

UTAH STATE BULLETIN

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Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Division of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3764. Additional rulemaking information and electronic versions of all administrative rule publications are available at <http://www.rules.utah.gov/>.

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)* of the same volume and issue number. The *Digest* is available by e-mail subscription or online. Visit <http://www.rules.utah.gov/publicat/digest.htm> for additional information.

Division of Administrative Rules, Salt Lake City 84114

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EXECUTIVE DOCUMENTS

Under authority granted by the Utah Constitution and various federal and state statutes, the Governor periodically issues **EXECUTIVE DOCUMENTS**, which can be categorized as either Executive Orders, Proclamations, and Declarations. Executive Orders set policy for the executive branch; create boards and commissions; provide for the transfer of authority; or otherwise interpret, implement, or give administrative effect to a provision of the Constitution, state law or executive policy. Proclamations call special or extraordinary legislative sessions; designate classes of cities; publish states-of-emergency; promulgate other official formal public announcements or functions; or publicly avow or cause certain matters of state government to be made generally known. Declarations designate special days, weeks or other time periods; call attention to or recognize people, groups, organizations, functions, or similar actions having a public purpose; or invoke specific legislative purposes (such as the declaration of an agricultural disaster).

The Governor's Office staff files **EXECUTIVE DOCUMENTS** that have legal effect with the Division of Administrative Rules for publication and distribution.

San Juan River Gold King Mine Contamination, Utah Exec. Order No. 2015-7

EXECUTIVE ORDER

San Juan River Gold King Mine Contamination

WHEREAS, on Wednesday, August 5, 2015, approximately three million gallons of contaminated water were discharged from the Gold King Mine in Silverton, Colorado, into the upper portions of Cement Creek, a tributary of which connects to the Upper Animas River watershed; and

WHEREAS, the Gold King Mine wastewater contains high levels of heavy metals, including aluminum, arsenic, cadmium, cobalt, copper, iron, lead, manganese, mercury, molybdenum, nickel and zinc; and

WHEREAS, the contamination plume from the Gold King Mine was carried by the Animas River in Colorado and flowed into the San Juan River in New Mexico, and has the potential to enter into Utah; and

WHEREAS, the contamination plume from the Gold King Mine will most certainly adversely impact downstream water supplies for drinking and other domestic uses, agriculture, economy, recreation and wildlife in San Juan and Kane Counties; and

WHEREAS, the contamination plume from the Gold King Mine requires immediate action to monitor and assess impact, minimize environmental impacts, support local businesses and recover from impacts to the economic base; and

WHEREAS, all available local and state resources may be insufficient to alleviate this emergency and prevent damage from the contamination plume; and

WHEREAS, damage to infrastructure, resources, and property will pose a significant threat to the health, safety, and welfare of citizens and visitors to Utah, as well as the economic base of affected local governments; and

WHEREAS, this situation constitutes an emergency situation with potentially catastrophic consequences; and

WHEREAS, on August 12, 2015, San Juan County issued an Emergency Declaration; and

WHEREAS, on August 9, 2015, the Navajo Nation issued an Emergency Declaration; and

WHEREAS, this exigent circumstance requires emergency action to preserve and protect the peace, health, safety, and welfare of the lives and property of the people of the State of Utah; and

WHEREAS, the conditions caused by the spill require a response that exceeds local resources, and require the State to mobilize its resources to assist local efforts and take the action necessary to protect public health, safety, welfare, and property and to minimize economic or physical harm; and

WHEREAS, these conditions do create a "State of Emergency" as defined by Section 53-2a-206 of the Utah Code, therefore;

NOW THEREFORE, I, Gary R. Herbert, Governor of the State of Utah by the power vested in me by the Constitution and Laws of the State of Utah, do hereby find, determine, and declare that that a "State of Emergency" does exist due to the threat to public safety, property, critical infrastructure, economy, natural resources and the environment for thirty days, effective as of August 12, 2015 requiring aid, assistance, and relief available pursuant to the provisions of State Statutes and the State Emergency Operations Plan, which is hereby activated;

IT IS ORDERED, that all agencies of the state government are authorized to utilize and employ state personnel, equipment and facilities for the performance of any and all activities consistent with the direction of the State of Utah Emergency Operations Plan; and

IT IS FURTHER ORDERED, that the Division of Finance make available emergency financial resources from the State Disaster Recovery Restricted Account to the Department of Public Safety, Division of Emergency Management, pursuant to Section 53-2a-603 of the Utah Code for activities related to this incident since its inception; and

IT IS FURTHER ORDERED that the Director of the Division of Emergency Management is authorized and directed to allocate the above funding to the appropriate State Agencies and execute awards, purchase orders, contracts, or other mechanisms to effect the allocation of the funds. These funds shall remain available for this purpose for thirty-six months from August 9, 2015, and any unexpended funds shall remain in the Disaster Recovery Restricted Account.

IN TESTIMONY, WHEREOF, I have here unto set my hand and caused to be affixed the Great Seal of the State of Utah this August 12th, 2015.

(State Seal)

Gary R. Herbert
Governor, State of Utah

ATTEST:

Spencer J. Cox
Lieutenant Governor, State of Utah

2015/007/EO

Calling the Sixty-First Legislature into a First Special Session, Utah Proc. No. 2015-1S

PROCLAMATION

WHEREAS, since the adjournment of the 2015 General Session of the Sixty-first Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

WHEREAS, Article VII, Section 6 of the Constitution of the State of Utah provides that the Governor may, by proclamation, convene the Legislature into Special Session;

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and the laws of the State of Utah, do by this Proclamation call the Sixty-first Legislature of the State of Utah into a First Special Session at the Utah State Capitol, in Salt Lake City, Utah, on the 19th day of August 2015, at 3:00 p.m., for the following purposes:

1. to consider the recommendation of the Prison Relocation Commission as to the building of a new state prison at the location of Interstate-80 and 7200 West in Salt Lake City;
2. to consider changes to the statute of limitations governing refunds or credits issued for overpayment of corporate taxes;
3. to consider the statutory qualifications for the Medicaid Inspector General;
4. to consider corrections to the penalty for an accident involving injury, death, or property damage, and code references within Utah Code Section 76-10-503;
5. to consider clarifications to Utah Code Section 78B-2-201; and
6. for the Senate to consent to appointments made by the Governor.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 14th day of August 2015.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2015/1/S

End of the Executive Documents Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between August 01, 2015, 12:00 a.m., and August 14, 2015, 11:59 p.m. are included in this, the September 01, 2015, issue of the *Utah State Bulletin*.

In this publication, each **PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **PROPOSED RULE** is usually printed. New rules or additions made to existing rules are underlined (example). Deletions made to existing rules are struck out with brackets surrounding them (~~example~~). Rules being repealed are completely struck out. A row of dots in the text between paragraphs (.) indicates that unaffected text from within a section was removed to conserve space. Unaffected sections are not usually printed. If a **PROPOSED RULE** is too long to print, the Division of Administrative Rules may include only the **RULE ANALYSIS**. A copy of each rule that is too long to print is available from the filing agency or from the Division of Administrative Rules.

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least October 1, 2015. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through December 30, 2015, the agency may notify the Division of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF A CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

The public, interest groups, and governmental agencies are invited to review and comment on **PROPOSED RULES**. *Comment may be directed to the contact person identified on the **RULE ANALYSIS** for each rule.*

PROPOSED RULES are governed by Section 63G-3-301, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5a, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page

Commerce, Real Estate
R162-2g
Real Estate Appraiser Licensing and
Certification Administrative Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39571

FILED: 08/12/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This filing clarifies the rules relating to appraiser experience and continuing education credit requirements as set forth in the qualification criteria of the Appraiser Qualifications Board.

SUMMARY OF THE RULE OR CHANGE: The amendment of Section R162-2g-304d clarifies that a licensee may receive experience credit for work without a traditional client up to a maximum of 50% of the required experience and also limits experience credit to the actual hours worked. The amendment of Section R162-2g-307d clarifies that a licensee may receive credit for up to one-half of the individual's continuing education requirement for participation, other than as a student, in education processes and programs.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-2g-201 and Section 61-2g-307 and Section 61-2g-311 and Section 61-2g-313 and Section 61-2g-314

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The division has the staff and budget in place to administer this proposed amendment. It is not expected that the proposed amendment will affect those resources or result in any additional cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** Local governments are not required to comply with or enforce the real estate appraiser licensing and certification administrative rules. No fiscal impact to local government is expected from the proposed amendment.

◆ **SMALL BUSINESSES:** The proposed amendment does not create new obligations for small business nor does it increase the cost associated with any existing obligation. No fiscal impact to small business is expected from the proposed amendment.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed rule amendment does not create new obligations for other persons nor does it increase the cost associated with any existing obligation. No fiscal impact to other persons is expected from the proposed amendment.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed rule amendment does not create new obligations for affected persons subject to the administrative rules nor does it increase the cost associated with any existing obligation. No fiscal impact to affected persons is expected from the proposed amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As stated in the rule analysis, this filing, which is for clarification only, amends the continuing education requirement for individual licensees. No fiscal impact to business is anticipated.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE
 REAL ESTATE
 HEBER M WELLS BLDG
 160 E 300 S
 SALT LAKE CITY, UT 84111-2316
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Justin Barney by phone at 801-530-6603, or by Internet E-mail at justinbarney@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2015

AUTHORIZED BY: Jonathan Stewart, Director

R162. Commerce, Real Estate.

R162-2g. Real Estate Appraiser Licensing and Certification Administrative Rules.

R162-2g-304d. Experience Hours.

(1)(a) Except as provided in this Subsection (1)(b), appraisal experience shall be measured in hours according to the appraisal experience hours schedules found in Appendices 1 through 3.

(b)(i) An applicant who has experience in categories other than those shown on the appraisal experience hours schedules, or who believes the schedules do not adequately reflect the applicant's experience or the complexity or time spent on an appraisal, may petition the board on an individual basis for evaluation and approval of the experience as being substantially equivalent to that required for licensure or certification.

(ii) Upon a finding that an applicant's experience is substantially equivalent to that required for licensure or certification, the board may award the applicant an appropriate number of hours for the alternate experience.

(2) General restrictions.

(a) An applicant may not accrue more than 2,000 experience hours in any 12-month period.

(b) The board may not award credit for:

(i) appraisal experience earned more than five years prior to the date of application;

(ii) appraisals that were performed in violation of:

(A) Utah law;

(B) the law of another jurisdiction; or

(C) the administrative rules adopted by the division and the board;

(iii) appraisals that fail to comply with USPAP;

(iv) appraisals of the value of a business as distinguished from the appraisal of commercial real estate;

(v) personal property appraisals; or

(vi) an appraisal that fails to clearly and conspicuously disclose the contribution made by the applicant in completing the assignment.

(c) At least 50% of the appraisals submitted for experience credit shall be appraisals of properties located in Utah.

(d) With regard to experience hours claimed from the schedules found in Appendices 1 and 2:

(i) appraisals where only an exterior inspection of the subject property is performed shall be granted 90% of the credit awarded an appraisal that includes an interior inspection of the subject property; and

(ii) no more than 25% of the total experience required for licensure or certification may be earned from appraisals where the interior of the subject property is not inspected.

(e) A maximum of 250 experience hours may be earned from appraisal of vacant land.

(f) Appraisals on commercial or multi-unit form reports shall be awarded 75% of the credit normally awarded for the appraisal.

(g) Experience gained for work without a traditional client may qualify for experience hours but cannot exceed 50% of the total experience requirement. Work without a traditional client includes the following: [Experience for appraisal work without a traditional client may qualify for experience as follows:]

(i) a client hiring an appraiser for a business purpose; or

(ii) a practicum course so long as the course is approved by the AQB Course Approval Program and, if the course is taught in Utah either live or by distance education, also approved ~~[or]~~ by the division.

~~[(h) Experience gained for work without a traditional client may not exceed 50% of the total experience requirement.]~~

(h) An applicant may receive credit only for experience hours actually worked by the applicant and as limited by the maximum experience hours described in these rules.

(3) Specific restrictions applicable to trainees applying for licensure.

(a)(i) A registered trainee may not claim experience hours for any appraisal work performed after January 1, 2015 unless the trainee and the trainee's supervisor(s) have completed the division-approved Supervisory Appraiser and Appraiser Trainee Course prior to performing the work to be claimed.

(ii) A trainee and the trainee's supervisor who signs the experience log shall document on the log the specific duties that the trainee performs for each appraisal.

(b) For each duty performed, the trainee shall be awarded a percentage of the total experience hours that may be awarded for the property type being appraised:

(i) pursuant to the appraisal experience hour schedules found in Appendices 1 through 3; and

(ii) with the following limitations for Appendix 2:

(A) participation in highest and best use analysis: 10% of total hours;

(B) participation in neighborhood description and analysis: 10% of total hours;

(C) property inspection: 20% of total hours, pursuant to this Subsection (3)(c);

(D) participation in land value estimate: 20% of total hours;

(E) participation in sales comparison property selection and analysis: 30% of total hours;

(F) participation in cost analysis: 20% of total hours;

(G) participation in income analysis: 30% of total hours;

(H) participation in the final reconciliation of value: 10% of total hours; and

(I) participation in report preparation: 20% of total hours.

(J) The applicant may claim up to 100% of the total hours allowed for the tasks listed in this Subsection(A) through (I).

(c) In order for a trainee to claim credit for an inspection pursuant to this Subsection (3)(b)(ii)(C):

(i) as to the first 100 residential appraisals or first 20 non-residential appraisals completed, as applicable to the license or certification being sought, the inspection must include:

(A) measurement of the exterior of a property that is the subject of an appraisal; and

(B) inspection of the exterior of a property that is used as a comparable in an appraisal; and

(ii) as to appraisals after the first 100 residential appraisals or first 20 non-residential appraisals completed, as applicable to the license or certification being sought, the inspection must satisfy all scope of work requirements.

(d) No more than one-third of the experience hours submitted toward licensure may come from any one of the categories identified in this Subsection (3)(b)(ii).

(4) Specific restrictions applicable to applicants for certification.

(a) An individual who obtained a license from the division through reciprocity shall provide to the division all records necessary for the division to verify that the individual satisfies the experience requirements outlined in these rules.

(b) The board may not award credit:

(i) for any appraisal where the applicant cannot prove more than 50% participation in the:

(A) data collection;

(B) verification of data;

(C) reconciliation;

(D) analysis;

(E) identification of property and property interests;

(F) compliance with USPAP standards; and

(G) preparation and development of the appraisal report; or

(ii) to more than one licensed appraiser per completed appraisal, except as provided in this Subsection (5).

(c)(i) An individual applying for certification as a state-certified residential appraiser shall document at least 75% of the hours submitted from:

(A) the residential experience hours schedule found in Appendix 1; or

(B) the residential portion of the mass appraisal hours schedule found in Appendix 3.

(ii) No more than 25% of the total hours submitted may be from:

(A) the general experience hours schedule found in Appendix 2; or

(B) properties other than 1- to 4-unit residential properties identified in the mass appraisal hours schedule found in Appendix 3.

(d) An individual applying for certification as a state-certified general appraiser shall document at least 1,500 experience hours as having been earned from:

(i) the general experience hours schedule found in Appendix 2; or

(ii) properties other than 1- to 4-unit residential properties identified in the mass appraisal hours schedule found in Appendix 3.

(5) Specific restrictions applicable to mass appraisers.

(a) Single-property appraisals performed under USPAP Standards 1 and 2 by mass appraisers shall be awarded full credit pursuant to Appendices 1 and 2.

(b) Review and supervision of appraisals by mass appraisers shall be awarded credit pursuant to this Subsection (6)(b)-(c).

(c)(i) Mass appraisers and mass appraiser trainees who perform 60% or more of the appraisal work shall be awarded full credit pursuant to Appendix 3.

(ii) Mass appraisers and mass appraiser trainees who perform between 25% and 59% of the appraisal work shall be awarded 50% credit pursuant to Appendix 3.

(iii) Mass appraisers and mass appraisal trainees who perform less than 25% of the appraisal work shall be awarded no credit for the appraisal assignment.

(d) In addition to submitting proof of required experience and samples, randomly selected from the experience log, of work conforming to USPAP Standard 6:

(i) a state-licensed appraiser applicant whose experience is earned primarily through mass appraisal shall submit proof of having performed at least five appraisals conforming to USPAP Standards 1 and 2;

(ii) a state-certified residential appraiser applicant whose experience is earned primarily through mass appraisal shall submit proof of having performed at least eight residential appraisals:

(A) conforming to USPAP Standards 1 and 2; and

(B) including the following property types:

(I) vacant property;

(II) two- to four-unit dwelling;

(III) non-complex single-family unit; and

(IV) complex single-family unit; and

(iii) a state-certified general appraiser applicant whose experience is earned primarily through mass appraisal shall submit proof of having performed at least eight appraisals from Appendix 2 conforming to USPAP Standards 1 and 2.

(e) No more than 60% of the total hours submitted for licensure or certification may be earned from any combination of appraisal assignments related to:

(i) property improvement inspection;

(ii) land segregation (division);

(iii) CAMA data entry; and

(iv) sale ratio study.

(f)(i) Mass appraisal of property with a personal property component of less than 50% of value shall be awarded full credit pursuant to Appendix 3 for the type of property appraised.

(ii) Mass appraisal of property with a personal property component of 50% to 75% of value shall be awarded 50% credit pursuant to Appendix 3 for the type of property appraised.

(iii) Mass appraisal of property with a personal property component greater than 75%, but less than 100%, shall be awarded 25% credit pursuant to Appendix 3 for the type of property appraised.

(iv) Mass appraisal of property with no real property component shall be awarded no credit.

(g) The appraisals submitted for review pursuant to this Subsection (5)(d) shall be selected from the applicant's most recent work.

(6) Special circumstances - condemnation appraisals, review appraisals, supervision of appraisers, other real estate experience, and government agency experience.

(a) Condemnation appraisals. A condemnation appraisal shall be awarded an additional 50% of the hours normally awarded for the appraisal if the condemnation appraisal includes a before-and-after appraisal because of a partial taking of the property.

(b) Review appraisals.

(i) Review appraisals shall be awarded experience credit when the appraiser performs technical reviews of appraisals prepared by employees, associates, or others, provided the appraiser complies with USPAP Standards Rule 3 when the appraiser is required to comply with the rule.

(ii) Except as provided in this Subsection (6)(e)(i), the following credit shall be awarded for review of appraisals:

(A) desk review: 30% of the hours that would be awarded if a separate written review appraisal report were prepared, up to a maximum of 500 hours; and

(B) field review: 50% of the hours that would be awarded if a separate written review appraisal report were prepared, up to a maximum of 500 hours.

(c) Supervision of appraisers. Except as provided in this Subsection (6)(e)(i), supervision of appraisers shall be awarded 20% of the hours that would be awarded to the appraisal, up to a maximum of 500 hours.

(d) Other real estate experience acceptable for certification.

(i) Provided that an applicant demonstrates to the satisfaction of the board that the applicant has the ability to arrive at a fair market value of property and to properly document value conclusions, the following activities may be used to satisfy up to 50% of the experience required for certification:

(A) preliminary valuation estimates;

(B) range of value estimates or similar studies;

(C) other real estate-related experience gained by:

(I) bankers;

(II) builders;

(III) city planners and managers; or

(IV) other individuals.

(ii) A comparative market analysis by an individual licensed under Section 61-2f et seq. may be granted up to 100% experience credit toward certification if:

(A) the analysis conforms with USPAP Standards Rules 1 and 2; and

(B) the individual demonstrates to the board that the individual uses similar techniques as appraisers to value properties and effectively utilize the appraisal process.

(iii) Except as provided in this Subsection (6)(e)(i), no more than 50% of the total experience required for certification may be

earned through any combination of experience described in this Subsection (6)(b)-(d).

(e) Government agency experience.

(i) An individual who obtains experience hours in conjunction with investigation by a government agency is not subject to the hour limitations of this Subsection (6).

(ii) In addition to submitting proof of required experience, an applicant whose experience is earned primarily in conjunction with investigations by government agencies and through review of appraisals, with no opinion of value developed, shall submit proof of having complied with USPAP Standards 1 and 2 in performing appraisals as follows:

(A) if applying for state-licensed appraiser with experience reviewing residential appraisals, five appraisals of one-unit dwellings;

(B) if applying for state-certified residential appraiser with experience reviewing residential appraisals, eight appraisals of one-unit dwellings; and

(C) if applying for state-certified general appraiser with experience reviewing appraisals of property types listed in Appendix 2, at least eight appraisals of property types identified in Appendix 2.

(7) The board, at its discretion, may request the division to verify the claimed experience by any of the following methods:

(a) verification with the clients;

(b) submission of selected reports to the board; and

(c) field inspection of reports identified by the applicant at the applicant's office during normal business hours.

R162-2g-307d. Continuing Education Course Certification.

(1) The division and the board may not award continuing education credit for a course that is taught in Utah to registered, licensed, or certified appraisers unless the course is certified prior to its being taught.

(2) To certify a continuing education course, an applicant shall, at least 30 days prior to the course being taught, submit a completed application as required by the division, including:

(a) name and contact information of the course sponsor and the entity through which the course will be provided;

(b) description of the physical facility where the course will be taught;

(c) the proposed number of credit hours for the course;

(d) identification of whether the method of instruction will be traditional education or distance education;

(e) title of the course;

(f) statement defining how the course will meet the objectives of continuing education by increasing the licensee's knowledge, professionalism, and ability to protect and serve the public;

(g) course outline including:

(i) a description of the subject matter covered in each 15-minute segment; and

(ii) a minimum of one learning objective for every hour of class time;

(h) the name and certification number of each certified instructor who will teach the course;

(i) copies of all materials that will be distributed to the participants;

(j) the procedure for pre-registration;

(k) the tuition or registration fee and a copy of the cancellation and refund policy;

(l) except for courses approved for distance education, the procedure for taking and maintaining control of attendance during class time;

(m) sample of the completion certificate;

(n) signed statement agreeing that the course provider will, within 10 business days of completing the class, upload to the division the following information:

(i) course name;

(ii) course certificate number assigned by the division;

(iii) date the course was taught;

(iv) number of credit hours; and

(v) names and license numbers of all students receiving continuing education credit;

(o) signed statement agreeing not to market personal sales products; and

(p) other information the division might require.

(2) Standards for approval.

(a)(i) A distance education course shall:

(A) provide interaction between the student and instructor; and

(B) include a written examination that requires a student to demonstrate mastery and fluency.

(ii) The division may approve a distance education course offered by a college or university if the college or university:

(A) offers distance education programs in other disciplines; and

(B)(I) is accredited by the Commission on Colleges or a regional accreditation association; or

(II) is approved by the International Distance Education Certification Center.

(b) The course topic must be AQB-approved.

(c) The procedure for taking and maintaining control of attendance shall be more extensive than having the students sign a class roll.

(d) The completion certificate shall allow for entry of:

(i) licensee's name;

(ii) type of license;

(iii) license number;

(iv) date of course;

(v) name of the course provider;

(vi) course title;

(viii) course certification number and expiration date;

(ix) credit hours awarded; and

(x) signatures of the course sponsor and the licensee.

(e) A real estate appraisal-related field trip that is submitted for continuing education credit may not include transit time to or from the field trip location as part of the credit hours awarded.

(4) Non-certified continuing education credit. Except as provided in Subsection R162-2f-307d(1), the board may award continuing education credit on a case-by-case basis for the following:

(a) up to one-half of an individual's continuing education credit requirement for:

(i) participation, other than as a student, in[-an] appraisal educational processes and programs; or[practicum course;]

(ii)[(b)] teaching, program development, authorship of textbooks, or similar activities that are determined by the board to be equivalent to obtaining continuing education;[- up to one-half of an individual's continuing education credit requirement;]

(b)[(e)] service as a member of the experience review committee, or the technical advisory panel, if approved by the board and offered in accordance with AQB standards as a:

- (i) practicum course under this Subsection (3)(a); or
- (ii) course under this Subsection (3)(b); and

(c)[(d)] completion of any course that:

(i) meets the continuing education objectives of increasing the licensee's knowledge, professionalism, and ability to protect and serve the public; and

- (ii) is taught outside the state of Utah.

