UPPAC

An Educator's Guide to UPPAC

***Many educators who have been accused of ethical misconduct** are unfamiliar with UPPAC and find themselves frustrated with the process. Furthermore, some educators don't have the financial means to hire an attorney to represent them and help them understand what is happening. As UPPAC staff, we hope this guide will help educators, especially those without attorneys, navigate the UPPAC process and understand what to expect during each step.*

If you have more questions after reading this guide, please contact us. This guide is written in non-legal language. To read the precise language of Utah law and UPPAC's administrative rules, see the endnotes that are included throughout.[1]

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I. What is UPPAC?

The Utah Professional Practices Advisory Commission ("UPPAC") is a group of educators and community members who advise the Utah State Board of Education ("USBE" or "the Board") "in matters relating to the professional practices of educators."[2]

UPPAC's primary function is to receive information regarding alleged misconduct by licensed educators and make recommendations to the Board regarding what licensing action, if any, is appropriate.

UPPAC has 11 voting members:[3]

- 6 teachers
- 3 other licensed educators (school or district administrators, human resources personnel, etc.)
- 2 community members (nominated by the state PTA)

Because these UPPAC members are volunteers, they are assisted by USBE employees. Current UPPAC staff consists of an executive secretary, three attorneys, and one assistant. UPPAC meetings are typically held once a month.

II. Opening a UPPAC Case

Most UPPAC cases begin with a Notification of Alleged Educator Misconduct, although UPPAC occasionally opens cases based on media reports or other sources.[4] Most of the notifications UPPAC receives are from school or district administrators. However, anyone can submit a notification to UPPAC, and UPPAC occasionally receives notifications from parents, coworkers, or other interested parties.

Submission of a Notification of Alleged Educator Misconduct does not necessarily mean that UPPAC will open a case. UPPAC members review each notification at their monthly meetings to determine

whether to open a case. When making this decision, UPPAC considers factors such as the nature and severity of the misconduct, the impact on students, the impact on the community, the impact on the teaching profession, and the educator's prior disciplinary history.[5]

If UPPAC determines that the alleged misconduct is something UPPAC needs to address, a case is opened. If not, no further investigation or action is taken.[6]

If UPPAC decides to open a case, UPPAC then decides whether there will be an expedited hearing or an investigation.

III. Expedited Hearing

A. Scheduling an Expedited Hearing

After UPPAC decides to open a case, the UPPAC members take a quick look at the allegations to determine how serious they are. If the allegations are relatively minor and there doesn't appear to be much dispute about what happened,[7]UPPAC may schedule an expedited hearing. An expedited hearing can be a good way to resolve minor cases quickly by avoiding an in-depth and sometimes lengthy investigation.[8]

The expedited hearing process is voluntary.[9] If UPPAC schedules your case for an expedited hearing, but you don't want to participate in an expedited hearing, contact us to opt out of the process, and we will cancel the hearing. If you opt out of the expedited hearing process, UPPAC will open an investigation.[10]

B. The Hearing

Expedited hearings are informal and take place in a conference room. The following people will be present:[11]

- The UPPAC executive secretary or designee[12]
- Three UPPAC members[13]
- A UPPAC attorney
- You, the educator
- Your attorney or other representative, if you have one
- An administrator from your school or district

The executive secretary will conduct the hearing. Because these hearings are informal, and because circumstances of cases vary widely, there is no set order to the hearing. Usually, the UPPAC attorney will ask you to describe what happened from your perspective, and he or she will ask you follow-up questions to get more detail. You will be given a full opportunity to give your side of the story. You are also encouraged to bring a written statement explaining what happened. The executive secretary and UPPAC members may ask you some questions as well. Your attorney, if you have one, may ask you questions or provide more information to us. We will also hear from an administrator from your school or district, who will tell us what happened from their perspective. The administrator may provide investigation notes, witness statements, employment history, or other information and documents. The goal is to get all sides of the story.

Expedited hearings are recorded,[14] and depending on the nature of your case, any testimony or other evidence at an expedited hearing might be considered for other purposes, including a subsequent hearing if there is one.[15]

C. After the Hearing

At the end of the expedited hearing, everyone is excused except for the hearing panel, which consists of the executive secretary and three UPPAC members. The panel will then deliberate. The executive secretary participates in the deliberations but does

not vote.[16] The three UPPAC members will make a decision, which will be one of the following:[17]

- Close the case with no further action
- Close the case upon completion of specified training or other requirements
- Issue a letter of education
- Issue a letter of warning
- Open an investigation[18]

After the expedited hearing panel has deliberated and made a decision, the executive secretary will prepare a hearing report reflecting the panel's findings and decision.[19] However, the panel's decision is not final. Instead, the full UPPAC commission will review the hearing report and discuss the case at the next UPPAC meeting. After discussion, UPPAC will vote. UPPAC's decision may adopt the hearing panel's recommendation, or it can be something different. Note that UPPAC's decision still is not a final action; it is a recommendation to the Board. See part X for more on this.

