

R277-211 received final approval by the Utah State Board of Education on December 5, 2019. R277-211 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.

R277-211. Utah Professional Practices Advisory Commission (UPPAC), Rules of Procedure: Notification to Educators, Complaints and Final Disciplinary Actions.

R277-211-1. 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 provide procedures regarding:

(a) notifications of alleged educator misconduct;

(b) review of notifications by UPPAC; and

(c) complaints, ~~[proposed stipulated agreements, approved stipulated agreements]~~ consents to discipline, and defaults.

~~[(3) Except as provided in Subsection (4),]~~ Title 63G, Chapter 4, Administrative Procedures Act does not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).

~~[(4) UPPAC may invoke and use sections or provisions of Title 63G, Chapter 4, Administrative Procedures Act as necessary to adjudicate an issue.]~~

R277-211-2. Initiating Proceedings Against Educators.

(1) The Executive Secretary may refer a case to UPPAC to make a determination if an investigation should be opened regarding an educator:

(a) upon receiving a notification of alleged educator misconduct; or

(b) upon the Executive Secretary's own initiative.

(2) ~~[An]~~ If an informant seeks to report information to UPPAC concerning alleged educator misconduct, the informant shall submit an allegation of misconduct to the

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Executive Secretary in writing, including the following:

(a) the informant's:

(i) name;

(ii) position, such as administrator, teacher, parent, or student;

(iii) telephone number;

(iv) address; and

(v) contact information;

(b) information ~~[of]~~ about the educator against whom the allegation is made:

(i) name;

(ii) position, such as administrator, teacher, candidate; and

(iii) if known, the address and telephone number; and

(c) the facts on which the allegation is based and supporting information~~;~~ and

~~———(d) signature of the informant and date].~~

(3) If an informant submits a written allegation of misconduct as provided in this rule, the informant may be notified of a final action taken by the Board regarding the allegation.

(4)(a) Proceedings initiated upon the Executive Secretary's own initiative may be based on information received through a telephone call, letter, newspaper article, media information, notice from another state, or by other means.

(b) The Executive Secretary may also recommend an investigation based on an anonymous allegation, notwithstanding the provisions of this rule, if the allegation bears sufficient indicia of reliability.

(5) The Executive Secretary shall permanently maintain all written allegations, subsequent dismissals, actions, or disciplinary letters related to a case against an educator ~~[shall be maintained permanently]~~ in the UPPAC case file.

R277-211-3. Review of Notification of Alleged Educator Misconduct.

(1)(a) Upon receipt of a notification of alleged educator misconduct, the Executive Secretary shall review the notification with UPPAC and recommend one of the following actions to UPPAC:

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(i) dismiss the matter if ~~[UPPAC determines that]~~ the alleged misconduct does not involve an issue that UPPAC should address; or

(ii) ~~[initiate an investigation if UPPAC determines that]~~ open a case if the alleged misconduct involves an issue that may be appropriately addressed by UPPAC and the Board.

(b) In considering whether to open a case regarding an allegation of educator misconduct, UPPAC shall consider the known facts and circumstances surrounding the allegation to determine whether opening a case is warranted~~[, including:]~~.

~~[(i) whether the allegation involves the physical or emotional safety and well-being of a student;~~

~~— (ii) fairness and the due process rights of the educator;~~

~~— (iii) the actual impact of the allegation on the educator's LEA or community;~~

~~— (iv) the impact of the allegation on the overall integrity of the education profession;~~

~~— (v) whether UPPAC has previously investigated a similar allegation;~~

~~— (vi) any recommendation made along with the notification by the educator's LEA;~~

~~— (vii) the credibility of the allegation; and~~

~~— (viii) whether the educator previously engaged in similar conduct.]~~

(c) UPPAC shall open a case most readily when the evidence shows that:

(i) the alleged misconduct involves the physical or emotional safety and well-being of a student;

(ii) the alleged misconduct had a highly visible impact on the educator's school community;

(iii) the alleged misconduct has the potential to damage the integrity of the education profession;

(iv) the educator's LEA recommends the Board investigate the matter; or

(v) the educator has received prior UPPAC discipline.