KEY: real estate appraisals, school certification, instructor certification

Date of Enactment or Last Substantive Amendment: [January 1,] 2015

Authorizing, and Implemented or Interpreted Law: 61-2g-201(2)(h); 61-2g-202(1); 61-2g-205(5)(c); 61-2g-307(3); 61-2g-401(5)

Education, Administration

R277-116

Utah State Board of Education Internal Audit Procedure

NOTICE OF PROPOSED RULE

(Repeal and Reenact)
DAR FILE NO.: 39584
FILED: 08/13/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is repealed and reenacted to add, delete, and change language to ensure consistency with the Utah Internal Audit Act, Utah State Board of Education intent, and internal auditing standards. Technical and conforming changes are also provided.

SUMMARY OF THE RULE OR CHANGE: Changes to the reenacted rule include providing additional definitions and sections to better articulate the role of the audit director, superintendent, and the agency in the audit process. New definitions are included and outdated definitions are removed; more detailed language describing the authority and responsibilities of the audit director are added; new sections describing the authority and responsibilities of the superintendent and agency, the audit process and audit reports are provided.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X, Section 3 and Subsection 53A-1-401(3) and Subsection 53A-1-402(1)(e) and Subsection 63I-5-201(4)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The reenacted rule provides procedural, technical, and conforming changes that will likely not result in a cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** The reenacted rule provides procedural, technical, and conforming changes that will likely not result in a cost or savings to local government.

◆ **SMALL BUSINESSES:** The reenacted rule provides procedural, technical, and conforming changes that will likely not result in a cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The reenacted rule provides procedural, technical, and conforming changes that will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The reenacted rule provides procedural, technical, and conforming changes that will likely not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2015

AUTHORIZED BY: Benjamin Rasmussen, UPPAC Director and Special Counsel

R277. Education, Administration.

~~[R277-116. Utah State Board of Education Internal Audit Procedure.~~

~~R277-116-1. Definitions.~~

~~A. "Appointing authority" means the Board.~~

~~B. "Audit" means internal reviews or analyses or a combination of both of Utah State Board of Education programs, activities and functions that may address one or more of the following objectives:~~

~~(1) to verify the accuracy and reliability of USOE or Board records;~~

~~(2) to assess compliance with management policies, plans, procedures, and regulations;~~

~~(3) to assess compliance with applicable laws, rules and regulations;~~

~~(4) to evaluate the efficient and effective use and protection of Board, state, or federal resources; or~~

~~(5) to verify the appropriate protection of USOE assets;~~

~~(6) to review and evaluate internal controls over LEA and USOE accounting systems, administrative systems, electronic data processing systems, and all other major systems necessary to ensure the fiscal and administrative accountability of LEAs and the USOE.~~

~~C. "Audit Committee" means a standing committee appointed by the Board Chair.~~

~~D. "Board" means the Utah State Board of Education.~~

~~E. "Internal Auditor" means person or persons appointed by the Board to direct the internal audit function for the Board and USOE.~~

~~F. "LEA," for purposes of this rule, means any local education agency under the supervision of the Board including any sub-unit of school districts, Utah Schools for the Deaf and the Blind, and charter schools.~~

~~G. "Subrecipient," for purposes of this rule, means any entity awarded funds through a sub-award, contract, or designated to receive an appropriation for programs supervised by the Board.~~

~~H. "Superintendent" means the State Superintendent of Public Instruction, who is the Agency Head within the meaning of the Utah Internal Audit Act.~~

~~I. "Survey work" means an internal review of Board rules, statutes, federal requirements and a limited sample of an LEA's programs, activities or documentation that may give rise to or refute the need for a more comprehensive audit. The preliminary or limited information derived from survey work is a part of the ongoing audit process and may be provided as a draft to the Audit Committee, to the Board or to the Superintendent upon request.~~

~~J. "USOE" means the Utah State Office of Education.~~

~~K. "USOR" means the Utah State Office of Rehabilitation.~~

R277-116-2. Authority and Purpose.

~~A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, Section 53A-1-405 which makes the Board responsible for verifying audits of local school districts, Section 53A-1-402(1)(e) which directs the Board to develop rules and minimum standards regarding cost effectiveness measures, school budget formats and financial accounting requirements for the local school districts, Section 53A-17a-147(2) which directs the Board to assess the progress and effectiveness of local school districts and programs funded under~~

~~the Minimum School Program and report its findings to the Legislature, and by Section 631-5-101 through 401 which provides standards and procedures for the Board, as the appointing authority for the USOE, to establish an internal audit program.~~

~~B. The purpose of this rule is to outline the Board's criteria and procedures for internal audits of programs under its supervision.~~

R277-116-3. Audit Committee Responsibilities.

~~The Audit Committee shall:~~

~~A. determine the priority for survey work or audits to be performed based on recommendations from the Internal Auditor, Audit Committee requests or correspondence, other Board member requests, or USOE staff recommendations;~~

~~B. consent to the appointment or removal of the Internal Auditor.~~

~~C. review and approve the annual internal audit plan and budget;~~

~~D. review internal and external audit reports, survey work, follow-up reports, and quality assurance reviews of the Internal Auditor;~~

~~E. meet at each regularly scheduled Board meeting with the Internal Auditor to discuss ongoing audits, audit priorities and progress, and other issues;~~

~~F. distribute drafts or preliminary versions of audits only to Board members, as requested, or auditees. Internal audits that have not been reviewed in final form by the Audit Committee, the auditee, and the Board are drafts and, as such, are not public records;~~

~~G. determine the distribution of audit findings in any or all stages or reports to other Board members as well as to other interested parties;~~

~~H. review the findings and recommendations of the Internal Auditor and make recommendations for action on the findings to the Board; and~~

~~I. evaluate the Internal Auditor at least annually in a formal evaluation process.~~

R277-116-4. Internal Auditor Authority and Responsibilities.

~~A. The Internal Auditor shall work closely with and receive regular supervision from the Superintendent.~~

~~B. The Internal Auditor shall report initially to the Superintendent. Following the Superintendent's response, the Internal Auditor reports to the Audit Committee and ultimately to the Board.~~

~~C. The Internal Auditor's work shall be determined primarily by a risk assessment developed by the Internal Auditor and approved by the Audit Committee at least annually. The risk assessment shall:~~

~~(1) consider public education programs for which the Board has responsibility;~~

~~(2) consider and evaluate which public education programs, activities or responsibilities are most critical to:~~

~~(a) student safety;~~

~~(b) student achievement;~~

~~(c) efficient management of public education resources;~~

~~(d) the priorities of public education as determined by the Board; and~~

~~(e) USOR risks and efficient management of USOR programs supervised by the Board.~~

~~D. The Internal Auditor shall meet with the Audit Committee or the Board, at the direction of either, to inform both the Audit Committee and the Board of progress on assigned audits and any additional information or assignments requested by the Audit Committee or the Board.~~

~~E. The Internal Auditor shall conduct audits as recommended by the Audit Committee, and as directed by the Board, including economy and efficiency audits, program audits, and financial-related audits of any function, LEA, or program under the Board's supervision, or as otherwise directed by the Board.~~

~~F. The Internal Auditor is authorized to manage a statewide hotline to receive and investigate allegations of fraud, waste and abuse over programs and entities supervised by the Board.~~

~~G. The Internal Auditor shall immediately notify the Audit Committee and the Board of any irregularity or serious deficiency discovered in the audit process or of any impeding or conflict to accomplishing an audit as directed by the Board.~~

~~H. The Internal Auditor shall submit a written report to the Audit Committee and the Board of each authorized audit within a reasonable time after completion of the audit.~~

~~I. The Internal Auditor shall maintain the classification of any public records consistent with Title 63G, Chapter 2, Government Records Access and Management Act.~~

~~J. Audit Committee members, Board members and USOE employees shall maintain information acquired in the audit process in the strictest confidence consistent with the Public Employees Ethics Act, Section 67-16-4.~~

~~K. The Internal Auditor shall have access to all records, personnel, and physical materials relevant and necessary to conduct audits of all programs and agencies supervised by the Board. All public education entities shall cooperate fully with Internal Auditor requests; The Internal Auditor is not required to issue subpoenas or make GRAMA requests under Section 63G-2-202 to receive requested information from public education entities.~~

~~L. The Internal Auditor shall meet at least semi-annually with the Audit Committee Chair to review the performance of the Internal Audit Division and discuss matters of concern, resources, and other issues.~~

R277-116-5. Audit Plans.

~~A. An audit plan shall be prepared by the Internal Auditor and shall:~~

~~(1) be reviewed regularly by both the Superintendent and the Audit Committee;~~

~~(2) identify the individual audits to be conducted during each year;~~

~~(3) determine the adequacy and efficiency of the USOE's internal monitoring and control of programs and personnel;~~

~~(4) identify the related resources to be devoted to each of the respective audits; and~~

~~(5) ensure that audits that evaluate the efficient and effective use of public education resources are adequately represented in the plan.~~

~~B. The Internal Auditor shall submit the audit plan first to the Superintendent for review, next to the Audit Committee for review, modification, update, and approval. Each audit plan shall expressly state an anticipated completion date.~~

~~C. The Internal Auditor shall:~~

~~(1) ensure that audits are conducted in accordance with professional auditing standards such as those published by the Institute of Internal Auditors, Inc., the American Institute of Certified Public Accountants, and, when required by other law, regulation, agreement, contract, or policy, in accordance with Government Auditing Standards, issued by the Comptroller General of the United States;~~

~~(a) all reports of audit findings issued by internal audit staff shall include a statement that the audit was conducted according to the appropriate standards;~~

~~(b) public release of reports of audit findings shall comply with the conditions specified by state laws and rules governing the USOE.~~

~~(2) report concerns to the Audit Committee or the Board that arise as the result of survey work or audits that necessitate a direct review of the Superintendent's activities or actions;~~

~~(3) report significant audit matters that cannot be appropriately addressed by the Audit Committee and the Board to either the Office of Legislative Auditor General or the Office of the State Auditor;~~

~~(4) report quarterly to the full Board those issues which have the potential of opening up the Board, Superintendent, or USOE to liability or litigation;~~

~~(5) conduct at least annually a risk assessment of the entire public education system and report the findings to the Audit Committee; and~~

~~(6) regularly attend all Board meetings.]~~

R277-116. Audit Procedure.

R277-116-1. Authority and Purpose.

~~(1) This rule is authorized by:~~

~~(a) Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board;~~

~~(b) Subsection 63I-5-201(4) which requires the Board to direct the establishment of an internal audit department for programs administered by the entities it governs;~~

~~(c) Subsection 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities;~~

~~(d) Subsection 53A-1-402(1)(e) which directs the Board to develop rules and minimum standards regarding school productivity and cost effectiveness measures, school budget formats, and financial, statistical, and student accounting requirements for the local school districts;~~

~~(e) Section 53A-1-404 which allows the Board to approve auditing standards for school boards;~~

~~(f) Section 53A-1-405 which makes the Board responsible for verifying audits of local school districts; and~~

~~(g) Subsection 53A-17a-147(2) which directs the Board to assess the progress and effectiveness of all programs funded under the State System of Public Education.~~

~~(2) The purpose of this rule is to:~~

~~(a) outline the role of the Audit Director, Superintendent, and agency in the audit process; and~~

~~(b) outline the Board's procedures for audits of agencies.~~

R277-116-2. Definitions.

- (1) "Agency" means:
- (a) an entity governed by the Board;
 - (b) an LEA; or
 - (c) a sub-recipient.
- (2) "Audit committee" means a standing committee of members appointed by the Board.
- (3) "Audit Director" means the person who:
- (a) directs the audit program of the Board;
 - (b) is appointed by and reports to the audit committee; and
 - (c) is independent of the agencies subject to Board audit.
- (4) "Audit plan" means a prioritized list of audits to be performed in the audit program within a specified period of time that is reviewed, approved, and adopted at least annually.
- (5) "Audit program" means a department that provides internal audit services for the Board that is directed by the Audit Director.
- (6) "An entity governed by the Board" means the SCSB, USDB, USOE, or USOR.
- (7) "Draft audit report" means a draft audit report compiled by the Audit Director that is classified as protected under Title 63G, Chapter 2, Part 3, Section 305, Protected records.
- (8) "Final audit report" means a draft audit report that is approved by the audit committee and the Board as a final audit report that is classified as public under Title 63G, Chapter 2, Part 3, Section 301, Public records.
- (9) "Sub-recipient" means any entity that receives funds from an entity governed by the Board.

R277-116-3. Audit Director Authority and Responsibilities.

- The Audit Director shall:
- (1) direct the audit program:
 - (a) as approved by the Board and audit committee by objectively evaluating the effectiveness and efficiency of the operations of the agency being audited;
 - (b) in accordance with the current International Standards for the Professional Practice of Internal Auditing; and
 - (c) as otherwise required by the Board;
 - (2) ensure that collectively the audit department possesses the knowledge, skills, and experience essential to the practices of the profession and are proficient in applying internal auditing standards, procedures, and techniques;
 - (3) employ:
 - (a) a sufficient number of professional and support staff to implement an effective internal audit program; and
 - (b) audit staff who are qualified in disciplines that include:
 - (i) accounting;
 - (ii) business management;
 - (iii) public administration;
 - (iv) human resource management;
 - (v) economics;
 - (vi) finance;
 - (vii) statistics;
 - (viii) electronic data processing; or
 - (ix) engineering;

- (4) inform the audit committee if additional professional and support staff are necessary to implement an effective internal audit program;
- (5) base compensation, training, job tenure, and advancement of internal auditing staff on job performance;
- (6) propose audit rules, policies, and amendments, for approval and adoption by the Board that maintain staff independence from operational and management responsibilities that would impair staff's ability to make independent audits of an agency;
- (7) develop and recommend an audit plan to the Board and the audit committee based on the findings of periodic risk assessments, audits, and budget;
- (8) perform an audit of a special program, activity, function, or organizational unit of an agency at the direction of the Board or the audit committee with one or more objectives, including:
 - (a) to verify the accuracy and reliability of agency records;
 - (b) to assess compliance with management policies, plans, procedures, and regulations;
 - (c) to assess compliance with applicable laws, rules, and regulations;
 - (d) to evaluate the efficient and effective use of agency resources;
 - (e) to verify the appropriate protection of agency assets; and
 - (f) review and evaluate internal controls over the agency's accounting systems, administrative systems, electronic data processing systems, and all other major systems necessary to ensure the fiscal and administrative accountability of the state agency;
- (9) determine the assignment and scope of the audits;
- (10) periodically discuss relevant matters with the audit committee including whether there are any restrictions on the scope of the audits;
- (11) submit draft audit reports directly to the Board and to the audit committee;
- (12) receive comments from the Board and responses from the Superintendent on the draft audit report;
- (13) edit draft audit report based upon the comments and responses received;
- (14) resubmit a draft audit report to the Board and audit committee:
 - (a) after receipt of comments from the Board and responses from the Superintendent; and
 - (b) until a draft audit report is approved and adopted as a final audit report by the Board;
- (15) report monthly to the audit committee, or as otherwise directed by the audit committee, including:
 - (a) reviewing current audits being performed both internally and externally;
 - (b) the scope of the internal and external audits;
 - (c) status of internal and external audits;
 - (d) follow up draft audit reports; and
 - (e) draft audit reports for final review and recommendation;
- (16) conduct an annual quality assurance review of the audit program with the audit committee;

(17) personally or through a designee, report quarterly to the Board, or as otherwise directed by the Board;

(18) personally or through a designee, attend all Board meetings;

(19) report to the Board, within a reasonable time of discovering, issues that have the potential of exposing the Board, Superintendent, or an agency to liability or litigation;

(20) maintain the classification of any public record consistent with GRAMA;

(21) be subject to the same penalties under GRAMA as the custodian of a public record; and

(22) ensure that significant audit matters that cannot be appropriately addressed by the audit program are referred to either the Office of Legislative Auditor General or the Office of the State Auditor.

R277-116-4. Superintendent Authority and Responsibilities.

The Superintendent shall establish the audit program by:

(1) providing resources necessary to conduct the audit program including adequate funds, staff, tools, and space to support the audit program;

(2) facilitating communications with those charged with governance, management, and staff as requested by the Audit Director or the audit committee to ensure the access necessary to perform an audit;

(3) ensuring access to all personnel, records, data, and other agency information that the Audit Director or staff consider necessary to carry out their assigned duties;

(4) notifying the Audit Director of external audits of entities governed by the Board;

(5) notifying the agency that the Audit Director shall be the liaison for an external audit; and

(6) supporting the audit program as otherwise requested by the audit committee or Audit Director.

R277-116-5. Agency Authority and Responsibilities.

The agency shall wholly cooperate and provide the Audit Director and the internal audit staff all:

(1) necessary access to those charged with governance, management, and staff; and

(2) personnel, records, data, and other agency information that the Audit Director or staff consider necessary to carry out their assigned duties.

R277-116-6. Audit Plans.

(1) The audit plan prepared by the Audit Director shall:

(a) identify the individual audits to be conducted during each year;

(b) identify the related resources to be devoted to each of the respective audits;

(c) ensure that internal controls are reviewed periodically as determined by the Board or by the audit committee; and

(d) ensure that audits that evaluate the efficient and effective use of agency resources are adequately represented in the audit plan.

(2) Upon request, the Audit Director shall make a copy of the approved and adopted audit plan available to the state auditor, legislative auditor, or other appropriate external auditors to assist in

planning and coordination of any external financial, compliance, electronic data processing, or performance audit.

R277-116-7. Audit Process.

(1) The Audit Director shall develop and recommend an audit plan to the Board and the audit committee based on the findings of periodic risk assessments and audits.

(2) Once approved and adopted by the Board, the Audit Director shall implement the audit plan.

(3) As requested by the audit committee or Audit Director, the Superintendent shall establish the audit program.

(4) The agency shall provide all information to the Audit Director and audit staff for the audit to be timely conducted.

(5) After conducting an audit, the Audit Director shall submit a draft audit report to:

(a) the audit committee;

(b) the Board; and

(c) the Superintendent for response or comment.

(6) Within fourteen days of the Audit Director's submission of the draft audit report to the Board and audit committee, the Superintendent shall either:

(a) provide a written response or comment to the Board, audit committee, and Audit Director to the draft audit report; or

(b) file a written request for an extension to the audit committee setting forth:

(i) the steps necessary to investigate and prepare a response to the draft audit report;

(ii) the time necessary to perform each step; and

(iii) the latest date that the Superintendent's written response or comment will be given to the Board, audit committee and Audit Director.

(7) Upon receiving written response and comment from the Superintendent, the Audit Director shall:

(a) incorporate into the draft audit report the written responses and comments, if any, received from the Board, the audit committee, and the Superintendent; and

(b) submit the amended draft audit report to the audit committee for recommendation.

(8) The audit committee may:

(a) recommend an amended draft audit report for approval and adoption; or

(b) send the amended draft audit report back to the Audit Director with instructions for additional review.

(9) Upon recommendation from the audit committee on the amended draft audit report, the Board may:

(a) approve and adopt an amended draft audit report as the final audit report; or

(b) send the amended draft audit report back to the audit committee with instructions for additional review.

R277-116-8. Audit Reports.

(1) An audit report prepared by the Audit Director and staff shall be based upon audits of agency programs, activities, and functions that include:

(a) findings based upon the audit scope; and

(b) one or more of the following objectives:

(i) verification of the accuracy and reliability of agency records;

- (ii) assessment of an agency's compliance with management policies, plans, procedures, and regulations;
 - (iii) assessment of an agency's compliance with applicable laws, rules, and regulations;
 - (iv) evaluation of the efficient and effective use of agency resources;
 - (v) verification of the appropriate protection of agency assets;
 - (vi) furnishing independent analyses, appraisals, and recommendations that may, depending upon the audit scope, identify:
 - (A) the adequacy of an agency's systems of internal control;
 - (B) the efficiency and effectiveness of agency management in carrying out assigned responsibilities; and
 - (C) the agency's compliance with applicable laws, rules, and regulations;
 - (vii) review and evaluation of internal controls over the agency's accounting systems, administrative systems, electronic data processing systems, and all other major systems necessary to ensure the fiscal and administrative accountability of the agency; and
 - (viii) identification of abuse, illegal acts, errors, omissions, or conflicts of interest.
- (2) An audit report prepared by the Audit Director and staff shall include a statement that the audit was conducted according to International Standards for the Professional Practice of Internal Auditing.
- (3) The Audit Director shall provide, upon written request, a copy of an audit report to the Office of Legislative Auditor General or the Office of the State Auditor.
- (4) The Audit Director shall ensure that public release of a final audit report complies with the conditions specified by the state laws and rules governing the audited agency.

KEY: educational administration
Date of Enactment or Last Substantive Amendment: [~~May 8,~~ 2015]
Notice of Continuation: December 16, 2013
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-1-405; 53A-1-402(1)(e); 53A-17a-147(2); 63I-5-101 through 401

Education, Administration
R277-200
 Utah Professional Practices Advisory
 Commission (UPPAC), Definitions

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 39585
 FILED: 08/13/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide add a new definition, remove definitions provided for in another definitions rule, and to make technical and conforming changes throughout the rule.

SUMMARY OF THE RULE OR CHANGE: A new definition is added to the rule, some definitions are removed as appropriate, and conforming and technical changes are provided throughout the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X, Section 3 and Section 53A-6-306 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

- ♦ **THE STATE BUDGET:** Adding and removing definitions and making conforming and technical changes throughout the rule will likely not result in a cost or savings to the state budget.
- ♦ **LOCAL GOVERNMENTS:** Adding and removing definitions and making conforming and technical changes throughout the rule will likely not result in a cost or savings to local government.
- ♦ **SMALL BUSINESSES:** Adding and removing definitions and making conforming and technical changes throughout the rule will likely not result in a cost or savings to small businesses.
- ♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Adding and removing definitions and making conforming and technical changes throughout the rule will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Adding and removing definitions and making conforming and technical changes throughout the rule will likely not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY, UT 84111-3272
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2015

AUTHORIZED BY: Benjamin Rasmussen, UPPAC Director and Special Counsel

R277. Education, Administration.

R277-200. Utah Professional Practices Advisory Commission (UPPAC), Definitions.

R277-200-1. Authority and Purpose.

~~[A-]~~(1) This rule is authorized ~~[under]~~by:

~~(a)~~ Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board~~[-]~~;

~~(b)~~ ~~[by-]~~Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures~~[-]~~; and

~~(c)~~ ~~[by-]~~Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.

~~[B-]~~(2) The purpose of this rule is to establish definitions for terms in UPPAC activities.

~~[C-]~~(3) The definitions contained in this rule apply to ~~[F]~~Rules R277-200 through R277-20~~[6]~~7. Any calculation of time called for by these rules shall be governed by Utah R. Civ. P. 6.

R277-200-2. Definitions.

~~[A]~~(1)(a) "Action" means a disciplinary action taken by the Board adversely affecting an educator's license.

(2)b) "Action" does not include a disciplinary letter.

(3)c) "Action" includes:

(a)i) a letter of reprimand;

(b)ii) probation;

(e)iii) suspension; and

(d)iv) revocation.

~~[B-]~~(2) "Administrative hearing" or "hearing" has the same meaning as that term is defined in Section 53A-6-601.

~~[C-]~~(3) "Alcohol related offense" means:

(1)a) driving under the influence;

(2)b) alcohol-related reckless driving or impaired driving;

(3)c) intoxication;

(4)d) driving with an open container;

(5)e) unlawful sale or supply of alcohol;

(6)f) unlawful permitting of consumption of alcohol by

minors;

(7)g) driving in violation of an alcohol or interlock restriction; and

(8) any offense under the laws of another state that is substantially equivalent to the offenses described in Subsections R277-200-2C(1) through (7)(3)(a) through (g).

~~[D-]~~(4) "Allegation of misconduct" means a written report alleging that an educator:

(1)a) has engaged in unprofessional or criminal conduct;

(2)b) is unfit for duty;

(3)c) has lost the educator's license in another state due to revocation or suspension, or through voluntary surrender or lapse of a license in the face of a claim of misconduct; or

(4)d) has committed some other violation of standards of ethical conduct, performance, or professional competence as provided in Rule R277-515.