IV. Investigation

A. Beginning of the Investigation

An investigation will be opened if any of the following happens:

- UPPAC initially decides to open an investigation;
- You opt out of the expedited hearing process; or
- After an expedited hearing, UPPAC decides to open an investigation.

If an investigation is opened, an investigator will be assigned.[20] The investigator is typically a USBE employee who is designated as a UPPAC attorney. However, in appropriate circumstances, the executive secretary may assign a non-attorney or non-USBE employee as the investigator.[21]

After an investigator is assigned, you will receive a letter informing you that an investigation has been opened.[22] A flag will also be placed on your CACTUS account.[23] This flag does not affect the status of your license, but it notifies employers or potential employers that there is a pending investigation that may result in licensing action. If an employer or potential employer has questions about a flag, they are welcome to contact the investigator or other UPPAC staff for more information.

B. The Investigation

The investigator's job is to gather the information UPPAC needs to make a good decision on your case. The information the investigator needs and how he or she obtains it will vary greatly depending on the circumstances of each case. The investigator will usually reach out to your school or district administrators to get information and request documentation. The investigator will then question other witnesses as necessary. If police were involved, the investigator may attempt to obtain police records. In short, the investigator will seek whatever information is necessary to understand what happened.

Typically, the last step in an investigation is for the investigator to meet with you, the educator.[24] The investigator's goal is to present all sides of the story to UPPAC, so meeting with the investigator is your chance to tell your side. If you have an attorney, he or she is also welcome to attend. The investigator will listen to your explanations and will likely have lots of questions for you. If you have documents or other evidence you want UPPAC to be aware of, this is the time to present it.

If your case involves criminal charges, the investigator will probably wait until your criminal case is resolved before beginning a

UPPAC investigation, for two primary reasons. First, UPPAC's decision will often be heavily dependent on how your criminal case is resolved. Second, it is often difficult to obtain police records while a criminal case is still pending.

C. Length of Investigation

Unfortunately, as a state agency, we have a very limited budget. As such, our staff is small, and our caseload is large. We understand that being accused of misconduct is not fun, and we understand the toll a lengthy investigation takes on educators. We do our best to work quickly given our responsibility to be thorough and give UPPAC all the information they need. We have also recently added a third investigator to our staff and implemented the expedited hearing process outlined above, which we believe will significantly reduce our investigators' caseloads and resolve cases faster.

Despite all this, investigations are usually not quick. The process usually takes at least six months, sometimes as long as a year. Although this is an inconvenience for every educator, if this presents an unusual burden for you, please contact your investigator, and we will do what we can to prioritize your case.

V. UPPAC Recommendation

When the investigator has all the information needed, he or she will prepare an investigative report and submit it to UPPAC. In this report, the investigator summarizes and analyzes the evidence collected and makes a recommendation to UPPAC regarding what licensing action, if any, is appropriate.[25] UPPAC then reviews the investigative report, discusses the case, and makes a decision. UPPAC's decision is called an "initial recommendation" and can be any of the following:

- Dismiss the case with no further action
- Issue a letter of education
- Issue a letter of warning
- Reprimand the educator
- Suspend the educator's license
- Revoke the educator's license

Remember that UPPAC's decision at this point is not a final action; it is a recommendation to the Board. See part X for more on this.

A. Dismissal

If UPPAC determines that you did not violate Utah's Educator Standards,[26] UPPAC may recommend dismissal with no further action. If UPPAC recommends dismissal, you do not have the right to a hearing, and your consent is not required. UPPAC's recommendation will be forwarded to the Board for a final decision.[27]

If approved by the Board, this means the flag on your CACTUS account, if there is one, will be removed, and your case will be closed.[28] Your license remains valid.

B. Letter of Education

If UPPAC determines that you did not violate Utah's Educator Standards, but the evidence shows conduct that could lead to a violation in the future, UPPAC may recommend a letter of education.[29] The purpose of a letter of education is to instruct and caution the educator when the educator is "close to the line."

If UPPAC recommends a letter of education, you do not have the right to a hearing, and your consent is not required. UPPAC's recommendation will be forwarded to the Board for a final decision.[30] If approved by the Board, this means the flag on your CACTUS account, if there is one, will be removed, UPPAC will issue a letter of education, and your case will be closed. Your license remains valid.

C. Letter of Warning

If UPPAC determines that you violated Utah's Educator Standards, but the violation is relatively minor, UPPAC may recommend a letter of warning.[31] For example, a letter of warning is the presumed discipline if an educator does one of the following:[32]

- Engages in a minimal boundary violation with a student
- Engages in minimal inappropriate physical contact with a student
- Engages in unprofessional communications or conduct with a student
- Is convicted of certain misdemeanor crimes, such as DUI, shoplifting, or minor violence offenses not involving students
- Carelessly mismanages public funds

If UPPAC recommends a letter of warning, you do not have the right to a hearing, and your consent is not required. UPPAC's recommendation will be forwarded to the Board for a final decision.[33]

If approved by the Board, this means the flag on your CACTUS account, if there is one, will be removed, UPPAC will issue a letter of warning, and your case will be closed. Your license remains valid.