[(b)c] If [the Executive Secretary recommends] UPPAC [initiate an investigation:

~~— (i) UPPAC shall initiate an investigation; and]~~ votes to open a case, UPPAC shall also determine whether to:

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(i) initiate an investigation; or

(ii) invite the educator to participate in an expedited hearing as described in Section R277-211-5.

~~[(ii) the Executive Secretary shall: direct a UPPAC investigator to gather evidence relating to the allegations.]~~

(2)(a) Prior to a UPPAC investigator's initiation of an investigation, the Executive Secretary shall send an investigative letter to the following ~~[with information that UPPAC has initiated an investigation]:~~

(i) the educator to be investigated;

(ii) the LEA that employs the educator; and

(iii) the LEA where the alleged activity occurred.

~~[(b) A letter described in Subsection(2)(a) shall inform the educator and the LEA that an investigation shall take place and is not evidence of unprofessional conduct.]~~

~~[(e)b] [UPPAC] The Executive Secretary shall place a flag on the educator's CACTUS file after:~~

~~(i) sending the ~~[notices]~~ educator an investigative letter; and~~

~~(ii) directing UPPAC staff to begin gathering evidence relating to the allegations.~~

~~(c) The Executive Secretary may not place a flag on an educator's CACTUS file if the educator agrees to an expedited hearing under Section R277-215-5 unless the expedited hearing panel recommends a full investigation.~~

(3)(a) The investigator shall review relevant documentation and interview individuals who may have knowledge of the allegations.

(b) The investigator shall prepare an objective and independent investigative report of the findings of the investigation and a recommendation supported by the evidence and Rule R277-215. ~~[for appropriate action or disciplinary letter.]~~

(c) If the investigator discovers additional evidence of unprofessional conduct ~~[that could have been included in the original notification of alleged educator misconduct]~~ beyond the original allegations, the investigator may include the additional evidence of misconduct in the investigative report provided that the educator has had the opportunity

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to respond to the additional evidence.

(d) The investigator shall submit the investigative report to the Executive Secretary.

(e) The Executive Secretary shall ~~[review]~~ add the investigative report described in Subsection (3)(d) ~~[with]~~ to a UPPAC meeting agenda.

(f) The investigative report described in Subsection(3)(d) shall become part of the UPPAC case file.

(4) UPPAC shall review the investigative report and take one of the following actions:

(a) ~~[R]~~recommend that the Board clear the CACTUS flag and take no action ~~[UPPAC determines no further action should be taken, UPPAC may recommend that the Board dismiss the case];~~ or

(b) ~~[UPPAC may]~~ make an initial recommendation ~~[of appropriate action or disciplinary letter]~~ consistent with the evidence and Rule R277-215.

(5) After receiving an initial recommendation from UPPAC for action, the Executive Secretary shall ~~[direct a UPPAC attorney to]:~~

(a) prepare and serve a complaint; or

(b) negotiate and prepare a proposed ~~[stipulated agreement]~~ consent to discipline.

(6)(a) Upon request of an educator, UPPAC will provide an electronic or paper copy of the UPPAC case file and evidence file to the educator.

(b) UPPAC may charge fees in accordance with Section R277-103-5 if the educator requests a paper copy.

~~[(7)(a) A proposed stipulated agreement shall conform to the requirements set forth in Section 277-211-6.~~

~~(b) An educator may stipulate to any recommended disposition for an action.~~

~~——(8) The Executive Secretary shall forward any proposed stipulated agreement to the Board for approval.]~~

R277-211-4. Expedited Hearings on Criminal Charges in lieu of Initial UPPAC Review.

(1) In a case involving the first report of an arrest, citation, or charge of an [licensed]

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educator, which requires self-reporting by the educator under Section R277-217-4 [~~R277-516-3~~], the Executive Secretary, with the consent of the educator, may schedule the matter for an expedited hearing in lieu of initially referring the matter to UPPAC.

