

R277-214 received final approval by the Utah State Board of Education on March 11, 2021. R277-214 will be published in the April 1, 2021 Utah State Bulletin, subject to a 30-day comment period, with a first possible effective date of May 24, 2021.

R277. Education, Administration.

R277-214. ~~[Utah Professional Practices Advisory Commission]~~ Criminal Background Review.

R277-214-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Section 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[~~:~~

~~—(a)—] to establish procedures for [an applicant to proceed toward licensing] evaluation of a licensure applicant's criminal background review[~~; or~~~~

~~—(b) be denied to continue when an application or recommendation for licensing or renewal identifies offenses in the applicant's criminal background check].~~

(3) If a licensed educator is charged with a misdemeanor or felony after receiving a license under Rule R277-301, the Executive Secretary shall review the matter with UPPAC in accordance with Rule R277-211 to determine how to proceed.

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

R277-214-2. Initial Submission and Evaluation of Information.

(1) The Executive Secretary shall review all information received as part of a criminal background review.

(2) The Executive Secretary may request any of the following information from an educator in determining how to process a criminal background review:

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

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

(c) any other information that the Executive Secretary considers relevant under the circumstances in a criminal background review.

(3)(a) The Executive Secretary may only process a criminal background review after receipt of all letters of explanation and documentation requested in good faith by the Executive Secretary.

(b) The Executive Secretary shall provide timely notice if the information provided by an applicant is incomplete.

(4) If an applicant is under court supervision of any kind, including parole, informal or formal probation, or plea in abeyance, the Executive Secretary may not process the background check review until the Executive Secretary receives proof that court supervision has terminated.

(5) It is the applicant's sole responsibility to provide any requested material to the Executive Secretary.

(6) The Executive Secretary shall process criminal background reviews subject to the following criteria:

(a) the Executive Secretary may clear a criminal background review without further action if the arrest, citation, or charge resulted in a dismissal, unless the dismissal resulted from a plea in abeyance agreement;

(b) the Executive Secretary shall forward a recommendation to clear the following criminal background reviews directly to the Board:

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(i) singular offenses committed by an applicant, excluding offenses identified in Subsection(6)(c), if the ~~[arrest]~~offense occurred more than two years prior to the date of submission to UPPAC for review;

(ii) ~~[more than]~~two offenses committed by ~~[the]~~an applicant, excluding offenses identified in Subsection(6)(c), if ~~[at least one arrest occurred more than five years]~~both offenses occurred more than two years prior to the date of submission to UPPAC for review; or

(iii) more than two offenses committed by the applicant, excluding offenses identified in Subsection(6)(c), if all ~~[arrests for the]~~offenses occurred more than ~~[40]~~five years prior to the date of submission to UPPAC for review;

(c) the Executive Secretary shall forward the following criminal background reviews to UPPAC, which shall make a recommendation to the Board for final action:

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

(ii) ~~[convictions or pleas in abeyance for multiple]~~more than two offenses where ~~[all offenses]~~at least one offense occurred less than five years prior to the date of submission to UPPAC;

(iii) ~~[convictions or pleas in abeyance for felonies]~~any felony;

(vi) ~~[arrests, convictions, or pleas in abeyance for]~~any sex-related or lewdness offense[s];

(v) ~~[convictions or pleas in abeyance for]~~any alcohol-related offense[s] or drug-related offense[s] where the offense date was less than five years prior to the date of submission to UPPAC;

(vi) ~~[convictions or pleas in abeyance]~~any offense involving children in any way; and

(vii) ~~[convictions or pleas in abeyance involving]~~any other matter which in the Executive Secretary's ~~[determines, in his]~~ discretion, warrants review by UPPAC ~~[and the]~~before consideration by the Board; and

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(d) If ~~[the]~~a criminal background review involves a conviction for an offense ~~[requiring mandatory revocation under Subsection 53E-6-604(5)(b)]~~identified in Subsection 53E-6-603(2) or an applicant meeting the definition of sex offender under Subsection 77-41-102(17), the Executive Secretary shall forward a recommendation ~~[directly-]~~to the Board that clearance be denied.

(7) If, as a result of a criminal background review, it is discovered that an applicant has been convicted of a misdemeanor offense, there is a rebuttable presumption that the following shall apply:

(a) for a single conviction, the individual shall be denied clearance for a period of one year from the date of the conduct giving rise to the charge;

(b) for two convictions:

(i) the individual shall be denied clearance for a period of two years from the date of the conduct giving rise to the most recent charge; and

(ii) if both of the offenses are alcohol-related offenses or drug-related offenses, the applicant shall present documentation of clinical assessment and recommended treatment before being considered for clearance; and

(c) for three convictions:

(i) the applicant shall be denied clearance for a period of five years from the date of the conduct giving rise to the most recent charge; and

(ii) if two or more of the offenses are alcohol-related offense or drug-related offenses, the applicant shall present documentation of clinical assessment and recommended treatment before being considered for clearance.

