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MEMORANDUM

TO: Members, Utah State Board of Education

FROM: Brad C. Smith
Chief Executive Officer

DATE: August 6-7, 2015

ACTION: R277-514 and R277-517 (Repeal)
R277-200 through R277-206 and R277-515 and R277-516 (Amendment)

Background:

1. Rules R277-517 and R277-514 are repealed because the bulk of the R277-517, which outlines the UPPAC process, was eliminated in HB 345 and, specifics on hearing procedures and Board review contained in R277-514 have been moved to R277-201 through R277-203.
2. Rules R277-200 through R277-206 and R277-515 and R277-516 are amended to incorporate hearing procedures, Board review of UPPAC recommendations, appeal procedures, and reporting requirements.

Key Points:

1. Repeal R277-517. The bulk of this rule outlines the UPPAC process which was done away with by HB 345. Specifics on hearing procedures and board review contained in this rule have been moved to R277-201-203.
2. Repeal R277-514.
 - a. The substance of this rule dealing with Board review and appeals to the superintendent have been combined with the UPPAC rules R277-201-203.
 - b. It is proposed that those cases in which the Board must adopt findings for deviating from UPPAC recommendations be limited to those in which a hearing has been held. Recommendations coming without a hearing report, would not require findings to remand the matter to UPPAC to conduct a hearing and create a record.
 - c. Reporting provisions of this rule would be moved to R277-516 with other reporting requirements.

3. Amend 201-203 to incorporate the above-referenced changes and clarify procedure for Board review and when the Board needs to issue independent findings. Specific procedures have been added for Board review of disciplinary letters, which don't require a stipulated agreement or hearing.
4. Amend 516 to incorporate 514 reporting requirements.
5. Amend 515 to update a reference to the reporting requirements.
6. Amend 200 to reflect application to the presumptions rule, if adopted, as well as add a definition for "sexually explicit conduct."
7. Rules 200-206 have been re-numbered consistent with new Board standards.

Anticipated Action:

1. It is proposed that the Law and Licensing Committee consider approving R277-514 and R277-517, for repeal, on first reading and, if approved by the Committee, the Board consider approving R277-514 and R277-517 for repeal on second reading.
2. It is proposed that the Law and Licensing Committee consider approving R277-200 through R277-206, R277-515, and R277-516, as amended, on first reading and, if approved by the Committee, the Board consider approving R277-200 through R277-206, R277-515, and R277-516, as amended, on second reading.

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~~[R277. Education, Administration.~~

~~**R277-514. Board Procedures: Sanctions for Educator Misconduct.**~~

~~**R277-514-1. Definitions.**~~

~~———— In addition to terms defined in Section 53A-6-103, the following definitions apply:~~

~~———— A. “Allegation of misconduct” means a written or oral report alleging that an educator has engaged in unprofessional, criminal, or incompetent conduct; is unfit for duty; has lost licensure in another state due to revocation or suspension, or through voluntary surrender or lapse of a license in the face of an allegation of misconduct; or has committed some other violation of standards of ethical conduct, performance, or professional competence.~~

~~———— B. “Board” means the Utah State Board of Education.~~

~~———— C. “Commission” means the Utah Professional Practices Advisory Commission.~~

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

~~———— E. “License” means an authorization issued by the Board which permits the holder to serve in a professional capacity in a unit of the public education system or an accredited private school.~~

~~———— F. “Party” means the complainant or the respondent.~~

~~———— G. “Recommended disposition” means a recommendation for resolution of a complaint.~~

~~———— H. “Serve” or “service,” as used to refer to the provision of notice to a person, means delivery of a written document or its contents to the person or persons in question. Delivery may be made in person, by mail to the individual’s last known address or by other means reasonably calculated, under all of the circumstances, to apprise the interested person or persons to the extent reasonably practical or practicable of the information contained in the document.~~

~~———— I. “Superintendent” means the State Superintendent of Public Instruction.~~

~~**R277-514-2. Authority and Purpose.**~~

~~———— A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public schools in the Board, Section 53A-6-405 relating to withdrawal or denial of licensure by the Board for cause, Section 53A-6-307 in which the Board retains the power to issue or revoke licenses, hold hearings or take other disciplinary action as warranted, and Subsection 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.~~

~~———— B. The purpose of this rule is to provide an appeals process for recommendations and decisions made by the Commission, including a review by the Superintendent; and to specify the procedures under which the Board may take action against an educator’s license for misconduct.~~

~~**R277-514-3. Administrative Review by Superintendent.**~~

~~———— A. If an administrative action is taken by the Commission which results in a recommendation to the Board for:~~

~~———— (1) suspension of an educator’s license for two years or more, or~~

~~———— (2) revocation of an educator’s license;~~

~~———— B. Either party may request review by the Superintendent within 15 days from the~~

~~date that the Commission sends written notice to both parties that the Commission has made its administrative recommendation:~~

~~—— C. The request for review shall consist of the following:~~

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

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

~~—— (3) signature of appellant.~~

~~—— D. If the Superintendent finds:~~

~~—— (1) that procedural errors have occurred which violated fairness or due process issues, the Superintendent shall refer the case back to the Commission for reconsideration as to whether or not the findings, conclusions or decisions of the Commission are supported by a preponderance of the evidence, or direct the Executive Secretary for the Commission to take specific administrative action. After reconsideration is completed, the Superintendent shall notify all parties to the case, and refer the matter to the Board, if necessary, for final disposition consistent with this rule.~~

R277-514-4. Board Procedures.

~~—— A. Except as provided under Subsection R277-514-4(E), if the Board receives an allegation of misconduct by an educator, the allegation shall be forwarded to the Executive Secretary for the Commission for action under R686-100.~~

~~—— B. Following completion of procedures provided in R686-100, if the Commission recommends that an educator's license be suspended for any period of time or revoked, the recommendation shall be forwarded to the Board for action.~~

~~—— C. Upon receiving a case from the Commission, the members of the Board shall review a summary of the case and may:~~

~~—— (1) accept the recommendation of the Commission; or~~

~~—— (2) review the case file, findings, conclusions, and recommended disposition of the case.~~

~~—— (a) If the Board finds no serious procedural errors, that the findings and conclusions are reasonable and supported by a preponderance of the evidence, and that the recommended disposition presents a reasonable resolution of the case, then the Board shall approve the findings and recommended disposition.~~

~~—— (b) If the Board finds serious procedural errors have violated the fundamental fairness of the process, then the Board shall refer the case back to the Commission to correct the errors.~~

~~—— (c) If the Board determines that the findings or conclusions are not supported by a preponderance of the evidence, or that the recommended disposition does not present a reasonable resolution of the case, then the Board may refer the case back to the Commission for further action or may, in the alternative, prepare other findings, conclusions, or disposition.~~

~~—— (d) If the Board finds that there is insufficient information in the case file to complete its work, the Board may direct the parties to appear and present additional evidence or clarification.~~

~~—— (e) If the Board finds it advisable to do so, the Board may initiate investigations or hearings regarding the initial or continued licensure of an individual and take disciplinary action upon its own volition without referring a given case to the Commission.~~

~~—— D. The Board shall issue a written order regarding its action which contains its conclusions and its disposition of the case, and direct the State Superintendent to serve~~

a copy of the written order upon the parties.

~~_____ E. All documents used by the Board in reaching its decision, and a copy of the Board's final order, shall be made part of the permanent case file.~~

~~_____ F. The decision of the Board is final.~~

~~R277-514-5. Notification Requirements and Procedures.~~

~~_____ A. An educator who has reasonable cause to believe that a student may have been physically or sexually abused by a school employee shall immediately report that belief to the school principal, district superintendent, or the Commission. A school administrator receiving such a report shall immediately submit the information to the Commission if the employee is licensed as an educator.~~

~~_____ B. A local superintendent or charter school director shall notify the Commission if an educator is determined, pursuant to an administrative or judicial action, to have had disciplinary action taken for or to be guilty of:~~

~~_____ (1) unprofessional conduct or professional incompetence which results in suspension for more than one week or termination, or which otherwise warrants Commission review; or~~

~~_____ (2) immoral behavior.~~

~~_____ C. Failure of an educator to comply with Subsection A or B may constitute unprofessional conduct.~~

~~_____ D. The State Office of Education shall notify the educator's employer of any final action taken by the Board; and shall notify all Utah local education agencies (LEAs) and the NASDTEC Educator Information Clearinghouse whenever a license is revoked or suspended, or if an educator surrenders a license or allows it to lapse in the face of allegations of misconduct rather than accept an opportunity to defend against the allegations.~~

~~KEY: disciplinary actions, professional competency, educator licensure~~

~~Date of Enactment or Last Substantive Amendment: October 9, 2012~~

~~Notice of Continuation: August 14, 2012~~

~~Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-405; 53A-6-307; 53A-1-401(3)]~~

~~[R277. Education, Administration.~~

~~R277-517. Board and UPPAC Disciplinary Definitions and Actions.~~

~~R277-517-1. Definitions.~~

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

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

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

~~_____ (1) personal directory information;~~

~~_____ (2) educational background;~~

~~_____ (3) endorsements;~~

~~_____ (4) employment history; and~~

~~_____ (5) a record of disciplinary action taken against the educator.~~

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

~~_____ E. "Revocation" means a permanent invalidation of a Utah educator license.~~

~~_____ F. "Stipulated agreement" means an agreement between a respondent/educator and the Board or between a respondent/educator and UPPAC under which disciplinary action against an educator's license status will be taken, in lieu of a hearing. At any time after an investigative letter has been sent, a stipulated agreement may be negotiated between the parties and becomes binding when approved by the Board.~~

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

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

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

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

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

~~_____ (3) Letter of reprimand is a letter sent by UPPAC to an educator for misconduct that was longer term or more seriously unethical or inappropriate than conduct warranting a letter of warning, but not warranting more serious discipline;~~

~~_____ (4) Probation is an action directed by UPPAC for an indefinite or designated time period usually accompanied by a disciplinary letter.~~

~~_____ J. "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~~

UPPAC has directed that an investigation of the educator's alleged actions take place:

~~_____ K. "USOE" means the Utah State Office of Education.~~

~~R277-517-2. Authority and Purpose.~~

~~_____ A. This rule is authorized by Utah Constitution Article X, Section 3 which vests the general control and supervision of the public schools in the Board, by Section 53A-1-402(1)(a) which directs the Board to make rules regarding the certification of educators, by Section 53A-6 which establishes provisions related to educator licensing and professional practices, 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:~~

~~_____ (1) provide standards and procedures to ensure protection of students' physical, emotional, academic and social well-being at school by all the adults who work for Utah public schools.~~

~~_____ (2) provide definitions and provisions explaining UPPAC actions and recommendations that do not rise to the level of action against an educator's license and to provide definitions and criteria for Board disciplinary actions against educator licenses.~~

~~R277-517-3. UPPAC Disciplinary Actions.~~

~~_____ A. UPPAC is an advisory body to the Board.~~

~~_____ B. Unlike Board action, a UPPAC action does not affect the validity of a Utah educator license.~~

~~_____ C. UPPAC may issue the following disciplinary actions:~~

~~_____ (1) Letter of admonishment:~~

~~_____ (a) sent directly to the educator;~~

~~_____ (b) cautioning the educator to avoid or take specific actions in the future;~~

~~_____ (c) does not show as a notation on CACTUS;~~

~~_____ (d) is maintained permanently in educator's paper licensing file.~~

~~_____ (2) Letter of warning:~~

~~_____ (a) sent directly to the educator;~~

~~_____ (b) warns the educator that specific behavior or conduct was inappropriate or unethical and directs the educator to avoid or take specific actions in the future;~~

~~_____ (c) does not show as a notation on CACTUS;~~

~~_____ (d) is maintained permanently in educator's paper licensing file;~~

~~_____ (e) notice sent by UPPAC to employer or former employer that investigation was closed with a letter of warning.~~

~~_____ (3) Letter of reprimand:~~

~~_____ (a) sent to educator and to educator's employer or former employer, if the employer is a public or private school;~~

~~_____ (b) strongly reprimands the educator that specific behavior or conduct was unethical or unacceptable among professional educators and directing the educator to avoid or take specific action in the future;~~

~~_____ (c) shows as a notation on educator's CACTUS file which directs those with CACTUS access to contact USOE for further information;~~

~~_____ (d) often, but not always, includes a period of probation during which educator must meet specific conditions;~~

~~_____ (e) remains as a notation on educator's CACTUS file for at least two years from the~~

date of UPPAC action unless a different time period is identified by the reprimand letter or in the stipulated agreement for the letter;

~~_____ (f) is maintained permanently in educator's paper licensing file;~~

~~_____ (g) may be removed from educator's active CACTUS file, upon educator's request, following designated time period and satisfaction of conditions by educator. UPPAC shall review the request, review educator's file and subsequent actions and may require educator to meet with UPPAC prior to granting the request;~~

~~_____ (4) probation:~~

~~_____ (a) usually, but not always, accompanies a warning or reprimand letter and~~

~~_____ (b) designates time period and conditions that educator receiving other UPPAC discipline may be asked to satisfy prior to lifting of the probation or to avoid further UPPAC discipline;~~

~~_____ (c) shows as a notation on an educator's CACTUS file and directs those with CACTUS access to contact USOE for further information;~~

~~_____ (d) remains on educator's CACTUS file for at least 2 years from the date of UPPAC action unless a different time period is designated;~~

~~_____ (e) may be lifted upon educator's request following designated time period and satisfaction of all conditions; UPPAC shall review the request, review educator's file and subsequent action and may require educator to meet with UPPAC prior to granting the request;~~

~~_____ (5) other disciplinary action or letter that is appropriate and reasonable to address or remediate educator misconduct, or both, that is not suspension or revocation.~~

~~_____ D. UPPAC shall make written recommendations to the Board for disciplinary actions that affect educator licenses including suspension, revocation and reinstatement.~~

~~_____ E. UPPAC action is a final administrative action for those disciplinary actions found in R277-517-3G, and the existence of such action is public information under Section 63G-2-201(2)(c). The substance of disciplinary letters is protected under Section 63G-2-305(25), (33) and (34):~~

~~_____ F. UPPAC shall send notice of final UPPAC action to an educator no more than 30 days following a final UPPAC action.~~

~~_____ G. UPPAC shall not provide information to the public about UPPAC actions until they have been reviewed or acted upon or both by the Board.~~

~~R277-517-4. Board Receipt and Review of UPPAC Recommendations.~~

~~_____ A. The Board shall review UPPAC recommendations for suspension, revocations, reinstatements, and other disciplinary actions upon request in executive sessions consistent with Section 52-4-204 through 206.~~

~~_____ B. UPPAC shall make Hearing Reports and stipulated agreements available for a confidential review by Board members prior to and during the Board's discussion of cases.~~

~~_____ C. UPPAC shall make case files, hearing recordings and exhibits available for review by Board members as directed by the Board.~~

~~_____ D. UPPAC shall forward the completed UPPAC Recommendation Report Form to the Board for its consideration.~~

~~_____ E. If the Board takes final action to accept the recommendations of a UPPAC hearing report, the final hearing report is a public record, but may be redacted prior to release to protect the names of students or information consistent with Section 63G-2-202(3):~~

~~—— F. If the Board does not accept a UPPAC recommendation, the Board shall prepare written findings and conclusions based on the record and take any other action consistent with procedures in R277-514-4C, and provide the findings to the educator consistent with R277-517-5D and E, below. The Board findings and conclusions are a public record, but may be redacted prior to release to protect the names of students or information consistent with Section 63G-2-202(3).~~

~~—— G. The Board shall initially review UPPAC recommendations at the next regularly scheduled Board meeting following receipt of written recommendations.~~

~~R277-517-5. Board Disciplinary Actions.~~

~~—— A. Board disciplinary actions:~~

~~—— (1) The Board may suspend an educator's license consistent with R277-517-1G:~~

~~—— (a) A suspension may be recommended by a Stipulated Agreement negotiated between UPPAC and an educator; or~~

~~—— (b) A suspension may be recommended following an administrative hearing under the provisions of R686-100;~~

~~—— (c) A suspension may include specific conditions which shall be satisfied by the educator prior to requesting a reinstatement hearing from UPPAC under R686-100;~~

~~—— (d) A suspension shall provide a minimum time period after which the educator may request a reinstatement hearing from UPPAC.~~

~~—— (2) The Board may revoke an educator's license:~~

~~—— (a) A revocation is permanent, except as provided under R277-517-5A(2)(c) below;~~

~~—— (b) A revocation is required under Section 53A-6-405(2);~~

~~—— (c) An individual whose license has been revoked may seek reinstatement of his license only in the following limited circumstances:~~

~~—— (i) the individual provides evidence of mistake or false information that was critical to the revocation action;~~

~~—— (ii) the individual identifies material procedural UPPAC or Board error in the revocation process.~~

~~—— (3) If a complaint is filed against an educator and the educator fails to respond to the complaint or fails to appear for a hearing before the Board or UPPAC, the Board may revoke or suspend the educator's license. This action may be taken only if UPPAC has documentation of attempts to contact the educator, consistent with R686-100.~~

~~—— (4) The Board may reinstate an educator's license:~~

~~—— (a) An educator may request a reinstatement hearing following a license suspension. The reinstatement request shall be made consistent with R686-100.~~

~~—— (b) An educator has a reasonable expectation of a reinstatement hearing, consistent with due process and reinstatement hearing conditions set by UPPAC, but no expectation of license reinstatement by the Board.~~

~~—— (c) An educator whose license has been suspended and the reinstatement denied by the Board may request an additional reinstatement hearing once every 24 months unless otherwise directed by the Board.~~

~~—— (d) An educator requesting a reinstatement hearing shall have a criminal background check, that was conducted not more than six months prior to the requested hearing, on file with the USOE. The background check and review of any offenses must be completed prior to reinstatement.~~

~~—— (e) Prior to sending a reinstatement recommendation to the Board for its~~

~~consideration, UPPAC shall provide evidence to the Board of its consideration of Board-identified criteria central to the Board's authority to reinstate an educator's license.~~

~~—— D. The Board has sole discretion in final administrative decisions.~~

~~—— E. The Board shall send written notice to an educator of Board action no more than 30 days following the Board's final action.~~

~~—— F. The Board shall send written notice of an educator's license suspension or revocation to an educator's former employer if the employer was a public or private school.~~

KEY: ~~educator, professional, standards~~

~~Date of Enactment or Last Substantive Amendments: June 8, 2015~~

~~Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(a); 53A-6; 53A-1-401(3)]~~

1 **R277. Education, Administration.**

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

4 **R277-200-1. Authority and Purpose.**

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

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

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

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

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

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

17

18 **R277-200-2. Definitions.**

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

21 ~~[(2)b]~~ “Action” does not include a disciplinary letter.