(2)(a) The Executive Secretary shall hold an expedited hearing within [~~30~~] 60 days of a report of an arrest, citation, or charge, unless otherwise agreed upon by both parties.

(b) [~~The Executive Secretary or the Executive Secretary's designee~~] An expedited hearing panel shall conduct an expedited hearing on a criminal charge [~~with~~] and include the following additional invited participants:

- (i) the educator;
- (ii) the educator's attorney or representative;
- (iii) a UPPAC attorney; and
- ~~[(iv) a voting member of UPPAC; and]~~
- (iv) a representative of the educator's LEA.

(3) The panel may consider the following matters at an expedited hearing on a criminal charge:

- (a) an educator's oral or written explanation of the events;
- (b) a police report;
- (c) a court docket or transcript;
- (d) an LEA's investigative report or employment file; and
- (e) additional information offered by [~~the educator~~] a participant in the expedited hearing if the [~~panel~~] Executive Secretary deems it probative of the issues at the expedited hearing.

(4) After reviewing the evidence described in Subsection (3), the expedited hearing panel shall make written findings and a recommendation to UPPAC consistent with the evidence and Rule R277-215 to do one of the following:

- (a) close the case;
- (b) close the case upon completion of court requirements;
- (c) recommend that the Board issue a [~~issuance of a disciplinary~~] letter of education or letter of warning to the Board;

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(d) open a full investigation; or

(e) recommend action by the Board, subject to an educator's due process rights under these rules.

(5) An expedited hearing on a criminal charge may be recorded but the testimony from the expedited hearing is inadmissible during a future UPPAC action related to the allegation unless the educator stipulates to admitting the recording.

(6) If the Board fails to adopt ~~[the]~~ UPPAC's recommendation ~~[of an expedited hearing panel]~~, UPPAC ~~[shall]~~ may open a full investigation or issue a complaint.

(7) An expedited hearing panel may proceed under this section with only two voting panel members with the stipulation of the educator.

R277-211-5. Expedited Hearings on Minor Violations of the Educator Standards.

(1) Upon review of an allegation of educator misconduct, UPPAC may recommend conducting an expedited hearing if:

(a) the material evidence provided by the informant does not appear to be disputed;

(b) the allegations, if true, implicate the presumption for a letter of education or letter of warning under Subsection R277-215-2(9); and

(c) the educator consents to participate.

(2) If an educator elects not to participate in an expedited hearing after UPPAC opens a case, the Executive Secretary shall initiate an investigation into the allegations of misconduct with no prejudice to the educator for not participating in the expedited hearing.

(3) At an expedited hearing under this section, an expedited hearing panel shall conduct the hearing and include the following invited individuals:

(a) the educator;

(b) the educator's attorney or representative;

(c) a UPPAC attorney; and

(d) an administrator from the educator's school or LEA.

(4) At an expedited hearing under this section, the panel may consider:

(a) an educator's oral or written explanation of the events;

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(b) an LEA's investigative report or employment file, including witness statements;
and

(c) additional information proffered by a participant in the expedited hearing if the Executive Secretary deems it probative of the issues at the expedited hearing.

(5) After reviewing the evidence described in Subsection (4), the expedited hearing panel shall make written findings and a recommendation consistent with the evidence and Rule R277-215 to do one of the following:

(a) close the case;

(b) close the case upon completion of recommended training or other educator requirements;

(c) issue a letter of education or letter of warning; or

(d) open a full investigation.

(6) If an expedited hearing panel recommends a full investigation be opened, the Executive Secretary shall follow the requirements set forth in Subsection R277-211-3(2).

(7) An expedited hearing under this section may be recorded.

(8) Testimony offered at an expedited hearing may be considered in a subsequent report to UPPAC or hearing if a full investigation is opened.

(9) An expedited hearing panel may proceed under this section with only two voting panel members with the stipulation of the educator.

R277-211-[5]6. Complaints.

(1) If UPPAC determines that an allegation is sufficiently supported by evidence discovered in the investigation, the Executive Secretary [~~shall~~] may direct the UPPAC attorney to serve a complaint upon the educator being investigated.