D. Reprimand

If UPPAC determines that you violated Utah's Educator Standards, and the violation is more serious or longer-term, UPPAC may recommend a reprimand.[34] A reprimand is the presumed discipline if an educator's conduct is more egregious or repetitive than conduct warranting a letter of warning.[35]

If UPPAC recommends a reprimand, you have the right to a hearing. UPPAC's recommendation will not be forwarded to the Board for a final decision unless:

- You agree to the reprimand (see part VI);
- You have a hearing (see part IX); or
- You default (see part VIII).

If approved by the Board, a reprimand means the flag on your CACTUS account will remain for whatever time the Board prescribes, typically two years from the initial placement of the flag.[36] A reprimand is usually accompanied by requirements the educator must meet in order to have the reprimand flag removed, such as additional training, counseling, or successfully completing criminal probation.[37] Despite the flag and additional requirements, the educator's license remains valid throughout the reprimand period.

E. Suspension

If UPPAC determines that your misconduct is more serious and warrants a temporary invalidation of your license, UPPAC may recommend a suspension of any length.[38] Following are a few examples of the types of misconduct that may lead to a license suspension.

A suspension of up to one year is presumed appropriate if an educator does one of the following:[39]

- Fails to report suspected child abuse or sexual abuse to authorities
- Engages in lesser misconduct, but UPPAC has previously disciplined the educator at least twice for similar misconduct

A suspension of one to three years is presumed appropriate if an educator does one of the following:[40]

- Views pornography on school property or using school equipment, even if no students see it
- Is convicted of a minor violence offense involving a student
- Engages in repeated incidents or a single egregious incident of excessive force with a student

- Engages in a pattern of boundary violations with a student
- Is convicted of two drug- or alcohol-related offenses within three years
- Falsifies information on an education-related document

A suspension of three years or more is presumed appropriate if an educator does one of the following:[41]

- Engages in a boundary violation that is sexual in nature
- Is convicted of a more serious violence offense involving a student
- Misappropriates $500 or more in public funds

A suspension of ten years or more is presumed appropriate if an educator is convicted of any felony that does not warrant revocation.[42]

If UPPAC recommends a suspension, you have the right to a hearing. UPPAC's recommendation will not be forwarded to the Board for a final decision unless:

- You agree to the suspension (see part VI);
- You have a hearing (see part IX); or
- You default (see part VIII).

If approved by the Board, a suspension means your license is invalid for whatever time the Board prescribes. During this time, you will not be allowed to work or volunteer in a public K–12 school in Utah.[43] This information is also shared with other states through a nationwide database, and other states typically will not issue a teaching license to someone who has a suspended license in another state.

A suspension is usually accompanied by requirements the educator must meet in order to be reinstated, such as additional training, counseling, or successfully completing criminal probation.[44]

As the end of your suspension period approaches, you can request a reinstatement hearing if you have completed all the requirements to be reinstated.[45]

F. Revocation

Revocation is reserved for very serious misconduct. In certain categories of cases, Utah law provides that revocation is mandatory, meaning the Board has no discretion and must revoke the license. For example, revocation is mandatory if an educator does one of the following:[46]

- Is convicted[47]of a felony of a sexual nature
- Is convicted of a misdemeanor sexual offense involving a minor
- Engages in specified sexual acts or touching with a student

If you have been convicted of a crime that triggers mandatory revocation, you probably will not hear from a UPPAC investigator seeking to meet with you during the investigation stage of your case. This is because UPPAC and the Board are required to revoke in these situations, and no further investigation or information beyond the conviction itself is necessary.

In some other cases, UPPAC may recommend revocation even if it's not mandatory. Revocation is presumed appropriate if an educator does one of the following:[48]

- Views or distributes child pornography
- Is convicted of any offense that requires registration as a sex offender
- Intentionally provides alcohol or an illegal drug to a minor

If UPPAC recommends revocation, you have the right to a hearing. UPPAC's recommendation will not be forwarded to the Board for a final decision unless:

- You agree to the revocation (see part VI);

- You have a hearing (see part IX); or
- You default (see part VIII).

If approved by the Board, revocation means your license is invalid. Revocation is permanent, meaning the license can never be reinstated.[49] If your license is revoked, you will not be allowed to work or volunteer in a public K–12 school in Utah.[50] This information is also shared with other states through a nationwide database, and other states typically will not issue a teaching license to someone who has a revoked license in another state.

VI. Consent to Discipline

After UPPAC makes its initial recommendation, a UPPAC attorney will be in touch with you to inform you of the decision. If UPPAC's recommendation is a dismissal, letter of education, or letter of warning, you will not need to do anything. Your case will be forwarded directly to the Board for a final decision. See part X.