~~[E-]~~(5) "Answer" means a written response to a complaint filed by USOE alleging educator misconduct.

~~[F-]~~(6) "Applicant" means a person seeking:

(1)a) a new license;

(2)b) reinstatement of an expired, surrendered, suspended, or revoked license; or

(3)c) clearance of a criminal background review from USOE at any stage of the licensing process.

~~[G-]~~ "Board" means the Utah State Board of Education.

~~[H-]~~(7) "Chair" means the Chair of UPPAC.

~~[I-]~~(8) "Complaint" means a written allegation or charge against an educator filed by USOE against the educator.

~~[J-]~~(9) "Complainant" means the Utah State Office of Education.

~~[K-]~~(10) "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file developed by the USOE and maintained on all licensed Utah educators.

~~[L-]~~(11)(a) "Conviction" means the final disposition of a judicial action for a criminal offense, except in cases of a dismissal on the merits.

(2)b) "Conviction" includes:

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

(b)ii) a guilty or no contest plea;

(e)iii) a plea in abeyance; and

(d)iv) for purposes of this rule, a conviction that has been expunged.

~~[M-]~~(12) "Criminal Background Review" means the process by which the Executive Secretary, UPPAC, and the Board review information pertinent to:

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

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

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

~~[N-]~~(13)(a) "Disciplinary letter" means a letter issued to a respondent by the Board as a result of an investigation into an allegation of educator misconduct.

(2)b) "Disciplinary letter" includes:

(1)i) a letter of admonishment;

(2)ii) a letter of warning; and

(3)iii) any other action that the Board takes to discipline an educator for educator misconduct that does not rise to the level of an action as defined in this R277-200-2section.

~~[O-]~~(14) "Drug" means controlled substance as defined in Section 58-37-2.

~~[P-]~~(15) "Drug related offense" means any criminal offense under:

(1)a) Title 58, Chapter 37;

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

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

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

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

([6]f) Title 58, Chapter 37e, Drug Dealer's Liability Act. Sections 58-37 through 37e.

~~Q. "Educator" means a person:~~

~~(1) who currently holds a license;~~

~~(2) who held a license at the time of an alleged offense;~~

~~(3) is a person who is student teaching in anticipation of seeking a license;~~

~~(4) is an applicant for a license;~~

~~(5) is a licensure candidate through the Alternate Route to Licensure, "ARL," program; or~~

~~(6) who has applied to the Alternate Route to Licensure, "ARL" program.~~

[R-](16) "Educator Misconduct" means:

([1]a) unprofessional or criminal conduct;

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

([3]c) conduct that is a violation of standards of ethical conduct, performance, or professional competence as provided in Rule R277-515.

[S-](17) "Executive Committee" means a subcommittee of UPPAC consisting of the following members:

([1]a) Executive Secretary;

([2]b) Chair;

([3]c) Vice-Chair; and

([4]d) one member of UPPAC at large.

[T-](18) "Executive Secretary" means an employee of USOE who:

([1]a) is appointed by the State Superintendent of Public Instruction to serve as the UPPAC Director; and

([2]b) serves as a non-voting member of UPPAC, consistent with Section 53A-6-302.

[U-](19) "Expedited Hearing" means an informal hearing aimed at determining an Educator's fitness to remain in the classroom held as soon as possible following an arrest, citation, or charge for a criminal offense requiring mandatory self-reporting under Section R277-516-3.

[V-](20) "Expedited Hearing Panel" means a panel of the following three members:

([1]a) the Executive Secretary;

([2]b) a voting member of UPPAC; and

([3]c) a UPPAC prosecutor.

[W-](21) "Final action" means an action by the Board that concludes an investigation of an allegation of misconduct against a licensed educator.

[X-](22) "GRAMA" refers to the Government Records Access and Management Act, Title 63G, Chapter 2, Government Records Access and Management Act.

[Y-](23) "Hearing officer" means a licensed attorney who:

([1]a) is experienced in matters relating to administrative procedures;

([2]b) is appointed by the Executive Secretary to manage the proceedings of a hearing;

([3]c) is not an acting member of UPPAC;

([4]d) has authority, subject to the limitations of these rules, to regulate the course of the hearing and dispose of procedural requests; and

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

~~Z-](24) "Hearing panel" means a panel of three or more individuals designated to:~~

~~([1]a) hear evidence presented at a hearing;~~

~~([2]b) make a recommendation to UPPAC as to disposition; and~~

~~([3]c) collaborate with the hearing officer in preparing a hearing report.~~

~~AA-](25) "Hearing report" means a report that:~~

~~([1]a) is prepared by the hearing officer consistent with the recommendations of the hearing panel at the conclusion of a hearing; and~~

~~([2]b) includes:~~

~~([a]i) a recommended disposition;~~

~~([b]ii) detailed findings of fact and conclusions of law, based upon the evidence presented in the hearing, relevant precedent; and~~

~~([e]iii) applicable law and rule.~~

~~BB-](26) "Informant" means a person who submits information to UPPAC concerning the alleged misconduct of an educator.~~

~~CC-](27) "Investigator" means an employee of the USOE, or independent investigator selected by the Board, who:~~

~~([1]a) is assigned to investigate allegations of educator misconduct under UPPAC supervision;~~

~~([2]b) offers recommendations of educator discipline to UPPAC and the Board at the conclusion of the investigation;~~

~~([3]c) provides an independent investigative report for UPPAC and the Board; and~~

~~([4]d) may also be the prosecutor but does not have to be.~~

~~DD-](28) "Investigative report" means a written report of an investigation into allegations of educator misconduct, prepared by an Investigator that:~~

~~([1]a) includes a brief summary of the allegations, the investigator's narrative, and a recommendation for UPPAC and the Board;~~

~~([2]b) may include a rationale for the recommendation, and mitigating and aggravating circumstances;~~

~~([3]c) is maintained in the UPPAC Case File; and~~

~~([4]d) is classified as protected under Subsection 63G-2-305(34).~~

~~EE-](29) "LEA" or "local education agency" [~~means a school district, charter school or,~~] for purposes of this rule[,] includes the Utah Schools for the Deaf and the Blind.~~

~~FF-](30) "Letter of admonishment" is a letter sent by the Board to an educator cautioning the educator to avoid or take specific actions in the future.~~

~~GG-](31) "Letter of reprimand" is a letter sent by the Board to an educator:~~

~~([1]a) for misconduct that was longer term or more seriously unethical or inappropriate than conduct warranting a letter of warning, but not warranting more serious discipline;~~

~~([2]b) that provides specific directives to the educator as a condition for removal of the letter;~~

~~([3]c) appears as a notation on the educator's CACTUS file; and~~

([4]d) that an educator can request to be removed from the educator's CACTUS file after two years, or after such other time period as the Board may prescribe in the letter of reprimand.

[HH-](32) "Letter of warning" is a letter sent by the Board to an educator:

([1]a) for misconduct that was inappropriate or unethical; and

([2]b) that does not warrant longer term or more serious discipline.

[H-](33) "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.

[J-](34) "Licensed educator" means an individual issued a teaching or administrative credential, including an endorsement, issued by the Board to signify authorization for the individual holding the license to provide professional services in Utah's public schools.

[KK-](35) "National Association of State Directors of Teacher Education and Certification (NASDTEC) Educator Information Clearinghouse" means a database maintained by NASDTEC for the members of NASDTEC regarding persons whose licenses have been suspended or revoked.

[LL-](36) "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.

[MM-](37) "Party" means a complainant or a respondent.

[NN-](38) "Petitioner" means an individual seeking:

([1]a) an educator license following a denial of a license;

([2]b) reinstatement following a license suspension; or in the event of compelling circumstances, reinstatement following a license revocation.

[OO-](39) "Probation" is an action directed by the Board that:

([1]a) involves monitoring or supervision for a designated time period, usually accompanied by a disciplinary letter;

([2]b) may require the educator to be subject to additional monitoring by an identified person or entity;

([3]c) may require the educator to be asked to satisfy certain conditions in order to have the probation lifted;

([4]d) may be accompanied by a letter of reprimand, which shall appear as a notation on the educator's CACTUS file; and

([5]e) unless otherwise specified, lasts at least two years and may be terminated through a formal petition to the Board by the respondent.

[PP-](40) "Prosecutor" means an attorney who:

([1]a) is designated by the Superintendent to represent the complainant and present evidence in support of the complaint; and

([2]b) may also be the investigator, but does not have to be.

[QQ-](41) "Revocation" means a permanent invalidation of a Utah educator license consistent with Rule R277-517.

[RR-](42) "Respondent" means an educator against whom:

([1]a) a complaint is filed; or

([2]b) an investigation is undertaken.

[SS-](43) "Serve" or "service," as used to refer to the provision of notice to a person, means:

([1]a) delivery of a written document or its contents to the person or persons in question; and

([2]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 an interested person or persons to the extent reasonably practical or practicable of the information contained in the document.

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

[FF-](45) "Stipulated agreement" means an agreement between a respondent and the Board:

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

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

([a]i) when approved by the Board; and

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

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

~~[UU-] "Superintendent" means the State Superintendent of Public Instruction or the Superintendent's designee.~~

[VV-](46)(a) "Suspension" means an invalidation of a Utah educator license.

([2]b) "Suspension" may:

([a]i) include specific conditions that an educator must satisfy; and

([b]ii) may identify a minimum time period that must elapse before the educator may request a reinstatement hearing before UPPAC.

[WW-](47) "Utah Professional Practices Advisory Commission" or "[U]PPAC[y]" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, established in Section 53A-6-301.

[XX-](48) "UPPAC Background Check File" means a file maintained securely by UPPAC on a criminal background review that:

([1]a) contains information obtained from:

([a]i) BCI; and

([b]ii) letters, police reports, court documents, and other materials as provided by an educator; and

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

[YY-](49) "UPPAC Case File" means a file:

([1]a) maintained securely by UPPAC on an investigation into educator misconduct;

([2]b) opened following UPPAC's direction to investigate alleged misconduct;

([3]c) that contains the original notification of 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;

([4]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

([5]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.

~~[[Z]]~~(50) "UPPAC Evidence File" means a file:

([1]a) maintained by the attorney assigned by UPPAC to investigate a case containing materials, written or otherwise, obtained by the UPPAC investigator during the course of the attorney's investigation;

([2]b) that contains correspondence between the Investigator and the educator or the educator's counsel;

([3]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

([4]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.

~~[[AAA]]~~(51) "UPPAC investigative letter" means a letter sent by UPPAC to an educator notifying the educator that an allegation of misconduct has been received against him and that UPPAC or the Board has directed that an investigation of the educator's alleged actions take place.

~~[[BBB]]~~(52) "UPPAC Prosecutor File" means a file:

([1]a) that is kept by the attorney assigned by UPPAC to investigate and/or prosecute a case that contains:

([a]i) the attorney's notes prepared in the course of investigation; and

([b]ii) other documents prepared by the attorney in anticipation of an eventual hearing; and

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

~~[[CCC]]~~. "USOE" means the Utah State Office of Education.

KEY: professional practices, definitions, educators

Date of Enactment or Last Substantive Amendment: [July 8,] 2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)

Education, Administration

R277-201

Utah Professional Practices Advisory Commission (UPPAC), Rules of Procedure: Notification to Educators, Complaints and Final Disciplinary Actions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39586

FILED: 08/13/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendments incorporate language regarding stipulated agreements and disciplinary actions currently in Rules R277-517 and R277-514, which are scheduled to be repealed. The amendments also provide technical and conforming changes. (DAR NOTE: The proposed repeals of Rule R277-517 is under DAR No. 39600, and Rule R277-514 is under DAR No. 39597 in this issue, September 1, 2015, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Language regarding stipulated agreements, disciplinary letters, and dismissal is provided, as well as technical and conforming changes throughout the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X, Section 3 and Section 53A-6-306 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Incorporating language from Rule R277-517 to Rule R277-201 and providing conforming and technical changes will likely not result in a cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** Incorporating language from Rule R277-517 to Rule R277-201 and providing conforming and technical changes will likely not result in a cost or savings to local government.

◆ **SMALL BUSINESSES:** Incorporating language from Rule R277-517 to Rule R277-201 and providing conforming and technical changes will likely not result in a cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Incorporating language from Rule R277-517 to Rule R277-201 and providing conforming and technical changes will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Incorporating language from Rule R277-517 to Rule R277-201 and providing conforming and technical changes will likely not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2015

AUTHORIZED BY: Benjamin Rasmussen, UPPAC Director and Special Counsel

R277. Education, Administration.**R277-201. Utah Professional Practices Advisory Commission (UPPAC), Rules of Procedure: Notification to Educators, Complaints and Final Disciplinary Actions.****R277-201-1. Authority and Purpose.**

~~[A-](1)~~ This rule is authorized ~~under~~ by:

~~(a)~~ Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board[;];

~~(b)~~ ~~by~~ Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures[;]; and

~~(c)~~ ~~by~~ Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.

~~[B-](2)~~ The purpose of this rule is to provide procedures regarding:

~~(1)~~~~a~~ notifications of alleged educator misconduct;

~~(2)~~~~b~~ review of notifications by UPPAC; and

~~(3)~~~~c~~ complaints, stipulated agreement, and defaults.

~~[C-](3)~~ Except as provided in Subsection [R277-201-1D] ~~(4)~~, ~~the provisions of the~~ Title 63G, Chapter 4, ~~[Utah]~~ Administrative Procedures Act does not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).

~~[D-](4)~~ UPPAC may invoke and use sections or provisions of ~~the Utah Administrative Procedures Act as found in~~ Title 63G, Chapter 4, ~~[Utah]~~ Administrative Procedures Act[;]; as necessary to adjudicate an issue.

R277-201-2. Initiating Proceedings Against Educators.

~~[A-](1)~~ The Executive Secretary may refer a case to UPPAC to make a determination if an investigation should be opened regarding an educator:

~~(1)~~~~a~~ upon receiving a notification of alleged educator misconduct; or

~~(2)~~~~b~~ upon the Executive Secretary's own initiative.

~~[B-](2)~~ An informant shall submit an allegation to the Executive Secretary in writing, including the following:

~~(1)~~~~a~~ the informant's:

~~(a)~~~~i~~ name;

~~(b)~~~~ii~~ position, ~~[f]such as administrator, teacher, parent, or student~~);

~~(e)~~~~iii~~ telephone number;

~~(d)~~~~iv~~ address; and

~~(e)~~~~v~~ contact information;

~~(2)~~~~b~~ ~~the following~~ information of the educator against whom the allegation is made:

~~(a)~~~~i~~ name;

~~(b)~~~~ii~~ position, ~~[f]such as administrator, teacher, candidate~~); and

~~(e)~~~~iii~~ if known, the address and telephone number ~~[of the educator against whom the allegation is made]~~;

~~(d)~~~~e~~ the facts on which the allegation is based and supporting information; and

~~(e)~~~~d~~ signature of the informant and date.

~~[C-](3)~~ If an informant submits a written allegation of misconduct as provided in this rule, the informant may be notified of a final action taken by the Board regarding the allegation.

~~[D-](1)~~~~4~~~~(a)~~ Proceedings initiated upon the Executive Secretary's own initiative may be based on information received through a telephone call, letter, newspaper article, media information, notice from another state, or by other means.

~~(2)~~~~b~~ The Executive Secretary may also recommend an investigation based on an anonymous allegation, notwithstanding the provisions of this rule, if the allegation bears sufficient indicia of reliability.

~~[E-](5)~~ All written allegations, subsequent dismissals, actions, or disciplinary letters related to a case against an educator shall be maintained permanently in the UPPAC's ~~paper-~~licensing case file[s].

R277-201-3. Review of Notification of Alleged Educator Misconduct.

~~[A-](1)~~~~(a)~~ ~~[Initial Review-]~~ On reviewing the notification of alleged educator misconduct, the Executive Secretary, the Executive Committee, or both, shall recommend one of the following to UPPAC:

~~(1)~~~~i~~ ~~[D]dismiss~~ ~~[the matter if UPPAC determines that alleged misconduct does not involve an issue that UPPAC should address, UPPAC shall dismiss the matter]~~; or

~~(2)~~~~ii~~ ~~[I]initiate an investigation~~ ~~[if UPPAC determines that the alleged misconduct involves an issue [which]that may be appropriately addressed by UPPAC and the Board]~~;

~~(a)~~~~b~~ If the Executive Secretary or Executive Committee recommends UPPAC initiate an investigation:

~~(i)~~ UPPAC shall initiate an investigation; and

~~(b)~~~~ii~~ the Executive Secretary shall direct a UPPAC investigator to gather evidence relating to the allegations.

~~[B-](1)~~~~2~~~~(a)~~ Prior to a UPPAC investigator's initiation of an investigation, the Executive Secretary shall send a letter to the following with information that UPPAC has initiated an investigation ~~[has been initiated]~~:

~~(a)~~~~i~~ the educator to be investigated;

~~(b)~~~~ii~~ the LEA that ~~currently~~ employs the educator; and

~~(e)~~~~iii~~ the LEA where the alleged activity occurred.

~~(2)~~~~b~~ A letter described in Subsection [R277-201-3B(1)] ~~(2)~~~~(a)~~ shall inform the educator and the LEA ~~(s)~~ that an investigation shall take place and is not evidence of unprofessional conduct.

~~(3)~~~~c~~ UPPAC shall place a flag on the educator's CACTUS file after sending the notices as provided in this rule.

~~(C)~~(~~(1)~~3)(a) The investigator shall review relevant documentation and interview individuals who may have knowledge of the allegations.

(2)b The investigator shall prepare an investigative report of the findings of the investigation and a recommendation for appropriate action or disciplinary letter.

(3)c If the investigator discovers additional evidence of unprofessional conduct ~~[which]that~~ could have been included in the original notification of alleged educator misconduct, the investigator may include the additional evidence of misconduct in the investigative report.

(4)d The ~~investigator shall submit the~~ investigative report ~~shall be submitted~~ to the Executive Secretary.

(5)e The Executive Secretary shall review the investigative report described in Subsection ~~[R277-201-3C(4)](3)~~ (d) with UPPAC.

(6)f The investigative report described in Subsection ~~[R277-201-3C(4)](3)(d)~~ shall become part of the UPPAC ~~(C)~~case ~~(F)~~file.

~~(D)~~(4) ~~[Secondary Review:]~~UPPAC shall review the investigative report and take one of the following actions:

(1)a ~~[Dismiss: If]~~UPPAC determines no further action should be taken, ~~[#]~~UPPAC may recommend that the Board dismiss the case; or

(2)b UPPAC may ~~[M]~~make an initial recommendation of appropriate ~~[A]~~action or disciplinary letter.

~~(E)~~(5) After receiving an initial recommendation from UPPAC for action, the Executive Secretary shall direct a UPPAC prosecutor to:

(1)a prepare and serve a complaint; or

(2)b negotiate and prepare a stipulated agreement.

~~(F)~~(1)6(a) A stipulated agreement shall conform to the requirements set forth in Section R277-201-6.

(2)b An educator may stipulate to any recommended disposition for an action.

~~(G)~~(7) The Executive Secretary shall forward any stipulated agreement to the Board for approval.

~~[-----H. Upon receipt of a hearing report as defined in R277-202, UPPAC shall make a final recommendation with appropriate findings and shall direct the Executive Secretary to transmit the recommendation to the Board for consideration.]~~

R277-201-4. Expedited Hearings.

~~(A)~~(1) In a case involving the report of an arrest, citation, or charge of a licensed educator, which requires self-reporting by the educator under Section R277-516-3, the Executive Secretary, with the consent of the educator, may schedule the matter for an expedited hearing in lieu of initially referring the matter to UPPAC.

~~(B)~~(1)2(a) The Executive Secretary shall hold an expedited hearing ~~shall be held~~ within ~~[thirty-(30)](3)~~ days of a report of an arrest, citation, or charge, unless otherwise agreed upon by both parties.

(2)b The Executive Secretary or the Executive Secretary's designee shall conduct~~[A]~~an expedited hearing ~~will be conducted by the Executive Secretary or the Executive Secretary's designee~~ with the following additional invited participants:

(a)i the educator;

(2)ii the educator's attorney or representative;

(3)iii a UPPAC prosecutor;

(4)iv a voting member of UPPAC; and

(5)v a representative~~(s)~~ of the educator's LEA.

~~(C)~~(3) The panel may consider the following matters ~~may be considered~~ at an expedited hearing:

(1)a an educator's oral or written explanation of the events;

(2)b a police report;

(3)c a court docket or transcript;

(4)d an LEA's investigative report or employment file;

and

(5)e additional information offered by the educator if the panel deems it probative of the issues at the ~~(E)~~expedited ~~(H)~~hearing.

~~(D)~~(4) After reviewing the evidence, the expedited hearing panel shall make written findings and a recommendation to UPPAC to do one of the following:

(1)a close the case;

(2)b close the case upon completion of court requirements;

(3)c recommend issuance of a disciplinary letter to the Board;

(4)d open a full investigation; or

(5)e recommend action by the Board, subject to an educator's due process rights under these rules.

~~(E)~~(5) An expedited hearing may be recorded, but the testimony from the expedited hearing is inadmissible during a future UPPAC action related to the allegation.

~~(F)~~(6) If the Board fails to adopt the recommendation of an expedited hearing panel, UPPAC shall open a full investigation.

R277-201-5. Complaints.

~~(A)~~(1) ~~[Filing a complaint:]~~If UPPAC determines that an allegation is sufficiently supported by evidence discovered in the investigation, UPPAC, through the Executive Secretary, may direct the prosecutor to serve a complaint upon the educator being investigated.

~~(B)~~(2) ~~[Elements of a complaint:]~~At a minimum, a complaint shall include:

(1)a a statement of legal authority and jurisdiction under which the action is being taken;

(2)b a statement of the facts and allegations upon which the complaint is based;

(3)c other information ~~[which]that~~ the investigator believes ~~[to be]~~is necessary to enable the respondent to understand and address the allegations;

(4)d a statement of the potential consequences ~~[should]~~if an allegation ~~[be]~~is found to be true or substantially true;

(5)e a statement that the respondent shall answer the complaint and request a hearing, if desired, within 30 days of the date the complaint ~~[was]~~is mailed to the respondent;

(6)f a statement that the respondent is required to file a written answer described in Subsection ~~[R277-201-5B(5)](2)(c)~~ with the Executive Secretary;

(7)g a statement advising the respondent that if the respondent fails to respond within 30 days, a default judgment for revocation or a suspension of the educator's license may occur for a term of five years or more;

(~~8~~)h) a statement that, if a hearing is requested, the hearing ~~shall~~ will be scheduled no less than 25 days, nor more than 180 days, after receipt of the respondent's answer, unless a different date is agreed to by both parties in writing; and

(~~9~~)i) a statement that the hearing ~~will be~~ is governed by these rules, with an internet address where the rules may be accessed.

~~(C)~~(3) On the Executive Secretary's own motion, the Executive Secretary, or the Executive Secretary's designee, with notice to the parties, may reschedule a hearing date.

~~(D)~~(~~1~~)4(a) ~~[Answer to the complaint.]~~ A respondent may file an answer to a complaint by filing a written response signed by the respondent~~;~~ or the respondent's representative with the Executive Secretary within 30 days after the complaint ~~was~~ is mailed.

(~~2~~)b) The answer may include a request for a hearing, and shall include:

(~~a~~)i) the file number of the complaint;

(~~b~~)ii) the names of the parties;

(~~e~~)iii) a statement of the relief that the respondent seeks;

and

(~~d~~)iv) if not requesting a hearing, a statement of the reasons that the relief requested should be granted.

~~(E)~~(~~1~~)5(a) As soon as reasonably practicable after receiving an answer, or no more than 30 days after receipt of an answer at the USOE, the Executive Secretary shall schedule a hearing, if requested, as provided in Rule R277-202.

(~~2~~)b) If the parties can reach an agreement prior to the hearing consistent with the terms of UPPAC's initial recommendation, the prosecutor may negotiate a stipulated agreement with the respondent.

(~~3~~)c) A stipulated agreement described in Subsection [R277-201-5E(2)](5)(b) shall be submitted to the Board for the Board's final approval.

