

1 **R277. Education, Administration.**

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

4 **R277-214-1. 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[:

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

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

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

20 ([3]4) The standards and procedures of the Utah Administrative Procedures Act do
21 not apply to this rule under the exemption of Subsection [63G-4-102](#)(2)(d).

22

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

62 (iii) more than two convictions for offenses committed by the applicant, excluding
63 offenses identified in Subsection(6)(c), if all ~~[arrests for the]~~ offenses occurred more than
64 ~~[40]~~ five years prior to the date of submission to UPPAC for review;

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

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

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

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

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

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

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

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

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

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

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

93 (b) for two convictions:

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

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

99 (c) for three convictions:

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

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

105 (8) Notwithstanding Subsection, if an applicant received a plea in abeyance for a
106 single misdemeanor offense within the last year, UPPAC shall consider the facts and
107 circumstances of the offense and may recommend clearance if UPPAC finds good cause
108 to allow the applicant to proceed.

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

112 ~~([7]10)~~ The Executive Secretary shall use reasonable discretion to interpret the
113 information received from the Bureau of Criminal Identification to comply with the
114 provisions of this rule.

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

119 **R277-214-3. Board Review and Appeals.**

120 ~~([8]1)~~ In Board ~~[review]~~ consideration of recommendations of the Executive
121 Secretary and UPPAC for a criminal background ~~[checks]~~ review, the following shall apply:

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

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

126 (c) the Board may substitute its own judgment in lieu of the recommendation of the
127 Executive Secretary or UPPAC in accordance with Subsection 53E-6-603(1). ~~[- which~~
128 ~~action shall be the final agency action of USOE; and~~

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

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

135 ~~[(10)2]~~ If a criminal background review results in an applicant's denial, ~~[the~~
136 ~~applicant may request to be heard, and to have the matter reconsidered by the Board,~~
137 ~~consistent with the requirements of Subsection 53E-6-603(4).]~~ the Executive Secretary
138 shall provide notice as required by Subsection 53E-6-603(4)(a).

139 (3) If an applicant requests a hearing in accordance with Subsection 53E-6-
140 603(4)(b), the Executive Secretary shall schedule a hearing within 90 days.

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

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

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

148 (b) relevant evidence or witnesses related to:

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

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

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

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

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

158 (b) UPPAC may:

159 (i) approve the hearing report; or

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

162 (9) Following UPPAC's recommendation under Subsection (6), the Executive
163 Secretary shall forward the hearing report to the Board, with a copy to the applicant.

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

166 (a) adopt the UPPAC recommendation; or

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

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

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

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

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

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

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

188
189 **KEY: educator licenses, background reviews, background checks**

190 **Date of Enactment or Last Substantive Amendment:**

191 **Notice of Continuation:**

192 **Authorizing, and Implemented or Interpreted Law: [Art X Sec 3](#); [53E-6-506](#); [53E-3-](#)**
193 **[401\(4\)](#)**