

(44) "Sexually explicit conduct" means the same as that term is defined in

Section 76-5b-103.

~~[[T.]]~~(45) “Stipulated agreement” means an agreement between a respondent and the Board:

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

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

(a)i) when approved by the Board; and

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

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

~~[UU. “Superintendent” means the State Superintendent of Public Instruction or the Superintendent’s designee.]~~

~~[[V.]]~~(46)(a) “Suspension” means an invalidation of a Utah educator license.

(2)b) “Suspension” may:

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

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

~~[[W.]]~~(47) “Utah Professional Practices Advisory Commission” or “[U]PPAC” means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, established in Section 53A-6-301.

~~[[X.]]~~(48) “UPPAC Background Check File” means a file maintained securely by UPPAC on a criminal background review that:

(1)a) contains information obtained from:

(a)i) BCI; and

(b)ii) letters, police reports, court documents, and other materials as provided by an educator; and

(2)b) is classified as private under Subsection 63G-2-302(2).

~~[[Y.]]~~(49) “UPPAC Case File” means a file:

(1)a) maintained securely by UPPAC on an investigation into educator misconduct;

(2)b) opened following UPPAC’s direction to investigate alleged misconduct;

(3)c) that contains the original notification of misconduct with supporting documentation, correspondence with the Executive Secretary, the investigative report, the stipulated agreement, the hearing report, and the final disposition of the case;

(4)d) that is classified as protected under Subsection 63G-2-305(10) until the investigation and any subsequent proceedings before UPPAC and the Board are completed; and

(5)e) that after a case proceeding is closed, is considered public under GRAMA, unless specific documents contained therein contain non-public information or have been otherwise classified as non-public under GRAMA, in which case the file may be redacted or partially or fully restricted.

~~[[Z.]]~~(50) “UPPAC Evidence File” means a file:

(1)a) maintained by the attorney assigned by UPPAC to investigate a case containing materials, written or otherwise, obtained by the UPPAC investigator during the course of the attorney’s investigation;

(2)b) that contains correspondence between the Investigator and the educator or the educator’s counsel;

([3]c) that is classified as protected under Subsection 63G-2-305(10) until the investigation and any subsequent proceedings before UPPAC and the Board are completed; and

([4]d) that is considered public under GRAMA after case proceedings are closed, unless specific documents contained therein contain non-public information or have been otherwise classified as non-public under GRAMA.

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

[BBB.](52) "UPPAC Prosecutor File" means a file:

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

([a]i) the attorney's notes prepared in the course of investigation; and

([b]ii) other documents prepared by the attorney in anticipation of an eventual hearing; and

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

[CCC. "USOE" means the Utah State Office of Education.]

KEY: professional practices, definitions, educators

Date of Enactment or Last Substantive Amendment: [July 8,]2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)

R277. Education, Administration.

~~[R277-200. Utah Professional Practices Advisory Commission (UPPAC), Definitions.~~

~~R277-200-1. Authority and Purpose.~~

- ~~_____ (1) This rule is authorized by:~~
 - ~~_____ (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;~~
 - ~~_____ (b) Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures; and~~
 - ~~_____ (c) Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.~~
- ~~_____ (2) The purpose of this rule is to establish definitions for terms in UPPAC activities.~~
- ~~_____ (3) The definitions contained in this rule apply to Rules R277-200 through R277-207. Any calculation of time called for by these rules shall be governed by Utah R. Civ. P. 6.~~

~~R277-200-2. Definitions.~~

- ~~_____ (1)(a) "Action" means a disciplinary action taken by the Board adversely affecting an educator's license.~~
- ~~_____ (b) "Action" does not include a disciplinary letter.~~
- ~~_____ (c) "Action" includes:~~
 - ~~_____ (i) a letter of reprimand;~~
 - ~~_____ (ii) probation;~~
 - ~~_____ (iii) suspension; and~~
 - ~~_____ (iv) revocation.~~
- ~~_____ (2) "Administrative hearing" or "hearing" has the same meaning as that term is defined in Section 53A-6-601.~~
- ~~_____ (3) "Alcohol related offense" means:~~
 - ~~_____ (a) driving under the influence;~~
 - ~~_____ (b) alcohol-related reckless driving or impaired driving;~~
 - ~~_____ (c) intoxication;~~
 - ~~_____ (d) driving with an open container;~~
 - ~~_____ (e) unlawful sale or supply of alcohol;~~
 - ~~_____ (f) unlawful permitting of consumption of alcohol by minors;~~
 - ~~_____ (g) driving in violation of an alcohol or interlock restriction; and~~
- ~~_____ (8) any offense under the laws of another state that is substantially equivalent to the offenses described in Subsections(3)(a) through (g).~~
- ~~_____ (4) "Allegation of misconduct" means a written report alleging that an educator:~~
 - ~~_____ (a) has engaged in unprofessional or criminal conduct;~~
 - ~~_____ (b) is unfit for duty;~~
 - ~~_____ (c) has lost the educator's 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~~
 - ~~_____ (d) has committed some other violation of standards of ethical conduct, performance, or professional competence as provided in Rule R277-515.~~
- ~~_____ (5) "Answer" means a written response to a complaint filed by USOE alleging~~

educator misconduct.

~~_____ (6) “Applicant” means a person seeking:~~

~~_____ (a) a new license;~~

~~_____ (b) reinstatement of an expired, surrendered, suspended, or revoked license; or~~

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

~~_____ (7) “Chair” means the Chair of UPPAC.~~

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

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

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

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

~~_____ (b) “Conviction” includes:~~

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

~~_____ (ii) a guilty or no contest plea;~~

~~_____ (iii) a plea in abeyance; and~~

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

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

~~_____ (a) a charge revealed by a criminal background check;~~

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

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

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

~~_____ (b) “Disciplinary letter” includes:~~

~~_____ (i) a letter of admonishment;~~

~~_____ (ii) a letter of warning; and~~

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

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

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

~~_____ (a) Title 58, Chapter 37;~~

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

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

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following members:

~~_____ (a) Executive Secretary;~~

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~~_____ (c) Vice Chair; and~~

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

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

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

KEY: professional practices, definitions, educators

~~Date of Enactment or Last Substantive Amendment: October 8, 2015~~

~~Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306;
53A-1-401(3)]~~

R277. Education, Administration.

R277-201. Utah Professional Practices Advisory Commission (UPPAC), Rules of Procedure: Notification to Educators, Complaints and Final Disciplinary Actions.

R277-201-1. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, by Section 53A-6-306 which directs the Board to adopt rules regarding UPPAC duties and procedures, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide procedures regarding:
(1) notifications of alleged educator misconduct;
(2) review of notifications by UPPAC; and
(3) complaints, stipulated agreement and defaults.

C. Except as provided in R277-201-1D, the provisions of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Section 63G-4-102(2)(d).

D. UPPAC may invoke and use sections or provisions of the Utah Administrative Procedures Act as found in Title 63G, Chapter 4, Utah Administrative Procedures Act, as necessary to adjudicate an issue.

R277-201-2. Initiating Proceedings Against Educators.

A. The Executive Secretary may refer a case to UPPAC to make a determination if an investigation should be opened regarding an educator:

(1) upon receiving a notification of alleged educator misconduct; or
(2) upon the Executive Secretary's own initiative.

B. An informant shall submit an allegation to the Executive Secretary in writing, including the following:

(1) the informant's:

(a) name;

(b) position (such as administrator, teacher, parent, student);

(c) telephone number;

(d) address; and

(e) contact information;

(2) the following information of the educator against whom the allegation is made:

(a) name;

(b) position (such as administrator, teacher, candidate); and

(c) if known, the address and telephone number of the educator against whom the allegation is made;

(d) the facts on which the allegation is based and supporting information; and

(e) signature of the informant and date.

C. If an informant submits a written allegation of misconduct as provided in this rule, the informant may be notified of a final action taken by the Board regarding the allegation.

D(1) Proceedings initiated upon the Executive Secretary's own

initiative may be based on information received through a telephone call, letter, newspaper article, media information, notice from another state or by other means.

(2) The Executive Secretary may also recommend an investigation based on an anonymous allegation, notwithstanding the provisions of this rule, if the allegation bears sufficient indicia of reliability.

E. All written allegations, subsequent dismissals, actions, or disciplinary letters related to a case against an educator shall be maintained permanently in UPPAC's paper licensing files.

R277-201-3. Review of Notification of Alleged Educator Misconduct.

A. Initial Review: On reviewing the notification of alleged educator misconduct, the Executive Secretary, the Executive Committee, or both, shall recommend one of the following to UPPAC:

(1) Dismiss: If UPPAC determines that alleged misconduct does not involve an issue that UPPAC should address, UPPAC shall dismiss the matter; or

(2) Initiate an investigation: If UPPAC determines that the alleged misconduct involves an issue which may be appropriately addressed by UPPAC and the Board:

(a) UPPAC shall initiate an investigation; and

(b) the Executive Secretary shall direct a UPPAC investigator to gather evidence relating to the allegations.

B(1) Prior to a UPPAC investigator's initiation of an investigation, the Executive Secretary shall send a letter to the following with information that an investigation has been initiated:

(a) the educator to be investigated;

(b) the LEA that currently employs the educator; and

(c) the LEA where the alleged activity occurred.

(2) A letter described in R277-201-3B(1) shall inform the educator and the LEA(s) that an investigation shall take place and is not evidence of unprofessional conduct.

(3) UPPAC shall place a flag on the educator's CACTUS file after sending the notices as provided in this rule.

C(1) The investigator shall review relevant documentation and interview individuals who may have knowledge of the allegations.

(2) The investigator shall prepare an investigative report of the findings of the investigation and a recommendation for appropriate action or disciplinary letter.

(3) If the investigator discovers additional evidence of unprofessional conduct which could have been included in the original notification of alleged educator misconduct, the investigator may include the additional evidence of misconduct in the investigative report.

(4) The investigative report shall be submitted to the Executive Secretary.

(5) The Executive Secretary shall review the investigative report described in R277-201-3C(4) with UPPAC.

(6) The investigative report described in R277-201-3C(4) shall become part of the UPPAC Case File.

D. Secondary Review: UPPAC shall review the investigative report and take one of the following actions:

(1) Dismiss: If UPPAC determines no further action should be taken, it may recommend that the Board dismiss the case; or

(2) Make an initial recommendation of appropriate Action or disciplinary letter.

E. After receiving an initial recommendation from UPPAC for action, the Executive Secretary shall direct a UPPAC prosecutor to:

(1) prepare and serve a complaint; or

(2) negotiate and prepare a stipulated agreement.

F(1) A stipulated agreement shall conform to the requirements set forth in R277-201-6.

(2) An educator may stipulate to any recommended disposition for an action.

G. The Executive Secretary shall forward any stipulated agreement to the Board for approval.

H. Upon receipt of a hearing report as defined in R277-202, UPPAC shall make a final recommendation with appropriate findings and shall direct the Executive Secretary to transmit the recommendation to the Board for consideration.

R277-201-4. Expedited Hearings.

A. In a case involving the report of an arrest, citation, or charge of a licensed educator, which requires self-reporting by the educator under R277-516-3, the Executive Secretary, with the consent of the educator, may schedule the matter for an expedited hearing in lieu of initially referring the matter to UPPAC.

B(1) an expedited hearing shall be held within thirty (30) days of a report of an arrest, citation, or charge, unless otherwise agreed upon by both parties.

(2) An expedited hearing will be conducted by the Executive Secretary or the Executive Secretary's designee with the following additional invited participants:

(a) the educator;

(2) the educator's attorney or representative;

(3) a UPPAC prosecutor;

(4) a voting member of UPPAC; and

(5) representative(s) of the educator's LEA.

C. The following matters may be considered at an expedited hearing:

(1) an educator's oral or written explanation of the events;

(2) a police report;

(3) a court docket or transcript;

(4) an LEA's investigative report or employment file; and

(5) additional information offered by the educator if the panel deems it probative of the issues at the Expedited Hearing.

D. After reviewing the evidence, the expedited hearing panel shall make written findings and a recommendation to UPPAC to do one of the following:

(1) close the case;

(2) close the case upon completion of court requirements;
(3) recommend issuance of a disciplinary letter to the Board;
(4) open a full investigation; or
(5) recommend action by the Board, subject to an educator's due process rights under these rules.

E. An expedited hearing may be recorded, but the testimony from the expedited hearing is inadmissible during a future UPPAC action related to the allegation.

F. If the Board fails to adopt the recommendation of an expedited hearing panel, UPPAC shall open a full investigation.

R277-201-5. Complaints.

A. Filing a complaint: If UPPAC determines that an allegation is sufficiently supported by evidence discovered in the investigation, UPPAC, through the Executive Secretary, may direct the prosecutor to serve a complaint upon the educator being investigated.

B. Elements of a complaint: At a minimum, a complaint shall include:

(1) a statement of legal authority and jurisdiction under which the action is being taken;

(2) a statement of the facts and allegations upon which the complaint is based;

(3) other information which the investigator believes to be necessary to enable the respondent to understand and address the allegations;

(4) a statement of the potential consequences should an allegation be found to be true or substantially true;

(5) a statement that the respondent shall answer the complaint and request a hearing, if desired, within 30 days of the date the complaint was mailed to the respondent;

(6) a statement that the respondent is required to file a written answer described in R277-201-5B(5) with the Executive Secretary;

(7) a statement advising the respondent that if the respondent fails to respond within 30 days, a default judgment for revocation or a suspension of the educator's license may occur for a term of five years or more;

(8) a statement that, if a hearing is requested, the hearing shall be scheduled no less than 25 days, nor more than 180 days, after receipt of the respondent's answer, unless a different date is agreed to by both parties in writing; and

(9) a statement that the hearing will be governed by these rules, with an internet address where the rules may be accessed.

C. On the Executive Secretary's own motion, the Executive Secretary, or the Executive Secretary's designee, with notice to the parties, may reschedule a hearing date.

D(1) Answer to the complaint: A respondent may file an answer to a complaint by filing a written response signed by the respondent, or the respondent's representative with the Executive Secretary within 30 days after the complaint was mailed.

(2) The answer may include a request for a hearing, and shall

include:

- (a) the file number of the complaint;
- (b) the names of the parties;
- (c) a statement of the relief that the respondent seeks; and
- (d) if not requesting a hearing, a statement of the reasons that the relief requested should be granted.

E(1) As soon as reasonably practicable after receiving an answer, or no more than 30 days after receipt of an answer at the USOE, the Executive Secretary shall schedule a hearing, if requested, as provided in R277-202.

(2) If the parties can reach an agreement prior to the hearing consistent with the terms of UPPAC's initial recommendation, the prosecutor may negotiate a stipulated agreement with the respondent.

(3) A stipulated agreement described in R277-201-5E(2) shall be submitted to the Board for the Board's final approval.

F(1) Default: If a respondent does not respond to the complaint within 30 days, the Executive Secretary may initiate default proceedings in accordance with the procedures set forth in R277-201-7.

(2) Except as provided in R277-201-7C, if the Executive Secretary enters an order of default, the Executive Secretary shall make a recommendation to the Board for a revocation or a suspension of the educator's license for five years before the educator may request a reinstatement hearing.

(3) If a default results in a suspension, a default may include conditions that an educator shall satisfy before the educator may qualify for a reinstatement hearing.

(4) An order of default shall result in a recommendation to the Board for a revocation if the alleged misconduct is conduct identified in Section 53A-6-501(5)(b).

R277-201-6. Stipulated Agreements.

A. At any time after UPPAC has made an initial recommendation, a respondent may accept UPPAC's initial recommendation, rather than request a hearing, by entering into a stipulated agreement.

B. By entering into a stipulated agreement, a respondent waives the respondent's right to a hearing to contest the recommended disposition, contingent on final approval by the Board,

C. Elements of a stipulated agreement: At a minimum, a stipulated agreement shall include:

(1) a summary of the facts, the allegations, and the evidence relied upon by UPPAC in its recommendation;

(2) a statement that the respondent admits the facts recited in the stipulated agreement as true for purposes of the Board administrative action;

(3) a statement that the respondent:

(a) waives the respondent's right to a hearing to contest the allegations that gave rise to the investigation; and

(b) agrees to limitations on the respondent's license or surrenders the respondent's license rather than contest the

allegations;

(4) a statement that the respondent agrees to the terms of the stipulated agreement and other provisions applicable to the case, such as remediation, counseling, restitution, rehabilitation, and other conditions, if any, under which the respondent may request a reinstatement hearing or a removal of the letter of reprimand or termination of probation;

(5) if for suspension or revocation of a license, a statement that the respondent:

(a) may not seek or provide professional services in a public school in Utah;

(b) may not seek to obtain or use an educator license in Utah;

or

(c) may not work or volunteer in a public K-12 setting in any capacity without express authorization from the UPPAC Executive Secretary, unless or until the respondent:

(i) first obtains a valid educator license or authorization from the Board to obtain such a license; or

(ii) satisfies other provisions provided in the stipulated agreement;

(6) a statement that the action and the stipulated agreement shall be reported to other states through the NASDTEC Educator Information Clearinghouse and any attempt to present to any other state a valid Utah license shall result in further licensing action in Utah;

(7) a statement that respondent waives the respondent's right to contest the facts stated in the stipulated agreement at a subsequent reinstatement hearing, if any;

(8) a statement that all records related to the stipulated agreement shall remain permanently in the UPPAC case file; and

(9) a statement reflecting the stipulated agreement's classification under GRAMA.

D. A violation of the terms of a stipulated agreement may result in additional disciplinary action and may affect the reinstatement process.

E(1) A stipulated agreement shall be forwarded to the Board for approval prior to execution by the respondent.

(2) If the Board fails to approve the stipulated agreement, the Executive Secretary shall notify the parties of the decision and the proceedings shall continue from the point under these procedures at which the stipulated agreement was negotiated, as if the stipulated agreement had not been submitted.

(3) Alternatively, if the Board rejects the stipulated agreement, it may provide alternative terms to the Executive Secretary, which would be satisfactory to the Board.

(4) If accepted by the respondent, the stipulated agreement, as modified, would become a final Board administrative action without further Board consideration.

(5) If the terms approved by the Board are rejected, the proceedings shall continue from the point under these procedures at

which the agreement was negotiated, as if the stipulated agreement had not been submitted.

(6) If the Board approves a stipulated agreement, the approval is a final Board administrative action, effective upon signature by all parties, and the Executive Secretary shall:

(a) notify the parties of the decision; and

(b) direct the appropriate penalties to begin.

F. If, after negotiating a stipulated agreement, a respondent fails to sign or respond to a proffered stipulated agreement within 30 days after the stipulated agreement is mailed, the Executive Secretary shall direct the prosecutor to prepare findings in default consistent with R277-201-7.

R277-201-7. Default Procedures.

A. If a respondent does not respond to a complaint or a stipulated agreement within 30 days from the date the complaint or stipulated agreement is served, the Executive Secretary may issue an order of default against respondent consistent with the following:

(1) the prosecutor shall prepare and serve on the respondent an order of default including:

(a) a statement of the grounds for default; and

(b) a recommended disposition if respondent fails to file a response to a complaint or respond to a proffered stipulated agreement;

(2) ten (10) days following service of the order of default, the prosecutor shall attempt to contact respondent by telephone or electronically;

(3) UPPAC shall maintain documentation of attempts toward written, telephonic or electronic contact;

(4) respondent has 20 days following service of the order of default to respond to UPPAC; and

(5) if UPPAC receives a response from respondent to a default order before the end of the 20 day default period, UPPAC shall allow respondent a final 10 day period to respond to a complaint or stipulated agreement.

B. Except as provided in R277-201-7C, if an order of default is issued, the Executive Secretary may make a recommendation to the Board for revocation or for a suspension of the educator's license for no less than five years.

C. If an order of default is issued, the Executive Secretary shall make a recommendation to the Board for a revocation of the educator's license if the alleged misconduct is conduct identified in 53A-6-501(5)(b).

KEY: teacher licensing, conduct, hearings

Date of Enactment or Last Substantive Amendment: 2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)

R277. Education, Administration.

R277-201. Utah Professional Practices Advisory Commission (UPPAC), Rules of Procedure: Notification to Educators, Complaints and Final Disciplinary Actions.

R277-201-1. Authority and Purpose.

[A.](1) This rule is authorized ~~under~~by:

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

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

(c) ~~by~~Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.

[B.](2) The purpose of this rule is to provide procedures regarding:

(1)a) notifications of alleged educator misconduct;

(2)b) review of notifications by UPPAC; and

(3)c) complaints, stipulated agreement, and defaults.

[C.](3) Except as provided in Subsection [R277-201-1D](4), ~~the provisions of the~~Title 63G, Chapter 4, ~~Utah~~Administrative Procedures Act does not apply to this rule under the exemption of Subsection 63G-4-102(d).

[D.](4) UPPAC may invoke and use sections or provisions of ~~the Utah Administrative Procedures Act as found in~~ Title 63G, Chapter 4, ~~Utah~~ Administrative Procedures Act as necessary to adjudicate an issue.

R277-201-2. Initiating Proceedings Against Educators.

[A.](1) The Executive Secretary may refer a case to UPPAC to make a determination if an investigation should be opened regarding an educator:

(1)a) upon receiving a notification of alleged educator misconduct; or

(2)b) upon the Executive Secretary's own initiative.

[B.](2) An informant shall submit an allegation to the Executive Secretary in writing, including the following:

(1)a) the informant's:

(a)i) name;

(b)ii) position, ~~{such as administrator, teacher, parent, or student}~~;

(c)iii) telephone number;

(d)iv) address; and

(e)v) contact information;

(2)b) ~~the following~~ information of the educator against whom the allegation is made:

(a)i) name;

(b)ii) position, ~~{such as administrator, teacher, candidate}~~; and

(c)iii) if known, the address and telephone number ~~of the educator against whom the allegation is made~~;

(d)c) the facts on which the allegation is based and supporting information; and

(e)d) signature of the informant and date.

[C.](3) If an informant submits a written allegation of misconduct as provided in this rule, the informant may be notified of a final action taken by the Board regarding the allegation.

[D.](4)(a) Proceedings initiated upon the Executive Secretary's own initiative

may be based on information received through a telephone call, letter, newspaper article, media information, notice from another state, or by other means.

(2)(b) The Executive Secretary may also recommend an investigation based on an anonymous allegation, notwithstanding the provisions of this rule, if the allegation bears sufficient indicia of reliability.

(5) All written allegations, subsequent dismissals, actions, or disciplinary letters related to a case against an educator shall be maintained permanently in the UPPAC's paper licensing case file[s].

R277-201-3. Review of Notification of Alleged Educator Misconduct.

(1)(a) ~~Initial Review:~~ On reviewing the notification of alleged educator misconduct, the Executive Secretary, the Executive Committee, or both, shall recommend one of the following to UPPAC:

(1)(i) ~~Dismiss the matter if~~ UPPAC determines that alleged misconduct does not involve an issue that UPPAC should address ~~UPPAC shall dismiss the matter~~; or

(2)(ii) ~~initiate an investigation if~~ UPPAC determines that the alleged misconduct involves an issue ~~which~~ that may be appropriately addressed by UPPAC and the Board.

(a) If the Executive Secretary or Executive Committee recommends UPPAC initiate an investigation:

(i) UPPAC shall initiate an investigation; and

(b)(ii) the Executive Secretary shall direct a UPPAC investigator to gather evidence relating to the allegations.

(2)(a) Prior to a UPPAC investigator's initiation of an investigation, the Executive Secretary shall send a letter to the following with information that UPPAC has initiated an investigation ~~has been initiated~~:

(a)(i) the educator to be investigated;

(b)(ii) the LEA that ~~currently~~ employs the educator; and

(c)(iii) the LEA where the alleged activity occurred.

(2)(b) A letter described in Subsection [R277-201-3B(4)](2)(a) shall inform the educator and the LEA(s) that an investigation shall take place and is not evidence of unprofessional conduct.

(3)(c) UPPAC shall place a flag on the educator's CACTUS file after sending the notices as provided in this rule.

(4)(a) The investigator shall review relevant documentation and interview individuals who may have knowledge of the allegations.

(2)(b) The investigator shall prepare an investigative report of the findings of the investigation and a recommendation for appropriate action or disciplinary letter.

(3)(c) If the investigator discovers additional evidence of unprofessional conduct ~~which~~ that could have been included in the original notification of alleged educator misconduct, the investigator may include the additional evidence of misconduct in the investigative report.

(4)(d) The investigator shall submit the investigative report ~~shall be submitted~~ to the Executive Secretary.

(5)(e) The Executive Secretary shall review the investigative report described in Subsection [R277-201-3C(4)](3)(d) with UPPAC.

(~~6~~)f) The investigative report described in Subsection [~~R277-201-3C(4)~~](3)(d) shall become part of the UPPAC [~~C~~]case [~~F~~]file.

~~D.~~(4) [~~Secondary Review:~~]UPPAC shall review the investigative report and take one of the following actions:

(1)a) [~~Dismiss: If~~]UPPAC determines no further action should be taken, [~~H~~]UPPAC may recommend that the Board dismiss the case; or

(2)b) UPPAC may [~~M~~]make an initial recommendation of appropriate [~~A~~]action or disciplinary letter.

~~E.~~(5) After receiving an initial recommendation from UPPAC for action, the Executive Secretary shall direct a UPPAC prosecutor to:

(~~1~~)a) prepare and serve a complaint; or

(2)b) negotiate and prepare a stipulated agreement.

~~F.~~(~~1~~)6)(a) A stipulated agreement shall conform to the requirements set forth in Section R277-201-6.

(2)b) An educator may stipulate to any recommended disposition for an action.

~~G.~~(7) The Executive Secretary shall forward any stipulated agreement to the Board for approval.

~~H.~~ Upon receipt of a hearing report as defined in R277-202, UPPAC shall make a final recommendation with appropriate findings and shall direct the Executive Secretary to transmit the recommendation to the Board for consideration.]

R277-201-4. Expedited Hearings.

~~A.~~(1) In a case involving the report of an arrest, citation, or charge of a licensed educator, which requires self-reporting by the educator under Section R277-516-3, the Executive Secretary, with the consent of the educator, may schedule the matter for an expedited hearing in lieu of initially referring the matter to UPPAC.

~~B.~~(~~1~~)2)(a) The Executive Secretary shall hold an expedited hearing[~~shall be held~~] within [~~thirty~~-(30)] days of a report of an arrest, citation, or charge, unless otherwise agreed upon by both parties.

(2)b) The Executive Secretary or the Executive Secretary's designee shall conduct [~~A~~]an expedited hearing[~~will be conducted by the Executive Secretary or the Executive Secretary's designee~~] with the following additional invited participants:

(~~1~~)a)i) the educator;

(2)ii) the educator's attorney or representative;

(3)iii) a UPPAC prosecutor;

(4)iv) a voting member of UPPAC; and

(5)v) a representative[~~(s)~~] of the educator's LEA.

~~C.~~(3) The panel may consider the following matters[~~may be considered~~] at an expedited hearing:

(1)a) an educator's oral or written explanation of the events;

(2)b) a police report;

(3)c) a court docket or transcript;

(4)d) an LEA's investigative report or employment file; and

(5)e) additional information offered by the educator if the panel deems it probative of the issues at the [~~E~~]expedited [~~H~~]hearing.

~~D.~~(4) After reviewing the evidence, the expedited hearing panel shall make written findings and a recommendation to UPPAC to do one of the following:

(1)a) close the case;
(2)b) close the case upon completion of court requirements;
(3)c) recommend issuance of a disciplinary letter to the Board;
(4)d) open a full investigation; or
(5)e) recommend action by the Board, subject to an educator's due process rights under these rules.

[E.](5) An expedited hearing may be recorded, but the testimony from the expedited hearing is inadmissible during a future UPPAC action related to the allegation.

[F.](6) If the Board fails to adopt the recommendation of an expedited hearing panel, UPPAC shall open a full investigation.

R277-201-5. Complaints.

[A.](1) ~~[Filing a complaint:]~~ If UPPAC determines that an allegation is sufficiently supported by evidence discovered in the investigation, UPPAC, through the Executive Secretary, may direct the prosecutor to serve a complaint upon the educator being investigated.

[B.](2) ~~[Elements of a complaint:]~~ At a minimum, a complaint shall include:

(1)a) a statement of legal authority and jurisdiction under which the action is being taken;

(2)b) a statement of the facts and allegations upon which the complaint is based;

(3)c) other information ~~[which]~~that the investigator believes ~~[to be]~~is necessary to enable the respondent to understand and address the allegations;

(4)d) a statement of the potential consequences ~~[should]~~if an allegation ~~[be]~~is found to be true or substantially true;

(5)e) a statement that the respondent shall answer the complaint and request a hearing, if desired, within 30 days of the date the complaint ~~[was]~~is mailed to the respondent;

(6)f) a statement that the respondent is required to file a written answer described in Subsection [R277-201-5B(5)](2)(e) with the Executive Secretary;

(7)g) a statement advising the respondent that if the respondent fails to respond within 30 days, a default judgment for revocation or a suspension of the educator's license may occur for a term of five years or more;

(8)h) a statement that, if a hearing is requested, the hearing ~~[shall]~~will be scheduled no less than 25 days, nor more than 180 days, after receipt of the respondent's answer, unless a different date is agreed to by both parties in writing; and

(9)i) a statement that the hearing ~~[will be]~~is governed by these rules, with an internet address where the rules may be accessed.

[C.](3) On the Executive Secretary's own motion, the Executive Secretary, or the Executive Secretary's designee, with notice to the parties, may reschedule a hearing date.

[D.](4)(a) ~~[Answer to the complaint:]~~ A respondent may file an answer to a complaint by filing a written response signed by the respondent~~;~~ or the respondent's representative with the Executive Secretary within 30 days after the complaint ~~[was]~~is mailed.

(2)b) The answer may include a request for a hearing, and shall include:

(a)i) the file number of the complaint;
(b)ii) the names of the parties;
(c)iii) a statement of the relief that the respondent seeks; and
(d)iv) if not requesting a hearing, a statement of the reasons that the relief requested should be granted.

(E)(1)(5)(a) As soon as reasonably practicable after receiving an answer, or no more than 30 days after receipt of an answer at the USOE, the Executive Secretary shall schedule a hearing, if requested, as provided in Rule R277-202.

(2)b) If the parties can reach an agreement prior to the hearing consistent with the terms of UPPAC's initial recommendation, the prosecutor may negotiate a stipulated agreement with the respondent.

(3)c) A stipulated agreement described in Subsection [R277-201-5E(2)](5)(b) shall be submitted to the Board for the Board's final approval.

(F)(1)(6)(a) ~~[Default:]~~ If a respondent does not respond to the complaint within 30 days, the Executive Secretary may initiate default proceedings in accordance with the procedures set forth in Section R277-201-7.

(2)b) Except as provided in Subsection R277-201-7(C)(3), if the Executive Secretary enters an order of default, the Executive Secretary shall make a recommendation to the Board for a revocation or a suspension of the educator's license for five years before the educator may request a reinstatement hearing.

(3)c) If a default results in a suspension, a default may include conditions that an educator shall satisfy before the educator may qualify for a reinstatement hearing.

(4)d) An order of default shall result in a recommendation to the Board for a revocation if the alleged misconduct is conduct identified in Subsection 53A-6-501(5)(b).

R277-201-6. Stipulated Agreements.

(A)(1) At any time after UPPAC has made an initial recommendation, a respondent may accept UPPAC's initial recommendation, rather than request a hearing, by entering into a stipulated agreement.

(B)(2) By entering into a stipulated agreement, a respondent waives the respondent's right to a hearing to contest the recommended disposition, contingent on final approval by the Board[;].

(C)(3) ~~[Elements of a stipulated agreement:]~~ At a minimum, a stipulated agreement shall include:

(1)a) a summary of the facts, the allegations, and the evidence relied upon by UPPAC in its recommendation;

(2)b) a statement that the respondent admits the facts recited in the stipulated agreement as true for purposes of the Board administrative action;

(3)c) a statement that the respondent:

(a)i) waives the respondent's right to a hearing to contest the allegations that gave rise to the investigation; and

(b)ii) agrees to limitations on the respondent's license or surrenders the respondent's license rather than contest the allegations;

(4)d) a statement that the respondent agrees to the terms of the stipulated agreement and other provisions applicable to the case, such as remediation, counseling, restitution, rehabilitation, and other conditions, if any, under which the

respondent may request a reinstatement hearing or a removal of the letter of reprimand or termination of probation;

([5]e) if for suspension or revocation of a license, a statement that the respondent:

([a]i) may not seek or provide professional services in a public school in [Utah]the state;

([b]ii) may not seek to obtain or use an educator license in [Utah]the state; or

([e]iii) may not work or volunteer in a public K-12 setting in any capacity without express authorization from the UPPAC Executive Secretary, unless or until the respondent:

([i]A) first obtains a valid educator license or authorization from the Board to obtain such a license; or

([ii]B) satisfies other provisions provided in the stipulated agreement;

([6]f) a statement that the action and the stipulated agreement shall be reported to other states through the NASDTEC Educator Information Clearinghouse and any attempt to present to any other state a valid Utah license shall result in further licensing action in Utah;

([7]g) a statement that respondent waives the respondent's right to contest the facts stated in the stipulated agreement at a subsequent reinstatement hearing, if any;

([8]h) a statement that all records related to the stipulated agreement shall remain permanently in the UPPAC case file; and

([9]i) a statement reflecting the stipulated agreement's classification under [GRAMA]Title 63G, Chapter 2, Government Records Access and Management Act.