~~(F)~~(~~1~~)6(a) ~~[Default.]~~ If a respondent does not respond to the complaint within 30 days, the Executive Secretary may initiate default proceedings in accordance with the procedures set forth in Section R277-201-7.

(~~2~~)b) Except as provided in Subsection R277-201-7(E)(3), if the Executive Secretary enters an order of default, the Executive Secretary shall make a recommendation to the Board for a revocation or a suspension of the educator's license for five years before the educator may request a reinstatement hearing.

(~~3~~)c) If a default results in a suspension, a default may include conditions that an educator shall satisfy before the educator may qualify for a reinstatement hearing.

(~~4~~)d) An order of default shall result in a recommendation to the Board for a revocation if the alleged misconduct is conduct identified in Subsection 53A-6-501(5)(b).

R277-201-6. Stipulated Agreements.

~~(A)~~(1) At any time after UPPAC has made an initial recommendation, a respondent may accept UPPAC's initial recommendation, rather than request a hearing, by entering into a stipulated agreement.

~~(B)~~(2) By entering into a stipulated agreement, a respondent waives the respondent's right to a hearing to contest the recommended disposition, contingent on final approval by the Board~~;~~.

~~(C)~~(3) ~~[Elements of a stipulated agreement.]~~ At a minimum, a stipulated agreement shall include:

(~~1~~)a) a summary of the facts, the allegations, and the evidence relied upon by UPPAC in its recommendation;

(~~2~~)b) a statement that the respondent admits the facts recited in the stipulated agreement as true for purposes of the Board administrative action;

(~~3~~)c) a statement that the respondent:

(~~a~~)i) waives the respondent's right to a hearing to contest the allegations that gave rise to the investigation; and

(~~b~~)ii) agrees to limitations on the respondent's license or surrenders the respondent's license rather than contest the allegations;

(~~4~~)d) a statement that the respondent agrees to the terms of the stipulated agreement and other provisions applicable to the case, such as remediation, counseling, restitution, rehabilitation, and other conditions, if any, under which the respondent may request a reinstatement hearing or a removal of the letter of reprimand or termination of probation;

(~~5~~)e) if for suspension or revocation of a license, a statement that the respondent:

(~~a~~)i) may not seek or provide professional services in a public school in ~~Utah~~ the state;

(~~b~~)ii) may not seek to obtain or use an educator license in ~~Utah~~ the state; or

(~~e~~)iii) may not work or volunteer in a public K-12 setting in any capacity without express authorization from the UPPAC Executive Secretary, unless or until the respondent:

(~~i~~)A) first obtains a valid educator license or authorization from the Board to obtain such a license; or

(~~i~~)B) satisfies other provisions provided in the stipulated agreement;

(~~6~~)f) a statement that the action and the stipulated agreement shall be reported to other states through the NASDTEC Educator Information Clearinghouse and any attempt to present to any other state a valid Utah license shall result in further licensing action in Utah;

(~~7~~)g) a statement that respondent waives the respondent's right to contest the facts stated in the stipulated agreement at a subsequent reinstatement hearing, if any;

(~~8~~)h) a statement that all records related to the stipulated agreement shall remain permanently in the UPPAC case file; and

(~~9~~)i) a statement reflecting the stipulated agreement's classification under [GRAMA]Title 63G, Chapter 2, Government Records Access and Management Act.

~~(D)~~(4) A violation of the terms of a stipulated agreement may result in additional disciplinary action and may affect the reinstatement process.

~~(E)~~(~~1~~)5(a) A stipulated agreement shall be forwarded to the Board for approval prior to execution by the respondent.

~~(b)~~ Prior to consideration of a stipulated agreement, UPPAC shall:

~~(i)~~ make the UPPAC case file available to the Board for confidential review; and

~~(ii)~~ make other evidence available for review as directed by the Board.

~~(c)~~ There is a presumption that the Board shall approve a stipulated agreement if the Board finds that:

(i) a stipulated agreement is based on adequate evidence; and

(ii) the terms of a stipulated agreement present a reasonable resolution of the case.

(d) The Board may take other action as provided in this rule if it finds that:

(i) a stipulated agreement is based on insufficient evidence;

(ii) the terms of a stipulated agreement present an unreasonable resolution of the case consistent with:

(A) R277-207; and

(B) due process; or

(iii) exceptional circumstances exist which warrant an alternative resolution.

([2]e)(i) If the Board [fails to approve the stipulated agreement,] finds that a stipulated agreement is based on insufficient evidence, the Board may reject a stipulated agreement and direct UPPAC to hold a hearing if the Board provides direction, in the form of a motion, as to what issues need to be addressed by UPPAC.

(ii) [t]The Executive Secretary shall notify the parties of the decision and the proceedings shall continue from the point under these procedures at which the stipulated agreement was negotiated, as if the stipulated agreement had not been submitted.

([3]f) [Alternatively, i]f the Board [rejects the stipulated agreement] finds that the terms of a stipulated agreement present an unreasonable resolution of a case, it may, by motion, provide alternative terms to the Executive Secretary, [which]that would be satisfactory to the Board.

([4]g) If accepted by the respondent, the stipulated agreement, as modified, [would become]is a final Board administrative action without further Board consideration.

([5]h) If the terms approved by the Board are rejected by the respondent, the proceedings shall continue from the point under these procedures at which the agreement was negotiated, as if the stipulated agreement had not been submitted.

([6]i) If the Board approves a stipulated agreement, the approval is a final Board administrative action, effective upon signature by all parties, and the Executive Secretary shall:

([a]i) notify the parties of the decision;

(ii) update CACTUS to reflect the action;

(iii) report the action to the NASDTEC Educator Information Clearinghouse if the agreement results in:

(A) a revocation; or

(b) a suspension; and

([b]iv) direct the appropriate penalties to begin.

[F-](6) If, after negotiating a stipulated agreement, a respondent fails to sign or respond to a proffered stipulated agreement within 30 days after the stipulated agreement is mailed, the Executive Secretary shall direct the prosecutor to prepare findings in default consistent with Section R277-201-7.

R277-201-7. Default Procedures.

[A-](1) If a respondent does not respond to a complaint or execute a negotiated stipulated agreement within 30 days from the date the complaint or stipulated agreement is served, the Executive Secretary may issue an order of default against the respondent consistent with the following:

([+])a) the prosecutor shall prepare and serve on the respondent an order of default including:

([a]i) a statement of the grounds for default; and

([b]ii) a recommended disposition if the respondent fails to file a response to a complaint or respond to a proffered stipulated agreement;

([2]b) ten[-(10)] days following service of the order of default, the prosecutor shall attempt to contact respondent by telephone or electronically;

([3]c) UPPAC shall maintain documentation of attempts toward written, telephonic, or electronic contact;

([4]d) the respondent has 20 days following service of the order of default to respond to UPPAC; and

([5]e) if UPPAC receives a response from respondent to a default order before the end of the 20 day default period, UPPAC shall allow respondent a final [40]ten day period to respond to a complaint or stipulated agreement.

[B-](2) Except as provided in Subsection [R277-201-7C] (3), if an order of default is issued, the Executive Secretary may make a recommendation to the Board for revocation or for a suspension of the educator's license for no less than five years.

[C-](3) If an order of default is issued, the Executive Secretary shall make a recommendation to the Board for a revocation of the educator's license if the alleged misconduct is conduct identified in Subsection 53A-6-501(5)(b).

R277-201-8. Disciplinary Letters and Dismissal.

(1) If UPPAC recommends issuance of a disciplinary letter or dismissal, the Executive Secretary shall forward the case to the Board for review.

(2) Prior to Board consideration of a disciplinary letter or dismissal, UPPAC shall:

(a) make the UPPAC case file available to the Board for confidential review; and

(b) make other evidence available for review as directed by the Board.

(3) There is a presumption that the Board shall approve a UPPAC disciplinary letter or dismissal recommendation if the Board finds that:

(a) the UPPAC recommendation is based on adequate evidence; and

(b) the UPPAC recommendation constitutes a reasonable resolution of the case.

(4) If the Board finds that the UPPAC recommendation is based on insufficient evidence or presents an unreasonable resolution of the case or exceptional circumstances exist that warrant an alternative resolution, then the Board may:

(a) remand the case to UPPAC for a hearing;

(b) remand the case to UPPAC with recommendations for negotiation of a stipulated agreement;

(c) direct the Executive Secretary to issue a different level of disciplinary letter; or

(d) dismiss the matter.

(5) If the Board approves a disciplinary letter, the Executive Secretary shall:

(a) prepare the disciplinary letter and mail it to the educator;

_____ (b) place a copy of the disciplinary letter in the UPPAC case file; and

_____ (c) update CACTUS to reflect that the investigation is closed.

KEY: teacher licensing, conduct, hearings

Date of Enactment or Last Substantive Amendment: [July 8,] 2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)

Education, Administration
R277-202
UPPAC Hearing Procedures and
Reports

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 39587

FILED: 08/13/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendments incorporate additional language regarding hearing reports and provide technical and conforming changes.

SUMMARY OF THE RULE OR CHANGE: Additional language regarding hearing reports and processes for Utah State Board of Education review are provided, as well as technical and conforming changes throughout the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X, Section 3 and Section 53A-6-306 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Incorporating additional language regarding hearing reports and making technical and conforming changes will likely not result in a cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** Incorporating additional language regarding hearing reports and making technical and conforming changes will likely not result in a cost or savings to local government.

◆ **SMALL BUSINESSES:** Incorporating additional language regarding hearing reports and making technical and conforming changes will likely not result in a cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Incorporating additional language regarding hearing reports and making technical and conforming changes will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Incorporating additional language regarding hearing reports and making technical and conforming changes will likely not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Benjamin Rasmussen by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at benjamin.rasmussen@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2015

AUTHORIZED BY: Benjamin Rasmussen, UPPAC Director and Special Counsel

R277. Education, Administration.

R277-202. UPPAC Hearing Procedures and Reports.

R277-202-1. Authority and Purpose.

~~[A-]~~(1) This rule is authorized ~~[under]~~by:

~~_____~~(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board~~[-]~~;

~~_____~~(b) ~~[by-]~~Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures~~[-]~~; and

~~_____~~(c) ~~[by-]~~Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.

~~[B-]~~(2) The purpose of this rule is to establish procedures regarding UPPAC hearings and hearing reports.

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

R277-202-2. Scheduling a Hearing.

~~[A-]~~(1)(a) ~~[Scheduling the hearing-]~~Following receipt of an answer by respondent requesting a hearing:

(a)i UPPAC shall select panel members;

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

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

([2]b) The Executive Secretary shall schedule a hearing for a date that is not less than 25 days nor more than 180 days from the date the Executive Secretary receives the answer[~~is received by the Executive Secretary~~].

([3]c) The required scheduling periods may be waived by mutual written consent of the parties or by the Executive Secretary for good cause shown.

~~[B-](2)[Change of hearing date:~~

~~—————(+) (a)~~ Any party may request a change of hearing date by submitting a request in writing ~~[which]that~~ shall:

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

([b]ii) be submitted to the Executive Secretary at least five days prior to the scheduled date of the hearing.

([2]b) The Executive Secretary shall determine whether the reason stated in the request is sufficient to warrant a change.

([3]c) If the Executive Secretary finds that the reason for the request for a change of hearing date is sufficient, the Executive Secretary shall promptly notify all parties of the new time, date, and place for the hearing.

([4]d) If the Executive Secretary does not find the reason for the request for a change of hearing date to be sufficient, the Executive Secretary shall immediately notify the parties that the request has been denied.

([5]e) The Executive Secretary and the parties may waive the time period required for requesting a change of hearing date for good cause shown.

~~[C-](3)~~ An educator ~~[shall be]~~is entitled to a hearing on any matter in which an action is recommended, as defined in Subsection R277-200-2[A](1).

~~[D-](4)~~ An educator is not entitled to a hearing on a matter in which a disciplinary letter is recommended, as defined in Subsection R277-200-2[N](14).

R277-202-3. Appointment and Duties of the Hearing Officer and Hearing Panel.

~~[A](1)(a)~~ ~~[Hearing officer:]~~The Executive Secretary shall appoint a hearing officer to chair the hearing panel and conduct the hearing.

([2]b) The Executive Secretary shall select a hearing officer on a random basis from a list of available contracted hearing officers, subject to availability and conflict of interest.

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

~~[(4)d) [Duties of a hearing officer:]~~A hearing officer:

([a]i) may require the parties to submit a brief[s] and a list[s] of witnesses prior to the hearing;

([b]ii) presides at the hearing and regulates the course of the proceeding[s];

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

([d]iv) may take testimony, rule on a question[s] of evidence, and ask a question[s] of a witness[es] to clarify a specific issue[s]; and

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

~~[B](+)(2)(a)~~ ~~[UPPAC panel members:]~~UPPAC shall select three or more individuals to serve as members of the hearing panel.

([2]b) As directed by UPPAC, any licensed educator may ~~[be used]~~serve as a panel member, if needed.

([3]c) The majority of panel members shall be current UPPAC members.

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

([5]e) UPPAC shall accommodate each prospective panel member based on the availability of the panel member.

([6]f) If the respondent is a teacher, at least one panel member shall be a teacher.

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

([8]h) The requirements of ~~[this]Subsection [R277-202-3B](2)~~ may be waived only upon the stipulation of both UPPAC and the respondent.

~~[C](+)(3)(a)~~ A UPPAC panel member shall:

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

([b]ii) ask a question[s] of a[H] witness[es] to clarify a specific issue[s];

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

([d]iv) make a recommendation to UPPAC as to the suggested disposition of a complaint; and

([e]v) assist the hearing officer in preparing the hearing report.

([2]b) A panel member ~~[should]~~may only consider ~~[only such]the~~ evidence ~~[as has been-]~~approved for admission by the hearing officer.

([3]c) The Executive Secretary may make an emergency substitution of a panel member for cause with the consent of the parties.

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

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

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

~~[D-](4)[Disqualification of a hearing officer shall be governed by the following requirements:~~

~~—————(+) (a)~~ A party may request that the Executive Secretary disqualify a hearing officer~~[be disqualified]~~ by submitting a written request for disqualification to the Executive Secretary.

([2]b) A party shall submit a request to disqualify a hearing officer~~[shall be submitted]~~ to the Executive Secretary at least 15 days before a scheduled hearing.

([3]c) The Executive Secretary shall review a request described in ~~[this]Subsection [R277-202-3D](4)~~ and supporting evidence to determine whether the reasons for the request are substantial and sufficient.

([4]d) If the Executive Secretary determines that the hearing officer should be disqualified, the Executive Secretary shall appoint a new hearing officer and, if necessary, reschedule the hearing.

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

([6]f) If the Executive Secretary denies a request to disqualify a hearing officer, the Executive Secretary shall notify the party within ten days prior to the date of the hearing.

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

([8]h) If the Superintendent finds that the appeal is justified, the Superintendent shall direct the Executive Secretary to appoint a new hearing officer and, if necessary, reschedule the hearing.

([9]i) The decision of the Superintendent described in Subsection [R277-202-3D(8)](4)(h) is final.

([10]j) If a party fails to file an appeal within the time requirements of Subsection [R277-202-3D(7)](4)(g), the appeal shall be deemed denied.

([11]k) If the Executive Secretary fails to meet the time requirements described in Subsection [R277-202-3D](4), the request or appeal ~~shall be~~ is approved.

~~[E](5) UPPAC panel members shall be governed by the following requirements:~~

~~(1)(a)~~ A UPPAC member shall ~~[disqualify]~~ recuse himself or herself as a panel member due to any known financial or personal interest, prior relationship, personal and independent knowledge of the persons or issues in the case, or other association that the panel member believes would compromise the panel member's ability to make an impartial decision.

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

([a]i) the hearing officer; or

([b]ii) to the Executive Secretary if there is no hearing officer.

([3]c) A party shall submit a request described in Subsection [R277-202-3E(2)](5)(b) no less than 15 days before a scheduled hearing.

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

([a]i) review a request described in Subsection [R277-202-3E(2)](5)(b) and supporting evidence to determine whether the reasons for the request are substantial and compelling enough to disqualify the panel member; and

([b]ii) if the reasons for the request described in Subsection [R277-202-3E(2)](5)(b) are substantial and compelling, disqualify the panel member.

([5]e) If the panel member's disqualification leaves the hearing panel with fewer than three UPPAC panel members:

([a]i) UPPAC shall appoint a replacement; and

([b]ii) the Executive Secretary shall, if necessary, reschedule the hearing.

([6]f) If a request described in Subsection [R277-202-3E(2)](5)(b) is denied, the hearing officer or the Executive Secretary if there is no hearing officer, shall notify the party requesting the panel member's disqualification no less than ten days prior to the date of the hearing.

([7]g) The requesting party may file a written appeal of a denial described in Subsection [R277-202-3E(6)](5)(f) with the Superintendent no later than five days prior to the hearing date.

([8]h) If the Superintendent finds that an appeal described in Subsection [R277-202-3E(7)](5)(g) is justified, the Superintendent shall direct the hearing officer or the Executive Secretary if there is no hearing officer, to replace the panel member.

([9]i) If a panel member's disqualification leaves the hearing panel with fewer than three UPPAC panel members, UPPAC shall agree upon a replacement and the Executive Secretary shall, if necessary, reschedule the hearing.

([10]j) The decision of the Superintendent described in Subsection [R277-202-3E(8)](5)(h) is final.

([11]k) If a party fails to file an appeal within the time requirements of Subsection [R277-202-3E(7)](5)(g), the appeal shall be deemed denied.

([12]l) If the hearing officer, or the Executive Secretary if there is no hearing officer, fails to meet the time requirements described in this Subsection [R277-202-3E](5), the request or appeal ~~shall be~~ is approved.

[F](6) The Executive Secretary may, at the time the Executive Secretary selects a hearing officer or panel member, select an alternative hearing officer or panel member following the process for selecting those individuals.

[G](7) The Executive Secretary may substitute a panel member with an alternative panel member if the Executive Secretary notifies the parties of the substitution.

R277-202-4. Preliminary Instructions to Parties to a Hearing.

[A](1) No later than 25 days before the date of a hearing, the Executive Secretary shall provide the parties with the following information:

([1]a) date, time, and location of the hearing;

([2]b) names and LEA affiliations of each panel member, and the name of the hearing officer; and

([3]c) instructions for accessing these rules.

[B](2) No later than 20 days before the date of the hearing, the respondent and the complainant shall provide the following to the other party and to the hearing officer:

([1]a) a brief, if requested by the hearing officer containing:

([a]i) any procedural and evidentiary motions along with the party's position regarding the allegations; and

([b]ii) relevant laws, rules, and precedent;

([2]b) the name of the person who will represent the party at the hearing;

([3]c) a list of witnesses expected to be called, including a summary of the testimony ~~[which]~~ that each witness is expected to present;

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

(5)e following receipt of the other party's witness list, a list of anticipated rebuttal witnesses and evidence no later than 10 ten days prior to the hearing.

(3)(a) Except as provided in Subsection R277-202-4C(1)(3)(b), a party may not present a witness or evidence at the hearing if the witness or evidence has not been disclosed to the other party as required in Subsection R277-202-4B(2).

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

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

(b)ii the hearing officer makes a determination of good cause to allow ~~it in~~ the witness or evidence.

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

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

R277-202-5. Hearing Parties' Representation.

(1) ~~Complainant: The~~ A USOE prosecutor shall represent the complainant ~~shall be represented by a USOE prosecutor~~.

(2) ~~Respondent:—~~ A respondent may represent himself or herself or be represented, at ~~his~~ the respondent's own cost, by another person.

(3) The informant has no right to:

(1)a individual representation at the hearing; or

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

(4) A respondent shall notify the Executive Secretary in a timely manner and in writing if the respondent chooses to be represented by anyone other than the respondent.

R277-202-6. Discovery Prior to a Hearing.

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

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

(3) A hearing officer may limit discovery:

(1)a at the discretion of the hearing officer; or

(2)b upon a motion by either party.

(4) A hearing officer rules on all discovery requests and motions.

(5) The Executive Secretary shall issue a subpoena or other order to secure the attendance of a witness pursuant to Subsection 53A-6-306(3)(c)(i) if:

(1)a requested by either party; and

(2)b notice of intent to call the witness has been timely provided as required by Section R277-202-4.

(6) The Executive Secretary shall issue a subpoena to produce evidence if timely requested by either party.

(7)(a) A party may not present an expert witness report or expert witness testimony at a hearing unless the requirements of Section R277-202-10 have been met.

(2)b A respondent may not subpoena the UPPAC prosecutor or investigator as an expert witness.

R277-202-7. Burden and Standard of Proof for UPPAC Proceedings.

(1) In matters other than those involving applicants for licensing, and excepting the presumptions under Subsection R277-202-11(10), the Board shall have the burden of proving that an action against the license is appropriate.

(2) An applicant for licensing has the burden of proving that licensing is appropriate.

(3) ~~Standard of proof:—~~ The standard of proof in all UPPAC hearings is a preponderance of the evidence.

(4) ~~Evidence:—~~ The Utah Rules of Evidence are not applicable to UPPAC proceedings.

(5) The criteria to decide an evidentiary question ~~is~~ shall be] are:

(1)a reasonable reliability of the offered evidence;

(2)b fairness to both parties; and

(3)c usefulness to UPPAC in reaching a decision.

(6) The hearing officer has the sole responsibility to determine the application of the hearing rules and the admissibility of evidence.

R277-202-8. Department.

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

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

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

R277-202-9. Hearing Record.

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

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

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

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

[E-](5) A party may review a UPPAC case file upon request of the party if the review of the UPPAC case file is performed:

- (1)a under supervision of the Executive Secretary; and
- (2)b at the USOE.

R277-202-10. Expert Witnesses in UPPAC Proceedings.

[A-](1) A hearing officer may allow testimony by an expert witness[es].

[B-](2) A party may call an expert witness at the party's own expense.

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

- (1)a notice of intent of a party to call an expert witness;
- (2)b the identity and qualifications of ~~each~~an expert witness;
- (3)c the purpose for which the expert witness is to be called; and
- (4)d any prepared expert witness report.

[D-](4) Defects in the qualifications of an expert witness[es], once a minimum threshold of expertise is established, go to the weight to be given the testimony and not to its admissibility.

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

R277-202-11. Evidence and Participation in UPPAC Proceedings.

[A-](1) A hearing officer may not exclude evidence solely because the evidence is hearsay.

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

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

[D-](4) If a case involves allegations of child abuse or of a sexual offense against a minor, either party, a member of the hearing panel, or the hearing officer, may request that a minor be allowed to testify outside of the respondent's presence.

[E-](5) If the hearing officer determines that a minor would suffer undue emotional or mental harm, or that the minor's testimony in the presence of the respondent would be unreliable, the minor's testimony may be admitted ~~[in one of the following ways:]~~as described in this section.

[F-](6) An oral statement of a victim or witness younger than 18 years of age ~~[which]that~~ is recorded prior to the filing of a complaint ~~[shall be]is~~ admissible as evidence in a hearing regarding the offense if:

- (1)a no attorney for either party is in the minor's presence when the statement is recorded;
- (2)b the recording is visual and aural and is recorded;
- (3)c the recording equipment is capable of making an accurate recording;
- (4)d the operator of the equipment is competent;

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

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

[G-](7) The testimony of a witness or victim younger than 18 years of age may be taken in a room other than the hearing room, and may be transmitted by closed circuit equipment to another room where it can be viewed by the respondent if ~~the following conditions shall be observed~~:

(1)a only the hearing panel members, attorneys for each party, persons necessary to operate equipment, and a person approved by the hearing officer whose presence contributes to the welfare and emotional well-being of the minor may be with the minor during the testimony;

(2)b the respondent ~~may~~is not ~~be~~ present during the minor's testimony;

(3)c the hearing officer ~~shall~~ ensures that the minor cannot hear or see the respondent;

(4)d the respondent ~~shall be~~is permitted to observe and hear, but ~~may~~ not communicate with the minor; and

(5)e only hearing panel members, the hearing officer, and the attorneys ~~may~~ question the minor.

[H-](8) If the hearing officer determines that the testimony of a minor may be taken consistent with Subsections [R277-202-11D](4) through [G](7), the minor may not be required to testify in any proceeding where the recorded testimony is used.

