

1 **R277. Education, Administration.**

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

4 **R277-215-1. Authority and Purpose.**

5 (1) This rule is authorized by:

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

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

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

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

14 **R277-215-2. Rebuttable Presumptions.**

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

17 (2) Revocation is presumed appropriate if an educator:

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

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

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

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

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

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

29 (i) is expunged; or

- 30 (ii) is reduced pursuant to Section [76-3-402](#).
- 31 (4) Suspension of three years or more is presumed appropriate if an educator:
- 32 (a) engages in a boundary violation ~~[of a]~~ that is sexual~~[ly suggestive]~~ in nature that
33 is not sexually explicit conduct;
- 34 (b) is convicted of ~~[child abuse]~~ using physical force with a minor if the conduct
35 results in a conviction of a class A misdemeanor;
- 36 (c) is convicted of an offense that results in the educator being placed on court
37 supervision for three or more years; ~~[or]~~
- 38 (d) is convicted of ~~[intentional]~~ theft or intentional misappropriation of public funds~~[-];~~
39 or
- 40 (e) intentionally misappropriates public funds or property in an amount of \$500 or
41 more.
- 42 (5) Suspension of one to three years is presumed appropriate, if an educator:
- 43 (a) willfully or knowingly creates, views, or gains access to sexually inappropriate
44 material on school property or using school equipment;
- 45 (b) is convicted of one or more class A misdemeanor violence offenses ~~[in the last~~
46 ~~3 years];~~
- 47 (c) is convicted of two or more misdemeanor violence offenses in the last three
48 years;
- 49 ~~[(e)](d)~~ is convicted of using physical force with a minor if:
- 50 (i) the conviction is a class B misdemeanor or lower; and
- 51 (ii) the minor is a student in the educator's school;
- 52 ~~[(d)](e)~~ engages in repeated incidents of or a single egregious incident of excessive
53 physical force or discipline to a ~~[child or]~~ student that~~[-~~
54 ~~——(i) does not result in a criminal conviction; and~~
55 ~~——(ii)]~~ does not meet the circumstances described in Subsection [53G-8-302\(2\)](#);
- 56 ~~[(e)](f)~~ bullies or threatens a student physically, verbally, or electronically;
- 57 ~~[(f)](g)~~ engages in a pattern of boundary violations with a student under a
58 circumstance not described in Subsection (4)(a);
- 59 ~~[(g)](h)~~ engages in multiple incidents or a pattern of theft or misappropriation of

60 public funds that does not result in a criminal conviction;

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

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

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

66 (i) harassing;

67 (ii) bullying; or

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

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

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

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

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

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

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

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

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

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

84 (a) engages in conduct described in Subsection (8) that is more egregious or
85 repetitive than the conduct described in Subsection (8); or

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

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

90 rule or LEA policy.

91 ~~[(7)]~~ (8) A ~~[letter of admonition,]~~ letter of warning~~[, or letter of reprimand, with or~~
92 ~~without probation,]~~ is presumed appropriate if an educator:

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

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

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

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

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

101 (f) knowingly violates a standardized testing protocol;

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

103 (i) a single driving under the influence of alcohol or drugs offense under Section
104 [41-6a-502](#);

105 (ii) impaired driving under Section [41-6a-502.5](#); or

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

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

111 (i) fails to make a report required by Rule [R277-516](#);

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

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

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

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

118 or

119 ([f]m) engages in other minor violations of the Utah Educator Standards in Rule

120 R277-~~[515]~~217.

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

124 **277-215-3. Aggravating and Mitigating Circumstances.**

125 ~~[(8)]~~(1) In ~~[considering]~~ the course of evaluating a presumption described in this
126 ~~[section]~~ rule, UPPAC or the Board ~~[shall]~~ may consider deviating from the presumptions
127 if:

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

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

131 ~~[(9)]~~(2) An aggravating factor may include evidence of the following:

132 (a) the educator has engaged in prior misconduct;

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

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

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

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

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

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

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

143 (i) the educator holds a position of heightened authority as an administrator;

144 (j) the educator's misconduct had a significant impact on the LEA or the community;

145 (k) the educator's misconduct was witnessed by a student;

146 (l) the educator was not honest or cooperative in the course of UPPAC's
147 investigation;

148 (m) the educator was convicted of crime as a result of the misconduct;

149 (n) any other factor that, in the view of UPPAC or the Board, warrants a more
150 serious consequence for the educator's misconduct; and

151 (o) the educator is on criminal probation or parole; or

152 (p) the Executive Secretary has issued an order of default on the educator's case
153 as described in Rules [R277-211](#) or [R277-212](#).

154 ~~[(10)]~~(3) A mitigating factor may include evidence of the following:

155 (a) the educator's misconduct was the result of strong provocation;

156 (b) the educator was young and new to the profession;

157 (c) the educator's attitude reflects recognition of the nature and consequences of
158 the misconduct and demonstrates a reasonable expectation that the educator will not
159 repeat the misconduct;

160 (d) the educator's attitude suggests amenability to supervision and training;

161 (e) the educator has little or no prior disciplinary history;

162 (f) since the misconduct, the educator has an extended period of misconduct-free
163 classroom time;

164 (g) the educator was a less active participant in a larger offense;

165 (h) the educator's misconduct was directed or approved, whether implicitly or
166 explicitly, by a supervisor or person in authority over the educator;

167 (i) the educator has voluntarily sought treatment, counseling or training specific to
168 the misconduct; ~~[or made restitution for the misconduct;]~~

169 (j) the educator has made a timely, good faith effort to make restitution or rectify the
170 consequences of the educator's misconduct;

171 ~~[(j)]~~(k) there was insufficient training or other policies that might have prevented the
172 misconduct;

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

175 ~~[(l)]~~(m) the educator self-reported the misconduct; ~~[or]~~

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

178 ~~[(m)]~~(o) any other factor that, in the view of UPPAC or the Board, warrants a less

179 serious consequence for the educator's misconduct.

180 ~~[(11)]~~(4)(a) UPPAC and the Board have sole discretion to determine the weight they
181 give to an aggravating or mitigating factor.

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

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

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

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

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

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

197 **KEY: educator, disciplinary presumptions**

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

199 **Authorizing, Implemented, or Interpreted Law: [Art X Sec 3](#); [53E-6-506](#); [53E-3-401\(4\)](#)**

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