~~[D.](4)~~ A violation of the terms of a stipulated agreement may result in additional disciplinary action and may affect the reinstatement process.

~~[E]([4]5)(a)~~ A stipulated agreement shall be forwarded to the Board for approval prior to execution by the respondent.

(b) Prior to consideration of a stipulated agreement, UPPAC shall:

(i) make the UPPAC case file available to the Board for confidential review; and

(ii) make other evidence available for review as directed by the Board.

(c) There is a presumption that the Board shall approve a stipulated agreement if the Board finds that:

(i) a stipulated agreement is based on adequate evidence; and

(ii) the terms of a stipulated agreement present a reasonable resolution of the case.

(d) The Board may take other action as provided in this rule if it finds that:

(i) a stipulated agreement is based on insufficient evidence;

(ii) the terms of a stipulated agreement present an unreasonable resolution of the case consistent with:

(A) R277-207; and

(B) due process; or

(iii) exceptional circumstances exist which warrant an alternative resolution.

([2]e)(i) If the Board ~~[fails to approve the stipulated agreement,]~~finds that a stipulated agreement is based on insufficient evidence, the Board may reject a stipulated agreement and direct UPPAC to hold a hearing if the Board provides direction, in the form of a motion, as to what issues need to be addressed by UPPAC.

(ii) ~~[t]~~The Executive Secretary shall notify the parties of the decision and the

proceedings shall continue from the point under these procedures at which the stipulated agreement was negotiated, as if the stipulated agreement had not been submitted.

~~(3)f~~ ~~[Alternatively, i]~~ If the Board ~~[rejects the stipulated agreement]~~ finds that the terms of a stipulated agreement present an unreasonable resolution of a case, it may, by motion, provide alternative terms to the Executive Secretary, ~~[which]~~ that would be satisfactory to the Board.

(4g) If accepted by the respondent, the stipulated agreement, as modified, ~~[would become]~~ is a final Board administrative action without further Board consideration.

(5h) If the terms approved by the Board are rejected by the respondent, the proceedings shall continue from the point under these procedures at which the agreement was negotiated, as if the stipulated agreement had not been submitted.

(6i) If the Board approves a stipulated agreement, the approval is a final Board administrative action, effective upon signature by all parties, and the Executive Secretary shall:

(a)i) notify the parties of the decision;

(ii) update CACTUS to reflect the action;

(iii) report the action to the NASDTEC Educator Information Clearinghouse if the agreement results in:

(A) a revocation; or

(b) a suspension; and

~~(b)~~ iv direct the appropriate penalties to begin.

~~F.~~ (6) If, after negotiating a stipulated agreement, a respondent fails to sign or respond to a proffered stipulated agreement within 30 days after the stipulated agreement is mailed, the Executive Secretary shall direct the prosecutor to prepare findings in default consistent with Section R277-201-7.

R277-201-7. Default Procedures.

~~A.~~ (1) If a respondent does not respond to a complaint or execute a negotiated stipulated agreement within 30 days from the date the complaint or stipulated agreement is served, the Executive Secretary may issue an order of default against the respondent consistent with the following:

(1a) the prosecutor shall prepare and serve on the respondent an order of default including:

(a)i) a statement of the grounds for default; and

(b)ii) a recommended disposition if the respondent fails to file a response to a complaint or respond to a proffered stipulated agreement;

(2b) ~~ten~~ ~~(10)~~ days following service of the order of default, the prosecutor shall attempt to contact respondent by telephone or electronically;

(3c) UPPAC shall maintain documentation of attempts toward written, telephonic, or electronic contact;

(4d) the respondent has 20 days following service of the order of default to respond to UPPAC; and

(5e) if UPPAC receives a response from respondent to a default order before the end of the 20 day default period, UPPAC shall allow respondent a final ~~10~~ ten day period to respond to a complaint or stipulated agreement.

~~[B.]~~(2) Except as provided in Subsection [R277-201-7C](3), if an order of default is issued, the Executive Secretary may make a recommendation to the Board for revocation or for a suspension of the educator's license for no less than five years.

~~[G.]~~(3) If an order of default is issued, the Executive Secretary shall make a recommendation to the Board for a revocation of the educator's license if the alleged misconduct is conduct identified in Subsection 53A-6-501(5)(b).

R277-201-8. Disciplinary Letters and Dismissal.

(1) If UPPAC recommends issuance of a disciplinary letter or dismissal, the Executive Secretary shall forward the case to the Board for review.

(2) Prior to Board consideration of a disciplinary letter or dismissal, UPPAC shall:

(a) make the UPPAC case file available to the Board for confidential review; and

(b) make other evidence available for review as directed by the Board.

(3) There is a presumption that the Board shall approve a UPPAC disciplinary letter or dismissal recommendation if the Board finds that:

(a) the UPPAC recommendation is based on adequate evidence; and

(b) the UPPAC recommendation constitutes a reasonable resolution of the case.

(4) If the Board finds that the UPPAC recommendation is based on insufficient evidence or presents an unreasonable resolution of the case or exceptional circumstances exist that warrant an alternative resolution, then the Board may:

(a) remand the case to UPPAC for a hearing;

(b) remand the case to UPPAC with recommendations for negotiation of a stipulated agreement;

(c) direct the Executive Secretary to issue a different level of disciplinary letter; or

(d) dismiss the matter.

(5) If the Board approves a disciplinary letter, the Executive Secretary shall:

(a) prepare the disciplinary letter and mail it to the educator;

(b) place a copy of the disciplinary letter in the UPPAC case file; and

(c) update CACTUS to reflect that the investigation is closed.

KEY: teacher licensing, conduct, hearings

Date of Enactment or Last Substantive Amendment: [July 8,]2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)

R277. Education, Administration.

[R277-201. Utah Professional Practices Advisory Commission (UPPAC), Rules of Procedure: Notification to Educators, Complaints and Final Disciplinary Actions.

~~R277-201-1. Authority and Purpose.~~

~~_____ (1) This rule is authorized by:~~

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

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

~~_____ (c) Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.~~

~~_____ (2) The purpose of this rule is to provide procedures regarding:~~

~~_____ (a) notifications of alleged educator misconduct;~~

~~_____ (b) review of notifications by UPPAC; and~~

~~_____ (c) complaints, stipulated agreement, and defaults.~~

~~_____ (3) Except as provided in Subsection(4), Title 63G, Chapter 4, Administrative Procedures Act does not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).~~

~~_____ (4) UPPAC may invoke and use sections or provisions of Title 63G, Chapter 4, Administrative Procedures Act as necessary to adjudicate an issue.~~

~~R277-201-2. Initiating Proceedings Against Educators.~~

~~_____ (1) The Executive Secretary may refer a case to UPPAC to make a determination if an investigation should be opened regarding an educator:~~

~~_____ (a) upon receiving a notification of alleged educator misconduct; or~~

~~_____ (b) upon the Executive Secretary's own initiative.~~

~~_____ (2) An informant shall submit an allegation to the Executive Secretary in writing, including the following:~~

~~_____ (a) the informant's:~~

~~_____ (i) name;~~

~~_____ (ii) position, such as administrator, teacher, parent, or student;~~

~~_____ (iii) telephone number;~~

~~_____ (iv) address; and~~

~~_____ (v) contact information;~~

~~_____ (b) information of the educator against whom the allegation is made:~~

~~_____ (i) name;~~

~~_____ (ii) position, such as administrator, teacher, candidate; and~~

~~_____ (iii) if known, the address and telephone number;~~

~~_____ (c) the facts on which the allegation is based and supporting information; and~~

~~_____ (d) signature of the informant and date.~~

~~_____ (3) If an informant submits a written allegation of misconduct as provided in this rule, the informant may be notified of a final action taken by the Board regarding the allegation.~~

~~_____ (4)(a) Proceedings initiated upon the Executive Secretary's own initiative may be based on information received through a telephone call, letter, newspaper article, media information, notice from another state, or by other means.~~

~~_____ (b) The Executive Secretary may also recommend an investigation based on an~~

anonymous allegation, notwithstanding the provisions of this rule, if the allegation bears sufficient indicia of reliability.

~~_____ (5) All written allegations, subsequent dismissals, actions, or disciplinary letters related to a case against an educator shall be maintained permanently in the UPPAC case file.~~

~~R277-201-3. Review of Notification of Alleged Educator Misconduct.~~

~~_____ (1)(a) On reviewing the notification of alleged educator misconduct, the Executive Secretary, the Executive Committee, or both, shall recommend one of the following to UPPAC:~~

~~_____ (i) dismiss the matter if UPPAC determines that alleged misconduct does not involve an issue that UPPAC should address; or~~

~~_____ (ii) initiate an investigation if UPPAC determines that the alleged misconduct involves an issue that may be appropriately addressed by UPPAC and the Board.~~

~~_____ (b) If the Executive Secretary or Executive Committee recommends UPPAC initiate an investigation:~~

~~_____ (i) UPPAC shall initiate an investigation; and~~

~~_____ (ii) the Executive Secretary shall direct a UPPAC investigator to gather evidence relating to the allegations.~~

~~_____ (2)(a) Prior to a UPPAC investigator's initiation of an investigation, the Executive Secretary shall send a letter to the following with information that UPPAC has initiated an investigation:~~

~~_____ (i) the educator to be investigated;~~

~~_____ (ii) the LEA that employs the educator; and~~

~~_____ (iii) the LEA where the alleged activity occurred.~~

~~_____ (b) A letter described in Subsection(2)(a) shall inform the educator and the LEA that an investigation shall take place and is not evidence of unprofessional conduct.~~

~~_____ (c) UPPAC shall place a flag on the educator's CACTUS file after sending the notices as provided in this rule.~~

~~_____ (3)(a) The investigator shall review relevant documentation and interview individuals who may have knowledge of the allegations.~~

~~_____ (b) The investigator shall prepare an investigative report of the findings of the investigation and a recommendation for appropriate action or disciplinary letter.~~

~~_____ (c) If the investigator discovers additional evidence of unprofessional conduct that could have been included in the original notification of alleged educator misconduct, the investigator may include the additional evidence of misconduct in the investigative report.~~

~~_____ (d) The investigator shall submit the investigative report to the Executive Secretary.~~

~~_____ (e) The Executive Secretary shall review the investigative report described in Subsection(3)(d) with UPPAC.~~

~~_____ (f) The investigative report described in Subsection(3)(d) shall become part of the UPPAC case file.~~

~~_____ (4) UPPAC shall review the investigative report and take one of the following actions:~~

~~_____ (a) UPPAC determines no further action should be taken, UPPAC may recommend that the Board dismiss the case; or~~

~~_____ (b) UPPAC may make an initial recommendation of appropriate action or disciplinary letter.~~

~~_____ (5) After receiving an initial recommendation from UPPAC for action, the Executive Secretary shall direct a UPPAC prosecutor to:~~

~~_____ (a) prepare and serve a complaint; or~~

~~_____ (b) negotiate and prepare a stipulated agreement.~~

~~_____ (6)(a) A stipulated agreement shall conform to the requirements set forth in Section R277-201-6.~~

~~_____ (b) An educator may stipulate to any recommended disposition for an action.~~

~~_____ (7) The Executive Secretary shall forward any stipulated agreement to the Board for approval.~~

~~R277-201-4. Expedited Hearings.~~

~~_____ (1) In a case involving the report of an arrest, citation, or charge of a licensed educator, which requires self-reporting by the educator under Section R277-516-3, the Executive Secretary, with the consent of the educator, may schedule the matter for an expedited hearing in lieu of initially referring the matter to UPPAC.~~

~~_____ (2)(a) The Executive Secretary shall hold an expedited hearing within 30 days of a report of an arrest, citation, or charge, unless otherwise agreed upon by both parties.~~

~~_____ (b) The Executive Secretary or the Executive Secretary's designee shall conduct an expedited hearing with the following additional invited participants:~~

~~_____ (i) the educator;~~

~~_____ (ii) the educator's attorney or representative;~~

~~_____ (iii) a UPPAC prosecutor;~~

~~_____ (iv) a voting member of UPPAC; and~~

~~_____ (v) a representative of the educator's LEA.~~

~~_____ (3) The panel may consider the following matters at an expedited hearing:~~

~~_____ (a) an educator's oral or written explanation of the events;~~

~~_____ (b) a police report;~~

~~_____ (c) a court docket or transcript;~~

~~_____ (d) an LEA's investigative report or employment file; and~~

~~_____ (e) additional information offered by the educator if the panel deems it probative of the issues at the expedited hearing.~~

~~_____ (4) After reviewing the evidence, the expedited hearing panel shall make written findings and a recommendation to UPPAC to do one of the following:~~

~~_____ (a) close the case;~~

~~_____ (b) close the case upon completion of court requirements;~~

~~_____ (c) recommend issuance of a disciplinary letter to the Board;~~

~~_____ (d) open a full investigation; or~~

~~_____ (e) recommend action by the Board, subject to an educator's due process rights under these rules.~~

~~_____ (5) An expedited hearing may be recorded, but the testimony from the expedited hearing is inadmissible during a future UPPAC action related to the allegation.~~

~~_____ (6) If the Board fails to adopt the recommendation of an expedited hearing panel, UPPAC shall open a full investigation.~~

~~R277-201-5. Complaints.~~

~~_____ (1) If UPPAC determines that an allegation is sufficiently supported by evidence discovered in the investigation, UPPAC, through the Executive Secretary, may direct the prosecutor to serve a complaint upon the educator being investigated.~~

~~_____ (2) At a minimum, a complaint shall include:~~

~~_____ (a) a statement of legal authority and jurisdiction under which the action is being taken;~~

~~_____ (b) a statement of the facts and allegations upon which the complaint is based;~~

~~_____ (c) other information that the investigator believes is necessary to enable the respondent to understand and address the allegations;~~

~~_____ (d) a statement of the potential consequences if an allegation is found to be true or substantially true;~~

~~_____ (e) a statement that the respondent shall answer the complaint and request a hearing, if desired, within 30 days of the date the complaint is mailed to the respondent;~~

~~_____ (f) a statement that the respondent is required to file a written answer described in Subsection(2)(e) with the Executive Secretary;~~

~~_____ (g) a statement advising the respondent that if the respondent fails to respond within 30 days, a default judgment for revocation or a suspension of the educator's license may occur for a term of five years or more;~~

~~_____ (h) a statement that, if a hearing is requested, the hearing will be scheduled no less than 25 days, nor more than 180 days, after receipt of the respondent's answer, unless a different date is agreed to by both parties in writing; and~~

~~_____ (i) a statement that the hearing is governed by these rules, with an internet address where the rules may be accessed.~~

~~_____ (3) On the Executive Secretary's own motion, the Executive Secretary, or the Executive Secretary's designee, with notice to the parties, may reschedule a hearing date.~~

~~_____ (4)(a) A respondent may file an answer to a complaint by filing a written response signed by the respondent or the respondent's representative with the Executive Secretary within 30 days after the complaint is mailed.~~

~~_____ (b) The answer may include a request for a hearing, and shall include:~~

~~_____ (i) the file number of the complaint; _____~~

~~_____ (ii) the names of the parties;~~

~~_____ (iii) a statement of the relief that the respondent seeks; and~~

~~_____ (iv) if not requesting a hearing, a statement of the reasons that the relief requested should be granted.~~

~~_____ (5)(a) As soon as reasonably practicable after receiving an answer, or no more than 30 days after receipt of an answer at the USOE, the Executive Secretary shall schedule a hearing, if requested, as provided in Rule R277-202.~~

~~_____ (b) If the parties can reach an agreement prior to the hearing consistent with the terms of UPPAC's initial recommendation, the prosecutor may negotiate a stipulated agreement with the respondent.~~

~~_____ (c) A stipulated agreement described in Subsection(5)(b) shall be submitted to the Board for the Board's final approval.~~

~~_____ (6)(a) If a respondent does not respond to the complaint within 30 days, the Executive Secretary may initiate default proceedings in accordance with the procedures set forth in Section R277-201-7.~~

~~_____ (b) Except as provided in Subsection R277-201-7(3), if the Executive Secretary~~

enters an order of default, the Executive Secretary shall make a recommendation to the Board for a revocation or a suspension of the educator's license for five years before the educator may request a reinstatement hearing.

~~_____ (c) If a default results in a suspension, a default may include conditions that an educator shall satisfy before the educator may qualify for a reinstatement hearing.~~

~~_____ (d) An order of default shall result in a recommendation to the Board for a revocation if the alleged misconduct is conduct identified in Subsection 53A-6-501(5)(b).~~

R277-201-6. Stipulated Agreements.

~~_____ (1) At any time after UPPAC has made an initial recommendation, a respondent may accept UPPAC's initial recommendation, rather than request a hearing, by entering into a stipulated agreement.~~

~~_____ (2) By entering into a stipulated agreement, a respondent waives the respondent's right to a hearing to contest the recommended disposition, contingent on final approval by the Board.~~

~~_____ (3) At a minimum, a stipulated agreement shall include:~~

~~_____ (a) a summary of the facts, the allegations, and the evidence relied upon by UPPAC in its recommendation;~~

~~_____ (b) a statement that the respondent admits the facts recited in the stipulated agreement as true for purposes of the Board administrative action;~~

~~_____ (c) a statement that the respondent:~~

~~_____ (i) waives the respondent's right to a hearing to contest the allegations that gave rise to the investigation; and~~

~~_____ (ii) agrees to limitations on the respondent's license or surrenders the respondent's license rather than contest the allegations; _____~~

~~_____ (d) a statement that the respondent agrees to the terms of the stipulated agreement and other provisions applicable to the case, such as remediation, counseling, restitution, rehabilitation, and other conditions, if any, under which the respondent may request a reinstatement hearing or a removal of the letter of reprimand or termination of probation;~~

~~_____ (e) if for suspension or revocation of a license, a statement that the respondent:~~

~~_____ (i) may not seek or provide professional services in a public school in the state;~~

~~_____ (ii) may not seek to obtain or use an educator license in the state; or _____~~

~~_____ (iii) may not work or volunteer in a public K-12 setting in any capacity without express authorization from the UPPAC Executive Secretary, unless or until the respondent:~~

~~_____ (A) first obtains a valid educator license or authorization from the Board to obtain such a license; or~~

~~_____ (B) satisfies other provisions provided in the stipulated agreement;~~

~~_____ (f) a statement that the action and the stipulated agreement shall be reported to other states through the NASDTEC Educator Information Clearinghouse and any attempt to present to any other state a valid Utah license shall result in further licensing action in Utah;~~

~~_____ (g) a statement that respondent waives the respondent's right to contest the facts stated in the stipulated agreement at a subsequent reinstatement hearing, if any;~~

~~_____ (h) a statement that all records related to the stipulated agreement shall remain~~

permanently in the UPPAC case file; and

~~(i) a statement reflecting the stipulated agreement's classification under Title 63G, Chapter 2, Government Records Access and Management Act.~~

~~(4) A violation of the terms of a stipulated agreement may result in additional disciplinary action and may affect the reinstatement process.~~

~~(5)(a) A stipulated agreement shall be forwarded to the Board for approval prior to execution by the respondent.~~

~~(b) Prior to consideration of a stipulated agreement, UPPAC shall:~~

~~(i) make the UPPAC case file available to the Board for confidential review; and~~

~~(ii) make other evidence available for review as directed by the Board.~~

~~(c) There is a presumption that the Board shall approve a stipulated agreement if the Board finds that:~~

~~(i) a stipulated agreement is based on adequate evidence; and~~

~~(ii) the terms of a stipulated agreement present a reasonable resolution of the case.~~

~~(d) The Board may take other action as provided in this rule if it finds that:~~

~~(i) a stipulated agreement is based on insufficient evidence;~~

~~(ii) the terms of a stipulated agreement present an unreasonable resolution of the case consistent with:~~

~~(A) R277-207; and~~

~~(B) due process; or~~

~~(iii) exceptional circumstances exist which warrant an alternative resolution.~~

~~(e)(i) If the Board finds that a stipulated agreement is based on insufficient evidence, the Board may reject a stipulated agreement and direct UPPAC to hold a hearing if the Board provides direction, in the form of a motion, as to what issues need to be addressed by UPPAC.~~

~~(ii) The Executive Secretary shall notify the parties of the decision and the proceedings shall continue from the point under these procedures at which the stipulated agreement was negotiated, as if the stipulated agreement had not been submitted.~~

~~(f) If the Board finds that the terms of a stipulated agreement present an unreasonable resolution of a case, it may, by motion, provide alternative terms to the Executive Secretary, that would be satisfactory to the Board.~~

~~(g) If accepted by the respondent, the stipulated agreement, as modified, is a final Board administrative action without further Board consideration.~~

~~(h) If the terms approved by the Board are rejected by the respondent, the proceedings shall continue from the point under these procedures at which the agreement was negotiated, as if the stipulated agreement had not been submitted.~~

~~(i) If the Board approves a stipulated agreement, the approval is a final Board administrative action, effective upon signature by all parties, and the Executive Secretary shall:~~

~~(i) notify the parties of the decision;~~

~~(ii) update CACTUS to reflect the action;~~

~~(iii) report the action to the NASDTEC Educator Information Clearinghouse if the agreement results in:~~

~~(A) a revocation; or~~

~~(b) a suspension; and~~

~~_____ (iv) direct the appropriate penalties to begin.~~

~~_____ (6) If, after negotiating a stipulated agreement, a respondent fails to sign or respond to a proffered stipulated agreement within 30 days after the stipulated agreement is mailed, the Executive Secretary shall direct the prosecutor to prepare findings in default consistent with Section R.277-201-7.~~

~~R277-201-7. Default Procedures.~~

~~_____ (1) If a respondent does not respond to a complaint or execute a negotiated stipulated agreement within 30 days from the date the complaint or stipulated agreement is served, the Executive Secretary may issue an order of default against the respondent consistent with the following:~~

~~_____ (a) the prosecutor shall prepare and serve on the respondent an order of default including:~~

~~_____ (i) a statement of the grounds for default; and~~

~~_____ (ii) a recommended disposition if the respondent fails to file a response to a complaint or respond to a proffered stipulated agreement;~~

~~_____ (b) ten days following service of the order of default, the prosecutor shall attempt to contact respondent by telephone or electronically;~~

~~_____ (c) UPPAC shall maintain documentation of attempts toward written, telephonic, or electronic contact;~~

~~_____ (d) the respondent has 20 days following service of the order of default to respond to UPPAC; and~~

~~_____ (e) if UPPAC receives a response from respondent to a default order before the end of the 20 day default period, UPPAC shall allow respondent a final ten day period to respond to a complaint or stipulated agreement.~~

~~_____ (2) Except as provided in Subsection(3), if an order of default is issued, the Executive Secretary may make a recommendation to the Board for revocation or for a suspension of the educator's license for no less than five years.~~

~~_____ (3) If an order of default is issued, the Executive Secretary shall make a recommendation to the Board for a revocation of the educator's license if the alleged misconduct is conduct identified in Subsection 53A-6-501(5)(b).~~

~~R277-201-8. Disciplinary Letters and Dismissal.~~

~~_____ (1) If UPPAC recommends issuance of a disciplinary letter or dismissal, the Executive Secretary shall forward the case to the Board for review.~~

~~_____ (2) Prior to Board consideration of a disciplinary letter or dismissal, UPPAC shall:~~

~~_____ (a) make the UPPAC case file available to the Board for confidential review; and~~

~~_____ (b) make other evidence available for review as directed by the Board.~~

~~_____ (3) There is a presumption that the Board shall approve a UPPAC disciplinary letter or dismissal recommendation if the Board finds that:~~

~~_____ (a) the UPPAC recommendation is based on adequate evidence; and~~

~~_____ (b) the UPPAC recommendation constitutes a reasonable resolution of the case.~~

~~_____ (4) If the Board finds that the UPPAC recommendation is based on insufficient evidence or presents an unreasonable resolution of the case or exceptional circumstances exist that warrant an alternative resolution, then the Board may:~~

~~_____ (a) remand the case to UPPAC for a hearing;~~

~~_____ (b) remand the case to UPPAC with recommendations for negotiation of a~~

stipulated agreement;

~~_____ (c) direct the Executive Secretary to issue a different level of disciplinary letter; or~~

~~_____ (d) dismiss the matter.~~

~~_____ (5) If the Board approves a disciplinary letter, the Executive Secretary shall:~~

~~_____ (a) prepare the disciplinary letter and mail it to the educator;~~

~~_____ (b) place a copy of the disciplinary letter in the UPPAC case file; and~~

~~_____ (c) update CACTUS to reflect that the investigation is closed.~~

KEY: ~~teacher licensing, conduct, hearings~~

Date of Enactment or Last Substantive Amendment: ~~October 8, 2015~~

Authorizing, and Implemented or Interpreted Law: ~~Art X Sec 3; 53A-6-306; 53A-1-401(3)]~~

R277. Education, Administration.

R277-202. UPPAC Hearing Procedures and Reports.

R277-202-1. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, by Section 53A-6-306 which directs the Board to adopt rules regarding UPPAC duties and procedures, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

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

C. 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).

R277-202-2. Scheduling a Hearing.

A(1) Scheduling the hearing: Following receipt of an answer by respondent requesting a hearing:

(a) UPPAC shall select panel members;

(b) 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; and

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

(2) The Executive Secretary shall schedule a hearing for a date that is not less than 25 days nor more than 180 days from the date the answer is received by the Executive Secretary.

(3) The required scheduling periods may be waived by mutual written consent of the parties or by the Executive Secretary for good cause shown.

B. Change of hearing date:

(1) Any party may request a change of hearing date by submitting a request in writing which shall:

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

(b) be submitted to the Executive Secretary at least five days prior to the scheduled date of the hearing.

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

(3) If the Executive Secretary finds that the reason for the request for a change of hearing date is sufficient, the Executive Secretary shall promptly notify all parties of the new time, date, and place for the hearing.

(4) If the Executive Secretary does not find the reason for the request for a change of hearing date to be sufficient, the Executive Secretary shall immediately notify the parties that the request has been denied.

(5) The Executive Secretary and the parties may waive the time period required for requesting a change of hearing date for good cause shown.

C. An educator shall be entitled to a hearing on any matter in

which an action is recommended, as defined in R277-200-2A.

D. An educator is not entitled to a hearing on a matter in which a disciplinary letter is recommended, as defined in R277-200-2N.

R277-202-3. Appointment and Duties of the Hearing Officer and Hearing Panel.

A(1) Hearing officer: The Executive Secretary shall appoint a hearing officer to chair the hearing panel and conduct the hearing.

(2) The Executive Secretary shall select a hearing officer on a random basis from a list of available contracted hearing officers, subject to availability and 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 an oath 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; and

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

B(1) UPPAC panel members: UPPAC shall select three or more individuals to serve as members of the hearing panel.

(2) As directed by UPPAC, any licensed educator may be used as a panel member, if needed.

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

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

(5) UPPAC shall accommodate each prospective panel member based on the availability of the panel member.

(6) If the respondent is a teacher, at least one panel member shall be a teacher.

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

(8) The requirements of this R277-202-3B may be waived only upon the stipulation of both UPPAC and the respondent.

C(1) A UPPAC panel member shall:

(a) assist a 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) ask questions of all witnesses to clarify specific issues;

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

(d) make a recommendation to UPPAC as to the suggested

disposition of a complaint; and

(e) assist the hearing officer in preparing the hearing report.

(2) A panel member should consider only such evidence as has been approved for admission by the hearing officer.

(3) The Executive Secretary may make an emergency substitution of a panel member for cause with the consent of the parties.

(4) The agreement to substitute a panel member shall be in writing.

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

(6) If the parties do not agree to a substitution or to having a two-member panel, the hearing shall be rescheduled.

D. Disqualification of a hearing officer shall be governed by the following requirements:

(1) A party may request that a hearing officer be disqualified by submitting a written request for disqualification to the Executive Secretary

(2) A request to disqualify a hearing officer shall be submitted to the Executive Secretary at least 15 days before a scheduled hearing.

(3) The Executive Secretary shall review a request described in this R277-202-3D and supporting evidence to determine whether the reasons for the request are substantial and sufficient.

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

(5) A hearing officer may recuse himself from a hearing if, in the hearing officer's opinion, the hearing officer's participation would violate any of the Utah Rules of Professional Conduct consistent with the Supreme Court Rules of Professional Practice.

(6) If the Executive Secretary denies a request to disqualify a hearing officer, the Executive Secretary shall notify the party within ten days prior to the date of the hearing.

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

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

(9) The decision of the Superintendent described in R277-202-3D(8) is final.

(10) If a party fails to file an appeal within the time requirements of R277-202-3D(7), the appeal shall be deemed denied.

(11) If the Executive Secretary fails to meet the time requirements described in R277-202-3D, the request or appeal shall be approved.

E. UPPAC panel members shall be governed by the following requirements:

(1) 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.

(2) A party may request that a UPPAC panel member be disqualified by submitting a written request to the following:

(a) the hearing officer; or

(b) to the Executive Secretary if there is no hearing officer.

(3) A party shall submit a request described in R277-202-3E(2) no less than 15 days before a scheduled hearing.

(4) The hearing officer, or the Executive Secretary, if there is no hearing officer, shall:

(a) review a request described in R277-202-3E(2) and supporting evidence to determine whether the reasons for the request are substantial and compelling enough to disqualify the panel member; and

(b) if the reasons for the request described in R277-202-3E(2) are substantial and compelling, disqualify the panel member.

(5) If the panel member's disqualification leaves the hearing panel with fewer than three UPPAC panel members:

(a) UPPAC shall appoint a replacement; and

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

(6) If a request described in R277-202-3E(2) is denied, the hearing officer or the Executive Secretary if there is no hearing officer, shall notify the party requesting the panel member's disqualification no less than ten days prior to the date of the hearing.

(7) The requesting party may file a written appeal of a denial described in R277-202-3E(6) with the Superintendent no later than five days prior to the hearing date.

(8) If the Superintendent finds that an appeal described in R277-202-3E(7) is justified, the Superintendent shall direct the hearing officer or the Executive Secretary if there is no hearing officer, to replace the panel member.

(9) If a panel member's 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.

(10) The decision of the Superintendent described in R277-202-3E(8) is final.

(11) If a party fails to file an appeal within the time requirements of R277-202-3E(7), the appeal shall be deemed denied.

(12) If the hearing officer, or the Executive Secretary if there is no hearing officer, fails to meet the time requirements described in this R277-202-3E, the request or appeal shall be approved.

F. The Executive Secretary may, at the time the Executive Secretary selects a hearing officer or panel member, select an alternative hearing officer or panel member following the process for selecting those individuals.

G. The Executive Secretary may substitute a panel member with

an alternative panel member if the Executive Secretary notifies the parties of the substitution.

R277-202-4. Preliminary Instructions to Parties to a Hearing.

A. No later 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 each panel member, and the name of the hearing officer; and

(3) instructions for accessing these rules.

B. No later 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:

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

(b) relevant laws, rules, and precedent;

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

(3) a list of witnesses expected to be called, including a summary of the testimony which each witness is expected to present;

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

(5) following receipt of the other party's witness list, a list of anticipated rebuttal witnesses and evidence no later than 10 days prior to the hearing.

C(1) Except as provided in R277-202-4C(1), a party may not present a witness or evidence at the hearing if the witness or evidence has not been disclosed to the other party as required in R277-202-4B.

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

(a) the parties stipulate to the presentation of the witness or evidence at the hearing; or

(b) the hearing officer makes a determination of good cause to allow it in.

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.

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

R277-202-5. Hearing Parties' Representation.

A. Complainant: The complainant shall be represented by a 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:

(1) individual representation at the hearing; or
(2) to be present or heard at the hearing unless called as a witness.

D. A respondent shall notify the Executive Secretary in a timely manner and in writing if the respondent chooses to be represented by anyone other than the respondent.

R277-202-6. 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 hearing officer.

B. Unduly burdensome legalistic discovery may not be used to delay a hearing.

C. A hearing officer may limit discovery:

(1) at the discretion of the hearing officer; or

(2) upon a motion by either party.

D. A hearing officer rules on all discovery requests and motions.

E. The Executive Secretary shall issue a subpoena or other order to secure the attendance of a witness pursuant to Section 53A-6-306(3)(c)(i) if:

(1) requested by either party; and

(2) notice of intent to call the witness has been timely provided as required by R277-202-4.

F. The Executive Secretary shall issue a subpoena to produce evidence if timely requested by either party.

G(1) A party may not present an expert witness report or expert witness testimony at a hearing unless the requirements of R277-202-10 have been met.

(2) A respondent may not subpoena the UPPAC prosecutor or investigator as an expert witness.

R277-202-7. Burden and Standard of Proof for UPPAC Proceedings.

A. In matters other than those involving applicants for licensing, and excepting the presumptions under R277-202-11J, the Board shall have the burden of proving that an 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.

E. 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.

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

R277-202-8. Department.