If UPPAC's recommendation is a reprimand, suspension, or revocation, you have the right to a hearing before the Board makes a final decision. If you don't want a hearing, you can agree to the discipline by signing a document called a Consent to Discipline.[51] The UPPAC attorney will draft this document and send it to you for review.

The Consent to Discipline is a binding legal document that could affect you for the rest of your career, so read it carefully. Feel free to contact the UPPAC attorney if you want to discuss the Consent to Discipline. Some parts of this document may be negotiable, while other parts are not. For example, if you don't like the way something is worded in the Consent to Discipline, bring it up to the UPPAC attorney, and we might be able to work out some alternate language. However, the UPPAC attorney is not authorized to negotiate certain parts of a Consent to Discipline, such as the length of a suspension. As you communicate with the UPPAC attorney, remember that he or she is not your attorney, so he or she cannot give you legal advice. However, the UPPAC attorney can give you information and discuss your options.

If you decide to accept UPPAC's recommendation and agree with the terms of the Consent to Discipline, sign it and return it to the UPPAC attorney, who will get it where it needs to go. Signing your document electronically (or scanning your signed document) and emailing it to the UPPAC attorney is usually the fastest way to do this. If that's not possible, you can also return it by mail or fax. Please do NOT just take a photo of the document and send us the photo; the Board will not accept it.

After the UPPAC attorney receives your signed Consent to Discipline, he or she will forward it to the Board for a final decision. See part X.

VII. Complaint and Answer

If you don't want to accept UPPAC's recommendation, or if there are other terms of the Consent to Discipline that you and the UPPAC attorney cannot agree on, the UPPAC attorney will send you a Complaint in order to start the hearing process.[52] The complaint, among other things, sets out the allegations the UPPAC attorney expects to establish at a hearing.[53]

If you decide you want a hearing, you need to send an Answer to the UPPAC executive secretary within 30 days of receiving a Complaint.[54] We understand that most people are not experienced in drafting legal documents, so your Answer does not need to be a perfectly polished piece of legal writing. Just keep in mind a few things when drafting your Answer. Your Answer MUST contain:[55]

- Your name
- The UPPAC case number (this number should appear in the Complaint; if you don't know it, ask the UPPAC attorney)
- A request for a hearing
- The relief you seek at a hearing (in other words, what you want to happen)

In addition to these basic requirements of an Answer, you are encouraged to include your specific responses to the allegations in the Complaint.

When we receive your Answer, we will schedule a hearing. See part IX. Remember, if you don't send us either an Answer or a signed Consent to Discipline within 30 days of receiving a Complaint, you will be in default. See part VIII.

VIII. Default

If we don't receive either an Answer or a signed Consent to Discipline within 30 days of sending you a Complaint, we will initiate default proceedings.[56] The executive secretary will send you a document called an Order of Default.[57] If you get this document but don't want to default, the time to act is now. The consequences of defaulting can be severe (see next paragraph). So send in your Answer or signed Consent to Discipline, or contact us to let us know what's going on. If we still don't hear from you 20 days after sending you an Order of Default, your default will become final, and it will be too late to change the outcome of your case.[58] A UPPAC attorney will attempt to contact you by phone or email at least once during the default process,[59]so make sure your contact information in CACTUS is up to date.

As noted above, the consequences of defaulting can be severe. If you default, it means you lose your right to a hearing. You may also lose your right to appeal to a court if you don't like the Board's final decision. Perhaps most importantly, your level of discipline will almost definitely be more severe if you default. This is because default is considered an aggravating factor when determining the appropriate level of discipline,[60] and the executive secretary will alter UPPAC's initial recommendation accordingly.[61] For example, if you default after UPPAC makes an initial recommendation of a reprimand, the executive secretary will likely change the recommendation to a suspension. If you default after UPPAC makes an initial recommendation of a suspension, the executive secretary will likely change the recommendation to a longer suspension, or maybe even revocation. The executive secretary's recommendation will then be forwarded to the Board for a final decision. See part X.

If you are having trouble meeting the deadlines discussed in this section, please contact the UPPAC attorney assigned to your case. If you are making a genuine effort, we may be able to work with you by giving you more time or by helping you understand your options. If you just don't respond, all we can do is assume you don't care about your license, and we will proceed with the default process.

IX. Hearing

A. Scheduling a Hearing

Your case will be scheduled for a hearing if you submit an answer after receiving a Complaint.[62] The executive secretary will choose a date between 45 and 180 days after receiving an Answer from you.[63] Before you submit your Answer, it may be wise to look at your calendar for the next several months. If you have any travel plans or other commitments that you would not be able to reschedule, you may want to include that information in your Answer, or at least let the UPPAC attorney know that when you submit your

Answer. The executive secretary will try to choose a date that works with your schedule.