22 ~~[(3)c]~~ “Action” includes:

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

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

25 ~~[(c)iii]~~ suspension; and

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

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

29 ~~[C.](3)~~ “Alcohol related offense” means:

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

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

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

33 ([4]d) driving with an open container;
34 ([5]e) unlawful sale or supply of alcohol;
35 ([6]f) unlawful permitting of consumption of alcohol by minors;
36 ([7]g) driving in violation of an alcohol or interlock restriction; and
37 (8) any offense under the laws of another state that is substantially equivalent
38 to the offenses described in Subsections [R277-200-2C(1) through (7)](3)(a) through
39 (g).

40 [D.](4) "Allegation of misconduct" means a written report alleging that an
41 educator:

42 ([1]a) has engaged in unprofessional or criminal conduct;

43 ([2]b) is unfit for duty;

44 ([3]c) has lost the educator's license in another state due to revocation or
45 suspension, or through voluntary surrender or lapse of a license in the face of a
46 claim of misconduct; or

47 ([4]d) has committed some other violation of standards of ethical conduct,
48 performance, or professional competence as provided in Rule R277-515.

49 [E.](5) "Answer" means a written response to a complaint filed by USOE
50 alleging educator misconduct.

51 [F.](6) "Applicant" means a person seeking:

52 ([1]a) a new license;

53 ([2]b) reinstatement of an expired, surrendered, suspended, or revoked
54 license; or

55 ([3]c) clearance of a criminal background review from USOE at any stage of
56 the licensing process.

57 [G. "Board" means the Utah State Board of Education.]

58 [H.](7) "Chair" means the Chair of UPPAC.

59 [I.](8) "Complaint" means a written allegation or charge against an educator
60 filed by USOE against the educator.

61 [J.](9) "Complainant" means the Utah State Office of Education.

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

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

67 ([2]b) "Conviction" includes:

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

69 ([b]ii) a guilty or no contest plea;

70 ([c]iii) a plea in abeyance; and

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

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

74 ([4]a) a charge revealed by a criminal background check;

75 ([2]b) a charge revealed by a hit as a result of ongoing monitoring; or

76 ([3]c) an educator or applicant's self-disclosure.

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

79 ([2]b) "Disciplinary letter" includes:

80 ([4]i) a letter of admonishment;

81 ([2]ii) a letter of warning; and

82 ([3]iii) any other action that the Board takes to discipline an educator for
83 educator misconduct that does not rise to the level of an action as defined in this

84 [R277-200-2]section.

85 [O:](14) "Drug" means controlled substance as defined in Section 58-37-2.

86 [P:](15) "Drug related offense" means any criminal offense under:

87 ([4]a) Title 58, Chapter 37;

88 ([2]b) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

89 ([3]c) Title 58, Chapter 37b, Imitation Controlled Substances Act;

90 ([4]d) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act;

91 ([5]e) Title 58, Chapter 37d, Clandestine Drug Lab Act; and

92 ([6]f) Title 58, Chapter 37e, Drug Dealer's Liability Act.

93 Sections 58-37 through 37e.

94 [Q. "Educator" means a person:

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

96 ——— (2) who held a license at the time of an alleged offense;

97 ~~_____ (3) is a person who is student teaching in anticipation of seeking a license;~~

98 ~~_____ (4) is an applicant for a license;~~

99 ~~_____ (5) is a licensure candidate through the Alternate Route to Licensure, "ARL,"~~
100 ~~program; or~~

101 ~~_____ (6) who has applied to the Alternate Route to Licensure, "ARL" program.]~~

102 [R.](16) "Educator Misconduct" means:

103 ([1]a) unprofessional or criminal conduct;

104 ([2]b) conduct that renders an educator unfit for duty; or

105 ([3]c) conduct that is a violation of standards of ethical conduct, performance,
106 or professional competence as provided in Rule R277-515.

107 [S.](17) "Executive Committee" means a subcommittee of UPPAC consisting
108 of the following members:

109 ([1]a) Executive Secretary;

110 ([2]b) Chair;

111 ([3]c) Vice-Chair; and

112 ([4]d) one member of UPPAC at large.

113 [T.](18) "Executive Secretary" means an employee of USOE who:

114 ([1]a) is appointed by the State Superintendent of Public Instruction to serve
115 as the UPPAC Director; and

116 ([2]b) serves as a non-voting member of UPPAC, consistent with Section
117 53A-6-302.

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

122 [V.](20) "Expedited Hearing Panel" means a panel of the following three
123 members:

124 ([1]a) the Executive Secretary;

125 ([2]b) a voting member of UPPAC; and

126 ([3]c) a UPPAC prosecutor.

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

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

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

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

134 (2)b) is appointed by the Executive Secretary to manage the proceedings of
135 a hearing;

136 (3)c) is not an acting member of UPPAC;

137 (4)d) has authority, subject to the limitations of these rules, to regulate the
138 course of the hearing and dispose of procedural requests; and

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

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

142 (1)a) hear evidence presented at a hearing;

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

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

145 [~~AA~~](25) “Hearing report” means a report that:

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

148 (2)b) includes:

149 (a)i) a recommended disposition;

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

152 (c)iii) applicable law and rule.

153 [~~BB~~](26) “Informant” means a person who submits information to UPPAC
154 concerning the alleged misconduct of an educator.

155 [~~CC~~](27) “Investigator” means an employee of the USOE, or independent
156 investigator selected by the Board, who:

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

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

161 ([3]c) provides an independent investigative report for UPPAC and the Board;
162 and

163 ([4]d) may also be the prosecutor but does not have to be.

164 ~~[DD:]~~(28) “Investigative report” means a written report of an investigation into
165 allegations of educator misconduct, prepared by an Investigator that:

166 ([1]a) includes a brief summary of the allegations, the investigator's narrative,
167 and a recommendation for UPPAC and the Board;

168 ([2]b) may include a rationale for the recommendation, and mitigating and
169 aggravating circumstances;

170 ([3]c) is maintained in the UPPAC Case File; and

171 ([4]d) is classified as protected under Subsection 63G-2-305(34).

172 ~~[EE:]~~(29) “LEA” or “local education agency” [~~means a school district, charter~~
173 ~~school or,~~ for purposes of this rule[;] includes the Utah Schools for the Deaf and the
174 Blind.

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

177 ~~[GG:]~~(31) “Letter of reprimand” is a letter sent by the Board to an educator:

178 ([1]a) for misconduct that was longer term or more seriously unethical or
179 inappropriate than conduct warranting a letter of warning, but not warranting more
180 serious discipline;

181 ([2]b) that provides specific directives to the educator as a condition for
182 removal of the letter;

183 ([3]c) appears as a notation on the educator's CACTUS file; and

184 ([4]d) that an educator can request to be removed from the educator's
185 CACTUS file after two years, or after such other time period as the Board may
186 prescribe in the letter of reprimand.

187 ~~[HH:]~~(32) “Letter of warning” is a letter sent by the Board to an educator:

188 ([1]a) for misconduct that was inappropriate or unethical; and

189 ([2]b) that does not warrant longer term or more serious discipline.

190 ~~[H:]~~(33) “License” means a teaching or administrative credential, including an
191 endorsement, which is issued by the Board to signify authorization for the person
192 holding the license to provide professional services in Utah’s public schools.

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

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

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

204 [MM.](37) “Party” means a complainant or a respondent.

205 [NN.](38) “Petitioner” means an individual seeking:

206 ([1]a) an educator license following a denial of a license;

207 ([2]b) reinstatement following a license suspension; or in the event of
208 compelling circumstances, reinstatement following a license revocation.

209 [OO.](39) “Probation” is an action directed by the Board that:

210 ([1]a) involves monitoring or supervision for a designated time period, usually
211 accompanied by a disciplinary letter;

212 ([2]b) may require the educator to be subject to additional monitoring by an
213 identified person or entity;

214 ([3]c) may require the educator to be asked to satisfy certain conditions in
215 order to have the probation lifted;

216 ([4]d) may be accompanied by a letter of reprimand, which shall appear as a
217 notation on the educator's CACTUS file; and

218 ([5]e) unless otherwise specified, lasts at least two years and may be
219 terminated through a formal petition to the Board by the respondent.

220 [PP.](40) “Prosecutor” means an attorney who:

221 ([1]a) is designated by the Superintendent to represent the complainant and
222 present evidence in support of the complaint; and

223 ([2]b) may also be the investigator, but does not have to be.

224 [QQ.](41) “Revocation” means a permanent invalidation of a Utah educator

225 license consistent with Rule R277-517.

226 ~~[RR-]~~(42) “Respondent” means an educator against whom:

227 ~~([1]a)~~ a complaint is filed; or

228 ~~([2]b)~~ an investigation is undertaken.

229 ~~[SS-]~~(43) “Serve” or “service,” as used to refer to the provision of notice to a
230 person, means:

231 ~~([1]a)~~ delivery of a written document or its contents to the person or persons
232 in question; and

233 ~~([2]b)~~ delivery that may be made in person, by mail, by electronic
234 correspondence, or by any other means reasonably calculated, under all of the
235 circumstances, to notify an interested person or persons to the extent reasonably
236 practical or practicable of the information contained in the document.

237 (44) “Sexually explicit conduct” means the same as that term is defined in
238 Section 76-5b-103.

239 ~~[TT-]~~(45) “Stipulated agreement” means an agreement between a respondent
240 and the Board:

241 ~~([1]a)~~ under which disciplinary action ~~is taken against the educator in lieu of~~
242 a hearing;

243 ~~([2]b)~~ that may be negotiated between the parties and becomes binding:

244 ~~([a]i)~~ when approved by the Board; and

245 ~~([b]ii)~~ at any time after an investigative letter has been sent;

246 ~~([3]c)~~ is a public document under GRAMA unless it contains specific
247 information that requires redaction or separate classification of the agreement.

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

250 ~~[VV-]~~([1]46)(a) “Suspension” means an invalidation of a Utah educator license.

251 ~~([2]b)~~ “Suspension” may:

252 ~~([a]i)~~ include specific conditions that an educator must satisfy; and

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

255 ~~[WW-]~~(47) “Utah Professional Practices Advisory Commission” or
256 “[f]UPPAC[f]” means an advisory commission established to assist and advise the

257 Board in matters relating to the professional practices of educators, established in
258 Section 53A-6-301.

259 ~~XX~~ (48) "UPPAC Background Check File" means a file maintained securely
260 by UPPAC on a criminal background review that:

261 ([1]a) contains information obtained from:

262 ([a]i) BCI; and

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

265 ([2]b) is classified as private under Subsection 63G-2-302(2).

266 ~~YY~~ (49) "UPPAC Case File" means a file:

267 ([1]a) maintained securely by UPPAC on an investigation into educator
268 misconduct;

269 ([2]b) opened following UPPAC's direction to investigate alleged misconduct;

270 ([3]c) that contains the original notification of misconduct with supporting
271 documentation, correspondence with the Executive Secretary, the investigative
272 report, the stipulated agreement, the hearing report, and the final disposition of the
273 case;

274 ([4]d) that is classified as protected under Subsection 63G-2-305(10) until the
275 investigation and any subsequent proceedings before UPPAC and the Board are
276 completed; and

277 ([5]e) that after a case proceeding is closed, is considered public under
278 GRAMA, unless specific documents contained therein contain non-public information
279 or have been otherwise classified as non-public under GRAMA, in which case the
280 file may be redacted or partially or fully restricted.

281 ~~ZZ~~ (50) "UPPAC Evidence File" means a file:

282 ([1]a) maintained by the attorney assigned by UPPAC to investigate a case
283 containing materials, written or otherwise, obtained by the UPPAC investigator
284 during the course of the attorney's investigation;

285 ([2]b) that contains correspondence between the Investigator and the
286 educator or the educator's counsel;

287 ([3]c) that is classified as protected under Subsection 63G-2-305(10) until the
288 investigation and any subsequent proceedings before UPPAC and the Board are

289 completed; and

290 ([4]d) that is considered public under GRAMA after case proceedings are
291 closed, unless specific documents contained therein contain non-public information
292 or have been otherwise classified as non-public under GRAMA.

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

297 [~~BBB.~~](52) “UPPAC Prosecutor File” means a file:

298 ([1]a) that is kept by the attorney assigned by UPPAC to investigate and/or
299 prosecute a case that contains:

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

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

303 ([2]b) that is classified as protected pursuant to Subsection 63G-2-305(18).

304 [~~CCC. “USOE” means the Utah State Office of Education.~~]

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

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

307 **Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-**
308 **1-401(3)**

1 **R277. Education, Administration.**

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

5 **R277-201-1. Authority and Purpose.**

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

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

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

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

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

14 ([1]a) notifications of alleged educator misconduct;

15 ([2]b) review of notifications by UPPAC; and

16 ([3]c) complaints, stipulated agreement, and defaults.

17 [C-](3) Except as provided in Subsection [R277-201-1D](4), [the provisions of
18 the]Title 63G, Chapter 4, [Utah]Administrative Procedures Act does not apply to this
19 rule under the exemption of Subsection 63G-4-102(2)(d).

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

23 **R277-201-2. Initiating Proceedings Against Educators.**

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

26 ([1]a) upon receiving a notification of alleged educator misconduct; or

27 ([2]b) upon the Executive Secretary's own initiative.

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

30 ([1]a) the informant's:

31 ([a]i) name;

32 ([b]ii) position, [(such as administrator, teacher, parent, or student)];
33 ([e]iii) telephone number;
34 ([d]iv) address; and
35 ([e]v) contact information;
36 ([2]b) [~~the following~~] information of the educator against whom the allegation
37 is made:

38 ([a]i) name;
39 ([b]ii) position, [(such as administrator, teacher, candidate)]; and
40 ([e]iii) if known, the address and telephone number [~~of the educator against~~
41 ~~whom the allegation is made~~];
42 ([d]c) the facts on which the allegation is based and supporting information;
43 and
44 ([e]d) signature of the informant and date.

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

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

51 ([2]b) The Executive Secretary may also recommend an investigation based
52 on an anonymous allegation, notwithstanding the provisions of this rule, if the
53 allegation bears sufficient indicia of reliability.

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

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

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

61 ([1]i) [D] dismiss [~~:-1~~] the matter if UPPAC determines that alleged misconduct
62 does not involve an issue that UPPAC should address [~~, UPPAC shall dismiss the~~

63 matter]; or

64 ([2]ii) [f]initiate an investigation[;-f] if UPPAC determines that the alleged
65 misconduct involves an issue [which]that may be appropriately addressed by
66 UPPAC and the Board[;].

67 ([a]b) If the Executive Secretary or Executive Committee recommends
68 UPPAC initiate an investigation:

69 (i) UPPAC shall initiate an investigation; and

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

72 [B]([1]2)(a) Prior to a UPPAC investigator's initiation of an investigation, the
73 Executive Secretary shall send a letter to the following with information that UPPAC
74 has initiated an investigation[~~has been initiated~~]:

75 ([a]i) the educator to be investigated;

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

77 ([c]iii) the LEA where the alleged activity occurred.

78 ([2]b) A letter described in Subsection [R277-201-3B(1)](2)(a) shall inform the
79 educator and the LEA[(-s)] that an investigation shall take place and is not evidence
80 of unprofessional conduct.

81 ([3]c) UPPAC shall place a flag on the educator's CACTUS file after sending
82 the notices as provided in this rule.

83 [E]([1]3)(a) The investigator shall review relevant documentation and interview
84 individuals who may have knowledge of the allegations.

85 ([2]b) The investigator shall prepare an investigative report of the findings of
86 the investigation and a recommendation for appropriate action or disciplinary letter.

87 ([3]c) If the investigator discovers additional evidence of unprofessional
88 conduct [which]that could have been included in the original notification of alleged
89 educator misconduct, the investigator may include the additional evidence of
90 misconduct in the investigative report.

91 ([4]d) The investigator shall submit the investigative report[~~shall be submitted~~]
92 to the Executive Secretary.

93 ([5]e) The Executive Secretary shall review the investigative report described
94 in Subsection [R277-201-3C(4)](3)(d) with UPPAC.

95 ([6]f) The investigative report described in Subsection [R277-201-3G(4)](3)(d)
96 shall become part of the UPPAC [E]case [F]file.

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

99 ([1]a) [~~Dismiss: If~~]UPPAC determines no further action should be taken,
100 [it]UPPAC may recommend that the Board dismiss the case; or

101 ([2]b) UPPAC may [M]make an initial recommendation of appropriate
102 [A]action or disciplinary letter.

103 [E](5) After receiving an initial recommendation from UPPAC for action, the
104 Executive Secretary shall direct a UPPAC prosecutor to:

105 ([1]a) prepare and serve a complaint; or

106 ([2]b) negotiate and prepare a stipulated agreement.

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

109 ([2]b) An educator may stipulate to any recommended disposition for an
110 action.

111 [G](7) The Executive Secretary shall forward any stipulated agreement to the
112 Board for approval.

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

116 **R277-201-4. Expedited Hearings.**

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

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

125 ([2]b) The Executive Secretary or the Executive Secretary's designee shall

126 conduct ~~[A]an expedited hearing[will be conducted by the Executive Secretary or the~~
127 ~~Executive Secretary's designee]~~ with the following additional invited participants:

128 (~~[a]~~i) the educator;

129 (~~[2]~~ii) the educator's attorney or representative;

130 (~~[3]~~iii) a UPPAC prosecutor;

131 (~~[4]~~iv) a voting member of UPPAC; and

132 (~~[5]~~v) a representative~~[(s)]~~ of the educator's LEA.