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

B. A hearing officer may exclude a person from the hearing room who fails to conduct themself in an appropriate manner and may, in response to extreme instances of noncompliance, disallow the person's testimony.

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

R277-202-9. Hearing Record.

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

B. An individual party may, at the party's own expense, make a recording or transcript of the proceedings if the party provides 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 UPPAC Case File and may not be removed except by direction of the hearing officer or by order of the Board.

E. A party may review a UPPAC case file upon request of the party if the review of the UPPAC case file is performed:

- (1) under supervision of the Executive Secretary; and
- (2) at the USOE.

R277-202-10. Expert Witnesses in UPPAC Proceedings.

A. A hearing officer may allow testimony by an expert witnesses.

B. A party may call an expert witness at the party's own expense.

C. A party shall provide a hearing officer and the opposing party with the following information at least 15 days prior to the hearing date:

- (1) notice of intent of a party to call an expert witness;
- (2) the identity and qualifications of each expert witness;
- (3) the purpose for which the expert witness is to be called;

and

- (4) any prepared expert witness report.

D. 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.

E. An expert witness who is a member of the complainant's staff or staff of an LEA may testify and have their testimony considered

as part of the record in the same manner as the testimony of any other expert.

R277-202-11. Evidence and Participation in UPPAC Proceedings.

A. A hearing officer may not exclude evidence solely because the evidence is hearsay.

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

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

D. If a case involves allegations of child abuse or of a sexual offense against a minor, either party, a member of the hearing panel, or the hearing officer, may request that a minor be allowed to testify outside of the respondent's presence.

E. If the hearing officer determines that a minor would suffer undue 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:

F. 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:

(1) no attorney for either party is in the minor's presence when the statement is recorded;

(2) the recording is visual and aural and is recorded;

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

(4) the operator of the equipment is competent;

(5) the recording is accurate and has not been altered; and

(6) each voice in the recording is identified.

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

(1) 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;

(2) the respondent may not be present during the minor's testimony;

(3) the hearing officer shall ensure that the minor cannot hear or see the respondent;

(4) the respondent shall be permitted to observe and hear, but may not communicate with the minor; and

(5) only hearing panel members, the hearing officer, and the attorneys may question the minor.

H. If the hearing officer determines that the testimony of a

minor may be taken consistent with R277-202-11D through G, the minor may not be required to testify in any proceeding where the recorded testimony is used.

I. On the hearing officer's 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.

J. 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.

(3) Evidence of behavior described in R277-202-11J(2) 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 of an educator's license for any reason.

R277-202-12. 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 as 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) detailed findings of fact and conclusions of law based upon the evidence of record or on facts officially noted.

(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;
(b) letter of admonishment;
(c) letter of warning;
(d) letter of reprimand;
(e) probation, to include the following terms and conditions:
(i) it is the respondent's responsibility to petition UPPAC for removal of probation and letter of reprimand from the respondent's CACTUS file;

(ii) a probationary time period or specifically designated indefinite time 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, if appropriate; and

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

(f) disciplinary action held in abeyance;

(g) suspension; or

(h) revocation; and

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

B. Findings of fact may not be based solely upon hearsay, and conclusions shall be based upon competent evidence.

C. Any of the consequences described in R277-202-12B may be imposed in the form of a disciplinary action held in abeyance.

D. If the respondent's penalty is held in abeyance, the respondent's penalty is stayed subject to the satisfactory completion of probationary conditions.

E. The decision to impose a consequence in the form of a disciplinary action held in abeyance shall provide for appropriate or presumed discipline should the probationary conditions not be fully satisfied;

F. Processing the hearing report:

(1) A hearing officer shall circulate a 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:

(a) as soon as possible after receiving the report; and

(b) 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.

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

(7) 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.

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

(a) there are no significant procedural errors;

(b) the hearing officer's recommendations are based upon a reasonable interpretation of the evidence presented at the hearing; and

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

(9) The Executive Secretary shall forward a copy of the hearing report to the Board for further action after the UPPAC review described in R277-202-12F(8).

(10) The Executive Secretary shall place a copy of the hearing report in the UPPAC case file.

(11) If UPPAC or the Board 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 new hearing officer and a new UPPAC panel; or

(ii) direct the Executive Secretary to amend the hearing report to reflect the decision of UPPAC or the Board.

G. The hearing report is a public document under GRAMA after final action is taken in the case, but may be redacted if it is determined that the hearing report contains particular information, the dissemination of which is otherwise restricted under the law.

H. A respondent's failure to comply with the terms of a final disposition may result in additional discipline against the educator license.

I. If a hearing officer fails to satisfy the hearing officer's responsibilities under this rule, the Executive Secretary 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; or

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

J. The Executive Secretary may waive the deadlines within this

R277-202-12 if the Executive Secretary finds good cause.

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

R277-202-13. Default.

A(1) The Executive Secretary may prepare an order of default if:

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

(b) the hearing officer recommends default as a sanction as a result of misconduct by the respondent or his representative during the course of the hearing process.

(2) 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.

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

C. An order of default may result in a recommendation to the Board for revocation or for a suspension of no less than five years.

D. An order of default shall result in a recommendation to the Board for a revocation if the alleged misconduct is conduct identified in 53A-6-501(5)(b).

R277-202-14. Rights of Victims at Hearings.

A. If the allegations that gave rise to the underlying allegations involve abuse of a sexual or physical nature, UPPAC shall make reasonable efforts to:

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

(2) notify the alleged victim of the date, time, and location of the hearing.

B. An alleged victim entitled to notification of a hearing shall be permitted, but is not required, to attend the hearing.

KEY: hearings, reports, educators

Date of Enactment or Last Substantive Amendment: 2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)

R277. Education, Administration.

R277-202. UPPAC Hearing Procedures and Reports.

R277-202-1. Authority and Purpose.

~~[A.](1)~~ This rule is authorized ~~[under]~~by:

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

~~(b)~~ ~~[by]~~Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures; and

~~(c)~~ ~~[by]~~Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.

~~[B.](2)~~ The purpose of this rule is to establish procedures regarding UPPAC hearings and hearing reports.

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

R277-202-2. Scheduling a Hearing.

~~[A](1)(a)~~ ~~[Scheduling the hearing:]~~Following receipt of an answer by respondent requesting a hearing:

~~(a)i~~ UPPAC shall select panel members;

~~(b)ii~~ 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; and

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

~~(2)b~~ The Executive Secretary shall schedule a hearing for a date that is not less than 25 days nor more than 180 days from the date the Executive Secretary receives the answer~~[is received by the Executive Secretary]~~.

~~(3)c~~ The required scheduling periods may be waived by mutual written consent of the parties or by the Executive Secretary for good cause shown.

~~[B.](2)~~~~[Change of hearing date:]~~

~~(1)(a)~~ Any party may request a change of hearing date by submitting a request in writing ~~[which]~~that shall:

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

~~(b)ii~~ be submitted to the Executive Secretary at least five days prior to the scheduled date of the hearing.

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

~~(3)c~~ If the Executive Secretary finds that the reason for the request for a change of hearing date is sufficient, the Executive Secretary shall promptly notify all parties of the new time, date, and place for the hearing.

~~(4)d~~ If the Executive Secretary does not find the reason for the request for a change of hearing date to be sufficient, the Executive Secretary shall immediately notify the parties that the request has been denied.

~~(5)e~~ The Executive Secretary and the parties may waive the time period required for requesting a change of hearing date for good cause shown.

~~[C.](3)~~ An educator ~~[shall be]~~is entitled to a hearing on any matter in which an action is recommended, as defined in Subsection R277-200-2[A](1).

~~[D.](4)~~ An educator is not entitled to a hearing on a matter in which a disciplinary letter is recommended, as defined in Subsection R277-200-2[N](14).

R277-202-3. Appointment and Duties of the Hearing Officer and Hearing Panel.

~~[A](1)(a) [Hearing officer:]~~The Executive Secretary shall appoint a hearing officer to chair the hearing panel and conduct the hearing.

~~(2)b~~ The Executive Secretary shall select a hearing officer on a random basis from a list of available contracted hearing officers, subject to availability and conflict of interest.

~~(3)c~~ 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)d) [Duties of a hearing officer:]~~A hearing officer:

~~(a)i~~ may require the parties to submit a brief[s] and a list[s] of witnesses prior to the hearing;

~~(b)ii~~ presides at the hearing and regulates the course of the proceeding[s];

~~(e)iii~~ administers an oath to a witness[es] as follows: "Do you swear or affirm that the testimony you will give is the truth?";

~~(e)iv~~ may take testimony, rule on a question[s] of evidence, and ask a question[s] of a witness[es] to clarify a specific issue[s]; and

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

~~[B]([4]2)(a) [UPPAC panel members:]~~UPPAC shall select three or more individuals to serve as members of the hearing panel.

~~(2)b~~ As directed by UPPAC, any licensed educator may ~~[be used]~~serve as a panel member, if needed.

~~(3)c~~ The majority of panel members shall be current UPPAC members.

~~(4)d~~ UPPAC shall select panel members on a rotating basis to the extent practicable.

~~(5)e~~ UPPAC shall accommodate each prospective panel member based on the availability of the panel member.

~~(6)f~~ If the respondent is a teacher, at least one panel member shall be a teacher.

~~(7)g~~ If the respondent is a non-teacher licensed educator, at least one panel member shall be a non-teacher licensed educator.

~~(8)h~~ The requirements of ~~[this]Subsection [R277-202-3B](2)~~ may be waived only upon the stipulation of both UPPAC and the respondent.

~~[C]([4]3)(a)~~ A UPPAC panel member shall:

~~(a)i~~ assist a 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)ii~~ ask a question[s] of a ~~[4]~~ witness[es] to clarify a specific issue[s];

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

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

(~~e~~)v) assist the hearing officer in preparing the hearing report.

(~~2~~)b) A panel member ~~[should]~~may only consider ~~[only such]~~the evidence [as has been] approved for admission by the hearing officer.

(~~3~~)c) The Executive Secretary may make an emergency substitution of a panel member for cause with the consent of the parties.

(~~4~~)d) The agreement to substitute a panel member shall be in writing.

(~~5~~)e) Parties may agree to a two-member UPPAC panel in an emergency situation.

(~~6~~)f) If the parties do not agree to a substitution or to having a two-member panel, the ~~[hearing]~~Executive Secretary shall ~~[be]~~reschedule~~[d]~~ the hearing.

~~[D.](4)[Disqualification of a hearing officer shall be governed by the following requirements:~~

~~—(1)~~(~~1~~)a) A party may request that the Executive Secretary disqualify a hearing officer~~[be disqualified]~~ by submitting a written request for disqualification to the Executive Secretary.

(~~2~~)b) A party shall submit a request to disqualify a hearing officer~~[shall be submitted]~~ to the Executive Secretary at least 15 days before a scheduled hearing.

(~~3~~)c) The Executive Secretary shall review a request described in ~~[this]~~Subsection [R277-202-3D](4) and supporting evidence to determine whether the reasons for the request are substantial and sufficient.

(~~4~~)d) If the Executive Secretary determines that the hearing officer should be disqualified, the Executive Secretary shall appoint a new hearing officer and, if necessary, reschedule the hearing.

(~~5~~)e) A hearing officer may recuse himself or herself from a hearing if, in the hearing officer's opinion, the hearing officer's participation would violate any of the Utah Rules of Professional Conduct consistent with the Supreme Court Rules of Professional Practice.

(~~6~~)f) If the Executive Secretary denies a request to disqualify a hearing officer, the Executive Secretary shall notify the party within ten days prior to the date of the hearing.

(~~7~~)g) The requesting party may submit a written appeal of the Executive Secretary's denial to the Superintendent no later than five days prior to the hearing date.

(~~8~~)h) If the Superintendent finds that the appeal is justified, the Superintendent shall direct the Executive Secretary to appoint a new hearing officer and, if necessary, reschedule the hearing.

(~~9~~)i) The decision of the Superintendent described in Subsection [R277-202-3D(8)](4)(h) is final.

(~~10~~)j) If a party fails to file an appeal within the time requirements of Subsection [R277-202-3D(7)](4)(g), the appeal shall be deemed denied.

(~~11~~)k) If the Executive Secretary fails to meet the time requirements described in Subsection [R277-202-3D](4), the request or appeal ~~[shall be]~~is approved.

~~[E.](5)[UPPAC panel members shall be governed by the following requirements:~~

~~—(1)~~(~~1~~)a) A UPPAC member shall ~~[disqualify]~~recuse himself or herself 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.

(2)(b) A party may request that a UPPAC panel member be disqualified by submitting a written request to the following:

(a)(i) the hearing officer; or

(b)(ii) to the Executive Secretary if there is no hearing officer.

(3)(c) A party shall submit a request described in Subsection [R277-202-3E(2)](5)(b) no less than 15 days before a scheduled hearing.

(4)(d) The hearing officer, or the Executive Secretary, if there is no hearing officer, shall:

(a)(i) review a request described in Subsection [R277-202-3E(2)](5)(b) and supporting evidence to determine whether the reasons for the request are substantial and compelling enough to disqualify the panel member; and

(b)(ii) if the reasons for the request described in Subsection [R277-202-3E(2)](5)(b) are substantial and compelling, disqualify the panel member.

(5)(e) If the panel member's disqualification leaves the hearing panel with fewer than three UPPAC panel members:

(a)(i) UPPAC shall appoint a replacement; and

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

(6)(f) If a request described in Subsection [R277-202-3E(2)](5)(b) is denied, the hearing officer or the Executive Secretary if there is no hearing officer, shall notify the party requesting the panel member's disqualification no less than ten days prior to the date of the hearing.

(7)(g) The requesting party may file a written appeal of a denial described in Subsection [R277-202-3E(6)](5)(f) with the Superintendent no later than five days prior to the hearing date.

(8)(h) If the Superintendent finds that an appeal described in Subsection [R277-202-3E(7)](5)(g) is justified, the Superintendent shall direct the hearing officer or the Executive Secretary if there is no hearing officer, to replace the panel member.

(9)(i) If a panel member's 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.

(10)(j) The decision of the Superintendent described in Subsection [R277-202-3E(8)](5)(h) is final.

(11)(k) If a party fails to file an appeal within the time requirements of Subsection [R277-202-3E(7)](5)(g), the appeal shall be deemed denied.

(12)(l) If the hearing officer, or the Executive Secretary if there is no hearing officer, fails to meet the time requirements described in this Subsection [R277-202-3E](5), the request or appeal ~~shall be~~ is approved.

~~F.~~(6) The Executive Secretary may, at the time the Executive Secretary selects a hearing officer or panel member, select an alternative hearing officer or panel member following the process for selecting those individuals.

~~G.~~(7) The Executive Secretary may substitute a panel member with an alternative panel member if the Executive Secretary notifies the parties of the substitution.

R277-202-4. Preliminary Instructions to Parties to a Hearing.

~~A.~~(1) No later than 25 days before the date of a hearing, the Executive

Secretary shall provide the parties with the following information:

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

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

(3)c instructions for accessing these rules.

B.(2) No later 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 a brief, if requested by the hearing officer containing:

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

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

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

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

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

(5)e following receipt of the other party's witness list, a list of anticipated rebuttal witnesses and evidence no later than ~~40~~ten days prior to the hearing.

G.(1)3(a) Except as provided in Subsection [R277-202-4C(1)](3)(b), a party may not present a witness or evidence at the hearing if the witness or evidence has not been disclosed to the other party as required in Subsection [R277-202-4B](2).

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

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

(b)ii the hearing officer makes a determination of good cause to allow ~~it in~~the witness or evidence.

D.(4) 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.

E.(5) A party shall provide materials to the hearing officer, panel members, and UPPAC as directed by the hearing officer.

R277-202-5. Hearing Parties' Representation.

A.(1) ~~[Complainant: The]~~A USOE prosecutor shall represent the complainant ~~[shall be represented by a USOE prosecutor].~~

B.(2) ~~[Respondent:—]~~A respondent may represent himself or herself or be represented, at ~~his~~the respondent's own cost, by another person.

C.(3) The informant has no right to:

(1)a individual representation at the hearing; or

(2)b to be present or heard at the hearing unless called as a witness.

D.(4) A respondent shall notify the Executive Secretary in a timely manner and in writing if the respondent chooses to be represented by anyone other than the respondent.

R277-202-6. Discovery Prior to a Hearing.

A.(1) Discovery is permitted to the extent necessary to obtain relevant

information necessary to support claims or defenses, as determined by the hearing officer.

~~[B.](2)~~ Unduly burdensome legalistic discovery may not be used to delay a hearing.

~~[C.](3)~~ A hearing officer may limit discovery:

~~(1)a)~~ at the discretion of the hearing officer; or

~~(2)b)~~ upon a motion by either party.

~~[D.](4)~~ A hearing officer rules on all discovery requests and motions.

~~[E.](5)~~ The Executive Secretary shall issue a subpoena or other order to secure the attendance of a witness pursuant to Subsection 53A-6-306(3)(c)(i) if:

~~(1)a)~~ requested by either party; and

~~(2)b)~~ notice of intent to call the witness has been timely provided as required by Section R277-202-4.

~~[F.](6)~~ The Executive Secretary shall issue a subpoena to produce evidence if timely requested by either party.

~~[G.](17)(a)~~ A party may not present an expert witness report or expert witness testimony at a hearing unless the requirements of Section R277-202-10 have been met.

~~(2)b)~~ A respondent may not subpoena the UPPAC prosecutor or investigator as an expert witness.

R277-202-7. Burden and Standard of Proof for UPPAC Proceedings.

~~[A.](1)~~ In matters other than those involving applicants for licensing, and excepting the presumptions under Subsection R277-202-11(J)(10), the Board shall have the burden of proving that an action against the license is appropriate.

~~[B.](2)~~ An applicant for licensing has the burden of proving that licensing is appropriate.

~~[C.](3)~~ ~~[Standard of proof:]~~The standard of proof in all UPPAC hearings is a preponderance of the evidence.

~~[D.](4)~~ ~~[Evidence:]~~The Utah Rules of Evidence are not applicable to UPPAC proceedings.

~~[E.](5)~~ The criteria to decide an evidentiary question~~[s shall be]~~ are:

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

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

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

~~[F.](6)~~ The hearing officer has the sole responsibility to determine the application of the hearing rules and the admissibility of evidence.

R277-202-8. Deportment.

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

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

~~[C.](3)~~ Parties, attorneys for parties, or other participants in the professional practices investigation and hearing process may not harass, intimidate, or pressure

witnesses or other hearing participants, nor may they direct others to harass, intimidate, or pressure witnesses or participants.

R277-202-9. Hearing Record.

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

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

[C.](3) If an exhibit is admitted as evidence, the record shall reflect the contents of the exhibit.

[D.](4) All evidence and statements presented at a hearing shall become part of the UPPAC [G.]case [F.]file and may not be removed except by direction of the hearing officer or by order of the Board.

[E.](5) A party may review a UPPAC case file upon request of the party if the review of the UPPAC case file is performed:

(1)a) under supervision of the Executive Secretary; and

(2)b) at the USOE.

R277-202-10. Expert Witnesses in UPPAC Proceedings.

[A.](1) A hearing officer may allow testimony by an expert witness[es].

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

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

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

(2)b) the identity and qualifications of [each]an expert witness;

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

(4)d) any prepared expert witness report.

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

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

R277-202-11. Evidence and Participation in UPPAC Proceedings.

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

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

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

[D.](4) If a case involves allegations of child abuse or of a sexual offense against a minor, either party, a member of the hearing panel, or the hearing officer, may request that a minor be allowed to testify outside of the respondent's presence.

[E.](5) If the hearing officer determines that a minor would suffer undue 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:]~~ as described in this section.

~~[F.](6)~~ An oral statement of a victim or witness younger than 18 years of age ~~[which]that~~ is recorded prior to the filing of a complaint ~~[shall be]~~is admissible as evidence in a hearing regarding the offense if:

(1)a) no attorney for either party is in the minor's presence when the statement is recorded;

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

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

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

(5)e) the recording is accurate and has not been altered; and

(6)f) each voice in the recording is identified.

~~[G.](7)~~ The testimony of a witness or victim younger than 18 years of age may be taken in a room other than the hearing room, and may be transmitted by closed circuit equipment to another room where it can be viewed by the respondent if ~~[the following conditions shall be observed]:~~

(1)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;

(2)b) the respondent ~~[may]is~~ not ~~[be]~~ present during the minor's testimony;

(3)c) the hearing officer ~~[shall]~~ ensures that the minor cannot hear or see the respondent;

(4)d) the respondent ~~[shall be]~~is permitted to observe and hear, but ~~[may]~~ not communicate with the minor; and

(5)e) only hearing panel members, the hearing officer, and the attorneys ~~[may]~~ question the minor.

~~[H.](8)~~ If the hearing officer determines that the testimony of a minor may be taken consistent with Subsections [R277-202-11D](4) through ~~[G](7)~~, the minor may not be required to testify in any proceeding where the recorded testimony is used.

~~[I.](9)~~ On the hearing officer's own motion or upon objection by a party, the hearing officer:

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

(2)b) shall exclude evidence that is privileged under law applicable to administrative proceedings in ~~[Utah]the state~~ unless waived;

(3)c) 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)d) may take official notice of any facts that could be judicially noticed under judicial or administrative laws of ~~[Utah]the state~~, or from the record of other proceedings before the agency.

~~[J.](10)~~ ~~— Presumptions:~~

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

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

(b)ii) failed to defend himself or herself against ~~[such a]the~~ charge when given a

reasonable opportunity to do so; or

([e]iii) 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]b) 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.

([3]c) Evidence of behavior described in Subsection [R277-202-11J(2)](10)(b) may include:

([a]i) conviction of a felony;

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

([e]iii) an investigation of an educator's license, certificate, or authorization in another state; or

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

R277-202-12. Hearing Report.

[A-](1) Within 20 days after the hearing, or within 20 days after the deadline imposed for the filing of any post-hearing materials as permitted by the hearing officer, the hearing officer shall sign and issue a hearing report consistent with the recommendations of the panel that includes:

([4]a) detailed findings of fact and conclusions of law based upon the evidence of record or on facts officially noted[-];

([2]b) a statement of relevant precedent, if available;

([3]c) a statement of applicable law and rule;

([4]d) a recommended disposition of UPPAC panel members ~~[which]~~that shall be one or an appropriate combination of the following:

([a]i) dismissal of the complaint;

([b]ii) letter of admonishment;

([e]iii) letter of warning;

([e]iv) letter of reprimand;

([e]v) probation, to include the following terms and conditions:

([i]A) it is the respondent's responsibility to petition UPPAC for removal of probation and letter of reprimand from the respondent's CACTUS file;

([ii]B) a probationary time period or specifically designated indefinite time period;

([iii]C) conditions that can be monitored;

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

([v]E) a statement providing for costs of probation, if appropriate; and

([vi]F) whether or not the respondent may work in any capacity in public education during the probationary period;

([f]vi) disciplinary action held in abeyance;

([g]vii) suspension, to include the following terms and conditions:

(A) a recommended minimum time period after which an educator may request a reinstatement hearing under Rule R277-203; and

(B) any recommended conditions precedent to requesting a reinstatement hearing under Section R277-203-2; or

([h]viii) revocation; and

([5]e) notice that UPPAC's recommendation is subject to approval by the Board and judicial review as may be allowed by law.

[B-](2) Findings of fact may not be based solely upon hearsay, and conclusions shall be based upon competent evidence.

[C-](3) Any of the consequences described in Subsection [R277-202-12B](1)(d) may be imposed in the form of a disciplinary action held in abeyance.

[D-](4)(a) If the respondent's penalty is held in abeyance, the respondent's penalty is stayed subject to the satisfactory completion of probationary conditions.

[E-](b) The decision to impose a consequence in the form of a disciplinary action held in abeyance shall provide for appropriate or presumed discipline ~~[should]~~if the respondent does not fully satisfy the probationary conditions~~[not be fully satisfied].~~

[F-](5) ~~Processing the hearing report:~~

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

([2]b) Hearing panel members shall notify the hearing officer of any changes to the report:

([a]i) as soon as possible after receiving the report; and

([b]ii) prior to the 20 day completion deadline of the hearing report.

([3]c) The hearing officer shall file the completed hearing report with the Executive Secretary, who shall review the report with UPPAC.

([4]d) 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]e) The hearing officer may confer with the Executive Secretary or the panel members or both while preparing the hearing report.

([6]f) The hearing officer may request the Executive Secretary to confer with the hearing officer and panel following the hearing.

([7]g) 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.

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

([a]i) there are no significant procedural errors;

([b]ii) the hearing officer's recommendations are based upon a reasonable interpretation of the evidence presented at the hearing; and

([e]iii) that all issues explained in the hearing report are adequately addressed in the conclusions of the report.

([9]i) ~~[The]~~After the UPPAC review, the Executive Secretary shall ~~[forward]~~send a copy of the hearing report to:

(i) the Board for further action;~~[after the UPPAC review described in R277-202-12F(8).]~~

(ii) the respondent; and

([10]iii) ~~[The Executive Secretary shall place a copy of the hearing report in]~~the UPPAC case file.

~~[(11) If UPPAC or the Board 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 new hearing officer and a new UPPAC panel; or~~
~~—— (ii) direct the Executive Secretary to amend the hearing report to reflect the decision of UPPAC or the Board.]~~

(6)(a) If UPPAC adopts a hearing report that recommends an action, as defined in Subsection R277-200-2(l), either party may request review by the Superintendent within 15 days from the date the Executive Secretary sends a copy of the hearing report to the respondent.

(b) The request for review shall consist of:

(i) the name, position, and address of the appellant;

(ii) the issue being appealed; and

(iii) the signature of the appellant or the appellant's representative.

(c) An appeal to the Superintendent is limited to a question of fairness or a violation of due process.

(d) If the Superintendent finds that a procedural error has occurred that violates fairness or due process, the Superintendent shall:

(i) refer the report back to UPPAC for reconsideration as to whether the findings, conclusions, or decisions are supported by a preponderance of the evidence; or

(ii) direct the UPPAC Executive Secretary to take specific administrative action.

(e) After UPPAC completes reconsideration, the Superintendent shall:

(i) notify all parties; and

(ii) refer the report to the Board, if necessary, for final disposition consistent with this rule.

(7)(a) Prior to Board consideration of a hearing report, UPPAC shall:

(i) make the UPPAC case file available to the Board for confidential review; and

(ii) make other evidence available for review as directed by the Board.

(b) It is presumed that the Board will approve a UPPAC hearing report if:

(i) the UPPAC hearing process comports with due process and is free from a procedural error;

(ii) the hearing report is based upon a reasonable interpretation of the evidence;

(iii) the hearing report's recommendations constitute a reasonable resolution to the UPPAC investigation; and

(iv) the hearing report provides adequate guidance to the educator concerning any conditions prior to:

(A) reinstatement;

(B) termination of probation; or

(C) removal of a letter of reprimand from CACTUS.

(c) If the Board determines that any of the criteria in Subsection (1) are absent from a hearing report, or that exceptional circumstances exist, the Board shall:

(i) remand the case to UPPAC to cure any issues with due process; or
(ii)(A) issue findings specifying the defects in the hearing report and adopting the Board's agreed upon disposition of the matter; and

(B) direct the Executive Secretary to include the findings as an addendum to the hearing report, which findings constitute final Board action.

(d) Following Board adoption of a hearing report or alternative findings, the Executive Secretary shall:

(i) notify the educator;

(ii) notify the educator's employer;

(iii) update CACTUS to reflect the Board's action; and

(iv) report the action to the NASDTEC Educator Information Clearing house if the action results in:

(A) a revocation; or

(B) a suspension.

[G-](8) The hearing report is a public document under [GRAMA]Title 63G, Chapter 2, Government Records Access and Management Act after final action is taken in the case, but may be redacted if it is determined that the hearing report contains particular information, the dissemination of which is otherwise restricted under the law.

[H-](9) A respondent's failure to comply with the terms of a final disposition may result in additional discipline against the educator license.

[I-](10) If a hearing officer fails to satisfy the hearing officer's responsibilities under this rule, the Executive Secretary may:

([1]a) notify the Utah State Bar of the failure;

([2]b) reduce the hearing officer's compensation consistent with the failure;

([3]c) take timely action to avoid disadvantaging either party; or

([4]d) preclude the hearing officer from further employment by the Board for UPPAC purposes.

[J-](11) The Executive Secretary may waive the deadlines within this section [R277-202-12-]if the Executive Secretary finds good cause.

[K-](12) All criteria of letters of warning and reprimand, probation, suspension, and revocation[~~shall also~~] apply to the comparable sections of the final hearing report[s].

R277-202-13. Default.

[A](1)(a) The Executive Secretary may prepare an order of default if:

([a]i) the respondent fails to attend or participate in a properly scheduled hearing after receiving proper notice; or

([b]ii) the hearing officer recommends default as a sanction as a result of misconduct by the respondent or [his]the respondent's representative during the course of the hearing process.

([2]b) 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.

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

[C-](3) An order of default may result in a recommendation to the Board for

revocation or for a suspension of no less than five years.

~~[D.]~~(4) An order of default shall result in a recommendation to the Board for a revocation if the alleged misconduct is conduct identified in Subsection 53A-6-501(5)(b).

R277-202-14. Rights of Victims at Hearings.

~~[A.]~~(1) If the allegations that gave rise to the underlying allegations involve abuse of a sexual or physical nature, UPPAC shall make reasonable efforts to:

(~~[1]~~)a) advise the alleged victim that a hearing has been scheduled; and

(~~[2]~~)b) notify the alleged victim of the date, time, and location of the hearing.

~~[B.]~~(2) An alleged victim entitled to notification of a hearing ~~[shall be]~~is permitted, but is not required, to attend the hearing.

KEY: hearings, reports, educators

Date of Enactment or Last Substantive Amendment: ~~[July 8,]~~2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)

R277. Education, Administration.

~~[R277-202. UPPAC Hearing Procedures and Reports.~~

~~R277-202-1. Authority and Purpose.~~

~~_____ (1) This rule is authorized by:~~

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

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

~~_____ (c) Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.~~

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

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

~~R277-202-2. Scheduling a Hearing.~~

~~_____ (1)(a) Following receipt of an answer by respondent requesting a hearing:~~

~~_____ (i) UPPAC shall select panel members;~~

~~_____ (ii) 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; and~~

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

~~_____ (b) The Executive Secretary shall schedule a hearing for a date that is not less than 25 days nor more than 180 days from the date the Executive Secretary receives the answer.~~

~~_____ (c) The required scheduling periods may be waived by mutual written consent of the parties or by the Executive Secretary for good cause shown.~~

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

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

~~_____ (ii) be submitted to the Executive Secretary at least five days prior to the scheduled date of the hearing.~~

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

~~_____ (c) If the Executive Secretary finds that the reason for the request for a change of hearing date is sufficient, the Executive Secretary shall promptly notify all parties of the new time, date, and place for the hearing.~~

~~_____ (d) If the Executive Secretary does not find the reason for the request for a change of hearing date to be sufficient, the Executive Secretary shall immediately notify the parties that the request has been denied.~~

~~_____ (e) The Executive Secretary and the parties may waive the time period required for requesting a change of hearing date for good cause shown.~~

~~_____ (3) An educator is entitled to a hearing on any matter in which an action is recommended, as defined in Subsection R277-200-2(1).~~

~~_____ (4) An educator is not entitled to a hearing on a matter in which a disciplinary letter is recommended, as defined in Subsection R277-200-2(14).~~

~~R277-202-3. Appointment and Duties of the Hearing Officer and Hearing Panel.~~

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

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

~~———— (c) 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.~~

~~———— (d) A hearing officer:~~

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

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

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

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

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

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

~~———— (b) As directed by UPPAC, any licensed educator may serve as a panel member, if needed.~~

~~———— (c) The majority of panel members shall be current UPPAC members.~~

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

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

~~———— (f) If the respondent is a teacher, at least one panel member shall be a teacher.~~

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

~~———— (h) The requirements of Subsection(2) may be waived only upon the stipulation of both UPPAC and the respondent.~~

~~———— (3)(a) A UPPAC panel member shall:~~

~~———— (i) assist a 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;~~

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

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

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

~~———— (v) assist the hearing officer in preparing the hearing report.~~

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

~~_____ (c) The Executive Secretary may make an emergency substitution of a panel member for cause with the consent of the parties.~~

~~_____ (d) The agreement to substitute a panel member shall be in writing.~~

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

~~_____ (f) If the parties do not agree to a substitution or to having a two-member panel, the Executive Secretary shall reschedule the hearing.~~

~~_____ (4)(a) A party may request that the Executive Secretary disqualify a hearing officer by submitting a written request for disqualification to the Executive Secretary.~~

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

~~_____ (c) The Executive Secretary shall review a request described in Subsection(4) and supporting evidence to determine whether the reasons for the request are substantial and sufficient.~~

~~_____ (d) If the Executive Secretary determines that the hearing officer should be disqualified, the Executive Secretary shall appoint a new hearing officer and, if necessary, reschedule the hearing.~~

~~_____ (e) A hearing officer may recuse himself or herself from a hearing if, in the hearing officer's opinion, the hearing officer's participation would violate any of the Utah Rules of Professional Conduct consistent with the Supreme Court Rules of Professional Practice.~~

~~_____ (f) If the Executive Secretary denies a request to disqualify a hearing officer, the Executive Secretary shall notify the party within ten days prior to the date of the hearing.~~

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

~~_____ (h) If the Superintendent finds that the appeal is justified, the Superintendent shall direct the Executive Secretary to appoint a new hearing officer and, if necessary, reschedule the hearing.~~

~~_____ (i) The decision of the Superintendent described in Subsection(4)(h) is final.~~

~~_____ (j) If a party fails to file an appeal within the time requirements of Subsection (4)(g), the appeal shall be deemed denied.~~

~~_____ (k) If the Executive Secretary fails to meet the time requirements described in Subsection(4), the request or appeal is approved.~~

~~_____ (5)(a) A UPPAC member shall recuse himself or herself 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 request that a UPPAC panel member be disqualified by submitting a written request to the following:~~

~~_____ (i) the hearing officer; or~~

~~_____ (ii) to the Executive Secretary if there is no hearing officer.~~

~~_____ (c) A party shall submit a request described in Subsection(5)(b) no less than 15 days before a scheduled hearing.~~

~~_____ (d) The hearing officer, or the Executive Secretary, if there is no hearing officer,~~

shall:

~~— (i) review a request described in Subsection(5)(b) and supporting evidence to determine whether the reasons for the request are substantial and compelling enough to disqualify the panel member; and~~

~~— (ii) if the reasons for the request described in Subsection(5)(b) are substantial and compelling, disqualify the panel member.~~

~~— (e) If the panel member's disqualification leaves the hearing panel with fewer than three UPPAC panel members:~~

~~— (i) UPPAC shall appoint a replacement; and~~

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

~~— (f) If a request described in Subsection(5)(b) is denied, the hearing officer or the Executive Secretary if there is no hearing officer, shall notify the party requesting the panel member's disqualification no less than ten days prior to the date of the hearing.~~

~~— (g) The requesting party may file a written appeal of a denial described in Subsection(5)(f) with the Superintendent no later than five days prior to the hearing date.~~

~~— (h) If the Superintendent finds that an appeal described in Subsection(5)(g) is justified, the Superintendent shall direct the hearing officer or the Executive Secretary if there is no hearing officer, to replace the panel member.~~

~~— (i) If a panel member's 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.~~

~~— (j) The decision of the Superintendent described in Subsection(5)(h) is final.~~

~~— (k) If a party fails to file an appeal within the time requirements of Subsection (5)(g), the appeal shall be deemed denied.~~

~~— (l) If the hearing officer, or the Executive Secretary if there is no hearing officer, fails to meet the time requirements described in this Subsection(5), the request or appeal is approved.~~

~~— (6) The Executive Secretary may, at the time the Executive Secretary selects a hearing officer or panel member, select an alternative hearing officer or panel member following the process for selecting those individuals.~~

~~— (7) The Executive Secretary may substitute a panel member with an alternative panel member if the Executive Secretary notifies the parties of the substitution.~~

R277-202-4. Preliminary Instructions to Parties to a Hearing.

