

1 **R277. Education, Administration.**

2 **R277-210. Utah Professional Practices Advisory Commission (UPPAC), Definitions.**

3 **R277-210-1. Authority and Purpose.**

4 (1) This rule is authorized by:

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

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

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

11 (2) The purpose of this rule is to establish definitions for terms in UPPAC activities.

12 (3) The definitions contained in this rule apply to Rules R277-210 through [R277-](#)
13 [217](#).

14 ([a]4) Any calculation of time called for by these rules shall be governed by [Utah](#)
15 [R. Civ. P. 6](#).

16

17 **R277-210-2. Definitions.**

18 (1)(a) "Action" means a disciplinary action taken by the Board adversely affecting
19 an educator's license.

20 (b) "Action" does not include a letter of warning or letter of education.

21 (c) "Action" includes:

22 (i) a reprimand;

23 (ii) a suspension; and

24 (iii) a revocation.

25 (2) "Administrative hearing" or "hearing" has the same meaning as that term is
26 defined in Section [53E-6-601](#)~~[-44]~~.

27 (3) "Alcohol related offense" means a violation of:

28 (a) [Title 41, Chapter 6a, Part 5](#), Driving Under the Influence and Reckless Driving,
29 except for offenses not involving alcohol;

30 (b) Section [76-9-701](#), Intoxication;

31 (c) Section [32B-4-403](#), Unlawful sale, offer for sale, or furnishing to minor; and

32 (d) any offense under the laws of another state that is substantially equivalent to
33 the offenses described in Subsections(3)(a) through (c).

34 (4) "Answer" means a written response to a complaint filed by the Executive
35 Secretary alleging educator misconduct.

36 (5) "Applicant" means a person seeking:

37 (a) a new license; or

38 (b) clearance of a criminal background review from Executive Secretary at any
39 stage of the licensing process.

40 (6)(a) "Boundary violation" means crossing verbal, physical, emotional, and social
41 lines that an educator must maintain [~~in order~~] to ensure structure, security, and
42 predictability in an educational environment.

43 (b) "Boundary violation" may include the following, depending on the
44 circumstances:

45 (i) isolated, one-on-one interactions with students out of the line of sight of others;

46 (ii) meeting individually with students in rooms with covered or blocked windows;

47 (iii) telling risqué jokes or using profanity in the presence of a student;

48 (iv) employing favoritism to a student;

49 (v) inappropriate gift giving to individual students;

50 (vi) uninvited or inappropriate touching;

51 (vii) photographing individual students for a non-educational purpose or use;

52 (viii) engaging in inappropriate or unprofessional contact outside of educational
53 program activities;

54 (ix) exchanging personal email or phone numbers with a student for a non-
55 educational purpose or use;

56 (x) interacting privately with a student through social media, computer, or
57 handheld devices;

58 (xi) discussing with a student inappropriate details about:

59 (A) an educator's personal life or personal issues; or
60 (B) a student's personal life or personal issues;
61 (xii) discussing issues restricted under Subsection [53E-9-203](#)(1) without
62 authorization.

63 (c) "Boundary violation" does not include:

64 (i) offering praise, encouragement, or acknowledgment;

65 (ii) offering rewards available to all who achieve;

66 (iii) asking permission to touch for necessary purposes;

67 (iv) giving pats on the back or a shoulder;

68 (v) giving side hugs;

69 (vi) giving handshakes or high fives;

70 (vii) offering warmth and kindness;

71 (viii) utilizing public social media alerts to groups of students and parents; or

72 (ix) contact permitted by an IEP or 504 plan.

73 (d) UPPAC and the Board may find "boundary violations" to be repetitive when the
74 misconduct occurs more than once.

75 (e)(i) UPPAC and the Board may find a pattern of "boundary violations" when there
76 are multiple incidents of related misconduct that occur consistently over a prolonged
77 timeframe; and

78 (ii) UPPAC and the Board find the educator's misconduct is aggravated by the
79 circumstances, including:

80 (A) the misconduct involves more than one student;

81 (B) the misconduct occurs in more than one physical setting; or

82 (C) the misconduct includes multiple types of boundary violations.

83 (iii) UPPAC and the Board may find a pattern of "boundary violations" most readily
84 when the educator's misconduct continues after documented warnings from
85 administrators in the educator's LEA.

86 (iv) Notwithstanding the existence of the factors identified in this Subsection (e),
87 UPPAC and the Board may find boundary violations are “repetitive” rather than a “pattern”
88 when there are mitigating circumstances consistent with Section [R277-215-3](#).

89 (7) "Complaint" means a written allegation or charge against an educator filed by
90 the Executive Secretary against the educator.

91 (8) "Complainant" means the Executive Secretary.