At the time the hearing is scheduled, the executive secretary will also choose a hearing officer and hearing panel members.

If something comes up and you need to request a change of hearing date, submit your request in writing to the hearing officer as soon as possible, but no later than 5 days before the hearing.[64] Make sure to include your reasons for your request. The hearing officer will determine whether your reasons are sufficient and will make a decision.[65] Please keep in mind that witnesses and other participants are rearranging their schedules to attend a hearing, so please only request a change if it's absolutely necessary. Also keep in mind that the more advance notice you give, the more likely your request for a change will be granted.

B. Discovery

Court trials often involve extensive depositions, interrogatories, and other discovery. UPPAC hearings are less formal than trials in court, and usually less complicated. For this reason, discovery is not typical in preparation for UPPAC hearings. You are, however, entitled to a copy of our file.[66] If the UPPAC attorney hasn't already given you a copy of our file, you can request it to help you prepare for your hearing.

If you feel like you need more information than what is in our file, you can ask the hearing officer to order discovery. The hearing officer will determine whether and to what extent discovery is necessary.[67]

C. Pre-Hearing Disclosures

Unlike discovery, pre-hearing disclosures are required before every hearing. At least 20 days before the hearing, the UPPAC attorney will send you a list of all exhibits and witnesses he or she intends to introduce at the hearing. Likewise, you need to send a list of all your exhibits and witnesses to the UPPAC attorney and to the hearing officer at least 20 days before the hearing.[68] The hearing officer may also request other information from you, such as a brief containing your position on the allegations.[69]

If you bring a witness or document to your hearing that was not listed in your pre-hearing disclosures, that witness or document will not be allowed unless the hearing officer determines there is a good reason for the failure to disclose it.[70]

If you want a certain person to be a witness at your hearing, but you're not sure he or she will come to the hearing voluntarily, you can ask the executive secretary to issue a subpoena to that person.[71]

Similarly, if some person or entity other than UPPAC has a document that you want to bring to the hearing, you can ask the executive secretary to issue a subpoena to produce the document.[72]

D. Participants at a Hearing

The hearing will take place in a conference room at the USBE building. The following people will be in the room at your hearing:

- The hearing officer
- The UPPAC executive secretary[73]
- Three UPPAC members[74]
- A UPPAC attorney
- You, the educator
- Your attorney or other representative, if you have one
- Witnesses

The hearing officer conducts the hearing and makes rulings on the admissibility of evidence and other issues that come up.[75] The hearing officer has discretion to tailor the hearing to the specific circumstances of your

case, so if the hearing officer says something that contradicts what you read in this guide, follow the hearing officer's directions. The hearing officer is analogous to a judge in a court trial.

The three UPPAC members make up the hearing panel. They are the ones who, with the hearing officer's help, will evaluate the evidence and make a decision at the end of the hearing.[76] The hearing panel is analogous to a jury in a court trial.

When the hearing is scheduled, you will receive a notice with the names of the hearing officer and the three hearing panel members.[77] If there is some reason you think a hearing panel member should be disqualified, you can submit a written request to the hearing officer.[78] If you think the hearing officer should be disqualified, you can submit a written request to the executive secretary.[79] These requests must be submitted at least 15 days before the hearing.[80]

Note that the people listed above are typically the only people allowed in the room during the hearing. The hearing officer may grant exceptions. For example, if a minor is testifying, a parent or other support person will typically be allowed to accompany the minor. Other exceptions may be granted in the hearing officer's discretion. If you have a spouse, other support person, or someone else that you want to be in the room during the hearing, be sure to make that request before the hearing to avoid surprises.

Also, unless there are unusual circumstances, witnesses (other than you, of course) will not be allowed in the room while other witnesses are testifying.

E. Evidence and Witnesses

The UPPAC attorney has the burden of proof at your hearing.[81] This means it is the UPPAC attorney's job to prove that the allegations against you are true.

The standard of proof at a UPPAC hearing is a "preponderance of the evidence."[82] This means that the panel members must decide if it is more likely than not that the allegations are true. This is a lower standard than, for example, a criminal trial, where the elements of the crime must be proven "beyond a reasonable doubt."

The UPPAC attorney will attempt to meet that burden by bringing witnesses, documents, recordings, or other types of evidence to the hearing. You can also bring whatever witnesses and evidence to the hearing that you think are relevant, as long as they were listed in your pre-hearing disclosures.

If any questions arise regarding the admissibility of a document or statement of a witness, the hearing officer will decide what is allowed. Unlike court trials, which are governed by strict rules of evidence, UPPAC hearings are less formal.[83] The hearing officer has discretion to allow or disallow evidence as he or she deems appropriate. The general criteria the hearing officer will use to decide evidentiary questions are:[84]

- Reasonable reliability of the offered evidence;
- Fairness to both parties; and
- Usefulness to UPPAC in reaching a decision.