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

135 (~~[1]~~a) an educator's oral or written explanation of the events;

136 (~~[2]~~b) a police report;

137 (~~[3]~~c) a court docket or transcript;

138 (~~[4]~~d) an LEA's investigative report or employment file; and

139 (~~[5]~~e) additional information offered by the educator if the panel deems it
140 probative of the issues at the ~~[E]~~expedited ~~[H]~~hearing.

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

143 (~~[1]~~a) close the case;

144 (~~[2]~~b) close the case upon completion of court requirements;

145 (~~[3]~~c) recommend issuance of a disciplinary letter to the Board;

146 (~~[4]~~d) open a full investigation; or

147 (~~[5]~~e) recommend action by the Board, subject to an educator's due process
148 rights under these rules.

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

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

154 **R277-201-5. Complaints.**

155 ~~[A.](1)~~ ~~[Filing a complaint.]~~ If UPPAC determines that an allegation is
156 sufficiently supported by evidence discovered in the investigation, UPPAC, through

157 the Executive Secretary, may direct the prosecutor to serve a complaint upon the
158 educator being investigated.

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

160 ([1]a) a statement of legal authority and jurisdiction under which the action is
161 being taken;

162 ([2]b) a statement of the facts and allegations upon which the complaint is
163 based;

164 ([3]c) other information ~~[which]~~that the investigator believes ~~[to be]~~is
165 necessary to enable the respondent to understand and address the allegations;

166 ([4]d) a statement of the potential consequences ~~[should]~~if an allegation ~~[be]~~is
167 found to be true or substantially true;

168 ([5]e) a statement that the respondent shall answer the complaint and request
169 a hearing, if desired, within 30 days of the date the complaint ~~[was]~~is mailed to the
170 respondent;

171 ([6]f) a statement that the respondent is required to file a written answer
172 described in Subsection [R277-201-5B(5)](2)(e) with the Executive Secretary;

173 ([7]g) a statement advising the respondent that if the respondent fails to
174 respond within 30 days, a default judgment for revocation or a suspension of the
175 educator's license may occur for a term of five years or more;

176 ([8]h) a statement that, if a hearing is requested, the hearing ~~[shall]~~will be
177 scheduled no less than 25 days, nor more than 180 days, after receipt of the
178 respondent's answer, unless a different date is agreed to by both parties in writing;
179 and

180 ([9]i) a statement that the hearing ~~[will be]~~is governed by these rules, with an
181 internet address where the rules may be accessed.

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

185 ~~[D.](14)(a) [Answer to the complaint:]~~A respondent may file an answer to a
186 complaint by filing a written response signed by the respondent[, or the respondent's
187 representative with the Executive Secretary within 30 days after the complaint
188 ~~[was]~~is mailed.

189 ([2]b) The answer may include a request for a hearing, and shall include:
190 ([a]i) the file number of the complaint;
191 ([b]ii) the names of the parties;
192 ([c]iii) a statement of the relief that the respondent seeks; and
193 ([d]iv) if not requesting a hearing, a statement of the reasons that the relief
194 requested should be granted.

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

198 ([2]b) If the parties can reach an agreement prior to the hearing consistent
199 with the terms of UPPAC's initial recommendation, the prosecutor may negotiate a
200 stipulated agreement with the respondent.

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

203 [F]([1]6)(a) [~~Default:~~] If a respondent does not respond to the complaint within
204 30 days, the Executive Secretary may initiate default proceedings in accordance with
205 the procedures set forth in Section R277-201-7.

206 ([2]b) Except as provided in Subsection R277-201-7[G](3), if the Executive
207 Secretary enters an order of default, the Executive Secretary shall make a
208 recommendation to the Board for a revocation or a suspension of the educator's
209 license for five years before the educator may request a reinstatement hearing.

210 ([3]c) If a default results in a suspension, a default may include conditions
211 that an educator shall satisfy before the educator may qualify for a reinstatement
212 hearing.

213 ([4]d) An order of default shall result in a recommendation to the Board for a
214 revocation if the alleged misconduct is conduct identified in Subsection
215 53A-6-501(5)(b).

216 **R277-201-6. Stipulated Agreements.**

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

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

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

225 ([1]a) a summary of the facts, the allegations, and the evidence relied upon
226 by UPPAC in its recommendation;

227 ([2]b) a statement that the respondent admits the facts recited in the
228 stipulated agreement as true for purposes of the Board administrative action;

229 ([3]c) a statement that the respondent:

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

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

234 ([4]d) a statement that the respondent agrees to the terms of the stipulated
235 agreement and other provisions applicable to the case, such as remediation,
236 counseling, restitution, rehabilitation, and other conditions, if any, under which the
237 respondent may request a reinstatement hearing or a removal of the letter of
238 reprimand or termination of probation;

239 ([5]e) if for suspension or revocation of a license, a statement that the
240 respondent:

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

243 ([b]ii) may not seek to obtain or use an educator license in [~~Utah~~]the state; or
244

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

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

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

251 ([6]f) a statement that the action and the stipulated agreement shall be

252 reported to other states through the NASDTEC Educator Information Clearinghouse
253 and any attempt to present to any other state a valid Utah license shall result in
254 further licensing action in Utah;

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

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

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

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

264 ~~E~~(~~1~~5)(a) A stipulated agreement shall be forwarded to the Board for
265 approval prior to execution by the respondent.

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

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

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

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

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

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

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

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

277 (ii) the terms of a stipulated agreement present an unreasonable resolution
278 of the case; or

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

280 ~~(2)~~(e)(i) If the Board ~~[fails to approve the stipulated agreement,]~~finds that a
281 stipulated agreement is based on insufficient evidence, the Board may reject a
282 stipulated agreement and direct UPPAC to hold a hearing.

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

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

287 ~~([3]f) [Alternatively, i]]~~ If the Board ~~[rejects the stipulated agreement]~~ finds that
288 the terms of a stipulated agreement present an unreasonable resolution of a case,
289 it may, by motion, provide alternative terms to the Executive Secretary, ~~[which]~~that
290 would be satisfactory to the Board.

291 ~~([4]g)~~ If accepted by the respondent, the stipulated agreement, as modified,
292 ~~[would become]~~is a final Board administrative action without further Board
293 consideration.

294 ~~([5]h)~~ If the terms approved by the Board are rejected by the respondent, the
295 proceedings shall continue from the point under these procedures at which the
296 agreement was negotiated, as if the stipulated agreement had not been submitted.

297 ~~([6]i)~~ If the Board approves a stipulated agreement, the approval is a final
298 Board administrative action, effective upon signature by all parties, and the
299 Executive Secretary shall:

300 ~~([a]i)~~ notify the parties of the decision;

301 (ii) update CACTUS to reflect the action;

302 (iii) report the action to the NASDTEC Educator Information Clearinghouse

303 if the agreement results in:

304 (A) a revocation; or

305 (b) a suspension; and

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

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

311 **R277-201-7. Default Procedures.**

312 ~~[A:]~~(1) If a respondent does not respond to a complaint or execute a
313 negotiated stipulated agreement within 30 days from the date the complaint or
314 stipulated agreement is served, the Executive Secretary may issue an order of

315 default against the respondent consistent with the following:

316 (~~[1]~~a) the prosecutor shall prepare and serve on the respondent an order of
317 default including:

318 (~~[a]~~i) a statement of the grounds for default; and

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

321 (~~[2]~~b) ~~ten~~[10] days following service of the order of default, the prosecutor
322 shall attempt to contact respondent by telephone or electronically;

323 (~~[3]~~c) UPPAC shall maintain documentation of attempts toward written,
324 telephonic, or electronic contact;

325 (~~[4]~~d) the respondent has 20 days following service of the order of default to
326 respond to UPPAC; and

327 (~~[5]~~e) if UPPAC receives a response from respondent to a default order
328 before the end of the 20 day default period, UPPAC shall allow respondent a final
329 ~~[40]~~ten day period to respond to a complaint or stipulated agreement.

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

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

337 **R277-201-8. Disciplinary Letters and Dismissal.**

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

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

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

343 and

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

345 (3) There is a presumption that the Board shall approve a UPPAC disciplinary

346 letter or dismissal recommendation if the Board finds that:
347 (a) the UPPAC recommendation is based on adequate evidence; and
348 (b) the UPPAC recommendation constitutes a reasonable resolution of the
349 case.
350 (4) If the Board finds that the UPPAC recommendation is based on
351 insufficient evidence or presents an unreasonable resolution of the case or
352 exceptional circumstances exist that warrant an alternative resolution, then the
353 Board may:
354 (a) remand the case to UPPAC for a hearing;
355 (b) remand the case to UPPAC with recommendations for negotiation of a
356 stipulated agreement;
357 (c) direct the Executive Secretary to issue a different level of disciplinary
358 letter; or
359 (d) dismiss the matter.
360 (5) If the Board approves a disciplinary letter, the Executive Secretary shall:
361 (a) prepare the disciplinary letter and mail it to the educator;
362 (b) place a copy of the disciplinary letter in the UPPAC case file; and
363 (c) update CACTUS to reflect that the investigation is closed.

364 **KEY: teacher licensing, conduct, hearings**

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

366 **Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-**
367 **1-401(3)**

1 **R277. Education, Administration.**

2 **R277-202. UPPAC Hearing Procedures and Reports.**

3 **R277-202-1. Authority and Purpose.**

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

5 (a) Utah Constitution Article X, Section 3₁ which vests general control and
6 supervision over public education in the Board~~[,]~~;

7 (b) ~~[by]~~Section 53A-6-306₁ which directs the Board to adopt rules regarding
8 UPPAC duties and procedures~~[,]~~; and

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

11 ~~[B-]~~(2) The purpose of this rule is to establish procedures regarding UPPAC
12 hearings and hearing reports.

13 ~~[C-]~~(3) The standards and procedures of ~~[the Utah-]~~Title 63G, Chapter 4,
14 Administrative Procedures Act do not apply to this rule under the exemption of
15 Subsection 63G-4-102(2)(d).

16 **R277-202-2. Scheduling a Hearing.**

17 ~~[A](1)(a) [Scheduling the hearing:]~~Following receipt of an answer by
18 respondent requesting a hearing:

19 (~~[a]~~i) UPPAC shall select panel members;

20 (~~[b]~~ii) the Executive Secretary shall appoint a hearing officer from among a list
21 of hearing officers identified by the state procurement process and approved by
22 UPPAC; and

23 (~~[c]~~iii) UPPAC shall schedule the date, time, and place for the hearing.

24 (~~[2]~~b) The Executive Secretary shall schedule a hearing for a date that is not
25 less than 25 days nor more than 180 days from the date the Executive Secretary
26 receives the answer~~[is received by the Executive Secretary]~~.

27 (~~[3]~~c) The required scheduling periods may be waived by mutual written
28 consent of the parties or by the Executive Secretary for good cause shown.

29 ~~[B-]~~(2)~~[Change of hearing date:~~

30 ~~—~~(1)(a) Any party may request a change of hearing date by submitting a
31 request in writing ~~[which]~~that shall:

32 ([a]i) include a statement of the reasons for the request; and
33 ([b]ii) be submitted to the Executive Secretary at least five days prior to the
34 scheduled date of the hearing.

35 ([2]b) The Executive Secretary shall determine whether the reason stated in
36 the request is sufficient to warrant a change.

37 ([3]c) If the Executive Secretary finds that the reason for the request for a
38 change of hearing date is sufficient, the Executive Secretary shall promptly notify all
39 parties of the new time, date, and place for the hearing.

40 ([4]d) If the Executive Secretary does not find the reason for the request for
41 a change of hearing date to be sufficient, the Executive Secretary shall immediately
42 notify the parties that the request has been denied.

43 ([5]e) The Executive Secretary and the parties may waive the time period
44 required for requesting a change of hearing date for good cause shown.

45 [C.](3) An educator ~~[shall be]~~is entitled to a hearing on any matter in which an
46 action is recommended, as defined in Subsection R277-200-2[A](1).

47 [D.](4) An educator is not entitled to a hearing on a matter in which a
48 disciplinary letter is recommended, as defined in Subsection R277-200-2[N](14).

49 **R277-202-3. Appointment and Duties of the Hearing Officer and Hearing Panel.**

50 [A](1)(a) ~~[Hearing officer:]~~The Executive Secretary shall appoint a hearing
51 officer to chair the hearing panel and conduct the hearing.

52 ([2]b) The Executive Secretary shall select a hearing officer on a random
53 basis from a list of available contracted hearing officers, subject to availability and
54 conflict of interest.

55 ([3]c) The Executive Secretary shall provide such information about the case
56 as necessary to determine whether the hearing officer has a conflict of interest and
57 shall disqualify any hearing officer that cannot serve under the Utah Rules of
58 Professional Conduct.

59 ([4]d) ~~[Duties of a hearing officer:]~~A hearing officer:

60 ([a]i) may require the parties to submit a brief[s] and a list[s] of witnesses prior
61 to the hearing;

62 ([b]ii) presides at the hearing and regulates the course of the proceeding[s];

63 ([e]iii) administers an oath to a witness[es] as follows: “Do you swear or affirm
64 that the testimony you will give is the truth?”;

65 ([d]iv) may take testimony, rule on a question[s] of evidence, and ask a
66 question[s] of a witness[es] to clarify a specific issue[s]; and

67 ([e]v) prepares and submits a hearing report to the Executive Secretary at the
68 conclusion of the proceedings in consultation with panel members and the timelines
69 of this rule.

70 [B]([1]2)(a) [UPPAC panel members:] UPPAC shall select three or more
71 individuals to serve as members of the hearing panel.

72 ([2]b) As directed by UPPAC, any licensed educator may [~~be used~~]serve as
73 a panel member, if needed.

74 ([3]c) The majority of panel members shall be current UPPAC members.

75 ([4]d) UPPAC shall select panel members on a rotating basis to the extent
76 practicable.

77 ([5]e) UPPAC shall accommodate each prospective panel member based on
78 the availability of the panel member.

79 ([6]f) If the respondent is a teacher, at least one panel member shall be a
80 teacher.

81 ([7]g) If the respondent is a non-teacher licensed educator, at least one panel
82 member shall be a non-teacher licensed educator.

83 ([8]h) The requirements of [this]Subsection [R277-202-3B](2) may be waived
84 only upon the stipulation of both UPPAC and the respondent.

85 [E]([1]3)(a) A UPPAC panel member shall:

86 ([a]i) assist a hearing officer by providing information concerning professional
87 standards and practices of educators in the respondent's particular field of practice
88 and in the situations alleged;

89 ([b]ii) ask a question[s] of a[~~tt~~] witness[es] to clarify a specific issue[s];

90 ([c]iii) review all evidence and briefs, if any, presented at the hearing;

91 ([d]iv) make a recommendation to UPPAC as to the suggested disposition of
92 a complaint; and

93 ([e]v) assist the hearing officer in preparing the hearing report.

94 ([2]b) A panel member [~~should~~]may only consider [~~only such~~]the evidence [~~as~~

95 ~~has been~~ approved for admission by the hearing officer.

96 ([3]c) The Executive Secretary may make an emergency substitution of a
97 panel member for cause with the consent of the parties.

98 ([4]d) The agreement to substitute a panel member shall be in writing.

99 ([5]e) Parties may agree to a two-member UPPAC panel in an emergency
100 situation.

101 ([6]f) If the parties do not agree to a substitution or to having a two-member
102 panel, the ~~[hearing]~~Executive Secretary shall ~~[be]~~reschedule~~[d]~~ the hearing.

103 ~~[D.](4)[Disqualification of a hearing officer shall be governed by the following~~
104 ~~requirements:~~

105 ~~——(1)(a)~~ A party may request that the Executive Secretary disqualify a hearing
106 officer~~[be disqualified]~~ by submitting a written request for disqualification to the
107 Executive Secretary.

108 ([2]b) A party shall submit a request to disqualify a hearing officer~~[shall be~~
109 ~~submitted]~~ to the Executive Secretary at least 15 days before a scheduled hearing.

110 ([3]c) The Executive Secretary shall review a request described in
111 ~~[this]~~Subsection ~~[R277-202-3D](4)~~ and supporting evidence to determine whether
112 the reasons for the request are substantial and sufficient.

113 ([4]d) If the Executive Secretary determines that the hearing officer should be
114 disqualified, the Executive Secretary shall appoint a new hearing officer and, if
115 necessary, reschedule the hearing.

116 ([5]e) A hearing officer may recuse himself or herself from a hearing if, in the
117 hearing officer's opinion, the hearing officer's participation would violate any of the
118 Utah Rules of Professional Conduct consistent with the Supreme Court Rules of
119 Professional Practice.

120 ([6]f) If the Executive Secretary denies a request to disqualify a hearing
121 officer, the Executive Secretary shall notify the party within ten days prior to the date
122 of the hearing.

123 ([7]g) The requesting party may submit a written appeal of the Executive
124 Secretary's denial to the Superintendent no later than five days prior to the hearing
125 date.

126 ([8]h) If the Superintendent finds that the appeal is justified, the

127 Superintendent shall direct the Executive Secretary to appoint a new hearing officer
128 and, if necessary, reschedule the hearing.

129 ~~(9)~~i) The decision of the Superintendent described in Subsection ~~[R277-202-~~
130 ~~3D(8)](4)(h)~~ is final.

131 ~~(10)~~j) If a party fails to file an appeal within the time requirements of
132 Subsection ~~[R277-202-3D(7)](4)(g)~~, the appeal shall be deemed denied.

133 ~~(11)~~k) If the Executive Secretary fails to meet the time requirements
134 described in Subsection ~~[R277-202-3D](4)~~, the request or appeal ~~[shall be]~~is
135 approved.

136 ~~[E.](5)[UPPAC panel members shall be governed by the following~~
137 ~~requirements:~~

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

143 ~~(2)~~b) A party may request that a UPPAC panel member be disqualified by
144 submitting a written request to the following:

145 ~~(a)~~i) the hearing officer; or

146 ~~(b)~~ii) to the Executive Secretary if there is no hearing officer.

