

1 **R277. Education, Administration.**

2 **R277-212. UPPAC Hearing Procedures and Reports.**

3 **R277-212-1. 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 procedures regarding UPPAC hearings  
12 and hearing reports.

13 (3) The standards and procedures of [Title 63G, Chapter 4](#), Administrative  
14 Procedures Act do not apply to this rule under the exemption of Subsection  
15 [63G-4-102\(2\)\(d\)](#).

16 (4) Hearings conducted in accordance with this rule are formal adjudicatory  
17 proceedings.

18

19 **R277-212-2. Scheduling a Hearing.**

20 (1)(a) Following receipt of an answer by respondent requesting a hearing, or at the  
21 direction of the Board to give the respondent an opportunity to have a hearing:

22 (i) UPPAC shall select panel members;

23 (ii) the Executive Secretary shall appoint a hearing officer from among a list of  
24 hearing officers identified by the state procurement process and approved by UPPAC; and

25 (iii) UPPAC shall schedule the date, time, and place for the hearing.

26 (b) The Executive Secretary shall schedule a hearing for a date that is not less than  
27 45 days nor more than 180 days from the date the Executive Secretary receives the  
28 answer unless otherwise stipulated by the parties.

29 (c) The required scheduling periods may be waived by mutual written consent of the  
30 parties or by the hearing officer for good cause shown.

31 (2)(a) Any party may request a change of hearing date by submitting a request in  
32 writing that shall:

33 (i) include a statement of the reasons for the request; and

34 (ii) be submitted to the hearing officer at least five days prior to the scheduled date  
35 of the hearing.

36 (b) The hearing officer shall determine whether the reason stated in the request is  
37 sufficient to warrant a change.

38 (c) If the hearing officer finds that the reason for the request for a change of hearing  
39 date is sufficient, the hearing officer shall promptly [~~notify all parties of the new time, date,~~  
40 ~~and place for the hearing~~] direct the Executive Secretary to reschedule the hearing and  
41 send notice to the parties.

42 (d) If the hearing officer does not find the reason for the request for a change of  
43 hearing date to be sufficient, the hearing officer shall immediately notify the parties that the  
44 request has been denied.

45 (e) The hearing officer [~~and the parties~~] may, upon stipulation of the parties or upon  
46 motion, waive the time period required for requesting a change of hearing date for good  
47 cause shown.

48 (3) An educator is entitled to a hearing on any matter in which an action is  
49 recommended.

50 (4) An educator is not entitled to a hearing on a matter in which a [~~disciplinary~~]  
51 letter of education or letter of warning is recommended.

52

53 **R277-212-3. Appointment and Duties of the Hearing Officer and Hearing Panel.**

54 (1)(a) The Executive Secretary shall appoint a hearing officer to chair the hearing  
55 panel and conduct the hearing.

56 (b) The Executive Secretary shall select a hearing officer on a random basis from

57 a list of available contracted hearing officers, subject to availability and conflict of interest.

58 (c) The Executive Secretary shall provide such information about the case as  
59 necessary to determine whether the hearing officer has a conflict of interest and shall  
60 disqualify any hearing officer that cannot serve under the Utah Rules of Professional  
61 Conduct.

62 (d) A hearing officer:

63 (i) may require the parties to submit a brief and a list of witnesses prior to the  
64 hearing;

65 (ii) presides at the hearing and regulates the course of the proceeding;

66 (iii) administers an oath to a witness as follows: "Do you swear or affirm that the  
67 testimony you will give is the truth?";

68 (iv) may take testimony, rule on a question of evidence, and ask a question of a  
69 witness to clarify a specific issue; and

70 (v) prepares and submits a hearing report to the Executive Secretary at the  
71 conclusion of the proceedings in consultation with panel members and the timelines of this  
72 rule.

73 (2)(a) UPPAC shall select three or more individuals to serve as members of the  
74 hearing panel.

75 (b) The majority of panel members shall be current UPPAC members.

76 (c) As directed by UPPAC, a licensed educator or member of the community may  
77 serve as a panel member, if needed.

78 (d) UPPAC shall select panel members on a rotating basis to the extent practicable.

79 (e) UPPAC shall accommodate each prospective panel member based on the  
80 availability of the panel member.

81 (f) If the respondent is a teacher, at least one panel member shall be a current  
82 classroom teacher.

83 (g) If the respondent is a non-teacher licensed educator, at least one panel member  
84 shall be a non-teacher licensed educator.

85 (3) The requirements of Subsection (2) may be waived only upon the stipulation of  
86 both the UPPAC attorney and the respondent.

