

## UPPAC NEWS

A BI-ANNUAL NEWSLETTER FROM THE UTAH PROFESSIONAL  
PRACTICES ADVISORY COMMISSION

### Physical Discipline of Students: What Is Acceptable and What Will Land You in Trouble

Many of the cases reported to UPPAC involve a common scenario. A student is misbehaving, and the teacher tries to correct the student's behavior. The student continues to misbehave, and the teacher has to decide what to do about it. In the cases that end up on our desks, the teacher decides that grabbing, pushing, or hitting the student is the only way to get the bad behavior to stop.

As a UPPAC staff, we understand that teachers have a tough job and are regularly placed in difficult situations every day. So, in the spirit of helping educators avoid becoming a name on a file on a UPPAC investigator's desk, we offer a quick refresher on the laws and rules that govern when it is legal and acceptable to use physical force with a student.

#### Self-Defense and Defense of Others

First, a bit about criminal law. Generally, if a person uses force and causes pain or injury to another, that person has committed an assault—or perhaps child abuse, if the victim is a child. However, the law provides that a person's conduct is "justified" if the person was acting in the defense of self or others. Here's the language:

"A person is justified in threatening or using force against another when and to the extent that the person reasonably believes that force or a threat of force is

necessary to defend the person or a third person against another person's imminent use of unlawful force." Utah Code Ann. § 76-2-402(1)(a).

This means that if you need to use force in order to prevent someone from getting hurt, you can do that, but only if the force used is necessary and objectively reasonable. If the force is unnecessary or excessive, it is not justified.

Another statute specific to the school setting provides that a school employee may use reasonable and necessary physical restraint to get a weapon away from a student, protect another person from physical injury, or remove a violent student. Utah Code Ann. § 53G-8-302(2). The statute emphasizes that force is only to be used if necessary. If less intrusive means will be effective, use the less intrusive means.

So if an educator restrains a student who is attacking—or is imminently about to attack—the educator or someone else, and the restraint is necessary and reasonable under the circumstances, that educator is justified and should be cleared in an investigation. If, however, that same educator then proceeds to hit the student out of anger after the threat has subsided, that's a problem. The force must be limited to what is necessary to stop the threat.

### QUESTIONS? PLEASE CONTACT US

Our UPPAC team is available if you need to report an ethical violation, have questions about the ethics of a situation, or if you would like us to provide training to your LEA regarding the educator standards. Please contact UPPAC at (801) 538-7835.

## Defense of Property

The criminal law also provides a more limited justification if force is used to prevent harm to property. Here again, the force must be objectively reasonable under the circumstances, taking into account the harm that may be caused.

In the school context, force against a student to prevent harm to property, as opposed to a person, is even more limited. A school employee may use reasonable and necessary physical restraint to protect property from being damaged only when physical safety is at risk. Utah Code Ann. § 53G-8-302(2)(d). In other words, damage to property, by itself, is never sufficient reason to use force on a student.

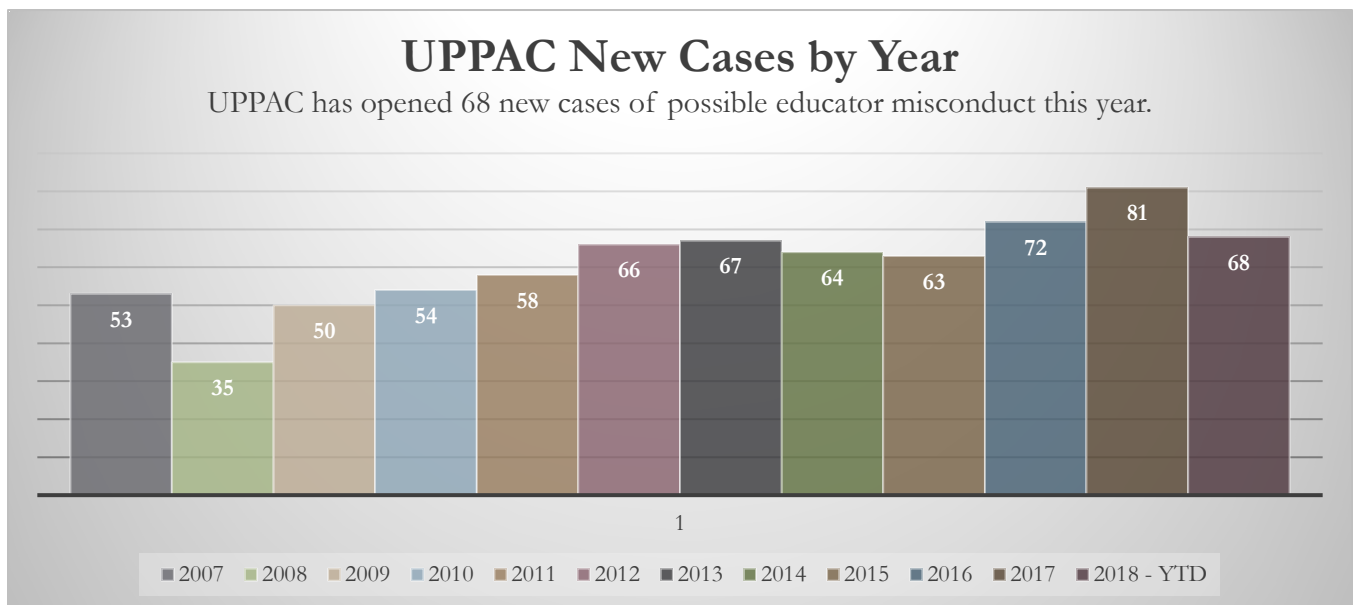
For example, if a student is dousing a classroom with gasoline in preparation to burn the school down, an educator can go ahead and intervene in that situation, using force if necessary. But if a student is writing on a desk or popping the eraser off his neighbor's pencil, going "hands-on" with that student is excessive and unreasonable, given the lack of risk of physical injury.