[I-](9) On the hearing officer's own motion or upon objection by a party, the hearing officer:

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

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

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

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

[J-](10)~~Presumptions:~~

~~(1)a~~ A rebuttable evidentiary presumption exists that a person has committed a sexual offense against a minor if the person has:

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

(b)ii failed to defend himself or herself against ~~such a~~the charge when given a reasonable opportunity to do so; or

(e)iii voluntarily surrendered a license or allowed a license to lapse in the face of a charge of having committed a sexual offense against a minor.

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

~~(3)~~^(c) Evidence of behavior described in Subsection ~~[R277-202-11J(2)](10)(b)~~ may include:

- ~~(a)~~⁽ⁱ⁾ conviction of a felony;
- ~~(b)~~⁽ⁱⁱ⁾ a felony charge and subsequent conviction for a lesser related charge pursuant to a plea bargain or plea in abeyance;
- ~~(e)~~⁽ⁱⁱⁱ⁾ an investigation of an educator's license, certificate, or authorization in another state; or
- ~~(d)~~^(iv) the expiration, surrender, suspension, revocation, or invalidation of an educator's license for any reason.

R277-202-12. Hearing Report.

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

- ~~(1)~~^(a) detailed findings of fact and conclusions of law based upon the evidence of record or on facts officially noted~~[-]~~;
- ~~(2)~~^(b) a statement of relevant precedent, if available;
- ~~(3)~~^(c) a statement of applicable law and rule;
- ~~(4)~~^(d) a recommended disposition of UPPAC panel members ~~[which]~~^{that} shall be one or an appropriate combination of the following:

- ~~(a)~~⁽ⁱ⁾ dismissal of the complaint;
- ~~(b)~~⁽ⁱⁱ⁾ letter of admonishment;
- ~~(e)~~⁽ⁱⁱⁱ⁾ letter of warning;
- ~~(d)~~^(iv) letter of reprimand;
- ~~(e)~~^(v) probation, to include the following terms and conditions:

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

~~(ii)~~^(B) a probationary time period or specifically designated indefinite time period;

~~(iii)~~^(C) conditions that can be monitored;

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

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

~~(vi)~~^(F) whether or not the respondent may work in any capacity in public education during the probationary period;

~~(f)~~^(vi) disciplinary action held in abeyance;

~~(g)~~^(vii) suspension, to include the following terms and conditions:

~~(A)~~ a recommended minimum time period after which an educator may request a reinstatement hearing under Rule R277-203; and

~~(B)~~ any recommended conditions precedent to requesting a reinstatement hearing under Section R277-203-2; or

~~(h)~~^(viii) revocation; and

~~(5)~~^(e) notice that UPPAC's recommendation is subject to approval by the Board and judicial review as may be allowed by law.

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

~~(C)~~⁽³⁾ Any of the consequences described in Subsection ~~[R277-202-12B](1)(d)~~ may be imposed in the form of a disciplinary action held in abeyance.

~~(D)~~^{(4)(a)} If the respondent's penalty is held in abeyance, the respondent's penalty is stayed subject to the satisfactory completion of probationary conditions.

~~(E)~~^(b) The decision to impose a consequence in the form of a disciplinary action held in abeyance shall provide for appropriate or presumed discipline ~~[should]~~^{if the respondent does not fully satisfy} the probationary conditions~~[- not be fully satisfied;]~~.

~~(F)~~⁽⁵⁾ ~~Processing the hearing report:~~

~~(+)~~^(a) A hearing officer shall circulate a draft report to hearing panel members prior to the 20 day completion deadline of the hearing report.

~~(2)~~^(b) Hearing panel members shall notify the hearing officer of any changes to the report:

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

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

~~(3)~~^(c) The hearing officer shall file the completed hearing report with the Executive Secretary, who shall review the report with UPPAC.

~~(4)~~^(d) The Executive Secretary may participate in UPPAC's deliberation as a resource to UPPAC in explaining the hearing report and answering any procedural questions raised by UPPAC members.

~~(5)~~^(e) The hearing officer may confer with the Executive Secretary or the panel members or both while preparing the hearing report.

~~(6)~~^(f) The hearing officer may request the Executive Secretary to confer with the hearing officer and panel following the hearing.

~~(7)~~^(g) The Executive Secretary may return a hearing report to a hearing officer if the report is incomplete, unclear, or unreadable, or missing essential components or information.

~~(8)~~^(h) UPPAC shall vote to uphold the hearing officer's and panel's report if UPPAC finds that:

~~(a)~~⁽ⁱ⁾ there are no significant procedural errors;

~~(b)~~⁽ⁱⁱ⁾ the hearing officer's recommendations are based upon a reasonable interpretation of the evidence presented at the hearing; and

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

~~(9)~~⁽ⁱ⁾ ~~[The]~~^{After the} UPPAC review, the Executive Secretary shall ~~[forward]~~^{send} a copy of the hearing report to:

~~(i)~~ the Board for further action; ~~[- after the UPPAC review described in R277-202-12F(8);]~~

~~(ii)~~ the respondent; and

~~(10)~~⁽ⁱⁱⁱ⁾ ~~[The Executive Secretary shall place a copy of the hearing report in]~~ the UPPAC case file.

~~(11)~~ If UPPAC or the Board determines that:

~~(a)~~ the hearing process had procedural errors;

~~(b)~~ the hearing officer's report is not based upon a reasonable interpretation of the evidence presented at the hearing;

~~(c)~~ that the conclusions and findings of the hearing report do not provide adequate guidance to the educator; or

~~(d)~~ that the findings or conclusions of the hearing report do not adequately address the evidence as outlined in the hearing report, the Board or UPPAC may:

~~(i)~~ direct the Executive Secretary to schedule the matter for rehearing before a new hearing officer and a new UPPAC panel; or

~~(ii) direct the Executive Secretary to amend the hearing report to reflect the decision of UPPAC or the Board.~~

~~(6)(a) If UPPAC adopts a hearing report that recommends an action, as defined in Subsection R277-200-2(1), either party may request review by the Superintendent within 15 days from the date the Executive Secretary sends a copy of the hearing report to the respondent.~~

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

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

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

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

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

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

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

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

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

~~(i) notify all parties; and~~

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

~~(7)(a) Prior to Board consideration of a hearing report, UPPAC shall:~~

~~(i) make the UPPAC case file available to the Board for confidential review; and~~

~~(ii) make other evidence available for review as directed by the Board.~~

~~(b) It is presumed that the Board will approve a UPPAC hearing report if:~~

~~(i) the UPPAC hearing process comports with due process and is free from a procedural error;~~

~~(ii) the hearing report is based upon a reasonable interpretation of the evidence;~~

~~(iii) the hearing report's recommendations constitute a reasonable resolution to the UPPAC investigation; and~~

~~(iv) the hearing report provides adequate guidance to the educator concerning any conditions prior to:~~

~~(A) reinstatement;~~

~~(B) termination of probation; or~~

~~(C) removal of a letter of reprimand from CACTUS.~~

~~(c) If the Board determines that any of the criteria in Subsection (1) are absent from a hearing report, or that exceptional circumstances exist, the Board shall:~~

~~(i) remand the case to UPPAC to cure any issues with due process; or~~

~~(ii)(A) issue findings specifying the defects in the hearing report and adopting the Board's agreed upon disposition of the matter; and~~

~~(B) direct the Executive Secretary to include the findings as an addendum to the hearing report, which findings constitute final Board action.~~

~~(d) Following Board adoption of a hearing report or alternative findings, the Executive Secretary shall:~~

~~(i) notify the educator;~~

~~(ii) notify the educator's employer;~~

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

~~(iv) report the action to the NASDTEC Educator Information Clearing house if the action results in:~~

~~(A) a revocation; or~~

~~(B) a suspension.~~

~~(8) The hearing report is a public document under [GRAMA] Title 63G, Chapter 2, Government Records Access and Management Act after final action is taken in the case, but may be redacted if it is determined that the hearing report contains particular information, the dissemination of which is otherwise restricted under the law.~~

~~(9) A respondent's failure to comply with the terms of a final disposition may result in additional discipline against the educator license.~~

~~(10) If a hearing officer fails to satisfy the hearing officer's responsibilities under this rule, the Executive Secretary may:~~

~~(1)a) notify the Utah State Bar of the failure;~~

~~(2)b) reduce the hearing officer's compensation consistent with the failure;~~

~~(3)c) take timely action to avoid disadvantaging either party; or~~

~~(4)d) preclude the hearing officer from further employment by the Board for UPPAC purposes.~~

~~(11) The Executive Secretary may waive the deadlines within this section [R277-202-12] if the Executive Secretary finds good cause.~~

~~(12) All criteria of letters of warning and reprimand, probation, suspension, and revocation[~~shall also~~] apply to the comparable sections of the final hearing report[s].~~

R277-202-13. Default.

~~(1)(a) The Executive Secretary may prepare an order of default if:~~

~~(a)i) the respondent fails to attend or participate in a properly scheduled hearing after receiving proper notice; or~~

~~(b)ii) the hearing officer recommends default as a sanction as a result of misconduct by the respondent or [his]the respondent's representative during the course of the hearing process.~~

~~(2)b) The hearing officer may determine that the respondent has failed to attend a properly scheduled hearing if the respondent has not appeared within 30 minutes of the appointed time for the hearing to begin, unless the respondent shows good cause for failing to appear in a timely manner.~~

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

~~(3) An order of default may result in a recommendation to the Board for revocation or for a suspension of no less than five years.~~

~~(4) An order of default shall result in a recommendation to the Board for a revocation if the alleged misconduct is conduct identified in Subsection 53A-6-501(5)(b).~~

R277-202-14. Rights of Victims at Hearings.

~~[A-]~~(1) If the allegations that gave rise to the underlying allegations involve abuse of a sexual or physical nature, UPPAC shall make reasonable efforts to:

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

(2)b) notify the alleged victim of the date, time, and location of the hearing.

~~[B-]~~(2) An alleged victim entitled to notification of a hearing ~~[shall be]~~is permitted, but is not required, to attend the hearing.

KEY: hearings, reports, educators

Date of Enactment or Last Substantive Amendment: [July 8,] 2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)

Education, Administration

R277-203

Request for Licensure Reinstatement and Reinstatement Procedures

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39588

FILED: 08/13/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendments to this rule provide additional language regarding the reinstatement hearing report and a new section on reinstatement from revocation of license. Conforming and technical changes are also provided.

SUMMARY OF THE RULE OR CHANGE: Additional language regarding the reinstatement hearing report, the Utah State Board of Education's process for reviewing hearing reports, and a new section on reinstatement from revocation of license is provided. Conforming and technical changes are also provided.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X, Section 3 and Section 53A-6-306 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** Incorporating additional language regarding reinstatement procedures and providing conforming and technical changes will likely not result in a cost or savings to the state budget.

♦ **LOCAL GOVERNMENTS:** Incorporating additional language regarding reinstatement procedures and providing conforming and technical changes will likely not result in a cost or savings to local government.

♦ **SMALL BUSINESSES:** Incorporating additional language regarding reinstatement procedures and providing conforming and technical changes will likely not result in a cost or savings to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Incorporating additional language regarding reinstatement procedures and providing conforming and technical changes will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Incorporating additional language regarding reinstatement procedures and providing conforming and technical changes will likely not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Benjamin Rasmussen by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at benjamin.rasmussen@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2015

AUTHORIZED BY: Benjamin Rasmussen, UPPAC Director and Special Counsel

R277. Education, Administration.

R277-203. Request for Licensure Reinstatement and Reinstatement Procedures.

R277-203-1. Authority and Purpose.

~~[A-]~~(1) This rule is authorized ~~[under]~~by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board[;];

(b) ~~[by]~~Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures[;]; and

(c) ~~[by]~~Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.

~~[B-]~~(2) The purpose of this rule is to establish procedures regarding educator license reinstatement.

~~[(C)](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).

R277-203-2. Application for Licensing Following Denial or Loss of License.

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

~~[(2)]b~~ A request for review described in Subsection [R277-203-2A](1)(a) shall:

~~[(a)]i~~ be in writing;

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

~~[(e)]iii~~ have the following information:

~~[(i)]A~~ name and address of the individual requesting

review;

~~[(ii)]B~~ the action being requested;

~~[(iii)]C~~ specific evidence and documentation of compliance with terms and conditions of any remedial or disciplinary requirements or recommendations from UPPAC or the Board;

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

and

~~[(v)]E~~ signature of the individual requesting review.

~~[(B)](1)(2)(a)~~ The Executive Secretary shall review the request with UPPAC.

~~[(2)]b~~ If UPPAC determines that the request is incomplete or invalid:

~~[(a)]i~~ the Executive Secretary shall deny the request; and

~~[(b)]ii~~ notify the individual requesting reinstatement of the denial.

~~[(3)]c~~ If UPPAC determines that the request of an individual described in Subsection [R277-203-2A](1) is complete, timely, and appropriate, UPPAC shall schedule and hold a hearing as provided under Section R277-203-3.

~~[(C)](1)(3)(a)~~ Burden of Persuasion: The burden of persuasion at a reinstatement hearing shall fall on the individual seeking the reinstatement.

~~[(2)]b~~ An individual requesting reinstatement of a suspended license shall:

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

~~[(b)]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;

~~[(e)]iii~~ undergo a criminal background check [~~consistent with Utah law and R277-517~~]not more than six months prior to the requested hearing; and

~~[(d)]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 or hearing report.

~~[(3)]c~~ An individual requesting licensing following a denial shall show sufficient evidence of completion of a

rehabilitation or remediation program, if applicable, when requesting reinstatement.

~~[(D)](4)~~ 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.

R277-203-3. Reinstatement Hearing Procedures.

~~[(A)](1)~~ A hearing officer shall:

~~[(1)]a~~ preside over a reinstatement hearing; and

~~[(2)]b~~ rule on all procedural issues during the reinstatement hearing as they arise.

~~[(B)](2)~~ A hearing panel, comprising individuals as set forth in Subsection [R277-202-3(B)](2), shall:

~~[(1)]a~~ hear the evidence; and

~~[(2)]b~~ along with the prosecutor and hearing officer, question the individual seeking reinstatement regarding the appropriateness of reinstatement.

~~[(C)](3)~~ An individual seeking reinstatement may:

(a) be represented by counsel; and

(b) may present evidence and witnesses.

~~[(D)](4)~~ A party may present evidence and witnesses consistent with Rule R277-202.

~~[(E)](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.

~~[(F)](6)~~ An individual seeking reinstatement shall present documentation or evidence that supports reinstatement.

~~[(G)](7)~~ The USOE, represented by the UPPAC prosecutor, shall present any evidence or documentation that explains and supports USOE's recommendation in the matter.

~~[(H)](8)~~ Other evidence or witnesses may be presented by either party and shall be presented consistent with Rule R277-202.

~~[(I)](9)~~ The individual seeking reinstatement shall:

~~[(1)]a~~ focus on the individual's actions, rehabilitative efforts, and performance following license denial or suspension;

~~[(2)]b~~ explain item by item how each condition of the hearing report or stipulated agreement was satisfied;

~~[(3)]c~~ provide documentation in the form of evaluations, reports, or plans, as directed by the hearing report or stipulated agreement, of satisfaction of all required and outlined conditions;

~~[(4)]d~~ be prepared to completely and candidly respond to the questions of the UPPAC prosecutor and hearing panel regarding:

~~[(a)]i~~ the misconduct that caused the license suspension;

~~[(b)]ii~~ subsequent rehabilitation activities;

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

~~[(d)]iv~~ work, professional actions, and behavior between the suspension and reinstatement request;

~~[(5)]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;

~~[(6)]f~~ provide copies of all reports and documents to the UPPAC prosecutor and hearing officer at least five days before a reinstatement hearing; and

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

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

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

([2]b) specific and exact compliance with reinstatement requirements;

([3]c) counseling, if required for reinstatement;

([4]d) specific plans for avoiding previous misconduct; and

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

[K](11) If the individual seeking reinstatement sought counseling as described in Subsection [R277-203-3](3)(10)(c), the individual shall state, under oath, that he provided all relevant information and background to his counselor or therapist.

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

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

([1]a) prepare a hearing report in accordance with the requirements set forth in Section R277-203-5; and

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

[N](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.

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

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

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

([a]i) directed by UPPAC;

([b]ii) prepared by the UPPAC Executive Secretary; and

([c]iii) attached to the hearing report; or

([3]c) reject the hearing panel's recommendation.

[P](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.

~~[Q] 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 provided in the hearing panel recommendation or in the Board's motion to deny.~~

R277-203-4. Rights of a Victim at a Reinstatement Hearing.

[A](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.

~~[B](2)~~ UPPAC's notification shall:

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

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

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

([4]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.

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

([1]a) to attend the hearing; and

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

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

~~[E](5)~~ A victim choosing not to respond in writing or appear at the reinstatement hearing waives the victim's right to participate in the reinstatement process.

R277-203-5. Reinstatement Hearing Report.

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

([1]a) ~~[provide]~~a summary of the background of the original disciplinary action;

([2]b) ~~[provide]~~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;

([3]c) ~~[specifically address]~~the hearing panel's conclusions regarding petitioner's appropriateness and fitness to be a public school educator again;~~[and]~~

(d) the hearing panel's recommendation; and

([4]e) ~~[provide]~~a statement ~~[that]~~indicating whether the hearing panel's recommendation to UPPAC was unanimous or ~~[provide]~~identifying how the panel's member's voted concerning reinstatement.

~~[B](1)(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.

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

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

([1]a) remove the flag;

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

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

~~[D](4)(a)~~ UPPAC and the Board shall follow the procedures described in Subsection R277-202-12(7) when considering a reinstatement hearing report.

_____ (b) The Board decision as to whether to accept the recommendation of the reinstatement hearing report is within the Board's sole discretion.

_____ (5) 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.

_____ (6) If the Board reinstates an educator, 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.

_____ (7) 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.

R277-203-6. 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.

_____ (2) An educator may request that the Superintendent order a new hearing 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 review 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 review 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 educator and USOE staff in making a determination.

_____ (6) If the Superintendent finds that the criteria in Subsection (2)(a) have been established, the Superintendent shall direct UPPAC to conduct a new hearing consistent with Rule R277-202.

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

KEY: licensure, reinstatements, hearings; license reinstatements

Date of Enactment or Last Substantive Amendment: [July 8,] 2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)

Education, Administration
R277-204
Utah Professional Practices Advisory
Commission Criminal Background
Review

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 39589
FILED: 08/13/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to make technical and conforming changes.

SUMMARY OF THE RULE OR CHANGE: Technical and conforming changes are made to the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X, Section 3 and Section 53A-6-306 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The technical and conforming changes that are made to this rule will likely not result in a cost or savings to the state budget.

♦ **LOCAL GOVERNMENTS:** The technical and conforming changes that are made to this rule will likely not result in a cost or savings to local government.

♦ **SMALL BUSINESSES:** The technical and conforming changes that are made to this rule will likely not result in a cost or savings to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The technical and conforming changes that are made to this rule will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The technical and conforming changes that are made to this rule will likely not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Benjamin Rasmussen by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at benjamin.rasmussen@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2015

AUTHORIZED BY: Benjamin Rasmussen, UPPAC Director and Special Counsel

R277. Education, Administration.

R277-204. Utah Professional Practices Advisory Commission Criminal Background Review.

R277-204-1. Authority and Purpose.

~~[A-]~~(1) This rule is authorized ~~[under]~~by:

~~(a)~~ Utah Constitution Article X, Section 3~~2~~, which vests general control and supervision over public education in the Board~~[-]~~;

~~(b)~~ ~~[by-]~~Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures~~[-]~~; and

~~(c)~~ ~~[by-]~~Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.

~~[B-]~~(2) The purpose of this rule is:

~~(a)~~ to establish procedures for an applicant to proceed toward licensing; or

~~(b)~~ be denied to continue when an application or recommendation for licensing or renewal identifies offenses in the applicant's criminal background check.

~~[C-]~~(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).

R277-204-2. Initial Submission and Evaluation of Information.

~~[A-]~~(1) The Executive Secretary shall review all information received as part of a criminal background review.

~~[B-]~~(2) The Executive Secretary may request any of the following information from an educator in determining how to process a criminal background review:

~~(1)~~~~[a]~~ a letter of explanation for each reported offense that details the circumstances, the final disposition, and any explanation for the offense the applicant may want to provide UPPAC, including any advocacy for approving licensing;

~~(2)~~~~[b]~~ official documentation regarding each offense, including court records and police reports for each offense, or if both court records and police reports are not available, a letter on official police or court stationery from the appropriate court or police department involved, explaining why the records are not available; and

~~(3)~~~~[c]~~ any other information that the Executive Secretary considers relevant under the circumstances in a criminal background review.

~~[E-]~~~~(1)~~~~[3]~~~~(a)~~ The Executive Secretary may only process a criminal background review after receipt of all letters of explanation and documentation requested in good faith by the Executive Secretary.

~~(2)~~~~[b]~~ The Executive Secretary shall provide timely notice if the information provided by an applicant is incomplete.

~~[D-]~~~~(4)~~ 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 has terminated.

~~[E-]~~~~(5)~~ It is the applicant's sole responsibility to provide any requested material to the Executive Secretary.

~~[F-]~~~~(6)~~ The Executive Secretary shall process criminal background reviews subject to the following criteria:

~~(1)~~~~[a]~~ the Executive Secretary may clear a criminal background review without further action if the arrest, citation, or charge resulted in a dismissal, unless the dismissal resulted from a plea in abeyance agreement;

~~(2)~~~~[b]~~ the Executive Secretary shall forward a recommendation to clear the following criminal background reviews directly to the Board:

~~(a)~~~~[i]~~ singular offenses committed by an applicant, excluding offenses identified in Subsection ~~[R277-204-2F(3)](6)(c)~~, if the arrest occurred more than two years prior to the date of submission to UPPAC for review;

~~(b)~~~~[ii]~~ more than two offenses committed by the applicant, excluding offenses identified in Subsection ~~[R277-204-2F(3)](6)(c)~~, if at least one arrest occurred more than five years prior to the date of submission to UPPAC for review; or

~~(c)~~~~[iii]~~ more than two offenses committed by the applicant, excluding offenses identified in Subsection ~~[R277-204-2F(3)](6)(c)~~, if all arrests for the offenses occurred more than 10 years prior to the date of submission to UPPAC for review;

~~(3)~~~~[c]~~ the Executive Secretary shall forward the following criminal background reviews to UPPAC, which shall make a recommendation to the Board for final action:

~~(a)~~~~[i]~~ convictions or pleas in abeyance for any offense where the offense date occurred less than two years prior to the date of submission to UPPAC;

~~(b)~~~~[ii]~~ convictions or pleas in abeyance for multiple offenses where all offenses occurred less than five years prior to the date of submission to UPPAC;

~~(c)~~~~[iii]~~ convictions or pleas in abeyance for felonies;

~~(d)~~~~[vi]~~ arrests, convictions, or pleas in abeyance for sex-related or lewdness offenses;

~~(e)~~~~[v]~~ convictions or pleas in abeyance for alcohol-related offenses or drug-related offenses where the offense date was less than five years prior to the date of submission to UPPAC;

~~(f)~~~~[vi]~~ convictions or pleas in abeyance involving children in any way; and

~~(g)~~~~[vii]~~ convictions or pleas in abeyance involving any other matter which the Executive Secretary determines, in his discretion, warrants review by UPPAC and the Board; and

~~(4)~~~~[d]~~ If the criminal background review involves a conviction for an offense requiring mandatory revocation under Subsection 53A-6-501(5)(b) or meeting the definition of sex offender under Subsection 77-41-102(1[6]7), the Executive

Secretary shall forward a recommendation directly to the Board that clearance be denied.

~~(G)~~(7) The Executive Secretary shall use reasonable discretion to interpret the information received from the Bureau of Criminal Identification to comply with the provisions of this rule.