~~— (1) No later than 25 days before the date of a hearing, the Executive Secretary shall provide the parties with the following information:~~

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

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

~~— (c) instructions for accessing these rules.~~

~~— (2) No later 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:~~

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

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

~~— (ii) relevant laws, rules, and precedent;~~

~~_____ (b) the name of the person who will represent the party at the hearing;~~
~~_____ (c) a list of witnesses expected to be called, including a summary of the testimony that each witness is expected to present;~~
~~_____ (d) a summary of documentary evidence that the party intends to submit; and~~
~~_____ (e) following receipt of the other party's witness list, a list of anticipated rebuttal witnesses and evidence no later than ten days prior to the hearing.~~
~~_____ (3)(a) Except as provided in Subsection(3)(b), a party may not present a witness or evidence at the hearing if the witness or evidence has not been disclosed to the other party as required in Subsection(2).~~
~~_____ (b) A party may present a witness or evidence at the hearing even if the witness or hearing has not been disclosed to the other party if:~~
~~_____ (i) the parties stipulate to the presentation of the witness or evidence at the hearing; or~~
~~_____ (ii) the hearing officer makes a determination of good cause to allow the witness or evidence.~~
~~_____ (4) 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.~~
~~_____ (5) A party shall provide materials to the hearing officer, panel members, and UPPAC as directed by the hearing officer.~~

~~R277-202-5. Hearing Parties' Representation.~~

~~_____ (1) A USOE prosecutor shall represent the complainant.~~
~~_____ (2) A respondent may represent himself or herself or be represented, at the respondent's own cost, by another person.~~
~~_____ (3) The informant has no right to:~~
~~_____ (a) individual representation at the hearing; or~~
~~_____ (b) to be present or heard at the hearing unless called as a witness.~~
~~_____ (4) A respondent shall notify the Executive Secretary in a timely manner and in writing if the respondent chooses to be represented by anyone other than the respondent.~~

~~R277-202-6. Discovery Prior to a Hearing.~~

~~_____ (1) Discovery is permitted to the extent necessary to obtain relevant information necessary to support claims or defenses, as determined by the hearing officer.~~
~~_____ (2) Unduly burdensome legalistic discovery may not be used to delay a hearing.~~
~~_____ (3) A hearing officer may limit discovery:~~
~~_____ (a) at the discretion of the hearing officer; or~~
~~_____ (b) upon a motion by either party.~~
~~_____ (4) A hearing officer rules on all discovery requests and motions.~~
~~_____ (5) The Executive Secretary shall issue a subpoena or other order to secure the attendance of a witness pursuant to Subsection 53A-6-306(3)(c)(i) if:~~
~~_____ (a) requested by either party; and~~
~~_____ (b) notice of intent to call the witness has been timely provided as required by Section R277-202-4.~~
~~_____ (6) The Executive Secretary shall issue a subpoena to produce evidence if~~

timely requested by either party.

~~—— (7)(a) A party may not present an expert witness report or expert witness testimony at a hearing unless the requirements of Section R277-202-10 have been met.~~

~~—— (b) A respondent may not subpoena the UPPAC prosecutor or investigator as an expert witness.~~

R277-202-7. Burden and Standard of Proof for UPPAC Proceedings.

~~—— (1) In matters other than those involving applicants for licensing, and excepting the presumptions under Subsection R277-202-11(10), the Board shall have the burden of proving that an action against the license is appropriate.~~

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

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

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

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

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

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

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

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

R277-202-8. Deportment.

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

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

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

R277-202-9. Hearing Record.

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

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

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

~~—— (4) All evidence and statements presented at a hearing shall become part of the UPPAC case file and may not be removed except by direction of the hearing officer or by order of the Board.~~

~~—— (5) A party may review a UPPAC case file upon request of the party if the review of the UPPAC case file is performed:~~

- ~~_____ (a) under supervision of the Executive Secretary; and~~
- ~~_____ (b) at the USOE.~~

~~R277-202-10. Expert Witnesses in UPPAC Proceedings.~~

- ~~_____ (1) A hearing officer may allow testimony by an expert witness.~~
- ~~_____ (2) A party may call an expert witness at the party's own expense.~~
- ~~_____ (3) A party shall provide a hearing officer and the opposing party with the following information at least 15 days prior to the hearing date:~~
 - ~~_____ (a) notice of intent of a party to call an expert witness;~~
 - ~~_____ (b) the identity and qualifications of an expert witness;~~
 - ~~_____ (c) the purpose for which the expert witness is to be called; and~~
 - ~~_____ (d) any prepared expert witness report.~~
- ~~_____ (4) Defects in the qualifications of an expert witness, once a minimum threshold of expertise is established, go to the weight to be given the testimony and not to its admissibility.~~
- ~~_____ (5) An expert witness who is a member of the complainant's staff or staff of an LEA may testify and have the testimony considered as part of the record in the same manner as the testimony of any other expert.~~

~~R277-202-11. Evidence and Participation in UPPAC Proceedings.~~

- ~~_____ (1) A hearing officer may not exclude evidence solely because the evidence is hearsay.~~
- ~~_____ (2) Each party has a right to call witnesses, present evidence, argue, respond, cross-examine witnesses who testify in person at the hearing, and submit rebuttal evidence.~~
- ~~_____ (3) Testimony presented at the hearing shall be given under oath if the testimony is offered as evidence to be considered in reaching a decision on the merits.~~
- ~~_____ (4) If a case involves allegations of child abuse or of a sexual offense against a minor, either party, a member of the hearing panel, or the hearing officer, may request that a minor be allowed to testify outside of the respondent's presence.~~
- ~~_____ (5) If the hearing officer determines that a minor would suffer undue 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 as described in this section.~~
- ~~_____ (6) An oral statement of a victim or witness younger than 18 years of age that is recorded prior to the filing of a complaint is 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;~~
 - ~~_____ (d) the operator of the equipment is competent;~~
 - ~~_____ (e) the recording is accurate and has not been altered; and~~
 - ~~_____ (f) each voice in the recording is identified.~~
- ~~_____ (7) The testimony of a witness or victim younger than 18 years of age may be taken in a room other than the hearing room, and may be transmitted by closed circuit equipment to another room where it can be viewed by the respondent if:~~
 - ~~_____ ([1]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 is not present during the minor's testimony;~~

~~_____ (c) the hearing officer ensures that the minor cannot hear or see the respondent;~~

~~_____ (d) the respondent is permitted to observe and hear, but not communicate with the minor; and~~

~~_____ (e) only hearing panel members, the hearing officer, and the attorneys question the minor.~~

~~_____ (8) If the hearing officer determines that the testimony of a minor may be taken consistent with Subsections(4) through (7), the minor may not be required to testify in any proceeding where the recorded testimony is used.~~

~~_____ (9) On the hearing officer's own motion or upon objection by a party, the hearing officer:~~

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

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

~~_____ (c) 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;~~

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

~~_____ (10)(a) A rebuttable evidentiary presumption exists that a person has committed a sexual offense against a minor if the person has:~~

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

~~_____ (ii) failed to defend himself or herself against the charge when given a reasonable opportunity to do so; or~~

~~_____ (iii) 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.~~

~~_____ (b) 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.~~

~~_____ (c) Evidence of behavior described in Subsection(10)(b) may include:~~

~~_____ (i) conviction of a felony;—~~

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

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

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

~~R277-202-12. Hearing Report.~~

~~_____ (1) Within 20 days after the hearing, or within 20 days after the deadline~~

~~imposed for the filing of any post-hearing materials as permitted by the hearing officer, the hearing officer shall sign and issue a hearing report consistent with the recommendations of the panel that includes:~~

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

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

~~—— (c) a statement of applicable law and rule;~~

~~—— (d) a recommended disposition of UPPAC panel members that shall be one or an appropriate combination of the following:~~

~~—— (i) dismissal of the complaint;~~

~~—— (ii) letter of admonishment;~~

~~—— (iii) letter of warning;~~

~~—— (iv) letter of reprimand;~~

~~—— (v) probation, to include the following terms and conditions:~~

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

~~—— (B) a probationary time period or specifically designated indefinite time period;~~

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

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

~~—— (E) a statement providing for costs of probation, if appropriate; and~~

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

~~—— (vi) disciplinary action held in abeyance;~~

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

~~—— (A) a recommended minimum time period after which an educator may request a reinstatement hearing under Rule R277-203; and~~

~~—— (B) any recommended conditions precedent to requesting a reinstatement hearing under Section R277-203-2; or~~

~~—— (viii) revocation; and~~

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

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

~~—— (3) Any of the consequences described in Subsection(1)(d) may be imposed in the form of a disciplinary action held in abeyance.~~

~~—— (4)(a) If the respondent's penalty is held in abeyance, the respondent's penalty is stayed subject to the satisfactory completion of probationary conditions.~~

~~—— (b) The decision to impose a consequence in the form of a disciplinary action held in abeyance shall provide for appropriate or presumed discipline if the respondent does not fully satisfy the probationary conditions.~~

~~—— (5)(a) A hearing officer shall circulate a draft report to hearing panel members prior to the 20 day completion deadline of the hearing report.~~

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

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

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

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

~~_____ (d) 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.~~

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

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

~~_____ (g) 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.~~

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

~~_____ (i) there are no significant procedural errors;~~

~~_____ (ii) the hearing officer's recommendations are based upon a reasonable interpretation of the evidence presented at the hearing; and~~

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

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

~~_____ (i) the Board for further action;~~

~~_____ (ii) the respondent; and~~

~~_____ (iii) the UPPAC case file.~~

~~_____ (6)(a) If UPPAC adopts a hearing report that recommends an action, as defined in Subsection R277-200-2(l), either party may request review by the Superintendent within 15 days from the date the Executive Secretary sends a copy of the hearing report to the respondent.~~

~~_____ (b) The request for review shall consist of:~~

~~_____ (i) the name, position, and address of the appellant;~~

~~_____ (ii) the issue being appealed; and~~

~~_____ (iii) the signature of the appellant or the appellant's representative.~~

~~_____ (c) An appeal to the Superintendent is limited to a question of fairness or a violation of due process.~~

~~_____ (d) If the Superintendent finds that a procedural error has occurred that violates fairness or due process, the Superintendent shall:~~

~~_____ (i) refer the report back to UPPAC for reconsideration as to whether the findings, conclusions, or decisions are supported by a preponderance of the evidence; or~~

~~_____ (ii) direct the UPPAC Executive Secretary to take specific administrative action.~~

~~_____ (e) After UPPAC completes reconsideration, the Superintendent shall:~~

~~_____ (i) notify all parties; and~~

~~_____ (ii) refer the report to the Board, if necessary, for final disposition consistent with this rule.~~

~~_____ (7)(a) Prior to Board consideration of a hearing report, UPPAC shall:~~

~~_____ (i) make the UPPAC case file available to the Board for confidential review; and~~

~~_____ (ii) make other evidence available for review as directed by the Board.~~

~~_____ (b) It is presumed that the Board will approve a UPPAC hearing report if:~~

- ~~_____ (i) the UPPAC hearing process comports with due process and is free from a procedural error;~~
- ~~_____ (ii) the hearing report is based upon a reasonable interpretation of the evidence;~~
- ~~_____ (iii) the hearing report's recommendations constitute a reasonable resolution to the UPPAC investigation; and~~
- ~~_____ (iv) the hearing report provides adequate guidance to the educator concerning any conditions prior to:~~
 - ~~_____ (A) reinstatement;~~
 - ~~_____ (B) termination of probation; or~~
 - ~~_____ (C) removal of a letter of reprimand from CACTUS.~~
- ~~_____ (c) If the Board determines that any of the criteria in Subsection (1) are absent from a hearing report, or that exceptional circumstances exist, the Board shall:~~
 - ~~_____ (i) remand the case to UPPAC to cure any issues with due process; or~~
 - ~~_____ (ii)(A) issue findings specifying the defects in the hearing report and adopting the Board's agreed upon disposition of the matter; and~~
 - ~~_____ (B) direct the Executive Secretary to include the findings as an addendum to the hearing report, which findings constitute final Board action.~~
- ~~_____ (d) Following Board adoption of a hearing report or alternative findings, the Executive Secretary shall:~~
 - ~~_____ (i) notify the educator;~~
 - ~~_____ (ii) notify the educator's employer;~~
 - ~~_____ (iii) update CACTUS to reflect the Board's action; and~~
 - ~~_____ (iv) report the action to the NASDTEC Educator Information Clearing house if the action results in:~~
 - ~~_____ (A) a revocation; or~~
 - ~~_____ (B) a suspension.~~
- ~~_____ (8) The hearing report is a public document under Title 63G, Chapter 2, Government Records Access and Management Act after final action is taken in the case, but may be redacted if it is determined that the hearing report contains particular information, the dissemination of which is otherwise restricted under the law.~~
- ~~_____ (9) A respondent's failure to comply with the terms of a final disposition may result in additional discipline against the educator license.~~
- ~~_____ (10) If a hearing officer fails to satisfy the hearing officer's responsibilities under this rule, the Executive Secretary may:~~
 - ~~_____ (a) notify the Utah State Bar of the failure;~~
 - ~~_____ (b) reduce the hearing officer's compensation consistent with the failure;~~
 - ~~_____ (c) take timely action to avoid disadvantaging either party; or~~
 - ~~_____ (d) preclude the hearing officer from further employment by the Board for UPPAC purposes.~~
- ~~_____ (11) The Executive Secretary may waive the deadlines within this section if the Executive Secretary finds good cause.~~
- ~~_____ (12) All criteria of letters of warning and reprimand, probation, suspension, and revocation apply to the comparable sections of the final hearing report.~~

R277-202-13. Default.

- ~~_____ (1)(a) The Executive Secretary may prepare an order of default if:~~
 - ~~_____ (i) the respondent fails to attend or participate in a properly scheduled hearing~~

after receiving proper notice; or

~~_____ (ii) the hearing officer recommends default as a sanction as a result of misconduct by the respondent or the respondent's representative during the course of the hearing process.~~

~~_____ (b) 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 recommendation of default may be executed by the Executive Secretary following all applicable time periods, without further action by UPPAC.~~

~~_____ (3) An order of default may result in a recommendation to the Board for revocation or for a suspension of no less than five years.~~

~~_____ (4) An order of default shall result in a recommendation to the Board for a revocation if the alleged misconduct is conduct identified in Subsection 53A-6-501(5)(b).~~

~~R277-202-14. Rights of Victims at Hearings.~~

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

~~_____ (a) advise the alleged victim that a hearing has been scheduled; and~~

~~_____ (b) notify the alleged victim of the date, time, and location of the hearing.~~

~~_____ (2) An alleged victim entitled to notification of a hearing is permitted, but is not required, to attend the hearing.~~

~~KEY: hearings, reports, educators~~

~~Date of Enactment or Last Substantive Amendment: October 8, 2015~~

~~Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)]~~

R277. Education, Administration.

R277-203. Request for Licensure Reinstatement and Reinstatement Procedures.

R277-203-1. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, by Section 53A-6-306 which directs the Board to adopt rules regarding UPPAC duties and procedures, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

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

C. 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).

R277-203-2. Application for Licensing Following Denial or Loss of License.

A(1) An individual who has been denied a license or lost the individual's 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 a review to consider reinstatement of a license.

(2) A request for review described in R277-203-2A(1) shall:

(a) be in writing;

(b) be transmitted to the UPPAC Executive Secretary; and

(c) have the following information:

(i) name and address of the individual requesting review;

(ii) the action being requested;

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

(iv) reason(s) that the individual seeks reinstatement; and

(v) signature of the individual requesting review.

B(1) The Executive Secretary shall review the request with UPPAC.

(2) If UPPAC determines that the request is incomplete or invalid:

(a) the Executive Secretary shall deny the request; and

(b) notify the individual requesting reinstatement of the denial.

(3) If UPPAC determines that the request of an individual described in R277-203-2A is complete, timely, and appropriate, UPPAC shall schedule and hold a hearing as provided under R277-203-3.

C(1) Burden of Persuasion: The burden of persuasion at a reinstatement hearing shall fall on the individual seeking the reinstatement.

(2) An individual 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 will 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 the individual's compliance with directives from UPPAC or the Board found in petitioner's original stipulated agreement or hearing report.

(3) An individual requesting licensing following a 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 of the individual's license in the other state before a request for a reinstatement hearing may be approved.

R277-203-3. Reinstatement Hearing Procedures.

A. A hearing officer shall:

(1) preside over a reinstatement hearing; and

(2) rule on all procedural issues during the reinstatement hearing as they arise.

B. A hearing panel, comprising individuals as set forth in R277-202-3(B), shall:

(1) hear the evidence; and

(2) along with the prosecutor and hearing officer, question the individual seeking reinstatement regarding the appropriateness of reinstatement.

C. An individual seeking reinstatement may:

(a) be represented by counsel; and

(b) may present evidence and witnesses.

D. A party may present evidence and witnesses consistent with R277-202.

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

F. An individual seeking reinstatement shall present documentation or evidence that supports reinstatement.

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

H. Other evidence or witnesses may be presented by either party and shall be presented consistent with R277-202.

I. The individual seeking reinstatement shall:

(1) focus on the individual's actions, 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 questions of the UPPAC prosecutor and hearing panel regarding:

(a) the misconduct that caused the license suspension;

(b) subsequent rehabilitation activities;

(c) counseling or therapy received by the individual related to the original misconduct; and

(d) work, professional actions, and behavior between the suspension and reinstatement request;

(5) present witnesses 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 an individual seeking reinstatement plans to introduce at the hearing.

J. The UPPAC prosecutor, the hearing panel, and hearing officer shall thoroughly question the individual seeking reinstatement as to the individual's:

(1) underlying misconduct which is the basis of the sanction on the educator's license;

(2) specific and exact compliance with reinstatement requirements;

(3) counseling, if required for reinstatement;

(4) specific plans for avoiding previous misconduct; and

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

K. If the individual seeking reinstatement sought counseling as described in R277-203-3J(3), the individual shall state, under oath, that he provided all relevant information and background to his counselor or therapist.

L. A 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, a hearing officer, with the assistance of the hearing panel, shall:

(1) prepare a hearing report in accordance with the requirements set forth in R277-203-5; and

(2) provide the hearing report to the UPPAC Executive Secretary.

N. The Executive Secretary shall submit the hearing report to UPPAC at the next meeting following receipt of the hearing report by the Executive Secretary.

O. UPPAC may do the following upon receipt of the hearing report:

(1) accept the hearing panel's recommendation as prepared in the

hearing report;

(2) amend the hearing panel's recommendation with conditions or modifications to the hearing panel's recommendation which shall be:

(a) directed by UPPAC;

(b) prepared by the UPPAC Executive Secretary; and

(c) attached to the hearing report; or

(3) reject the hearing panel's recommendation.

P. After UPPAC makes a recommendation on the hearing panel report, the UPPAC recommendation will be forwarded to the Board for final action on the individual's reinstatement request.

Q. If the Board denies an individual's request for reinstatement, the individual shall wait at least twenty four (24) months prior to filing a request for reinstatement again, unless a different time is provided in the hearing panel recommendation or in the Board's motion to deny.

R277-203-4. Rights of a Victim at a Reinstatement Hearing.

A. If the allegations that gave rise to the underlying suspension involve abuse of a sexual or physical nature, UPPAC shall make reasonable efforts to notify the victim or the victim's family of the reinstatement request.

B. UPPAC's notification shall:

(1) advise the victim that a reinstatement hearing has been scheduled;

(2) notify the victim of the date, time, and location of the hearing;

(3) advise the victim of the victim's right to be heard at the reinstatement hearing; and

(4) provide the victim with a form upon which the victim can submit a statement for consideration by the hearing panel.

C. A victim entitled to notification of the reinstatement proceedings shall be permitted:

(1) to attend the hearing; and

(2) to offer the victim's position on the educator's reinstatement request, either by testifying in person or by submitting a written statement.

D. A victim choosing to testify at a reinstatement hearing shall be subject to reasonable cross examination in the hearing officer's discretion.

E. A victim choosing not to respond in writing or appear at the reinstatement hearing waives the victim's right to participate in the reinstatement process.

R277-203-5. Reinstatement Hearing Report.

A. A hearing officer shall provide the following in a reinstatement hearing report:

(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(1) The hearing panel report is a public document under GRAMA following the conclusion of the reinstatement process unless specific information or evidence contained therein is protected by a specific provision of GRAMA, or another provision of state or federal law.

(2) The Executive Secretary shall add the hearing panel report to the UPPAC case file.

C. If a license is reinstated, an educator's CACTUS file shall be updated to:

(1) remove the flag;

(2) show that the educator's license was reinstated; and

(3) show the date of formal Board action reinstating the license.

D. The Board decision as to whether to accept the recommendation of the reinstatement hearing report is within the Board's sole discretion.

KEY: licensure, reinstatement, hearings; license reinstatement

Date of Enactment or Last Substantive Amendment: 2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)

R277. Education, Administration.

R277-203. Request for Licensure Reinstatement and Reinstatement Procedures.

R277-203-1. Authority and Purpose.

~~[A.](1)~~ This rule is authorized ~~[under]~~by:

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

~~(b)~~ ~~[by]~~Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures; and

~~(c)~~ ~~[by]~~Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.

~~[B.](2)~~ The purpose of this rule is to establish procedures regarding educator license reinstatement.

~~[C.](3)~~ The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).

R277-203-2. Application for Licensing Following Denial or Loss of License.

~~[A](1)(a)~~ An individual who has been denied a license or lost the individual's 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 a review to consider reinstatement of a license.

~~(2)(b)~~ A request for review described in Subsection [R277-203-2A](1)(a) shall:

~~(a)(i)~~ be in writing;

~~(a)(ii)~~ be transmitted to the UPPAC Executive Secretary; and

~~(a)(iii)~~ have the following information:

~~(i)A)~~ name and address of the individual requesting review;

~~(i)B)~~ the action being requested;

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

~~(i)D)~~ reason(s) that the individual seeks reinstatement; and

~~(i)E)~~ signature of the individual requesting review.

~~[B](4)(a)~~ The Executive Secretary shall review the request with UPPAC.

~~(2)(b)~~ If UPPAC determines that the request is incomplete or invalid:

~~(a)(i)~~ the Executive Secretary shall deny the request; and

~~(a)(ii)~~ notify the individual requesting reinstatement of the denial.

~~(3)(c)~~ If UPPAC determines that the request of an individual described in Subsection [R277-203-2A](1) is complete, timely, and appropriate, UPPAC shall schedule and hold a hearing as provided under Section R277-203-3.

~~[C](4)(3)(a)~~ Burden of Persuasion: The burden of persuasion at a reinstatement hearing shall fall on the individual seeking the reinstatement.

~~(2)(b)~~ An individual requesting reinstatement of a suspended license shall:

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

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

~~(a)(iii)~~ undergo a criminal background check ~~[consistent with Utah law and~~

~~R277-517~~ not more than six months prior to the requested hearing; and

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

(~~3~~)c) An individual requesting licensing following a denial shall show sufficient evidence of completion of a rehabilitation or remediation program, if applicable, when requesting reinstatement.

(~~D~~)(4) An individual whose license has been suspended or revoked in another state shall seek reinstatement of the individual's license in the other state before a request for a reinstatement hearing may be approved.

R277-203-3. Reinstatement Hearing Procedures.

(~~A~~)(1) A hearing officer shall:

(~~1~~)a) preside over a reinstatement hearing; and

(~~2~~)b) rule on all procedural issues during the reinstatement hearing as they arise.

(~~B~~)(2) A hearing panel, comprising individuals as set forth in Subsection ~~[R277-202-3(B)]~~(2), shall:

(~~1~~)a) hear the evidence; and

(~~2~~)b) along with the prosecutor and hearing officer, question the individual seeking reinstatement regarding the appropriateness of reinstatement.

(~~C~~)(3) An individual seeking reinstatement may:

(a) be represented by counsel; and

(b) may present evidence and witnesses.

(~~D~~)(4) A party may present evidence and witnesses consistent with Rule ~~R277-202~~.

(~~E~~)(5) A hearing officer of a reinstatement hearing shall direct one or both parties to explain the background of a case to panel members at the beginning of the hearing to provide necessary information about the initial misconduct and subsequent UPPAC and Board action.

(~~F~~)(6) An individual seeking reinstatement shall present documentation or evidence that supports reinstatement.

(~~G~~)(7) The USOE, represented by the UPPAC prosecutor, shall present any evidence or documentation that explains and supports USOE's recommendation in the matter.

(~~H~~)(8) Other evidence or witnesses may be presented by either party and shall be presented consistent with Rule ~~R277-202~~.

(~~I~~)(9) The individual seeking reinstatement shall:

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

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

(~~3~~)c) 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~~)d) be prepared to completely and candidly respond to the questions of the UPPAC prosecutor and hearing panel regarding:

(~~[a]~~i) the misconduct that caused the license suspension;
(~~[b]~~ii) subsequent rehabilitation activities;
(~~[c]~~iii) counseling or therapy received by the individual related to the original misconduct; and

(~~[d]~~iv) work, professional actions, and behavior between the suspension and reinstatement request;

(~~[5]~~e) present witnesses 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]~~f) provide copies of all reports and documents to the UPPAC prosecutor and hearing officer at least five days before a reinstatement hearing; and

(~~[7]~~g) bring eight copies of all documents or materials that an individual seeking reinstatement plans to introduce at the hearing.

~~[J.](10)~~ The UPPAC prosecutor, the hearing panel, and hearing officer shall thoroughly question the individual seeking reinstatement as to the individual's:

(~~[1]~~a) underlying misconduct which is the basis of the sanction on the educator's license;

(~~[2]~~b) specific and exact compliance with reinstatement requirements;

(~~[3]~~c) counseling, if required for reinstatement;

(~~[4]~~d) specific plans for avoiding previous misconduct; and

(~~[5]~~e) demeanor and changed understanding of petitioner's professional integrity and actions consistent with Rule R277-515.

~~[K.](11)~~ If the individual seeking reinstatement sought counseling as described in Subsection [R277-203-3J(3)](10)(c), the individual shall state, under oath, that he provided all relevant information and background to his counselor or therapist.

~~[L.](12)~~ A hearing officer shall rule on procedural issues in a reinstatement hearing in a timely manner as they arise.

~~[M.](13)~~ No more than 20 days following a reinstatement hearing, a hearing officer, with the assistance of the hearing panel, shall:

(~~[1]~~a) prepare a hearing report in accordance with the requirements set forth in Section R277-203-5; and

(~~[2]~~b) provide the hearing report to the UPPAC Executive Secretary.

~~[N.](14)~~ The Executive Secretary shall submit the hearing report to UPPAC at the next meeting following receipt of the hearing report by the Executive Secretary.

~~[O.](15)~~ UPPAC may do the following upon receipt of the hearing report:

(~~[1]~~a) accept the hearing panel's recommendation as prepared in the hearing report;

(~~[2]~~b) amend the hearing panel's recommendation with conditions or modifications to the hearing panel's recommendation which shall be:

(~~[a]~~i) directed by UPPAC;

(~~[b]~~ii) prepared by the UPPAC Executive Secretary; and

(~~[c]~~iii) attached to the hearing report; or

(~~[3]~~c) reject the hearing panel's recommendation.

~~[P.](16)~~ After UPPAC makes a recommendation on the hearing panel report, the UPPAC recommendation will be forwarded to the Board for final action on the individual's reinstatement request.

~~[Q. If the Board denies an individual's request for reinstatement, the individual shall wait at least twenty four (24) months prior to filing a request for reinstatement again, unless a different time is provided in the hearing panel recommendation or in the Board's motion to deny.]~~

R277-203-4. Rights of a Victim at a Reinstatement Hearing.

[A.](1) If the allegations that gave rise to the underlying suspension involve abuse of a sexual or physical nature, UPPAC shall make reasonable efforts to notify the victim or the victim's family of the reinstatement request.

[B.](2) UPPAC's notification shall:

(1)a) advise the victim or the victim's family that a reinstatement hearing has been scheduled;

(2)b) notify the victim or the victim's family of the date, time, and location of the hearing;

(3)c) advise the victim or the victim's family of the victim's right to be heard at the reinstatement hearing; and

(4)d) provide the victim or the victim's family with a form upon which the victim can submit a statement for consideration by the hearing panel.

[C.](3) A victim entitled to notification of the reinstatement proceedings shall be permitted:

(1)a) to attend the hearing; and

(2)b) to offer the victim's position on the educator's reinstatement request, either by testifying in person or by submitting a written statement.

[D.](4) A victim choosing to testify at a reinstatement hearing shall be subject to reasonable cross examination in the hearing officer's discretion.

[E.](5) A victim choosing not to respond in writing or appear at the reinstatement hearing waives the victim's right to participate in the reinstatement process.

R277-203-5. Reinstatement Hearing Report.

[A.](1) A hearing officer shall provide the following in a reinstatement hearing report:

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

(2)b) ~~[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)c) ~~[specifically address]~~ the hearing panel's conclusions regarding petitioner's appropriateness and fitness to be a public school educator again;~~[-and]~~

(d) the hearing panel's recommendation; and

(4)e) ~~[provide]~~ a statement [that] indicating whether the hearing panel's recommendation to UPPAC was unanimous or ~~[provide]~~ identifying how the panel's member's voted concerning reinstatement.

[B.](1)(a) The hearing panel report is a public document under GRAMA following the conclusion of the reinstatement process unless specific information or evidence contained therein is protected by a specific provision of GRAMA, or another provision of state or federal law.

(2)b) The Executive Secretary shall add the hearing panel report to the UPPAC case file.

[C.](3) If a license is reinstated, an educator's CACTUS file shall be updated to:

(1)a remove the flag;

(2)b show that the educator's license was reinstated; and

(3)c show the date of formal Board action reinstating the license.

[D.](4)(a) UPPAC and the Board shall follow the procedures described in Subsection R277-202-12(7) when considering a reinstatement hearing report.

(b) The Board decision as to whether to accept the recommendation of the reinstatement hearing report is within the Board's sole discretion.

(5) If the Board denies an individual's request for reinstatement, the individual shall wait at least twenty four (24) months prior to filing a request for reinstatement again, unless a different time is specified by UPPAC or the Board.