92 (9) "Comprehensive Administration of Credentials for Teachers in Utah Schools
93 (CACTUS)" means the electronic file developed by the Superintendent and maintained
94 on all licensed Utah educators.

95 (10) "Conflict of interest" means a business, family, monetary or relationship
96 concern that may cause a reasonable educator to be unduly influenced or that creates
97 the appearance of undue influence.

98 (11) "Consent to discipline" means an agreement between a respondent and the
99 Board:

100 (a) under which disciplinary action is taken against the educator in lieu of a
101 hearing;

102 (b) that may be negotiated between the parties and becomes binding:

103 (i) when approved by the Board; and

104 (ii) at any time after an investigative letter has been sent;

105 (c) is a public document under GRAMA unless it contains specific information that
106 requires redaction or separate classification of the agreement.

107 (12)(a) "Conviction" means the final disposition of a judicial action for a criminal
108 offense, except in cases of a dismissal on the merits.

109 (b) "Conviction" includes:

110 (i) a finding of guilty by a judge or jury;

111 (ii) a guilty or no contest plea;

112 (iii) a plea in abeyance; and

113 (iv) for purposes of Rule [R277-214](#), a conviction that has been expunged.

- 114 (13) "Criminal background review" means the process by which the Executive
115 Secretary, UPPAC, and the Board review information pertinent to:
- 116 (a) a charge revealed by a criminal background check;
 - 117 (b) a charge revealed by a hit as a result of ongoing monitoring; or
 - 118 (c) an educator or applicant's self-disclosure.
- 119 (14) "Drug" means controlled substance as defined in Section [58-37-2](#).
- 120 (15) "Drug related offense" means any criminal offense under:
- 121 (a) [Title 58, Chapter 37](#);
 - 122 (b) [Title 58, Chapter 37a](#), Utah Drug Paraphernalia Act;
 - 123 (c) [Title 58, Chapter 37b](#), Imitation Controlled Substances Act;
 - 124 (d) [Title 58, Chapter 37c](#), Utah Controlled Substance Precursor Act;
 - 125 (e) [Title 58, Chapter 37d](#), Clandestine Drug Lab Act; and
 - 126 (f) [Title 58, Chapter 37e](#), Drug Dealer's Liability Act.
- 127 (16)(a) "Educator" means a person who:
- 128 (i) currently holds a Utah educator license; or
 - 129 (ii) held a license at the time of an alleged offense.
- 130 (b) "Educator" does not include a paraprofessional, a volunteer, or an unlicensed
131 teacher in a classroom.
- 132 (17) "Educator misconduct" means:
- 133 (a) unprofessional conduct;
 - 134 (b) conduct that renders an educator unfit for duty; or
 - 135 (c) conduct that is a violation of standards of ethical conduct, performance, or
136 professional competence as provided in Rule [R277-217](#).
- 137 (18) "Executive Secretary" means
- 138 (a) an employee of the Board appointed by the Superintendent to serve as a non-
139 voting member of UPPAC, consistent with Section [53E-6-502](#); or
 - 140 (b) the Executive Secretary's designee.

141 (19) "Expedited hearing" means an informal hearing aimed at determining if
142 allegations of educator misconduct can be summarily resolved or if an investigation by
143 UPPAC is warranted.

144 (20) "Expedited hearing panel" means a panel of the following:

145 (a) the Executive Secretary or the Executive Secretary's designee, who acts as a
146 non-voting hearing officer; and

147 (b)(i) three voting members of UPPAC; or

148 (ii) two voting members of UPPAC and a licensed educator with appropriate skills
149 and training to assist on the panel.

150 (21) "Final action" means an action by the Board that concludes an investigation
151 of an allegation of misconduct against a licensed educator.

152 (22) "GRAMA" means [Title 63G, Chapter 2](#), Government Records Access and
153 Management Act.

154 (23) "Hearing officer" means a licensed attorney who:

155 (a) is experienced in matters relating to administrative procedures;

156 (b) is appointed by the Executive Secretary to manage the proceedings of a
157 hearing;

158 (c) is not an acting member of UPPAC;

159 (d) has authority, subject to the limitations of these rules, to regulate the course of
160 the hearing and dispose of procedural requests;

161 (e) drafts a hearing report reflecting the findings and recommendations of the
162 hearing panel; and

163 (f) does not have a vote as to the recommended disposition of a case.

164 (24) "Hearing panel" means a panel of three or more individuals designated to:

165 (a) hear evidence presented at a hearing;

166 (b) make a recommendation to UPPAC as to disposition consistent with the
167 rebuttable presumptions in Rule [R277-215](#); and

168 (c) collaborate with the hearing officer in preparing a hearing report.

