

R277-213 received final approval by the Utah State Board of Education on December 5, 2019. R277-213 is published in the January 1, 2020 Utah State Bulletin, subject to a 30-day comment period, with a first possible effective date of February 7, 2020.

R277. Education, Administration.

R277-213. Request for Licensure Reinstatement and Reinstatement Procedures.

R277-213-1. Authority and Purpose.

(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 procedures regarding educator license reinstatement.

(3) The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).

R277-213-2. Application for ~~[Licensing Following Denial or Loss of License]~~ Reinstatement.

(1)(a) An individual ~~[who has been denied a license or lost the individual's license through suspension, or allowed a license to lapse in the face of an allegation of misconduct]~~ with a suspended license, may request a review to consider reinstatement of ~~[a]~~ the license.

(b) A request for review described in Subsection (1)(a) shall:

(i) be in writing;

(ii) be ~~[transmitted]~~ submitted to the UPPAC Executive Secretary; and

(iii) have the following information:

(A) name and address of the individual requesting review;

(B) the action being requested;

(C) specific evidence and documentation of compliance with terms and conditions of any remedial or disciplinary requirements or recommendations from UPPAC or the

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Board;

(D) reason~~[(s)]~~ that the individual seeks reinstatement; and

(E) signature of the individual requesting review.

(2)(a) The Executive Secretary shall review the request with UPPAC.

(b) If UPPAC determines that the request is incomplete or invalid:

(i) the Executive Secretary shall deny the request; and

(ii) notify the individual requesting reinstatement of the denial.

(c) If UPPAC determines that the request of an individual described in Subsection (1) is complete, timely, and appropriate, ~~[UPPAC]~~ the Executive Secretary shall schedule and hold a hearing as ~~[provided under]~~ soon as practicable in accordance with the provisions of Section R277-213-3.

(3) An educator may file a request for reinstatement at any time one year prior to the expiration of the suspension period if the educator has completed the requirements identified in the educator's consent to discipline or hearing report.

~~[(3)4]~~(a) Burden of Persuasion: The burden of persuasion at a reinstatement hearing shall fall on the individual seeking ~~[the]~~ reinstatement.

(b) An individual requesting reinstatement of a suspended license shall:

(i) show sufficient evidence of compliance with any conditions imposed in the past disciplinary action;

(ii) provide sufficient evidence to the reinstatement hearing panel that the educator will not engage in recurrences of the actions that gave rise to the suspension and that reinstatement is appropriate;

(iii) undergo a criminal background check not more than six months prior to the requested hearing; and

(iv) provide materials for review by the hearing panel that demonstrate the individual's compliance with directives from UPPAC or the Board found in petitioner's original ~~[stipulated agreement]~~ consent to discipline or hearing report.

(c) An individual requesting ~~[licensing following a denial]~~ reinstatement shall show sufficient evidence of completion of a rehabilitation or remediation program, if applicable,

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when requesting reinstatement.

([4]5) An individual whose license has been suspended or revoked in another state shall seek reinstatement of the individual's license in the other state before a request for a reinstatement hearing may be approved.

R277-213-3. Reinstatement Hearing Procedures.

(1) A hearing officer shall:

(a) preside over a reinstatement hearing; and

(b) rule on all procedural issues during the reinstatement hearing as they arise.

(2) A hearing panel, comprising individuals as set forth in Subsection R277-212-3(2), shall:

(a) hear the evidence; and

(b) along with the UPPAC attorney and hearing officer, question the individual seeking reinstatement regarding the appropriateness of reinstatement.

(3) An individual seeking reinstatement may:

(a) be represented by counsel; and

(b) may present evidence and witnesses.

(4) A party may present evidence and witnesses consistent with Rule R277-212.

(5) A hearing officer of a reinstatement hearing shall direct one or both parties to explain the background of a case to panel members at the beginning of the hearing to provide necessary information about the initial misconduct and subsequent UPPAC and Board action.