(6) If the Board reinstates an educator, the Executive Secretary shall:

(a) update CACTUS to reflect the Board's action; and

(b) report the Board's action to the NASDTEC Educator Information Clearing house.

(7) The Executive Secretary shall send notice of the Board's decision no more than 30 days following Board action to:

(a) the educator;

(b) the educator's LEA.

R277-203-6. Reinstatement from Revocation of License.

(1) The Executive Secretary shall deny any request for a reinstatement hearing for a revoked license unless the educator's stipulated agreement or revocation order from the Board allows the educator to request a reinstatement hearing.

(2) An educator may request that the Superintendent order a new hearing if:

(a) an educator provides:

(i) evidence of mistake or false information that was critical to the revocation action; or

(ii) newly discovered evidence:

(A) that undermines the revocation determination; and

(B) that the educator could not have reasonably obtained during the original disciplinary proceedings; or

(b) an educator identifies material procedural Board error in the revocation process.

(3) A request for review by the Superintendent must be filed within 30 days of Board action for circumstances identified in Subsection (2)(a)(i) or (b).

(4) A request for review by the Superintendent must be filed within 90 days of discovery of the new evidence for circumstances identified in Subsection(2)(a)(ii).

(5) The Superintendent:

(a) shall make a determination on a request made under Subsection(2) within 60 days; and

(b) may request briefing from an educator and USOE staff in making a determination.

(6) If the Superintendent finds that the criteria in Subsection (2)(a) have been established, the Superintendent shall direct UPPAC to conduct a new hearing consistent with Rule R277-202.

(7) If the Superintendents finds that the criteria in Subsection (2)(b) have been

established, the Superintendent shall recommend to the Board that they reconsider their previous action.

KEY: licensure, reinstatement, hearings; license reinstatement

Date of Enactment or Last Substantive Amendment: [~~July 8,~~]2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)

R277. Education, Administration.

[R277-203. Request for Licensure Reinstatement and Reinstatement Procedures.

R277-203-1. Authority and Purpose.

~~_____ (1) This rule is authorized by:~~

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

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

~~_____ (c) Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.~~

~~_____ (2) The purpose of this rule is to establish procedures regarding educator license reinstatement.~~

~~_____ (3) The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).~~

R277-203-2. Application for Licensing Following Denial or Loss of License.

~~_____ (1)(a) An individual who has been denied a license or lost the individual's 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 a review to consider reinstatement of a license.~~

~~_____ (b) A request for review described in Subsection (1)(a) shall:~~

~~_____ (i) be in writing;~~

~~_____ (ii) be transmitted to the UPPAC Executive Secretary; and~~

~~_____ (iii) have the following information:~~

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

~~_____ (B) the action being requested;~~

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

~~_____ (D) reason(s) that the individual seeks reinstatement; and~~

~~_____ (E) signature of the individual requesting review.~~

~~_____ (2)(a) The Executive Secretary shall review the request with UPPAC.~~

~~_____ (b) If UPPAC determines that the request is incomplete or invalid:~~

~~_____ (i) the Executive Secretary shall deny the request; and~~

~~_____ (ii) notify the individual requesting reinstatement of the denial.~~

~~_____ (c) If UPPAC determines that the request of an individual described in Subsection (1) is complete, timely, and appropriate, UPPAC shall schedule and hold a hearing as provided under Section R277-203-3.~~

~~_____ (3)(a) Burden of Persuasion: The burden of persuasion at a reinstatement hearing shall fall on the individual seeking the reinstatement.~~

~~_____ (b) An individual requesting reinstatement of a suspended license shall:~~

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

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

~~_____ (iii) undergo a criminal background check not more than six months prior to the~~

requested hearing; and

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

~~— (c) An individual requesting licensing following a denial shall show sufficient evidence of completion of a rehabilitation or remediation program, if applicable, when requesting reinstatement.~~

~~— (4) An individual whose license has been suspended or revoked in another state shall seek reinstatement of the individual's license in the other state before a request for a reinstatement hearing may be approved.~~

~~R277-203-3. Reinstatement Hearing Procedures.~~

~~— (1) A hearing officer shall:~~

~~— (a) preside over a reinstatement hearing; and~~

~~— (b) rule on all procedural issues during the reinstatement hearing as they arise.~~

~~— (2) A hearing panel, comprising individuals as set forth in Subsection (2), shall:~~

~~— (a) hear the evidence; and~~

~~— (b) along with the prosecutor and hearing officer, question the individual seeking reinstatement regarding the appropriateness of reinstatement.~~

~~— (3) An individual seeking reinstatement may:~~

~~— (a) be represented by counsel; and~~

~~— (b) may present evidence and witnesses.~~

~~— (4) A party may present evidence and witnesses consistent with Rule R277-202.~~

~~— (5) A hearing officer of a reinstatement hearing shall direct one or both parties to explain the background of a case to panel members at the beginning of the hearing to provide necessary information about the initial misconduct and subsequent UPPAC and Board action.~~

~~— (6) An individual seeking reinstatement shall present documentation or evidence that supports reinstatement.~~

~~— (7) The USOE, represented by the UPPAC prosecutor, shall present any evidence or documentation that explains and supports USOE's recommendation in the matter.~~

~~— (8) Other evidence or witnesses may be presented by either party and shall be presented consistent with Rule R277-202.~~

~~— (9) The individual seeking reinstatement shall:~~

~~— (a) focus on the individual's actions, rehabilitative efforts, and performance following license denial or suspension;~~

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

~~— (c) 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;~~

~~— (d) be prepared to completely and candidly respond to the questions of the UPPAC prosecutor and hearing panel regarding:~~

~~— (i) the misconduct that caused the license suspension;~~

~~— (ii) subsequent rehabilitation activities;~~

~~— (iii) counseling or therapy received by the individual related to the original~~

misconduct; and

~~— (iv) work, professional actions, and behavior between the suspension and reinstatement request;~~

~~— (e) present witnesses 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;~~

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

~~— (g) bring eight copies of all documents or materials that an individual seeking reinstatement plans to introduce at the hearing.~~

~~— (10) The UPPAC prosecutor, the hearing panel, and hearing officer shall thoroughly question the individual seeking reinstatement as to the individual's:~~

~~— (a) underlying misconduct which is the basis of the sanction on the educator's license;~~

~~— (b) specific and exact compliance with reinstatement requirements;~~

~~— (c) counseling, if required for reinstatement;~~

~~— (d) specific plans for avoiding previous misconduct; and~~

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

~~— (11) If the individual seeking reinstatement sought counseling as described in Subsection(10)(c), the individual shall state, under oath, that he provided all relevant information and background to his counselor or therapist.~~

~~— (12) A hearing officer shall rule on procedural issues in a reinstatement hearing in a timely manner as they arise.~~

~~— (13) No more than 20 days following a reinstatement hearing, a hearing officer, with the assistance of the hearing panel, shall:~~

~~— (a) prepare a hearing report in accordance with the requirements set forth in Section R277-203-5; and~~

~~— (b) provide the hearing report to the UPPAC Executive Secretary.~~

~~— (14) The Executive Secretary shall submit the hearing report to UPPAC at the next meeting following receipt of the hearing report by the Executive Secretary.~~

~~— (15) UPPAC may do the following upon receipt of the hearing report:~~

~~— (a) accept the hearing panel's recommendation as prepared in the hearing report;~~

~~— (b) amend the hearing panel's recommendation with conditions or modifications to the hearing panel's recommendation which shall be:~~

~~— (i) directed by UPPAC;~~

~~— (ii) prepared by the UPPAC Executive Secretary; and~~

~~— (iii) attached to the hearing report; or~~

~~— (c) reject the hearing panel's recommendation.~~

~~— (16) After UPPAC makes a recommendation on the hearing panel report, the UPPAC recommendation will be forwarded to the Board for final action on the individual's reinstatement request.~~

R277-203-4. Rights of a Victim at a Reinstatement Hearing.

~~— (1) If the allegations that gave rise to the underlying suspension involve abuse of~~

~~a sexual or physical nature, UPPAC shall make reasonable efforts to notify the victim or the victim's family of the reinstatement request.~~

~~—— (2) UPPAC's notification shall:~~

~~—— (a) advise the victim or the victim's family that a reinstatement hearing has been scheduled;~~

~~—— (b) notify the victim or the victim's family of the date, time, and location of the hearing;~~

~~—— (c) advise the victim or the victim's family of the victim's right to be heard at the reinstatement hearing; and~~

~~—— (d) provide the victim or the victim's family with a form upon which the victim can submit a statement for consideration by the hearing panel.~~

~~—— (3) A victim entitled to notification of the reinstatement proceedings shall be permitted:~~

~~—— (a) to attend the hearing; and~~

~~—— (b) to offer the victim's position on the educator's reinstatement request, either by testifying in person or by submitting a written statement.~~

~~—— (4) A victim choosing to testify at a reinstatement hearing shall be subject to reasonable cross examination in the hearing officer's discretion.~~

~~—— (5) A victim choosing not to respond in writing or appear at the reinstatement hearing waives the victim's right to participate in the reinstatement process.~~

~~R277-203-5. Reinstatement Hearing Report.~~

~~—— (1) A hearing officer shall provide the following in a reinstatement hearing report:~~

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

~~—— (b) 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;~~

~~—— (c) the hearing panel's conclusions regarding petitioner's appropriateness and fitness to be a public school educator again;~~

~~—— (d) the hearing panel's recommendation; and~~

~~—— (e) a statement indicating whether the hearing panel's recommendation to UPPAC was unanimous or identifying how the panel member's voted concerning reinstatement.~~

~~—— (2)(a) The hearing panel report is a public document under GRAMA following the conclusion of the reinstatement process unless specific information or evidence contained therein is protected by a specific provision of GRAMA, or another provision of state or federal law.~~

~~—— (b) The Executive Secretary shall add the hearing panel report to the UPPAC case file.~~

~~—— (3) If a license is reinstated, an educator's CACTUS file shall be updated to:~~

~~—— (a) remove the flag;~~

~~—— (b) show that the educator's license was reinstated; and~~

~~—— (c) show the date of formal Board action reinstating the license.~~

~~—— (4)(a) UPPAC and the Board shall follow the procedures described in Subsection R277-202-12(7) when considering a reinstatement hearing report.~~

~~—— (b) The Board decision as to whether to accept the recommendation of the~~

reinstatement hearing report is within the Board's sole discretion.

~~_____ (5) If the Board denies an individual's request for reinstatement, the individual shall wait at least twenty four (24) months prior to filing a request for reinstatement again, unless a different time is specified by UPPAC or the Board.~~

~~_____ (6) If the Board reinstates an educator, the Executive Secretary shall:~~

~~_____ (a) update CACTUS to reflect the Board's action; and~~

~~_____ (b) report the Board's action to the NASDTEC Educator Information Clearing house.~~

~~_____ (7) The Executive Secretary shall send notice of the Board's decision no more than 30 days following Board action to:~~

~~_____ (a) the educator;~~

~~_____ (b) the educator's LEA.~~

~~R277-203-6. Reinstatement from Revocation of License.~~

~~_____ (1) The Executive Secretary shall deny any request for a reinstatement hearing for a revoked license unless the educator's stipulated agreement or revocation order from the Board allows the educator to request a reinstatement hearing.~~

~~_____ (2) An educator may request that the Superintendent order a new hearing if:~~

~~_____ (a) an educator provides:~~

~~_____ (i) evidence of mistake or false information that was critical to the revocation action; or~~

~~_____ (ii) newly discovered evidence:~~

~~_____ (A) that undermines the revocation determination; and~~

~~_____ (B) that the educator could not have reasonably obtained during the original disciplinary proceedings; or~~

~~_____ (b) an educator identifies material procedural Board error in the revocation process.~~

~~_____ (3) A request for review by the Superintendent must be filed within 30 days of Board action for circumstances identified in Subsection (2)(a)(i) or (b).~~

~~_____ (4) A request for review by the Superintendent must be filed within 90 days of discovery of the new evidence for circumstances identified in Subsection(2)(a)(ii).~~

~~_____ (5) The Superintendent:~~

~~_____ (a) shall make a determination on a request made under Subsection(2) within 60 days; and~~

~~_____ (b) may request briefing from an educator and USOE staff in making a determination.~~

~~_____ (6) If the Superintendent finds that the criteria in Subsection (2)(a) have been established, the Superintendent shall direct UPPAC to conduct a new hearing consistent with Rule R277-202.~~

~~_____ (7) If the Superintendents finds that the criteria in Subsection (2)(b) have been established, the Superintendent shall recommend to the Board that they reconsider their previous action.~~

KEY: licensure, reinstatement, hearings; license reinstatement

Date of Enactment or Last Substantive Amendment: October 8, 2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)]

R277. Education, Administration.

R277-204. Utah Professional Practices Advisory Commission Criminal Background Review.

R277-204-1. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, by Section 53A-6-306 which directs the Board to adopt rules regarding UPPAC duties and procedures, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

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.

C. 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).

R277-204-2. Initial Submission and Evaluation of Information.

A. The Executive Secretary shall review all information received as part of a criminal background review.

B. The Executive Secretary may request any of the following information from an educator in determining how to process a criminal background review:

(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; and

(3) any other information that the Executive Secretary considers relevant under the circumstances in a criminal background review.

C(1) The Executive Secretary may only process a criminal background review after receipt of all letters of explanation and documentation requested in good faith by the Executive Secretary.

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

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

E. It is the applicant's sole responsibility to provide any requested material to the Executive Secretary.

F. The Executive Secretary shall process criminal background reviews subject to the following criteria:

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

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

(a) singular offenses committed by an applicant, excluding offenses identified in R277-204-2F(3), if the arrest occurred more than two years prior to the date of submission to UPPAC for review;

(b) more than two offenses committed by the applicant, excluding offenses identified in R277-204-2F(3), if at least one arrest occurred more than five years prior to the date of submission to UPPAC for review; or

(c) more than two offenses committed by the applicant, excluding offenses identified in R277-204-2F(3), if all arrests for the offenses occurred more than 10 years prior to the date of submission to UPPAC for review;

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

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

(b) convictions or pleas in abeyance for multiple offenses where all offenses occurred less than five years prior to the date of submission to UPPAC;

(c) convictions or pleas in abeyance for felonies;

(d) arrests, convictions, or pleas in abeyance for sex-related or lewdness offenses;

(e) convictions or pleas in abeyance for alcohol-related offenses or drug-related offenses where the offense date was less than five years prior to the date of submission to UPPAC;

(f) convictions or pleas in abeyance involving children in any way; and

(g) convictions or pleas in abeyance involving any other matter which the Executive Secretary determines, in his discretion, warrants review by UPPAC and the Board; and

(4) If the criminal background review involves a conviction for an offense requiring mandatory revocation under 53A-6-501(5)(b) or meeting the definition of sex offender under 77-41-102(16), the Executive Secretary shall forward a recommendation directly to the Board that clearance be denied.

G. The Executive Secretary shall use reasonable discretion to interpret the information received from the Bureau of Criminal Identification to comply with the provisions of this rule.

H. In Board review of recommendations of the Executive Secretary and UPPAC for criminal background checks, the following shall apply:

(1) the Board may uphold any recommendation of the Executive Secretary or UPPAC, which action shall be the final agency action of

USOE;

(2) the Board may substitute its own judgment in lieu of the recommendation of the Executive Secretary or UPPAC, which action shall be the final agency action of USOE; and

(3) if the Board chooses to substitute its own judgment in a criminal background review, the Board shall adopt findings articulating its reasoning.

I. If a criminal background review arises as a result of conduct that was cleared in a prior criminal background review by the Executive Secretary, UPPAC, or the Board, the prior action shall be deemed final, and the Executive Secretary shall clear the criminal background review.

J. If a criminal background review results in an applicant's denial, the applicant may request to be heard, and to have the matter reconsidered by the Board, consistent with the requirements of Section 53A-15-1506(1)(c).

KEY: educator license, background review, background check

Date of Enactment or Last Substantive Amendment: 2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)

R277. Education, Administration.

R277-204. Utah Professional Practices Advisory Commission Criminal Background Review.

R277-204-1. Authority and Purpose.

~~[A.](1)~~ This rule is authorized ~~[under]~~by:

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

~~(b)~~ ~~[by]~~Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures; and

~~(c)~~ ~~[by]~~Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.

~~[B.](2)~~ The purpose of this rule is:

~~(a)~~ to establish procedures for an applicant to proceed toward licensing; or

~~(b)~~ be denied to continue when an application or recommendation for licensing or renewal identifies offenses in the applicant's criminal background check.

~~[C.](3)~~ The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).

R277-204-2. Initial Submission and Evaluation of Information.

~~[A.](1)~~ The Executive Secretary shall review all information received as part of a criminal background review.

~~[B.](2)~~ The Executive Secretary may request any of the following information from an educator in determining how to process a criminal background review:

~~(1)~~~~[a]~~ 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)~~~~[b]~~ 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; and

~~(3)~~~~[c]~~ any other information that the Executive Secretary considers relevant under the circumstances in a criminal background review.

~~[C.](1)~~~~[3]~~~~(a)~~ The Executive Secretary may only process a criminal background review after receipt of all letters of explanation and documentation requested in good faith by the Executive Secretary.

~~(2)~~~~[b]~~ The Executive Secretary shall provide timely notice if the information provided by an applicant is incomplete.

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

~~[E.](5)~~ It is the applicant's sole responsibility to provide any requested material to the Executive Secretary.

~~[F.](6)~~ The Executive Secretary shall process criminal background reviews subject to the following criteria:

~~(1)~~~~[a]~~ the Executive Secretary may clear a criminal background review without further action if the arrest, citation, or charge resulted in a dismissal, unless the

dismissal resulted from a plea in abeyance agreement;

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

(a)i) singular offenses committed by an applicant, excluding offenses identified in Subsection [R277-204-2F(3)](6)(c), if the arrest occurred more than two years prior to the date of submission to UPPAC for review;

(b)ii) more than two offenses committed by the applicant, excluding offenses identified in Subsection [R277-204-2F(3)](6)(c), if at least one arrest occurred more than five years prior to the date of submission to UPPAC for review; or

(e)iii) more than two offenses committed by the applicant, excluding offenses identified in Subsection [R277-204-2F(3)](6)(c), if all arrests for the offenses occurred more than 10 years prior to the date of submission to UPPAC for review;

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

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

(b)ii) convictions or pleas in abeyance for multiple offenses where all offenses occurred less than five years prior to the date of submission to UPPAC;

(e)iii) convictions or pleas in abeyance for felonies;

(d)vi) arrests, convictions, or pleas in abeyance for sex-related or lewdness offenses;

(e)v) convictions or pleas in abeyance for alcohol-related offenses or drug-related offenses where the offense date was less than five years prior to the date of submission to UPPAC;

(f)vi) convictions or pleas in abeyance involving children in any way; and

(g)vii) convictions or pleas in abeyance involving any other matter which the Executive Secretary determines, in his discretion, warrants review by UPPAC and the Board; and

(4)d) If the criminal background review involves a conviction for an offense requiring mandatory revocation under Subsection 53A-6-501(5)(b) or meeting the definition of sex offender under Subsection 77-41-102(1)(6)(7), the Executive Secretary shall forward a recommendation directly to the Board that clearance be denied.

(G)(7) The Executive Secretary shall use reasonable discretion to interpret the information received from the Bureau of Criminal Identification to comply with the provisions of this rule.

(H)(8) In Board review of recommendations of the Executive Secretary and UPPAC for criminal background checks, the following shall apply:

(a) the Board shall consider a criminal background review in accordance with the standards described in Section 53A-6-405;

(1)b) the Board may uphold any recommendation of the Executive Secretary or UPPAC, which action shall be the final agency action of USOE;

(2)c) the Board may substitute its own judgment in lieu of the recommendation of the Executive Secretary or UPPAC, which action shall be the final agency action of USOE; and

(3)d) if the Board chooses to substitute its own judgment in a criminal background review, the Board shall adopt findings articulating its reasoning.

(I)(9) If a criminal background review arises as a result of conduct that was

cleared in a prior criminal background review by the Executive Secretary, UPPAC, or the Board, the prior action shall be deemed final, and the Executive Secretary shall clear the criminal background review.

[~~J.~~](10) If a criminal background review results in an applicant's denial, the applicant may request to be heard, and to have the matter reconsidered by the Board, consistent with the requirements of Subsection 53A-15-1506(1)(c).

KEY: educator license, background review, background check

Date of Enactment or Last Substantive Amendment: [~~July 8,~~]2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)

R277. Education, Administration.

~~[R277-204. Utah Professional Practices Advisory Commission Criminal Background Review.~~

~~R277-204-1. Authority and Purpose.~~

~~_____ (1) This rule is authorized by:~~

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

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

~~_____ (c) Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.~~

~~_____ (2) The purpose of this rule is:~~

~~_____ (a) to establish procedures for an applicant to proceed toward licensing; or~~

~~_____ (b) be denied to continue when an application or recommendation for licensing or renewal identifies offenses in the applicant's criminal background check.~~

~~_____ (3) The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).~~

~~R277-204-2. Initial Submission and Evaluation of Information.~~

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

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

~~_____ (a) 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;~~

~~_____ (b) 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; and~~

~~_____ (c) any other information that the Executive Secretary considers relevant under the circumstances in a criminal background review.~~

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

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

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

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

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

~~_____ (a) the Executive Secretary may clear a criminal background review without further action if the arrest, citation, or charge resulted in a dismissal, unless the~~

~~dismissal resulted from a plea in abeyance agreement;~~

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

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

~~_____ (ii) more than two offenses committed by the applicant, excluding offenses identified in Subsection(6)(c), if at least one arrest occurred more than five years prior to the date of submission to UPPAC for review; or~~

~~_____ (iii) more than two offenses committed by the applicant, excluding offenses identified in Subsection(6)(c), if all arrests for the offenses occurred more than 10 years prior to the date of submission to UPPAC for review;~~

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

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

~~_____ (ii) convictions or pleas in abeyance for multiple offenses where all offenses occurred less than five years prior to the date of submission to UPPAC;~~

~~_____ (iii) convictions or pleas in abeyance for felonies;~~

~~_____ (vi) arrests, convictions, or pleas in abeyance for sex-related or lewdness offenses;~~

~~_____ (v) convictions or pleas in abeyance for alcohol-related offenses or drug-related offenses where the offense date was less than five years prior to the date of submission to UPPAC;~~

~~_____ (vi) convictions or pleas in abeyance involving children in any way; and~~

~~_____ (vii) convictions or pleas in abeyance involving any other matter which the Executive Secretary determines, in his discretion, warrants review by UPPAC and the Board; and~~

~~_____ (d) If the criminal background review involves a conviction for an offense requiring mandatory revocation under Subsection 53A-6-501(5)(b) or meeting the definition of sex offender under Subsection 77-41-102(17), the Executive Secretary shall forward a recommendation directly to the Board that clearance be denied.~~

~~_____ (7) The Executive Secretary shall use reasonable discretion to interpret the information received from the Bureau of Criminal Identification to comply with the provisions of this rule.~~

~~_____ (8) In Board review of recommendations of the Executive Secretary and UPPAC for criminal background checks, the following shall apply:~~

~~_____ (a) the Board shall consider a criminal background review in accordance with the standards described in Section 53A-6-405;~~

~~_____ (b) the Board may uphold any recommendation of the Executive Secretary or UPPAC, which action shall be the final agency action of USOE;~~

~~_____ (c) the Board may substitute its own judgment in lieu of the recommendation of the Executive Secretary or UPPAC, which action shall be the final agency action of USOE; and~~

~~_____ (d) if the Board chooses to substitute its own judgment in a criminal background review, the Board shall adopt findings articulating its reasoning.~~

~~_____ (9) If a criminal background review arises as a result of conduct that was cleared~~

~~in a prior criminal background review by the Executive Secretary, UPPAC, or the Board, the prior action shall be deemed final, and the Executive Secretary shall clear the criminal background review.~~

~~———— (10) If a criminal background review results in an applicant's denial, the applicant may request to be heard, and to have the matter reconsidered by the Board, consistent with the requirements of Subsection 53A-15-1506(1)(c).~~

~~**KEY: educator license, background review, background check**~~

~~**Date of Enactment or Last Substantive Amendment: October 8, 2015**~~

~~**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)]**~~

R277. Education, Administration.

R277-205. Alcohol Related Offenses.

R277-205-1. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, by Section 53A-6-306 which directs the Board to adopt rules regarding UPPAC duties and procedures, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

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

C. 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).

R277-205-2. Action by the Board 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, UPPAC shall adhere to the following minimum conditions:

(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 assessment and recommended treatment following the second conviction;

(3) 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 assessment and recommended treatment, UPPAC shall recommend that the Board send a letter of warning to the educator;

(4) 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 assessment and recommended treatment, UPPAC shall recommend that the Board send a letter of reprimand to the educator and a letter to the district, if employed;

(5) 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 assessment and recommended treatment, UPPAC or the Board may initiate an investigation of the educator based upon the alcohol offenses;

(6) Three convictions--a letter shall be sent to the educator informing the educator of the provisions of this rule and requiring documentation of clinical assessment and recommended treatment following the third conviction;

(7) 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 assessment and recommended treatment, UPPAC shall recommend that the Board send a letter of warning to the

educator;

(8) 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 assessment and recommended treatment, UPPAC shall recommend that the Board send a letter of reprimand to the educator and send a copy of the letter of reprimand to the educator's employer; and

(9) 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 assessment and recommended treatment, UPPAC shall recommend suspension of the educator's license to the Board, subject to the educator's right to a hearing under R277-202.

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

R277-205-3. Board Action Toward Individuals Who Do 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 any purpose requiring a background check, 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 Board clearance for a period of one year from the date of the arrest;

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

C. three convictions--the Board may require the applicant to present documentation of clinical assessment and recommended treatment and may deny clearance.

KEY: educators, disciplinary actions, alcohol, background check

Date of Enactment or Last Substantive Amendment: 2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)

R277. Education, Administration.

R277-205. Alcohol Related Offenses.

R277-205-1. Authority and Purpose.

[A-](1) This rule is authorized ~~under~~by:

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

(b) ~~by~~Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures[;]; and

(c) ~~by~~Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.

[B-](2) The purpose of this rule is to establish procedures for disciplining educators regarding alcohol related offenses.

[C-](3) The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).

R277-205-2. Action by the Board if a Licensed Educator Has Been Convicted of an Alcohol Related Offense.

[A-](1)(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, UPPAC shall adhere to the ~~following~~ minimum conditions described in this Subsection (1).[;]

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

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

([3]d) 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 assessment and recommended treatment, UPPAC shall recommend that the Board send a letter of warning to the educator[;].

([4]e) 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 assessment and recommended treatment, UPPAC shall recommend that the Board send a letter of reprimand to the educator and a letter to the district, if employed[;].

([5]f) 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 assessment and recommended treatment, UPPAC or the Board may initiate an investigation of the educator based upon the alcohol offenses[;].

([6]g) Three convictions--a letter shall be sent to the educator informing the educator of the provisions of this rule and requiring documentation of clinical assessment and recommended treatment following the third conviction[;].

([7]h) 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 assessment and recommended treatment, UPPAC shall recommend that the Board send a letter of warning to the educator[;].

([8]i) 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

assessment and recommended treatment, UPPAC shall recommend that the Board send a letter of reprimand to the educator and send a copy of the letter of reprimand to the educator's employer[; and].

(9) 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 assessment and recommended treatment, UPPAC shall recommend suspension of the educator's license to the Board, subject to the educator's right to a hearing under Rule R277-202.

(2) This rule does not preclude more serious or additional action by the Board against an educator for other related or unrelated offenses.

R277-205-3. Board Action Toward Individuals Who Do Not Hold Licensing.

(1) 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 any purpose requiring a background check, has been convicted of an alcohol related offense within five years of the date of the background check, the[following] minimum conditions described in this section shall apply[;].

(2) One conviction--the individual shall be denied Board clearance for a period of one year from the date of the arrest[;].

(3) Two convictions--the individual shall be denied Board clearance for a period of two years from the date of the most recent arrest and the applicant shall present documentation of clinical assessment and recommended treatment before Board clearance shall be considered[; and].

(4) Three convictions--the Board may require the applicant to present documentation of clinical assessment and recommended treatment and may deny clearance.

KEY: educators, disciplinary actions, alcohol, background check

Date of Enactment or Last Substantive Amendment: [July 8,]2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)

R277. Education, Administration.

~~[R277-205. Alcohol Related Offenses.~~

~~R277-205-1. Authority and Purpose.~~

~~_____ (1) This rule is authorized by:~~

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

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

~~_____ (c) Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.~~

~~_____ (2) The purpose of this rule is to establish procedures for disciplining educators regarding alcohol related offenses.~~

~~_____ (3) The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).~~

~~R277-205-2. Action by the Board if a Licensed Educator Has Been Convicted of an Alcohol Related Offense.~~

~~_____ (1)(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, UPPAC shall adhere to the minimum conditions described in this Subsection (1).~~

~~_____ (b) One conviction--a letter shall be sent to the educator informing the educator of the provisions of this rule.~~

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

~~_____ (d) 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 assessment and recommended treatment, UPPAC shall recommend that the Board send a letter of warning to the educator.~~

~~_____ (e) 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 assessment and recommended treatment, UPPAC shall recommend that the Board send a letter of reprimand to the educator and a letter to the district, if employed.~~

~~_____ (f) 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 assessment and recommended treatment, UPPAC or the Board may initiate an investigation of the educator based upon the alcohol offenses.~~

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

~~_____ (h) 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 assessment and recommended treatment, UPPAC shall recommend that the Board send a letter of warning to the educator.~~

~~_____ (i) 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 assessment and recommended treatment, UPPAC shall recommend that the Board send a letter of~~

reprimand to the educator and send a copy of the letter of reprimand to the educator's employer.

~~_____ (j) 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 assessment and recommended treatment, UPPAC shall recommend suspension of the educator's license to the Board, subject to the educator's right to a hearing under Rule R277-202.~~

~~_____ (2) This rule does not preclude more serious or additional action by the Board against an educator for other related or unrelated offenses.~~

~~R277-205-3. Board Action Toward Individuals Who Do Not Hold Licensing.~~

~~_____ (1) 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 any purpose requiring a background check, has been convicted of an alcohol related offense within five years of the date of the background check, the minimum conditions described in this section shall apply.~~

~~_____ (2) One conviction—the individual shall be denied Board clearance for a period of one year from the date of the arrest.~~

~~_____ (3) Two convictions—the individual shall be denied Board clearance for a period of two years from the date of the most recent arrest and the applicant shall present documentation of clinical assessment and recommended treatment before Board clearance shall be considered.~~

~~_____ (4) Three convictions—the Board may require the applicant to present documentation of clinical assessment and recommended treatment and may deny clearance.~~

KEY: educators, disciplinary actions, alcohol, background check

Date of Enactment or Last Substantive Amendment: October 8, 2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)]

R277. Education, Administration.

R277-206. Drug Related Offenses.

R277-206-1. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, by Section 53A-6-306 which directs the Board to adopt rules regarding UPPAC duties and procedures, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

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

C. 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).

R277-206-2. Action by the Board if a Licensed Educator Has Been Convicted of a 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 assessment and recommended treatment following the second conviction;

(3) 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, the Board shall send a letter of warning to the educator;

(4) 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, the Board shall send a letter of reprimand to the educator and a letter to the district with notice of treatment;

(5) 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 or the Board may initiate an investigation of the educator based upon the drug offenses;

(6) 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;

(7) 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 assessment and recommended treatment, the Board shall send a letter of warning to the educator;

(8) 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 assessment and recommended treatment, the

Board shall send a letter of reprimand to the educator and send a copy of the letter of reprimand to the educator's employer; and

(9) 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 assessment and recommended treatment, UPPAC shall recommend suspension of the educator's license to the Board, subject to the educator's right to a hearing under R277-202.

B. This rule does not preclude more serious or additional action by the Board against an educator if circumstances warrant it.

R277-206-3. Board Action Towards an Individual Who Does Not Hold Licensing.

A. If as a result of a background check, it is discovered that an applicant has been convicted of a drug related offense within ten years of the date of the background check, the following minimum conditions shall apply:

(1) one conviction--the individual shall be denied clearance for a period of one year from the date of the conduct giving rise to the charge;

(2) two convictions--the individual shall be denied clearance for a period of three years from the date of the conduct giving rise to the most recent charge and the applicant shall present documentation of clinical assessment and recommended treatment before clearance shall be considered; and

(3) three convictions--the individual shall be denied clearance for a period of five years from the date of the conduct giving rise to the most recent charge.

B. UPPAC or the Board may require the applicant to present documentation of clinical assessment and recommended treatment and may recommend denial of clearance.

KEY: educators, disciplinary actions, drug offenses, background checks

Date of Enactment or Last Substantive Amendment: 2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)

R277. Education, Administration.

R277-206. Drug Related Offenses.

R277-206-1. Authority and Purpose.

~~[A.](1)~~ This rule is authorized ~~[under]~~by:

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

~~(b)~~ ~~[by]~~Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures[;] and

~~(c)~~ ~~[by]~~Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.

~~[B.](2)~~ The purpose of this rule is to establish procedures for disciplining educators regarding drug related offenses.

~~[C.](3)~~ The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).