In addition to these general guidelines, the hearing officer will observe a few specific rules:

- Hearsay is admissible.[85] In a court trial, a witness is usually not allowed to testify about something that someone else said. However, in UPPAC hearings, this type of testimony is allowed.
- The hearing officer may exclude evidence that is irrelevant or unduly repetitious.[86]
- The hearing officer must exclude evi-

dence that is privileged.[87] For example, this may include communication between a lawyer and his or her client, certain communications between spouses, etc.

- There are special rules regarding child witnesses.[88]

If the UPPAC attorney sees evidentiary questions that might arise at the hearing, he or she may bring them up, either to you or to the hearing officer, well before the hearing. This helps save time at the hearing and ensures that everyone is on the same page regarding what will be allowed at the hearing. You are encouraged to do the same. If you want to make sure your documents or witnesses are going to be allowed, or if you see something in the UPPAC attorney's pre-hearing disclosures that you don't think should be allowed, please raise those issues as soon as possible.

F. Behavior at the Hearing

Although UPPAC hearings are less formal than court trials, everyone is still expected to keep emotions in check and behave appropriately.[89] If you fail to conduct yourself in an appropriate manner, the hearing officer may exclude you from the hearing room or prohibit you from testifying on your own behalf.[90]

You are also prohibited from harassing, intimidating, or pressuring witnesses or other hearing participants, or directing others to do so.[91]

If you don't show up at your hearing, or if you exhibit extreme misbehavior, the hearing officer will end the hearing, and you will be in default.[92]

G. Order of the Hearing

Not every hearing has the same format. As noted earlier, the hearing officer has discretion to tailor the hearing to the circumstances of your case. However, most hearings proceed roughly as follows:

1. *Introduction*

   The hearing officer will convene the hearing, introduce himself or herself, and ask everyone present to introduce themselves. If there are evidentiary issues or other matters to resolve before the hearing, they will be addressed at this time, outside the presence of the hearing panel members if necessary.

2. *Opening Statements*

   Each side will summarize for the hearing panel what they expect the evidence at the hearing to establish. The UPPAC attorney will go first, then you.

   Opening statements are not evidence. Instead, they are intended to orient everyone regarding what the case is about. As such, they should be relatively brief.

3. *UPPAC Attorney's Evidence*

   Because the UPPAC attorney has the burden of proof, he or she will present evidence first. Witnesses will testify under oath, one at a time. The UPPAC attorney will question each witness first. Then you can ask the witness questions if you have any. If the UPPAC attorney has any follow-up questions, he or she may ask them. Then if the hearing officer or hearing panel members have any questions for the witness, they may ask them. The witness will then be excused, and the UPPAC attorney will call his or her next witness. This process continues until the UPPAC attorney has presented all of his or her witnesses and exhibits.

4. *Educator's Evidence*

   Now it's your turn. If you have witnesses other than yourself, you will question each witness. Keep in mind that we

know most educators are not trained in the finer points of examining witnesses, so just keep it simple. Think of it like a conversation. Think about what information this person knows that you want the hearing panel to hear, and ask questions to elicit that information. When you're done questioning each witness, the UPPAC attorney may question the witness, followed by the hearing officer and panel members.

Next, it's your turn to testify under oath, if you want to. Whether or not you testify is up to you. However, remember that the things you say in an opening statement or closing argument are not evidence; they only summarize the evidence. If you have something to say that you want the hearing panel to consider *as evidence*, you need to say it in testimony, under oath.

If you decide to testify, you don't need to ask yourself questions and then answer them. Just tell the hearing panel what you want them to know. It may be helpful to outline your testimony before the hearing. That way, you won't forget to address something important, and it may keep you from getting nervous. After you've finished giving your testimony, the UPPAC attorney may ask you questions, followed by the hearing officer and panel members.

If you bring documentsor other exhibits you want the hearing panel to consider, you need to have them admitted into evidence. It's not enough to refer to a document or show it to a witness. You need to explain what the document is and then ask the hearing officer if it can be admitted into evidence. There may be a discussion about the admissibility of the exhibit if necessary, then the hearing officer will decide whether or not to admit the exhibit. If it is admitted, you can then distribute copies. Please bring enough copies for everyone to avoid having to interrupt the hearing to make copies. Seven copies should be enough (hearing officer, 3 panel members, executive secretary, UPPAC attorney, and yourself).

When you have presented all the witnesses and exhibits you want to, tell the hearing officer that you have no more evidence.

5. *UPPAC Attorney's Rebuttal Evidence*

   If the UPPAC attorney has additional evidence to rebut any of your witnesses or exhibits, he or she may present it at this time. Often there will be no rebuttal evidence, and the hearing will skip to closing arguments.

6. *Closing Arguments*

   Each side will then have a chance to summarize the evidence in a closing argument. Again, the UPPAC attorney will go first, then you.

   Remember that your closing argument is not given under oath, and it is not evidence, so you can't discuss anything that wasn't addressed in previous testimony. In other words, the closing argument is for summarizing the evidence, not giving new evidence.

