

Representing yourself in any legal proceeding can be overwhelming. If you have an upcoming hearing with UPPAC, this guide is meant to help you understand what to expect at your hearing so you can properly prepare. If you have more questions after reading this guide, feel free to contact us. However, remember that UPPAC staff cannot give you legal advice, and this guide is not a substitute for advice from a qualified attorney. Also note that this guide is written in non-legal language. If you want to read the precise language of UPPAC’s administrative rules, you can find them online here: <https://schools.utah.gov/administrativerules>.

Contents	
Do I have to have a hearing?	1
Who are the people involved in the hearing process?	1
Can I request a different hearing officer or panel member?	2
Can I request a different date for my hearing?	2
How do I get documents related to my case? Is there any information I need to provide before my hearing?	2
Can I ask for a subpoena for witnesses or documents?	2
Who will be in the room at the hearing	3
Who has the burden of proof at the hearing?	3
What types of evidence will be admissible at the hearing	3
How am I expected to behave at the hearing?	4
How will the hearing unfold?	4
What happens after the hearing?	5
Contact Information	6

Do I have to have a hearing?

If your case has been scheduled for a hearing, it means you requested one. If you decide you don’t want a hearing, you will need to resolve your case in another way. Contact the UPPAC attorney to discuss your options.

Who are the people involved in the hearing process?

At the time your hearing is scheduled, the UPPAC executive secretary will inform you who the hearing officer and hearing panel members will be. The hearing officer conducts the hearing and makes rulings on the admissibility of evidence and other issues that come up. The hearing officer has discretion to tailor the hearing to the specific circumstances of your case, so if the hearing officer says something that contradicts what you read in this guide, follow the hearing officer’s instructions. The hearing officer is analogous to a judge in a court trial.

Three UPPAC members make up the hearing panel. They are the ones who, with the hearing officer’s help, will evaluate the evidence and make a decision at the end of the hearing. The hearing panel is analogous to a jury in a court trial.

A UPPAC attorney will present evidence to the panel regarding the allegations against you. The UPPAC attorney is usually the same person who investigated the allegations against you in the first place.

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Can I request a different hearing officer or panel member?

If there is some reason you think a hearing panel member should be disqualified, you can submit a written request to the hearing officer. If you think the hearing officer should be disqualified, you can submit a written request to the executive secretary. These requests must be submitted at least 15 days before the hearing.

Can I request a different date for my hearing?

If something comes up and you need to request a change of hearing date, submit your request in writing to the hearing officer as soon as possible, but no later than 5 days before the hearing. The hearing officer will determine whether your reasons are sufficient and will make a decision. Please keep in mind that witnesses and other participants are rearranging their schedules to attend a hearing, so please only request a change if it's absolutely necessary.

How do I get documents related to my case? Is there any information I need to provide before my hearing?

Court trials often involve extensive depositions and other discovery. UPPAC hearings are less formal than court trials, and usually less complicated. For this reason, discovery is not typical in preparation for UPPAC hearings. You are, however, entitled to a copy of our file. If the UPPAC attorney hasn't already given you a copy of our file, you can request it. If you think you need more information than what is in our file, you can ask the hearing officer to order discovery. The hearing officer will determine whether and to what extent discovery is necessary.

Unlike discovery, pre-hearing disclosures are required before every hearing. At least 20

days before the hearing, the UPPAC attorney will send you a list of all exhibits and witnesses the attorney intends to introduce at the hearing. Likewise, you need to send a list of all your exhibits and witnesses to the UPPAC attorney and to the hearing officer at least 20 days before the hearing. The hearing officer may also request other information from you, such as a brief containing your position on the allegations.

If you bring a witness or document to your hearing that was not listed in your pre-hearing disclosures, that witness or document will not be allowed unless the hearing officer determines there is a good reason for the failure to disclose it.

Can I ask for a subpoena for witnesses or documents?

Yes. If you want a certain person to be a witness at your hearing, but you're not sure he or she will come to the hearing voluntarily, you can ask the executive secretary to issue a subpoena to that person.

