

1 **R277. Education, Administration.**

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

4 **R277-211-1. Authority and Purpose.**

5 (1) This rule is authorized by:

6 (a) Utah Constitution [Article X, Section 3](#), which vests general control and
7 supervision over public education in the Board;

8 (b) Section [53E-6-506](#), which directs the Board to adopt rules regarding UPPAC
9 duties and procedures; and

10 (c) Subsection [53E-3-401\(4\)](#), which allows the Board to make rules to execute the
11 Board's duties and responsibilities under the Utah Constitution and state law.

12 (2) The purpose of this rule is to provide procedures regarding:

13 (a) notifications of alleged educator misconduct;

14 (b) review of notifications by UPPAC; and

15 (c) complaints, consents to discipline, and defaults.

16 (3) [Title 63G, Chapter 4](#), Administrative Procedures Act, does not apply to this rule
17 under the exemption of Subsection [63G-4-102\(2\)\(d\)](#).

18

19 **R277-211-2. Initiating Proceedings Against Educators.**

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

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

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

24 (2) If an informant seeks to report information to UPPAC concerning alleged
25 educator misconduct, the informant shall submit an allegation of misconduct to the
26 Executive Secretary in writing, including the following:

27 (a) the informant's:

28 (i) name;

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

- 30 (iii) telephone number;
31 (iv) address; and
32 (v) contact information;
33 (b) information about the educator against whom the allegation is made:
34 (i) name;
35 (ii) position, such as administrator, teacher, candidate; and
36 (iii) if known, the address and telephone number; and
37 (c) the facts on which the allegation is based and supporting information.

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

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

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

47 (5) The Executive Secretary shall permanently maintain all written allegations,
48 subsequent dismissals, actions, or disciplinary letters related to a case against an
49 educator in the UPPAC case file.

50

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

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

55 (i) dismiss the matter if the alleged misconduct does not involve an issue that
56 UPPAC should address; or

57 (ii) open a case if the alleged misconduct involves an issue that may be
58 appropriately addressed by UPPAC and the Board.

59 (b) In considering whether to open a case regarding an allegation of educator
60 misconduct, UPPAC shall consider the known facts and circumstances surrounding the
61 allegation to determine whether opening a case is warranted.

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

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

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

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

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

70 (v) the educator has received prior UPPAC discipline.

71 (c) If UPPAC votes to open a case, UPPAC shall also determine whether to:

72 (i) initiate an investigation; or

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

75 (2)(a) Prior to a UPPAC investigator's initiation of an investigation, the Executive
76 Secretary shall send an investigative letter to the following:

77 (i) the educator to be investigated;

78 (ii) the LEA that employs the educator; and

79 (iii) the LEA where the alleged activity occurred.

80 (b) The Executive Secretary shall place a flag on the educator's CACTUS file after:

81 (i) sending the educator an investigative letter; and

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

83 (c) The Executive Secretary may not place a flag on an educator's CACTUS file if
84 the educator agrees to an expedited hearing under Section R277-~~215~~211-5 unless the
85 expedited hearing panel recommends a full investigation.

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

88 (b) The investigator shall prepare an objective and independent investigative
89 report of the findings of the investigation and a recommendation supported by the
90 evidence and Rule [R277-215](#).

91 (c) If the investigator discovers additional evidence of unprofessional conduct
92 beyond the original allegations, the investigator may include the additional evidence of
93 misconduct in the investigative report provided that the educator has had the opportunity
94 to respond to the additional evidence.

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

97 (e) The Executive Secretary shall add the investigative report described in
98 Subsection (3)(d) to a UPPAC meeting agenda.

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

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

103 (a) Recommend that the Board clear the CACTUS flag and take no action; or

104 (b) make an initial recommendation consistent with the evidence and Rule [R277-](#)
105 [215](#).

106 (5) After receiving an initial recommendation from UPPAC for action, the Executive
107 Secretary shall:

108 (a) prepare and serve a complaint; or

109 (b) negotiate and prepare a proposed consent to discipline.