   If you have a recommendation for the panel, now is your time to give it. For example, if the UPPAC presumption calls for a suspension of your license, but you want the hearing panel to consider a reprimand instead, tell them why. Remind them of the evidence they heard during the hearing that supports your position.

   Because the UPPAC attorney has the burden of proof, he or she will usually get the last word after you give your closing argument.

H. Deliberation and Hearing Report

After closing arguments are finished, the hearing officer will excuse everyone from the room except the hearing panel members. The hearing officer and panel members will then discuss the case, make findings, and make a decision about what licensing action, if any, is appropriate. The hearing officer participates in the deliberations and helps the panel members articulate their findings, but the hearing officer does not get a vote.

When deliberations are finished, the hearing officer will prepare a hearing report within 20 days. The hearing report will set out the hearing panel's findings and conclusions. The hearing officer will circulate the report to the panel members to ensure it reflects the panel's findings. When the hearing report is complete, it will be submitted to the full UPPAC commission, which will then vote on what licensing action, if any, is appropriate. Because the hearing panel members heard the evidence directly, UPPAC will typically give the panel's recommendation some deference. However, UPPAC's recommendation does not have to be the same as the hearing panel's recommendation.

After UPPAC makes its final recommendation, that recommendation is forwarded to the Board for approval.

X. Board Decision

The Utah State Board of Education is the elected body that has decision-making authority over educator licenses.[93] For this reason, UPPAC does not make final decisions regarding educator licenses.[94] Instead, as its name suggests, UPPAC's role is to assist and advise the Board on these issues.[95] Everything UPPAC does is a recommendation to the Board.

After UPPAC has made its final recommendation—whether by agreement, after a hearing, or otherwise—the recommendation is forwarded to the Board for final action. The Board will then consider your case at its next monthly meeting and make a decision. The Board's decision can be the same as UPPAC's recommendation, or, if the Board determines that UPPAC's recommendation is unreasonable, it can be more severe or less severe.

If you resolved your case by signing a Consent to Discipline, and if the Board's decision is different from what you agreed to, the Board will remand the case back to UPPAC.[96] If this happens, the UPPAC attorney will contact you to either sign a new Consent to Discipline or have a hearing.

XI. Other Notes

A. Surrender

If you have been notified that UPPAC has opened an investigation, you can submit a petition to surrender your license.[97] If you send a petition to surrender, the UPPAC executive secretary will forward your petition to the Board. The Board will then decide whether UPPAC's investigation should continue.[98]

If we receive a petition to surrender, the Board typically will direct UPPAC to stop investigating. However, depending on the circumstances, the Board may direct UPPAC to continue its investigation. This might happen, for example, if you are not the only licensed educator involved in a situation, and UPPAC needs to gather information to make a decision regarding the other people involved.

A petition to surrender has the same effect as revocation. In other words, it's permanent. You cannot withdraw your petition, and you can never have your license reinstated or apply for a new license.[99]

If you think you might be interested in sur-

rendering your license, contact the UPPAC attorney. He or she will make sure you understand the consequences of surrendering, and if you decide to proceed, he or she can probably help draft your petition. However, remember that the UPPAC attorney is not *your* attorney and cannot give you legal advice. Surrendering your license is a big decision; consider hiring an attorney to help you decide.

B. Attorneys

This guide is primarily written for the benefit of educators who do not have attorneys. However, you can decide to hire an attorney at any time. Whether or not you are represented by an attorney is completely up to you.

If you decide to hire an attorney, have your attorney contact us to let us know he or she is representing you. Once we learn that you are represented by an attorney, ethical rules prohibit the UPPAC attorney from communicating with you directly. We will communicate with your attorney instead.

Although you have the right to an attorney, because this is not a criminal proceeding, you don't have the right to a *free* attorney. If you are a member of the Utah Education Association (UEA), you may qualify to be represented by a UEA attorney. Contact UEA for more information.

If you have further questions, please contact the State Board of Education UPPAC staff:

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Sydnee Dickson, Ed.D.
State Superintendent of Public Instruction

Endnotes

[1] UPPAC rules are found in the Utah Administrative Code, Rules R277-210 through 217. The rules are available online at this link: https://www.schools.utah.gov/administrativerules. The Utah Code is available online at this link: https://le.utah.gov/xcode/Title53E/Chapter6/53E-6.html.

[2] Utah Code § 53E-6-501.

[3] Utah Code § 53E-6-502.

[4] Rule R277-211-2(4)(a).

[5] Rule R277-211-3(1)(b), (c).

[6] Rule R277-211-3(1)(a).

[7] Rule R277-211-5(1).

[8] The expedited hearing process is new as of February 2020, but we expect cases that go through this process to be resolved in a matter of 2-4 months.

[9] Rule R277-211-5(1)(c).

[10] Rule R277-211-5(2).

[11] Rules R277-211-5(3), R277-210-2(21).

