

R277. Education, Administration.

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

R277-210-1. Authority, Purpose, and Oversight Category.

- (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 definitions for terms in UPPAC activities.
- (3) The definitions contained in this rule apply to Rules R277-210 through R277-217.
- (4) Any calculation of time called for by Rules R277-210 through R277-217 shall be governed by Utah R. Civ. P. 6.
- (5) This rule is categorized as exempt as described in Rule R277-111.

R277-210-2. Definitions.

- (1)(a) "Action" means a disciplinary action taken by the Board adversely affecting an educator's license.
- (b) "Action" does not include a letter of warning or letter of education.
- (c) "Action" includes:
 - (i) a reprimand;
 - (ii) a suspension; and
 - (iii) a revocation.
- (2) "Administrative hearing" or "hearing" has the same meaning as that term is defined in Section 53E-6-601.
- (3) "Alcohol related offense" means a violation of:

(a) Title 41, Chapter 6a. Part 5, Driving Under the Influence and Reckless Driving, except for offenses not involving alcohol;

(b) Section 76-9-701, Intoxication;

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

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

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

(5) "Applicant" means a person seeking:

(a) a new license; or

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

(6)(a) "Boundary violation" means crossing verbal, physical, emotional, and social lines with a student or minor that an educator must maintain to ensure structure, security, and predictability in an educational environment.

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

- (i) isolated, one-on-one interactions with students out of the line of sight of others;
- (ii) meeting individually with students in rooms with covered or blocked windows;
- (iii) telling risqué jokes or using profanity in the presence of a student;
- (iv) employing favoritism to a student;
- (v) inappropriate gift giving to individual students;
- (vi) uninvited or inappropriate touching;
- (vii) photographing individual students for a non-educational purpose or use;
- (viii) engaging in inappropriate or unprofessional contact outside of educational program activities;
- (ix) exchanging personal email or phone numbers with a student for a non-educational purpose or use;
- (x) interacting privately with a student through social media, computer, or handheld devices;

- (xi) discussing with a student inappropriate details about:
 - (A) an educator's personal life or personal issues; or
 - (B) a student's personal life or personal issues;
 - (xii) discussing issues restricted under Subsection 53E-9-203(1) without authorization.
- (c) "Boundary violation" does not include:
 - (i) offering praise, encouragement, or acknowledgment;
 - (ii) offering rewards available to all who achieve;
 - (iii) asking permission to touch for necessary purposes;
 - (iv) giving pats on the back or a shoulder;
 - (v) giving side hugs;
 - (vi) giving handshakes or high fives;
 - (vii) offering warmth and kindness;
 - (viii) utilizing public social media alerts to groups of students and parents; or
 - (ix) contact permitted by an IEP or 504 plan.
 - (d) UPPAC and the Board may find "boundary violations" to be repetitive when the misconduct occurs more than once.
- (e)(i) UPPAC and the Board may find a pattern of "boundary violations" when there are multiple incidents of related misconduct that occur consistently over a prolonged timeframe; and
 - (ii) UPPAC and the Board find the educator's misconduct is aggravated by the circumstances, including:
 - (A) the misconduct involves more than one student;
 - (B) the misconduct occurs in more than one physical setting; or
 - (C) the misconduct includes multiple types of boundary violations.
 - (iii) UPPAC and the Board may find a pattern of "boundary violations" most readily when the educator's misconduct continues after documented warnings from administrators in the educator's LEA.
 - (iv) Notwithstanding the existence of the factors identified in this Subsection (e), UPPAC and the Board may find boundary violations are "repetitive" rather than a "pattern" when there are mitigating circumstances consistent with Section R277-215-3.

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

(8) "Complainant" means the Executive Secretary.

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

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

(11) "Consensual sexual activity" means sexually explicit conduct involving an individual or consenting adults.

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

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

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

(i) when approved by the Board; and

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

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

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

(b) "Conviction" includes:

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

(ii) a guilty or no contest plea;

(iii) a plea in abeyance; and

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

(14) "Criminal background review" means the process by which the Executive Secretary, UPPAC, and the Board review information pertinent to:

(a) a charge revealed by a criminal background check;

(b) a charge revealed by a hit as a result of ongoing monitoring; or

(c) an educator or applicant's self-disclosure.

(15) "Drug" means controlled substance as defined in Section 58-37-2.

(16) "Drug related offense" means any criminal offense under:

(a) Title 58, Chapter 37, Utah Controlled Substances Act;

(b) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(c) Title 58, Chapter 37b, Imitation Controlled Substances Act;

(d) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act;

(e) Title 58, Chapter 37d, Clandestine Drug Lab Act; and

(f) Title 58, Chapter 37e, Drug Dealer's Liability Act.

(17)(a) "Educator" means a person who:

(i) currently holds a Utah educator license; or

(ii) held a license at the time of an alleged offense.