Similarly, if some person or entity other than UPPAC has a document that you want to bring to the hearing, you can ask the executive secretary to issue a subpoena to produce the document.

Remember that people need time to respond to subpoenas. If you are requesting subpoenas, do it well before your pre-hearing disclosures are due.

Who will be in the room at the hearing?

The hearing will take place in a conference room at the USBE building. The following people will be in the room at your hearing:

- The hearing officer
- The UPPAC executive secretary
- Three UPPAC members

- A UPPAC attorney
- You, the educator
- Your attorney or other representative, if you have one
- One witness at a time

The people listed above are typically the only people allowed in the room during the hearing. The hearing officer may grant exceptions. For example, if a minor is testifying, a parent or other support person will typically be allowed to accompany the minor. Other exceptions may be granted at the hearing officer's discretion. If you have a spouse, other support person, or someone else that you want to be in the room during the hearing, make that request before the hearing to avoid surprises.

Also, unless there are unusual circumstances, witnesses (other than you) will not be allowed in the room while other witnesses are testifying.

Who has the burden of proof at a hearing?

The UPPAC attorney has the burden of proof at your hearing. This means it is the UPPAC attorney's job to prove that the allegations against you are true.

The standard of proof is a "preponderance of the evidence." This means that the panel members must decide if it is more likely than not that an allegation is true. This is a lower standard than, for example, a criminal trial, where the elements of a crime must be proven "beyond a reasonable doubt."

What types of evidence will be admissible at the hearing?

The UPPAC attorney may bring witnesses, documents, recordings, or other types of evidence to the hearing. You can also bring whatever witnesses and evidence to the

hearing that you think are relevant, as long as they were listed in your pre-hearing disclosures.

If any questions arise regarding the admissibility of a document or statement of a witness, the hearing officer will decide what is allowed. Unlike court trials, which are governed by strict rules of evidence, UPPAC hearings are less formal. The hearing officer has discretion to allow or disallow evidence as he or she deems appropriate. The general criteria the hearing officer will use to decide evidentiary questions are:

- Reasonable reliability of the offered evidence;
- Fairness to both parties; and
- Usefulness to UPPAC in reaching a decision.

In addition to these general guidelines, the hearing officer will observe a few specific rules:

- Hearsay is admissible. In a court trial, a witness is usually not allowed to testify about something that someone else said. However, in UPPAC hearings, this type of testimony is allowed.
- The hearing officer may exclude evidence that is irrelevant or unduly repetitious.
- The hearing officer must exclude evidence that is privileged. For example, this may include communication between a lawyer and his or her client, certain communications between spouses, etc.
- There are special rules regarding child witnesses.

If the UPPAC attorney sees evidentiary questions that might arise at the hearing, he or she may bring them up, either to you or to the hearing officer, well before the hearing. This helps save time at the hearing

and ensures that everyone is on the same page regarding what will be allowed at the hearing. You are encouraged to do the same. If you want to make sure your documents or witnesses are going to be allowed, or if you see something in the UPPAC attorney's pre-hearing disclosures that you don't think should be allowed, please raise those issues as soon as possible.

How am I expected to behave at the hearing?

Although UPPAC hearings are less formal than court trials, everyone is still expected to keep emotions in check and behave appropriately. If you fail to conduct yourself in an appropriate manner, the hearing officer may exclude you from the hearing room or prohibit you from testifying on your own behalf.

You are also prohibited from harassing, intimidating, or pressuring witnesses or other hearing participants, or directing others to do so.

If you don't show up at your hearing, or if you exhibit extreme misbehavior, the hearing officer will end the hearing, and you will be in default.

How will the hearing unfold?

Not every hearing has the same format. The hearing officer has discretion to tailor the hearing to the circumstances of your case. However, most hearings proceed roughly as follows:

1. Introduction

The hearing officer will convene the hearing, introduce himself or herself, and ask everyone present to introduce themselves. If there are evidentiary issues or other matters to resolve before the hearing, they will be addressed at this time, outside the presence of the hearing panel members if necessary.