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

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

114

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

117 (1) In a case involving the first report of an arrest, citation, or charge of an
118 educator, which requires self-reporting by the educator under Section [R277-217-4](#) the
119 Executive Secretary, with the consent of the educator, may schedule the matter for an
120 expedited hearing in lieu of initially referring the matter to UPPAC.

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

123 (b) An expedited hearing panel shall conduct an expedited hearing on a criminal
124 charge and include the following additional invited participants:

- 125 (i) the educator;
- 126 (ii) the educator's attorney or representative;
- 127 (iii) a UPPAC attorney; and
- 128 (iv) a representative of the educator's LEA.

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

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

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

- 140 (a) close the case;
- 141 (b) close the case upon completion of court requirements;
- 142 (c) recommend that the Board issue a letter of education or letter of warning [~~to~~
143 ~~the Board~~];
- 144 (d) open a full investigation; or

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

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

150 (6) If the Board fails to adopt UPPAC's recommendation, UPPAC may open a full
151 investigation or issue a complaint.

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

154

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

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

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

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

162 (c) the educator consents to participate.

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

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

169 (a) the educator;

170 (b) the educator's attorney or representative;

171 (c) a UPPAC attorney; and

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

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

- 174 (a) an educator's oral or written explanation of the events;
175 (b) an LEA's investigative report or employment file, including witness statements;
176 and
177 (c) additional information proffered by a participant in the expedited hearing if the
178 Executive Secretary deems it probative of the issues at the expedited hearing.
- 179 (5) After reviewing the evidence described in Subsection (4), the expedited
180 hearing panel shall make written findings and a recommendation consistent with the
181 evidence and Rule [R277-215](#) to do one of the following:
- 182 (a) close the case;
183 (b) close the case upon completion of recommended training or other educator
184 requirements;
185 (c) issue a letter of education or letter of warning; or
186 (d) open a full investigation.
- 187 (6) If an expedited hearing panel recommends a full investigation be opened, the
188 Executive Secretary shall follow the requirements set forth in Subsection R277-211-3(2).
- 189 (7) An expedited hearing under this section may be recorded.
- 190 (8) Testimony offered at an expedited hearing may be considered in a subsequent
191 report to UPPAC or hearing [~~if a full investigation is opened~~].
- 192 (9) An expedited hearing panel may proceed under this section with only two
193 voting panel members with the stipulation of the educator.

194

195 **R277-211-6. Complaints.**

- 196 (1) If UPPAC determines that an allegation is sufficiently supported by evidence
197 discovered in the investigation, the Executive Secretary may direct the UPPAC attorney
198 to serve a complaint upon the educator being investigated.
- 199 (2) At a minimum, a complaint shall include:
- 200 (a) a statement of legal authority and jurisdiction under which the action is being
201 taken;
202 (b) a statement of the facts and allegations upon which the complaint is based;

203 (c) other information necessary to enable the respondent to understand and
204 address the allegations;

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

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

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

211 (g) a statement advising the respondent that if the respondent fails to respond
212 within 30 days, the Executive Secretary may issue a default order in accordance with
213 Section R277-211-8;

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

217 (i) a copy of the applicable hearing rules as required by Section [53E-6-607](#); and

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

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

222 (4)(a) A respondent may file an answer to a complaint by filing a written response
223 signed by the respondent or the respondent's attorney with the Executive Secretary within
224 30 days after the complaint is mailed.

225 (b) The answer shall include:

226 (i) a request for a hearing;

227 (ii) the file number of the complaint;

228 (iii) the names of the parties; and

229 (iv) the relief that the respondent seeks at a hearing.

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

232 (5)(a) The Executive Secretary shall schedule a hearing, if requested by the
233 respondent, in accordance with Subsection (2)(h) and Rule [R277-212](#).

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

237 (c) A proposed consent to discipline described in Subsection(5)(b) shall be
238 submitted to the Board for the Board's consideration in accordance with Section R277-
239 211-7.