(6) An individual seeking reinstatement shall present documentation or evidence that supports reinstatement.

(7) The Executive Secretary, represented by a UPPAC attorney, shall present any evidence or documentation that explains and supports UPPAC's recommendation in the matter.

(8) Other evidence or witnesses may be presented by either party and shall be presented consistent with Rule R277-212.

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(9) The individual seeking reinstatement shall:

(a) focus on the individual's actions, rehabilitative efforts, and performance following [~~license denial or~~] suspension;

(b) explain item by item how each condition of the hearing report or [~~stipulated agreement~~] consent to discipline was satisfied;

(c) provide documentation in the form of evaluations, reports, or plans, as directed by the hearing report or [~~stipulated agreement~~] consent to discipline, of satisfaction of all required and outlined conditions;

(d) be prepared to completely and candidly respond to the questions of the UPPAC attorney and hearing panel regarding:

(i) the misconduct that caused the license suspension;

(ii) subsequent rehabilitation activities;

(iii) counseling or therapy received by the individual related to the original misconduct; and

(iv) work, professional actions, and behavior between the suspension and reinstatement request;

(e) present witnesses and be prepared to question witnesses (including counselors, current employers, support group members) at the hearing who can provide substantive corroboration of rehabilitation or current professional fitness to be an educator;

(f) provide copies of all reports and documents to the UPPAC attorney and hearing officer at least five days before a reinstatement hearing; and

(g) bring eight copies of all documents or materials that an individual seeking reinstatement plans to introduce at the hearing.

(10) The UPPAC attorney, the hearing panel, and hearing officer shall thoroughly question the individual seeking reinstatement as to the individual's:

(a) underlying misconduct which is the basis of the sanction on the educator's license;

(b) specific and exact compliance with reinstatement requirements;

(c) counseling, if required for reinstatement;

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(d) specific plans for avoiding previous misconduct; and

(e) demeanor and changed understanding of petitioner's professional integrity and actions consistent with Rule R277-~~515~~217.

(11) If the individual seeking reinstatement sought counseling as described in Subsection(10)(c), the individual shall state, under oath, that he provided all relevant information and background to his counselor or therapist.

(12) A hearing officer shall rule on procedural issues in a reinstatement hearing in a timely manner as they arise.

(13) No more than 20 days following a reinstatement hearing, a hearing officer, with the assistance of the hearing panel, shall:

(a) prepare a hearing report in accordance with the requirements set forth in Section R277-213-5; and

(b) provide the hearing report to the UPPAC Executive Secretary.

(14) The Executive Secretary shall submit the hearing report to UPPAC at the next meeting following receipt of the hearing report by the Executive Secretary.

(15) UPPAC may do the following upon receipt of the hearing report:

(a) accept the hearing panel's recommendation as prepared in the hearing report;

(b) amend the hearing panel's recommendation with conditions or modifications to the hearing panel's recommendation which shall be:

(i) directed by UPPAC;

(ii) prepared by the UPPAC Executive Secretary; and

(iii) attached to the hearing report; or

(c) reject the hearing panel's recommendation.

(16) After UPPAC makes a recommendation on the hearing panel report, the UPPAC recommendation will be forwarded to the Board for final action on the individual's reinstatement request.

~~[(17) If the Board denies an individual's request for reinstatement, the individual shall wait at least twenty four (24) months prior to filing a request for reinstatement again, unless a different time is specified by UPPAC or the Board.]~~

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(1[8]7) If the Board reinstates an educator's license, the Executive Secretary shall:

(a) update CACTUS to reflect the Board's action; and

(b) report the Board's action to the NASDTEC Educator Information Clearing house.

(1[9]8) The Executive Secretary shall send notice of the Board's decision no more than 30 days following Board action to:

(a) the educator;

(b) the educator's LEA.

R277-213-4. Rights of a Victim at a Reinstatement Hearing.

(1) If the allegations that gave rise to the underlying suspension involve abuse of a sexual or physical nature, UPPAC shall make reasonable efforts to notify the victim or the victim's family of the reinstatement request.