147 ~~(3)~~c) A party shall submit a request described in Subsection ~~[R277-202-~~
148 ~~3E(2)](5)(b)~~ no less than 15 days before a scheduled hearing.

149 ~~(4)~~d) The hearing officer, or the Executive Secretary, if there is no hearing
150 officer, shall:

151 ~~(a)~~i) review a request described in Subsection ~~[R277-202-3E(2)](5)(b)~~ and
152 supporting evidence to determine whether the reasons for the request are
153 substantial and compelling enough to disqualify the panel member; and

154 ~~(b)~~ii) if the reasons for the request described in Subsection ~~[R277-202-~~
155 ~~3E(2)](5)(b)~~ are substantial and compelling, disqualify the panel member.

156 ~~(5)~~e) If the panel member's disqualification leaves the hearing panel with
157 fewer than three UPPAC panel members:

158 ~~(a)~~i) UPPAC shall appoint a replacement; and

159 ([b]ii) the Executive Secretary shall, if necessary, reschedule the hearing.

160 ([6]f) If a request described in Subsection [R277-202-3E(2)](5)(b) is denied,
161 the hearing officer or the Executive Secretary if there is no hearing officer, shall
162 notify the party requesting the panel member's disqualification no less than ten days
163 prior to the date of the hearing.

164 ([7]g) The requesting party may file a written appeal of a denial described in
165 Subsection [R277-202-3E(6)](5)(f) with the Superintendent no later than five days
166 prior to the hearing date.

167 ([8]h) If the Superintendent finds that an appeal described in Subsection
168 [R277-202-3E(7)](5)(g) is justified, the Superintendent shall direct the hearing officer
169 or the Executive Secretary if there is no hearing officer, to replace the panel
170 member.

171 ([9]i) If a panel member's disqualification leaves the hearing panel with fewer
172 than three UPPAC panel members, UPPAC shall agree upon a replacement and the
173 Executive Secretary shall, if necessary, reschedule the hearing.

174 ([10]j) The decision of the Superintendent described in Subsection [R277-
175 202-3E(8)](5)(h) is final.

176 ([11]k) If a party fails to file an appeal within the time requirements of
177 Subsection [R277-202-3E(7)](5)(g), the appeal shall be deemed denied.

178 ([12]l) If the hearing officer, or the Executive Secretary if there is no hearing
179 officer, fails to meet the time requirements described in this Subsection [R277-202-
180 3E](5), the request or appeal ~~shall be~~ is approved.

181 [F.](6) The Executive Secretary may, at the time the Executive Secretary
182 selects a hearing officer or panel member, select an alternative hearing officer or
183 panel member following the process for selecting those individuals.

184 [G.](7) The Executive Secretary may substitute a panel member with an
185 alternative panel member if the Executive Secretary notifies the parties of the
186 substitution.

187 **R277-202-4. Preliminary Instructions to Parties to a Hearing.**

188 [A.](1) No later than 25 days before the date of a hearing, the Executive
189 Secretary shall provide the parties with the following information:

190 ([4]a) date, time, and location of the hearing;
191 ([2]b) names and LEA affiliations of each panel member, and the name of the
192 hearing officer; and
193 ([3]c) instructions for accessing these rules.
194 [B-](2) No later than 20 days before the date of the hearing, the respondent
195 and the complainant shall provide the following to the other party and to the hearing
196 officer:
197 ([4]a) a brief, if requested by the hearing officer containing:
198 ([a]i) any procedural and evidentiary motions along with the party's position
199 regarding the allegations; and
200 ([b]ii) relevant laws, rules, and precedent;
201 ([2]b) the name of the person who will represent the party at the hearing;
202 ([3]c) a list of witnesses expected to be called, including a summary of the
203 testimony ~~[which]~~that each witness is expected to present;
204 ([4]d) a summary of documentary evidence that the party intends to submit;
205 and
206 ([5]e) following receipt of the other party's witness list, a list of anticipated
207 rebuttal witnesses and evidence no later than ~~[40]~~ten days prior to the hearing.
208 [C-](1)(3)(a) Except as provided in Subsection [R277-202-4C(1)](3)(b), a party
209 may not present a witness or evidence at the hearing if the witness or evidence has
210 not been disclosed to the other party as required in Subsection [R277-202-4B](2).
211 ([2]b) A party may present a witness or evidence at the hearing even if the
212 witness or hearing has not been disclosed to the other party if:
213 ([a]i) the parties stipulate to the presentation of the witness or evidence at the
214 hearing; or
215 ([b]ii) the hearing officer makes a determination of good cause to allow ~~[it~~
216 in]the witness or evidence.
217 [D-](4) If a party fails to comply in good faith with a directive of the hearing
218 officer, including time requirements, the hearing officer may prohibit introduction of
219 the testimony or evidence or take other steps reasonably appropriate under the
220 circumstances.
221 [E-](5) A party shall provide materials to the hearing officer, panel members,

222 and UPPAC as directed by the hearing officer.

223 **R277-202-5. Hearing Parties' Representation.**

224 ~~[A.](1) [Complainant: The]~~A USOE prosecutor shall represent the complainant
225 ~~[shall be represented by a USOE prosecutor].~~

226 ~~[B.](2) [Respondent:]~~A respondent may represent himself or herself or be
227 represented, at ~~[his]~~the respondent's own cost, by another person.

228 ~~[C.](3)~~ The informant has no right to:

229 ~~([1]a)~~ individual representation at the hearing; or

230 ~~([2]b)~~ to be present or heard at the hearing unless called as a witness.

231 ~~[D.](4)~~ A respondent shall notify the Executive Secretary in a timely manner
232 and in writing if the respondent chooses to be represented by anyone other than the
233 respondent.

234 **R277-202-6. Discovery Prior to a Hearing.**

235 ~~[A.](1)~~ Discovery is permitted to the extent necessary to obtain relevant
236 information necessary to support claims or defenses, as determined by the hearing
237 officer.

238 ~~[B.](2)~~ Unduly burdensome legalistic discovery may not be used to delay a
239 hearing.

240 ~~[C.](3)~~ A hearing officer may limit discovery:

241 ~~([1]a)~~ at the discretion of the hearing officer; or

242 ~~([2]b)~~ upon a motion by either party.

243 ~~[D.](4)~~ A hearing officer rules on all discovery requests and motions.

244 ~~[E.](5)~~ The Executive Secretary shall issue a subpoena or other order to
245 secure the attendance of a witness pursuant to Subsection 53A-6-306(3)(c)(i) if:

246 ~~([1]a)~~ requested by either party; and

247 ~~([2]b)~~ notice of intent to call the witness has been timely provided as required
248 by Section R277-202-4.

249 ~~[F.](6)~~ The Executive Secretary shall issue a subpoena to produce evidence
250 if timely requested by either party.

251 ~~[G.](17)(a)~~ A party may not present an expert witness report or expert witness

252 testimony at a hearing unless the requirements of Section R277-202-10 have been
253 met.

254 ~~(2)~~b A respondent may not subpoena the UPPAC prosecutor or investigator
255 as an expert witness.

256 **R277-202-7. Burden and Standard of Proof for UPPAC Proceedings.**

257 ~~(A.)~~(1) In matters other than those involving applicants for licensing, and
258 excepting the presumptions under Subsection R277-202-11~~(J)~~(10), the Board shall
259 have the burden of proving that an action against the license is appropriate.

260 ~~(B.)~~(2) An applicant for licensing has the burden of proving that licensing is
261 appropriate.

262 ~~(C.)~~(3) ~~[Standard of proof:]~~The standard of proof in all UPPAC hearings is a
263 preponderance of the evidence.

264 ~~(D.)~~(4) ~~[Evidence:]~~The Utah Rules of Evidence are not applicable to UPPAC
265 proceedings.

266 ~~(E.)~~(5) The criteria to decide an evidentiary question~~[s shall be]~~ are:

267 ~~(1)~~a reasonable reliability of the offered evidence;

268 ~~(2)~~b fairness to both parties; and

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

270 ~~(F.)~~(6) The hearing officer has the sole responsibility to determine the
271 application of the hearing rules and the admissibility of evidence.

272 **R277-202-8. Deportment.**

273 ~~(A.)~~(1) Parties, their representatives, witnesses, and other persons present
274 during a hearing shall conduct themselves in an appropriate manner during a
275 hearing, giving due respect to members of the hearing panel and complying with the
276 instructions of the hearing officer.

277 ~~(B.)~~(2) A hearing officer may exclude a person from the hearing room who
278 fails to conduct ~~themselves]~~himself or herself in an appropriate manner and may, in
279 response to extreme instances of noncompliance, disallow the person's testimony.

280 ~~(C.)~~(3) Parties, attorneys for parties, or other participants in the professional
281 practices investigation and hearing process may not harass, intimidate, or pressure

282 witnesses or other hearing participants, nor may they direct others to harass,
283 intimidate, or pressure witnesses or participants.

284 **R277-202-9. Hearing Record.**

285 [A.](1) A hearing shall be recorded at UPPAC's expense, and the recording
286 shall become part of the UPPAC case file, unless otherwise agreed upon by all
287 parties.

288 [B.](2) An individual party may, at the party's own expense, make a recording
289 or transcript of the proceedings if the party provides notice to the Executive
290 Secretary.

291 [C.](3) If an exhibit is admitted as evidence, the record shall reflect the
292 contents of the exhibit.

293 [D.](4) All evidence and statements presented at a hearing shall become part
294 of the UPPAC [E.]case [F.]file and may not be removed except by direction of the
295 hearing officer or by order of the Board.

296 [E.](5) A party may review a UPPAC case file upon request of the party if the
297 review of the UPPAC case file is performed:

- 298 (1)a) under supervision of the Executive Secretary; and
299 (2)b) at the USOE.

300 **R277-202-10. Expert Witnesses in UPPAC Proceedings.**

301 [A.](1) A hearing officer may allow testimony by an expert witness[es].

302 [B.](2) A party may call an expert witness at the party's own expense.

303 [C.](3) A party shall provide a hearing officer and the opposing party with the
304 following information at least 15 days prior to the hearing date:

- 305 (1)a) notice of intent of a party to call an expert witness;
306 (2)b) the identity and qualifications of [each]an expert witness;
307 (3)c) the purpose for which the expert witness is to be called; and
308 (4)d) any prepared expert witness report.

309 [D.](4) Defects in the qualifications of an expert witness[es], once a minimum
310 threshold of expertise is established, go to the weight to be given the testimony and
311 not to its admissibility.

312 [E.](5) An expert witness who is a member of the complainant's staff or staff
313 of an LEA may testify and have the[ir] testimony considered as part of the record in
314 the same manner as the testimony of any other expert.

315 **R277-202-11. Evidence and Participation in UPPAC Proceedings.**

316 [A.](1) A hearing officer may not exclude evidence solely because the
317 evidence is hearsay.

318 [B.](2) Each party has a right to call witnesses, present evidence, argue,
319 respond, cross-examine witnesses who testify in person at the hearing, and submit
320 rebuttal evidence.

321 [C.](3) Testimony presented at the hearing shall be given under oath if the
322 testimony is offered as evidence to be considered in reaching a decision on the
323 merits.

324 [D.](4) If a case involves allegations of child abuse or of a sexual offense
325 against a minor, either party, a member of the hearing panel, or the hearing officer,
326 may request that a minor be allowed to testify outside of the respondent's presence.

327 [E.](5) If the hearing officer determines that a minor would suffer undue
328 emotional or mental harm, or that the minor's testimony in the presence of the
329 respondent would be unreliable, the minor's testimony may be admitted [~~in one of~~
330 ~~the following ways:~~]as described in this section.

331 [F.](6) An oral statement of a victim or witness younger than 18 years of age
332 [~~which~~]that is recorded prior to the filing of a complaint [~~shall be~~]is admissible as
333 evidence in a hearing regarding the offense if:

334 ([1]a) no attorney for either party is in the minor's presence when the
335 statement is recorded;

336 ([2]b) the recording is visual and aural and is recorded;

337 ([3]c) the recording equipment is capable of making an accurate recording;

338 ([4]d) the operator of the equipment is competent;

339 ([5]e) the recording is accurate and has not been altered; and

340 ([6]f) each voice in the recording is identified.

341 [G.](7) The testimony of a witness or victim younger than 18 years of age
342 may be taken in a room other than the hearing room, and may be transmitted by

343 closed circuit equipment to another room where it can be viewed by the respondent
344 if ~~the following conditions shall be observed~~:

345 ~~(1)~~a) only the hearing panel members, attorneys for each party, persons
346 necessary to operate equipment, and a person approved by the hearing officer
347 whose presence contributes to the welfare and emotional well-being of the minor
348 may be with the minor during the testimony;

349 ~~(2)~~b) the respondent ~~may~~is not ~~be~~ present during the minor's testimony;

350 ~~(3)~~c) the hearing officer ~~shall~~ensures that the minor cannot hear or see the
351 respondent;

352 ~~(4)~~d) the respondent ~~shall be~~is permitted to observe and hear, but ~~may~~ not
353 communicate with the minor; and

354 ~~(5)~~e) only hearing panel members, the hearing officer, and the attorneys
355 ~~may~~ question the minor.

356 ~~H.~~(8) If the hearing officer determines that the testimony of a minor may be
357 taken consistent with Subsections ~~[R277-202-11D]~~(4) through ~~[G]~~(7), the minor may
358 not be required to testify in any proceeding where the recorded testimony is used.

359 ~~I.~~(9) On the hearing officer's own motion or upon objection by a party, the
360 hearing officer:

361 ~~(1)~~a) may exclude evidence that the hearing officer determines to be
362 irrelevant, immaterial, or unduly repetitious;

363 ~~(2)~~b) shall exclude evidence that is privileged under law applicable to
364 administrative proceedings in ~~[Utah]~~the state unless waived;

365 ~~(3)~~c) may receive documentary evidence in the form of a copy or excerpt if
366 the copy or excerpt contains all pertinent portions of the original document;

367 ~~(4)~~d) may take official notice of any facts that could be judicially noticed under
368 judicial or administrative laws of ~~[Utah]~~the state, or from the record of other
369 proceedings before the agency.

370 ~~J.~~(10) ~~Presumptions:~~

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

373 ~~(a)~~i) been found, pursuant to a criminal, civil, or administrative action to have
374 committed a sexual offense against a minor;

375 ([b]ii) failed to defend himself or herself against [~~such a~~]the charge when
376 given a reasonable opportunity to do so; or

377 ([e]iii) voluntarily surrendered a license or allowed a license to lapse in the
378 face of a charge of having committed a sexual offense against a minor.

379 ([2]b) A rebuttable evidentiary presumption exists that a person is unfit to
380 serve as an educator if the person has been found pursuant to a criminal, civil, or
381 administrative action to have exhibited behavior evidencing unfitness for duty,
382 including immoral, unprofessional, or incompetent conduct, or other violation of
383 standards of ethical conduct, performance, or professional competence.

384 ([3]c) Evidence of behavior described in Subsection [R277-202-11J(2)](10)(b)
385 may include:

386 ([a]i) conviction of a felony;

387 ([b]ii) a felony charge and subsequent conviction for a lesser related charge
388 pursuant to a plea bargain or plea in abeyance;

389 ([e]iii) an investigation of an educator's license, certificate, or authorization in
390 another state; or

391 ([d]iv) the expiration, surrender, suspension, revocation, or invalidation of an
392 educator's license for any reason.

393 **R277-202-12. Hearing Report.**

394 [~~A.](1) Within 20 days after the hearing, or within 20 days after the deadline
395 imposed for the filing of any post-hearing materials as permitted by the hearing
396 officer, the hearing officer shall sign and issue a hearing report consistent with the
397 recommendations of the panel that includes:~~

398 ([1]a) detailed findings of fact and conclusions of law based upon the
399 evidence of record or on facts officially noted[-];

400 ([2]b) a statement of relevant precedent, if available;

401 ([3]c) a statement of applicable law and rule;

402 ([4]d) a recommended disposition of UPPAC panel members [~~which~~]that shall
403 be one or an appropriate combination of the following:

404 ([a]i) dismissal of the complaint;

405 ([b]ii) letter of admonishment;

406 ([e]iii) letter of warning;
407 ([d]iv) letter of reprimand;
408 ([e]v) probation, to include the following terms and conditions:
409 ([i]A) it is the respondent's responsibility to petition UPPAC for removal of
410 probation and letter of reprimand from the respondent's CACTUS file;
411 ([ii]B) a probationary time period or specifically designated indefinite time
412 period;
413 ([iii]C) conditions that can be monitored;
414 ([iv]D) if recommended by the panel, a person or entity to monitor a
415 respondent's probation;
416 ([v]E) a statement providing for costs of probation, if appropriate; and
417 ([vi]F) whether or not the respondent may work in any capacity in public
418 education during the probationary period;
419 ([f]vi) disciplinary action held in abeyance;
420 ([g]vii) suspension, to include the following terms and conditions:
421 (A) a recommended minimum time period after which an educator may
422 request a reinstatement hearing under Rule R277-203; and
423 (B) any recommended conditions precedent to requesting a reinstatement
424 hearing under Section R277-203-2; or
425 ([h]viii) revocation; and
426 ([5]e) notice that UPPAC's recommendation is subject to approval by the
427 Board and judicial review as may be allowed by law.
428 [B-](2) Findings of fact may not be based solely upon hearsay, and
429 conclusions shall be based upon competent evidence.
430 [C-](3) Any of the consequences described in Subsection [R277-202-
431 12B](1)(d) may be imposed in the form of a disciplinary action held in abeyance.
432 [D-](4)(a) If the respondent's penalty is held in abeyance, the respondent's
433 penalty is stayed subject to the satisfactory completion of probationary conditions.
434 [E-](b) The decision to impose a consequence in the form of a disciplinary
435 action held in abeyance shall provide for appropriate or presumed discipline
436 [should]if the respondent does not fully satisfy the probationary conditions[not be
437 fully satisfied;].