87 (4)(a) A UPPAC panel member shall:

88 (i) assist a hearing officer by providing information concerning professional  
89 standards and practices of educators in the respondent's particular field of practice and in  
90 the situations alleged;

91 (ii) ask a question of a witness to clarify a specific issue;

92 (iii) review all evidence and briefs, if any, presented at the hearing;

93 (iv) make a recommendation to UPPAC as to the suggested disposition of a  
94 complaint; and

95 (v) assist the hearing officer in preparing the hearing report.

96 (b) A panel member may only consider the evidence approved for admission by the  
97 hearing officer.

98 (c) The Executive Secretary may make an emergency substitution of a panel  
99 member for good cause shown or with the consent of the parties.

100 (d) ~~[The]~~ An agreement to substitute a panel member shall be in writing.

101 (e) Parties may agree to a two-member UPPAC panel in an emergency situation.

102 ~~[(f) If the parties do not agree to a substitution or to having a two-member panel, the~~  
103 ~~Executive Secretary shall reschedule the hearing.]~~

104 (5)(a) A party may request that the Executive Secretary disqualify a hearing officer  
105 by submitting a written request for disqualification to the Executive Secretary.

106 (b) A party shall submit a request to disqualify a hearing officer to the Executive  
107 Secretary at least 15 days before a scheduled hearing.

108 (6)(a) The Executive Secretary shall review a request described in Subsection (5)  
109 and supporting evidence to determine whether the reasons for the request are substantial  
110 and compelling.

111 (b) If the Executive Secretary determines that the hearing officer should be  
112 disqualified, the Executive Secretary shall appoint a new hearing officer and, if necessary,

113 reschedule the hearing.

114 (7) A hearing officer may recuse himself or herself from a hearing if, in the hearing  
115 officer's opinion, the hearing officer's participation would violate any of the Utah Rules of  
116 Professional Conduct consistent with the Supreme Court Rules of Professional Practice.

117 (8)(a) If the Executive Secretary denies a request to disqualify a hearing officer  
118 described in Subsection (5), the Executive Secretary shall notify the party within ten days  
119 prior to the date of the hearing.

120 (b) The requesting party may submit a written appeal of the Executive Secretary's  
121 denial to the Superintendent no later than five days prior to the hearing date.

122 (c) If the Superintendent finds that the appeal is justified, the Superintendent shall  
123 direct the Executive Secretary to appoint a new hearing officer and, if necessary,  
124 reschedule the hearing.

125 (d) The decision of the Superintendent described in Subsection (8)(c) is final.

126 (e) If a party fails to file an appeal within the time requirements of Subsection (8)(b),  
127 the appeal shall be deemed denied.

128 (f) If the Executive Secretary fails to meet the time requirements described in  
129 Subsection (6) or (8), the request or appeal is approved.

130 (9)(a) A UPPAC member shall recuse himself or herself as a panel member due to  
131 any known financial or personal interest, prior relationship, personal and independent  
132 knowledge of the persons or issues in the case, or other association that the panel member  
133 believes would compromise the panel member's ability to make an impartial decision.

134 (b) A party may request that a UPPAC panel member be disqualified by submitting  
135 a written request to the [following:

136 ~~——(i) the hearing officer; or~~

137 ~~——(ii) to the Executive Secretary if there is no] hearing officer.~~

138 (c) A party shall submit a request described in Subsection (9)(b) no less than 15  
139 days before a scheduled hearing.

140 (d) The hearing officer[, or the Executive Secretary, if there is no hearing officer,]

141 shall:

142 (i) review a request described in Subsection (9)(b) and supporting evidence to  
143 determine whether the reasons for the request are substantial and compelling enough to  
144 disqualify the panel member; and

145 (ii) if the reasons for the request described in Subsection (9)(b) are substantial and  
146 compelling, disqualify the panel member.

147 (e) If ~~[the panel member's disqualification leaves the hearing panel with fewer than~~  
148 ~~three UPPAC panel members]~~ a panel member is disqualified:

149 (i) UPPAC shall appoint a replacement; and

150 (ii) the Executive Secretary shall, if necessary, reschedule the hearing.

151 (f) If a request described in Subsection (9)(b) is denied, the hearing officer ~~[or the~~  
152 ~~Executive Secretary if there is no hearing officer]~~, shall notify the party requesting the panel  
153 member's disqualification no less than ten days prior to the date of the hearing.