## It's All about Purpose

You may have noticed that in the statutes above, the purpose of using force is always to prevent imminent harm. The purpose is never punishment. Technically, the answer to the question in the title of this article—when is it appropriate to use physical discipline with a student—is never. Discipline is never an acceptable reason to use force. Utah law specifically prohibits corporal punishment, which is defined as "the intentional infliction of physical pain upon the body of a student as a disciplinary measure." Utah Code Ann. § 53G-8-301(1).

In addition, forced compliance is never an acceptable reason to use force. If a student is getting out of line or refusing to go somewhere he's been told to go, it is not acceptable to grab the student and physically move him where he needs to go.

It is understandably frustrating to an educator when a student is talking out of turn, being belligerent, refusing to follow directions, or otherwise misbehaving. But unless it is necessary to prevent harm, as discussed above, resist any temptation you have to hit, push, or grab a child. Protect yourself and your students by using the other tools at your disposal. Summon assistance from a colleague or administrator if you can't handle the situation in another way.



## UPPAC EDUCATOR DISCIPLINE

### A Summary of Utah State Board Licensing Actions from January-July 2018

#### **Revocation**

UPPAC case no. 16-1367

An educator was arrested and convicted of Disorderly Conduct and being Under the Influence of Alcohol. In a separate incident, the educator sent an angry, profanity-laced text message to his principal. Both incidents were similar to previous misconduct, for which the educator had been suspended in the past. The educator also made misleading statements at his reinstatement hearing. The educator's license was permanently revoked.

UPPAC case no. 17-1404

An educator provided alcohol to a 17-year-old student and later had sex with the student. The educator was convicted of Unlawful Sexual Activity with a Minor. The educator's license was permanently revoked.

UPPAC case no. 17-1423

An educator asked for and received nude photos of a 17-year-old student. The educator was convicted of Sexual Exploitation of a Minor. The educator's license was permanently revoked.

#### **Surrender**

UPPAC case no. 17-1457

An educator allegedly engaged in boundary violations with a student including frequent text messaging, giving gifts, meeting the student outside of school, discussing the educator's personal life, and frequent uninvited touching, among other things. The educator permanently surrendered his license before UPPAC conducted an investigation.

#### **Suspension**

UPPAC case no. 16-1381

An educator engaged in boundary violations with several high school students, including emailing students,

allowing students to sit on his desk, and hugging students. The educator told a coworker that he had feelings for a student and wanted to run away with her after she graduated. The educator received a minimum four-year suspension of his educator's license.

UPPAC case no. 17-1392

An educator removed a misbehaving student from class. During the encounter, the educator slammed his clipboard in an aggressive manner into the wall near the student's head. The educator had been disciplined by UPPAC twice previously for similar confrontations with students. The educator received a minimum two-year suspension of his educator's license.

UPPAC case no. 17-1409

An educator engaged in boundary violations with a student, including writing a note on the student's arm and communicating with her by text message and Instagram. The educator met with the student in his classroom with the door locked. The educator received a minimum two-year suspension of his educator's license.

