

### Background

Utah state statute requires that every educator receive a background check and enroll in ongoing monitoring through the Utah Bureau of Criminal Identification and the Federal Bureau of Investigation. Utah Code Ann. § 53G-11-403. This background check process is very thorough and identifies misdemeanor and felony charges from across the country. An educator's background check even identifies expunged information<sup>1</sup> to USBE. See, Utah Code Ann. § 77-40-109(2)(b)(vi). The Utah Professional Practices Advisory Commission, "UPPAC," checks the results of the initial background checks and follows up if a criminal incident or a "hit" occurs any time after the educator's initial background check. UPPAC then requests the information necessary for the Utah State Board of Education, "USBE," to determine if an educator is fit to work in the classroom. By rule, USBE has established a process to review prior charges uncovered through the background check process. Utah Admin. Code R277-214. UPPAC reviews all criminal charges that may have arisen, except for violations of municipal ordinances or minor traffic violations.<sup>2</sup> This guide has been prepared to help educators know what to expect if a criminal charge appears on their background check.

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### Document Request

USBE rule requires that UPPAC's Executive Secretary "review **all** information received as part of a criminal background review." Utah Admin. Code R277-214(1)(Emphasis added). If an educator's background check reveals any offense the USBE considers relevant, the Executive Secretary sends a letter to the educator notifying the educator that the educator's background check is under review and requesting additional documentation. UPPAC will copy the educator's employing LEA, if the educator is assigned in USBE's licensing system. UPPAC places a hold on the educator proceeding with licensing until the concerns raised through the background review are addressed. This same process will be followed for all criminal charges that appear on a background check (except for municipal ordinances or minor traffic violations) regardless of whether the educator was notified of the charges through an arrest, a citation, or a summons.

By rule, the Executive Secretary may require an educator to provide a police report showing the basis for the charge and court records outlining what happened with the criminal case. If either of these are not available, the educator will be required to provide proof from the court or agency that the records are no longer maintained.

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<sup>1</sup> Unlike other matters, USBE does not flag an educator's licensing account for expunged offenses, or disclose the nature of the hit to the educator's LEA.

<sup>2</sup> If an educator's background check shows a warrant for a minor traffic issue, UPPAC sends the educator a letter, reminding the educator to resolve the court obligation, and allows the educator to proceed.

The Executive Secretary will also require the educator to provide a written explanation regarding what happened leading up to the charges. The educator is expected to provide a concise summary of the relevant facts of the incident and what happened in court.

Many educators are tempted to provide additional documents and information beyond what is requested. Documents such as extra court pleadings, life histories, and character references go beyond the scope of UPPAC's efforts to efficiently identify the salient facts of the situation and are not considered by the Executive Secretary or USBE, unless specifically requested at a later date.

It is the educator's sole responsibility to provide the requested documents to UPPAC. See, Utah Admin. Code R277-214-2(5). All documents must be provided to UPPAC staff before the educator's case will be reviewed. The fastest way to ensure timely review of an educator's case is to email requested materials to [uppac@schools.utah.gov](mailto:uppac@schools.utah.gov). Educators should scan documents in PDF format where possible. Educators may also mail or fax documents where email is unavailable.

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## Case Review

The Executive Secretary is looking for specific information to determine what steps are required for clearance after UPPAC receives an educator's documents. First, the Executive Secretary must verify that the educator's court obligations are entirely resolved. Under USBE rule, "If an applicant is under court supervision of any kind, including parole, informal or formal probation, or plea in abeyance, the Executive Secretary may not process the background check review until the Executive Secretary receives proof that court supervision is terminated." Utah Admin. Code R277-214-2(4).

Once the Executive Secretary verifies the

court case is closed, the Executive Secretary evaluates how the case will proceed. If the case was dismissed by the court without a conviction, a plea in abeyance, or a diversion agreement, the Executive Secretary may clear the educator's licensing hold and allow the educator to proceed. Utah Admin. Code R277-214-2(6)(a).