154 ~~[(g) The requesting party may file a written appeal of a denial described in~~  
155 ~~Subsection (9)(f) with the Superintendent no later than five days prior to the hearing date.~~

156 ~~—(h) If the Superintendent finds that an appeal described in Subsection (9)(g) is~~  
157 ~~justified, the Superintendent shall direct the hearing officer or the Executive Secretary if~~  
158 ~~there is no hearing officer, to replace the panel member.~~

159 ~~—(i) If a panel member's disqualification leaves the hearing panel with fewer than three~~  
160 ~~UPPAC panel members, UPPAC shall agree upon a replacement and the Executive~~  
161 ~~Secretary shall, if necessary, reschedule the hearing.~~

162 ~~—(j) The decision of the Superintendent described in Subsection (9)(h) is final.~~

163 ~~—(k) If a party fails to file an appeal within the time requirements of Subsection (9)(g),~~  
164 ~~the appeal shall be deemed denied.~~

165 ~~—(l) If the hearing officer, or the Executive Secretary if there is no hearing officer, fails~~  
166 ~~to meet the time requirements described in this Subsection (9), the request or appeal is~~  
167 ~~approved.]~~

168 (10) The Executive Secretary may, at the time the Executive Secretary selects a

169 hearing officer or panel member, select an alternative hearing officer or panel member  
170 following the process for selecting those individuals.

171 (11) The Executive Secretary may substitute a panel member with an alternative  
172 panel member if the Executive Secretary notifies the parties of the substitution.

173

174 **R277-212-4. Preliminary Instructions to Parties to a Hearing.**

175 (1) A hearing shall be scheduled no less than 45 days after receipt of an answer,  
176 unless otherwise stipulated by the parties.

177 (2) No later than 25 days before the date of a hearing, the Executive Secretary shall  
178 provide the parties with the following information:

179 (a) date, time, and location of the hearing;

180 (b) names and LEA affiliations of each panel member, and the name of the hearing  
181 officer; and

182 (c) instructions for accessing these rules.

183 (3) No later than 20 days before the date of the hearing, the respondent and the  
184 complainant shall provide the following to the other party and to the hearing officer:

185 (a) a brief, if requested by the hearing officer containing:

186 (i) any procedural and evidentiary motions along with the party's position regarding  
187 the allegations; and

188 (ii) relevant laws, rules, and precedent;

189 (b) the name of the person who will represent the party at the hearing;

190 (c) a list of witnesses expected to be called, including a summary of the testimony  
191 that each witness is expected to present;

192 (d) a summary of documentary evidence that the party intends to submit; and

193 (e) following receipt of the other party's witness list, a list of anticipated rebuttal  
194 witnesses and evidence no later than ten days prior to the hearing.

195 (4)(a) Except as provided in Subsection (4)(b), a party may not present a witness  
196 or evidence at the hearing if the witness or evidence has not been disclosed to the other

197 party as required in Subsection (3).

198 (b) A party may present a witness or evidence at the hearing even if the witness or  
199 hearing has not been disclosed to the other party if:

200 (i) the parties stipulate to the presentation of the witness or evidence at the hearing;

201 or

202 (ii) the hearing officer makes a determination of good cause to allow the witness or  
203 evidence.

204 (5) If a party fails to comply in good faith with a directive of the hearing officer,  
205 including time requirements, the hearing officer may prohibit introduction of the testimony  
206 or evidence or take other steps reasonably appropriate under the circumstances.

207 (6) A party shall provide materials to the hearing officer, panel members, and  
208 UPPAC as directed by the hearing officer.

209

210 **R277-212-5. Hearing Parties' Representation.**

211 (1) A UPPAC attorney shall represent the complainant.

212 (2) A respondent may represent himself or herself or be represented, at the  
213 respondent's own cost, by ~~[another person]~~ legal counsel.

214 (3) ~~[The]~~ An informant has no right to:

215 (a) individual representation at the hearing; or

216 (b) to be present or heard at the hearing unless called as a witness.

217 (4) A respondent shall notify the Executive Secretary in a timely manner and in  
218 writing if the respondent chooses to be represented by ~~[anyone other than the respondent]~~  
219 legal counsel.

220

221 **R277-212-6. Discovery Prior to a Hearing.**

222 (1) Discovery is permitted to the extent necessary to obtain relevant information  
223 necessary to support claims or defenses, as determined by the hearing officer.

224 (2) Unduly burdensome legalistic discovery may not be used to delay a hearing.

