

R277. Education, Administration.

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

R277-215-1. 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 establish rebuttable presumptions for UPPAC and Board review of UPPAC cases.

R277-215-2. Rebuttable Presumptions.

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

(2) Revocation is presumed appropriate if an educator:

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

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

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

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

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

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

(i) is expunged; or

(ii) is reduced pursuant to Section 76-3-402.

- (4) Suspension of three years or more is presumed appropriate if an educator:
 - (a) engages in a boundary violation of a sexually suggestive nature that is not sexually explicit conduct;
 - (b) is convicted of child abuse if the conduct results in a conviction of a class A misdemeanor;
 - (c) is convicted of an offense that results in the educator being placed on court supervision for three or more years; or
 - (d) is convicted of intentional theft or misappropriation of public funds.
- (5) Suspension of one to three years is presumed appropriate, if an educator:
 - (a) willfully or knowingly creates, views, or gains access to sexually inappropriate material on school property or using school equipment;
 - (b) is convicted of one or more misdemeanor violence offenses in the last 3 years;
 - (c) is convicted of using physical force with a minor if the conviction is a class B misdemeanor or lower;
 - (d) engages in repeated incidents of or a single egregious incident of excessive physical force or discipline to a child or student that:
 - (i) does not result in a criminal conviction; and
 - (ii) does not meet the circumstances described in Subsection 53G-8-302(2);
 - (e) threatens a student physically, verbally, or electronically;
 - (f) engages in a pattern of boundary violations with a student under a circumstance not described in Subsection (4)(a);
 - (g) engages in multiple incidents or a pattern of theft or misappropriation of public funds that does not result in a criminal conviction;
 - (h) attends a school or school-related activity in an assigned employment-related capacity while possessing, using, or under the influence of alcohol or illegal drugs;
 - (i) is convicted of two drug-related offenses or alcohol-related offenses in the three years previous to the most recent conviction;
 - (j) engages in a pattern of or a single egregious incident of:
 - (i) harassing;
 - (ii) bullying; or

(iii) threatening a co-worker or community member; or
(k) knowingly and deliberately falsifies or misrepresents information on an education-related document.

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

(a) has three or more incidents of inappropriate conduct that would otherwise warrant lesser discipline so long as the educator had notice that such conduct was inappropriate from:

- (i) Board rule or LEA policy; or
- (ii) verbal or written notice from an LEA or UPPAC;
- (b) fails to report to appropriate authorities suspected child or sexual abuse; or
- (c) knowingly teaches, counsels, or assists a minor student in a manner that disregards a legal, written directive, such as a court order or an approved college and career ready plan.

(7) A letter of admonition, letter of warning, or letter of reprimand, with or without probation, is presumed appropriate if an educator:

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

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

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

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

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

(f) knowingly violates a standardized testing protocol;

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

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

(ii) impaired driving under Section 41-6a-502.5; or

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

territory;

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

(i) fails to make a report required by Rule R277-516;

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

(k) engages in an activity that constitutes a conflict of interest; or

(l) engages in other minor violations of the Utah Educator Standards in Rule R277-515.

(8) In considering a presumption described in this section, UPPAC or the Board shall consider deviating from the presumptions if:

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

(b) aggravating or mitigating factors exist that warrant deviation from the presumption.

(9) An aggravating factor may include the following:

(a) the educator has engaged in prior misconduct;

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

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

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

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

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

(g) the educator's attitude does not reflect responsibility for the misconduct or the consequences of the misconduct;

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

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

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

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

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

(m) the educator was convicted of crime as a result of the misconduct;
(n) any other factor that, in the view of UPPAC or the Board, warrants a more serious consequence for the educator's misconduct; and
(o) the educator is on criminal probation or parole; or
(p) the Executive Secretary has issued an order of default on the educator's case as described in Rules R277-211 or R277-212.

(10) A mitigating factor may include the following:

(a) the educator's misconduct was the result of strong provocation;
(b) the educator was young and new to the profession;
(c) the educator's attitude reflects recognition of the nature and consequences of the misconduct and demonstrates a reasonable expectation that the educator will not repeat the misconduct;
(d) the educator's attitude suggests amenability to supervision and training;
(e) the educator has little or no prior disciplinary history;
(f) since the misconduct, the educator has an extended period of misconduct-free classroom time;
(g) the educator was a less active participant in a larger offense;
(h) the educator's misconduct was directed or approved, whether implicitly or explicitly, by a supervisor or person in authority over the educator;
(i) the educator has voluntarily sought treatment or made restitution for the misconduct;
(j) there was insufficient training or other policies that might have prevented the misconduct;
(k) there are substantial grounds to partially excuse or justify the educator's behavior though failing to fully excuse the violation;
(l) the educator self-reported the misconduct; or
(m) any other factor that, in the view of UPPAC or the Board, warrants a less serious consequence for the educator's misconduct.

(11)(a) UPPAC and the Board have sole discretion to determine the weight they give to an aggravating or mitigating factor.

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

KEY: educator, disciplinary presumptions

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

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