(b) "Educator" does not include a paraprofessional, a volunteer, or an unlicensed teacher in a classroom.

(18) "Educator misconduct" means:

(a) unprofessional conduct;

(b) conduct that renders an educator unfit for duty; or

(c) conduct that is a violation of standards of ethical conduct, performance, or professional competence as provided in Rule R277-217.

(19) "Executive Secretary" means

(a) an employee of the Board appointed by the Superintendent to serve as a non-voting member of UPPAC, consistent with Section 53E-6-502; or

(b) the Executive Secretary's designee.

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

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

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

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

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

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

(23) "GRAMA" means Title 63G, Chapter 2, Government Records Access and Management Act.

(24) "Hearing officer" means a licensed attorney who:

- (a) is experienced in matters relating to administrative procedures;
- (b) is appointed by the Executive Secretary to manage the proceedings of a hearing;
- (c) is not an acting member of UPPAC;
- (d) has authority, subject to the limitations of Board rule, to regulate the course of the hearing and dispose of procedural requests;
- (e) drafts a hearing report reflecting the findings and recommendations of the hearing panel; and

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

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

- (a) hear evidence presented at a hearing;
- (b) make a recommendation to UPPAC as to disposition consistent with the rebuttable presumptions in Rule R277-215; and
- (c) collaborate with the hearing officer in preparing a hearing report.

(26) "Hearing report" means a report that:

- (a) is prepared by the hearing officer consistent with the recommendations of the hearing panel at the conclusion of a hearing; and
- (b) includes:
 - (i) a recommended disposition;
 - (ii) detailed findings of fact and conclusions of law, based upon the evidence presented in the hearing, relevant precedent; and
 - (iii) applicable law and rule.

(27) "Illegal drug" means a substance included in:

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

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

(c) any controlled substance analog.

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

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

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

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

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

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

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

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

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

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

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

(31) "Investigator" means an employee of the Board, or independent investigator selected in accordance with Subsection 53E-6-506(3), who:

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

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

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

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

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

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

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

- (a) for misconduct that was inappropriate or unethical; and
- (b) that does not warrant longer term or more serious discipline.

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

(36) "Minor" means:

- (a) an individual under the age of 18; or
- (b) an individual who an educator reasonably believes is under the age of 18 under the circumstances of the interaction.

(37) "Misdemeanor offense," for purposes of Board rule, does not include:

- (a) violations of municipal ordinances; or
- (b) Class C Misdemeanors or Infractions in violation of Title 41, Utah Motor Vehicle Code.

(38) "National Association of State Directors of Teacher Education and Certification Educator Information Clearinghouse" or "NASDTEC Clearinghouse" means a database maintained by NASDTEC for the members of NASDTEC regarding persons who:

- (a) had their license suspended or revoked;
- (b) have been placed on probation; or
- (c) have received a reprimand.

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

(40) "Party" means the complainant or a respondent.

(41) "Petitioner" means an individual seeking:

- (a) an educator license following a denial of a license; or
- (b) reinstatement following a license suspension.

(42) "Plea in abeyance" means the same as described in Subsection 77-2a-1(1).

(43) "Pornographic or indecent material" means the same as the term is defined in Section 76-5c-208.

(44) "Recent graduate" means an individual within six months of graduating or officially exiting from high school.

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

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

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

(c) may include specific directives that the educator must complete before requesting the flag be removed from the educator's CACTUS file under Subsection (45)(b).

(46) "Respondent" means an educator against whom:

- (a) a complaint is filed; or
- (b) an investigation is undertaken.

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

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

- (a) occurring at the school before, during, or after school hours; or
- (b) that a student attends at a remote location as a representative of the school or with the school's authorization.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(54) "UPPAC attorney file" means a file:

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

- (i) the attorney's notes; and
- (ii) other documents prepared by the attorney in anticipation of an eventual hearing; and

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

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

- (a) contains information obtained from:
 - (i) BCI; and
 - (ii) letters, police reports, court documents, and other materials provided by an applicant; and

(b) is classified as private under Subsection 63G-2-302(2).

(56) "UPPAC case file" means a file:

- (a) maintained securely by UPPAC on an investigation into educator misconduct;
- (b) opened following UPPAC's direction to investigate alleged misconduct;
- (c) that contains the original notification of alleged misconduct with supporting documentation, correspondence with the Executive Secretary, the investigative report, the stipulated agreement, the hearing report, and the final disposition of the case;
- (d) that is classified as protected under Subsection 63G-2-305(10) until the investigation and any subsequent proceedings before UPPAC and the Board are completed; and
- (e) that after a case proceeding is closed, is considered public under GRAMA, unless specific documents contained therein contain non-public information or have been otherwise classified as non-public under GRAMA, in which case the file may be redacted or partially or fully restricted.

(57) "UPPAC evidence file" means a file:

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

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

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

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

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

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