[12] The executive secretary often delegates this responsibility to a UPPAC attorney.

[13] On rare occasions, there may be only two UPPAC members available for a hearing. In this case, the executive secretary may choose one other licensed educator to substitute, or, with your consent, the hearing may proceed without a third member. Rules R277-210-2(21), R277-211-5(9).

[14] Rule R277-211-5(7).

[15] Rule R277-211-5(8).

[16] Rule R277-210-2(21), (24).

[17] Rule R277-211-5(5).

[18] The two primary reasons the panel might recommend opening an investigation are: 1) there is not enough information to make a decision; or 2) the allegations are more serious than originally thought, and the case cannot be appropriately resolved by issuing a letter of warning.

[19] Rule R277-210-2(24)(e).

[20] Rule R277-211-3(2)(b)(ii).

[21] Rule R277-210-2(31).

[22] Rule R277-211-3(2)(b)(i).

[23] Rule R277-211-3(2)(b).

[24] If you have been convicted of a serious sex-related crime, the investigator may not reach out to you for a meeting. For more on this, see part V.F.

[25] Rule R277-211-3(3)(b).

[26] Rule R277-217.

[27] Rule R277-211-9(1).

[28] Rule R277-211-3(4)(a).

[29] Rules R277-210-2(33), R277-215-2(9).

[30] Rule R277-211-9(1).

[31] Rule R277-210-2(34).

[32] Rule R277-215-2(8).

[33] Rule R277-211-9(1).

[34] Rule R277-210-2(43)(a).

[35] Rule R277-215-2(7).

[36] Rule R277-210-2(43)(b).

[37] Rule R277-210-2(43)(c).

[38] Rule R277-210-2(49).

[39] Rule R277-215-2(6).

[40] Rule R277-215-2(5).

[41] Rule R277-215-2(4).

[42] Rule R277-215-2(3).

[43] Rule R277-211-7(3)(m).

[44] Rule R277-211-7(3)(l)(i).

[45] The reinstatement process is not covered in detail in this guide. For reinstatement procedures, see Rule R277-213.

[46] Utah Code § 53E-6-604(5)(b).

[47] This includes entering a plea in abeyance.

[48] Rule R277-215-2(2).

[49] Rule R277-210-2(45), Utah Code § 53E-6-604(5)(c).

[50] Rule R277-211-7(3)(m).

[51] Rule R277-211-7.

[52] Depending on the nature of your case or other circumstances, the UPPAC attorney may send you a Complaint and a Consent to Discipline at the same time.

[53] Rule R277-211-6(2).

[54] Rule R277-211-6(4)(a).

[55] Rule R277-211-6(4)(b).

[56] Rule R277-211-6(6)(a).
[57] Rule R277-211-8(1)(a).
[58] Rule R277-211-8(1)(d).
[59] Rule R277-211-8(1)(b).
[60] Rule R277-215-3(2)(p).
[61] Rule R277-211-8(2).
[62] Rule R277-212-2(1)(a).
[63] Rule R277-212-2(1)(b).
[64] Rule R277-212-2(2)(a).
[65] Rule R277-212-2(2)(b).
[66] Rule R277-211-3(6).
[67] Rule R277-212-6(1)-(4).
[68] Rule R277-212-4(3)(c), (d).
[69] Rule R277-212-4(3)(a).
[70] Rule R277-212-4(4).
[71] Rule R277-212-6(5).
[72] Rule R277-212-6(6).
[73] The executive secretary sometimes delegates this responsibility to a UPPAC attorney.
[74] On rare occasions, there may be only two UPPAC members available for a hearing, or the executive secretary might decide that another person with special qualifications would benefit the panel. In this case, the executive secretary may choose one other person to substitute, or, with your consent, the hearing may proceed without a third member. Rules R277-212-3(2),(3).
[75] Rule R277-210-2(24).
[76] Rule R277-210-2(25).
[77] Rule R277-212-4(2)(b).
[78] Rule R277-212-3(9).
[79] Rule R277-212-3(5).
[80] Rule R277-212-3(5)(b), (9)(c).
[81] Rule R277-212-7(1).
[82] Rule R277-212-7(3).
[83] Rule R277-212-7(4).
[84] Rule R277-212-7(5).
[85] Rule R277-212-11(1).
[86] Rule R277-212-11(4)(a).
[87] Rule R277-212-11(4)(b).
[88] Rule R277-212-12.
[89] Rule R277-212-8(1).
[90] Rule R277-212-8(2).
[91] Rule R277-212-8(3).
[92] Rule R277-212-15(1).
[93] Utah Code § 53E-6-602(1).
[94] Utah Code § 53E-6-602(2).
[95] Utah Code § 53E-6-501.
[96] Rule R277-211-7(4)(b).
[97] Rule R277-216-2(1).
[98] Rule R277-216-3(1)(c).
[99] Rule R277-216-3(2)(a)(v).