

R277-215 received final approval by the Utah State Board of Education on December 5, 2019. R277-215 is published in the January 1, 2020 Utah State Bulletin, subject to a 30-day comment period, with a first possible effective date of February 7, 2020.

R277. Education, Administration.

R277-215. Utah Professional Practices Advisory Commission (UPPAC), Disciplinary Rebuttable Presumptions.

R277-215-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Section 53E-6-506, which directs the Board to adopt rules regarding UPPAC duties and procedures; and

(c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to establish rebuttable presumptions for UPPAC and Board review of UPPAC cases.

R277-215-2. Rebuttable Presumptions.

(1) UPPAC and the Board shall consider the rebuttable presumptions in this section when evaluating a case of educator misconduct.

(2) Revocation is presumed appropriate if an educator:

(a) is subject to mandatory revocation under Subsection 53E-6-604(5)(b);

(b) is convicted of, admits to, or is found pursuant to an evidentiary hearing to have engaged in viewing or distributing child pornography, whether real or simulated, on or off school property;

(c) is convicted of an offense that requires the educator to register as a sex offender under Subsection 77-41-105(3);

(d) intentionally provides alcohol or illegal drugs to a minor.

(3)(a) Suspension of ten years or more is presumed appropriate if an educator is convicted of any felony not specified in Subsection (2).

(b) An educator who is suspended based on a felony conviction under Subsection (3)(a) may apply for a reinstatement hearing early if the educator's felony:

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(i) is expunged; or

(ii) is reduced pursuant to Section 76-3-402.

(4) Suspension of three years or more is presumed appropriate if an educator:

(a) engages in a boundary violation ~~[of a]~~ that is sexual~~[ly suggestive]~~ in nature that is not sexually explicit conduct;

(b) is convicted of ~~[child abuse]~~ using physical force with a minor if the conduct results in a conviction of a class A misdemeanor;

(c) is convicted of an offense that results in the educator being placed on court supervision for three or more years; ~~[or]~~

(d) is convicted of ~~[intentional]~~ theft or intentional misappropriation of public funds~~[-];~~
or

(e) intentionally misappropriates public funds or property in an amount of \$500 or more.

(5) Suspension of one to three years is presumed appropriate, if an educator:

(a) willfully or knowingly creates, views, or gains access to sexually inappropriate material on school property or using school equipment;

(b) is convicted of one or more class A misdemeanor violence offenses ~~[in the last 3 years]~~ under Title 76, Chapter 5, Offenses Against the Person, or a comparable statute from a jurisdiction outside of Utah;

(c) is convicted of two or more misdemeanor violence offenses under Title 76, Chapter 5, Offenses Against the Person, or a comparable statute from a jurisdiction outside of Utah, in the last three years;

~~[(c)]~~(d) is convicted of using physical force with a minor if:

(i) the conviction is a class B misdemeanor or lower; and

(ii) the minor is a student in the educator's school;

~~[(d)]~~(e) engages in repeated incidents of or a single egregious incident of excessive physical force or discipline to a ~~[child or]~~ student that~~[:~~

~~——(i) does not result in a criminal conviction; and~~

~~——(ii)]~~ does not meet the circumstances described in Subsection 53G-8-302(2);

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~~[(e)]~~(f) bullies or threatens a student physically, verbally, or electronically;

~~[(f)]~~(g) engages in a pattern of boundary violations with a student under a circumstance not described in Subsection (4)(a);

~~[(g)]~~(h) engages in multiple incidents or a pattern of theft or misappropriation of public funds that does not result in a criminal conviction;

~~[(h)]~~(i) attends a school or school-related activity in an assigned employment-related capacity while possessing, using, or under the influence of alcohol or illegal drugs;

~~[(i)]~~(j) is convicted of two drug-related offenses or alcohol-related offenses in the three years previous to the most recent conviction;

~~[(j)]~~(k) engages in a pattern of or a single egregious incident of:

(i) harassing;

(ii) bullying; or

(iii) threatening a co-worker or community member; or

~~[(k)]~~(l) knowingly and deliberately falsifies or misrepresents information on an education-related document.

(6) A suspension of up to one year is presumed appropriate if an educator:

(a)(i) ~~three~~ engages in inappropriate conduct that warrants lesser discipline; and

~~(ii) has previously received two or more disciplinary letters or actions from UPPAC, including a letter of admonishment, education or warning, related to similar incidents of inappropriate conduct; [that would otherwise warrant lesser discipline so long as the educator had notice that such conduct was inappropriate from:~~

~~—— (i) Board rule or LEA policy; or~~

~~—— (ii) verbal or written notice from an LEA or UPPAC;]~~

(b) fails to report to appropriate authorities suspected child or sexual abuse; or

(c) knowingly teaches, counsels, or assists a minor student in a manner that disregards a legal, written directive, such as a court order or an approved college and career ready plan.

(7) A reprimand is presumed appropriate if an educator:

(a) engages in conduct described in Subsection (8) that is more egregious or

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repetitive than the conduct described in Subsection (8); or

(b)(i) engages in reportable inappropriate conduct that warrants lesser discipline;
and

(ii) within the previous ten years, has received two or more written disciplinary actions from the same LEA for similar inappropriate conduct related to a violation of Board rule or LEA policy.