438 ~~[F.](5)[Processing the hearing report:~~
439 ~~——(1)](a)~~ A hearing officer shall circulate a draft report to hearing panel members
440 prior to the 20 day completion deadline of the hearing report.
441 ~~(2)]b~~ Hearing panel members shall notify the hearing officer of any changes
442 to the report:
443 ~~(a)]i~~ as soon as possible after receiving the report; and
444 ~~(b)]ii~~ prior to the 20 day completion deadline of the hearing report.
445 ~~(3)]c~~ The hearing officer shall file the completed hearing report with the
446 Executive Secretary, who shall review the report with UPPAC.
447 ~~(4)]d~~ The Executive Secretary may participate in UPPAC's deliberation as a
448 resource to UPPAC in explaining the hearing report and answering any procedural
449 questions raised by UPPAC members.
450 ~~(5)]e~~ The hearing officer may confer with the Executive Secretary or the
451 panel members or both while preparing the hearing report.
452 ~~(6)]f~~ The hearing officer may request the Executive Secretary to confer with
453 the hearing officer and panel following the hearing.
454 ~~(7)]g~~ The Executive Secretary may return a hearing report to a hearing
455 officer if the report is incomplete, unclear, or unreadable, or missing essential
456 components or information.
457 ~~(8)]h~~ UPPAC shall vote to uphold the hearing officer's and panel's report if
458 UPPAC finds that:
459 ~~(a)]i~~ there are no significant procedural errors;
460 ~~(b)]ii~~ the hearing officer's recommendations are based upon a reasonable
461 interpretation of the evidence presented at the hearing; and
462 ~~(c)]iii~~ that all issues explained in the hearing report are adequately addressed
463 in the conclusions of the report.
464 ~~(9)]i~~ ~~[The]~~After the UPPAC review, the Executive Secretary shall
465 ~~[forward]~~send a copy of the hearing report to:
466 ~~(i)~~ the Board for further action;~~[after the UPPAC review described in R277-~~
467 ~~202-12F(8).]~~
468 ~~(ii)~~ the respondent; and
469 ~~(10)]iii~~ ~~[The Executive Secretary shall place a copy of the hearing report in]~~

470 the UPPAC case file.

471 ~~[(11) If UPPAC or the Board determines that:~~

472 ~~—— (a) the hearing process had procedural errors;~~

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

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

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

479 ~~—— (i) direct the Executive Secretary to schedule the matter for rehearing before~~
480 ~~a new hearing officer and a new UPPAC panel; or~~

481 ~~—— (ii) direct the Executive Secretary to amend the hearing report to reflect the~~
482 ~~decision of UPPAC or the Board.]~~

483 (6)(a) If UPPAC adopts a hearing report that recommends an action, as
484 defined in Subsection R277-200-2(l), either party may request review by the
485 Superintendent within 15 days from the date the Executive Secretary sends a copy
486 of the hearing report to the respondent.

487 (b) The request for review shall consist of:

488 (i) the name, position, and address of the appellant;

489 (ii) the issue being appealed; and

490 (iii) the signature of the appellant or the appellant's representative.

491 (c) An appeal to the Superintendent is limited to a question of fairness or a
492 violation of due process.

493 (d) If the Superintendent finds that a procedural error has occurred that
494 violates fairness or due process, the Superintendent shall:

495 (i) refer the report back to UPPAC for reconsideration as to whether the
496 findings, conclusions, or decisions are supported by a preponderance of the
497 evidence; or

498 (ii) direct the UPPAC Executive Secretary to take specific administrative
499 action.

500 (e) After UPPAC completes reconsideration, the Superintendent shall:

501 (i) notify all parties; and

502 (ii) refer the report to the Board, if necessary, for final disposition consistent
503 with this rule.

504 (7)(a) Prior to Board consideration of a hearing report, UPPAC shall:

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

506 and

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

508 (b) It is presumed that the Board will approve a UPPAC hearing report if:

509 (i) the UPPAC hearing process comports with due process and is free from
510 a procedural error;

511 (ii) the hearing report is based upon a reasonable interpretation of the
512 evidence;

513 (iii) the hearing report's recommendations constitute a reasonable resolution
514 to the UPPAC investigation; and

515 (iv) the hearing report provides adequate guidance to the educator concerning
516 any conditions prior to:

517 (A) reinstatement;

518 (B) termination of probation; or

519 (C) removal of a letter of reprimand from CACTUS.

520 (c) If the Board determines that any of the criteria in Subsection (1) are absent
521 from a hearing report, or that exceptional circumstances exist, the Board shall:

522 (i) remand the case to UPPAC to cure any issues with due process; or

523 (ii)(A) issue findings specifying the defects in the hearing report and adopting
524 the Board's agreed upon disposition of the matter; and

525 (B) direct the Executive Secretary to include the findings as an addendum to
526 the hearing report, which findings constitute final Board action.

527 (d) Following Board adoption of a hearing report or alternative findings, the
528 Executive Secretary shall:

529 (i) notify the educator;

530 (ii) notify the educator's employer;

531 (iii) update CACTUS to reflect the Board's action; and

532 (iv) report the action to the NASDTEC Educator Information Clearing house
533 if the action results in:

534 (A) a revocation; or

535 (B) a suspension.

536 ~~[G.](8)~~ The hearing report is a public document under ~~[GRAMA]~~Title 63G,
537 Chapter 2, Government Records Access and Management Act after final action is
538 taken in the case, but may be redacted if it is determined that the hearing report
539 contains particular information, the dissemination of which is otherwise restricted
540 under the law.

541 ~~[H.](9)~~ A respondent's failure to comply with the terms of a final disposition
542 may result in additional discipline against the educator license.

543 ~~[I.](10)~~ If a hearing officer fails to satisfy the hearing officer's responsibilities
544 under this rule, the Executive Secretary may:

545 ~~([1]a)~~ notify the Utah State Bar of the failure;

546 ~~([2]b)~~ reduce the hearing officer's compensation consistent with the failure;

547 ~~([3]c)~~ take timely action to avoid disadvantaging either party; or

548 ~~([4]d)~~ preclude the hearing officer from further employment by the Board for
549 UPPAC purposes.

550 ~~[J.](11)~~ The Executive Secretary may waive the deadlines within this section
551 ~~[R277-202-12-]~~if the Executive Secretary finds good cause.

552 ~~[K.](12)~~ All criteria of letters of warning and reprimand, probation, suspension,
553 and revocation~~[-shall also]~~ apply to the comparable sections of the final hearing
554 report[s].

555 **R277-202-13. Default.**

556 ~~[A](1)(a)~~ The Executive Secretary may prepare an order of default if:

557 ~~([a]i)~~ the respondent fails to attend or participate in a properly scheduled
558 hearing after receiving proper notice; or

559 ~~([b]ii)~~ the hearing officer recommends default as a sanction as a result of
560 misconduct by the respondent or ~~[his]~~the respondent's representative during the
561 course of the hearing process.

562 ~~([2]b)~~ The hearing officer may determine that the respondent has failed to
563 attend a properly scheduled hearing if the respondent has not appeared within 30
564 minutes of the appointed time for the hearing to begin, unless the respondent shows

565 good cause for failing to appear in a timely manner.

566 [B-](2) The recommendation of default may be executed by the Executive
567 Secretary following all applicable time periods, without further action by UPPAC.

568 [C-](3) An order of default may result in a recommendation to the Board for
569 revocation or for a suspension of no less than five years.

570 [D-](4) An order of default shall result in a recommendation to the Board for
571 a revocation if the alleged misconduct is conduct identified in Subsection
572 53A-6-501(5)(b).

573 **R277-202-14. Rights of Victims at Hearings.**

574 [A-](1) If the allegations that gave rise to the underlying allegations involve
575 abuse of a sexual or physical nature, UPPAC shall make reasonable efforts to:

576 ([1]a) advise the alleged victim that a hearing has been scheduled; and

577 ([2]b) notify the alleged victim of the date, time, and location of the hearing.

578 [B-](2) An alleged victim entitled to notification of a hearing [~~shall be~~]is
579 permitted, but is not required, to attend the hearing.

580 **KEY: hearings, reports, educators**

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

582 **Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-**
583 **1-401(3)**

1 **R277. Education, Administration.**

2 **R277-203. Request for Licensure Reinstatement and Reinstatement**
3 **Procedures.**

4 **R277-203-1. Authority and Purpose.**

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

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

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

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

12 ~~[B.](2)~~ The purpose of this rule is to establish procedures regarding educator
13 license reinstatement.

14 ~~[C.](3)~~ The standards and procedures of the Utah Administrative Procedures
15 Act do not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).

16 **R277-203-2. Application for Licensing Following Denial or Loss of License.**

17 ~~[A](1)(a)~~ An individual who has been denied a license or lost the individual's
18 license through suspension, or through surrender of a license or allowing a license
19 to lapse in the face of an allegation of misconduct, may request a review to consider
20 reinstatement of a license.

21 ~~[(2)b]~~ A request for review described in Subsection ~~[R277-203-2A](1)(a)~~ shall:

22 ~~[(a)i]~~ be in writing;

23 ~~[(b)ii]~~ be transmitted to the UPPAC Executive Secretary; and

24 ~~[(c)iii]~~ have the following information:

25 ~~[(i)A]~~ name and address of the individual requesting review;

26 ~~[(ii)B]~~ the action being requested;

27 ~~[(iii)C]~~ specific evidence and documentation of compliance with terms and
28 conditions of any remedial or disciplinary requirements or recommendations from
29 UPPAC or the Board;

30 ~~[(iv)D]~~ reason(s) that the individual seeks reinstatement; and

31 ~~[(v)E]~~ signature of the individual requesting review.

32 [B]([1]2)(a) The Executive Secretary shall review the request with UPPAC.

33 ([2]b) If UPPAC determines that the request is incomplete or invalid:

34 ([a]i) the Executive Secretary shall deny the request; and

35 ([b]ii) notify the individual requesting reinstatement of the denial.

36 ([3]c) If UPPAC determines that the request of an individual described in
37 Subsection [R277-203-2A](1) is complete, timely, and appropriate, UPPAC shall
38 schedule and hold a hearing as provided under Section R277-203-3.

39 [C]([1]3)(a) Burden of Persuasion: The burden of persuasion at a
40 reinstatement hearing shall fall on the individual seeking the reinstatement.

41 ([2]b) An individual requesting reinstatement of a suspended license shall:

42 ([a]i) show sufficient evidence of compliance with any conditions imposed in
43 the past disciplinary action;

44 ([b]ii) provide sufficient evidence to the reinstatement hearing panel that the
45 educator will not engage in recurrences of the actions that gave rise to the
46 suspension and that reinstatement is appropriate;

47 ([c]iii) undergo a criminal background check [~~consistent with Utah law and~~
48 R277-517]not more than six months prior to the requested hearing; and

49 ([d]iv) provide materials for review by the hearing panel that demonstrate the
50 individual's compliance with directives from UPPAC or the Board found in petitioner's
51 original stipulated agreement or hearing report.

52 ([3]c) An individual requesting licensing following a denial shall show sufficient
53 evidence of completion of a rehabilitation or remediation program, if applicable,
54 when requesting reinstatement.

55 [D:]([4) An individual whose license has been suspended or revoked in
56 another state shall seek reinstatement of the individual's license in the other state
57 before a request for a reinstatement hearing may be approved.

58 **R277-203-3. Reinstatement Hearing Procedures.**

59 [A:]([1) A hearing officer shall:

60 ([1]a) preside over a reinstatement hearing; and

61 ([2]b) rule on all procedural issues during the reinstatement hearing as they
62 arise.

63 ~~[B.](2)~~ A hearing panel, comprising individuals as set forth in Subsection
64 ~~[R277-202-3(B)](2)~~, shall:

65 ~~(1)a~~ hear the evidence; and

66 ~~(2)b~~ along with the prosecutor and hearing officer, question the individual
67 seeking reinstatement regarding the appropriateness of reinstatement.

68 ~~[C.](3)~~ An individual seeking reinstatement may:

69 (a) be represented by counsel; and

70 (b) may present evidence and witnesses.

71 ~~[D.](4)~~ A party may present evidence and witnesses consistent with Rule
72 ~~R277-202~~.

73 ~~[E.](5)~~ A hearing officer of a reinstatement hearing shall direct one or both
74 parties to explain the background of a case to panel members at the beginning of
75 the hearing to provide necessary information about the initial misconduct and
76 subsequent UPPAC and Board action.

77 ~~[F.](6)~~ An individual seeking reinstatement shall present documentation or
78 evidence that supports reinstatement.

79 ~~[G.](7)~~ The USOE, represented by the UPPAC prosecutor, shall present any
80 evidence or documentation that explains and supports USOE's recommendation in
81 the matter.

82 ~~[H.](8)~~ Other evidence or witnesses may be presented by either party and
83 shall be presented consistent with Rule ~~R277-202~~.

84 ~~[I.](9)~~ The individual seeking reinstatement shall:

85 ~~(1)a~~ focus on the individual's actions, rehabilitative efforts, and performance
86 following license denial or suspension;

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

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

92 ~~(4)d~~ be prepared to completely and candidly respond to the questions of the
93 UPPAC prosecutor and hearing panel regarding:

94 ~~(a)i~~ the misconduct that caused the license suspension;

95 ([b]ii) subsequent rehabilitation activities;

96 ([e]iii) counseling or therapy received by the individual related to the original
97 misconduct; and

98 ([d]iv) work, professional actions, and behavior between the suspension and
99 reinstatement request;

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

104 ([6]f) provide copies of all reports and documents to the UPPAC prosecutor
105 and hearing officer at least five days before a reinstatement hearing; and

106 ([7]g) bring eight copies of all documents or materials that an individual
107 seeking reinstatement plans to introduce at the hearing.

108 [~~J~~](10) The UPPAC prosecutor, the hearing panel, and hearing officer shall
109 thoroughly question the individual seeking reinstatement as to the individual's:

110 ([1]a) underlying misconduct which is the basis of the sanction on the
111 educator's license;

112 ([2]b) specific and exact compliance with reinstatement requirements;

113 ([3]c) counseling, if required for reinstatement;

114 ([4]d) specific plans for avoiding previous misconduct; and

115 ([5]e) demeanor and changed understanding of petitioner's professional
116 integrity and actions consistent with Rule R277-515.

117 [~~K~~](11) If the individual seeking reinstatement sought counseling as described
118 in Subsection [R277-203-3J(3)](10)(c), the individual shall state, under oath, that he
119 provided all relevant information and background to his counselor or therapist.

120 [~~L~~](12) A hearing officer shall rule on procedural issues in a reinstatement
121 hearing in a timely manner as they arise.

122 [~~M~~](13) No more than 20 days following a reinstatement hearing, a hearing
123 officer, with the assistance of the hearing panel, shall:

124 ([1]a) prepare a hearing report in accordance with the requirements set forth
125 in Section R277-203-5; and

126 ([2]b) provide the hearing report to the UPPAC Executive Secretary.

127 ~~[N:]~~(14) The Executive Secretary shall submit the hearing report to UPPAC
128 at the next meeting following receipt of the hearing report by the Executive
129 Secretary.

130 ~~[O:]~~(15) UPPAC may do the following upon receipt of the hearing report:

131 ~~([1]a)~~ accept the hearing panel's recommendation as prepared in the hearing
132 report;

133 ~~([2]b)~~ amend the hearing panel's recommendation with conditions or
134 modifications to the hearing panel's recommendation which shall be:

135 ~~([a]i)~~ directed by UPPAC;

136 ~~([b]ii)~~ prepared by the UPPAC Executive Secretary; and

137 ~~([c]iii)~~ attached to the hearing report; or

138 ~~([3]c)~~ reject the hearing panel's recommendation.

139 ~~[P:]~~(16) After UPPAC makes a recommendation on the hearing panel report,
140 the UPPAC recommendation will be forwarded to the Board for final action on the
141 individual's reinstatement request.

142 ~~[Q: If the Board denies an individual's request for reinstatement, the individual~~
143 ~~shall wait at least twenty four (24) months prior to filing a request for reinstatement~~
144 ~~again, unless a different time is provided in the hearing panel recommendation or in~~
145 ~~the Board's motion to deny.]~~

146 **R277-203-4. Rights of a Victim at a Reinstatement Hearing.**

147 ~~[A:]~~(1) If the allegations that gave rise to the underlying suspension involve
148 abuse of a sexual or physical nature, UPPAC shall make reasonable efforts to notify
149 the victim or the victim's family of the reinstatement request.

150 ~~[B:]~~(2) UPPAC's notification shall:

151 ~~([1]a)~~ advise the victim that a reinstatement hearing has been scheduled;

152 ~~([2]b)~~ notify the victim of the date, time, and location of the hearing;

153 ~~([3]c)~~ advise the victim of the victim's right to be heard at the reinstatement
154 hearing; and

155 ~~([4]d)~~ provide the victim with a form upon which the victim can submit a
156 statement for consideration by the hearing panel.

157 ~~[E:]~~(3) A victim entitled to notification of the reinstatement proceedings shall

158 be permitted:

159 ([1]a) to attend the hearing; and

160 ([2]b) to offer the victim's position on the educator's reinstatement request,
161 either by testifying in person or by submitting a written statement.

162 [D.](4) A victim choosing to testify at a reinstatement hearing shall be subject
163 to reasonable cross examination in the hearing officer's discretion.

164 [E.](5) A victim choosing not to respond in writing or appear at the
165 reinstatement hearing waives the victim's right to participate in the reinstatement
166 process.

167 **R277-203-5. Reinstatement Hearing Report.**

168 [A.](1) A hearing officer shall provide the following in a reinstatement hearing
169 report:

170 ([1]a) ~~provide~~ a summary of the background of the original disciplinary
171 action;

172 ([2]b) ~~provide~~ adequate information, including summary statements of
173 evidence presented, documents provided, and petitioner's testimony and demeanor
174 for both UPPAC and the Board to evaluate petitioner's progress and rehabilitation
175 since petitioner's original disciplinary action;

176 ([3]c) ~~specifically address~~ the hearing panel's conclusions regarding
177 petitioner's appropriateness and fitness to be a public school educator again; ~~and~~

178 (d) the hearing panel's recommendation; and

179 ([4]e) ~~provide~~ a statement [that] indicating whether the hearing panel's
180 recommendation to UPPAC was unanimous or ~~provide~~ identifying how the panel's
181 member's voted concerning reinstatement.