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

243 (b) If the Executive Secretary enters an order of default, the Executive Secretary
244 shall make a recommendation to the Board for discipline consistent with the evidence and
245 Rule [R277-215](#).

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

248

249 **R277-211-7. Proposed Consent to Discipline.**

250 (1) At any time after UPPAC has made an initial recommendation, a respondent
251 may accept UPPAC's initial recommendation, rather than request a hearing, by entering
252 into a proposed consent to discipline.

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

256 (3) At a minimum, a proposed consent to discipline shall include:

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

260 (b) a statement that the respondent admits or does not contest the facts recited in
261 the proposed consent to discipline as true for purposes of the Board administrative action;

262 (c) a statement that the respondent:

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

265 (ii) agrees to the proposed action [~~limitations on the respondent's license or~~
266 ~~surrenders the respondent's license~~] rather than contest the allegations;

267 (d) a statement that the respondent agrees to the terms of the proposed consent
268 to discipline and other provisions applicable to the case, such as remediation,
269 assessment and recommended counseling, restitution, rehabilitation, and other
270 conditions, if any, under which the respondent may request a reinstatement hearing or a
271 removal of the reprimand;

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

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

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

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

283 (i) a statement that information regarding the proposed reprimand, suspension, or
284 revocation may be included in an online licensing database that is available for public
285 access in accordance with [~~R277-512~~] [Rule R277-312](#).

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

288 (k) a statement that the educator understands that the Board is not bound by
289 UPPAC's recommendation or the negotiated proposed consent to discipline unless the
290 Board approves the proposed consent to discipline;

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

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

294 (ii) a minimum time period that must elapse before the educator may request a
295 reinstatement hearing; ~~[and]~~

296 (m) if for suspension or revocation of a license, a statement that the respondent
297 may not work or volunteer in a public school in accordance with Subsection [53E-6-603\(3\)](#);
298 and]:

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

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

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

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

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

307 (n) if for suspension or revocation of a license, a statement that any attempt to
308 represent to any other state a valid Utah license shall result in further licensing action in
309 Utah.

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

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

314 (i)(A) remand the case to UPPAC and shall include issues or questions that need
315 to be addressed;

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

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

320 (ii) direct the Executive Secretary to issue a letter of education or letter of warning
321 or dismiss the matter; or

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

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

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

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

331 (a) notify the parties of the decision;

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

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

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

337 (a) notify the parties of the decision;

338 (b) update CACTUS to reflect the action;

339 (c) report the action to the NASDTEC Educator Information Clearinghouse if the
340 agreement results in:

341 (i) a revocation;

342 (ii) a suspension; or

343 (iii) a reprimand;

344 (d) direct the appropriate penalties to begin; and

345 (e) notify the LEAs throughout the state.

346

347 **R277-211-8. Default Procedures.**

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

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

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

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

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

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

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

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

366 (2) The Executive Secretary shall make a recommendation to the Board for
367 discipline consistent with the evidence and Rule [R277-215](#).

368 (3) If an educator's default results in a suspension, the order of default shall include
369 conditions the educator must meet before requesting a reinstatement hearing.

370

371 **R277-211-9. Disciplinary Letters and Dismissal.**

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

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

377 (a) remand the case to the Executive Secretary with:

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

379 (ii) alternative terms and disposition that would be satisfactory to the Board to be
380 submitted to the educator for consideration; and

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

382 (b) dismiss the matter; or

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

384 (3) If the Board approves a letter of warning or letter of education, the Executive
385 Secretary shall:

386 (a) prepare the letter of warning or letter of education and mail it to the educator;

387 (b) place a copy of the letter of warning or letter of education in the UPPAC case
388 file; and

389 (c) update CACTUS to reflect that the case is closed.

390

391 **KEY: teacher licensing, conduct, hearings**

392 **Date of Enactment or Last Substantive Amendment: February 7, 2020**

393 **Notice of Continuation: February 10, 2021**

394 **Authorizing, and Implemented or Interpreted Law: [Art X Sec 3](#); [53E-6-506](#); [53E-3-](#)
395 [401\(4\)](#)**