R277-206-2. Action by the Board if a Licensed Educator Has Been Convicted of a Drug Related Offense.

~~[A.](1)(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 described in this Subsection (1) shall apply[;].

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

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

~~(3)(d)~~ 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, the Board shall send a letter of warning to the educator[;].

~~(4)(e)~~ 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, the Board shall send a letter of reprimand to the educator and a letter to the district with notice of treatment[;].

~~(5)(f)~~ 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 or the Board may initiate an investigation of the educator based upon the drug offenses[;].

~~(6)(g)~~ 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[;].

~~(7)(h)~~ 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 assessment and recommended treatment, the Board shall send a letter of warning to the educator[;].

~~(8)(i)~~ 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 assessment and recommended treatment, the Board shall send a letter of reprimand to the educator and send a copy of the letter of reprimand to the educator's employer[; ~~and~~].

(~~9~~)i) 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 assessment and recommended treatment, UPPAC shall recommend suspension of the educator's license to the Board, subject to the educator's right to a hearing under Rule R277-202.

~~B.~~(2) This rule does not preclude more serious or additional action by the Board against an educator if circumstances warrant it.

R277-206-3. Board Action Towards an Individual Who Does Not Hold Licensing.

~~A.~~(1)(a) If as a result of a background check, it is discovered that an applicant has been convicted of a drug related offense within ten years of the date of the background check, the ~~following~~ minimum conditions described in this Subsection (1) shall apply~~:~~.

(~~1~~)~~b~~) ~~e~~One conviction--the individual shall be denied clearance for a period of one year from the date of the conduct giving rise to the charge~~:~~.

(~~2~~)~~c~~) ~~t~~Two convictions--the individual shall be denied clearance for a period of three years from the date of the conduct giving rise to the most recent charge and the applicant shall present documentation of clinical assessment and recommended treatment before clearance shall be considered~~;~~ ~~and~~.

(~~3~~)~~d~~) ~~t~~Three convictions--the individual shall be denied clearance for a period of five years from the date of the conduct giving rise to the most recent charge.

~~B.~~(2) UPPAC or the Board may require the applicant to present documentation of clinical assessment and recommended treatment and may recommend denial of clearance.

KEY: educators, disciplinary actions, drug offenses, background checks

Date of Enactment or Last Substantive Amendment: ~~July 8,~~ 2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)

R277. Education, Administration.

~~[R277-206. Drug Related Offenses.~~

~~R277-206-1. Authority and Purpose.~~

~~_____ (1) This rule is authorized by:~~

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

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

~~_____ (c) Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.~~

~~_____ (2) The purpose of this rule is to establish procedures for disciplining educators regarding drug related offenses.~~

~~_____ (3) The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).~~

~~R277-206-2. Action by the Board if a Licensed Educator Has Been Convicted of a Drug Related Offense.~~

~~_____ (1)(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 minimum conditions described in this Subsection (1) shall apply.~~

~~_____ (b) One conviction--a letter shall be sent to the educator informing the educator of the provisions of this rule.~~

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

~~_____ (d) 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, the Board shall send a letter of warning to the educator.~~

~~_____ (e) 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, the Board shall send a letter of reprimand to the educator and a letter to the district with notice of treatment.~~

~~_____ (f) 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 or the Board may initiate an investigation of the educator based upon the drug offenses.~~

~~_____ (g) 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.~~

~~_____ (h) 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 assessment and recommended treatment, the Board shall send a letter of warning to the educator.~~

~~_____ (i) 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 assessment and recommended treatment, the Board shall send a letter of reprimand to the educator and send a copy of the letter of reprimand to the educator's employer.~~

~~_____ (j) 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 assessment and recommended treatment, UPPAC shall recommend suspension of the educator's license to the Board, subject to the educator's right to a hearing under Rule R277-202.~~

~~———(2) This rule does not preclude more serious or additional action by the Board against an educator if circumstances warrant it.~~

~~R277-206-3. Board Action Towards an Individual Who Does Not Hold Licensing.~~

~~———(1)(a) If as a result of a background check, it is discovered that an applicant has been convicted of a drug related offense within ten years of the date of the background check, the minimum conditions described in this Subsection (1) shall apply.~~

~~———(b) One conviction--the individual shall be denied clearance for a period of one year from the date of the conduct giving rise to the charge.~~

~~———(c) Two convictions--the individual shall be denied clearance for a period of three years from the date of the conduct giving rise to the most recent charge and the applicant shall present documentation of clinical assessment and recommended treatment before clearance shall be considered.~~

~~———(d) Three convictions--the individual shall be denied clearance for a period of five years from the date of the conduct giving rise to the most recent charge.~~

~~———(2) UPPAC or the Board may require the applicant to present documentation of clinical assessment and recommended treatment and may recommend denial of clearance.~~

~~KEY: educators, disciplinary actions, drug offenses, background checks~~

~~Date of Enactment or Last Substantive Amendment: October 8, 2015~~

~~Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)]~~

R277. Education, Administration.

R277-207. Utah Professional Practices Advisory Commission (UPPAC), Disciplinary Rebuttable Presumptions.

R277-207-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(c) Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.

(2) The purpose of this rule is to establish rebuttable presumptions for UPPAC and Board review of UPPAC cases.

R277-207-2. Rebuttable Presumptions.

(1) UPPAC and the Board shall consider the rebuttable presumptions in this section when evaluating a case of educator misconduct.

(2)(a) Revocation is presumed appropriate if an educator:

(i) is subject to mandatory revocation under Subsection 53A-6-501(5)(b);

(ii) is convicted of, admits to, or is found pursuant to an evidentiary hearing to have engaged in viewing child pornography, whether real or simulated, on or off school property;

(iii) is convicted three or more times of any combination of drug, alcohol, violence, or sexual offenses in the three years previous to the most recent conviction;

(iv) is convicted of an offense that requires the educator to register as a sex offender under Subsection 77-41-105(3);

(v) except as provided in Subsection (2)(c), is convicted of any felony; or

(vi) intentionally provides alcohol or illegal drugs to a minor.

(b) Early release or work release permitted by the jail may not be considered by UPPAC or the Board for purposes of calculating the jail time in Subsection (2)(a)(iii).

(c) An educator who is convicted of a felony may apply for a reinstatement hearing if the educator's felony is:

(i) expunged; or

(ii) reduced to a misdemeanor pursuant to Section 76-3-402.

(3) Suspension of three years or more is presumed appropriate if an educator:

(a) engages in a boundary violation of a sexually suggestive nature that is not sexually explicit conduct;

(b) is convicted of child abuse if the conduct results in a conviction of a class A misdemeanor or higher;

(c) is convicted of an offense that results in the educator being placed on court supervision for three or more years; or

(d) is convicted of intentional theft or misappropriation of public funds.

(4) Suspension of one to three years is presumed appropriate, if an educator:

(a) willfully or knowingly creates, views, or gains access to sexually inappropriate material on school property or using school equipment;

(b) is convicted of one or more misdemeanor violence offenses in the last 3 years;

(c) is convicted of using physical force with a minor if the conviction is a class B misdemeanor or lower;

(d) engages in repeated incidents of or a single egregious incident of excessive physical force or discipline to a child or student that:

(i) does not result in a criminal conviction; and

(ii) does not meet the circumstances described in Subsection 53A-11-802(2);

(e) threatens a student physically, verbally, or electronically;

(f) engages in a pattern of inappropriately fraternizing with a student under a circumstance not described in Subsection (3)(a);

(g) engages in multiple incidents or a pattern of theft or misappropriation of public funds that does not result in a criminal conviction;

(h) attends a school or school-related activity in an assigned employment-related capacity while possessing, using, or under the influence of alcohol or illegal drugs;

(i) is convicted of two drug-related offenses or alcohol-related offenses in the three years previous to the most recent conviction;

(j) engages in a pattern of or a single egregious incident of:

(i) harassing;

(ii) bullying; or

(iii) threatening a co-worker or community member;

(k) knowingly and deliberately falsifies or misrepresents information on an education-related document; or

(l) knowingly and deliberately teaches, counsels, or assists a student in a manner that undermines or disregards the lawful, express directives of a parent.

(5) A short-term suspension is presumed appropriate if an educator:

(a) has three or more incidents of inappropriate conduct that would otherwise warrant lesser discipline; or

(b) fails to report to appropriate authorities suspected child or sexual abuse.

(6) A letter of admonition, letter of warning, or letter of reprimand, with or without probation, is presumed appropriate if an educator:

(a) engages in a miscellaneous minimal boundary violation with a student or minor, whether physical, electronic, or verbal;

(b) engages in minimal inappropriate physical contact with a student;

(c) engages in unprofessional communications or conduct with a student, co-worker, community member, or parent;

(d) engages in an inappropriate discussion with a student that violates state or federal law;

(e) knowingly violates a requirement or procedure for special education needs;

(f) knowingly violates a standardized testing protocol;

(g) is convicted of one of the following with or without court probation:

(i) a single driving under the influence of alcohol or drugs offense under Section 41-6a-502;

(ii) impaired driving under Section 41-6a-502.5; or

(iii) a charge that contains identical or substantially similar elements to the state's driving under the influence of alcohol or drugs law or under the law of another state or territory;

(h) carelessly mismanages public funds or fails to accurately account for receipt and expenditure of public funds entrusted to the educator's care;

(i) fails to make a report required by Rule R277-516;
(j) is convicted of one or two misdemeanor offenses not otherwise listed;
(k) engages in an activity that constitute or create the appearance of a conflict of interest with the educator's professional responsibility; or
(l) engages in other minor violations of the Utah Educator Standards in Rule R277-515.

(7) In considering a presumption described in this section, UPPAC or the Board shall consider deviating from the presumptions if:

(a) the presumption does not involve a revocation mandated by statute; and
(b) aggravating or mitigating factors exist that warrant deviation from the presumption.

(8) An aggravating factor may include the following:

(a) the educator has engaged in prior misconduct;
(b) the educator presents a serious threat to a student;
(c) the educator's misconduct directly involved a student;
(d) the educator's misconduct involved a particularly vulnerable student;
(e) the educator's misconduct resulted in physical or psychological harm to a student;

(f) the educator violated multiple standards of professional conduct;

(g) the educator's attitude does not reflect responsibility for the misconduct or the consequences of the misconduct;

(h) the educator's misconduct continued after investigation by the LEA or UPPAC;

(i) the educator holds a position of heightened authority as an administrator;

(j) the educator's misconduct had a significant impact on the LEA or the community;

(k) the educator's misconduct was witnessed by a student;

(l) the educator was not honest or cooperative in the course of UPPAC's investigation;

(m) the educator was convicted of crime as a result of the misconduct; and

(n) any other factor that, in the view of UPPAC or the Board, warrants a more serious consequence for the educator's misconduct.

(9) A mitigating factor may include the following:

(a) the educator's misconduct was the result of strong provocation;

(b) the educator was young and new to the profession;

(c) the educator's attitude reflects recognition of the nature and consequences of the misconduct and demonstrates a reasonable expectation that the educator will not repeat the misconduct;

(d) the educator's attitude suggests amenability to supervision and training;

(e) the educator has little or no prior disciplinary history;

(f) since the misconduct, the educator has an extended period of misconduct-free classroom time;

(g) the educator was a less active participant in a larger offense;

(h) the educator's misconduct was directed or approved, whether implicitly or explicitly, by a supervisor or person in authority over the educator;

(i) the educator has voluntarily sought treatment or made restitution for the misconduct;

(j) there was insufficient training or other policies that might have prevented the misconduct;

(k) any other factor that, in the view of UPPAC or the Board, warrants a less serious consequence for the educator's misconduct.

(10)(a) UPPAC and the Board have sole discretion to determine the weight they give to an aggravating or mitigating factor.

(b) The weight UPPAC or the Board give an aggravating or mitigating factor may vary in each case and any one aggravating or mitigating factor may outweigh some or all other aggravating or mitigating factors.

KEY: educator, disciplinary presumptions

Date of Enactment of Last Substantive Amendment: 2015

Authorizing, Implemented, or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)

R277. Education, Administration.

**~~[R277-207. Utah Professional Practices Advisory Commission (UPPAC),
Disciplinary Rebuttable Presumptions.~~**

~~R277-207-1. Authority and Purpose.~~

~~_____ (1) This rule is authorized by:~~

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

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

~~_____ (c) Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.~~

~~_____ (2) The purpose of this rule is to establish rebuttable presumptions for UPPAC and Board review of UPPAC cases.~~

~~R277-207-2. Rebuttable Presumptions.~~

~~_____ (1) UPPAC and the Board shall consider the rebuttable presumptions in this section when evaluating a case of educator misconduct.~~

~~_____ (2)(a) Revocation is presumed appropriate if an educator:~~

~~_____ (i) is subject to mandatory revocation under Subsection 53A-6-501(5)(b);~~

~~_____ (ii) is convicted of, admits to, or is found pursuant to an evidentiary hearing to have engaged in viewing child pornography, whether real or simulated, on or off school property;~~

~~_____ (iii) is convicted three or more times of any combination of drug, alcohol, violence, or sexual offenses in the three years previous to the most recent conviction;~~

~~_____ (iv) is convicted of an offense that requires the educator to register as a sex offender under Subsection 77-41-105(3);~~

~~_____ (v) except as provided in Subsection (2)(c), is convicted of any felony; or~~

~~_____ (vi) intentionally provides alcohol or illegal drugs to a minor.~~

~~_____ (b) Early release or work release permitted by the jail may not be considered by UPPAC or the Board for purposes of calculating the jail time in Subsection (2)(a)(iii).~~

~~_____ (c) An educator who is convicted of a felony may apply for a reinstatement hearing if the educator's felony is:~~

~~_____ (i) expunged; or~~

~~_____ (ii) reduced to a misdemeanor pursuant to Section 76-3-402.~~

~~_____ (3) Suspension of three years or more is presumed appropriate if an educator:~~

~~_____ (a) engages in a boundary violation of a sexually suggestive nature that is not sexually explicit conduct;~~

~~_____ (b) is convicted of child abuse if the conduct results in a conviction of a class A misdemeanor or higher;~~

~~_____ (c) is convicted of an offense that results in the educator being placed on court supervision for three or more years; or~~

~~_____ (d) is convicted of intentional theft or misappropriation of public funds.~~

~~_____ (4) Suspension of one to three years is presumed appropriate, if an educator:~~

~~_____ (a) willfully or knowingly creates, views, or gains access to sexually inappropriate material on school property or using school equipment;~~

~~_____ (b) is convicted of one or more misdemeanor violence offenses in the last 3 years;~~

~~_____ (c) is convicted of using physical force with a minor if the conviction is a class B misdemeanor or lower;~~

~~_____ (d) engages in repeated incidents of or a single egregious incident of excessive physical force or discipline to a child or student that:~~

~~_____ (i) does not result in a criminal conviction; and~~

~~_____ (ii) does not meet the circumstances described in Subsection 53A-11-802(2);~~

~~_____ (e) threatens a student physically, verbally, or electronically;~~

~~_____ (f) engages in a pattern of inappropriately fraternizing with a student under a circumstance not described in Subsection (3)(a);~~

~~_____ (g) engages in multiple incidents or a pattern of theft or misappropriation of public funds that does not result in a criminal conviction;~~

~~_____ (h) attends a school or school-related activity in an assigned employment-related capacity while possessing, using, or under the influence of alcohol or illegal drugs;~~

~~_____ (i) is convicted of two drug-related offenses or alcohol-related offenses in the three years previous to the most recent conviction;~~

~~_____ (j) engages in a pattern of or a single egregious incident of:~~

~~_____ (i) harassing;~~

~~_____ (ii) bullying; or~~

~~_____ (iii) threatening a co-worker or community member;~~

~~_____ (k) knowingly and deliberately falsifies or misrepresents information on an education-related document; or~~

~~_____ (l) knowingly and deliberately teaches, counsels, or assists a student in a manner that undermines or disregards the lawful, express directives of a parent.~~

~~_____ (5) A short-term suspension is presumed appropriate if an educator:~~

~~_____ (a) has three or more incidents of inappropriate conduct that would otherwise warrant lesser discipline; or~~

~~_____ (b) fails to report to appropriate authorities suspected child or sexual abuse.~~

~~_____ (6) A letter of admonition, letter of warning, or letter of reprimand, with or without probation, is presumed appropriate if an educator:~~

~~_____ (a) engages in a miscellaneous minimal boundary violation with a student or minor, whether physical, electronic, or verbal;~~

~~_____ (b) engages in minimal inappropriate physical contact with a student;~~

~~_____ (c) engages in unprofessional communications or conduct with a student, co-worker, community member, or parent;~~

~~_____ (d) engages in an inappropriate discussion with a student that violates state or federal law;~~

~~_____ (e) knowingly violates a requirement or procedure for special education needs;~~

~~_____ (f) knowingly violates a standardized testing protocol;~~

~~_____ (g) is convicted of one of the following with or without court probation:~~

~~_____ (i) a single driving under the influence of alcohol or drugs offense under Section 41-6a-502;~~

~~_____ (ii) impaired driving under Section 41-6a-502.5; or~~

~~_____ (iii) a charge that contains identical or substantially similar elements to the state's driving under the influence of alcohol or drugs law or under the law of another state or territory;~~

~~_____ (h) carelessly mismanages public funds or fails to accurately account for receipt and expenditure of public funds entrusted to the educator's care;~~

- ~~_____ (i) fails to make a report required by Rule R277-516;~~
- ~~_____ (j) is convicted of one or two misdemeanor offenses not otherwise listed;~~
- ~~_____ (k) engages in an activity that constitute or create the appearance of a conflict of interest with the educator's professional responsibility; or~~
- ~~_____ (l) engages in other minor violations of the Utah Educator Standards in Rule R277-515.~~
- ~~_____ (7) In considering a presumption described in this section, UPPAC or the Board shall consider deviating from the presumptions if:~~
 - ~~_____ (a) the presumption does not involve a revocation mandated by statute; and~~
 - ~~_____ (b) aggravating or mitigating factors exist that warrant deviation from the presumption.~~
- ~~_____ (8) An aggravating factor may include the following:~~
 - ~~_____ (a) the educator has engaged in prior misconduct;~~
 - ~~_____ (b) the educator presents a serious threat to a student;~~
 - ~~_____ (c) the educator's misconduct directly involved a student;~~
 - ~~_____ (d) the educator's misconduct involved a particularly vulnerable student;~~
 - ~~_____ (e) the educator's misconduct resulted in physical or psychological harm to a student;~~
 - ~~_____ (f) the educator violated multiple standards of professional conduct;~~
 - ~~_____ (g) the educator's attitude does not reflect responsibility for the misconduct or the consequences of the misconduct;~~
 - ~~_____ (h) the educator's misconduct continued after investigation by the LEA or UPPAC;~~
 - ~~_____ (i) the educator holds a position of heightened authority as an administrator;~~
 - ~~_____ (j) the educator's misconduct had a significant impact on the LEA or the community;~~
 - ~~_____ (k) the educator's misconduct was witnessed by a student;~~
 - ~~_____ (l) the educator was not honest or cooperative in the course of UPPAC's investigation;~~
 - ~~_____ (m) the educator was convicted of crime as a result of the misconduct; and~~
 - ~~_____ (n) any other factor that, in the view of UPPAC or the Board, warrants a more serious consequence for the educator's misconduct.~~
- ~~_____ (9) A mitigating factor may include the following:~~
 - ~~_____ (a) the educator's misconduct was the result of strong provocation;~~
 - ~~_____ (b) the educator was young and new to the profession;~~
 - ~~_____ (c) the educator's attitude reflects recognition of the nature and consequences of the misconduct and demonstrates a reasonable expectation that the educator will not repeat the misconduct;~~
 - ~~_____ (d) the educator's attitude suggests amenability to supervision and training;~~
 - ~~_____ (e) the educator has little or no prior disciplinary history;~~
 - ~~_____ (f) since the misconduct, the educator has an extended period of misconduct-free classroom time;~~
 - ~~_____ (g) the educator was a less active participant in a larger offense;~~
 - ~~_____ (h) the educator's misconduct was directed or approved, whether implicitly or explicitly, by a supervisor or person in authority over the educator;~~
 - ~~_____ (i) the educator has voluntarily sought treatment or made restitution for the misconduct;~~

~~_____ (j) there was insufficient training or other policies that might have prevented the misconduct;~~

~~_____ (k) any other factor that, in the view of UPPAC or the Board, warrants a less serious consequence for the educator's misconduct.~~

~~_____ (10)(a) UPPAC and the Board have sole discretion to determine the weight they give to an aggravating or mitigating factor.~~

~~_____ (b) The weight UPPAC or the Board give an aggravating or mitigating factor may vary in each case and any one aggravating or mitigating factor may outweigh some or all other aggravating or mitigating factors.~~

KEY: educator, disciplinary presumptions

Date of Enactment of Last Substantive Amendment: January 11, 2016

Authorizing, Implemented, or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)]

EXHIBIT 2

R277. Education, Administration.

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

R277-210-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

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

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

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

R277-210-2. Definitions.

(1)(a) "Action" means a disciplinary action taken by the Board adversely affecting an educator's license.

(b) "Action" does not include a disciplinary letter.

(c) "Action" includes:

(i) a letter of reprimand;

(ii) probation;

(iii) suspension; and

(iv) revocation.

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

(3) "Alcohol related offense" means:

(a) driving under the influence;

(b) alcohol-related reckless driving or impaired driving;

(c) intoxication;

(d) driving with an open container;

(e) unlawful sale or supply of alcohol;

(f) unlawful permitting of consumption of alcohol by minors;

(g) driving in violation of an alcohol or interlock restriction; and

(h) any offense under the laws of another state that is substantially equivalent to the offenses described in Subsections(3)(a) through (g).

(4) "Allegation of misconduct" means a written report alleging that an educator:

(a) has engaged in unprofessional or criminal conduct;

(b) is unfit for duty;

(c) has lost the educator's 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

(d) has committed some other violation of standards of ethical conduct, performance, or professional competence as provided in Rule R277-515.

(5) "Answer" means a written response to a complaint filed by the Executive Secretary alleging educator misconduct.

(6) "Applicant" means a person seeking:

(a) a new license;

(b) reinstatement of an expired, surrendered, suspended, or revoked license; or

(c) clearance of a criminal background review from Executive Secretary at any stage of the licensing process.

(7) "Boundary violation" means the same as that term is defined in Rule R277-515.

(8) "Chair" means the Chair of UPPAC.

(9) "Complaint" means a written allegation or charge against an educator filed by the Executive Secretary against the educator.

(10) "Complainant" means the Executive Secretary.

(11) "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file developed by the Superintendent and maintained on all licensed Utah educators.

(12) "Conflict of interest" means the same as that term is defined in Rule R277-101.

(13)(a) "Conviction" means the final disposition of a judicial action for a criminal offense, except in cases of a dismissal on the merits.

(b) "Conviction" includes:

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

(ii) a guilty or no contest plea;

(iii) a plea in abeyance; and

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

(14) "Criminal Background Review" means the process by which the Executive Secretary, UPPAC, and the Board review information pertinent to:

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

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

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

(15)(a) "Disciplinary letter" means a letter issued to a respondent by the Board as a result of an investigation into an allegation of educator misconduct.

(b) "Disciplinary letter" includes:

(i) a letter of admonishment;

(ii) a letter of warning; and

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

(16) "Drug" means controlled substance as defined in Section 58-37-2.

(17) "Drug related offense" means any criminal offense under:

(a) Title 58, Chapter 37;

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

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

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

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

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

Sections 58-37 through 37e.

(18) "Educator Misconduct" means:

(a) unprofessional or criminal conduct;
(b) conduct that renders an educator unfit for duty; or
(c) conduct that is a violation of standards of ethical conduct, performance, or professional competence as provided in Rule R277-515.

(19) "Executive Committee" means a subcommittee of UPPAC consisting of the following members:

- (a) Executive Secretary;
- (b) Chair;
- (c) Vice-Chair; and
- (d) one member of UPPAC at large.

(20) "Executive Secretary" means:

- (a) an employee of the Board who:
 - (i) is appointed by the Superintendent to serve as the UPPAC Director; and
 - (ii) serves as a non-voting member of UPPAC, consistent with Section 53A-6-302; or
- (b) the Executive Secretary's designee.

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

(22) "Expedited Hearing Panel" means a panel of the following three members:

- (a) the Executive Secretary;
- (b) a voting member of UPPAC; and
- (c) a UPPAC attorney.

(23) "Final action" means an action by the Board that concludes an investigation of an allegation of misconduct against a licensed educator.

(24) "GRAMA" refers to the Government Records Access and Management Act, Title 63G, Chapter 2, Government Records Access and Management Act.

(25) "Hearing officer" means a licensed attorney who:

- (a) is experienced in matters relating to administrative procedures;
- (b) is appointed by the Executive Secretary to manage the proceedings of a hearing;
- (c) is not an acting member of UPPAC;

(d) has authority, subject to the limitations of these rules, to regulate the course of the hearing and dispose of procedural requests; and

(5) does not have a vote as to the recommended disposition of a case.

(26) "Hearing panel" means a panel of three or more individuals designated to:

- (a) hear evidence presented at a hearing;
- (b) make a recommendation to UPPAC as to disposition; and
- (c) collaborate with the hearing officer in preparing a hearing report.

(27) "Hearing report" means a report that:

(a) is prepared by the hearing officer consistent with the recommendations of the hearing panel at the conclusion of a hearing; and

(b) includes:

- (i) a recommended disposition;
- (ii) detailed findings of fact and conclusions of law, based upon the evidence presented in the hearing, relevant precedent; and

(iii) applicable law and rule.

(28) "Informant" means a person who submits information to UPPAC concerning the alleged misconduct of an educator.

(29) "Investigator" means an employee of the Board, or independent investigator selected by the Board, who:

(a) is assigned to investigate allegations of educator misconduct under UPPAC supervision;

(b) offers recommendations of educator discipline to UPPAC and the Board at the conclusion of the investigation;

(c) provides an independent investigative report for UPPAC and the Board; and

(d) may also be a UPPAC attorney but does not have to be.

(30) "Investigative report" means a written report of an investigation into allegations of educator misconduct, prepared by an Investigator that:

(a) includes a brief summary of the allegations, the investigator's narrative, and a recommendation for UPPAC and the Board;

(b) may include a rationale for the recommendation, and mitigating and aggravating circumstances;

(c) is maintained in the UPPAC Case File; and

(d) is classified as protected under Subsection 63G-2-305(34).

(31) "LEA" or "local education agency" for purposes of this rule includes the Utah Schools for the Deaf and the Blind.

(32) "Letter of admonishment" is a letter sent by the Board to an educator cautioning the educator to avoid or take specific actions in the future.

(33) "Letter of reprimand" is a letter sent by the Board to an educator:

(a) 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;

(b) that provides specific directives to the educator as a condition for removal of the letter;

(c) appears as a notation on the educator's CACTUS file; and

(d) that an educator can request to be removed from the educator's CACTUS file after two years, or after such other time period as the Board may prescribe in the letter of reprimand.

(34) "Letter of warning" is a letter sent by the Board to an educator:

(a) for misconduct that was inappropriate or unethical; and

(b) that does not warrant longer term or more serious discipline.

(35) "License" means a teaching or administrative credential, including an endorsement, which is issued by the Board to signify authorization for the person holding the license to provide professional services in Utah's public schools.

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

(37) "National Association of State Directors of Teacher Education and Certification (NASDTEC) Educator Information Clearinghouse" means a database maintained by NASDTEC for the members of NASDTEC regarding persons whose licenses have been suspended or revoked.

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

(39) "Party" means a complainant or a respondent.

(40) "Petitioner" means an individual seeking:

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

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

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

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

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

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

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

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

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

(43) "Respondent" means an educator against whom:

(a) a complaint is filed; or

(b) an investigation is undertaken.

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

(a) delivery of a written document or its contents to the person or persons in question; and

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

(45) "Sexually explicit conduct" means the same as that term is defined in Section 76-5b-103.

(46) "Stipulated agreement" means an agreement between a respondent and the Board:

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

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

(i) when approved by the Board; and

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

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

(47)(a) "Suspension" means an invalidation of a Utah educator license.

(b) "Suspension" may:

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

(ii) may identify a minimum time period that must elapse before the educator

may request a reinstatement hearing before UPPAC.

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

(49) "UPPAC Attorney File" means a file:

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

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

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

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

(50) "UPPAC Background Check File" means a file maintained securely by UPPAC on a criminal background review that:

(a) contains information obtained from:

(i) BCI; and

(ii) letters, police reports, court documents, and other materials as provided by an educator; and

(b) is classified as private under Subsection 63G-2-302(2).

(51) "UPPAC Case File" means a file:

(a) maintained securely by UPPAC on an investigation into educator misconduct;

(b) opened following UPPAC's direction to investigate alleged misconduct;

(c) that contains the original notification of misconduct with supporting documentation, correspondence with the Executive Secretary, the investigative report, the stipulated agreement, the hearing report, and the final disposition of the case;

(d) that is classified as protected under Subsection 63G-2-305(10) until the investigation and any subsequent proceedings before UPPAC and the Board are completed; and

(e) that after a case proceeding is closed, is considered public under GRAMA, unless specific documents contained therein contain non-public information or have been otherwise classified as non-public under GRAMA, in which case the file may be redacted or partially or fully restricted.

(52) "UPPAC Evidence File" means a file:

(a) maintained by the attorney assigned by UPPAC to investigate a case containing materials, written or otherwise, obtained by the UPPAC investigator during the course of the attorney's investigation;

(b) that contains correspondence between the Investigator and the educator or the educator's counsel;

(c) that is classified as protected under Subsection 63G-2-305(10) until the investigation and any subsequent proceedings before UPPAC and the Board are completed; and

(d) that is considered public under GRAMA after case proceedings are closed, unless specific documents contained therein contain non-public information or have been otherwise classified as non-public under GRAMA.

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

KEY: professional practices, definitions, educators

Date of Enactment or Last Substantive Amendment: 2016

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306;
53A-1-401**

R277. Education, Administration.

R277-211. Utah Professional Practices Advisory Commission (UPPAC), Rules of Procedure: Notification to Educators, Complaints and Final Disciplinary Actions.

R277-211-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to provide procedures regarding:

(a) notifications of alleged educator misconduct;

(b) review of notifications by UPPAC; and

(c) complaints, proposed stipulated agreements, approved stipulated agreements, and defaults.

(3) Except as provided in Subsection(4), Title 63G, Chapter 4, Administrative Procedures Act does not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).

(4) UPPAC may invoke and use sections or provisions of Title 63G, Chapter 4, Administrative Procedures Act as necessary to adjudicate an issue.

R277-211-2. Initiating Proceedings Against Educators.

(1) The Executive Secretary may refer a case to UPPAC to make a determination if an investigation should be opened regarding an educator:

(a) upon receiving a notification of alleged educator misconduct; or

(b) upon the Executive Secretary's own initiative.

(2) An informant shall submit an allegation to the Executive Secretary in writing, including the following:

(a) the informant's:

(i) name;

(ii) position, such as administrator, teacher, parent, or student;

(iii) telephone number;

(iv) address; and

(v) contact information;

(b) information of the educator against whom the allegation is made:

(i) name;

(ii) position, such as administrator, teacher, candidate; and

(iii) if known, the address and telephone number;

(c) the facts on which the allegation is based and supporting information; and

(d) signature of the informant and date.

(3) If an informant submits a written allegation of misconduct as provided in this rule, the informant may be notified of a final action taken by the Board regarding the allegation.

(4)(a) Proceedings initiated upon the Executive Secretary's own initiative may be based on information received through a telephone call, letter, newspaper article, media information, notice from another state, or by other means.

(b) The Executive Secretary may also recommend an investigation based on an anonymous allegation, notwithstanding the provisions of this rule, if the allegation bears sufficient indicia of reliability.

(5) The Executive Secretary shall maintain all written allegations, subsequent dismissals, actions, or disciplinary letters related to a case against an educator shall be maintained permanently in the UPPAC case file.

R277-211-3. Review of Notification of Alleged Educator Misconduct.

(1)(a) Upon receipt of a notification of alleged educator misconduct, the Executive Secretary shall recommend one of the following to UPPAC:

(i) dismiss the matter if UPPAC determines that alleged misconduct does not involve an issue that UPPAC should address; or

(ii) initiate an investigation if UPPAC determines that the alleged misconduct involves an issue that may be appropriately addressed by UPPAC and the Board.

(b) If the Executive Secretary recommends UPPAC initiate an investigation:

(i) UPPAC shall initiate an investigation; and

(ii) the Executive Secretary shall direct a UPPAC investigator to gather evidence relating to the allegations.

(2)(a) Prior to a UPPAC investigator's initiation of an investigation, the Executive Secretary shall send a letter to the following with information that UPPAC has initiated an investigation:

(i) the educator to be investigated;

(ii) the LEA that employs the educator; and

(iii) the LEA where the alleged activity occurred.

(b) A letter described in Subsection(2)(a) shall inform the educator and the LEA that an investigation shall take place and is not evidence of unprofessional conduct.

(c) UPPAC shall place a flag on the educator's CACTUS file after sending the notices as provided in this rule.

(3)(a) The investigator shall review relevant documentation and interview individuals who may have knowledge of the allegations.