182 [B.](1)(2)(a) The hearing panel report is a public document under GRAMA
183 following the conclusion of the reinstatement process unless specific information or
184 evidence contained therein is protected by a specific provision of GRAMA, or
185 another provision of state or federal law.

186 ([2]b) The Executive Secretary shall add the hearing panel report to the
187 UPPAC case file.

188 [C.](3) If a license is reinstated, an educator's CACTUS file shall be updated

189 to:

190 ([1]a) remove the flag;

191 ([2]b) show that the educator's license was reinstated; and

192 ([3]c) show the date of formal Board action reinstating the license.

193 [D-](4)(a) The Board decision as to whether to accept the recommendation
194 of the reinstatement hearing report is within the Board's sole discretion.

195 (b) An educator has an expectation of due process, but no expectation of
196 license reinstatement by the Board.

197 (5) If the Board denies an individual's request for reinstatement, the individual
198 shall wait at least twenty four (24) months prior to filing a request for reinstatement
199 again, unless a different time is specified by UPPAC or the Board.

200 (6) If the Board reinstates an educator, the Executive Secretary shall:

201 (a) update CACTUS to reflect the Board's action; and

202 (b) report the Board's action to the NASDTEC Educator Information Clearing
203 house.

204 (7) The Executive Secretary shall send notice of the Board's decision no more
205 than 30 days following Board action to:

206 (a) the educator;

207 (b) the educator's LEA.

208 **R277-203-6. Reinstatement from Revocation of License.**

209 (1) The Executive Secretary shall deny any request for a reinstatement
210 hearing for a revoked license unless the educator's stipulated agreement or
211 revocation order from the Board allows the educator to request a reinstatement
212 hearing.

213 (2) An educator may request that the Superintendent order a new hearing if:

214 (a) an educator provides:

215 (i) evidence of mistake or false information that was critical to the revocation
216 action; or

217 (ii) newly discovered evidence:

218 (A) that undermines the revocation determination; and

219 (B) that the educator could not have reasonably obtained during the original

220 disciplinary proceedings; or
221 (b) an educator identifies material procedural Board error in the revocation
222 process.

223 (3) A request for review by the Superintendent must be filed within 30 days
224 of Board action for circumstances identified in Subsection (2)(a)(i) or (b).

225 (4) A request for review by the Superintendent must be filed within 90 days
226 of discovery of the new evidence for circumstances identified in Subsection(2)(a)(ii).

227 (5) The Superintendent:

228 (a) shall make a determination on a request made under Subsection(2) within
229 60 days; and

230 (b) may request briefing from an educator and USOE staff in making a
231 determination.

232 (6) If the Superintendent finds that the criteria in Subsection (2)(a) have been
233 established, the Superintendent shall direct UPPAC to conduct a new hearing
234 consistent with Rule R277-202.

235 (7) If the Superintendents finds that the criteria in Subsection (2)(b) have been
236 established, the Superintendent shall recommend to the Board that they reconsider
237 their previous action.

238 **KEY: licensure, reinstatement, hearings; license reinstatement**

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

240 **Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-**
241 **1-401(3)**

1 **R277. Education, Administration.**

2 **R277-204. Utah Professional Practices Advisory Commission Criminal**
3 **Background Review.**

4 **R277-204-1. Authority and Purpose.**

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

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

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

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

12 ~~[B.](2)~~ The purpose of this rule is:

13 (a) to establish procedures for an applicant to proceed toward licensing; or

14 (b) be denied to continue when an application or recommendation for
15 licensing or renewal identifies offenses in the applicant's criminal background check.

16 ~~[C.](3)~~ The standards and procedures of the Utah Administrative Procedures
17 Act do not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).

18 **R277-204-2. Initial Submission and Evaluation of Information.**

19 ~~[A.](1)~~ The Executive Secretary shall review all information received as part
20 of a criminal background review.

21 ~~[B.](2)~~ The Executive Secretary may request any of the following information
22 from an educator in determining how to process a criminal background review:

23 ([1]a) a letter of explanation for each reported offense that details the
24 circumstances, the final disposition, and any explanation for the offense the
25 applicant may want to provide UPPAC, including any advocacy for approving
26 licensing;

27 ([2]b) official documentation regarding each offense, including court records
28 and police reports for each offense, or if both court records and police reports are
29 not available, a letter on official police or court stationery from the appropriate court
30 or police department involved, explaining why the records are not available; and

31 ([3]c) any other information that the Executive Secretary considers relevant

32 under the circumstances in a criminal background review.

33 [~~C~~](~~1~~)(~~3~~)(a) The Executive Secretary may only process a criminal background
34 review after receipt of all letters of explanation and documentation requested in good
35 faith by the Executive Secretary.

36 (~~2~~b) The Executive Secretary shall provide timely notice if the information
37 provided by an applicant is incomplete.

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

42 [~~E~~](5) It is the applicant's sole responsibility to provide any requested
43 material to the Executive Secretary.

44 [~~F~~](6) The Executive Secretary shall process criminal background reviews
45 subject to the following criteria:

46 (~~1~~a) the Executive Secretary may clear a criminal background review without
47 further action if the arrest, citation, or charge resulted in a dismissal, unless the
48 dismissal resulted from a plea in abeyance agreement;

49 (~~2~~b) the Executive Secretary shall forward a recommendation to clear the
50 following criminal background reviews directly to the Board:

51 (~~a~~i) singular offenses committed by an applicant, excluding offenses
52 identified in Subsection [R277-204-2F(3)](6)(c), if the arrest occurred more than two
53 years prior to the date of submission to UPPAC for review;

54 (~~b~~ii) more than two offenses committed by the applicant, excluding offenses
55 identified in Subsection [R277-204-2F(3)](6)(c), if at least one arrest occurred more
56 than five years prior to the date of submission to UPPAC for review; or

57 (~~e~~iii) more than two offenses committed by the applicant, excluding offenses
58 identified in Subsection [R277-204-2F(3)](6)(c), if all arrests for the offenses
59 occurred more than 10 years prior to the date of submission to UPPAC for review;

60 (~~3~~c) the Executive Secretary shall forward the following criminal background
61 reviews to UPPAC, which shall make a recommendation to the Board for final action:

62 (~~a~~i) convictions or pleas in abeyance for any offense where the offense date
63 occurred less than two years prior to the date of submission to UPPAC;

64 ([b]ii) convictions or pleas in abeyance for multiple offenses where all offenses
65 occurred less than five years prior to the date of submission to UPPAC;

66 ([c]iii) convictions or pleas in abeyance for felonies;

67 ([d]vi) arrests, convictions, or pleas in abeyance for sex-related or lewdness
68 offenses;

69 ([e]v) convictions or pleas in abeyance for alcohol-related offenses or
70 drug-related offenses where the offense date was less than five years prior to the
71 date of submission to UPPAC;

72 ([f]vi) convictions or pleas in abeyance involving children in any way; and

73 ([g]vii) convictions or pleas in abeyance involving any other matter which the
74 Executive Secretary determines, in his discretion, warrants review by UPPAC and
75 the Board; and

76 ([4]d) If the criminal background review involves a conviction for an offense
77 requiring mandatory revocation under Subsection 53A-6-501(5)(b) or meeting the
78 definition of sex offender under Subsection 77-41-102(1[6]7), the Executive
79 Secretary shall forward a recommendation directly to the Board that clearance be
80 denied.

81 [G.](7) The Executive Secretary shall use reasonable discretion to interpret
82 the information received from the Bureau of Criminal Identification to comply with the
83 provisions of this rule.

84 [H.](8) In Board review of recommendations of the Executive Secretary and
85 UPPAC for criminal background checks, the following shall apply:

86 (a) the Board shall consider a criminal background review in accordance with
87 the standards described in Section 53A-6-405;

88 ([1]b) the Board may uphold any recommendation of the Executive Secretary
89 or UPPAC, which action shall be the final agency action of USOE;

90 ([2]c) the Board may substitute its own judgment in lieu of the
91 recommendation of the Executive Secretary or UPPAC, which action shall be the
92 final agency action of USOE; and

93 ([3]d) if the Board chooses to substitute its own judgment in a criminal
94 background review, the Board shall adopt findings articulating its reasoning.

95 [I.](9) If a criminal background review arises as a result of conduct that was

96 cleared in a prior criminal background review by the Executive Secretary, UPPAC,
97 or the Board, the prior action shall be deemed final, and the Executive Secretary
98 shall clear the criminal background review.

99 ~~[(10)]~~ If a criminal background review results in an applicant's denial, the
100 applicant may request to be heard, and to have the matter reconsidered by the
101 Board, consistent with the requirements of Subsection 53A-15-1506(1)(c).

102 **KEY: educator license, background review, background check**

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

104 **Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-**
105 **1-401(3)**

1 **R277. Education, Administration.**

2 **R277-205. Alcohol Related Offenses.**

3 **R277-205-1. Authority and Purpose.**

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

5 (a) Utah Constitution Article X, Section 3₁ which vests general control and
6 supervision over public education in the Board~~[,]~~;

7 (b) ~~[by]~~Section 53A-6-306₁ which directs the Board to adopt rules regarding
8 UPPAC duties and procedures~~[,]~~; and

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

11 ~~[B-]~~(2) The purpose of this rule is to establish procedures for disciplining
12 educators regarding alcohol related offenses.

13 ~~[C-]~~(3) The standards and procedures of the Utah Administrative Procedures
14 Act do not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).

15 **R277-205-2. Action by the Board if a Licensed Educator Has Been Convicted**
16 **of an Alcohol Related Offense.**

17 ~~[A-]~~(1)(a) If as a result of a background check, it is discovered that a licensed
18 educator has been convicted of an alcohol related offense in the previous five years,
19 UPPAC shall adhere to the~~[following]~~ minimum conditions described in this
20 Subsection (1).~~[:]~~

21 (~~[1]~~b) One conviction--a letter shall be sent to the educator informing the
22 educator of the provisions of this rule~~[:]~~.

23 (~~[2]~~c) Two convictions--a letter shall be sent to the educator informing the
24 educator of the provisions of this rule and requiring documentation of clinical
25 assessment and recommended treatment following the second conviction~~[:]~~.

26 (~~[3]~~d) If the most recent conviction was more than three years prior to the
27 discovery of the conviction(s) and the educator provides documentation of clinical
28 assessment and recommended treatment, UPPAC shall recommend that the Board
29 send a letter of warning to the educator~~[:]~~.

30 (~~[4]~~e) If the most recent conviction was less than three years prior to the
31 discovery of the conviction(s) and the educator provides documentation of clinical

32 assessment and recommended treatment, UPPAC shall recommend that the Board
33 send a letter of reprimand to the educator and a letter to the district, if employed[;].

34 ([5]f) If the most recent conviction was less than three years prior to the
35 discovery of the conviction(s) and the educator provides no documentation of clinical
36 assessment and recommended treatment, UPPAC or the Board may initiate an
37 investigation of the educator based upon the alcohol offenses[;].

38 ([6]g) Three convictions--a letter shall be sent to the educator informing the
39 educator of the provisions of this rule and requiring documentation of clinical
40 assessment and recommended treatment following the third conviction[;].

41 ([7]h) If the most recent conviction was more than three years prior to the
42 discovery of the conviction(s) and the educator provides documentation of clinical
43 assessment and recommended treatment, UPPAC shall recommend that the Board
44 send a letter of warning to the educator[;].

45 ([8]i) If the most recent conviction was less than three years prior to the
46 discovery of the conviction(s) and the educator provides documentation of clinical
47 assessment and recommended treatment, UPPAC shall recommend that the Board
48 send a letter of reprimand to the educator and send a copy of the letter of reprimand
49 to the educator's employer[; and].

50 ([9]j) If the most recent conviction was less than three years prior to the
51 discovery of the conviction(s) and the educator provides no documentation of clinical
52 assessment and recommended treatment, UPPAC shall recommend suspension of
53 the educator's license to the Board, subject to the educator's right to a hearing under
54 Rule R277-202.

55 [B:](2) This rule does not preclude more serious or additional action by the
56 Board against an educator for other related or unrelated offenses.

57 **R277-205-3. Board Action Toward Individuals Who Do Not Hold Licensing.**

58 (1) If as a result of a background check, it is discovered that an individual
59 inquiring about educator licensing, seeking information about educator licensing, or
60 placed in a public school for any purpose requiring a background check, has been
61 convicted of an alcohol related offense within five years of the date of the
62 background check, the[following] minimum conditions described in this section shall

63 apply[;].

64 [A.](2) [o]One conviction--the individual shall be denied Board clearance for
65 a period of one year from the date of the arrest[;].

66 [B.](3) [t]Two convictions--the individual shall be denied Board clearance for
67 a period of two years from the date of the most recent arrest and the applicant shall
68 present documentation of clinical assessment and recommended treatment before
69 Board clearance shall be considered[; and].

70 [C.](4) [t]Three convictions-the Board may require the applicant to present
71 documentation of clinical assessment and recommended treatment and may deny
72 clearance.

73 **KEY: educators, disciplinary actions, alcohol, background check**

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

75 **Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-**
76 **1-401(3)**

1 **R277. Education, Administration.**

2 **R277-206. Drug Related Offenses.**

3 **R277-206-1. Authority and Purpose.**

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

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

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

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

11 ~~[B-]~~(2) The purpose of this rule is to establish procedures for disciplining
12 educators regarding drug related offenses.

13 ~~[C-]~~(3) The standards and procedures of the Utah Administrative Procedures
14 Act do not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).

15 **R277-206-2. Action by the Board if a Licensed Educator Has Been Convicted**
16 **of a Drug Related Offense.**

17 ~~[A-]~~(1)(a) If as a result of a background check, it is discovered that a licensed
18 educator has been convicted of a drug related offense in the previous ten years, the
19 ~~[following]~~minimum conditions described in this Subsection (1) shall apply~~;~~.

20 ~~([1]b)~~ ~~[e]~~One conviction--a letter shall be sent to the educator informing the
21 educator of the provisions of this rule~~;~~.

22 ~~([2]c)~~ ~~[f]~~Two convictions--a letter shall be sent to the educator informing the
23 educator of the provisions of this rule and requiring documentation of clinical
24 assessment and recommended treatment following the second conviction~~;~~.

25 ~~([3]d)~~ If the most recent conviction was more than three years prior to the
26 discovery of the conviction(s) and the educator provides documentation of clinical
27 treatment, the Board shall send a letter of warning to the educator~~;~~.

28 ~~([4]e)~~ If the most recent conviction was less than three years prior to the
29 discovery of the conviction(s) and the educator provides documentation of clinical
30 treatment, the Board shall send a letter of reprimand to the educator and a letter to
31 the district with notice of treatment~~;~~.

32 ([5]f) If the most recent conviction was less than three years prior to the
33 discovery of the conviction(s) and the educator provides no documentation of clinical
34 treatment, UPPAC or the Board may initiate an investigation of the educator based
35 upon the drug offenses[;].

36 ([6]g) Three convictions--a letter shall be sent to the educator informing the
37 educator of the provisions of this rule and requiring documentation of clinical
38 treatment following the third conviction[;].

39 ([7]h) If the most recent conviction was more than five years prior to the
40 discovery of the conviction(s) and the educator provides documentation of clinical
41 assessment and recommended treatment, the Board shall send a letter of warning
42 to the educator[;].

43 ([8]i) If the most recent conviction was less than three years prior to the
44 discovery of the conviction(s) and the educator provides documentation of clinical
45 assessment and recommended treatment, the Board shall send a letter of reprimand
46 to the educator and send a copy of the letter of reprimand to the educator's
47 employer[; and].

48 ([9]j) If the most recent conviction was less than three years prior to the
49 discovery of the conviction(s) and the educator provides no documentation of clinical
50 assessment and recommended treatment, UPPAC shall recommend suspension of
51 the educator's license to the Board, subject to the educator's right to a hearing under
52 Rule R277-202.

53 [B-](2) This rule does not preclude more serious or additional action by the
54 Board against an educator if circumstances warrant it.

55 **R277-206-3. Board Action Towards an Individual Who Does Not Hold**
56 **Licensing.**

57 [A-](1)(a) If as a result of a background check, it is discovered that an
58 applicant has been convicted of a drug related offense within ten years of the date
59 of the background check, the[following] minimum conditions described in this
60 Subsection (1) shall apply[;].

61 ([4]b) [e]One conviction--the individual shall be denied clearance for a period
62 of one year from the date of the conduct giving rise to the charge[;].

63 (~~2~~)c) [~~t~~]Two convictions--the individual shall be denied clearance for a period
64 of three years from the date of the conduct giving rise to the most recent charge and
65 the applicant shall present documentation of clinical assessment and recommended
66 treatment before clearance shall be considered~~[-and]~~.

67 (~~3~~)d) [~~t~~]Three convictions--the individual shall be denied clearance for a
68 period of five years from the date of the conduct giving rise to the most recent
69 charge.

70 ~~[B:]~~(2) UPPAC or the Board may require the applicant to present
71 documentation of clinical assessment and recommended treatment and may
72 recommend denial of clearance.

73 **KEY: educators, disciplinary actions, drug offenses, background checks**
74 **Date of Enactment or Last Substantive Amendment: [~~July 8,~~]2015**
75 **Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-**
76 **1-401(3)**

1 **R277. Education, Administration.**

2 **R277-515. Utah Educator Standards.**

3 **R277-515-~~[2]~~1. Authority and Purpose.**

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

5 (a) Utah Constitution Article X, Section 3, which vests the general control and
6 supervision of the public schools in the Board~~;~~;

7 (b) ~~[by]~~ Subsection 53A-1-402(1)(a), which directs the Board to make rules
8 regarding the certification of educators~~;~~;

9 (c) ~~[by Section 53A-6]~~ Title 53A, Chapter 6, Educator Licensing and
10 Professional Practices Act, which provides all laws related to educator licensing and
11 professional practices~~;~~;

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

14 ~~[B.](2)~~ The purpose of this rule is to:

15 (a) establish statewide standards for public school educators that provide
16 notice to educators and prospective educators and notice and protection to public
17 school students and parents~~[- The rule also];~~

18 (b) recognize[s] that licensed public school educators are professionals and,
19 as such, should share common professional standards, expectations, and role model
20 responsibilities~~[- The rule];~~ and

21 (c) distinguish[es] behavior for which educators shall receive license discipline
22 from behavior that all Utah educators should aspire to and for which license
23 discipline shall be initiated only in egregious circumstances or following a pattern of
24 offenses.