169 (25) "Hearing report" means a report that:

170 (a) is prepared by the hearing officer consistent with the recommendations of the
171 hearing panel at the conclusion of a hearing; and

172 (b) includes:

173 (i) a recommended disposition;

174 (ii) detailed findings of fact and conclusions of law, based upon the evidence
175 presented in the hearing, relevant precedent; and

176 (iii) applicable law and rule.

177 (26) "Illegal drug" means a substance included in:

178 (a) Schedules I, II, III, IV, or V established in Section [58-37-4](#);

179 (b) Schedules I, II, III, IV, or V of the [federal Controlled Substances Act, Title II,](#)
180 [Pub. L. No. 91-513](#); or

181 (c) any controlled substance analog.

182 (27) "Informant" means a person who submits information to UPPAC concerning
183 the alleged misconduct of an educator.

184 (28)(a) "Investigative letter" means a letter sent by the Executive Secretary to an
185 educator notifying the educator:

186 (i) that an allegation of misconduct has been received against the educator;

187 (ii) that UPPAC or the Board has directed that an investigation of the educator's
188 alleged actions take place; and

189 (iii) if applicable, that the Executive Secretary will place a flag on the educator's
190 CACTUS file.

191 (b) An "investigative letter" is not evidence of unprofessional conduct.

192 (29) "Investigative report" means a written report of an investigation addressing
193 allegations of educator misconduct, prepared by an investigator that:

194 (a) includes a brief summary of the allegations, the investigator's narrative, a
195 summary of the evidence, and a recommendation for UPPAC;

196 (b) may include a rationale for the recommendation, and mitigating and
197 aggravating circumstances;

198 (c) is maintained in the UPPAC case file; and

199 (d) is classified as protected under Subsection [63G-2-305](#)(34).

200 (30) "Investigator" means an employee of the Board, or independent investigator
201 selected in accordance with Subsection [53E-6-506](#)(3), who:

202 (a) is assigned to conduct an independent and objective investigation into
203 allegations of educator misconduct under UPPAC supervision;

204 (b) offers recommendations of educator discipline to UPPAC, supported by Rule
205 [R277-215](#), and the evidence, at the conclusion of the investigation;

206 (c) provides an independent and objective investigative report for UPPAC and the
207 Board; and

208 (d) may also be a UPPAC attorney but does not have to be.

209 (31) "LEA" or "local education agency" for purposes of Rules R277-210 through
210 [R277-217](#) includes the Utah Schools for the Deaf and the Blind.

211 (32) "Letter of education" is a letter sent by the Board to an educator to instruct
212 and caution the educator in an area of professional conduct when the evidence does not
213 show a violation of the educator standards in Rule [R277-217](#), but the evidence may show
214 conduct that could lead to a violation of the standards in the future.

215 (33) "Letter of warning" is a letter sent by the Board to an educator:

216 (a) for misconduct that was inappropriate or unethical; and

217 (b) that does not warrant longer term or more serious discipline.

218 (34) "License" means a teaching or administrative credential, including an
219 endorsement, which is issued by the Board to signify authorization for the person holding
220 the license to provide professional services in Utah's public schools.

221 (35) "Misdemeanor offense," for purposes of these rules, does not include:

222 (a) violations of municipal ordinances; or

223 (b) Class C Misdemeanors or Infractions in violation of [Title 41](#), Utah Motor Vehicle
224 Code.

225 (36) "National Association of State Directors of Teacher Education and
226 Certification Educator Information Clearinghouse" or "NASDTEC Clearinghouse" means

227 a database maintained by NASDTEC for the members of NASDTEC regarding persons
228 who:

229 (a) had their license suspended or revoked;

230 (b) have been placed on probation; or

231 (c) have received a reprimand.

232 (37) "Notification of alleged educator misconduct" means the official UPPAC form
233 that may be accessed on UPPAC's internet website, and may be submitted by any
234 person, school, or LEA that alleges educator misconduct.

235 (38) "Party" means the complainant or a respondent.

236 (39) "Petitioner" means an individual seeking:

237 (a) an educator license following a denial of a license; or

238 (b) reinstatement following a license suspension.

239 (40) "Plea in abeyance" means the same as described in Subsection [77-2a-1](#)(1).

240 (41) "Pornographic or indecent material" means the same as the term is defined
241 in Subsection [76-10-1235](#)(1)(a).

242 (42) "Reprimand" is an action by the Board, which:

243 (a) is imposed for misconduct that was longer term or more seriously unethical or
244 inappropriate than conduct warranting a letter of warning, but not warranting invalidation
245 of the educator's license;

246 (b) is accompanied by a flag on the educator's CACTUS file, which the educator
247 may request the Board remove from the educator's CACTUS file two years from the date
248 the educator's CACTUS file was flagged for investigation, or after such other time period
249 as prescribed by the Board; and

250 (c) may include specific directives that the educator must complete prior to
251 requesting the flag be removed from the educator's CACTUS file under Subsection
252 (43)(b).