(b) The investigator shall prepare an investigative report of the findings of the investigation and a recommendation for appropriate action or disciplinary letter.

(c) If the investigator discovers additional evidence of unprofessional conduct that could have been included in the original notification of alleged educator misconduct, the investigator may include the additional evidence of misconduct in the investigative report.

(d) The investigator shall submit the investigative report to the Executive Secretary.

(e) The Executive Secretary shall review the investigative report described in Subsection(3)(d) with UPPAC.

(f) The investigative report described in Subsection(3)(d) shall become part of the UPPAC case file.

(4) UPPAC shall review the investigative report and take one of the following actions:

(a) UPPAC determines no further action should be taken, UPPAC may recommend that the Board dismiss the case; or

(b) UPPAC may make an initial recommendation of appropriate action or

disciplinary letter.

(5) After receiving an initial recommendation from UPPAC for action, the Executive Secretary shall direct a UPPAC attorney to:

(a) prepare and serve a complaint; or

(b) negotiate and prepare a proposed stipulated agreement.

(6)(a) Upon request of an educator, UPPAC will provide an electronic or paper copy of the UPPAC case file and evidence file to the educator.

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

(7)(a) A proposed stipulated agreement shall conform to the requirements set forth in Section R277-211-6.

(b) An educator may stipulate to any recommended disposition for an action.

(8) The Executive Secretary shall forward any proposed stipulated agreement to the Board for approval.

R277-211-4. Expedited Hearings.

(1) In a case involving the report of an arrest, citation, or charge of a licensed educator, which requires self-reporting by the educator under Section R277-516-3, the Executive Secretary, with the consent of the educator, may schedule the matter for an expedited hearing in lieu of initially referring the matter to UPPAC.

(2)(a) The Executive Secretary shall hold an expedited hearing within 30 days of a report of an arrest, citation, or charge, unless otherwise agreed upon by both parties.

(b) The Executive Secretary or the Executive Secretary's designee shall conduct an expedited hearing with the following additional invited participants:

(i) the educator;

(ii) the educator's attorney or representative;

(iii) a UPPAC attorney;

(iv) a voting member of UPPAC; and

(v) a representative of the educator's LEA.

(3) The panel may consider the following matters at an expedited hearing:

(a) an educator's oral or written explanation of the events;

(b) a police report;

(c) a court docket or transcript;

(d) an LEA's investigative report or employment file; and

(e) additional information offered by the educator if the panel deems it probative of the issues at the expedited hearing.

(4) After reviewing the evidence described in Subsection (3), the expedited hearing panel shall make written findings and a recommendation to UPPAC to do one of the following:

(a) close the case;

(b) close the case upon completion of court requirements;

(c) recommend issuance of a disciplinary letter to the Board;

(d) open a full investigation; or

(e) recommend action by the Board, subject to an educator's due process rights under these rules.

(5) An expedited hearing may be recorded, but the testimony from the expedited hearing is inadmissible during a future UPPAC action related to the allegation.

(6) If the Board fails to adopt the recommendation of an expedited hearing panel, UPPAC shall open a full investigation.

R277-211-5. Complaints.

(1) If UPPAC determines that an allegation is sufficiently supported by evidence discovered in the investigation, the Executive Secretary shall direct the UPPAC attorney to serve a complaint upon the educator being investigated.

(2) At a minimum, a complaint shall include:

(a) a statement of legal authority and jurisdiction under which the action is being taken;

(b) a statement of the facts and allegations upon which the complaint is based;

(c) other information that the investigator believes is necessary to enable the respondent to understand and address the allegations;

(d) a statement of the potential consequences if an allegation is found to be true or substantially true;

(e) a statement that the respondent shall answer the complaint and request a hearing, if desired, within 30 days of the date the complaint is mailed to the respondent;

(f) a statement that the respondent is required to file a written answer described in Subsection(2)(e) with the Executive Secretary;

(g) a statement advising the respondent that if the respondent fails to respond within 30 days, a default judgment for revocation or a suspension of the educator's license may occur for a term of five years or more;

(h) a statement that, if a hearing is requested, the hearing will be scheduled no less than 45 days, nor more than 180 days, after receipt of the respondent's answer, unless a different date is agreed to by both parties in writing; and

(i) a copy of the applicable hearing rules as required by Subsection 53A-6-604(2).

(3) On the Executive Secretary's own motion, the Executive Secretary, or the Executive Secretary's designee, with notice to the parties, may reschedule a hearing date.

(4)(a) A respondent may file an answer to a complaint by filing a written response signed by the respondent or the respondent's representative with the Executive Secretary within 30 days after the complaint is mailed.

(b) The answer may include a request for a hearing, and shall include:

(i) the file number of the complaint;

(ii) the names of the parties;

(iii) a statement of the relief that the respondent seeks; and

(iv) if not requesting a hearing, a statement of the reasons that the relief requested should be granted.

(c) As an alternative to filing an answer, the respondent may file a voluntary surrender pursuant to Rule R277-216.

(5)(a) As soon as reasonably practicable after receiving an answer, or no more than 30 days after receipt of an answer, the Executive Secretary shall schedule a hearing, if requested by the respondent, as provided in Rule R277-212.

(b) If the parties can reach an agreement prior to the hearing consistent with the terms of UPPAC's initial recommendation, the UPPAC attorney may negotiate a proposed stipulated agreement with the respondent.

(c) A proposed stipulated agreement described in Subsection(5)(b) shall be submitted to the Board for the Board's final approval.

(6)(a) If a respondent does not respond to the complaint within 30 days, the Executive Secretary may initiate default proceedings in accordance with the procedures set forth in Section R277-211-7.

(b) Except as provided in Subsection R277-211-7(3), if the Executive Secretary enters an order of default, the Executive Secretary shall make a recommendation to the Board for a revocation or a suspension of the educator's license for five years before the educator may request a reinstatement hearing.

(c) If a default results in a suspension, a default may include conditions that an educator shall satisfy before the educator may qualify for a reinstatement hearing.

(d) An order of default shall result in a recommendation to the Board for a revocation if the alleged misconduct is conduct identified in Subsection 53A-6-501(5)(b).

R277-211-6. Proposed Consent to Discipline.

(1) At any time after UPPAC has made an initial recommendation, a respondent may accept UPPAC's initial recommendation, rather than request a hearing, by entering into a proposed consent to discipline.

(2) By entering into a proposed consent to discipline, a respondent waives the respondent's right to a hearing to contest the recommended disposition, contingent on final approval by the Board.

(3) At a minimum, the Executive Secretary shall include the following in a proposed consent to discipline:

(a) a summary of the facts, the allegations, the presumption described in Rule R277-215, mitigating or aggravating factors described in Rule R277-215, and the evidence relied upon by UPPAC in its recommendation;

(b) a statement that the respondent admits the facts recited in the proposed consent to discipline as true for purposes of the Board administrative action;

(c) a statement that the respondent:

(i) waives the respondent's right to a hearing to contest the allegations that gave rise to the investigation; and

(ii) agrees to limitations on the respondent's license or surrenders the respondent's license rather than contest the allegations;

(d) a statement that the respondent agrees to the terms of the proposed consent to discipline and other provisions applicable to the case, such as remediation, counseling, restitution, rehabilitation, and other conditions, if any, under which the respondent may request a reinstatement hearing or a removal of the letter of reprimand or termination of probation;

(e) if for suspension or revocation of a license, a statement that the respondent:

(i) may not seek or provide professional services in a public school in the state;

(ii) may not seek to obtain or use an educator license in the state; or

(iii) may not work or volunteer in a public K-12 setting in any capacity without express authorization from the UPPAC Executive Secretary, unless or until the respondent:

(A) first obtains a valid educator license or authorization from the Board to obtain such a license; or

(B) satisfies other provisions provided in the proposed consent to discipline;

(f) a statement that the action and the proposed consent to discipline shall be reported to other states through the NASDTEC Educator Information Clearinghouse and any attempt to present to any other state a valid Utah license shall result in further licensing action in Utah;

(g) a statement that respondent waives the respondent's right to contest the facts stated in the proposed consent to discipline at a subsequent reinstatement hearing, if any;

(h) a statement that all records related to the proposed consent to discipline shall remain permanently in the UPPAC case file;

(i) a statement reflecting the proposed consent to discipline classification under Title 63G, Chapter 2, Government Records Access and Management Act;

(j) a statement that a violation of the terms of an approved consent to discipline may result in additional disciplinary action and may affect the reinstatement process; and

(k) a statement that the educator understands that the Board is not bound by UPPAC's recommendation or the negotiated proposed stipulated agreement unless the Board approves the proposed consent to discipline.

(4)(a) The Executive Secretary shall forward a proposed consent to discipline to the Board for approval.

(b) If the Board does not approve a proposed consent to discipline, the Board may:

(i)(A) remand the case to UPPAC and may include issues that need to be addressed;

(B) offer respondent the opportunity for a hearing; or

(C) provide alternative terms and disposition to the Executive Secretary, that would be satisfactory to the Board to be submitted to the educator for consideration;

(ii) direct the Executive Secretary to issue a disciplinary letter or dismiss the matter; or

(iii) take other appropriate action consistent with due process and R277-215.

(5) If the respondent accepts a consent to discipline with alternative terms and disposition proposed by the Board, the consent to discipline, as modified, is a final Board administrative action without further Board consideration.

(6) If the terms approved by the Board are rejected by the respondent, the proceedings shall continue from the point under these procedures at which the agreement was negotiated, as if the stipulated agreement had not been submitted.

(7) If the Board remands to UPPAC to provide respondent the opportunity for a hearing under Subsection (4)(b)(i)(B), the Executive Secretary shall:

(a) notify the parties of the decision;

(b) direct a UPPAC attorney to issue a complaint; and

(c) direct the proceedings as if the proposed consent to discipline had not been submitted.

(8) If the Board approves a proposed consent to discipline, the approval is a final Board administrative action and the Executive Secretary shall:

(a) notify the parties of the decision;

(b) update CACTUS to reflect the action;

(c) report the action to the NASDTEC Educator Information Clearinghouse if the agreement results in:

- (i) a revocation; or
- (ii) a suspension;
- (d) direct the appropriate penalties to begin; and
- (e) notify the LEAs throughout the state.

R277-211-7. Default Procedures.

(1) If a respondent does not respond to a complaint within 30 days from the date the complaint is served, the Executive Secretary may issue an order of default against the respondent consistent with the following:

(a) the Executive Secretary shall prepare and serve on the respondent an order of default including:

- (i) a statement of the grounds for default; and
- (ii) a recommended disposition if the respondent fails to file a response to a complaint;

(b) ten days following service of the order of default, a UPPAC attorney shall attempt to contact respondent by telephone or electronically;

(c) UPPAC shall maintain documentation of attempts toward written, telephonic, or electronic contact;

(d) the respondent has 20 days following service of the order of default to respond to UPPAC; and

(e) if UPPAC receives a response from respondent to a default order before the end of the 20 day default period, UPPAC shall allow respondent a final ten day period to respond to a complaint.

(2) Except as provided in Subsection (3), if an order of default is issued, the Executive Secretary shall make a recommendation to the Board for discipline in accordance with Rule R277-215.

(3) If an order of default is issued, the Executive Secretary shall make a recommendation to the Board for a revocation of the educator's license if the alleged misconduct is conduct identified in Subsection 53A-6-501(5)(b).

R277-211-8. Disciplinary Letters and Dismissal.

(1) If UPPAC recommends issuance of a disciplinary letter or dismissal, the Executive Secretary shall forward the case to the Board for review.

(2) If the Board does not approve a recommendation for a disciplinary letter or dismissal described in Subsection (1), the Board may:

- (a) remand the case to UPPAC with:
 - (i) direction as to the issues UPPAC should address;
 - (ii) alternative terms and disposition that should be satisfactory to the Board to be submitted to the educator for consideration; and

(iii) the opportunity for the educator to participate in a hearing;

(b) direct the Executive Secretary to issue a different level of disciplinary letter;

(c) dismiss the matter; or

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

(3) If the Board approves a disciplinary letter, the Executive Secretary shall:

(a) prepare the disciplinary letter and mail it to the educator;

(b) place a copy of the disciplinary letter in the UPPAC case file; and

(c) update CACTUS to reflect that the investigation is closed.

KEY: teacher licensing, conduct, hearings

Date of Enactment or Last Substantive Amendment: 2016

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306;
53A-1-401**

R277. Education, Administration.

R277-212. UPPAC Hearing Procedures and Reports.

R277-212-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

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

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

R277-212-2. Scheduling a Hearing.

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

(i) UPPAC shall select panel members;

(ii) 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; and

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

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

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

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

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

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

(b) The hearing officer shall determine whether the reason stated in the request is sufficient to warrant a change.

(c) If the hearing officer finds that the reason for the request for a change of hearing date is sufficient, the hearing officer shall promptly notify all parties of the new time, date, and place for the hearing.

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

(e) The hearing officer and the parties may waive the time period required for requesting a change of hearing date for good cause shown.

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

(4) An educator is not entitled to a hearing on a matter in which a disciplinary

letter is recommended.

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

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

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

(c) 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.

(d) A hearing officer:

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

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

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

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

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

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

(b) As directed by UPPAC, any licensed educator may serve as a panel member, if needed.

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

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

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

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

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

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

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

(i) assist a 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;

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

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

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

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

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

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

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

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

(f) If the parties do not agree to a substitution or to having a two-member panel, the Executive Secretary shall reschedule the hearing.

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

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

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

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

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

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

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

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

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

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

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

(9)(a) A UPPAC member shall recuse himself or herself 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 request that a UPPAC panel member be disqualified by submitting a written request to the following:

(i) the hearing officer; or

(ii) to the Executive Secretary if there is no hearing officer.

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

(d) The hearing officer, or the Executive Secretary, if there is no hearing officer,

shall:

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

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

(e) If the panel member's disqualification leaves the hearing panel with fewer than three UPPAC panel members:

(i) UPPAC shall appoint a replacement; and

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

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

(g) The requesting party may file a written appeal of a denial described in Subsection (9)(f) with the Superintendent no later than five days prior to the hearing date.

(h) If the Superintendent finds that an appeal described in Subsection (9)(g) is justified, the Superintendent shall direct the hearing officer or the Executive Secretary if there is no hearing officer, to replace the panel member.

(i) If a panel member's 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.

(j) The decision of the Superintendent described in Subsection (9)(h) is final.

(k) If a party fails to file an appeal within the time requirements of Subsection (9)(g), the appeal shall be deemed denied.

(l) If the hearing officer, or the Executive Secretary if there is no hearing officer, fails to meet the time requirements described in this Subsection (9), the request or appeal is approved.

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

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

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

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

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

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

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

(c) instructions for accessing these rules.

(3) No later 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:

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

(i) any procedural and evidentiary motions along with the party's position

regarding the allegations; and

(ii) relevant laws, rules, and precedent;

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

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

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

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

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

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

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

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

(5) 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.

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

R277-212-5. Hearing Parties' Representation.

(1) A UPPAC attorney shall represent the complainant.

(2) A respondent may represent himself or herself or be represented, at the respondent's own cost, by another person.

(3) The informant has no right to:

(a) individual representation at the hearing; or

(b) to be present or heard at the hearing unless called as a witness.

(4) A respondent shall notify the Executive Secretary in a timely manner and in writing if the respondent chooses to be represented by anyone other than the respondent.

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

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

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

(3) A hearing officer may limit discovery:

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

(b) upon a motion by either party.

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

(5) The Executive Secretary shall issue a subpoena or other order to secure the attendance of a witness pursuant to Subsection 53A-6-306(3)(c)(i) if:

(a) requested by either party; and

(b) notice of intent to call the witness has been timely provided as required by

Section R277-212-4.

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

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

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

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

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

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

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

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

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

(a) reasonable reliability of the offered evidence;

(b) fairness to both parties; and

(c) usefulness to UPPAC in reaching a decision.

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

R277-212-8. Deportment.

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

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

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

R277-212-9. Hearing Record.

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) any prepared expert witness report.

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

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

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

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

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

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

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

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

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

(c) 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;

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

(5)(a) In addition to a rebuttable presumption described in Subsection 53A-6-306(3)(e), a rebuttable evidentiary presumption exists that a person has committed a sexual offense against a minor if the person has:

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

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

(b) 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.

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

(i) conviction of a felony;

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

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

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

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

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

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

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

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

(a) no attorney for either party is in the minor victim or witness'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;

(d) the operator of the equipment is competent;

(e) the recording is accurate and has not been altered; and

(f) each voice in the recording is identified.

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

(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 victim or witness may be with the minor victim or witness during the testimony;

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

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

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

(e) only hearing panel members, the hearing officer, and the attorneys question

the minor victim or witness.

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

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

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

R277-212-13. Hearing Report.

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

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

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

(c) a statement of applicable law and rule;

(d) presumptions applied by UPPAC;

(e) mitigating and aggravating circumstances considered by UPPAC;

(f) a recommended disposition of UPPAC panel members that shall be one or an appropriate combination of the following:

(i) dismissal of the complaint;

(ii) letter of admonishment;

(iii) letter of warning;

(iv) letter of reprimand;

(v) probation, to include the following terms and conditions:

(A) it is the respondent's responsibility to petition UPPAC for removal of probation and letter of reprimand from the respondent's CACTUS file;

(B) a recommended minimum probationary time;

(C) conditions that can be monitored;

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

(E) a statement providing for costs of probation, if appropriate; and

(F) whether or not the respondent may work in any capacity in public education during the probationary period;

(vi) disciplinary action held in abeyance;

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

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

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

(viii) revocation; and

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

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

(3) Any of the consequences described in Subsection (1)(d) may be imposed in the form of a disciplinary action held in abeyance.

(4)(a) If the respondent's penalty is held in abeyance, the respondent's penalty is stayed subject to the satisfactory completion of probationary conditions.

(b) The decision to impose a consequence in the form of a disciplinary action held in abeyance shall provide for appropriate or presumed discipline if the respondent does not fully satisfy the probationary conditions.

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

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

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

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

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

(d) 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.

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

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

(g) 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.

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

(i) there are no significant procedural errors;

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

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

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

(i) the Board for further action;

(ii) the respondent; and

(iii) the UPPAC case file.

(6)(a) If UPPAC adopts a hearing report that recommends an action, as defined in Subsection R277-210-2(1), either party may request review by the Superintendent within 15 days from the date the Executive Secretary sends a copy of the hearing report to the respondent.

(b) The request for review shall consist of:

(i) the name, position, and address of the appellant;

(ii) the issue being appealed; and

(iii) the signature of the appellant or the appellant's representative.

(c) An appeal to the Superintendent is limited to a question of fairness or a violation of due process.

(d) If the Superintendent finds that a procedural error has occurred that violates fairness or due process, the Superintendent shall:

(i) refer the report back to UPPAC for reconsideration as to whether the findings, conclusions, or decisions are supported by a preponderance of the evidence; or

(ii) direct the UPPAC Executive Secretary to take specific administrative action.

(e) After UPPAC completes reconsideration, the Superintendent shall:

(i) notify all parties; and

(ii) refer the report to the Board, if necessary, for final disposition consistent with this rule.

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

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

(b) direct the Executive Secretary to make other evidence available pursuant to Section R277-212-14 before issuing a final decision with official findings; or

(c) issue findings based on the UPPAC hearing record and report:

(i) specifying the reasons, including presumptions and the mitigating and aggravating circumstances the Board considered, why the Board disapproves of the hearing report;

(ii) adopting the Board's decision on the matter; and

(iii) directing the Executive Secretary to include the findings as an addendum to the hearing report, which findings constitute final Board action; or

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

(8) Following Board adoption of a hearing report or the Board's decision under Subsection (7)(b), the Executive Secretary shall:

(a) notify the educator;

(b) notify the educator's employer;

(c) update CACTUS to reflect the Board's action; and

(d) report the action to the NASDTEC Educator Information Clearing house if the action results in:

(i) a revocation; or

(ii) a suspension.

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

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

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

(a) notify the Utah State Bar of the failure;

(b) reduce the hearing officer's compensation consistent with the failure;

(c) take timely action to avoid disadvantaging either party; or

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

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

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

R277-212-14. Additional Relevant Evidence.

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

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

(b) file a response described in Subsection (2); and

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

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

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

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

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

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

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

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

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

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

(b) provide the respondent notice of the hearing meeting the requirements of Section 53A-6-604;

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

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

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

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

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

(7) If the Board conducts a hearing described in Subsection (6), Sections R277-212-4, R277-212-5, and R277-212-7 through R277-212-12 apply.

(8) The Executive Secretary shall issue a subpoena or other order to secure the attendance of a witness pursuant to Subsection 53A-6-306(3)(c)(i) if:

(a) requested by either party; and

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

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

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

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

R277-212-15. Default.

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

(i) the respondent fails to file an answer as described in Subsection R277-211-5(4);

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

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

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

(3) Except as provided in Subsection (4), the Executive Secretary shall make a recommendation to the Board for discipline in accordance with Rule R277-215.

(4) An order of default shall result in an Executive Secretary recommendation to the Board for a revocation if the alleged misconduct is conduct identified in Subsection 53A-6-501(5)(b).

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

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

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

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

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

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

(3) An alleged victim or witness may have a victim advocate attend the hearing with them.

KEY: hearings, reports, educators

Date of Enactment or Last Substantive Amendment: 2016

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401

R277. Education, Administration.

R277-213. Request for Licensure Reinstatement and Reinstatement Procedures.

R277-213-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to establish procedures regarding educator license reinstatement.

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

R277-213-2. Application for Licensing Following Denial or Loss of License.

(1)(a) An individual who has been denied a license or lost the individual's license through suspension, or allowed a license to lapse in the face of an allegation of misconduct, may request a review to consider reinstatement of a license.

(b) A request for review described in Subsection (1)(a) shall:

(i) be in writing;

(ii) be transmitted to the UPPAC Executive Secretary; and

(iii) have the following information:

(A) name and address of the individual requesting review;

(B) the action being requested;

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

(D) reason(s) that the individual seeks reinstatement; and

(E) signature of the individual requesting review.

(2)(a) The Executive Secretary shall review the request with UPPAC.

(b) If UPPAC determines that the request is incomplete or invalid:

(i) the Executive Secretary shall deny the request; and

(ii) notify the individual requesting reinstatement of the denial.

(c) If UPPAC determines that the request of an individual described in Subsection (1) is complete, timely, and appropriate, UPPAC shall schedule and hold a hearing as provided under Section R277-213-3.

(3)(a) Burden of Persuasion: The burden of persuasion at a reinstatement hearing shall fall on the individual seeking the reinstatement.

(b) An individual requesting reinstatement of a suspended license shall:

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

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

(iii) undergo a criminal background check not more than six months prior to the requested hearing; and

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

(c) An individual requesting licensing following a denial shall show sufficient evidence of completion of a rehabilitation or remediation program, if applicable, when requesting reinstatement.

(4) An individual whose license has been suspended or revoked in another state shall seek reinstatement of the individual's license in the other state before a request for a reinstatement hearing may be approved.

R277-213-3. Reinstatement Hearing Procedures.

(1) A hearing officer shall:

(a) preside over a reinstatement hearing; and

(b) rule on all procedural issues during the reinstatement hearing as they arise.

(2) A hearing panel, comprising individuals as set forth in Subsection (2), shall:

(a) hear the evidence; and

(b) along with the UPPAC attorney and hearing officer, question the individual seeking reinstatement regarding the appropriateness of reinstatement.

(3) An individual seeking reinstatement may:

(a) be represented by counsel; and

(b) may present evidence and witnesses.

(4) A party may present evidence and witnesses consistent with Rule R277-212.

(5) A hearing officer of a reinstatement hearing shall direct one or both parties to explain the background of a case to panel members at the beginning of the hearing to provide necessary information about the initial misconduct and subsequent UPPAC and Board action.

(6) An individual seeking reinstatement shall present documentation or evidence that supports reinstatement.

(7) The Executive Secretary, represented by a UPPAC attorney, shall present any evidence or documentation that explains and supports UPPAC's recommendation in the matter.

(8) Other evidence or witnesses may be presented by either party and shall be presented consistent with Rule R277-212.

(9) The individual seeking reinstatement shall:

(a) focus on the individual's actions, rehabilitative efforts, and performance following license denial or suspension;

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

(c) 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;

(d) be prepared to completely and candidly respond to the questions of the UPPAC attorney and hearing panel regarding:

(i) the misconduct that caused the license suspension;

(ii) subsequent rehabilitation activities;

(iii) counseling or therapy received by the individual related to the original misconduct; and

(iv) work, professional actions, and behavior between the suspension and reinstatement request;

(e) present witnesses 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;

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

(g) bring eight copies of all documents or materials that an individual seeking reinstatement plans to introduce at the hearing.

(10) The UPPAC attorney, the hearing panel, and hearing officer shall thoroughly question the individual seeking reinstatement as to the individual's:

(a) underlying misconduct which is the basis of the sanction on the educator's license;

(b) specific and exact compliance with reinstatement requirements;

(c) counseling, if required for reinstatement;

(d) specific plans for avoiding previous misconduct; and

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

(11) If the individual seeking reinstatement sought counseling as described in Subsection(10)(c), the individual shall state, under oath, that he provided all relevant information and background to his counselor or therapist.

(12) A hearing officer shall rule on procedural issues in a reinstatement hearing in a timely manner as they arise.

(13) No more than 20 days following a reinstatement hearing, a hearing officer, with the assistance of the hearing panel, shall:

(a) prepare a hearing report in accordance with the requirements set forth in Section R277-213-5; and

(b) provide the hearing report to the UPPAC Executive Secretary.

(14) The Executive Secretary shall submit the hearing report to UPPAC at the next meeting following receipt of the hearing report by the Executive Secretary.

(15) UPPAC may do the following upon receipt of the hearing report:

(a) accept the hearing panel's recommendation as prepared in the hearing report;

(b) amend the hearing panel's recommendation with conditions or modifications to the hearing panel's recommendation which shall be:

(i) directed by UPPAC;

(ii) prepared by the UPPAC Executive Secretary; and

(iii) attached to the hearing report; or

(c) reject the hearing panel's recommendation.

(16) After UPPAC makes a recommendation on the hearing panel report, the UPPAC recommendation will be forwarded to the Board for final action on the individual's reinstatement request.

(17) If the Board denies an individual's request for reinstatement, the individual shall wait at least twenty four (24) months prior to filing a request for reinstatement again, unless a different time is specified by UPPAC or the Board.

(18) If the Board reinstates an educator's license, the Executive Secretary shall:

(a) update CACTUS to reflect the Board's action; and
(b) report the Board's action to the NASDTEC Educator Information Clearing house.

(19) The Executive Secretary shall send notice of the Board's decision no more than 30 days following Board action to:

- (a) the educator;
- (b) the educator's LEA.

R277-213-4. Rights of a Victim at a Reinstatement Hearing.

(1) If the allegations that gave rise to the underlying suspension involve abuse of a sexual or physical nature, UPPAC shall make reasonable efforts to notify the victim or the victim's family of the reinstatement request.

(2) A UPPAC's notification described in Subsection (1) shall:

(a) advise the victim or the victim's family that a reinstatement hearing has been scheduled;

(b) notify the victim or the victim's family of the date, time, and location of the hearing;

(c) advise the victim or the victim's family of the victim's right to be heard at the reinstatement hearing; and

(d) provide the victim or the victim's family with a form upon which the victim can submit a statement for consideration by the hearing panel.

(3) A victim entitled to notification of the reinstatement proceedings shall be permitted:

(a) to attend the hearing; and

(b) to offer the victim's position on the educator's reinstatement request, either by testifying in person or by submitting a written statement.

(4) A victim choosing to testify at a reinstatement hearing shall be subject to reasonable cross examination in the hearing officer's discretion.

(5) A victim choosing not to respond in writing or appear at the reinstatement hearing waives the victim's right to participate in the reinstatement process.

R277-213-5. Reinstatement Hearing Report.

(1) A hearing officer shall provide the following in a reinstatement hearing report:

(a) a summary of the background of the original disciplinary action;

(b) 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;

(c) the hearing panel's conclusions regarding petitioner's appropriateness and fitness to be a public school educator again;

(d) the hearing panel's recommendation; and

(e) a statement indicating whether the hearing panel's recommendation to UPPAC was unanimous or identifying how the panel member's voted concerning reinstatement.

(2)(a) The hearing panel report is a public document under GRAMA following the conclusion of the reinstatement process unless specific information or evidence contained therein is protected by a specific provision of GRAMA, or another provision of

state or federal law.

(b) The Executive Secretary shall add the hearing panel report to the UPPAC case file.

(3) If a license is reinstated, an educator's CACTUS file shall be updated to:

(a) remove the flag;

(b) show that the educator's license was reinstated; and

(c) show the date of formal Board action reinstating the license.

R277-213-6. Reinstatement from Revocation of License.

(1) The Executive Secretary shall deny any request for a reinstatement hearing for a revoked license unless the educator's stipulated agreement or revocation order from the Board allows the educator to request a reinstatement hearing.

(2) An educator may request that the Superintendent order a reconsideration of the prior Board licensing action if:

(a) an educator provides:

(i) evidence of mistake or false information that was critical to the revocation action; or

(ii) newly discovered evidence:

(A) that undermines the revocation determination; and

(B) that the educator could not have reasonably obtained during the original disciplinary proceedings; or

(b) an educator identifies material procedural Board error in the revocation process.

(3) A request for reconsideration by the Superintendent must be filed within 30 days of Board action for circumstances identified in Subsection (2)(a)(i) or (b).

(4) A request for reconsideration by the Superintendent must be filed within 90 days of discovery of the new evidence for circumstances identified in Subsection(2)(a)(ii).

(5) The Superintendent:

(a) shall make a determination on a request made under Subsection(2) within 60 days; and

(b) may request briefing from an educator and the Executive Secretary in making a determination.

(6) If the Superintendent finds that the criteria in Subsection (2)(a) have been established, the Superintendent shall make a recommendation to the Board to conduct a new hearing consistent with Rule R277-212.

(7) If the Superintendent finds that the criteria in Subsection (2)(b) have been established, the Superintendent shall recommend to the Board that they reconsider their previous action.

KEY: licensure, reinstatement, hearings

Date of Enactment or Last Substantive Amendment: 2016

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401

R277. Education, Administration.

R277-214. Utah Professional Practices Advisory Commission Criminal Background Review.

R277-214-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is:

(a) to establish procedures for an applicant to proceed toward licensing; or

(b) be denied to continue when an application or recommendation for licensing or renewal identifies offenses in the applicant's criminal background check.

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

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

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

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

(a) 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;

(b) 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; and

(c) any other information that the Executive Secretary considers relevant under the circumstances in a criminal background review.

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

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

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

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

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

(a) the Executive Secretary may clear a criminal background review without further action if the arrest, citation, or charge resulted in a dismissal, unless the

dismissal resulted from a plea in abeyance agreement;

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

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

(ii) more than two offenses committed by the applicant, excluding offenses identified in Subsection(6)(c), if at least one arrest occurred more than five years prior to the date of submission to UPPAC for review; or

(iii) more than two offenses committed by the applicant, excluding offenses identified in Subsection(6)(c), if all arrests for the offenses occurred more than 10 years prior to the date of submission to UPPAC for review;

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

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

(ii) convictions or pleas in abeyance for multiple offenses where all offenses occurred less than five years prior to the date of submission to UPPAC;

(iii) convictions or pleas in abeyance for felonies;

(vi) arrests, convictions, or pleas in abeyance for sex-related or lewdness offenses;

(v) convictions or pleas in abeyance for alcohol-related offenses or drug-related offenses where the offense date was less than five years prior to the date of submission to UPPAC;

(vi) convictions or pleas in abeyance involving children in any way; and

(vii) convictions or pleas in abeyance involving any other matter which the Executive Secretary determines, in his discretion, warrants review by UPPAC and the Board; and

(d) If the criminal background review involves a conviction for an offense requiring mandatory revocation under Subsection 53A-6-501(5)(b) or meeting the definition of sex offender under Subsection 77-41-102(17), the Executive Secretary shall forward a recommendation directly to the Board that clearance be denied.

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

(8) In Board review of recommendations of the Executive Secretary and UPPAC for criminal background checks, the following shall apply:

(a) the Board shall consider a criminal background review in accordance with the standards described in Section 53A-6-405;

(b) the Board may uphold any recommendation of the Executive Secretary or UPPAC, which action shall be the final agency action of USOE;

(c) the Board may substitute its own judgment in lieu of the recommendation of the Executive Secretary or UPPAC, which action shall be the final agency action of USOE; and

(d) if the Board chooses to substitute its own judgment in a criminal background review, the Board shall adopt findings articulating its reasoning.

(9) If a criminal background review arises as a result of conduct that was cleared

in a prior criminal background review by the Executive Secretary, UPPAC, or the Board, the prior action shall be deemed final, and the Executive Secretary shall clear the criminal background review.

(10) If a criminal background review results in an applicant's denial, the applicant may request to be heard, and to have the matter reconsidered by the Board, consistent with the requirements of Subsection 53A-15-1506(1)(c).

R277-214-3. Alcohol and Drug Related Offenses of an Individual Who Does Not Hold Licensing.