25 **R277-515-~~[4]~~2. Definitions.**

26 ~~[A. "Board" means the Utah State Board of Education.]~~

27 (1) "Core Standard" means a statement:

28 (a) of what a student enrolled in a public school is expected to know and be
29 able to do at a specific grade level or following completion of an identified course;
30 and

31 (b) established by the Board in Rule R277-700 as required by Section 53A-1-

32 402.

33 [B:](2) “Diversion agreement” means an agreement between a prosecutor
34 and defendant entered into prior to a conviction delaying prosecution of a criminal
35 charge for a specified period of time and contingent upon the defendant satisfying
36 certain conditions.

37 [C:](3)(a) “Educator” or “professional educator” means a person who currently
38 holds a Utah educator license, held a license at the time of an alleged offense, is an
39 applicant for a license, or is a person in training to obtain a license.

40 (b) “Professional educator” does not include ~~[The “professional” denotes that~~
41 ~~the individual holds or is seeking a Utah educator license as opposed to]~~a
42 paraprofessional, ~~[or]~~a volunteer, or an unlicensed teacher in a classroom.

43 [D:](4) “Felony offense” means any offense for which an individual is charged
44 with a first, second, or third degree felony under:

45 (a) [the] Title 76, Utah Criminal Code, ~~[, Title 76,]~~;

46 (b) [the] Title 67, Chapter 16, Utah Public Officers’ and Employees’ Ethics Act,
47 ~~Title 67, Chapter 16,]~~;

48 (c) [the] Title 58, Chapter 37d, Clandestine Drug Lab Act, ~~[, Title 58 Chapter~~
49 ~~37d,]~~;

50 (d) [the] Title 63G, Chapter 6a, Utah Procurement Code, ~~[, Title 63G, Chapter~~
51 ~~6,]~~ or

52 (e) any other statute in the Utah Code establishing a felony.

53 [E:](5) “Illegal drug~~(s)~~” means a substance included in:

54 (a) Schedules I, II, III, IV, or V ~~[of] established in Section 58-37-4~~, ~~[, and also~~
55 ~~includes a drug or substance included in]~~;

56 (b) Schedules I, II, III, IV, or V of the federal Controlled Substances Act, Title
57 II, Pub. L. No. 91-513, ~~[,]~~ or

58 (c) any controlled substance analog.

59 ~~[F. “Illegal sexual conduct” means any conduct proscribed under the Utah~~
60 ~~Criminal Code, Sections 76-5-401 through 406, Section 76-5a-1-4, and Section 76-~~
61 ~~9-704 through 704.]~~

62 (6) “LEA” or “local education agency” for purposes of this rule includes the
63 Utah Schools for the Deaf and the Blind.

64 ~~[G.](7)~~ “Licensing discipline” means a sanction~~[s ranging from]~~, including an
65 admonition, a letter of warning, a written reprimand, suspension of license, and
66 revocation of license, or other appropriate disciplinary measure~~[s]~~, for violation of a
67 professional educator standard~~[s]~~.

68 ~~[H.](8)~~ “Misdemeanor offense” means any offense for which an individual is
69 charged with a Class A, B, or C misdemeanor under:

70 (a) [the] Title 76, Utah Criminal Code~~[, Title 76,]~~;

71 (b) [the] Title 67, Chapter 16, Utah Officers’ and Public Employees’ Ethics Act~~;~~
72 ~~Title 67, Chapter 16;~~;

73 (c) [the] Title 58, Chapter 37d, Clandestine Drug Lab Act~~[, Title 58 Chapter~~
74 ~~37d;~~;

75 (d) [the] Title 63G, Chapter 6a, Utah Procurement Code~~[, Title 63G, Chapter~~
76 ~~6;~~]; or

77 (e) any other statute in the Utah Code establishing a misdemeanor.

78 ~~[I.](9)~~ “Plea in abeyance” means a plea of guilty or no contest ~~[which]~~that is
79 not entered as a judgment or conviction but is held by a court in abeyance for a
80 specified period of time.

81 ~~[J.](10)~~ “School-related activity” means any event, activity, or program:

82 (a) occurring at the school before, during, or after school hours; or

83 (b) [which]that a student[s] attends at a remote location as a representative[s]
84 of the school or with the school’s authorization, or both.

85 ~~[K.](11)~~ “Stalking” means the act of intentionally or knowingly engaging in a
86 course of conduct directed at a specific person as defined in Section 76-5-106.5.

87 ~~[L. “Utah Core Curriculum” means minimum academic standards provided~~
88 ~~through courses as established by the Board which shall be mastered by all students~~
89 ~~K-12 as a requisite for graduation from Utah’s secondary schools.]~~

90 ~~[M. “Utah Public Employees Ethics Act” means the provisions established in~~
91 ~~Section 67-16-1-14.]~~

92 ~~[N.](12)~~ “Utah Professional Practices Advisory Commission” or
93 ~~[Commission)]~~“UPPAC” means an advisory commission established to assist and
94 advise the Board in matters relating to the professional practices of educators, as
95 established ~~[under]~~by Section 53A-6-301.

96 [O. “USOE” means the Utah State Office of Education.]

97 [P.](13) “Weapon[(s)]” means any item that in the manner of its use or
98 intended use is capable of causing death or serious bodily injury.

99 **R277-515-3. Educator as a Role Model of Civic and Societal Responsibility.**

100 [A.](1) The professional educator is responsible for compliance with federal,
101 state, and local laws.

102 [B.](2) The professional educator shall familiarize himself or herself with
103 professional ethics and is responsible for compliance with applicable professional
104 standards.

105 [C.](3) Failing to strictly adhere to ~~[the following]~~ Subsection (4) shall result in
106 licensing discipline ~~[as defined in R277-515-1G].~~

107 (4) The professional educator, upon receiving a Utah educator license:

108 ([1]a) ~~[shall]~~ may not be convicted of any felony or misdemeanor offense
109 ~~[which]~~ that adversely affects the individual’s ability to perform an assigned dut[ies]y
110 and carry out the responsibilities of the profession, including role model
111 responsibilit[ies:]y;

112 ([2]b) ~~[shall]~~ may not be convicted of or commit any act of violence or abuse,
113 including physical, sexual, or emotional abuse of any person;

114 ([3]c) ~~[shall]~~ may not commit any act of cruelty to a child~~[ren]~~ or any criminal
115 offense involving a child~~[ren]~~;

116 ([4]d) ~~[shall]~~ may not be convicted of a stalking crime;

117 ([5]e) ~~[shall]~~ may not possess or distribute an illegal drug~~[s,]~~ or be convicted
118 of any crime related to an illegal drug~~[s,]~~, including a prescription drug~~[s,]~~ not
119 specifically prescribed for the individual;

120 ([6]f) ~~[shall not be convicted of any illegal sexual conduct, including offenses~~
121 ~~that are plea bargained to lesser offenses from an initial sexual offense]~~ may not
122 engage in conduct of a sexual nature described in Section 53A-6-405;

123 ([7]g) ~~[shall]~~ may not be subject to a diversion agreement specific to a sex-
124 related or drug-related offense~~[s,]~~, plea in abeyance, court-imposed probation, or
125 court supervision related to a criminal charge~~[s which]~~ that could adversely impact
126 the educator’s ability to perform the duties and responsibilities of the profession;

127 ([8]h) ~~shall~~ may not provide to a student[s] or allow a student[s,] under the
128 educator's supervision or control to consume an alcoholic beverage[s] or
129 unauthorized drug[s];

130 ([9]i) ~~shall~~ may not attend school or a school-related activity in an assigned
131 supervisory capacity[;] while possessing, using, or under the influence of alcohol or
132 an illegal drug[s];

133 ([10]j) ~~shall~~ may not intentionally exceed the prescribed dosage[s] of a
134 prescription medication[s] while at school or a school-related activity;

135 ([11]k) shall cooperate in providing all relevant information and evidence to
136 the proper authorit[ies]y in the course of an investigation by a law enforcement
137 agency or by the Division of Child [Protective]and Family Services regarding
138 potential criminal activity[. ~~However~~], except that an educator ~~[shall be entitled~~
139 ~~to]~~ may decline to give evidence against himself or herself in an[y ~~such~~] investigation
140 if the [~~same~~] evidence may tend to incriminate the educator as that term is defined
141 by the Fifth Amendment of the U.S. Constitution;

142 ([12]l) shall report suspected child abuse or neglect to law enforcement or the
143 Division of Child and Family Services pursuant to Sections 53A-6-502 and 62A-4a-
144 409 and comply with[~~Board~~] rules and [~~school-district~~] LEA polic[ies]y regarding the
145 reporting of suspected child abuse;

146 ([13]m) shall strictly adhere to state laws regarding the possession of a
147 firearm[s,] while on school property or at a school-sponsored activit[ies,]y and
148 enforce [~~district~~] an LEA polic[ies]y related to student access to or possession of a
149 weapon[s];

150 ([14]n) ~~shall~~ may not solicit, encourage, or consummate an inappropriate
151 relationship, whether written, verbal, or physical, with a student or minor;

152 ([15]o) ~~shall~~ may not:

153 (i) participate in sexual, physical, or emotional harassment[~~—or—any~~
154 ~~combination~~] towards any public school-age student or colleague[~~,n~~]; or

155 (ii) knowingly allow harassment toward a student[s] or colleague[s];

156 ([16]p) ~~shall~~ may not make inappropriate contact in any communication[~~-~~],
157 including written, verbal, or electronic[~~-~~], with a minor, student, or colleague,
158 regardless of age or location;

159 ([17]q) ~~[shall]~~may not interfere or discourage a student's^[?] or colleague's^[?]
160 legitimate exercise of political and civil rights, acting consistent with law and ~~[school~~
161 ~~district/school]~~LEA polic^[ies]y;

162 ([18]r) shall provide accurate and complete information in a required
163 evaluation^[s] of himself or herself, another educator^[s], or student^[s], as directed,
164 consistent with the law;

165 ([19]s) shall be forthcoming with accurate and complete information to an
166 appropriate authorit^[ies]y regarding known educator misconduct ~~[which]~~that could
167 adversely impact performance of a professional responsibilit^[ies]y, including a role
168 model responsibilit^[ies]y, by himself or herself, or another^[s];

169 ([20]t) shall provide accurate and complete information required for licensure,
170 transfer, or employment purposes;~~[-and]~~

171 ([21]u) shall provide accurate and complete information regarding
172 qualifications, degrees, academic or professional awards or honors, and related
173 employment history when applying for employment or licensure^[-];

174 ([22]v) shall notify the USOE at the time of application for licensure of past
175 license disciplinary action or license discipline from another jurisdiction^[s];

176 ([23]w) shall notify the USOE honestly and completely of past criminal
177 convictions at the time of the license application and renewal of licenses; and

178 ([24]x) shall provide complete and accurate information during an official
179 inquiry or investigation by ~~[school-district]~~LEA, state, or law enforcement personnel.

180 ~~[D:]~~(5)(a) Failure to adhere to ~~[the following]~~this Subsection (5) may result in
181 licensing discipline~~[-as defined in R277-515-1G]~~.

182 (b) A [P]penalt^[ies]y shall be imposed, most readily, if an educator~~[s have]~~ has
183 received a previous documented warning^[(s)] from the educator's employer.

184 ([1]c) An educator ~~[shall]~~may not:

185 (i) exclude a student from participating in any program^[-] or deny or grant any
186 benefit to any student on the basis of race, color, creed, sex, national origin, marital
187 status, political or religious belief^[s], physical or mental condition^[s], family, social,
188 or cultural background, or sexual orientation^[-]; and

189 (ii) ~~[shall]~~may not engage in conduct that would encourage a student^[(s)] to
190 develop a prejudice on the~~[se]~~ grounds described in Subsection (5)(c)(i) or any other,

191 consistent with the law.

192 (~~[2]~~d) An educator shall maintain confidentiality concerning a student unless
193 revealing confidential information to an authorized person[s] serves the best interest
194 of the student and serves a lawful purpose, consistent with ~~[federal and state]~~:

195 (i) Title 53A, Chapter 13, Part 3, Utah Family Educational Rights and Privacy
196 Act; and

197 (ii) the Federal Family Educational Rights and Privacy Acts ~~[(FERPA)]~~, 20
198 U.S.C. Sec. 1232g and 34 CFR Part 99.

199 (~~[3]~~e) Consistent with ~~[the]~~ Title 67, Chapter 16, Utah Public Officers' and
200 Employees' Ethics Act, Section 53A-1-402.5, and ~~[Board]~~ rule[s], a professional
201 educator:

202 (~~[a]~~i) ~~[shall]~~ may not accept a bonus[es] or incentive[s] from a vendor[s,] or
203 potential vendor[s,] or a gift[s] from a parent[s] of a student[s], or a student[s] where
204 there may be the appearance of a conflict of interest or impropriety;

205 (~~[b]~~ii) ~~[shall]~~ may not accept or give a gift[s] to a student[s] that would suggest
206 or further an inappropriate relationship;

207 (~~[c]~~iii) ~~[shall]~~ may not accept or give a gift[s] to a colleague[s] that ~~[are]~~ is
208 inappropriate or furthers the appearance of impropriety;

209 (~~[d]~~iv) may accept a donation[s] from a student[s], parent[s], ~~[and]~~ or
210 business[es] donating specifically and strictly to benefit a student[s];

211 (~~[e]~~v) may accept, but not solicit, a nominal appropriate personal gift[s] for a
212 birthday[s], holiday[s ~~and~~], or teacher appreciation occasion[s], consistent with
213 ~~[school or school district]~~ LEA polic[ies]y and ~~[the]~~ Title 67, Chapter 16, Utah Public
214 Officers' and Employees' Ethics Act;

215 (~~[f]~~vi) ~~[shall]~~ may not use ~~[his]~~ the educator's position or influence to:

216 (~~[i]~~A) solicit a colleague[s], student[s], or parent[s ~~or~~] of a student[s] to
217 purchase equipment, supplies, or services from the educator or participate in an
218 activit[ies]y that financially benefits the educator unless approved in writing by the
219 ~~[local school board or governing board]~~ LEA; or

220 (~~[i]~~B) promote an athletic camp[s], summer league[s], travel opportunit[ies]y,
221 or other outside instructional opportunit[ies]y from which the educator receives
222 personal remuneration[;] and that involve students in the educator's school system,

223 unless approved in writing consistent with [~~local school board or governing~~
224 ~~board~~]LEA policy and[~~Board~~] rule; and

225 ([~~g~~]vii) [~~shall~~]may not use school property, a facilit[~~ies~~]y, or equipment for
226 personal enrichment, commercial gain, or for personal uses without express
227 supervisor permission.

228 **R277-515-4. Educator Responsibility for Maintaining a Safe Learning**
229 **Environment and Educational Standards.**

230 [~~A~~](1) A professional educator maintains a positive and safe learning
231 environment for a student[~~s~~] and works toward meeting an educational standard[~~s~~]
232 required by law.

233 [~~B~~](2)(a) Failure to strictly adhere to [~~the following~~]this Subsection (2) shall
234 result in licensing discipline[~~as defined in R277-515-1G~~].

235 (b) The professional educator, upon receiving a Utah educator license:

236 ([~~1~~]i) shall take prompt and appropriate action to prevent harassment or
237 discriminatory conduct toward[~~s~~] a student[~~s~~] or school employee[~~s~~] that may result
238 in a hostile, intimidating, abusive, offensive, or oppressive learning environment;

239 ([~~2~~]ii) shall resolve a disciplinary problem[~~s~~] according to law, [~~school~~
240 ~~board~~]LEA policy, and local building procedures and strictly protect student
241 confidentiality and understand laws relating to student information and records;

242 ([~~3~~]iii) shall supervise a student[~~s~~] appropriately at school and a school-related
243 activit[~~ies~~]y, home or away, consistent with [~~district~~]LEA policy and building
244 procedures and the age of the students;

245 ([~~4~~]iv) shall take action to protect a student from any known condition
246 detrimental to that student's physical health, mental health, safety, or learning;

247 ([~~5~~]v)(A) shall demonstrate honesty and integrity by strictly adhering to all
248 state and [~~district~~]LEA instructions and protocols in managing and administering a
249 standardized test[~~s~~] to a student[~~s~~] consistent with Section 53A-1-608 and Rule
250 R277-~~[473]~~404;

251 ([~~a~~]B) shall cooperate in good faith with a required student assessment[~~s~~];

252 ([~~b~~]C) shall encourage a student's[~~']~~ best effort[~~s~~] in a[~~#~~]n assessment[~~s~~];

253 ([~~c~~]D) shall submit and include all required student information and

254 assessments, as required by ~~[state law and State Board of Education]~~statute and
255 rule[s]; and

256 ~~([d]E)~~ shall attend training and cooperate with assessment training and
257 assessment directives at all levels[-];

258 ~~([6]vi)~~ ~~[shall]~~may not use or attempt to use ~~[school district or school]~~an LEA
259 computer[s] or information system[s] in violation of the ~~[school district's]~~LEA's
260 acceptable use policy for an employee[s] or access information that may be
261 detrimental to young people or inconsistent with the educator's role model
262 responsibility; and

263 ~~([7]vii)~~ ~~[shall]~~may not knowingly possess, while at school or any school-related
264 activity, any pornographic material in any form.

265 ~~[C.](3)(a)~~ Failure to adhere to ~~[the following]~~this Subsection (3) may result in
266 licensing discipline~~[-as defined in R277-515-1G]~~.