(2) At a minimum, a complaint shall include:

(a) a statement of legal authority and jurisdiction under which the action is being taken;

(b) a statement of the facts and allegations upon which the complaint is based;

(c) other information [~~that the investigator believes is~~] necessary to enable the

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respondent to understand and address the allegations;

(d) a statement of the potential consequences if an allegation is found to be true or substantially true;

(e) a statement that the respondent shall answer the complaint and request a hearing, if desired, within 30 days of the date the complaint is mailed to the respondent;

(f) a statement that the respondent is required to file a written answer described in Subsection(2)(e) with the Executive Secretary;

(g) a statement advising the respondent that if the respondent fails to respond within 30 days, the Executive Secretary may issue a default [judgment for revocation or a suspension of the educator's license may occur for a term of five years or more] order in accordance with Section R277-211-8;

(h) a statement that, if a hearing is requested, the hearing will be scheduled no less than 45 days, nor more than 180 days, after receipt of the respondent's answer, unless a different date is agreed to by both parties in writing; ~~and~~

(i) a copy of the applicable hearing rules as required by ~~S[ubs]ection 53E-6-607[-];~~
and

(j) if the respondent is not represented by counsel, a written guide to help the respondent understand the UPPAC investigation and hearing process.

(3) On the Executive Secretary's own motion, the Executive Secretary, or the Executive Secretary's designee, with notice to the parties, may reschedule a hearing date.

(4)(a) A respondent may file an answer to a complaint by filing a written response signed by the respondent or the respondent's ~~[representative]~~ attorney with the Executive Secretary within 30 days after the complaint is mailed.

(b) The answer ~~[may]~~ shall include:

(i) a request for a hearing[-, and shall include:];

(ii) the file number of the complaint;

(iii) the names of the parties; and

(i[iv]) [a statement of] the relief that the respondent seeks at a hearing.; ~~and~~

~~[(iv) if not requesting a hearing, a statement of the reasons that the relief requested~~

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~~should be granted.]~~

(c) As an alternative to filing an answer, the respondent may file a voluntary surrender pursuant to Rule R277-216.

(5)(a) ~~[As soon as reasonably practicable after receiving an answer, or no more than 30 days after receipt of an answer, t]~~ The Executive Secretary shall schedule a hearing, if requested by the respondent, [as provided in Rule R277-212] in accordance with Subsection (2)(h).

(b) If the parties can reach an agreement prior to the hearing consistent with the terms of UPPAC's initial recommendation, the UPPAC attorney may negotiate a proposed ~~[stipulated agreement]~~ consent to discipline with the respondent.

(c) A proposed ~~[stipulated agreement]~~ consent to discipline described in Subsection(5)(b) shall be submitted to the Board for the Board's ~~[final approval]~~ consideration in accordance with Section R277-211-7.

(6)(a) If a respondent does not respond to the complaint within 30 days, the Executive Secretary may initiate default proceedings in accordance with the procedures set forth in Section R277-211-~~[7]~~8.

(b) ~~[Except as provided in Subsection R277-211-7(3), i]~~ If the Executive Secretary enters an order of default, the Executive Secretary shall make a recommendation to the Board for [a revocation or a suspension of the educator's license for five years before the educator may request a reinstatement hearing] discipline consistent with the evidence and Rule R277-215.

(c) If a default results in a suspension, a default may include conditions that an educator shall satisfy before the educator may qualify for a reinstatement hearing.

~~[(d) An order of default shall result in a recommendation to the Board for a revocation if the alleged misconduct is conduct identified in Subsection 53E-6-604(5)(b)].~~

R277-211-~~[6]~~7. Proposed Consent to Discipline.

(1) At any time after UPPAC has made an initial recommendation, a respondent may accept UPPAC's initial recommendation, rather than request a hearing, by entering into a

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proposed consent to discipline.

(2) By entering into a proposed consent to discipline, a respondent waives the respondent's right to a hearing to contest the recommended disposition, contingent on final approval by the Board.