(1)(a) If as a result of a background check, it is discovered that an applicant has been convicted of an alcohol related offense or a drug related offense within five years of the date of the background check, the minimum conditions described in this Subsection (1) shall apply.

(b) One conviction--the individual shall be denied clearance for a period of one year from the date of the conduct giving rise to the charge.

(c) Two convictions--the individual shall be denied clearance for a period of two years from the date of the conduct giving rise to the most recent charge and the applicant shall present documentation of clinical assessment and recommended treatment before clearance shall be considered.

(d) Three convictions--the individual shall be denied clearance for a period of five years from the date of the conduct giving rise to the most recent charge, and the applicant shall present documentation of clinical assessment and recommended treatment before clearance shall be considered.

(2) UPPAC or the Board may take action in excess of the minimum conditions specified in Subsection (1) if aggravating circumstances exist as set forth in Subsection R277-215-2(9).

KEY: educator license, background review, background check

Date of Enactment or Last Substantive Amendment: 2016

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401

R277. Education, Administration.

**R277-215. Utah Professional Practices Advisory Commission (UPPAC),
Disciplinary Rebuttable Presumptions.**

R277-215-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to establish rebuttable presumptions for UPPAC and Board review of UPPAC cases.

R277-215-2. Rebuttable Presumptions.

(1) UPPAC and the Board shall consider the rebuttable presumptions in this section when evaluating a case of educator misconduct.

(2) Revocation is presumed appropriate if an educator:

(a) is subject to mandatory revocation under Subsection 53A-6-501(5)(b);

(b) is convicted of, admits to, or is found pursuant to an evidentiary hearing to have engaged in viewing child pornography, whether real or simulated, on or off school property;

(c) is convicted of an offense that requires the educator to register as a sex offender under Subsection 77-41-105(3);

(d) intentionally provides alcohol or illegal drugs to a minor.

(3)(a) Suspension of ten years or more is presumed if an educator is convicted of any felony not specified in Subsection (2).

(b) An educator who is suspended based on a felony conviction under Subsection (3)(a) may apply for a reinstatement hearing early if the educator's felony:

(i) is expunged; or

(ii) is reduced pursuant to Section 76-3-402.

(4) Suspension of three years or more is presumed appropriate if an educator:

(a) engages in a boundary violation of a sexually suggestive nature that is not sexually explicit conduct;

(b) is convicted of child abuse if the conduct results in a conviction of a class A misdemeanor;

(c) is convicted of an offense that results in the educator being placed on court supervision for three or more years; or

(d) is convicted of intentional theft or misappropriation of public funds.

(5) Suspension of one to three years is presumed appropriate, if an educator:

(a) willfully or knowingly creates, views, or gains access to sexually inappropriate material on school property or using school equipment;

(b) is convicted of one or more misdemeanor violence offenses in the last 3 years;

(c) is convicted of using physical force with a minor if the conviction is a class B misdemeanor or lower;

(d) engages in repeated incidents of or a single egregious incident of excessive

physical force or discipline to a child or student that:

(i) does not result in a criminal conviction; and

(ii) does not meet the circumstances described in Subsection 53A-11-802(2);

(e) threatens a student physically, verbally, or electronically;

(f) engages in a pattern of boundary violations with a student under a circumstance not described in Subsection (3)(a);

(g) engages in multiple incidents or a pattern of theft or misappropriation of public funds that does not result in a criminal conviction;

(h) attends a school or school-related activity in an assigned employment-related capacity while possessing, using, or under the influence of alcohol or illegal drugs;

(i) is convicted of two drug-related offenses or alcohol-related offenses in the three years previous to the most recent conviction;

(j) engages in a pattern of or a single egregious incident of:

(i) harassing;

(ii) bullying; or

(iii) threatening a co-worker or community member; or

(k) knowingly and deliberately falsifies or misrepresents information on an education-related document.

(6) A suspension of up to one year is presumed appropriate if an educator:

(a) has three or more incidents of inappropriate conduct that would otherwise warrant lesser discipline so long as the educator had notice that such conduct was inappropriate from:

(i) Board rule or LEA policy; or

(ii) verbal or written notice from an LEA or UPPAC;

(b) fails to report to appropriate authorities suspected child or sexual abuse; or

(c) knowingly teaches, counsels, or assists a minor student in a manner that disregards a legal, written directive, such as a court order or an approved college and career ready plan.

(7) A letter of admonition, letter of warning, or letter of reprimand, with or without probation, is presumed appropriate if an educator:

(a) engages in a miscellaneous minimal boundary violation with a student or minor, whether physical, electronic, or verbal;

(b) engages in minimal inappropriate physical contact with a student;

(c) engages in unprofessional communications or conduct with a student, co-worker, community member, or parent;

(d) engages in an inappropriate discussion with a student that violates state or federal law;

(e) knowingly violates a requirement or procedure for special education needs;

(f) knowingly violates a standardized testing protocol;

(g) is convicted of one of the following with or without court probation:

(i) a single driving under the influence of alcohol or drugs offense under Section 41-6a-502;

(ii) impaired driving under Section 41-6a-502.5; or

(iii) a charge that contains identical or substantially similar elements to the state's driving under the influence of alcohol or drugs law or under the law of another state or territory;

(h) carelessly mismanages public funds or fails to accurately account for receipt

and expenditure of public funds entrusted to the educator's care;

(i) fails to make a report required by Rule R277-516;

(j) except for a class C misdemeanor under Title 41, Motor Vehicles, is convicted of one or two misdemeanor offenses not otherwise listed;

(k) engages in an activity that constitutes a conflict of interest; or

(l) engages in other minor violations of the Utah Educator Standards in Rule R277-515.

(8) In considering a presumption described in this section, UPPAC or the Board shall consider deviating from the presumptions if:

(a) the presumption does not involve a revocation mandated by statute; and

(b) aggravating or mitigating factors exist that warrant deviation from the presumption.

(9) An aggravating factor may include the following:

(a) the educator has engaged in prior misconduct;

(b) the educator presents a serious threat to a student;

(c) the educator's misconduct directly involved a student;

(d) the educator's misconduct involved a particularly vulnerable student;

(e) the educator's misconduct resulted in physical or psychological harm to a student;

(f) the educator violated multiple standards of professional conduct;

(g) the educator's attitude does not reflect responsibility for the misconduct or the consequences of the misconduct;

(h) the educator's misconduct continued after investigation by the LEA or UPPAC;

(i) the educator holds a position of heightened authority as an administrator;

(j) the educator's misconduct had a significant impact on the LEA or the community;

(k) the educator's misconduct was witnessed by a student;

(l) the educator was not honest or cooperative in the course of UPPAC's investigation;

(m) the educator was convicted of crime as a result of the misconduct;

(n) any other factor that, in the view of UPPAC or the Board, warrants a more serious consequence for the educator's misconduct; and

(o) the educator is on criminal probation or parole; or

(p) the Executive Secretary has issued an order of default on the educator's case as described in Rules R277-211 or R277-212.

(10) A mitigating factor may include the following:

(a) the educator's misconduct was the result of strong provocation;

(b) the educator was young and new to the profession;

(c) the educator's attitude reflects recognition of the nature and consequences of the misconduct and demonstrates a reasonable expectation that the educator will not repeat the misconduct;

(d) the educator's attitude suggests amenability to supervision and training;

(e) the educator has little or no prior disciplinary history;

(f) since the misconduct, the educator has an extended period of misconduct-free classroom time;

(g) the educator was a less active participant in a larger offense;

(h) the educator's misconduct was directed or approved, whether implicitly or explicitly, by a supervisor or person in authority over the educator;

(i) the educator has voluntarily sought treatment or made restitution for the misconduct;

(j) there was insufficient training or other policies that might have prevented the misconduct;

(k) there are substantial grounds to partially excuse or justify the educator's behavior though failing to fully excuse the violation;

(l) the educator self-reported the misconduct; or

(m) any other factor that, in the view of UPPAC or the Board, warrants a less serious consequence for the educator's misconduct.

(11)(a) UPPAC and the Board have sole discretion to determine the weight they give to an aggravating or mitigating factor.

(b) The weight UPPAC or the Board give an aggravating or mitigating factor may vary in each case and any one aggravating or mitigating factor may outweigh some or all other aggravating or mitigating factors.

KEY: educator, disciplinary presumptions

Date of Enactment of Last Substantive Amendment: 2016

Authorizing, Implemented, or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401

R277. Education, Administration.

R277-216. Surrender of License with UPPAC Investigation Pending.

R277-216-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to establish procedures for Board consideration of an educator request to surrender a license in the face of a UPPAC investigation.

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

R277-216-2. Petition to Surrender.

(1) An educator may surrender an educator license prior to the resolution of a UPPAC investigation.

(2) An educator who requests to surrender an educator license under Subsection (1), shall submit a petition or stipulated agreement to UPPAC for submission to the Board, which shall include:

(a) a brief statement of the procedural history of the investigation leading up to the voluntary surrender;

(b) a statement that the educator is entitled to due process in UPPAC's investigation and that the educator freely and voluntarily waives the educator's due process rights, including:

(i) a right to a hearing;

(ii) a right to confront and cross examine witnesses;

(iii) a right to present witnesses;

(iv) a right to an impartial decision based upon evidence presented at the hearing; and

(v) a right to subpoena witnesses; and

(c) a statement that the educator surrenders the educator's license freely and voluntarily and without coercion or duress;

(d) a statement that the educator:

(i) is represented by counsel; or

(ii) understands the educator's right to be represented by counsel and knowingly and voluntarily waives the assistance of counsel in UPPAC's investigation;

(e) a statement that the educator is fully aware of the implications of surrendering the educator's license with an investigation pending, including:

(i) that the educator may not work, consult, or volunteer in any K-12 public school in the state of Utah in any capacity;

(ii) that the educator is not eligible for a reinstatement hearing at any time;

(iii) that UPPAC files and case resolution are subject to public disclosure in accordance with state and federal law;

(iv) that notification of the educator's license surrender will be shared with all states through NASDTEC; and

(v) except as provided in Subsection (3), that notification of the educator's license surrender will be:

(A) classified and reported as a voluntary surrender (UPPAC investigation); and

(B) shared with LEAs throughout the state.

(3) If an educator surrenders a license during an investigation of allegations described in Subsection 53A-6-501(5)(b), the surrender will be:

(a) classified and reported as a revocation; and

(b) shared with LEAs through the state.

(4)(a) Voluntary surrender of a license as set forth in this section is permanent.

(b) An educator who surrenders a license as set forth in this section is not eligible for a reinstatement hearing at any time.

R277-216-3. Review of Petition to Surrender.

(1)(a) Upon receiving a petition or stipulated agreement as provided in Subsection R277-216-2(2), the Executive Secretary shall review the request for surrender to determine if it meets the requirements set forth in the rule.

(b) If the requirements of Subsection R277-216-2(2) are not met, the Executive Secretary shall notify the educator that the request is insufficient and the reasons why the request is insufficient.

(c) If the requirements of Subsection R277-216-2(2) are met, the Executive Secretary shall notify the Board of the voluntary surrender and request direction on whether to continue the investigation.

(2) Upon receipt of a voluntary surrender of an educator license, the Executive Secretary shall:

(a) notify the educator:

(i) that the voluntary surrender was received;

(ii) whether the Board required UPPAC to continue the investigation;

(iii) that the voluntary surrender will be reported in the public record as a voluntary surrender with pending UPPAC investigation except as provided in Subsection R277-216-2(3);

(iv) that the voluntary surrender will be reported to NASDTEC and to LEAs throughout the state; and

(v) that the educator's license cannot be reinstated at any time.

(b) update CACTUS to reflect the disposition;

(c) report the disposition to NASDTEC;

(d) notify the educator's last employer of record;

(e) report the disposition to LEAs through the state; and

(f) provide the educator a copy of the report to LEAs described in Subsection (2)(e).

R277-216-4. Applicability of Rule.

This R277-216 does not apply to an educator's voluntary surrender of the educator's license if the educator is not being investigated by UPPAC.

KEY: educators, license surrender, UPPAC

Date of Enactment or Last Substantive Amendment: 2016

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

53A-1-401

EXHIBIT 3

BEFORE THE UTAH PROFESSIONAL PRACTICES ADVISORY COMMISSION

In re:

HANNAH GREEN,

**STIPULATED AGREEMENT:
LETTER OF REPRIMAND**

UPPAC File No. 15-1284

The Utah Professional Practices Advisory Commission ("UPPAC") and Hannah Green ("Respondent") hereby stipulate and agree as follows:

BACKGROUND

- (1) Respondent holds a Level 2 Early Childhood Education License ("License"), which she received in 2005. She has been teaching kindergarten at Oquirrh Hills Elementary School ("School") in the Granite School District ("District") since 2005.
- (2) In February 2015, UPPAC commenced an investigation ("Investigation") regarding allegations that Respondent violated the Utah Educator Standards ("Standards") for being convicted of Driving Under the Influence, a class B misdemeanor, in criminal case no. 151403920.
- (3) UPPAC represents that the Investigation included:
 - (a) A review of the following documents:
 - i. Correspondence from the District to Respondent;
 - ii. Respondent's written statement to the District;
 - iii. Court dockets for case no. 151403920 ("2015 DUI") and case no. 115001095 ("2011 DUI");
 - iv. Letter from Annie's House, treatment facility, verifying treatment;
 - v. Certificate of completion for Prime for Life 16 hour substance abuse prevention course through Changes Counseling and Consultation, LLC;
 - vi. Letter form Changes Counseling confirming completion of intensive outpatient program;
 - vii. DUI summons and citation;
 - viii. Impound documents;

- ix. District self-report form;
- (b) Interviews with:
- i. Respondent; and
 - ii. Karen Marberger, principal at the School.

ALLEGATIONS AND RESPONSE

- (4) Respondent was convicted of Driving Under the Influence, a class B misdemeanor. Her blood alcohol content was reported as .304 and she plead guilty to the DUI charge. She was sentenced to serve 10 days in jail; ordered to pay a fine of \$1,615, placed on probation for one year; and ordered to continue with counseling and treatment. Her driver's license is suspended for two years. Respondent had previously been convicted of two DUI's: one in 2002 and one in 2011. The 2002 case was not considered by the court in the 2015 DUI case.

RESPONDENT'S RESPONSE

- (5) Respondent admits to the allegations stated above in paragraph 4. She asserts that she immediately sought intensive treatment following the 2015 DUI charge and continues to participate in programs and treatment to maintain sobriety.

VIOLATIONS OF UTAH EDUCATOR STANDARDS

- (6) UPPAC maintains that Respondent's conduct violated the Standards as set forth in the Utah Administrative Code section R277-515, specifically, the following Standards which require that a professional educator:
- (a) "shall familiarize himself with professional ethics and is responsible for compliance with applicable professional standards," Rule 277-515-3B;
 - (b) "understands and follows Board rules and local board policies," Rule 277-515-5A(1);
 - (c) "understands and follows school and administrative policies and procedures," Rule 277-515-5A(2);
 - (d) "is responsible for compliance with federal, state, and local laws, Rule 277-515-3A; and

- (e) "shall not be convicted of any felony or misdemeanor offense which adversely affects the individual's ability to perform assigned duties and carry out the responsibilities of the profession, including role model responsibilities," Rule 277-515-3C(1).

RECOMMENDATION AND REMEDIAL ACTION

- (7) UPPAC recommends a letter of reprimand be issued on Respondent's license commencing on December 21, 2015.
- (8) Respondent has the right to request a hearing to contest the allegations and charges against her, but voluntarily waives her right to a hearing and accepts the allegations stated herein as true.
- (9) Respondent accepts UPPAC's recommendation for a letter of reprimand that Respondent may request be removed from her CACTUS file after two (2) years have lapsed from December 21, 2015, and upon satisfaction of the conditions set forth below. Additionally, Respondent acknowledges that her letter of reprimand will not automatically be removed, but that she must request and the State Board of Education approve the removal of the letter of reprimand.
- (10) Respondent waives any right to contest the allegations stated in this Agreement at any subsequent hearing or proceeding.
- (11) Respondent may request the letter of reprimand be removed after December 21, 2017 by sending a written request to the UPPAC Executive Secretary. The letter will be also be maintained permanently in her paper licensing file, but it will not affect her license status.
- (12) Upon execution of this agreement, the existence of the letter of reprimand becomes a matter of public record and will be noted on Respondent's Computer Aided Credentials of Teachers in Utah System ("CACTUS") file.
- (13) All records related to this Agreement shall remain permanently in Respondent's licensing file at the State Board of Education.
- (14) This Agreement is a public document and may be released to others pursuant to the Government Records Access and Management Act (Utah Code sections 63G-2-101 et seq.)

- (15) The parties agree that any violation of this Agreement may result in increased licensing penalties or further action as warranted.
- (16) Respondent acknowledges that this Agreement does not affect any enforcement action that might be brought by a criminal prosecutor or any other local, state or federal enforcement authority.
- (17) Respondent further acknowledges that this Agreement shall be the final compromise and settlement of this matter.

 Utah State Board of Education, by and through,
 Nicole Ferguson, UPPAC Attorney

 Date

Hannah Green

 Hannah Green,
 Respondent

August 8, 2016

 Date

Recommendation accepted and approved by UPPAC on the _____ day of _____, 2016.

By and through its Executive Secretary _____.

Licensing action approved and finalized by Utah State Board of Education on the _____ day of _____, 2016.

By and through its Chair: _____

Utah Professional Practices
Advisory Commission
250 East 500 South
P.O. Box 144200
Salt Lake City, UT
84114-4200

Phone: (801) 538-7745
Fax: (801) 538-7768
www.schools.utah.gov/uppac

August 12, 2016

Hannah Green

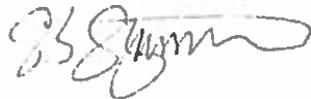
Dear Ms. Green:

At its August 12, 2016 meeting, the Utah State Board of Education discussed the allegations that you were convicted of Driving Under the Influence in 2011 and 2015. The Board approved UPPAC's recommendation that you receive a letter of reprimand. As a licensed educator your actions should be consistent with the educator standards contained in Utah Admin. Code R277-515. While alcohol usage is legal, as a licensed educator you must be careful to drink responsibly. Excessive drinking also may bear on an educator's role model responsibilities.

The letter of reprimand will result in a flag on your CACTUS file. You may request that it be removed no sooner than December 21, 2017 by submitting a written request to the UPPAC Executive Secretary. The letter of reprimand will also be maintained permanently in your paper licensing file, but it will not affect your license status. You will remain a fully licensed educator. Any further credible allegations of misconduct will result in a presumption of additional disciplinary licensing action.

Dissemination of this letter and your file are subject to GRAMA, Utah Code Ann. § 63G-2-101, et seq. It may be considered by the Commission or the State Board of Education if formal allegations are made regarding your conduct in the future. It is the sincere hope of the Commission members and the State Board that you comply with all ethical standards in future educational endeavors.

Sincerely,



Ben Rasmussen
Executive Secretary

BCR:bs

Cc: Tracey M. Watson

Martin Bates
Granite School District

Calbert Beck
Murray City School District

Kathleen Carter
Alpine School District

Dawn Davies
Community Member

Chet Hunsaker
Ogden City School District

Camille Johnson
Davis School District

Jo Jolley
Canyons School District

Darin Nielsen
Box Elder School District

Ann K. Peterson
Jubb School District

Cheryl Phipps
Community Member

Beverlee Simpson
Salt Lake City School District

Ben Rasmussen
Executive Secretary
(801) 538-7835

Nicole Ferguson
Investigator and Attorney
for Complainant
(801) 538-7583

Matthew Brass
Investigator and Attorney
for Complainant
(801) 538-7818

EXHIBIT 4

December 21, 2015

Utah Professional Practices
Advisory Commission
250 East 500 South
P.O. Box 144200
Salt Lake City, UT
84114-4200

Phone: (801) 538-7745
Fax: (801) 538-7768
www.schools.utah.gov/uppac

Shawn Hatfield
1057 North 1600 East
Mapleton, Utah 84664

Dear Mr. Hatfield:

The Utah State Board of Education reviewed the allegation that your interactions with a student violated the appropriate boundaries established by ethical rules and school policy. The Board approved UPPAC's recommendation that you receive a Letter of Warning. As a licensed educator your actions should be in comportment with the educator ethics standards contained in Utah Admin. Code R277-515. The allegation was that you singled out a student by complimenting him and giving him gifts. By definition, a letter of warning is a letter sent by the Board to an educator for misconduct that is inappropriate or unethical, but does not warrant longer term or more serious discipline.

As part of this Letter of Warning, the Board recommends that you participate in a boundaries education class to inform your interactions with students. This letter of warning will not appear in your Computer Aided Credentials of Teachers in Utah System (CACTUS) file and will not affect the status of your educator license. The flag in your CACTUS file for this allegation will be removed. This letter of warning will, however, remain permanently in UPPAC records and the existence of the letter is a matter of public information.

Dissemination of this letter and your file are subject to GRAMA, Utah Code Ann. § 63G-2-101, et seq. It may be considered by the UPPAC and the State Board of Education if formal allegations are made regarding your conduct in the future. It is the sincere hope of UPPAC and the Board that you comply with all ethical standards in future educational endeavors.

Sincerely,



Ben Rasmussen
Executive Secretary

Cc:

Tracey M. Watson
Utah Education Association

EXHIBIT 5

BEFORE THE UTAH STATE BOARD OF EDUCATION

In re:

STEVEN R. SMITH

STIPULATED AGREEMENT

UPPAC File No. 12-1058

The Utah State Board of Education ("Board") and Steven R. Smith ("Smith") hereby stipulate and agree as follows:

BACKGROUND

- (1) On or about November 22, 2000, Smith received his Level 2 educator license ("license").
- (2) On or about February 6, 2012 UPPAC received information that Smith allegedly engaged in unprofessional conduct.
- (3) On or about June 30, 2013, during the UPPAC investigation, Smith's license expired.
- (4) Thereafter, this case has a protracted and complicated procedural history.
- (5) On or about March 14, 2016, by and through his counsel, Smith voluntarily surrendered his license acknowledging that such action was permanent and irrevocable.
- (6) On April 15, 2016, the Board accepted Smith's voluntary surrender by issuing a Decision, which gave Smith notice of the impact of his voluntary surrender and allowed him time to withdraw his voluntary surrender.
- (7) Thereafter, the parties' legal counsel engaged in negotiations.
- (8) While engaged in negotiations, Smith's time to withdraw his voluntary surrender was extended.

STIPULATED AGREEMENT

Smith, by and through legal counsel, negotiated the following terms with the Board, by and through legal counsel, and they hereby agree:

- (A) The voluntary surrender of Smith's license is permanent and irrevocable and will be classified as a revocation pursuant to Utah Code Ann. § 53A-6-501(5)(b).
- (B) Smith is not eligible for a reinstatement hearing at any time.
- (C) Smith may not work or consult in any capacity in any K-12 public schools in the State of Utah. Smith may volunteer with supervision, or otherwise participate in his children's classes provided: (1) he gives a copy of this Stipulated Agreement to the principal and classroom teacher, and (2) the LEA's policies allow him to volunteer.
- (D) All documents related to Smith's license as would otherwise be classified as public pursuant to GRAMA are subject to public disclosure in accordance with state and federal law.
- (E) Smith's surrender of his license will be reported to all states through NASDTEC as a revocation voluntary surrender.
- (F) Smith's surrender of his license will be reported to LEAs throughout the state as a revocation voluntary surrender. See attached Notification.
- (G) The UPPAC investigation will end when this Stipulated Agreement is approved and executed by the Board.
- (H) Smith acknowledges that this Stipulated Agreement is only effective upon approval by the Board, and shall be the final compromise and settlement of this matter.
- (I) Smith acknowledges that if the Board rejects this Stipulated Agreement it shall be deemed null and void and without any force or effect whatsoever.


Steven R. Smith

8/8/2016
Date

Date

David Crandall, Chairman
Utah State Board of Education



UTAH STATE BOARD OF EDUCATION

David L. Crandall, Chair David L. Thomas, First Vice Chair
Jennifer A. Johnson, Second Vice Chair

Dixie L. Allen Britney Cummins Jefferson Moss
Laura Belnap Linda B. Hansen Spencer F. Stokes
Leslie B. Castle Mark Huntsman Terry Warner
Barbara W. Corry Stan Lockhart Joel Wright

Sydnee Dickson, State Superintendent of Public Instruction
Lorraine Austin, Board Secretary

NOTIFICATION OF INVALIDATION OF EDUCATOR LICENSE

State Reporting: UTAH

Name of Individual: Steven Smith

Date of Birth: 6/27/1973

Last School and District in Which Employed: Brighton High School, Canyons District

Position Held: AP Music Theory, Chorus I Mixed, Chorus I SA, Chorus II Mixed, Chorus III Small Ensemble, Music Theory

Colleges Attended: University of Utah

Degree(s) Held: Bachelor of Music

Kind of License and License Area(s) Held: Level 2 Secondary Education (6-12)

Endorsement(s) on License: Music (K-12)

Nature of Invalidation: Voluntary Surrender

Cause of Action: Allegations of unprofessional conduct

Date Action Was Taken: 3/14/2016

Date Action Is Effective: 8/12/2016

Explanation of Penalty: Smith's voluntary surrender is considered a permanent action. Smith is not eligible for a reinstatement hearing at any time.

Secretary, State Board of Education

EXHIBIT 6

BEFORE THE UTAH STATE BOARD OF EDUCATION

In re:

ADAM G. HOOD

STIPULATED AGREEMENT

UPPAC File No. 15-1282

The Utah State Board of Education ("Board") and Adam G. Hood ("Hood") hereby stipulate and agree as follows:

BACKGROUND

- (1) On or about June 1, 2009, Hood received his Level 2 educator license ("license").
- (2) On or about May 22, 2015, UPPAC received information that Hood allegedly engaged in unprofessional conduct.
- (3) UPPAC completed an investigation and Hood refused the stipulated agreement offered.
- (4) On or about March 28, 2016, by and through his counsel, Hood voluntarily surrendered his license acknowledging that such action was permanent and irrevocable.
- (5) On April 15, 2016, the Board accepted Hood's voluntary surrender by issuing a Decision, which gave Hood notice of the impact of his voluntary surrender and allowed him time to withdraw his voluntary surrender.
- (6) Thereafter, the parties' legal counsel engaged in negotiations.
- (7) While engaged in negotiations, Hood's time to withdraw his voluntary surrender was extended.

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STIPULATED AGREEMENT

Hood, by and through legal counsel, negotiated the following terms with the Board, by and through legal counsel, and they hereby agree:

- (A) The voluntary surrender of Hood's license is permanent and irrevocable.
- (B) Hood is not eligible for a reinstatement hearing at any time.
- (C) Hood may not work or consult in any capacity in any K-12 public schools in the State of Utah. Hood may volunteer with supervision, or otherwise participate in his children's classes provided: (1) he gives a copy of this Stipulated Agreement to the principal and classroom teacher, and (2) the LEA's policies allow him to volunteer.
- (D) All documents related to Hood's license are subject to public disclosure in accordance with state and federal law.
- (E) Hood's surrender of his license will be reported to all states through NASDTEC as a voluntary surrender.
- (F) Hood's surrender of his license will be reported to LEAs throughout the state as a voluntary surrender. *See attached Notification.*
- (G) The UPPAC investigation will end when this Stipulated Agreement is approved and executed by the Board.
- (H) Hood acknowledges that this Stipulated Agreement is only effective upon approval by the Board, and shall be the final compromise and settlement of this matter.
- (I) Hood acknowledges that if the Board rejects this Stipulated Agreement it shall be deemed null and void and without any force or effect whatsoever.



Adam G. Hood

8-8-16

Date

David Crandall, Chairman
Utah State Board of Education

Date



UTAH STATE BOARD OF EDUCATION

David L. Crandall, Chair David L. Thomas, First Vice Chair
Jennifer A. Johnson, Second Vice Chair

Dixie L. Allen	Brittney Cummins	Jefferson Moss
Laura Belnap	Linda B. Hansen	Spencer F. Stokes
Leslie B. Castle	Mark Huntsman	Terryl Warner
Barbara W. Corry	Stan Lockhart	Joel Wright

Sydnee Dickson, State Superintendent of Public Instruction
Lorraine Austin, Board Secretary

NOTIFICATION OF INVALIDATION OF EDUCATOR LICENSE

State Reporting:	UTAH
Name of Individual:	Adam G. Hood
Date of Birth:	9/22/1982
Last School and District in Which Employed:	Woods Cross High School, Davis District
Position Held:	Physical Education (6-12), Student Study Skills, U.S. History II, World Civilizations
Colleges Attended:	Weber State University
Degree(s) Held:	Bachelor of Arts
Kind of License and License Area(s) Held:	Level 2 Special Education (K-12+), Secondary Education (6-12)
Endorsement(s) on License:	Mathematics-Special Ed, Mild/Moderate Disabilities, Coaching, History, Physical Education
Nature of Invalidation:	Voluntary Surrender
Cause of Action:	Allegations of unprofessional conduct
Date Action Was Taken:	03/28/2016
Date Action Is Effective:	08/12/2016
Explanation of Penalty:	Hood's voluntary surrender is considered a permanent action. Hood is not eligible for a reinstatement hearing at any time.

Secretary, State Board of Education

EXHIBIT 7

BEFORE THE UTAH STATE BOARD OF EDUCATION

in re:

HEIDI TASSO

STIPULATED AGREEMENT

UPPAC File No. 12-1058

The Utah State Board of Education ("Board") and Heidi Tasso ("Tasso") hereby stipulate and agree as follows:

BACKGROUND

- (1) On or about July 30, 1992, Tasso received her Level 2 educator license.
- (2) On or about September 15, 2015, UPPAC received information that Tasso allegedly engaged in unprofessional conduct.
- (3) On or about September 29, 2015, UPPAC sent a letter to Tasso and provided notice that she was under investigation for unprofessional conduct without details of the allegations.
- (4) On or about November 11, 2015, through her attorney, Tasso voluntarily surrendered her license acknowledging that such action was permanent and irrevocable.
- (5) On April 15, 2016, the Board accepted Tasso's voluntary surrender by issuing a Decision, which gave Tasso notice of the impact of her voluntary surrender and allowed her time to withdraw her voluntary surrender.
- (6) Thereafter, the parties' legal counsel engaged in negotiations.
- (7) While engaged in negotiations, Tasso's time to withdraw her voluntary surrender was extended.

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STIPULATED AGREEMENT

Tasso, by and through legal counsel, negotiated the following terms with the Board, by and through legal counsel, and they hereby stipulate to the following agreement:

- (A) The voluntary surrender of Tasso's license is permanent and irrevocable and by this Stipulated Agreement will be classified as a revocation pursuant to Utah Code Ann. § 53A-6-501(5)(b).
- (B) Tasso is not eligible for a reinstatement hearing at any time.
- (C) Tasso may not work, consult, or volunteer in any capacity in any K-12 public schools in the State of Utah.
- (D) All documents related to Tasso's license are subject to public disclosure in accordance with state and federal law.
- (E) By this Stipulated Agreement, Tasso's surrender of her license will be reported to all states through NASDTEC as a revocation.
- (F) By this Stipulated Agreement, Tasso's surrender of her license will be reported to LEAs throughout the state as a revocation. *See attached Notification.*
- (G) The UPPAC investigation will end when this Stipulated Agreement is approved and executed by the Board.
- (H) Tasso acknowledges that this Stipulated Agreement is only effective upon approval by the Board, and shall be the final compromise and settlement of this matter.
- (I) Tasso acknowledges that if the Board rejects this Stipulated Agreement it shall be deemed null and void and without any force or effect whatsoever.

Heidi Tasso
Heidi Tasso

8/8/16
Date

David Crandall, Chairman
Utah State Board of Education

Date



UTAH STATE BOARD OF EDUCATION

David L. Crandall, Chair David L. Thomas, First Vice Chair
Jennifer A. Johnson, Second Vice Chair

Dixie L. Allen Brittney Cummins Jefferson Moss
Laura Belnap Linda B. Hansen Spencer F. Stokes
Leslie B. Castle Mark Huntsman Terryl Warner
Barbara W. Corry Stan Lockhart Joel Wright

Sydnee Dickson, State Superintendent of Public Instruction
Lorraine Austin, Board Secretary

NOTIFICATION OF INVALIDATION OF EDUCATOR LICENSE

State Reporting: UTAH

Name of Individual: Heidi Tasso

Date of Birth: 12/28/1967

Last School and District in Which Employed: Millcreek High School, Washington School District

Position Held: Counselor (7-12)

Colleges Attended: Brigham Young University, Utah State University, Western Governors University

Degree(s) Held: Bachelor of Science, Master of Science, Master of Science

Kind of License and License Area(s) Held: Level 2 Administrative/Supervisory (K-12), Secondary Education (6-12)

Endorsement(s) on License: Psychology, Mathematics Endorsement 3

Nature of Invalidation: Revocation

Cause of Action: Allegation of unprofessional conduct

Date Action Was Taken: 11/11/2016

Date Action Is Effective: 04/15/2016

Explanation of Penalty: Tasso's revocation is considered a permanent action. Tasso is not eligible for a reinstatement hearing at any time.

Secretary, State Board of Education