UPPAC case no. 17-1412

An educator was involved in a physical altercation with a student, during which he grabbed and pushed the student. The educator entered a plea in abeyance to Child Abuse. The educator received a minimum one-year suspension of his educator's license.

UPPAC case no. 17-1420

An educator engaged in a series of boundary violations with several students, including going to a student's home, visiting a student in the hospital, and hugging students. The district also discovered that several pornographic websites had been deleted from the browsing history on the educator's school computer. The educator received a minimum two-year suspension of his educator's license.

UPPAC case no. 17-1422

An educator told a student that if she didn't follow her instructions, the educator would bite her. The student failed to follow instructions, and the educator bit the student on the arm. The educator entered a plea in abeyance to Child Abuse. The educator received a minimum one-year suspension of her educator's license.

**Letter of Reprimand**

UPPAC case no. 16-1373

An educator had an odor of alcohol and was acting strangely when she reported to work. The educator had taken several medications that combined with the alcohol to cause impairment. The educator received a letter of reprimand to remain on her educator's license for two years.

UPPAC case no. 16-1379

An educator engaged in a physical altercation with his wife and son at his home. The educator entered a plea in

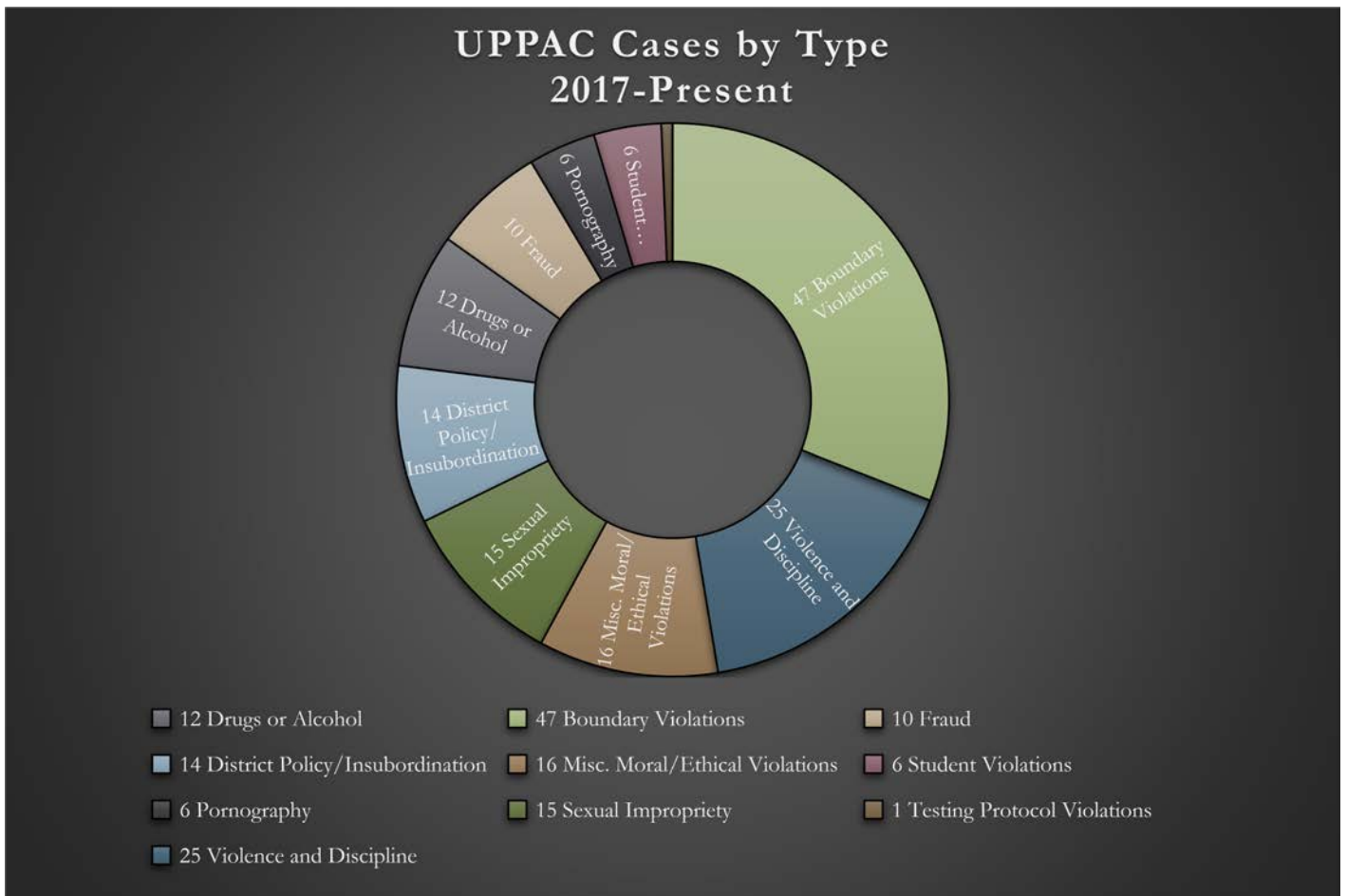
abeyance to Assault. The educator received a letter of reprimand to remain on his educator's license for three years.