- 225 (3) A hearing officer may limit discovery:  
226 (a) at the discretion of the hearing officer; or  
227 (b) upon a motion by either party.
- 228 (4) A hearing officer rules on all discovery requests and motions.
- 229 (5) The Executive Secretary shall issue a subpoena or other order to secure the  
230 attendance of a witness pursuant to Subsection [53E-6-606](#)(1) if:  
231 (a) requested by either party; and  
232 (b) notice of intent to call the witness has been timely provided as required by  
233 Section R277-212-4.
- 234 (6) The Executive Secretary shall issue a subpoena to produce evidence if timely  
235 requested by either party.
- 236 (7)(a) A party may not present an expert witness report or expert witness testimony  
237 at a hearing unless the requirements of Section R277-212-10 have been met.
- 238 (b) A respondent may not subpoena the UPPAC attorney or investigator as an  
239 expert witness.
- 240
- 241 **R277-212-7. Burden and Standard of Proof for UPPAC Proceedings.**
- 242 (1) In matters other than those involving applicants for licensing, and excepting the  
243 presumptions under Subsection R277-212-11[(+4)], the Board shall  
244 have the burden of proving that an action against the license is appropriate.
- 245 (2) An applicant for licensing has the burden of proving that licensing is appropriate.
- 246 (3) The standard of proof in all UPPAC hearings is a preponderance of the evidence.
- 247 (4) The Utah Rules of Evidence are not applicable to UPPAC proceedings.
- 248 (5) The criteria to decide an evidentiary question are:  
249 (a) reasonable reliability of the offered evidence;  
250 (b) fairness to both parties; and  
251 (c) usefulness to UPPAC in reaching a decision.
- 252 (6) The hearing officer has the sole responsibility to determine the application of the

253 hearing rules and the admissibility of evidence.

254

255 **R277-212-8. Deportment.**

256 (1) Parties, their representatives, witnesses, and other persons present during a  
257 hearing shall conduct themselves in an appropriate manner during a hearing, giving due  
258 respect to members of the hearing panel and complying with the instructions of the hearing  
259 officer.

260 (2) A hearing officer may exclude a person from the hearing room who fails to  
261 conduct himself or herself in an appropriate manner and may, in response to extreme  
262 instances of noncompliance, disallow the person's testimony.

263 (3) Parties, attorneys for parties, or other participants in the professional practices  
264 investigation and hearing process may not harass, intimidate, or pressure witnesses or  
265 other hearing participants, nor may they direct others to harass, intimidate, or pressure  
266 witnesses or participants.

267

268 **R277-212-9. Hearing Record.**

269 (1) A hearing shall be recorded at UPPAC's expense, and the recording shall  
270 become part of the UPPAC case file, unless otherwise agreed upon by all parties.

271 (2) An individual party may, at the party's own expense, make a recording or  
272 transcript of the proceedings if the party provides notice to the Executive Secretary.

273 (3) If an exhibit is admitted as evidence, the record shall reflect the contents of the  
274 exhibit.

275 (4) All evidence and statements presented at a hearing shall become part of the  
276 UPPAC case file and may not be removed except by direction of the Executive Secretary  
277 or by order of the Board.

278 (5)(a) Upon request of an educator, UPPAC will provide an electronic or paper copy  
279 of the UPPAC case file to the educator.

280 (b) UPPAC may charge fees in accordance with Rule R277-103-5 if the educator

281 requests a paper copy.

282

283 **R277-212-10. Expert Witnesses in UPPAC Proceedings.**

284 (1) A hearing officer may allow testimony by an expert witness.

285 (2) A party may call an expert witness at the party's own expense.

286 (3) A party shall provide a hearing officer and the opposing party with the following  
287 information at least 15 days prior to the hearing date:

288 (a) notice of intent of a party to call an expert witness;

289 (b) the identity and qualifications of an expert witness;

290 (c) the purpose for which the expert witness is to be called; and

291 (d) any prepared expert witness report.

292 (4) Defects in the qualifications of an expert witness, once a minimum threshold of  
293 expertise is established, go to the weight to be given the testimony and not to its  
294 admissibility.

295 (5) An expert witness who is a member of the complainant's staff or staff of an LEA  
296 may testify and have the testimony considered as part of the record in the same manner  
297 as the testimony of any other expert.

298

299 **R277-212-11. Evidence and Participation in UPPAC Proceedings.**

300 (1) A hearing officer may not exclude evidence solely because the evidence is  
301 hearsay.

302 (2) Each party has a right to call witnesses, present evidence, argue, respond,  
303 cross-examine witnesses who testify in person at the hearing, and submit rebuttal  
304 evidence.