(2) A UPPAC's notification described in Subsection (1) shall:

(a) advise the victim or the victim's family that a reinstatement hearing has been scheduled;

(b) notify the victim or the victim's family of the date, time, and location of the hearing;

(c) advise the victim or the victim's family of the victim's right to be heard at the reinstatement hearing; and

(d) provide the victim or the victim's family with a form upon which the victim can submit a statement for consideration by the hearing panel.

(3) A victim entitled to notification of the reinstatement proceedings shall be permitted:

(a) to attend the hearing; and

(b) to offer the victim's position on the educator's reinstatement request, either by testifying in person or by submitting a written statement.

(4) A victim choosing to testify at a reinstatement hearing shall be subject to reasonable cross examination in the hearing officer's discretion.

(5) A victim choosing not to respond in writing or appear at the reinstatement hearing

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waives the victim's right to participate in the reinstatement process.

R277-213-5. Reinstatement Hearing Report.

(1) A hearing officer shall provide the following in a reinstatement hearing report:

(a) a summary of the background of the original disciplinary action;

(b) adequate information, including summary statements of evidence presented, documents provided, and petitioner's testimony and demeanor for both UPPAC and the Board to evaluate petitioner's progress and rehabilitation since petitioner's original disciplinary action;

(c) the hearing panel's conclusions regarding petitioner's appropriateness and fitness to be a public school educator again;

(d) the hearing panel's recommendation; [~~and~~]

(e) a statement indicating whether the hearing panel's recommendation to UPPAC was unanimous or identifying how the panel member^[?]s voted concerning reinstatement^[-]; and

(f) if the recommendation is to deny the reinstatement request, a recommended time period the educator must wait and requirements the educator must complete, if any, before requesting another reinstatement hearing.

(2)(a) The hearing panel report is a public document under GRAMA following the conclusion of the reinstatement process unless specific information or evidence contained therein is protected by a specific provision of GRAMA, or another provision of state or federal law.

(b) The Executive Secretary shall add the hearing panel report to the UPPAC case file.

(3) If a license is reinstated, an educator's CACTUS file shall be updated to:

(a) remove the flag;

(b) show that the educator's license was reinstated; and

(c) show the date of formal Board action reinstating the license.

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R277-213-6. Reinstatement from Revocation of License.

(1) The Executive Secretary shall deny any request for a reinstatement hearing for a revoked license unless the educator's stipulated agreement or revocation order from the Board allows the educator to request a reinstatement hearing consistent with the law at the time of the revocation.

(2) An educator may request that the Superintendent order a reconsideration of the prior Board licensing action if:

(a) an educator provides:

(i) evidence of mistake or false information that was critical to the revocation action;

or

(ii) newly discovered evidence:

(A) that undermines the revocation determination; and

(B) that the educator could not have reasonably obtained during the original disciplinary proceedings; or

(b) an educator identifies material procedural Board error in the revocation process.

(3) A request for reconsideration by the Superintendent must be filed within 30 days of Board action for circumstances identified in Subsection (2)(a)(i) or (b).

(4) A request for reconsideration by the Superintendent must be filed within 90 days of discovery of the new evidence for circumstances identified in Subsection(2)(a)(ii).

(5) The Superintendent:

(a) shall make a determination on a request made under Subsection(2) within 60 days; and

(b) may request briefing from ~~[an]~~ the educator and the ~~[Executive Secretary]~~ UPPAC attorney in making a determination.

(6) If the Superintendent finds that the criteria in Subsection (2)(a) have been established, the Superintendent shall make a recommendation to ~~[the Board]~~ direct UPPAC to conduct a new hearing consistent with Rule R277-212.

(7) If the Superintendent finds that the criteria in Subsection (2)(b) have been established, the Superintendent shall recommend to the Board that they reconsider their

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previous action.

KEY: licensure, reinstatement, hearings

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Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53E-6-506; 53E-3-401(4)