253 (43) "Respondent" means an educator against whom:

254 (a) a complaint is filed; or

255 (b) an investigation is undertaken.

256 (44) "Revocation" means a permanent invalidation of a Utah educator license.

257 (45) "School-related activity" means a class, event, activity, or program:

258 (a) occurring at the school before, during, or after school hours; or

259 (b) that a student attends at a remote location as a representative of the school or
260 with the school's authorization.

261 (46) "Serve" or "service," as used to refer to the provision of notice to a person,
262 means:

263 (a) delivery of a written document to a respondent; and

264 (b) delivery that may be made in person, by mail, by electronic correspondence,
265 or by any other means reasonably calculated, under all of the circumstances, to notify a
266 respondent to the extent reasonably practical or practicable of the information contained
267 in the document.

268 (47) "Sexually explicit conduct" means the same as that term is defined in Section
269 76-5b-103.

270 (48) "Suspension" means an invalidation of a Utah educator license, which may
271 be reinstated after:

272 (a) the educator completes specific conditions identified in the consent to
273 discipline or hearing report;

274 (b) the passage of the time specified in the consent to discipline or hearing report;
275 and

276 (c) Board action to reinstate the license following a reinstatement hearing as
277 described in Rule [R277-213](#).

278 (49)(a) "Under the influence of alcohol or an illegal drug" means that a person:

279 (i) is under the influence of alcohol, an illegal drug, or the combined influence of
280 alcohol and drugs to a degree that renders the person incapable of effectively working in
281 a public school;

282 (ii) has sufficient alcohol in the person's body that a subsequent chemical test
283 shows that the person has a blood or breath alcohol concentration of .05 grams or greater
284 at the time of the test; or

285 (iii) has a blood or breath alcohol concentration of .05 grams or greater during
286 work hours at a public school.

287 (b) An educator is presumed to be "under the influence of alcohol or an illegal
288 drug" if the educator refuses a lawful request, made with reasonable suspicion by the
289 educator's LEA, to submit to a drug or alcohol test.

290 (50) "Utah Professional Practices Advisory Commission" or "UPPAC" means an
291 advisory commission established to assist and advise the Board in matters relating to the
292 professional practices of educators, established in Section [53E-6-501](#).

293 (51) "UPPAC attorney file" means a file:

294 (a) that is kept by the attorney assigned by UPPAC to investigate or prosecute a
295 case that contains:

296 (i) the attorney's notes; and

297 (ii) other documents prepared by the attorney in anticipation of an eventual
298 hearing; and

299 (b) that is classified as protected pursuant to Subsection [63G-2-305](#)(18).

300 (52) "UPPAC background check file" means a file maintained securely by UPPAC
301 on a criminal background review that:

302 (a) contains information obtained from:

303 (i) BCI; and

304 (ii) letters, police reports, court documents, and other materials provided by an
305 applicant; and

306 (b) is classified as private under Subsection [63G-2-302](#)(2).

307 (53) "UPPAC case file" means a file:

308 (a) maintained securely by UPPAC on an investigation into educator misconduct;

309 (b) opened following UPPAC's direction to investigate alleged misconduct;

310 (c) that contains the original notification of alleged misconduct with supporting
311 documentation, correspondence with the Executive Secretary, the investigative report,
312 the stipulated agreement, the hearing report, and the final disposition of the case;

313 (d) that is classified as protected under Subsection [63G-2-305](#)(10) until the
314 investigation and any subsequent proceedings before UPPAC and the Board are
315 completed; and

316 (e) that after a case proceeding is closed, is considered public under GRAMA,
317 unless specific documents contained therein contain non-public information or have been
318 otherwise classified as non-public under GRAMA, in which case the file may be redacted
319 or partially or fully restricted.

320 (54) "UPPAC evidence file" means a file:

321 (a) maintained by UPPAC investigator containing materials, written or otherwise,
322 obtained by the UPPAC investigator during the course of the investigation;

323 (b) that contains correspondence between the investigator and the educator or
324 the educator's counsel;

325 (c) that is classified as protected under Subsection [63G-2-305](#)(10) until the
326 investigation and any subsequent proceedings before UPPAC and the Board are
327 completed; and

328 (d) that is considered public under GRAMA after case proceedings are closed,
329 unless specific documents contained therein contain non-public information or have been
330 otherwise classified as non-public under GRAMA.

331 (55) "Weapon" means an item that in the manner of the item's use or intended use
332 is capable of causing death or serious bodily injury.

333

334 **KEY: professional practices, definitions, educators**

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336 **Authorizing, and Implemented or Interpreted Law: [Art X Sec 3](#); [53E-6-506](#); [53E-3-](#)
337 [401](#)**