(3) At a minimum, ~~[the Executive Secretary shall include the following in]~~ a proposed consent to discipline shall include:

(a) a summary of the facts, the allegations, the presumption described in Rule R277-215, mitigating or aggravating factors described in Rule R277-215, and the evidence relied upon by UPPAC in its recommendation;

(b) a statement that the respondent admits the facts recited in the proposed consent to discipline as true for purposes of the Board administrative action;

(c) a statement that the respondent:

(i) waives the respondent's right to a hearing to contest the allegations that gave rise to the investigation; and

(ii) agrees to limitations on the respondent's license or surrenders the respondent's license rather than contest the allegations;

(d) a statement that the respondent agrees to the terms of the proposed consent to discipline and other provisions applicable to the case, such as remediation, assessment and recommended counseling, restitution, rehabilitation, and other conditions, if any, under which the respondent may request a reinstatement hearing or a removal of the ~~[letter of]~~ reprimand ~~[or termination of probation]~~;

~~[(e) if for suspension or revocation of a license, a statement that the respondent:~~

~~—— (i) may not seek or provide professional services in a public school in the state;~~

~~—— (ii) may not seek to obtain or use an educator license in the state; or ——~~

~~—— (iii) may not work or volunteer in a public K-12 setting in any capacity without express authorization from the UPPAC Executive Secretary, unless or until the respondent:~~

~~—— (A) first obtains a valid educator license or authorization from the Board to obtain such a license; or~~

~~—— (B) satisfies other provisions provided in the proposed consent to discipline;]~~

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([f]e) a statement that the action and the proposed consent to discipline shall be reported to other states through the NASDTEC Educator Information Clearinghouse and any attempt to present to any other state a valid Utah license shall result in further licensing action in Utah;

([g]f) a statement that respondent waives the respondent's right to contest the facts stated in the proposed consent to discipline at a subsequent reinstatement hearing, if any;

([h]g) a statement that all records related to the proposed consent to discipline shall remain permanently in the UPPAC case file;

([i]h) a statement reflecting the proposed consent to discipline classification under Title 63G, Chapter 2, Government Records Access and Management Act;

([j]i) a statement that information regarding the proposed [~~letter of~~] reprimand, suspension, or revocation may be included in an online licensing database that is available for public access in accordance with R277-512.

([k]j) a statement that a violation of the terms of an approved consent to discipline may result in additional disciplinary action and may affect the reinstatement process; and

([l]k) a statement that the educator understands that the Board is not bound by UPPAC's recommendation or the negotiated proposed [~~stipulated agreement~~] consent to discipline unless the Board approves the proposed consent to discipline[-];

(l) if for a suspension of the educator's license:

(i) specific conditions that an educator must satisfy prior to requesting a reinstatement hearing; and

(ii) a minimum time period that must elapse before the educator may request a reinstatement hearing; and

(m) if for suspension or revocation of a license, a statement that the respondent:

(i) may not seek or provide professional services in a public school in the state;

(ii) may not seek to obtain or use an educator license in the state; or

(iii) may not work or volunteer in a public K-12 setting in any capacity without express authorization from the UPPAC Executive Secretary, unless or until the respondent:

(A) first obtains a valid educator license or authorization from the Board to obtain

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such a license; or

(B) satisfies other provisions provided in the proposed consent to discipline.

(4)(a) The Executive Secretary shall forward a proposed consent to discipline to the Board for approval.

(b) If the Board does not approve a proposed consent to discipline, the Board may:

(i)(A) remand the case to UPPAC and ~~[may]~~ shall include issues or questions that need to be addressed;

(B) offer respondent the opportunity for a hearing; or

(C) provide alternative terms and disposition to the Executive Secretary, consistent with the available evidence and presumptions described in R277-215, that would be satisfactory to the Board to be submitted to the educator for consideration;

(ii) direct the Executive Secretary to issue a ~~[disciplinary]~~ letter of education or letter of warning or dismiss the matter; or

(iii) take other appropriate action consistent with due process and R277-215.