~~(H)~~(8) In Board review of recommendations of the Executive Secretary and UPPAC for criminal background checks, the following shall apply:

(a) the Board shall consider a criminal background review in accordance with the standards described in Section 53A-6-405;

~~(1)~~b) the Board may uphold any recommendation of the Executive Secretary or UPPAC, which action shall be the final agency action of USOE;

~~(2)~~c) the Board may substitute its own judgment in lieu of the recommendation of the Executive Secretary or UPPAC, which action shall be the final agency action of USOE; and

~~(3)~~d) if the Board chooses to substitute its own judgment in a criminal background review, the Board shall adopt findings articulating its reasoning.

~~(4)~~(9) If a criminal background review arises as a result of conduct that was cleared in a prior criminal background review by the Executive Secretary, UPPAC, or the Board, the prior action shall be deemed final, and the Executive Secretary shall clear the criminal background review.

~~(5)~~(10) If a criminal background review results in an applicant's denial, the applicant may request to be heard, and to have the matter reconsidered by the Board, consistent with the requirements of Subsection 53A-15-1506(1)(c).

KEY: educator licenses, background reviews, background checks

Date of Enactment or Last Substantive Amendment: ~~July 8,~~ 2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)

Education, Administration R277-205 Alcohol Related Offenses

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 39590

FILED: 08/13/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The is rule amended to provide technical and conforming changes.

SUMMARY OF THE RULE OR CHANGE: Technical and conforming changes are made to the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X, Section 3 and Section 53A-6-306 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** Technical and conforming changes will likely not result in a cost or savings to the state budget.

♦ **LOCAL GOVERNMENTS:** Technical and conforming changes will likely not result in a cost or savings to local government.

♦ **SMALL BUSINESSES:** Technical and conforming changes will likely not result in a cost or savings to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Technical and conforming changes will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Technical and conforming changes will likely not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I believe that there is likely no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION

ADMINISTRATION

250 E 500 S

SALT LAKE CITY, UT 84111-3272

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Benjamin Rasmussen by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at benjamin.rasmussen@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2015

AUTHORIZED BY: Benjamin Rasmussen, UPPAC Director and Special Counsel

R277. Education, Administration.

R277-205. Alcohol Related Offenses.

R277-205-1. Authority and Purpose.

~~(A)~~(1) This rule is authorized ~~under~~ by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board~~;~~;

(b) ~~by~~Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures~~;~~; and

~~(c)~~ ~~[by]~~ Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.

~~[B:]~~(2) The purpose of this rule is to establish procedures for disciplining educators regarding alcohol related offenses.

~~[C:]~~(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).

R277-205-2. Action by the Board if a Licensed Educator Has Been Convicted of an Alcohol Related Offense.

~~[A:]~~(1)(a) If as a result of a background check, it is discovered that a licensed educator has been convicted of an alcohol related offense in the previous five years, UPPAC shall adhere to the ~~[following]~~ minimum conditions described in this Subsection (1).~~;~~

(1)(b) One conviction--a letter shall be sent to the educator informing the educator of the provisions of this rule~~;~~.

(2)(c) Two convictions--a letter shall be sent to the educator informing the educator of the provisions of this rule and requiring documentation of clinical assessment and recommended treatment following the second conviction~~;~~.

(3)(d) If the most recent conviction was more than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical assessment and recommended treatment, UPPAC shall recommend that the Board send a letter of warning to the educator~~;~~.

(4)(e) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical assessment and recommended treatment, UPPAC shall recommend that the Board send a letter of reprimand to the educator and a letter to the district, if employed~~;~~.

(5)(f) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides no documentation of clinical assessment and recommended treatment, UPPAC or the Board may initiate an investigation of the educator based upon the alcohol offenses~~;~~.

(6)(g) Three convictions--a letter shall be sent to the educator informing the educator of the provisions of this rule and requiring documentation of clinical assessment and recommended treatment following the third conviction~~;~~.

(7)(h) If the most recent conviction was more than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical assessment and recommended treatment, UPPAC shall recommend that the Board send a letter of warning to the educator~~;~~.

(8)(i) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical assessment and recommended treatment, UPPAC shall recommend that the Board send a letter of reprimand to the educator and send a copy of the letter of reprimand to the educator's employer~~;~~ ~~and~~.

(9)(j) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides no documentation of clinical assessment and recommended treatment, UPPAC shall recommend suspension of the educator's license to the Board, subject to the educator's right to a hearing under Rule R277-202.

~~[B:]~~(2) This rule does not preclude more serious or additional action by the Board against an educator for other related or unrelated offenses.

R277-205-3. Board Action Toward Individuals Who Do Not Hold Licensing.

(1) If as a result of a background check, it is discovered that an individual inquiring about educator licensing, seeking information about educator licensing, or placed in a public school for any purpose requiring a background check, has been convicted of an alcohol related offense within five years of the date of the background check, the ~~[following]~~ minimum conditions described in this section shall apply~~;~~.

~~[A:]~~(2) ~~[e]~~ One conviction--the individual shall be denied Board clearance for a period of one year from the date of the arrest~~;~~.

~~[B:]~~(3) ~~[t]~~ Two convictions--the individual shall be denied Board clearance for a period of two years from the date of the most recent arrest and the applicant shall present documentation of clinical assessment and recommended treatment before Board clearance shall be considered~~;~~ ~~and~~.

~~[C:]~~(4) ~~[t]~~ Three convictions--the Board may require the applicant to present documentation of clinical assessment and recommended treatment and may deny clearance.

KEY: educators, disciplinary actions, alcohol, background checks

Date of Enactment or Last Substantive Amendment: [July 8,] 2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)

Education, Administration

R277-206

Drug Related Offenses

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39591

FILED: 08/13/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide technical and conforming changes.

SUMMARY OF THE RULE OR CHANGE: Technical and conforming changes are provided.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X, Section 3 and Section 53A-6-306 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** Technical and conforming changes will likely not result in a cost or savings to the state budget.

- ◆ LOCAL GOVERNMENTS: Technical and conforming changes will likely not result in a cost or savings to local government.
- ◆ SMALL BUSINESSES: Technical and conforming changes will likely not result in a cost or savings to small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Technical and conforming changes will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Technical and conforming changes will likely not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I believe that there is likely no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Benjamin Rasmussen by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at benjamin.rasmussen@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2015

AUTHORIZED BY: Benjamin Rasmussen, UPPAC Director and Special Counsel

R277. Education, Administration.

R277-206. Drug Related Offenses.

R277-206-1. Authority and Purpose.

~~[A-](1)~~ This rule is authorized ~~under~~ ~~by~~:

~~(a)~~ Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board~~;~~;

~~(b)~~ ~~by~~ Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures~~;~~ and

~~(c)~~ ~~by~~ Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.

~~[B-](2)~~ The purpose of this rule is to establish procedures for disciplining educators regarding drug related offenses.

~~[C-](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).

R277-206-2. Action by the Board if a Licensed Educator Has Been Convicted of a Drug Related Offense.

~~[A-](1)(a)~~ If as a result of a background check, it is discovered that a licensed educator has been convicted of a drug related offense in the previous ten years, the ~~following~~ minimum conditions ~~described in this Subsection (1)~~ shall apply~~;~~.

~~(1)(b)~~ ~~[0]~~ One conviction--a letter shall be sent to the educator informing the educator of the provisions of this rule~~;~~.

~~(2)(c)~~ ~~[1]~~ Two convictions--a letter shall be sent to the educator informing the educator of the provisions of this rule and requiring documentation of clinical assessment and recommended treatment following the second conviction~~;~~.

~~(3)(d)~~ If the most recent conviction was more than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical treatment, the Board shall send a letter of warning to the educator~~;~~.

~~(4)(e)~~ If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical treatment, the Board shall send a letter of reprimand to the educator and a letter to the district with notice of treatment~~;~~.

~~(5)(f)~~ If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides no documentation of clinical treatment, UPPAC or the Board may initiate an investigation of the educator based upon the drug offenses~~;~~.

~~(6)(g)~~ Three convictions--a letter shall be sent to the educator informing the educator of the provisions of this rule and requiring documentation of clinical treatment following the third conviction~~;~~.

~~(7)(h)~~ If the most recent conviction was more than five years prior to the discovery of the conviction(s) and the educator provides documentation of clinical assessment and recommended treatment, the Board shall send a letter of warning to the educator~~;~~.

~~(8)(i)~~ If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical assessment and recommended treatment, the Board shall send a letter of reprimand to the educator and send a copy of the letter of reprimand to the educator's employer~~;~~ ~~and~~.

~~(9)(j)~~ If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides no documentation of clinical assessment and recommended treatment, UPPAC shall recommend suspension of the educator's license to the Board, subject to the educator's right to a hearing under Rule R277-202.

~~[B-](2)~~ This rule does not preclude more serious or additional action by the Board against an educator if circumstances warrant it.

R277-206-3. Board Action Towards an Individual Who Does Not Hold Licensing.

~~[A-](1)(a)~~ If as a result of a background check, it is discovered that an applicant has been convicted of a drug related offense within ten years of the date of the background check, the ~~following~~ minimum conditions described in this Subsection (1) shall apply~~;~~.

(~~1~~)b) ~~(e)~~One conviction--the individual shall be denied clearance for a period of one year from the date of the conduct giving rise to the charge~~;~~.

(~~2~~)c) ~~(f)~~Two convictions--the individual shall be denied clearance for a period of three years from the date of the conduct giving rise to the most recent charge and the applicant shall present documentation of clinical assessment and recommended treatment before clearance shall be considered~~;~~~~and~~.

(~~3~~)d) ~~(g)~~Three convictions--the individual shall be denied clearance for a period of five years from the date of the conduct giving rise to the most recent charge.

~~(B-)~~(2) UPPAC or the Board may require the applicant to present documentation of clinical assessment and recommended treatment and may recommend denial of clearance.

KEY: educators, disciplinary actions, drug offenses, background checks
Date of Enactment or Last Substantive Amendment: [July 8,] 2015
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)

Education, Administration
R277-406
K-3 Reading Improvement Program and the State Reading Goal

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 39592
FILED: 08/13/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide provisions for the Utah State Board of Education to develop uniform standards for acceptable growth goals that a local education agency (LEA) adopts taking into account the approach to calculating the uniform growth goal for LEAs based on Dynamic Indicators of Basic Early Literacy Skills (DIBELS) data and student growth. The amendments also include technical and conforming changes.

SUMMARY OF THE RULE OR CHANGE: The amendments to this rule provide language regarding how the uniform growth goal for LEAs will be calculated and a target of 47.83% for the percentage of students making typical, above typical, or well-above typical progress from the beginning of 3rd grade to the end of the year. Technical and conforming changes are also provided.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X, Section 3 and Subsection 53A-1-401(3) and Subsection 53A-17a-150(14)(a)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The amendments providing how the uniform growth goal will be calculated and technical and conforming changes will likely not result in a cost or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** The amendments providing how the uniform growth goal will be calculated and technical and conforming changes will likely not result in a cost or savings to local government.
- ◆ **SMALL BUSINESSES:** The amendments providing how the uniform growth goal will be calculated and technical and conforming changes will likely not result in a cost or savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments providing how the uniform growth goal will be calculated and technical and conforming changes will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments providing how the uniform growth goal will be calculated and technical and conforming changes will likely not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I believe that there is likely no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
◆ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2015

AUTHORIZED BY: Benjamin Rasmussen, UPPAC Director and Special Counsel

R277. Education, Administration.
R277-406. K-3 Reading Improvement Program and the State Reading Goal.
R277-406-[2]1. Authority and Purpose.
~~(A-)~~(1) This rule is authorized ~~[under]~~by:

~~(a)~~ Utah Constitution, Article X Section 3, which vests general control and supervision over public education in the Board ~~by~~;

~~(b)~~ Subsection 53A-1-401(3), which allows the Board to make rules in accordance with its responsibilities ~~;~~ and ~~by~~

~~(c)~~ Subsection 53A-17a-150(14)(a), which directs the Board to develop rules for implementing the K-3 Reading Improvement Program.

~~(B-)(2)~~ The purpose of this rule is to outline the responsibilities of ~~[USOE]~~the Superintendent and LEAs for implementation of Section 53A-17A-150, K-3 Reading Improvement Program, and Section 53A-1-606.5, State Reading Goal-Reading Achievement Plan.

R277-406-~~1~~2. Definitions.

~~(A-)(1)~~ "Benchmark assessment" means an assessment that:

- ~~(a)~~ is given three times each year at:
 - ~~(i)~~ the ~~(f)~~beginning of the school year ~~;~~;
 - ~~(ii)~~ ~~middle~~the midpoint of the school year ~~;~~; and
 - ~~(iii)~~ the end of the school year ~~);~~;
- ~~(b)~~ ~~designed to~~ gives teachers information to:
 - ~~(i)~~ plan appropriate instruction ~~;~~; and
 - ~~(ii)~~ evaluate the effects of ~~that~~ instruction ~~;~~; and ~~(to)~~
- ~~(c)~~ provides data about the extent to which students are prepared to be successful on the end of year Criterion Referenced Test.

~~(B-)~~ "Board" means the Utah State Board of Education.

~~(C-)(2)~~ "Grade level in reading" means that a student gains adequate meaning from independently reading texts designed for instruction at that grade level.

~~(D-)~~ "LEA" means a local education agency, including local school boards, public school districts and charter schools.

~~(E-)(3)~~ "LEA plan" means the K-3 Reading Achievement Program Plan submitted by a public school district ~~(s and public)~~ or a charter school ~~(s)~~.

~~(F-)(4)~~ "Midpoint of school year" means January 31 of the school year.

~~(G-)(5)~~ "Program" means the K-3 Reading Improvement Program.

~~(H-)(6)~~ "Program money" means ~~[funds allocated to an LEA through the K-3 Reading Improvement Program]~~the same as that term is defined in Section 53A-17a-150.

~~(I-)(7)~~ "School plan" means the K-3 Reading Achievement Program Plan submitted by a public school ~~;~~ including or a charter school ~~(s)~~.

~~(J-)~~ "USOE" means the Utah State Office of Education

R277-406-3. Board/~~[USOE]~~Superintendent Responsibilities.

~~(A-)~~ The USOE shall provide model Program plans.

~~(B-)(1)~~ The Board shall approve ~~(the P)~~a program plan ~~(s)~~ submitted by an LEA ~~(s)~~ pursuant to ~~[R277-406-4A]~~Subsection R277-406-4(1).

~~(C-)~~ The Board shall develop uniform standards for acceptable growth goals that an LEA adopts.

~~(2)~~ In accordance with Section 53A-17a-150, the uniform standard for a growth goal is that the goal:

- ~~(a)~~ signifies the percentage of third grade students who made typical, above typical, or well-above typical progress from the

~~beginning of the year to the end of the year in third grade as measured by the benchmark assessment; and~~

~~(b)~~ sets the target percentage of third graders making typical progress or better at 47.83 percent.

~~(3)~~ The Superintendent shall use the information provided by an LEA described in Subsection R277-406-4(3) to determine the progress of each student in grade 3 within the following categories:

- ~~(i)~~ well-above typical;
- ~~(ii)~~ above typical;
- ~~(iii)~~ typical;
- ~~(iv)~~ below typical; or
- ~~(v)~~ well-below typical.

~~(D-)~~ The USOE shall prepare and disseminate a Program report at the end of each school year from information submitted by LEAs.

~~(E-)~~ The Board shall make a report to the Public Education Appropriations Subcommittee that includes information on:

- ~~(1)~~ student learning gains in reading for the past school year and the previous five years;
- ~~(2)~~ the percentage of third grade students reading on grade level in the past school year and the previous five years;
- ~~(3)~~ progress of schools and school districts in meeting the goals in their K-3 Reading Improvement Plan(s);
- ~~(4)~~ correlation between third grade students reading on grade level and results of third grade language arts scores on criterion-referenced test or computer adaptive test; and
- ~~(5)~~ may include recommendations on how to increase the percentage of third grade students that read on grade level.

R277-406-4. Responsibilities of LEAs.

~~(A-)(1)~~ To receive Program money, ~~[each elementary school or]~~a school with K-3 grade levels shall submit a school plan to its local board or charter board, and each LEA shall submit an LEA plan to the Board for reading proficiency improvement that incorporates the ~~[following]~~components described in Subsections 53A-1-606.5(3)(d) and 53A-17a-150(4)(a). ~~;~~

- ~~(1)~~ assessment;
- ~~(2)~~ intervention strategies;
- ~~(3)~~ research-based best practices;
- ~~(4)~~ professional development for classroom teachers in kindergarten through grade three;
- ~~(5)~~ reading performance standards;
- ~~(6)~~ opportunity for parents to receive materials and guidance to assist their child at home; and
- ~~(7)~~ specific measurable, gain-score goals that include:
 - ~~(a)~~ a goal of having every student reading at grade level by the end of grade three;
 - ~~(b)~~ a growth goal for each public school based on student learning gains as measured by benchmark assessments administered to increase the percentage of students who are at or above grade level at the end of third grade pursuant to Section 53A-1-603(2)d;
 - ~~(c)~~ goals for kindergarten, first grade, second grade, and third grade for each public school based upon student learning gains. As of July 1, 2012 this gain score goal must be based on benchmark assessments administered pursuant to Section 53A-1-606-6; and
 - ~~(d)~~ a growth goal for each public school to increase the percentage of third grade students who read on grade level from

~~year to year as measured by the third grade reading test administered pursuant to Section 53A-1-603.~~

~~(8) reporting to parents:~~

~~(a) effective July 1, 2012, at the beginning, in the middle, and at the end of grade one, grade two, and grade three, parents shall receive their child's benchmark assessment results as required by Section 53A-1-606.6; and~~

~~(b) at the end of the third grade year, parents shall be notified whether or not the child is at grade level in reading.~~

~~] [B.](2) The school plan shall be created:~~

~~(1)a) for a school[s] in a district, under the direction of the school community council;~~

~~(2)b) for a charter school[s], under the direction of the charter school governing board.~~

~~[C. Program money shall be used only for reading proficiency improvement and only for students in kindergarten, first grade, second grade, and third grade, and may be used to supplement but not supplant other programs.~~

~~D. Program money may be used for:~~

~~(1) reading assessments;~~

~~(2) focused reading interventions that have proven to significantly increase the percentage of students reading at grade level including the use of:~~

~~(a) reading specialists;~~

~~(b) tutoring;~~

~~(c) before or after school programs;~~

~~(d) summer school programs;~~

~~(e) the use of reading software;~~

~~(f) or the purchase of portable technology devices used to administer reading assessments; or~~

~~(g) the use of interactive computer software programs for literacy instruction and assessments for students.~~

~~E. An LEA that uses Program money in a manner that is inconsistent with these rules, Utah law, or established rules of fiscal accountability shall be directed to reimburse the Board for the amount of money improperly used or managed.~~

~~] [F.](3)(a) An LEA[s] shall complete the report [pursuant to R277-406-3D]required by Subsections 53A-17a-150(13)(a) and 53A-17a-150(14)(b)(i) within timelines set by the [USOE]Superintendent.~~

~~[G. If for two consecutive years an LEA fails to meet its goal to increase the percentage of third grade students who read on grade level, the LEA shall not receive K-3 Reading Improvement Program money the following year, and an LEA shall terminate any levy imposed under Section 53A-17a-151.~~

~~I. An LEA shall provide data and information for the USOE's year-end Program report to the Public Education Appropriations Subcommittee consistent with Section 53A-17a-150(16). LEAs shall report:~~

~~(1) progress in meeting gain score goals for kindergarten, first grade, second grade, and third grade, including information from the previous five years;~~

~~] (b) The report shall include:~~

~~(i) the information described in Subsection 53A-17a-150(16)(a) for kindergarten, first grade, second grade, and third grade, including information from the previous five years; and~~

~~(ii) the composite scores on the benchmark assessment of students in grades 1 through 3 to the Superintendent.~~

~~(A) through UTREx; and~~

~~(B) on or before July 1 of each year.~~

~~[(2) progress in meeting the state goal of all students at or above grade level in reading at the end of third grade, including the previous five years; and~~

~~(3) how Program money was expended, by categories of expenditure.~~

~~] [H.](4) An LEA that loses Program money due to a failure to meet its goal of increasing the percentage of third grade students at grade level may reapply for the Program money upon submission of a revised K-3 Reading Improvement Plan after one year of not receiving Program money.~~

KEY: reading, improvements, goals

Date of Enactment or Last Substantive Amendment: [August 7, 2013]2015

Notice of Continuation: June 10, 2013

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-17a-150(14)(a)

**Education, Administration
R277-477
Distribution of Funds from the Interest
and Dividend Account and
Administration of the School LAND
Trust Program**

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 39593

FILED: 08/13/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide for the requirements of H.B. 213, 2015 General Session concerning school community council involvement in schools' Internet filtering procedures. The rule is further amended to provide language to clarify the approved and unapproved expenditures to ensure that schools continue to spend their allocation of School LAND Trust Program money appropriately and in line with statutory requirements.

SUMMARY OF THE RULE OR CHANGE: The changes include providing guidance to school community councils on how to participate in overseeing a school's internet filtering procedures; adding to the list of approved and unapproved expenditures; augmenting the formula for distributions to new charter schools; and making technical and conforming changes throughout.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X, Section 3 and Subsection 53A-1-401(3) and Subsection 53A-16-101.5(4)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The provisions of the reenacted rule will likely not result in a cost or savings to the state budget.
- ◆ LOCAL GOVERNMENTS: Local education agencies may incur costs to ensure that on and off campus internet filtering systems are in place. Costs to build an internet filtering appliance from scratch could cost around \$13,000 to \$15,000 a year depending on system requirements. Resources available through the Utah Education Network and authority to use School LAND Trust funding for these expenses may help to mitigate additional costs.
- ◆ SMALL BUSINESSES: The provisions of the reenacted rule will likely not result in a cost or savings to small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The provisions of the reenacted rule will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The provisions of the reenacted rule will likely not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I believe that there is likely no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2015

AUTHORIZED BY: Benjamin Rasmussen, UPPAC Director and Special Counsel

R277. Education, Administration.

~~[R277-477. Distribution of Funds from the Interest and Dividend Account and Administration of the School LAND Trust Program.~~

R277-477-1. Definitions.

~~A. "Approving Entity" means the school district, University, or other legally authorized entity that approves or rejects plans for a district or charter school.~~

~~B. "Board" means the Utah State Board of Education. The Board is the primary beneficiary representative and advocate for beneficiaries of the School Trust corpus and the School LAND Trust Program.~~

~~C. "Chartering Entity" means the school district, Board, university, or other entity authorized to charter a charter school.~~

~~D. "Charter trust land council" means a council comprised of a two person majority of elected parents or guardians of students attending the charter school and may include other members, as determined by the board of the charter school. The governing board of a charter school may serve as a charter trust land council if the board membership includes at least two more parents or guardians of students currently enrolled at the school than all other members combined consistent with Section 53A-16-101.5. If not, the board of the charter school shall develop a school policy governing the election of a charter trust land council. R277-491 does not apply to charter trust land councils.~~

~~E. "Councils" means school community councils and charter trust lands councils.~~

~~F. "Fall enrollment report" means the audited census of students registered in Utah public schools as reported in the audited October 1 Fall Enrollment Report from the previous year.~~

~~G. "Funds" means interest and dividend income as defined under Section 53A-16-101.5(2).~~

~~H. "Interest and Dividends Account" means a restricted account within the Uniform School Fund created under Section 53A-16-101 established to collect interest and dividends from the permanent State School Fund until the end of the fiscal year. The USOE distributes funds to school districts, charter schools and the USDB through the School LAND Trust Program at the beginning of the next fiscal year.~~

~~I. "Local board of education" means the locally-elected board designated in Section 53A-3-101 that makes decisions and directs the actions of local school districts, and which approves School LAND Trust plans for schools under the local board's authority.~~

~~J. "Most critical academic needs" for purposes of this rule means academic needs identified in an individual school's improvement plan developed consistent with Section 53A-1a-108.5 or identified in the school charter.~~

~~K. "Principal" means an administrator licensed as a principal in the state of Utah and employed in that capacity at a school. For the purposes of this rule, "principal" includes the director of a charter school. "Principal" also includes a specific designee of the principal.~~

~~L. "School Children's Trust Director" means the Director appointed by the Board under Section 53A-16-101.6 to assist the Board in fulfilling its duties as primary beneficiary representative for trust lands and funds.~~

~~M. "School community council" means the council organized at each school district public school as established in Section 53A-1a-108 and R277-491. The council includes the principal, school employee members and parent members. There shall be at least a two parent member majority.~~

~~N. "State Charter School Board (SCSB)" means the board designated under Section 53A-1a-501.5 that has responsibility for making recommendations regarding the welfare of charter schools to the Board.~~

O. "State Superintendent of Public Instruction (Superintendent)" means the individual appointed by the Board as provided for in Section 53A-1-301(1) to administer all programs assigned to the Board in accordance with the policies and the standards established by the Board.