(8) UPPAC or the Board may deviate from the presumptions specified in Subsection (7) if aggravating or mitigating circumstances apply, as set forth in Section R277-215-3.

~~(7)~~9) The Executive Secretary shall use reasonable discretion to interpret the information received from the Bureau of Criminal Identification to comply with the provisions of this rule.

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(10) If a criminal background review arises as a result of conduct that was cleared in a prior criminal background review by the Executive Secretary, UPPAC, or the Board, the prior action shall be deemed final, and the Executive Secretary shall clear the criminal background review.

R277-214-3. Board Review and Appeals.

~~([8]1)~~ In Board ~~[review]~~consideration of recommendations of the Executive Secretary and UPPAC for a criminal background ~~[checks]~~review, the following shall apply:

(a) the Board shall consider a criminal background review in accordance with the standards described in Section 53E-6-603;

(b) the Board may uphold ~~[any]~~the recommendation of the Executive Secretary or UPPAC~~[- which action shall be the final agency action of USOE]; or~~

(c) the Board may substitute its own judgment in lieu of the recommendation of the Executive Secretary or UPPAC~~[- which action shall be the final agency action of USOE]; and~~

~~——(d) if the Board chooses to substitute its own judgment in a criminal background review, the Board shall adopt findings articulating its reasoning].~~

~~[(9) If a criminal background review arises as a result of conduct that was cleared in a prior criminal background review by the Executive Secretary, UPPAC, or the Board, the prior action shall be deemed final, and the Executive Secretary shall clear the criminal background review.]~~

~~([10]2)~~ If a criminal background review results in an applicant's denial, ~~[the applicant may request to be heard, and to have the matter reconsidered by the Board, consistent with the requirements of Subsection 53E-6-603(4).]~~the Executive Secretary shall provide notice as required by Subsection 53E-6-603(4)(a).

(3) If an applicant requests a hearing in accordance with Subsection 53E-6-603(4)(b), the Executive Secretary shall schedule a hearing within 90 days.

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(4) During a hearing on a criminal background review a hearing panel, composed in the same manner as provided for expedited hearings in Subsection R277-210-2(21) shall hear the evidence.

(5) the applicant, or applicant's attorney, and a UPPAC attorney, may present evidence at a hearing, including:

(a) documents submitted to the Executive Secretary in accordance with Subsection R277-214-2(2); and

(b) relevant evidence or witnesses related to:

(i) the facts surrounding the criminal offenses at issue; and

(ii) the applicant's character and conduct since the time of the offense.

(6) The applicant shall have the burden of persuasion by a preponderance of evidence that the applicant is fit for licensure as an educator.

(7) Following the hearing, the hearing officer, with the assistance of the hearing panel, shall prepare a hearing report within 20 days setting forth findings of fact and recommendations in accordance with Subsection 53E-6-603(1).

(8)(a) The Executive Secretary shall submit the matter to UPPAC at the next available meeting following preparation of the report.

(b) UPPAC may:

(i) approve the hearing report; or

(ii) direct the Executive Secretary to prepare an addendum modifying the hearing recommendation and specifying the evidence supporting the modification.

(9) Following UPPAC's recommendation under Subsection (6), the Executive Secretary shall forward the hearing report to the Board.

(10) The Board shall consider the recommendation submitted under Subsection (7) and within a reasonable time shall:

(a) adopt the UPPAC recommendation; or

(b) issue an alternate written determination and action based on the findings of fact made in the hearing report, if the Board disagrees with the UPPAC recommendation.

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~~[R277-214-3. Alcohol and Drug Related Offenses of an Individual Who Does Not Hold Licensing.~~

~~————(1)(a) If as a result of a background check, it is discovered that an applicant has been convicted of an alcohol-related offense or a drug-related offense within five years of the date of the background check, the minimum conditions described in this Subsection (1) shall apply.~~

~~————(b) One conviction—the individual shall be denied clearance for a period of one year from the date of the conduct giving rise to the charge.~~

~~————(c) Two convictions—the individual shall be denied clearance for a period of two years from the date of the conduct giving rise to the most recent charge and the applicant shall present documentation of clinical assessment and recommended treatment before clearance shall be considered.~~

~~————(d) Three convictions—the individual shall be denied clearance for a period of five years from the date of the conduct giving rise to the most recent charge, and the applicant shall present documentation of clinical assessment and recommended treatment before clearance shall be considered.~~

~~————(2) UPPAC or the Board may take action in excess of the minimum conditions specified in Subsection (1) if aggravating circumstances exist as set forth in Subsection R277-215-2(9).]~~

KEY: educator licenses, background reviews, background checks

Date of Enactment or Last Substantive Amendment:

Notice of Continuation:

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