305 (3) Testimony presented at the hearing shall be given under oath if the testimony  
306 is offered as evidence to be considered in reaching a decision on the merits.

307 (4) On the hearing officer's own motion or upon objection by a party, the hearing  
308 officer:

309 (a) may exclude evidence that the hearing officer determines to be irrelevant,  
310 immaterial, or unduly repetitious;

311 (b) shall exclude evidence that is privileged under law applicable to administrative  
312 proceedings in the state unless waived;

313 (c) may receive documentary evidence in the form of a copy or excerpt if the copy  
314 or excerpt contains all pertinent portions of the original document;

315 (d) may take official notice of any facts that could be judicially noticed under judicial  
316 or administrative laws of the state, or from the record of other proceedings before the  
317 agency.

318 (5)(a) In addition to a rebuttable presumption described in Subsection  
319 [53E-6-506\(3\)\(e\)](#), a rebuttable evidentiary presumption exists that a person has committed  
320 a sexual offense against a minor if the person has:

321 (i) been found, pursuant to a criminal, civil, or administrative action to have  
322 committed a sexual offense against a minor; or

323 (ii) failed to defend himself or herself against the charge when given a reasonable  
324 opportunity to do so.

325 (b) A rebuttable evidentiary presumption exists that a person is unfit to serve as an  
326 educator if the person has been found pursuant to a criminal, civil, or administrative action  
327 to have exhibited behavior evidencing unfitness for duty, including immoral, unprofessional,  
328 or incompetent conduct, or other violation of standards of ethical conduct, performance, or  
329 professional competence.

330 (c) Evidence of behavior described in Subsection (11)(b) may include:

331 (i) conviction of a felony;

332 (ii) a felony charge and subsequent conviction for a lesser related charge pursuant  
333 to a plea bargain or plea in abeyance;

334 (iii) an investigation of an educator's license, certificate, or authorization in another  
335 state; or

336 (iv) the expiration, surrender, suspension, revocation, or invalidation of an educator's

337 license for any reason.

338

339 **R277-212-12. Testimony of a Minor Victim or Witness.**

340 (1) For purposes of this section, a "minor victim or witness" is an individual who is  
341 less than 18 years old at the time of hearing.

342 (2) If a case involves allegations of child abuse or of a sexual offense against a  
343 minor under applicable federal or state law, either party~~[, a member of the hearing panel]~~,  
344 or the hearing officer, may request that a minor victim or witness be allowed to testify  
345 outside of the respondent's presence.

346 (3) If the hearing officer determines that a minor victim or witness would suffer  
347 undue emotional or mental harm, or that the minor victim or witness's testimony in the  
348 presence of the respondent would be unreliable, the minor victim or witness's testimony  
349 may be admitted as described in this section.

350 (4) An oral statement of a minor victim or witness that is recorded prior to the filing  
351 of a complaint is admissible as evidence in a hearing regarding the offense if:

352 (a) no attorney for either party is in the minor victim or witness's presence when the  
353 statement is recorded;

354 (b) the recording is visual and aural and is recorded;

355 (c) the recording equipment is capable of making an accurate recording;

356 (d) the operator of the equipment is competent;

357 (e) the recording is accurate and has not been altered; and

358 (f) each voice in the recording is identified.

359 (5) The testimony of a minor victim or witness may be taken in a room other than  
360 the hearing room, and may be transmitted by closed circuit equipment to another room  
361 where it can be viewed by the respondent if:

362 (a) only the hearing officer, hearing panel members, attorneys for each party,  
363 persons necessary to operate equipment, and a person approved by the hearing officer  
364 whose presence contributes to the welfare and emotional well-being of the minor victim or

365 witness may be with the minor victim or witness during the testimony;

366 (b) the respondent is not present during the minor victim or witness's testimony;

367 (c) the hearing officer ensures that the minor victim or witness cannot hear or see  
368 the respondent;

369 (d) the respondent is permitted to observe and hear, but not communicate with the  
370 minor victim or witness; and

371 (e) only hearing panel members, the hearing officer, and the attorneys question the  
372 minor victim or witness.

373 (6)(a) If a witness testifies under circumstances described in Subsection (5), a pro  
374 se educator, may submit written questions to the hearing officer to ask on the educator's  
375 behalf.

376 (b) A hearing officer shall take appropriate recesses to ensure a pro se educator is  
377 allowed to ask all needed follow up questions.

378 (7) If the hearing officer determines that the testimony of a minor victim or witness  
379 may be taken consistent with Subsections (2) through (5), the minor victim or witness may  
380 not be required to testify in any proceeding where the recorded testimony is used.