2. Opening statements

Each side will summarize for the hearing panel what they expect the evidence at the hearing to establish. The UPPAC attorney will go first, then you.

Opening statements are not evidence. Instead, they are intended to orient everyone regarding what the case is about. As such, they should be relatively brief.

3. UPPAC attorney's evidence

The UPPAC attorney will present evidence first. Witnesses will testify under oath, one at a time. The UPPAC attorney will question each witness first. Then you can ask the witness questions if you have any. Then the UPPAC attorney may ask some additional questions, followed by the hearing officer and panel members. The witness will then be excused, and the UPPAC attorney will call his or her next witness. This process continues until the UPPAC attorney has presented all of his or her witnesses and exhibits.

4. Educator's evidence

Now it's your turn. If you have witnesses other than yourself, you will question each witness. When you're done, the UPPAC attorney may question the witness, followed by the hearing officer and panel members.

Next, it's your turn to testify under oath, if you want to. Whether or not to testify is up to you. However, remember that the things you say in an opening statement or closing argument are not evidence; they only summarize the evidence. If you have something to say that you want the hearing panel to consider as evidence, you need to say it in testimony, under oath.

If you decide to testify, just tell the hearing panel what you want them to know. It may be helpful to outline your

testimony before the hearing. After you've finished giving your testimony, the UPPAC attorney may ask you questions, followed by the hearing officer and panel members.

If you bring documents or other exhibits you want the hearing panel to consider, you need to have them admitted into evidence. It's not enough to refer to a document or show it to a witness. You need to explain what the document is and then ask the hearing officer if it can be admitted into evidence. There may be a discussion about the admissibility of the exhibit if necessary, then the hearing officer will decide whether or not to admit the exhibit. If it is admitted, you can then distribute copies. Please bring enough copies for everyone to avoid having to interrupt the hearing to make copies. Seven copies should be enough (hearing officer, 3 panel members, executive secretary, UPPAC attorney, and yourself).

5. UPPAC attorney's rebuttal evidence

If the UPPAC attorney has additional evidence to rebut any of your witnesses or exhibits, he or she may present it at this time. Often there will be no rebuttal evidence, and the hearing will skip to closing arguments.

6. Closing arguments

Each side will then have a chance to summarize the evidence in a closing argument. Again, the UPPAC attorney will go first, then you.

Remember that your closing argument is not given under oath, and it is not evidence, so you can't discuss anything that wasn't addressed in previous testimony. In other words, the closing argument is for summarizing the evidence, not giving new evidence.

If you have a recommendation for the panel, now is your time to give it. For example, if the UPPAC presumption calls for a suspension of your license, but you want the hearing panel to consider a reprimand instead, tell them why. Remind them of the evidence they heard during the hearing that supports your position.

Because the UPPAC attorney has the burden of proof, he or she will usually get the last word after you give your closing argument.

What happens after the hearing?

After closing arguments are finished, the hearing officer will excuse everyone from the room except the hearing panel members. The hearing officer and panel members will then discuss the case, make findings, and make a decision about what licensing action, if any, is appropriate. The hearing officer participates in the deliberations and helps the panel members articulate their findings, but the hearing officer does not get a vote.

When deliberations are finished, the hearing officer will prepare a hearing report reflecting the panel's findings and decision. However, the panel's decision is not final. Instead, the full UPPAC commission will review the hearing report and discuss the case at the next UPPAC meeting. After discussion, UPPAC will vote. UPPAC's decision may adopt the hearing panel's recommendation, or it can be something different.

Because UPPAC is an advisory body, UPPAC's decision still is not a final action; it is a recommendation to the Utah State Board of Education. After UPPAC makes its decision, your case will be forwarded to the Board for a final decision and action. It will probably take about two months after your hearing to get a final decision from the Board.

Please do not come to the hearing unprepared.
If you have further questions, please contact the
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