267 ~~(b)~~ A ~~[P]~~penalt[ies]y shall be imposed, most readily, if an educator~~[s have]~~
268 has received a previous documented warning~~(s)]~~ from the educator's employer~~[-]~~.

269 ~~(c)~~ A professional educator:

270 ~~([1]i)~~ shall demonstrate respect for a diverse perspective[s], idea[s], and
271 opinion[s] and encourage contributions from a broad spectrum of school and
272 community sources, including a communit~~[ies]~~y whose heritage language is not
273 English;

274 ~~([2]ii)~~ shall use appropriate language, eschewing profane, foul, offensive, or
275 derogatory comments or language;

276 ~~([3]iii)~~ shall maintain a positive and safe learning environment for a student[s];

277 ~~([4]iv)~~ shall work toward meeting an educational standard[s] required by law;

278 ~~([5]v)~~ shall teach the objectives contained in ~~[the Utah]~~a Core
279 ~~[Curriculum]~~Standard;

280 ~~([6]vi)~~ ~~[shall]~~may not distort or alter subject matter from ~~[the]~~a Core Standard
281 in a manner inconsistent with the law~~[-and shall use instructional time effectively]~~;
282 and

283 ~~([7]vii)~~ shall use instructional time effectively consistent with ~~[school and~~
284 ~~school district]~~LEA polic~~[ies]~~y.

285 **R277-515-5. Professional Educator Responsibility for Compliance with [School**
286 **District]LEA Polic[ies]y.**

287 ~~[A-](1)(a)~~ Failure to strictly adhere to ~~[the following]~~this Subsection (1) shall
288 result in licensing discipline~~[- as defined in R277-515-1G].~~

289 (b) The professional educator:

290 ~~(1)~~(i) understands and follows ~~[Board]~~a rule[s] and ~~[local board]~~LEA
291 polic[ies]y;

292 ~~(2)~~(ii) understands and follows a school ~~[and]~~or administrative polic[ies]y
293 ~~[and]~~or procedure[s];

294 ~~(3)~~(iii) understands and respects appropriate boundaries[;] established by
295 ethical rules and school polic[ies]y and directive[s;] in teaching, supervising, and
296 interacting with a student[s ~~and~~] or colleague[s]; and

297 ~~(4)~~(iv) shall conduct financial business with integrity by honestly accounting
298 for all funds committed to the educator's charge, as school responsibilities require,
299 consistent with ~~[school and school district]~~LEA policy.

300 ~~[B-](2)(a)~~ Failure to adhere to ~~[the following]~~this Subsection (2) may result in
301 licensing discipline~~[- as defined in R277-515-1G].~~

302 (b) A ~~[P]~~penalt[ies]y shall be imposed most readily, if an educator~~[s have]~~ has
303 received a previous documented warning~~[(s)]~~ from the educator's employer.

304 (c) The professional educator:

305 ~~(1)~~(i) shall resolve a grievance[s] with a student[s], colleague[s], school
306 community member[s], and parent[s] professionally, with civility, and in accordance
307 with ~~[school district/charter school]~~LEA polic[ies]y; and

308 ~~(2)~~(ii) shall follow ~~[school district/charter school]~~LEA polic[ies]y for collecting
309 money from a student[s], accounting for all money collected, and not commingling
310 any school funds with personal funds.

311 **R277-515-6. Professional Educator Conduct.**

312 ~~[A-](1)~~ A professional educator exhibits integrity and honesty in relationships
313 with ~~[school and district]~~an LEA administrator~~[s and]~~ or personnel.

314 ~~[B-](2)(a)~~ Failure to adhere to ~~[the following]~~this Subsection (2) may result in
315 licensing discipline~~[- as defined in R277-515-1G].~~

316 (b) A ~~[P]~~penalt[ies]y shall be imposed most readily, if an educator~~[s have]~~ has
317 received a previous documented warning~~[(s)]~~ from the educator's employer.

318 (c) The professional educator:

319 ~~[(1)]~~i) shall communicate professionally and with civility with a colleague[s],
320 school and community specialist[s], administrator[s], and other personnel;

321 ~~[(2)]~~ii) shall maintain[s] a professional and appropriate relationship and
322 demeanor with a student[s], colleague~~[s and]~~, school community member[s], and
323 parent[s];

324 ~~[(3)]~~iii) ~~[shalt]~~may not promote a personal opinion[s], personal issue[s], or
325 political position[s] as part of the instructional process in a manner inconsistent with
326 law;

327 ~~[(4)]~~iv) shall express~~[es]~~ a personal opinion[s] professionally and responsibly in
328 the community served by the school;

329 ~~[(4)]~~v) shall comply with ~~[school and district]~~an LEA polic[ies]y, supervisory
330 directive[s], and generally-accepted professional standard[s] regarding appropriate
331 dress and grooming at school and at a school-related event[s];

332 ~~[(5)]~~vi) shall work diligently to improve the educator's own professional
333 understanding, judgment, and expertise;

334 ~~[(6)]~~vii) shall honor all contracts for a professional service[s];

335 ~~[(7)]~~viii) shall perform all services required or directed by the educator's
336 contract with the ~~[school district, school, or charter school]~~LEA with professionalism
337 consistent with ~~[local]~~LEA polic[ies]y and~~[-Board]~~ rule[s]; and

338 ~~[(8)]~~ix) shall recruit another educator[s] for employment in another position only
339 within ~~[district]~~a LEA timeline[s] and guideline[s].

340 **R277-515-7. Violations of Professional Ethics.**

341 ~~[A-]~~(1) This rule establishes standards of ethical decorum and behavior for
342 licensed educators in ~~[Utah]~~the state.

343 ~~[B-]~~(2) Provisions of this rule do not prevent, circumvent, replace, nor mirror
344 criminal or potential charges that may be issued against a professional educator[s].

345 ~~[C-]~~(3) The Board and USOE shall adhere to the provisions of this rule in
346 licensing and disciplining a licensed Utah educator[s].

347 [~~D.~~](4) Reporting and employment provisions related to professional ethics are
348 provided in:

349 ([~~1~~]a) Section [~~53A-3-410~~]53A-15-1507;

350 ([~~2~~]b) Section 53A-6-501;

351 ([~~3~~]c) Section 53A-11-403; and

352 ([~~4~~]d) Section [~~R277-514-5~~]R277-516-7.

353 **KEY: educator, professional, standards**

354 **Date of Enactment or Last Substantive Amendments: [~~August 7, 2008~~]2015**

355 **Notice of Continuation: November 15, 2012**

356 **Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(a);**

357 **53A-6; 53A-1-401(3)**

1 **R277. Education, Administration.**

2 **R277-516. [Education Employee]Background Check Policies and Required**
3 **Reports of Arrests [and Required Background Check Policies]for Licensed**
4 **Educators, Volunteers, Non-licensed Employees, and Charter School**
5 **Governing Board Members.**

6 **R277-516-[2]1. Authority and Purpose.**

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

8 (a) Utah Constitution Article X, Section 3, which vests the general control and
9 supervision of the public schools in the Board[;];

10 (b)(i) ~~[by]~~Subsections 53A-1-301(3)(a) and 53A-1-301(3)(d)(x), which instruct
11 the Superintendent to perform duties assigned by the Board that include:

12 (ii) presenting to the Governor and the Legislature each December a report
13 of the public school system for the preceding year that includes:

14 (A) investigation of all matters pertaining to the public schools[;]; and

15 (B) statistical and financial information about the school system which the
16 Superintendent considers pertinent;

17 (c) ~~[by]~~Subsections 53A-1-402(1)(a)(i) and (iii), which direct the Board to:

18 (i) establish rules and minimum standards for the public schools regarding the
19 qualification and certification of educators and ancillary personnel who provide direct
20 student services[;]; and

21 (ii) the evaluation of instructional personnel; and

22 (d) ~~[by]~~Title 53A, Chapter 15, Part 15, Background Checks, which directs the
23 Board to require educator license applicants to submit to background checks and
24 provide ongoing monitoring of licensed educators.

25 ~~[B.]~~(2) The purpose of this rule is ensure that all students who are compelled
26 by law to attend public schools, subject to release from school attendance consistent
27 with Section 53A-11-102, are instructed and served by public school teachers and
28 employees who have not violated laws that would endanger students in any way.

29 **R277-516-[4]2. Definitions.**

30 ~~[A. "Board" means the Utah State Board of Education.]~~

31 ~~[B.]~~(1) "Charter school governing board" means a board designated by a

32 charter school to make decisions for the operation of the charter school.

33 [C-](2) "Charter school board member" means a current member of a charter
34 school governing board.

35 [D-](3) "Comprehensive Administration of Credentials for Teachers in Utah
36 Schools (CACTUS)" means the database maintained on all licensed Utah educators,
37 which includes information such as:

- 38 ([1]a) personal directory information;
- 39 ([2]b) educational background;
- 40 ([3]c) endorsements;
- 41 ([4]d) employment history;
- 42 ([5]e) professional development information;
- 43 ([6]f) completion of employee background checks; and
- 44 ([7]g) a record of disciplinary action taken against the educator.

45 [E-](4) "Contract employee" means an employee of a staffing service who
46 works at a public school under a contract between the staffing service and the public
47 school.

48 [F-](5) "DPS" means the Department of Public Safety.

49 [G-](6) "LEA" or "local education agency" [~~means a school district, a charter~~
50 ~~school, or,~~]for purposes of this rule[;] includes the Utah Schools for the Deaf and the
51 Blind.

52 [H]([1]7)(a) "Licensed educator" means an individual who holds a valid Utah
53 educator license and has satisfied all requirements to be a licensed educator in the
54 Utah public school system (examples are traditional public school teachers, charter
55 school teachers, school administrators, USOE and school district specialists).

56 ([2]b) A licensed educator may or may not be employed in a position that
57 requires an educator license.

58 ([3]c) A licensed educator includes an individual who:

- 59 ([a]i) is student teaching;
- 60 ([b]ii) is in an alternative route to licensing program or position; or
- 61 ([c]iii) [~~an individual who~~]holds an LEA-specific competency-based license.

62 [I-](8) "Non-licensed public education [employee]" means an employee of a an
63 LEA who:

64 ([4]a) does not hold a current Utah educator license issued by the Board
65 under Title 53A, Chapter 6, Educator Licensing and Professional Practices; or

66 ([2]b) is a contract employee.

67 [~~J~~](9) “Public education employer” means the education entity that hires and
68 employs an individual, including public school districts, the Utah State Office of
69 Education, Regional Service Centers, and charter schools.

70 [~~K~~. “Superintendent” means the State Superintendent of Public Instruction or
71 the Superintendent’s designee.

72 ~~—— L. “USOE” means the Utah State Office of Education.]~~

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

76 [~~M~~](11) “Volunteer” means a volunteer who may be given significant
77 unsupervised access to children in connection with the volunteer’s assignment.

78 **R277-516-3. Licensed Public Education Employee Personal Reporting of**
79 **Arrests.**

80 [~~A~~](1) A licensed educator who is arrested, cited or charged with the following
81 alleged offenses shall report the arrest, citation, or charge within 48 hours or as soon
82 as possible to the licensed educator's district superintendent, charter school director
83 or designee:

84 ([4]a) any matters involving an alleged sex offense;

85 ([2]b) any matters involving an alleged drug-related offense;

86 ([3]c) any matters involving an alleged alcohol-related offense;

87 ([4]d) any matters involving an alleged offense against the person under Title
88 76, Chapter 5, Offenses Against the Person;

89 ([5]e) any matters involving an alleged felony offense under Title 76, Chapter
90 6, Offenses Against Property;

91 ([6]f) any matters involving an alleged crime of domestic violence under Title
92 77, Chapter 36, Cohabitant Abuse Procedures Act; and

93 ([7]g) any matters involving an alleged crime under federal law or the laws of
94 another state comparable to the violations listed in Subsections [R277-516-3A(1)-

95 ~~(6)~~(a) through (f).

96 ~~[B-]~~(2) A licensed educator shall report convictions, including pleas in
97 abeyance and diversion agreements within 48 hours or as soon as possible upon
98 receipt of notice of the conviction, plea in abeyance or diversion agreement.

99 ~~[C-]~~(3) An LEA superintendent, director, or designee shall report conviction,
100 arrest or offense information received from a licensed educator to the
101 Superintendent within 48 hours of receipt of information from a licensed educator.

102 ~~[D-]~~(4) The Superintendent shall develop an electronic reporting process on
103 the USOE website.

104 ~~[E-]~~(5) A licensed educator shall report for work following an arrest and
105 provide notice to the licensed educator's employer unless directed not to report for
106 work by the employer, consistent with school district or charter school policy.

107 **R277-516-4. Non-licensed Public Education Employee, Volunteer, and Charter**
108 **School Board Member Background Check Policies.**

109 ~~[A-]~~(1) An LEA shall adopt a policy for non-licensed public education
110 employee, volunteer, and charter school board member background checks that
111 includes at least the following components:

112 ~~(1)~~a) a requirement that the individual submit to a background check and
113 ongoing monitoring through registration with the systems described in Section 53A-
114 15-1505 as a condition of employment or appointment; and

115 ~~(2)~~b) identification of the appropriate privacy risk mitigation strategy that will
116 be used to ensure that the LEA only receives notifications for individuals with whom
117 the LEA maintains an authorizing relationship.

118 ~~[B-]~~(2) An LEA policy shall describe the background check process necessary
119 based on the individual's duties.

120 **R277-516-5. Non-licensed Public Education Employee~~-or~~, Volunteer, or**
121 **Charter School Board Member Arrest Reporting Policy Required from LEAs.**

122 ~~[A-]~~(1) An LEA shall have a policy requiring a non-licensed public
123 employee[s], a volunteer, a charter school board member[s], ~~[and all]~~or any other
124 employee[s] who drives a motor vehicle[s] as an employment responsibility, to report

125 offenses specified in Subsection [R277-516-5C](3).

126 ~~[B:]~~(2) An LEA shall post the policy described in Subsection [R277-516-5A](1)
127 on the LEA's website.

128 ~~[C:]~~(3) An LEA's policy described in Subsection [R277-516-5A](1) shall
129 include the following minimum components:

130 ([1]a) reporting of the following:

131 ([a]i) convictions, including pleas in abeyance and diversion agreements;

132 ([b]ii) any matters involving arrests for alleged sex offenses;

133 ([c]iii) any matters involving arrests for alleged drug-related offenses;

134 ([d]iv) any matters involving arrests for alleged alcohol-related offenses; and

135 ([e]v) any matters involving arrests for alleged offenses against the person
136 under Title 76, Chapter 5, Offenses Against the Person.

137 ([2]b) a timeline for receiving reports from non-licensed public education
138 employees;

139 ([3]c) immediate suspension from student supervision responsibilities for
140 alleged sex offenses and other alleged offenses which may endanger students
141 during the period of investigation;

142 ([4]d) immediate suspension from transporting students or public education
143 vehicle operation or maintenance for alleged offenses involving alcohol or drugs
144 during the period of investigation;

145 ([5]e) adequate due process for the accused employee consistent with
146 ~~S[ub]section 53A-[3-410(10)]~~15-1506;

147 ([6]f) a process to review arrest information and make employment or
148 appointment decisions that protect both the safety of students and the confidentiality
149 and due process rights of employees and charter school board members; and

150 ([7]g) timelines and procedures for maintaining records of arrests and
151 convictions of non-licensed public education employees and charter school board
152 members.

153 ~~[D:]~~(4) An LEA shall ensure that the records described in R277-516-
154 ~~5~~[C](3)~~([7]g)~~:

155 (a) include final administrative determinations and actions following
156 investigation; and

157 (b) are maintained:
158 (i) only as necessary to protect the safety of students; and
159 (ii) with strict requirements for the protection of confidential employment
160 information.

161 **R277-516-6. Public Education Employer Responsibilities Upon Receipt of**
162 **Arrest Information.**

163 ~~[A:]~~(1) A public education employer that receives arrest information about a
164 licensed public education employee shall review the arrest information and assess
165 the employment status consistent with Section 53A-6-501, Rule R277-515, and the
166 LEA's policy.

167 ~~[B:]~~(2) A public education employer that receives arrest information about a
168 non-licensed public education employee, volunteer, or charter school board member
169 shall review the arrest information and assess the individual's employment or
170 appointment status:

171 ~~([1]a)~~ considering the individual's assignment and duties; and

172 ~~([2]b)~~ consistent with a local board-approved policy for ethical behavior of
173 non-licensed employees, volunteers, and charter school board members.

174 ~~[C:]~~(3) A local board shall provide appropriate training to non-licensed public
175 education employees, volunteers, and charter school board members about the
176 provisions of the local board's policy for self-reporting and ethical behavior of non-
177 licensed public education employees, volunteers, and charter school board
178 members.

179 ~~[D:]~~(4) A public education employer shall cooperate with the Superintendent
180 in investigations of licensed educators.

181 **R277-516-7. Misconduct Notification Requirements and Procedures.**

182 (1)(a) An educator who has reasonable cause to believe that a student may
183 have been physically or sexually abused by a schools employee shall immediately
184 report that belief to the school principal, district superintendent, or UPPAC, in
185 addition to any other reports required by law.

186 (b) A school administrator who receives a report described in Subsection

187 (1)(a) shall immediately submit the information to UPPAC if the employee is licensed
188 as an educator.

189 (2) A local superintendent or charter school director shall notify UPPAC if an
190 educator is determined, pursuant to an administrative or judicial action, to have had
191 disciplinary action taken for, or, to be guilty of:

192 (a) unprofessional conduct or professional incompetence that:

193 (i) results in suspension for more than one week or termination; or

194 (ii) otherwise warrants UPPAC review; or

195 (b) immoral behavior.

196 (3) An educator who fails to comply with Subsection (1) may:

197 (a) be found guilty of unprofessional conduct; and

198 (b) have disciplinary action taken against the educator.

199 **KEY: school employees, self reporting**

200 **Date of Enactment or Last Substantive Amendments: 2015**

201 **Notice of Continuation: June 10, 2014**

202 **Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-301(3)(a);**

203 **53A-1-301(3)(d)(x); 53A-1-402(1)(a)(i); 53A-1-402(1)(a)(iii)**