381

382 **R277-212-13. Hearing Report.**

383 (1) Within 20 days after the hearing, or within 20 days after the deadline imposed  
384 for the filing of any post-hearing materials as permitted by the hearing officer, the hearing  
385 officer shall sign and issue a hearing report consistent with the recommendations of the  
386 panel that includes:

387 (a) detailed findings of fact and conclusions of law based upon the evidence of  
388 record or on facts officially noted;

389 (b) a statement of relevant precedent, if available;

390 (c) a statement of applicable law and rule;

391 (d) presumptions applied by UPPAC;

392 (e) mitigating and aggravating circumstances considered by UPPAC;

393 (f) a recommended disposition of UPPAC panel members that shall be one [~~or an~~  
394 ~~appropriate combination~~] of the following:

395 (i) dismissal of the complaint;

396 (ii) letter of [~~admonishment~~] education;

397 (iii) letter of warning;

398 (iv) [~~letter of~~] reprimand;

399 [~~(v) probation, to include the following terms and conditions:~~

400 ~~—— (A) it is the respondent's responsibility to petition UPPAC for removal of probation~~  
401 ~~and letter of reprimand from the respondent's CACTUS file;~~

402 ~~—— (B) a recommended minimum probationary time;~~

403 ~~—— (C) conditions that can be monitored;~~

404 ~~—— (D) if recommended by the panel, a person or entity to monitor a respondent's~~  
405 ~~probation;~~

406 ~~—— (E) a statement providing for costs of probation, if appropriate; and~~

407 ~~—— (F) whether or not the respondent may work in any capacity in public education~~  
408 ~~during the probationary period;]~~

409 [~~(vi) disciplinary action held in abeyance~~];

410 (vii) suspension, to include the following terms and conditions:

411 (A) a recommended minimum time period consistent with [R277-215](#) after which an  
412 educator may request a reinstatement hearing under Rule [R277-213](#); and

413 (B) any recommended conditions precedent to requesting a reinstatement hearing  
414 under Section [R277-213-2](#); or

415 (viii) revocation; and

416 (g) notice that UPPAC's recommendation is subject to approval by the Board and  
417 judicial review as may be allowed by law.

418 (2) Findings of fact may not be based solely upon hearsay, and conclusions shall  
419 be based upon competent evidence.

420 [~~(3) Any of the consequences described in Subsection (1)(d) may be imposed in the~~

421 ~~form of a disciplinary action held in abeyance.~~

422 ~~——(4)(a) If the respondent's penalty is held in abeyance, the respondent's penalty is~~  
423 ~~stayed subject to the satisfactory completion of probationary conditions.~~

424 ~~——(b) The decision to impose a consequence in the form of a disciplinary action held~~  
425 ~~in abeyance shall provide for appropriate or presumed discipline if the respondent does not~~  
426 ~~fully satisfy the probationary conditions.]~~

427 ([5]3)(a) A hearing officer shall circulate a draft report to hearing panel members  
428 prior to the 20 day completion deadline of the hearing report.

429 (b) Hearing panel members shall notify the hearing officer of any changes to the  
430 report:

431 (i) as soon as possible after receiving the report; and

432 (ii) prior to the 20 day completion deadline of the hearing report.

433 (c) The hearing officer shall file the completed hearing report with the Executive  
434 Secretary, who shall review the report with UPPAC.

435 (d) The Executive Secretary may participate in UPPAC's deliberation as a resource  
436 to UPPAC in explaining the hearing report and answering any procedural questions raised  
437 by UPPAC members.

438 (e) The hearing officer may confer with the Executive Secretary or the panel  
439 members or both while preparing the hearing report.

440 (f) The hearing officer may request the Executive Secretary to confer with the  
441 hearing officer and panel following the hearing.

442 (g) The Executive Secretary may return a hearing report to a hearing officer if the  
443 report is incomplete, unclear, or unreadable, or missing essential components or  
444 information.

445 (h) UPPAC shall vote to uphold the hearing officer's and panel's report if UPPAC  
446 finds that:

447 (i) there are no significant procedural errors;

448 (ii) the hearing officer's recommendations are based upon a preponderance of the

449 evidence presented at the hearing; and

450 (iii) that all issues explained in the hearing report are adequately addressed in the  
451 conclusions of the report.

452 (i) After the UPPAC review, the Executive Secretary shall send a copy of the hearing  
453 report to:

454 (i) the Board for further action;

455 (ii) the respondent; and

456 (iii) the UPPAC case file.