(5) If the respondent accepts a consent to discipline with alternative terms and disposition proposed by the Board, the consent to discipline, as modified, is a final Board administrative action without further Board consideration.

(6) If the terms approved by the Board are rejected by the respondent, the proceedings shall continue from the point under these procedures at which the agreement was negotiated, as if the ~~[stipulated agreement]~~ consent to discipline had not been submitted.

(7) If the Board remands to UPPAC to provide respondent the opportunity for a hearing under Subsection (4)(b)(i)(B), the Executive Secretary shall:

(a) notify the parties of the decision;

(b) direct a UPPAC attorney to issue a complaint; and

(c) direct the proceedings as if the proposed consent to discipline had not been submitted.

(8) If the Board approves a proposed consent to discipline, the approval is a final Board administrative action and the Executive Secretary shall:

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- (a) notify the parties of the decision;
- (b) update CACTUS to reflect the action;
- (c) report the action to the NASDTEC Educator Information Clearinghouse if the agreement results in:
 - (i) a revocation;
 - (ii) a suspension; or
 - ~~[(iii) probation; or]~~
 - (i~~v~~ii) a ~~[letter of]~~ reprimand;
- (d) direct the appropriate penalties to begin; and
- (e) notify the LEAs throughout the state.

R277-211-~~[7]~~8. Default Procedures.

(1) If a respondent does not respond to a complaint within 30 days from the date the complaint is served, the Executive Secretary may issue an order of default against the respondent consistent with the following:

(a) the Executive Secretary shall prepare and serve on the respondent an order of default including:

(i) a statement of the grounds for default; and

(ii) a recommended disposition if the respondent fails to file a response to a complaint;

(b) ten days following service of the order of default, a UPPAC attorney shall attempt to contact respondent or respondent's attorney by telephone or electronically unless the respondent is incarcerated and unrepresented;

(c) UPPAC shall maintain documentation of attempts toward written, telephonic, or electronic contact;

(d) the respondent has 20 days following service of the order of default to respond to UPPAC; and

(e) if UPPAC receives a response from respondent to a default order before the end of the 20 day default period, UPPAC shall allow respondent a final ten day period to

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respond to a complaint.

(2) ~~[Except as provided in Subsection (3), if an order of default is issued, t]~~The Executive Secretary shall make a recommendation to the Board for discipline ~~[in accordance]~~ consistent with the evidence and Rule R277-215.

~~[(3) If an order of default is issued, the Executive Secretary shall make a recommendation to the Board for a revocation of the educator's license if the alleged misconduct is conduct identified in Subsection 53E-6-604(5)(b).]~~

R277-211-[8]9. Disciplinary Letters and Dismissal.

(1) If UPPAC recommends issuance of a ~~[disciplinary]~~ letter of warning, letter of education, or dismissal, the Executive Secretary shall forward the case to the Board for review on a consent calendar.

(2) If the Board does not approve a recommendation for a ~~[disciplinary]~~ letter of warning, letter of education, or dismissal described in Subsection (1), the Board may:

(a) remand the case to the Executive Secretary [UPPAC] with:

(i) direction as to the issues UPPAC should address;

(ii) alternative terms and disposition that ~~[should]~~ would be satisfactory to the Board to be submitted to the educator for consideration; and

(iii) the opportunity for the educator to participate in a hearing;

~~[(b) direct the Executive Secretary to issue a different level of disciplinary letter;]~~

~~[(e)b] dismiss the matter; or~~

~~[(d)c] take other appropriate action consistent with due process and Rule R277-215.~~

(3) If the Board approves a ~~[disciplinary]~~ letter of warning or letter of education, the Executive Secretary shall:

(a) prepare the ~~[disciplinary]~~ letter of warning or letter of education and mail it to the educator;

(b) place a copy of the ~~[disciplinary]~~ letter of warning or letter of education in the UPPAC case file; and

(c) update CACTUS to reflect that the ~~[investigation]~~ case is closed.

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KEY: teacher licensing, conduct, hearings

Date of Enactment or Last Substantive Amendment: May 10, 2017

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