UPPAC case no. 17-1394

An educator yelled and swore at a misbehaving middle-school student in front of other students. While UPPAC was investigating, the educator was involved in another incident in which he yelled and swore at a student. The educator received a letter of reprimand to remain on his educator's license for two years.

UPPAC case no. 17-1396

An educator engaged in inappropriate physical contact with several third-grade students by picking them up, tickling them, and giving "horsey rides." This conduct continued after a directive from the educator's principal to stop. The educator received a letter of reprimand to remain on his educator's license for two years.



UPPAC case no. 17-1402

An educator grabbed the top of a misbehaving student's backpack and pulled it downwards, causing the student to fall to the ground. The educator entered a plea in abeyance to Child Abuse. The educator received a letter of reprimand to remain on his educator's license for two years.

UPPAC case no. 17-1403

An educator had a physical encounter with a 14-year-old autistic student who was having a significant behavioral episode and throwing items at staff members. The educator told the student to calm down, and the student threw a ball that hit the educator's head. The educator charged at the student, slammed him into a closet door, and took him to the ground. This occurred after an administrator told the educator several times to leave the area. The educator received a letter of reprimand to remain on his educator's license for two years.

UPPAC case no. 17-1411

An educator made several female students uncomfortable by making inappropriate comments to them, including telling one student she "owed him" for turning in an assignment late. Another student stated the educator made a comment about her body after she transferred from his school. The educator received a letter of

UPPAC expresses its appreciation to outgoing members **Martin Bates** from Granite District and **Kathy Carter** from Alpine School District's Lehi High School. Thank you for your years of diligent service to your profession. We wish you well.

Also a warm welcome to our two new members, **Brenda Kraack**, from Salt Lake City School District's East High School, and **Rich Nielsen**, from Iron County School District. Thank you for volunteering your service, and we look forward to working with you.

reprimand to remain on his educator's license for two years.

UPPAC case no. 17-1433

A principal received a report that a student had received nude photos of her adult boyfriend. The principal failed to immediately report the allegations to the police or DCFS, as required by Utah law. The incident was reported to the police about a week later. The principal received a letter of reprimand to remain on his educator's license for two years.

UPPAC case no. 17-1443

An educator saw an online dating profile showing a photo of a female student at his high school. The profile indicated the student was 23 years old. The educator sent the student several anonymous messages that made the student uncomfortable. The educator received a letter of reprimand to remain on his educator's license for two years.

UPPAC case no. 17-1445

An educator engaged in a physical altercation with a misbehaving student. The student pushed the educator, who pushed the student back, then grabbed the student by the neck to lead him to the office. The educator received a letter of reprimand to remain on his educator's license for two years.

### **Letter of Warning**

UPPAC case no. 17-1413

An educator showed her 6<sup>th</sup>-grade class a documentary without properly screening it beforehand. One segment of the video discussed prostitution and sexuality in the ancient city of Pompeii. The video showed several explicit paintings and artifacts depicting various sexual positions and body parts. The educator received a letter of warning.

UPPAC case no. 17-1419

An educator engaged in three incidents of minor inappropriate conduct and communication with students over the course of one week. The most serious incident involved grabbing a student's arm to pull her away from a door. The educator received a letter of warning.

UPPAC case no. 17-1428

An educator grabbed a student and pulled him about 20 feet to the principal's office. The educator received a letter of warning.

UPPAC case no. 18-1475

An educator showed her 7<sup>th</sup>-grade art class a video without properly screening it beforehand. The video

contained two scenes showing nude models posing for a painting. The educator received a letter of warning.

### **Other**

UPPAC case no. 17-1436

A part-time teacher picked up a 15-year-old student from her home late at night and took her to a park, where the teacher kissed the student and touched her breast over her clothing. The teacher was convicted of Sexual Abuse of a Minor. Because the teacher was not fully licensed, he received a permanent flag on his CACTUS account.