457 ~~[(6)(a) If UPPAC adopts a hearing report that recommends an action, as defined in~~  
458 ~~Subsection R277-210-2(1), either party may request review by the Superintendent within~~  
459 ~~15 days from the date the Executive Secretary sends a copy of the hearing report to the~~  
460 ~~respondent.~~

461 ~~——(b) The request for review shall consist of:~~

462 ~~——(i) the name, position, and address of the appellant;~~

463 ~~——(ii) the issue being appealed; and~~

464 ~~——(iii) the signature of the appellant or the appellant's representative.~~

465 ~~——(c) An appeal to the Superintendent is limited to a question of fairness or a violation~~  
466 ~~of due process.~~

467 ~~——(d) If the Superintendent finds that a procedural error has occurred that violates~~  
468 ~~fairness or due process, the Superintendent shall:~~

469 ~~——(i) refer the report back to UPPAC for reconsideration as to whether the findings,~~  
470 ~~conclusions, or decisions are supported by a preponderance of the evidence; or~~

471 ~~——(ii) direct the UPPAC Executive Secretary to take specific administrative action.~~

472 ~~——(e) After UPPAC completes reconsideration, the Superintendent shall:~~

473 ~~——(i) notify all parties; and~~

474 ~~——(ii) refer the report to the Board, if necessary, for final disposition consistent with this~~  
475 ~~rule.]~~

476 ([7]4) If the Board does not approve a UPPAC hearing report, the Board may:

- 477 (a) remand the case to UPPAC with direction to cure due process issues; or  
478 (b) direct the Executive Secretary to make other evidence available pursuant to  
479 Section [R277-212](#)-14 before issuing a final decision with official findings; or  
480 (c) issue findings based on the UPPAC hearing record and report:  
481 (i) specifying the reasons, including the evidence, presumptions, and the mitigating  
482 and aggravating circumstances the Board considered, for the Board's failure to accept ~~why~~  
483 ~~the Board disapproves of~~ the hearing report;  
484 (ii) adopting the Board's decision on the matter; and  
485 (iii) directing the Executive Secretary to include the findings as an addendum to the  
486 hearing report, which findings constitute final Board action; or  
487 (d) take other appropriate action consistent with due process and [R277-215](#).  
488 ([8]5) Following Board adoption of a hearing report or the Board's decision under  
489 Subsection ([7]4)([b]c), the Executive Secretary shall:  
490 (a) notify the educator;  
491 (b) notify the educator's employer;  
492 (c) update CACTUS to reflect the Board's action; and  
493 (d) report the action to the NASDTEC Educator Information Clearing house if the  
494 action results in:  
495 (i) a revocation;  
496 (ii) a suspension;  
497 ~~[(iii) probation;]~~ or  
498 (i[v]ii) ~~[a letter of]~~ reprimand.  
499 ([9]6) The hearing report is a public document under [Title 63G, Chapter 2,](#)  
500 [Government Records Access and Management Act](#) after final action is taken in the case,  
501 but may be redacted if it is determined that the hearing report contains particular  
502 information, the dissemination of which is otherwise restricted under the law.  
503 ([10]7) A respondent's failure to comply with the terms of a final disposition may  
504 result in additional discipline against the educator license.

505 ([14]8) If a hearing officer fails to satisfy the hearing officer's responsibilities under  
506 this rule, the Executive Secretary may:

- 507 (a) notify the Utah State Bar of the failure;  
508 (b) reduce the hearing officer's compensation consistent with the failure;  
509 (c) take timely action to avoid disadvantaging either party; or  
510 (d) preclude the hearing officer from further employment by the Board for UPPAC  
511 purposes.

512 ([12]9) The Executive Secretary may waive the deadlines within this section if the  
513 Executive Secretary finds good cause.

514 (1[3]0) All criteria of letters of warning and reprimand, probation, suspension, and  
515 revocation apply to the comparable sections of the final hearing report.

516

517 **R277-212-14. Additional Relevant Evidence.**

518 (1) If the Board directs the Executive Secretary to make additional relevant evidence  
519 available to the Board for review, before the Board issues a final decision with official  
520 findings, the Executive Secretary shall give the educator a notice that includes:

521 (a) what additional relevant evidence the Board directed UPPAC to make available  
522 to review;

523 (b) the opportunity to file a response described in Subsection (2); and

524 (c) a statement that the educator's failure to file either a timely written response or  
525 request for hearing would be a waiver of the right to either respond, or request a hearing.