~~[(7)]~~ (8) A ~~[letter of admonition;]~~ letter of warning~~[- or letter of reprimand, with or without probation;]~~ is presumed appropriate if an educator:

(a) engages in a miscellaneous minimal boundary violation with a student or minor, whether physical, electronic, or verbal;

(b) engages in minimal inappropriate physical contact with a student;

(c) engages in unprofessional communications or conduct with a student, co-worker, community member, or parent;

(d) engages in an inappropriate discussion with a student that violates state or federal law;

(e) knowingly violates a requirement or procedure for special education needs;

(f) knowingly violates a standardized testing protocol;

(g) is convicted of one of the following with or without court probation:

(i) a single driving under the influence of alcohol or drugs offense under Section 41-6a-502;

(ii) impaired driving under Section 41-6a-502.5; or

(iii) a charge that contains identical or substantially similar elements to the state's driving under the influence of alcohol or drugs law or under the law of another state or territory;

(h) carelessly mismanages public funds or fails to accurately account for receipt and expenditure of public funds entrusted to the educator's care;

(i) fails to make a report required by Rule R277-516;

(j) except for a class C misdemeanor under Title 41, Motor Vehicles, is convicted of one or two misdemeanor offenses not otherwise listed;

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(k) engages in an activity that constitutes a conflict of interest; ~~[or]~~

(l)(i) is convicted of using physical force with a minor if the conduct results in a conviction of a class B misdemeanor or lower; and

(ii) the inappropriate conduct does not involve a student at the educator's school; or

(~~f~~m) engages in other minor violations of the Utah Educator Standards in Rule R277-~~[515]~~217.

(9) A letter of education is presumed appropriate if the evidence does not show a violation of the educator standards in Rule R277-217, but the evidence may show conduct that could lead to a violation of the standards in the future.

277-215-3. Aggravating and Mitigating Circumstances.

~~[(8)]~~(1) In ~~[considering]~~ the course of evaluating a presumption described in this [section] rule, UPPAC or the Board ~~[shall]~~ may consider deviating from the presumptions if:

(a) the presumption does not involve a revocation mandated by statute; and

(b) relevant aggravating or mitigating factors exist ~~[that warrant deviation from the presumption].~~

~~[(9)]~~(2) An aggravating factor may include evidence of the following:

(a) the educator has engaged in prior misconduct;

(b) the educator presents a serious threat to a student;

(c) the educator's misconduct directly involved a student;

(d) the educator's misconduct involved a particularly vulnerable student;

(e) the educator's misconduct resulted in physical or psychological harm to a student;

(f) the educator violated multiple standards of professional conduct;

(g) the educator's attitude ~~[does not reflect responsibility for the misconduct or the consequences of the misconduct]~~ exhibits indifference, flippancy, disregard, or defiance towards the allegations or the consequences;

(h) the educator's misconduct continued after investigation by the LEA or UPPAC;

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- (i) the educator holds a position of heightened authority as an administrator;
- (j) the educator's misconduct had a significant impact on the LEA or the community;
- (k) the educator's misconduct was witnessed by a student;
- (l) the educator was not honest or cooperative in the course of UPPAC's investigation;
- (m) the educator was convicted of crime as a result of the misconduct;
- (n) any other factor that, in the view of UPPAC or the Board, warrants a more serious consequence for the educator's misconduct; and
- (o) the educator is on criminal probation or parole; or
- (p) the Executive Secretary has issued an order of default on the educator's case as described in Rules R277-211 or R277-212.

~~[(10)](3)~~ A mitigating factor may include evidence of the following:

- (a) the educator's misconduct was the result of strong provocation;
- (b) the educator was young and new to the profession;
- (c) the educator's attitude reflects recognition of the nature and consequences of the misconduct and demonstrates a reasonable expectation that the educator will not repeat the misconduct;
- (d) the educator's attitude suggests amenability to supervision and training;
- (e) the educator has little or no prior disciplinary history;
- (f) since the misconduct, the educator has an extended period of misconduct-free classroom time;
- (g) the educator was a less active participant in a larger offense;
- (h) the educator's misconduct was directed or approved, whether implicitly or explicitly, by a supervisor or person in authority over the educator;
- (i) the educator has voluntarily sought treatment, counseling or training specific to the misconduct; ~~[or made restitution for the misconduct;]~~
- (j) the educator has made a timely, good faith effort to make restitution or rectify the consequences of the educator's misconduct;
- (~~j~~k) there was insufficient training or other policies that might have prevented the

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misconduct;

(~~k~~) there are substantial grounds to partially excuse or justify the educator's behavior though failing to fully excuse the violation;

(~~h~~m) the educator self-reported the misconduct; [~~o~~]

(n) the educator received a plea in abeyance from the court for criminal charges stemming from the alleged misconduct;

(~~m~~o) any other factor that, in the view of UPPAC or the Board, warrants a less serious consequence for the educator's misconduct.

~~(4)~~(4)(a) UPPAC and the Board have sole discretion to determine the weight they give to an aggravating or mitigating factor.

(b) The weight UPPAC or the Board give an aggravating or mitigating factor may vary in each case and any one aggravating or mitigating factor may outweigh some or all other aggravating or mitigating factors.

R277-215-4. Circumstances Warranting Consideration of Deviation from Presumptions.

(1) UPPAC and the Board shall consider reducing a presumed suspension under this Rule R277-215 if the evidence shows that:

(a) the educator's misconduct resulted in a disproportionate period of missed classroom time; or

(b) UPPAC's investigation into a matter with no pending criminal charges took more than six months to present to UPPAC under Subsection R277-211-3(3)(e) due to circumstances beyond the educator's control.

(2) UPPAC and the Board may consider reducing a presumed suspension period to correspond to a probationary period in an educator's court plea in abeyance agreement if the plea results from charges stemming from the educator's alleged misconduct.

KEY: educator, disciplinary presumptions

Date of Enactment of Last Substantive Amendment: August 12, 2016

Authorizing, Implemented, or Interpreted Law: Art X Sec 3; 53E-6-506; 53E-3-401(4)