P. "Student" means a child in public school grades kindergarten through twelve counted on the audited October 1 Fall Enrollment Report of the school district, charter school, or USDB.

Q. "USDB" means the Utah Schools for the Deaf and the Blind.

R. "USOE" means the Utah State Office of Education.

R277-477-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which places general control and supervision of the public school system under the Board, by Section 53A-16-101.5(3)(c) which allows the Board to adopt rules regarding the time and manner in which the student count shall be made for allocation of school trust land funds, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to:

(1) provide financial resources to public schools to enhance or improve student academic achievement and implement an academic component of the school improvement plan;

(2) involve parents and guardians of a school's students in decision making regarding the expenditure of School LAND Trust Program money allocated to the school;

(3) provide direction in the distribution from the Interest and Dividends Account created in Section 53A-16-101 and funded in Section 53A-16-101.5(2);

(4) provide for appropriate and adequate oversight of the expenditure and use of School LAND Trust monies by designated local boards of education, chartering entities, and the Board;

(5) provide for:

(a) appropriate and timely distribution of School LAND Trust funds;

(b) accountability of councils for notice to school community members and appropriate use of funds;

(c) independent oversight of the agencies managing school trust lands and the permanent State School Fund to ensure those trust assets are managed prudently, profitably, and in the best interest of the beneficiaries;

(d) representation, advocacy, and information on school trust lands and permanent State School Fund issues to all interested parties including: the School and Institutional Trust Lands Administration, the School and Institutional Trust Lands Board of Trustees, the School and Institutional Trust Fund Office, the School and Institutional Trust Fund Board of Trustees, the Legislature, the Utah Attorney General's office, school community councils, and the general public;

(e) compliance by councils with requirements in statute and Board rule; and

(f) allocation of the monies as provided in Section 53A-16-101.5(3)(c) based on student count.

(6) define the roles, duties, and responsibilities of the School Children's Trust Director within the USOE.

R277-477-3. Distribution of Funds - Local Board or Local Charter Board Approval of School LAND Trust Plans.

A. All public schools receiving School LAND Trust Program funds shall have a council as required by Sections 53A-1a-108 and R277-491, a charter school trust lands council as required in 53A-16-101.5(7), or have a local board approved exemption under R277-491-3E. District public schools and charter schools shall submit a Principal Assurance Form, as described in R277-491-5A.

B. All charter schools that elect to receive School LAND Trust funds shall have a charter trust lands council, develop an academic plan in accordance with the school charter, and report the date when the charter trust lands council and charter board approved the plan. The principal for each charter school that elects to receive School LAND Trust funds shall submit a plan on the School LAND Trust Program website no later than May 1; newly opening charter schools shall submit plans on the School LAND Trust Program website no later than October 1 in the school's first year.

C. An approving entity shall consider plans annually and may approve or disapprove a school plan. If the approving entity does not approve a plan, the approving entity shall provide a written explanation explaining why the plan was not approved and request that the school revise the plan, consistent with Section 53A-16-101.5.

D. The principal for each public school shall provide information on each school's plan to address most critical academic needs and complete the USOE-provided form via the School LAND Trust website.

(1) Along with each plan, the principal shall submit a record of the vote by the school community council or charter trust land council approving the school plan.

(2) The approval shall include the date of the vote, votes for, against, and absent, consistent with Section 53A-16-101.5.

E. To facilitate schools' submission of information, each local board of education shall establish a school district submission date for the school district schools not later than May 1 of each year. Timelines shall allow for school community council reconsideration and amendment of the school plans if the approving entity rejects a plan.

F. The USOE shall only distribute funds to schools with plans approved by the approving entity.

G. Approving entity responsibilities:

(1) Principals shall show at least one of the training DVDs available on the School LAND Trust website in at least one school faculty meeting annually. In the same meeting, the principal shall explain how the school is spending its School LAND Trust funds.

(2) Prior to approval of school plans, the approving entity shall ensure that plans include academic goals, specific steps to meet those goals, measurements to assess improvement and specific expenditures focused on student academic improvement.

(3) The USOE shall not distribute funds until a school has an approved plan to use funds to enhance or improve a school's academic excellence consistent with Section 53A-16-101.5 and R277-477.

(4) The School Children's Trust Director shall review and approve all charter school plans on behalf of the SCSB. The School

Children's Trust Director shall also provide notice as necessary to the SCSB of changes required of charter schools for compliance with state law and Board rule.

~~R277-477-4. Appropriate Use of School LAND Trust Program Funds:~~

~~A. Examples of successful plans using School LAND Trust Program monies include programs focused on:~~

- ~~(1) credit recovery courses and programs;~~
- ~~(2) study skills classes;~~
- ~~(3) college entrance exam preparation classes;~~
- ~~(4) academic field trips;~~
- ~~(5) classroom equipment and materials such as flashcards, math manipulatives, calculators, microscopes, maps or books;~~
- ~~(6) teachers, teacher aides, and student tutors;~~
- ~~(7) professional development directly tied to school academic goals;~~
- ~~(8) student focused educational technology, including hardware and software, computer carts and work stations;~~
- ~~(9) books, textbooks, workbooks, library books, bookcases, and audio-visual materials;~~
- ~~(10) student planners; and~~
- ~~(11) nominal student incentives that are academic in nature or of marginal total cost.~~

~~B. Examples of plans ineligible for School LAND Trust Program funding include:~~

- ~~(1) security;~~
- ~~(2) phone, cell phone, electric, and other utility costs;~~
- ~~(3) sports and playground equipment;~~
- ~~(4) athletic or intermural programs;~~
- ~~(5) extra-curricular non-academic expenditures;~~
- ~~(6) audio-visual systems in non-classroom locations;~~
- ~~(7) non-academic field trips;~~
- ~~(8) food and drink for council meetings or parent nights;~~
- ~~(9) printing and mailing costs for notices to parents;~~
- ~~(10) accreditation, administrative, clerical, or secretarial costs;~~
- ~~(11) cash or cash equivalent incentives for students;~~
- ~~(12) other furniture;~~
- ~~(13) staff bonuses; and~~
- ~~(14) similar non-instructional items or programs.~~

~~C. Each school plan may budget and spend no more than the lesser of \$5,000 or 20 percent of the annual allocation of School LAND Trust funds for in-school civic and character education including student leadership skills training and positive behavior intervention. A school may designate funds for these programs/activities only if the plan clearly describes how these activities/programs directly affect student academic achievement.~~

~~D. Schools that are specifically designated to serve students with disabilities may use funds as needed to directly influence and improve student performance according to the students' Individual Education Plans (IEPs).~~

~~E. The school trust is intended to benefit all of Utah's school children. The Board encourages councils to design and implement plans in a way that benefits all children at each school.~~

~~F. School districts and charter schools choosing to submit information to the School LAND Trust website through a comprehensive electronic plan shall satisfy standards for~~

~~programming and data entry required by the USOE. They shall review School LAND Trust plans on the USOE website prior to local board of education or chartering entity approval to ensure information consistent with the law has been downloaded by individual schools into the electronic plan visible on the School LAND Trust Program website.~~

~~G. Principals shall ensure that all council members have the opportunity to sign the form indicating their involvement in implementing the current School LAND Trust plan and developing the school plan for the upcoming year. A principal shall upload the form to the database.~~

~~H. Prior to approval of the School LAND Trust plans, the president or chair of an approving entity shall ensure that the members of the approving entity receive annual training on the requirements of Section 53A-16-101.5.~~

~~I. When approving school plans on the School LAND Trust Program website, the approving entity shall report the meeting date(s) when the approving entity approved the plans.~~

~~R277-477-5. Distribution of Funds -- Determination of Proportionate Share.~~

~~A. A designated amount appropriated by the Legislature from the Interest and Dividends Account shall fund the School Children's Trust Section, the administration of the program and other duties outlined in this rule and Sections 53A-16-101.5 and 53A-16-101.6. The USOE shall deposit any unused balance initially allocated for School LAND Trust Program administration in the Interest and Dividends Account for future distribution to schools through the School LAND Trust Program.~~

~~B. The USOE, through the School LAND Trust Program, shall distribute funds to school districts and charter schools as provided under Section 53A-16-101.5(3)(a). The USOE shall base the distribution on the state's total fall enrollment as reflected in the audited October 1 Fall Enrollment Report from the previous school year.~~

~~C. Each school district shall distribute funds received under R277-477-3A to each school within each school district on an equal per student basis.~~

~~D. Local boards of education shall adjust distributions, maintaining an equal per student distribution within a school district, for school openings and closures and for boundary changes occurring after the audited October 1 Fall Enrollment Report of the prior year.~~

~~E. The USOE shall fund charter schools on a per pupil basis, provided that each charter school, including newly opening charter schools, receives at least 0.4 percent of the total available to charter schools as a group. A newly opening charter school shall receive the greater of 0.4 percent of the total available to charter schools as a group or the per pupil amount based on the school's estimated enrollment. The USOE shall allocate the remainder of the distribution to charter schools on a per pupil basis to all charter schools that receive an amount greater than the base 0.4 percent amount. The USOE shall increase or decrease a newly opening charter school's enrollment in the school's second year to reflect the school's actual initial October 1 enrollment.~~

~~F. If a school chooses not to apply for School LAND Trust Program funds or does not meet the requirements for receiving funds, the USOE shall retain the funds allocated for that~~

school and include those funds in the statewide distribution for the following school year.

~~_____ G. Local boards of education and school districts shall ensure timely notification to chairs and principals of the availability of the funds to schools with approved plans.~~

~~_____ H. The School Children's Trust Director shall review and approve all plans submitted by the USDB governing board as necessary.~~

~~R277-477-6. School LAND Trust Program: Implementation of Plans and Required Reporting.~~

~~_____ A. Schools shall make full good faith efforts to implement plans as approved.~~

~~_____ B. The school community council or charter school trust land council may amend a current year plan when necessary. The council shall amend the plan by a majority vote of a quorum of the council. The principal shall amend the school plan on the School LAND Trust website. The approving entity shall consider the amendment for approval, and approve amendments before funds are spent according to the amendment.~~

~~_____ C. A school may carryover funds not used in the school approved plan to the next school year and add those funds to the School LAND Trust Program funds available for expenditure in the school the following year.~~

~~_____ D. Schools shall provide an explanation for any carry over that exceeds one-tenth of the school's allocation in a single year in the school plan or report. The USOE shall consider districts and schools with consistently large carryover balances over multiple years as not making adequate and appropriate progress on their approved plans. The USOE may direct compliance reviews and corrective action.~~

~~_____ E. Approval of school plans on the School LAND Trust website affirms that the approving entity has reviewed the plans and that the plans meet the requirements of Section 53A-1a-105 and R277-477.~~

~~_____ F. District and charter school business officials shall enter prior year audited expenditures by category on the School LAND Trust website on or before October 15th. The expenditure data shall appear in the final reports submitted online by principals for reporting to parents as required in Section 53A-1a-108.~~

~~_____ G. Principals shall submit final reports on the School LAND Trust website by October 20 annually.~~

~~R277-477-7. School LAND Trust Program – School Children's Trust to Review Compliance.~~

~~_____ A. The School Children's Trust Section staff shall review each school final report for consistency with the approved school plan.~~

~~_____ B. The School Children's Trust Section staff shall create a list of all schools whose final reports indicate that funds from the School LAND Trust Program were expended inconsistent with the requirements and academic intent of the law, inconsistent with R277-477 or R277-491, or inconsistent with the local board of education/charter board approved plan. The School Children's Trust Section staff shall report this list of schools to the district contact, district superintendent, and local board of education or charter board president annually.~~

~~_____ C. USOE staff may visit schools receiving funds from the School LAND Trust Program to discuss the program, receive information and suggestions, provide training, and answer questions.~~

~~_____ D. The School Children's Trust Director shall supervise annual compliance reviews to review expenditure of funds relative to the approved plan and allowable expenses.~~

~~_____ E. The School Children's Trust Director shall report annually to the Board Audit Committee on compliance review findings and other compliance issues. The Board Audit Committee shall make determinations regarding questioned costs and corrective action, following review and consideration of compliance and financial reviews conducted by the School Children's Trust Section staff.~~

~~_____ F. The Board Audit Committee may recommend to the Board that the Board reduce or eliminate funds if a school fails to comply with Utah law or Board rule. The Board may require that the school reimburse the School LAND Trust Program for any inappropriate expenditures.~~

~~R277-477-8. School Children's Trust Director – Other Provisions:~~

~~_____ A. The Director shall have professional qualifications and expertise in the areas generating revenue to the trust, including economics, energy development, finance, investments, public education, real estate, renewable resources, risk management, and trust law, as provided in 53A-16-101.6(3)(b).~~

~~_____ B. The Director shall report to the Board Audit Committee monthly. The Director shall report day to day to the Superintendent or Superintendent's designee and has responsibilities as outlined in Sections 53A-16-101.5 and 53A-16-101.6.~~

~~_____ C. The employees of the section report to the Director, who shall carry out the policy direction of the Board under law and faithfully adhere to the Board approved budget.~~

~~_____ D. The School Children's Trust Director shall submit a draft section budget to the Board Audit Committee annually, consistent with Section 53A-16-101.6(5)(a).~~

~~_____ E. The School Children's Trust Director shall include in the draft budget a proposed School LAND Trust Program and school community council training schedule, as described in Section 53A-16-101.6(11).~~

~~_____ F. The Board Audit Committee may discuss or approve, or both, the School Children's Trust budget in an open portion of the Board Audit Committee meeting.~~

~~_____ G. The Board, consistent with Section 53A-16-101.6(5)(b), shall propose an approved budget to the Legislature.]~~

R277-477. Distributions of Funds from the Interest and Dividends Account and Administration of the School LAND Trust Program.

R277-477-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which places general control and supervision of the public school system under the Board;

(b) Subsection 53A-16-101.5(4), which allows the Board to adopt rules regarding the time and manner in which a student count shall be made for allocation of funds; and

_____ (c) Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.

_____ (2) The Board is the primary beneficiary representative and advocate for the beneficiaries of the School Trust corpus and the School LAND Trust Program.

_____ (3) The purpose of this rule is to:

_____ (a) provide financial resources to a public school to implement a component of a school's improvement plan or charter document in order to enhance and improve student academic achievement;

_____ (b) provide a means to involve a parent of a school's student in decision-making regarding the expenditure of School LAND Trust Program funds allocated to the school;

_____ (c) provide direction in the distribution of funds from the Interest and Dividends Account, as funded in Subsection 53A-16-101.5(3);

_____ (d) provide for appropriate and adequate oversight of the expenditure and use of funds by a designated local board of education, an approving entity, and the Board;

_____ (e) provide for proper allocation of funds as stated in Subsections 53A-16-101.5(3) and (4), and the appropriate and timely distribution of the funds;

_____ (f) enforce compliance with statutory and rule requirements, including the responsibility for a school community council to notify school community members regarding the use of funds; and

_____ (g) define the roles, duties, and responsibilities of the School Children's Trust Director within the USOE.

R277-477-2. Definitions.

_____ (1) "Approving entity" means an LEA governing board, university, or other legally authorized entity that may approve or reject a plan for a district or charter school.

_____ (2)(a) "Charter trust land council" means a council comprised of a two person majority of elected parents of students attending the charter school convened to act in lieu of the school community council for the charter school.

_____ (b) "Charter trust land council" includes a charter school governing board if:

_____ (i) the council meets the two-parent majority requirement; and

_____ (ii) the charter school governing board chooses to serve as the charter trust land council.

_____ (3) "Council" means a school community council or a charter trust land council.

_____ (4) "Digital citizenship" means the same as that term is defined in Section 53A-1a-108.

_____ (5) "Fall enrollment report" means the audited census of students registered in Utah public schools as reported in the audited October 1 Fall Enrollment Report of the previous year.

_____ (6) "Funds" means interest and dividends income as defined in Subsection 53A-16-101.5(3).

_____ (7) "Interest and Dividends Account" means the restricted account within the Uniform School Fund created under Subsection 53A-16-101(2).

_____ (8) "Most critical academic need" means an academic need identified in a school's improvement plan or school's charter.

_____ (9)(a) "Principal" means an administrator licensed as a principal in the state and employed in that capacity at a school.

_____ (b) "Principal" includes the director of a charter school.

_____ (10) "School Children's Trust Director" means the Director appointed by the Board under Section 53A-16-101.6.

_____ (11) "Student" means a child in public school grades kindergarten through 12 counted on the fall enrollment report of a school district, charter school, or USDB.

R277-477-3. Distribution of Funds - Local Board or Local Charter Board Approval of School LAND Trust Plans.

_____ (1) A public school receiving School LAND Trust Program funds shall have:

_____ (a) a school community council as required by Section 53A-1a-108 and Rule R277-491;

_____ (b) a charter school trust land council as required by Subsection 53A-16-101.5(9); or

_____ (c) an approved exemption under this rule.

_____ (2) A public school receiving School LAND Trust Program funds shall submit a principal assurance form, as described in Section R277-491-5 and Subsection 53A-16-101.5(5) (c), prior to the public school receiving a distribution of School LAND Trust Program funds.

_____ (3) A charter school that elects to receive School LAND Trust funds shall:

_____ (a) have a charter trust land council;

_____ (b) be subject to Section 53A-1a-108.1 if the charter trust land council is not a charter school governing board; and

_____ (c) receive training about Section 53A-1a-108.1.

_____ (4) A charter school that is a small or special school may receive an exemption from the charter land trust council composition requirements contained in Subsection 53A-16-101.5(9) upon application to the Board if the small or special school demonstrates and documents a good faith effort to recruit members to the charter trust land council.

_____ (5) The principal of a charter school that elects to receive School LAND Trust funds shall submit a plan to the School Children's Trust Section on the School LAND Trust website:

_____ (a) no later than April 1; or

_____ (b) for a newly opening charter school, no later than November 1 in the school's first year in order to receive funding in the year the newly opening charter school opens.

_____ (6)(a) An approving entity:

_____ (i) shall consider a plan annually; and

_____ (ii) may approve or disapprove a school plan.

_____ (b) If an approving entity does not approve a plan, the approving entity shall:

_____ (i) provide a written explanation why the approving entity did not approve the plan; and

_____ (ii) request that the school revise the plan, consistent with Section 53A-16-101.5.

_____ (7)(a) To receive funds, the principal of a public school shall submit a School LAND Trust plan to the School Children's Trust Section annually through the School LAND Trust website using the form provided.

_____ (b) The Board may grant an exemption from a school using the USOE-provided form, described in Subsection (7)(a), on a case-by-case basis.

_____ (8) In addition to the requirements of Subsection (6), the School LAND Trust plan described in Subsection (7)(a) shall include the date the council voted to approve the plan.

(9)(a) A council member shall have the opportunity to provide a digital signature indicating the member's involvement in implementing the current School LAND Trust plan and developing the school plan for the upcoming year.

(b) Entering the council member's name and email address into the Council Membership and Signature Form page on the School LAND Trust website and using that system to collect the digital signature shall suffice to meet the requirements of this Subsection (9).

(c) An LEA or district school, upon the permission of the LEA's governing board, may design the LEA or district school's own form to collect the information required by this Subsection (9).

(10)(a) An LEA governing board shall establish a timeline, including a deadline, for a school to submit the school's School LAND Trust plan.

(b) The deadline described in Subsection (10)(a) may be no later than May 1 of each year.

(c) Timelines set by an LEA governing board shall allow for council reconsideration and amendment of the School LAND Trust plan if the local board of education rejects a plan.

(11) The USOE shall only distribute funds to a school with an approved School LAND Trust plan and that meets all other requirements.

(12)(a) Prior to approving a plan, an approving entity shall review a School LAND Trust plan under the approving entity's purview to confirm that a School LAND Trust plan contains:

(i) academic goals;

(ii) specific steps to meet the academic goals described in Subsection (12)(a)(i);

(iii) measurements to assess improvement; and

(iv) specific expenditures focused on student academic improvement.

(b)(i) The Superintendent shall review a School LAND Trust plan for compliance with statute and rule.

(ii) The approving entity shall determine whether a School LAND Trust plan is consistent with the approving entity's pedagogy, programs, and curriculum.

(c) Prior to approving a School LAND Trust plan, the president or chair of the approving entity shall provide training annually on the requirements of Section 53A-16-101.5 to the members of the approving entity.

R277-477-4. Appropriate Use of School LAND Trust Program Funds.

(1) Acceptable uses of School LAND Trust Program funds include the following:

(a) a credit recovery course or program;

(b) a study skills class;

(c) a college entrance exam preparation class;

(d) an academic field trip;

(e) classroom equipment or materials, including flashcards, math manipulatives, a calculator, microscope, map, or book;

(f) a teacher, teacher aide, tutor, or other personnel if an employee paid out of School LAND Trust funds spends at least 75% of the employee's time interacting with, instructing, or preparing to instruct a student in an approved academic area;

(g) professional development directly tied to a school's academic goals, including a faculty meal, per diem, and travel required as a part of a professional development program;

(h) student focused educational technology, including hardware and software, a computer cart, work station, projector, and smart board.

(i) a book, textbook, workbook, library book, bookcase, magazine, and audio-visual material;

(j) a student planner; and

(k) a nominal student incentive that is academic in nature or of nominal total cost.

(2) Expenditures ineligible for School LAND Trust Program funding include the following:

(a) security costs;

(b) phone, cell phone, electric, HVAC, or other utility;

(c) a facility, building, or maintenance costs;

(d) sports and playground equipment;

(e) an athletic or intramural program;

(f) an extra-curricular non-academic expenditure;

(g) an audio-visual system in a non-classroom location;

(h) a non-academic field trip;

(i) an expense for a council meeting, parent night, orientation, training, or similar meeting or event;

(j) mailing costs;

(k) accreditation costs;

(l) administrative, clerical, or secretarial costs, technical support, or maintenance, including for repair of an item not purchased with School LAND Trust funds;

(m) cash or cash equivalent incentives, including a gift card of any type regardless of the recipient;

(n) furniture;

(o) a staff bonus; and

(p) a similar non-instructional item or program.

(3)(a) A School LAND Trust plan may budget and spend no more than the lesser of \$5,000 or 20% of the school's annual allocation of funds for in-school civic and character education, including student leadership skills training and positive behavior intervention.

(i) A school may designate funds for an in-school civic and character education program or activity if the plan clearly describes how the program or activity will directly affect student academic achievement.

(ii) A school may use funds to provide digital citizenship training as described in Section 53A-1a-108.

(b) Notwithstanding other provisions in this rule, a school may use funds as needed to implement students' IEPs.

R277-477-5. Distribution of Funds - Determination of Proportionate Share.

(1) A local school board shall report the prior year expenditure of distributions for each school and adjust the current year distribution of funds received from the School LAND Trust Program as described in Section 53A-16-101.5, as necessary to maintain an equal per student distribution within a school district based on school openings and closings, boundary changes, and other enrollment changes occurring after the fall enrollment report.

(2)(a) For purposes of this Subsection (2) and Subsection (3), "qualifying charter school" means a charter school that:

_____ (i) would receive more funds from a per pupil distribution than the charter school receives from the base payment described in Subsection (2)(c); and

_____ (ii) is not a newly opening charter school as described in Subsection (3).

_____ (b) The Superintendent shall distribute the funds allocated to charter schools as described in this Subsection (2).

_____ (c) The Superintendent shall first distribute a base payment to each charter school that is equal to the product of:

_____ (i) an amount equal to the total funds available for all charter schools; and

_____ (ii) at least 0.4%.

_____ (d) After the Superintendent distributes the amount described in Subsection (2)(c), the Superintendent shall distribute the remaining funds to qualifying charter schools on a per pupil basis.