526 (2) An educator who receives a notice described in Subsection (1) may submit one  
527 of the following within 30 days of the notice described in Subsection (1) was sent:

528 (a) a written response to the additional relevant evidence that the Board directed  
529 the Executive Secretary to make available for review; or

530 (b) a written request for a hearing before the Board to respond to the additional  
531 relevant evidence.

532 (3) If the educator fails to timely respond as provided in Subsection (2):

533 (a) the Executive Secretary shall notify the respondent that the respondent waived  
534 the right to respond or request a hearing; and

535 (b) the Board may proceed to view the additional relevant evidence.

536 (4) If the educator files a timely written response, the Executive Secretary shall  
537 submit the written response to the Board for consideration before the Board issues a final  
538 decision.

539 (5) If the educator files a timely hearing request, before the Board issues a final  
540 decision, the Executive Secretary shall:

541 (a) request a hearing before the Board, as described in Subsection (7);

542 (b) provide the respondent notice of the hearing meeting the requirements of Section  
543 53E-6-607;

544 (c) include a copy of the Board rules that apply; and

545 (d) notify the respondent that if the respondent fails to attend or participate in the  
546 hearing:

547 (i) that the respondent has waived the right to appear and respond to the additional  
548 relevant evidence; and

549 (ii) that the Board may proceed to review the additional relevant evidence.

550 (6) The Board shall schedule a hearing described in Subseciton (5)(b) within no less  
551 than 45 days and no more than 90 days from the date the Executive Secretary receives the  
552 respondent's written request for a hearing.

553 (7) If the Board conducts a hearing described in Subsection (6), Sections  
554 R277-212-4, R277-212-5, and R277-212-7 through R277-212-12 apply.

555 (8) The Executive Secretary shall issue a subpoena or other order to secure the  
556 attendance of a witness pursuant to Subsection [53E-6-506\(3\)\(c\)\(i\)](#) if:

557 (a) requested by either party; and

558 (b) notice of intent to call the witness has been timely provided as required by  
559 Section R277-212-4.

560 (9) Subsection R277-212-3(1) governs the appointment of a hearing officer to

561 conduct a hearing under this section, but no hearing report is required.

562 (10) After the hearing or viewing the additional relevant evidence, the Board will  
563 prepare findings that support the reasons for the Board's decision, including the  
564 presumptions and mitigating and aggravating circumstances described in Rule R277-215  
565 that the Board applied.

566 (11) Findings issued by the Board as described in Subsection (11) may not be based  
567 solely upon hearsay.

568

569 **R277-212-15. Default.**

570 (1)(a) The Executive Secretary shall prepare an order of default if:

571 (i) the respondent fails to file an answer as described in Subsection R277-211-5(4);

572 (ii) the respondent fails to attend or participate in a properly scheduled hearing after  
573 receiving proper notice; or

574 (iii) the hearing officer recommends default as a sanction as a result of misconduct  
575 by the respondent or the respondent's representative during the course of the hearing  
576 process.

577 (b) The hearing officer may determine that the respondent has failed to attend a  
578 properly scheduled hearing if the respondent has not appeared within 30 minutes of the  
579 appointed time for the hearing to begin, unless the respondent shows good cause for failing  
580 to appear in a timely manner.

581 (2) The recommendation of default may be executed by the Executive Secretary  
582 following all applicable time periods, without further action by UPPAC.

583 (3) ~~[Except as provided in Subsection (4), t]~~The Executive Secretary shall make a  
584 recommendation to the Board for discipline in accordance with Rule R277-215.

585 ~~[(4) An order of default shall result in an Executive Secretary recommendation to the~~  
586 ~~Board for a revocation if the alleged misconduct is conduct identified in Subsection~~  
587 ~~53E-6-604(5)(b).]~~

588

589 **R277-212-16. Rights of Victims at Hearings.**

590 (1) If the allegations that gave rise to the underlying allegations involve abuse of a  
591 sexual or physical nature, UPPAC shall make reasonable efforts to:

592 (a) advise the alleged victim that a hearing has been scheduled;

593 (b) notify the alleged victim of the date, time, and location of the hearing; and

594 (c) notify the alleged victim of the right to attend the hearing alone or with a victim  
595 advocate present.

596 (2) An alleged victim or guardian entitled to notification of a hearing is permitted, but  
597 is not required, to attend the hearing.

598 (3) An alleged victim or witness may have a criminal justice victim advocate or  
599 support person attend the hearing with them.

600

601 **KEY: hearings, reports, educators**

602 **Date of Enactment or Last Substantive Amendment: February 7, 2017**

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

604 [53E-3-401\(4\)](#)