In all other cases, the Executive Secretary will determine if the case can be reviewed by USBE at its next available meeting or whether it must first be reviewed by UPPAC. In some cases, USBE requires that instead of the Executive Secretary making a determination in accordance with USBE rule, UPPAC must review the case and make a recommendation to USBE. Most older misdemeanor cases go directly to USBE. However, UPPAC will review a case, when the educator's charges are more recent, the educator has had multiple charges, or where the educator was charged with matters of more serious concern such as lewdness or sex-related offenses, drug and alcohol offenses, offenses involving children, or felonies. The Executive Secretary may also seek UPPAC review if the facts of a given charge raise special concerns that warrant additional scrutiny. See, Utah Admin. Code R277-214-2(6)(c).

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## Issues on Review

Notwithstanding the high demand for teachers in Utah, the Legislature has charged USBE with requiring that only teachers meeting high standards be in the classroom. State law requires USBE to deny an educator's background review if an educator has been convicted of any of several sex-related offenses. Utah Code Ann. § 53E-6-603(2). USBE is also considered to have good cause to deny a background review if an educator's behavior is considered to be "immoral, unprofessional, or incompetent" or if the educator's actions were "a violation

of standards of ethical conduct, performance, or professional competence.” Utah Code Ann. § 53E-6-603(1)(b).

Most cases are reviewed by USBE on the UPPAC consent calendar at the Board’s monthly meeting. At the meeting, the Executive Secretary provides a short, written description of what transpired and makes a recommendation in accordance with Rule R277-214 or conveys UPPAC’s recommendation. A sample description provided to the Board would be:

Mr. DeVos was charged with Retail Theft in December 2006 after he was caught stealing some items from a Wal-Mart to give as Christmas presents. Mr. DeVos successfully completed a plea in abeyance with the court and the matter is now closed. The Executive Secretary recommends clearance in accordance with R277-214-2(6)(b)(i).

The Board members review all of the background case information prior to the Board meeting and may ask questions of the Executive Secretary about particular cases during the Board’s executive session. Educators with criminal background reviews are only identified by a case number on the Board’s agenda and are not discussed by name during open session. The information discussed in a criminal background review has heightened protection in accordance with federal law and is kept confidential.

If USBE approves an educator’s background review, UPPAC will release the licensing flag and email the educator with information on how to proceed in the licensure process. If a previously reviewed issue arises in a subsequent background review, UPPAC will clear the matter and will not request documents a second time.

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## Denial and Appeal

If, for some reason, an educator’s background review is denied by USBE, the Executive Secretary will send the educator a letter advising the educator of USBE’s decision and the steps that will be required and the timeframe that must pass for the educator to be considered for licensure in the future. An educator whose background review is denied may not be employed by or volunteer in a public school in any capacity. Utah Code Ann. § 53E-6-603(3).

However, if an educator’s background review is denied, the educator may request a hearing before a panel of UPPAC members. At the hearing, the educator may personally discuss the circumstances of the background review with the panel and request that the matter be reconsidered. Utah Code Ann. §53E-6-603(4). The hearing panel makes a written recommendation to UPPAC following the hearing, and UPPAC makes a formal recommendation to USBE. USBE reviews the UPPAC recommendation with the Executive Secretary during a subsequent executive session and takes final action either granting or denying the educator’s appeal.

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## Time Required

The time it takes for the background review process to play out is largely dependent on the educator. After UPPAC sends its initial letter, UPPAC takes no action on the case until the educator provides all requested documents. An educator can ensure an expedited review by getting requested documents to UPPAC as soon as possible. After UPPAC receives the requested information, it can usually process the matter in 1-3 months, depending on how many levels of review are required, and how close the educator submits the documents to deadlines for available USBE calendars. Educators should consult USBE staff for deadlines if they are on a tight timeline.

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

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