_____ (3)(a) The Superintendent shall distribute an amount of funds to a newly opening charter school that is equal to the greater of:

_____ (i) the base payment described in Subsection (2)(c); or

_____ (ii) a per pupil amount based on the newly opened charter school's projected October 1 enrollment count.

_____ (b) The Superintendent shall increase or decrease a newly opening charter school's first year distribution of funds in the school's second year to reflect the newly opening charter school's actual first year October 1 enrollment.

_____ (4) If a school chooses not to apply for funds or does not meet the requirements for receiving funds, the USOE shall retain the funds allocated for that school and include those funds in the statewide distribution for the following school year.

R277-477-6. School LAND Trust Program - Implementation of Plans and Required Reporting.

_____ (1) A school shall implement a plan as approved.

_____ (2)(a) The principal shall submit a plan amendment authorized by Subsection 53A-16-101.5(6)(d)(iii) through the School LAND Trust website for approval, including the date the council approved the amendment and the number of votes for, against, and absent.

_____ (b) The approving entity shall:

_____ (i) consider the amendment for approval; and

_____ (ii) approve an amendment before the school uses funds according to the amendment.

_____ (c) The School Children's Trust Section shall review an amendment for compliance with statute and rule before the school uses funds according to the amendment.

_____ (3)(a) A school shall provide an explanation for any carryover that exceeds one-tenth of the school's allocation in a given year in the School LAND Trust Plan or final report.

_____ (b) The USOE shall consider a district or school with a consistently large carryover balance over multiple years as not making adequate and appropriate progress on an approved plan.

_____ (c) The Board may take corrective action to remedy excessive carryover balances as outlined in Section R277-477-9.

_____ (4) By approving a plan on the School LAND Trust website, the approving entity affirms that:

_____ (a) the entity has reviewed the plan; and

_____ (b) the plan meets the requirements of statute and rule.

_____ (5)(a) A district or charter school business official shall enter prior year audited expenditures by specific category on the School LAND Trust website on or before October 1.

_____ (b) The expenditure data shall appear in the final report submitted online by a principal, as required by Section 53A-16-101.5.

_____ (6) A principal shall submit a final report on the School LAND Trust website by October 20 annually.

R277-477-7. School LAND Trust Program - School Children's Trust Section to Review Compliance.

_____ (1)(a) The School Children's Trust Section shall review each school's final report for consistency with the approved school plan.

_____ (b) The School Children's Trust Section shall create a list of all schools whose final reports indicate that funds from the School LAND Trust Program were expended inconsistent with the statute, rule, or the school's approved plan.

_____ (c) The School Children's Trust Section shall annually report a school described in Subsection (1)(b) to the school district contact person, district superintendent, and president of the local board of education or charter board, as applicable.

_____ (2) The School Children's Trust Section may visit a school receiving funds from the School LAND Trust Program to discuss the program, receive information and suggestions, provide training, and answer questions.

_____ (3)(a) The School Children's Trust Director shall supervise annual compliance reviews to review expenditure of funds consistent with the approved plan, allowable expenses, and the law.

_____ (b) The School Children's Trust Director shall report annually to the Board Audit Committee on compliance review findings and other compliance issues.

_____ (c) After receiving the report described in Subsection (3)(b) and any other relevant information requested by the committee, the Board Audit Committee may make a determination regarding questioned expenditures and corrective action as outlined in Section R277-477-9.

R277-477-8. School Children's Trust Director - Other Provisions.

_____ (1)(a) The School Children's Trust Director is an employee of the Board, pursuant to Section 53A-16-101.6 and Board bylaws.

_____ (b) The School Children's Trust Director shall report to the Board Audit Committee monthly.

_____ (c) The School Children's Trust Director shall report day-to-day to the Superintendent or the Superintendent's designee.

_____ (2)(a) The School Children's Trust Director shall submit a draft section budget to the Board Audit Committee annually, consistent with Subsection 53A-16-101.6(5)(a).

_____ (b) The School Children's Trust Director shall include in the draft budget a proposed School LAND Trust Program and training schedule, as described in Subsection 53A-16-101.6(13).

_____ (3) In addition to the duties established in Section 53A-16-101.6, the School Children's Trust Director shall:

_____ (a) assist the Board as needed as its designee in fulfilling its duties as primary beneficiary representative for school trust lands and funds;

(b) provide independent oversight of an agency managing school trust lands and the permanent State School Fund to ensure the trust assets are managed prudently, profitably, and in the best interest of the beneficiaries;

(c) review and approve a charter school plan on behalf of the State Charter School Board;

(d) provide notice as necessary to the State Charter School Board of changes required of charter schools for compliance with state statute and rule;

(e) review and approve a plan submitted by the USDB governing board as necessary; and

(f) carry out the policy direction of the Board under law and faithfully adhere to the Board-approved budget.

(4) The employees of the School Children's Trust Section report to the School Children's Trust Director.

R277-477-9. Failure to Comply with Rule.

(1) If a local school board, school district, district or charter school, or council fails to comply with the provisions of this rule, the School Children's Trust Director may report the failure to the Audit Committee of the Board.

(2) If the Audit Committee of the Board finds that any local school board, school district, district or charter school, or council failed to comply with statute or rule, the Audit Committee may recommend that the Board take any or all of the following actions:

(a) in cooperation with the local school board or charter school governing board, develop a corrective action plan for the school district, district or charter school, or council;

(b) require the school to reimburse the School LAND Trust Program for any inappropriate expenditures;

(c) reduce, eliminate, or withhold future funding; or

(d) any other necessary and appropriate corrective action.

(3) The Board may, by majority vote, take any of the actions outlined in Subsection (2) to correct or remedy a violation of statute or rule by a local school board, school district, district or charter school, or council.

KEY: schools, trust lands funds

Date of Enactment or Last Substantive Amendment: ~~July 8, 2014~~2015

Notice of Continuation: August 13, 2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-16-101.5(3)(c); 53A-1-401(3)

Education, Administration
R277-491
School Community Councils

NOTICE OF PROPOSED RULE

(Repeal and Reenact)
DAR FILE NO.: 39594
FILED: 08/13/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide language for the requirements of H.B. 213, 2015 General Session, concerning school community council involvement in schools' Internet filtering procedures and provide technical and conforming changes.

SUMMARY OF THE RULE OR CHANGE: The amendments implement the requirements of H.B. 213 (2015), including providing guidance to school community councils on how to participate in overseeing a school's internet filtering procedures. Technical and conforming changes are also made throughout the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X, Section 3 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The provisions of the reenacted rule will likely not result in a cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** The provisions of the reenacted rule will likely not result in a cost or savings to local government.

◆ **SMALL BUSINESSES:** The provisions of the reenacted rule will likely not result in a cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The provisions of the reenacted rule will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The provisions of the reenacted rule will likely not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I believe that there is likely not fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2015

AUTHORIZED BY: Benjamin Rasmussen, UPPAC Director and Special Counsel

R277. Education, Administration.

[R277-491. School Community Councils.

R277-491-1. Definitions.

- ~~_____~~ A. "Board" means the Utah State Board of Education.
- ~~_____~~ B. "Candidate" means a parent or school employee who has filed for election to the school community council.
- ~~_____~~ C. "Contested race" means the election of members to a school community council when there are more candidates than open positions.
- ~~_____~~ D. "Days" means calendar days unless otherwise specifically designated.
- ~~_____~~ E. "Educator" means a person employed by the school district where the person's child attends school and who holds a current educator license.
- ~~_____~~ F. "Parent" means the parent or legal guardian of a student attending a school district public school.
- ~~_____~~ G. "Parent or legal guardian member":
- ~~_____~~ (1) means a member of a school community council who is a parent of a student who will be enrolled at the school at any time during the parent's or legal guardian's term of office; and
- ~~_____~~ (2) may not include an educator that the school employs.
- ~~_____~~ H. "School principal" means the principal of the school or designee as assigned by the principal.
- ~~_____~~ I. "School community" means the geographic area the school district designates as the attendance area, with reasonable inclusion of the parents and legal guardians of additional students who currently attend the school.
- ~~_____~~ J. "School community council" means the council organized at each school district public school consistent with Section 53A-1a-108 and R277-491. The council includes the principal, school employee members and parent members. Each council shall have at least a two parent member majority.
- ~~_____~~ K. "School employee member" means a member of a school community council that the school or school district employs at a school, including the principal.
- ~~_____~~ L. "Student" means a child in public school grades kindergarten through twelve counted on the audited October 1 Fall Enrollment Report.
- ~~_____~~ M. "USDB" means the Utah Schools for the Deaf and the Blind.
- ~~_____~~ N. "USOE" means the Utah State Office of Education.

R277-491-2. Authority and Purpose.

- ~~_____~~ A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, and by Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.
- ~~_____~~ B. Local boards of education are responsible for school community council operations, plan approval, oversight, and training.
- ~~_____~~ C. The purpose of this rule is to:
- ~~_____~~ (1) provide procedures and clarifying information to school community councils to assist them in fulfilling school

community council responsibilities consistent with Section 53A-1a-108(3);

- ~~_____~~ (2) provide direction to school districts and schools in establishing and maintaining school community councils whose primary focus is to develop, approve, and assist in implementing school plans, and advising school/school district administrators consistent with Sections 53A-1a-108(3) and 53A-16-101.5;
- ~~_____~~ (3) provide a framework and support for improved academic achievement of students that is locally driven from within individual schools, through critical review of assessments and other indicators of student success, by establishing meaningful, measurable goals and implementing research-based programs and processes to reach the goals;
- ~~_____~~ (4) encourage increased participation of the parents, school employees and others that support the purposes of the school community councils;
- ~~_____~~ (5) encourage compliance with the law; and
- ~~_____~~ (6) increase public awareness of:
- ~~_____~~ (a) school trust lands and related land policies;
- ~~_____~~ (b) management of the permanent State School Fund established in Utah Constitution Article X, Section 5; and
- ~~_____~~ (c) educational excellence.

R277-491-3. School Community Council Member Election Provisions.

- ~~_____~~ A. Each school shall establish a timeline for the election of parent or legal guardian members of a school community council; the timeline shall remain consistent for at least a four-year period.
- ~~_____~~ B. A school shall hold the election for the parent or legal guardian members of a school community council near the beginning of the school year or in the spring and completed before the last week of school.
- ~~_____~~ C. If a school holds the election in the spring, the school community council shall attempt to notify parents of incoming students about the opportunity to run for the council, and provide those parents with the opportunity to vote in the election.
- ~~_____~~ D. A school community council member's term lasts two years. A school community council shall stagger terms so that approximately half of the council positions are elected each year.
- ~~_____~~ E. A public school that is a secure facility, juvenile detention facility, hospital program school, or other small special program may receive School LAND Trust Program funds without having a school community council if the school demonstrates and documents a good faith effort to recruit members, have meetings and publicize results. The local board of education shall make this determination.
- ~~_____~~ F. Each school community council shall determine the size of the council by a majority vote of a quorum of council members, provided that the resulting council has at least one employee member, the principal, and a two person majority of parents.
- ~~_____~~ G. The principal shall provide notice of the school community council elections to the school community at least 10 days prior to the elections. The principal shall include in the notice the dates, times, and location of the election, the positions up for election, and information about becoming a candidate.

H. Parents and guardians may stand for election as parent or guardian members of a school community council at a school consistent with the definition of parent member in R277-491-1G.

I. The USOE encourages school community councils to establish clear and written timelines and procedures for school community council elections that may include receiving information from applicants in a timely manner.

J. A school need only conduct an election if the school community council position(s) are contested.

K. Parents may vote for the school community council parent members if their child(ren) are enrolled at the school, or to the extent possible consistent with R277-491-3C.

L. School community councils may establish procedures that allow for ballots to be clearly marked and mailed to the school in the case of distances that would otherwise discourage parent participation. Hand-delivered or mailed ballots shall meet the same timelines for voters voting in person.

M. Entire school districts or schools may allow parents to vote by electronic ballot. The school district or school shall clearly explain on its website the opportunity to vote by electronic means, if allowed by the school district or school.

N. Following the election, if those taking part in the election elect to the council more parent members who are educators in that district than parents who are not educators in that district, the parents on that council shall appoint additional parent members until the number of parent members who are not educators exceeds the number of parent educators in that district.

O. School community council members who were duly elected or appointed prior to a subsequent change in law or Board rule may complete the term for which they were elected. All school community council members shall satisfy requirements of Utah law and Board rule in subsequent terms.

R277-491-4. Local School Board and School District Responsibilities Relating to School Community Councils.

A. Local boards of education may ask school community councils to address local issues at the school community council level for discussion before bringing the issues to local boards of education. Local boards of education may ask school community councils for information to inform local board decisions.

B. A local school board, in compliance with Section 53A-1a-108, shall ensure that all council members receive annual training, including training for the chair and vice chair about their specific responsibilities, and about the school community council requirements of Sections 53A-1a-108, 53A-1a-108.1, 53A-16-108.5, and 53A-16-101.5.

C. A school or school district administrator shall not prohibit or discourage a school community council from discussing any issue or concern not prohibited by law and raised by any school community council member.

R277-491-5. School Community Council Principal Responsibilities.

A. Following the election, the principal shall enter and electronically sign on the School LAND Trust website a Principal's Assurance Form affirming the school community council's election, that vacancies were filled after the elections, as necessary, and that the school community council's bylaws or procedures comply with Section 53A-1a-108 and R277-477 and R277-491.

B. A principal may not serve as chair or vice-chair of the school community council.

C. Annually, on or before October 20, the principal shall provide the following information on the school website, in the school office, and if needed, through a method that the council decides is best for the parents at the school who do not have internet access, and as provided in Section 53A-1a-108 and 53A-1a-108.1:

(1) A list of the members of the school community council and each member's direct email or phone number, or both;

(2) The school community council meeting schedule; and

(3) A summary of the annual report describing how the school used the School LAND Trust Program funds consistent with Section 53A-1a-108.1(5)(b) and R277-477-4C.

D. Principals shall ensure that school websites fully communicate the opportunities provided to parents to serve on the school community council and how parents can directly influence the expenditure of the School LAND Trust Program funds. Principals shall include on the website each school's dollar amount received each year through the program.

R277-491-6. School Community Council Chair Responsibilities.

A. After the council is seated each year, the council shall elect a chair from the parent members and a vice-chair from the parent or school employee members.

B. The school community council chair or designee shall:

(1) post the school community council meeting information (time, place and date of meeting; meeting agenda; and previous meeting draft minutes) on the school's website at least one week prior to each meeting;

(2) set the agenda for every meeting;

(3) conduct every meeting;

(4) assure that written minutes are kept consistent with Section 53A-1a-108.1(8);

(5) inform council members on resources available on the School LAND Trust website;

(6) assure that the council adopts a set of rules of order and procedures, including procedures for electing the chair and vice-chair, that the chair follows to conduct each meeting. The principal shall post these rules on the school website and make them available at each meeting; and

(7) welcome and encourage public participation.

C. School community council responsibilities do not allow for closed meetings, consistent with Section 53A-1a-108.1.

R277-491-7. School Community Council Business.

A. School community councils shall report on plans, programs, and expenditures at least annually to local boards of education and cooperate with USOE monitoring and audits.

B. School community councils shall encourage participation on the school community council and may recruit potential applicants to apply for open positions on the council.

C. The USOE encourages:

(1) school community councils to establish clear and written procedures governing the removal from office of a member who moves away or consistently does not attend meetings, and additional clarifications to assist in the efficient operation of school community councils, consistent with the law and Board rules; and

~~(2) school principals to attend all school community council meetings.~~

~~R277-491-8. Development of Plans.~~

~~A. School community council members shall participate fully in the development of various school plans described in Section 53A-1a-108(3) including, at a minimum:~~

- ~~(1) The School Improvement Plan;~~
- ~~(2) The School LAND Trust Plan;~~
- ~~(3) The Reading Achievement Plan (for elementary schools); and~~
- ~~(4) The Professional Development Plan.~~

~~B. The USOE encourages school community councils to advise and inform elected local school board members and other interested community members regarding the uses of these funds.~~

~~R277-491-9. Failure to Comply with Rule.~~

~~A. If a school district, school, or school community council fails to comply with the provisions of this rule, the School Children's Trust Director appointed under Section 53A-16-101.6 may report such failure to the Audit Committee of the Utah State Board of Education.~~

~~B. The Audit Committee of the Utah State Board of Education may recommend to the Board a reduction or elimination of School LAND Trust funds for a school district or school if the Audit Committee finds that the school district, school, or school community council has failed to comply with Utah law or Board rule.]~~

~~R277-491. School Community Councils.~~

~~R277-491-1. Authority and Purpose.~~

- ~~(1) This rule is authorized by:~~
 - ~~(a) Utah Constitution Article X, Section 3, which places general control and supervision of the public school system under the Board; and~~
 - ~~(b) Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.~~
- ~~(2) The purpose of this rule is to:~~
 - ~~(a) provide procedures and clarifying information to a school community council to assist the council in fulfilling school community council responsibilities consistent with Sections 53A-1a-108 and 53A-1a-108.1;~~
 - ~~(b) provide direction to a local school board, school, and school district in establishing and maintaining a school community council;~~
 - ~~(c) provide a framework and support for improved academic achievement of students that is locally driven from within an individual school;~~
 - ~~(d) encourage increased participation of a parent, school employee, and others to support the mission of a school community council;~~
 - ~~(e) increase public awareness of:~~
 - ~~(i) school trust lands;~~
 - ~~(ii) the permanent State School Fund; and~~
 - ~~(iii) educational excellence; and~~
 - ~~(f) enforce compliance with the laws governing a school community council.~~

R277-491-2. Definitions.

(1) "Local school board" means the locally elected school board designated in Section 53A-3-101.

(2)(a) "Principal" means an administrator licensed as a principal in the state and employed in that capacity at a school.

(b) "Principal" includes a specific designee of the principal.

(3) "School community" means the geographic area a school district designates as the attendance area, with reasonable inclusion of a parent of a student who attends the school but lives outside the attendance area.

(4) "Student" means a child in a public school, grades kindergarten through 12, counted on the audited October 1 fall enrollment report.

R277-491-3. School Community Council Member Election Provisions.

(1) If a school holds an election in the spring, the school community council shall:

(a) attempt to notify a parent of an incoming student about the opportunity to run for the council; and

(b) provide a parent of an incoming student with an opportunity to vote in the election.

(2) In addition to the election notice requirements of Subsection 53A-1a-108(5)(c), the principal shall provide notice of:

(a) the location where a ballot may be cast; and

(b) the means by which a ballot may be cast, whether in person, by mail, or by electronic transfer.

(3) A parent may vote for a school community council parent member if:

(a) the parent's child is enrolled at the school; or

(b)(i) the school holds the election in the spring; and

(ii) the parent's child will be enrolled at the school in the following school year.

(4)(a) A school community council may establish a procedure that allows a parent to mail a ballot to the school in the event the distance between a parent and the voting location would otherwise discourage parental participation.

(b) A mailed or hand-delivered ballot shall meet the same timeline as a ballot voted in person.

(5)(a) A school, school district, or local school board may allow a parent to vote by electronic ballot.

(b) If allowed, the school or school district shall clearly explain on its website the opportunity to vote by electronic means.

(6) In the event of a change in statute or rule affecting the composition of a school community council, a council member who is elected or appointed prior to the change may complete the term for which the member was elected.

(7)(a) A public school that is a secure facility, juvenile detention facility, hospital program school, or other small or special school may receive School LAND Trust Program funds without having a school community council if the school demonstrates and documents a good faith effort to:

(i) recruit members;

(ii) have meetings;

(iii) publicize the opportunity to serve on the council; and

(iv) publish election results to the school community.
 (b) The local school board shall make the determination whether to grant the exemption.

R277-491-4. School Community Council Principal Responsibilities.

(1) Following an election, the principal shall enter and electronically sign on the School LAND Trust Program website a Principal's Assurance Form affirming:

- (a) the school community council's election;
- (b) that vacancies were filled by election if necessary; and
- (c) that the school community council's bylaws or procedures comply with Section 53A-1a-108, Rule R277-477, and this rule.

(2) In addition to the requirements of Subsection 53A-1a-108.1(6), each year the principal shall post the following information on the school's website:

- (a) an invitation to a parent to serve on the school community council that includes an explanation of how a parent can directly influence the expenditure of the School LAND Trust Program funds; and
- (b) the dollar amount the school receives each year from the School LAND Trust Program.

R277-491-5. School Community Council Chair Responsibilities.

(1) After the school community council election, the school community council shall annually elect at the council's first meeting a chair and vice chair in accordance with Subsection 53A-1a-108(5)(j).

- (2) The school community council chair shall:
 - (a) post the information required by Subsection 53A-1a-108.1(5);
 - (b) set the agenda for every meeting;
 - (c) conduct every meeting;
 - (d) keep written minutes of every meeting, consistent with Subsection 53A-1a-108.1(9);
 - (e) inform council members about resources available on the School LAND Trust Program website; and
 - (f) welcome and encourage public participation in school community council meetings.

(3) The chair may delegate the responsibilities established in this section as appropriate at the chair's discretion.

R277-491-6. School Community Council Business.

(1)(a) The school community council shall adopt rules of order and procedure to govern a council meeting in accordance with Subsection 53A-1a-108.1(10).

- (b) The rules of order and procedure shall outline the process for:
 - (i) selecting a chair and vice chair; and
 - (ii) removing from office a member who moves away or fails to attend meetings regularly.
- (2) The school community council shall:
 - (a) report on a plan, program, or expenditure at least annually to the local school board; and

(b) encourage participation on the school community council by members of the school community and recruit a potential candidate to run for an open position on the council.

(3)(a) The principal shall provide an annual report to the school community council that summarizes current practices used by the school district and school to facilitate the school community council's responsibilities under Subsection 53A-1a-108(3)(a).

(b) The report described in Subsection (3)(a) shall include:

- (i) information concerning internet filtering protocols for school and district devices that access the internet;
- (ii) local instructional practices, monitoring, and reporting procedures; and
- (iii) internet safety training required by Section 53A-1a-108.

(4) A school community council may advise and inform the local school board and other members of the school community regarding the uses of School LAND Trust Program funds.

R277-491-7. Inapplicable to Charter Schools.

This rule does not apply to a charter school.

R277-491-8. Failure to Comply with Rule.

(1) If a local school board, school district, school, or school community council fails to comply with the provisions of this rule, the School Children's Trust Director appointed under Section 53A-16-101.6 may report the failure to the Audit Committee of the Board.

(2)(a) The Audit Committee shall allow the local school board, school district, school, or school community council to present information to the Audit Committee.

(b) The Audit Committee of the Board may recommend to the Board a reduction or elimination of School LAND Trust funds for a school district or school if the Audit Committee finds that the local school board, school district, school, or school community council has not complied with statute or rule.

(3) Before the Board takes action on the Audit Committee's recommendation, the Board shall allow the local school board, school district, school, or school community council to present information to the Board.

KEY: school community councils

Date of Enactment or Last Substantive Amendment: [July 8, 2014]2015

Notice of Continuation: August 13, 2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3)

Education, Administration
R277-497
 School Grading System

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE NO.: 39595
 FILED: 08/13/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to implement the requirements of S.B. 245, 2015 General Session and make technical and conforming changes.

SUMMARY OF THE RULE OR CHANGE: The amendments provide provisions for the Utah State Board of Education (Board) to exempt certain schools from school grading and evaluation; make recommendations for calculating student growth; and provide an alternative grade distribution for the 2014-15 school year only. The amendments also include technical and conforming changes throughout the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X, Section 3 and Section 53A-1-1104 and Section 53A-1-1113 and Subsection 53A-1-401(3)

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Adds Guide to Utah's Comprehensive Accountability System for Alternative Schools, published by Utah State Board of Education, 06/06/2014

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** Procedures for exempting a school from the school grading system will likely not result in a cost or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** Procedures for exempting a school from the school grading system will likely not result in a cost or savings to local government.
- ◆ **SMALL BUSINESSES:** Procedures for exempting a school from the school grading system will likely not result in a cost or savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Procedures for exempting a school from the school grading system will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Procedures for exempting a school from the school grading system will likely not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I believe that there is be no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2015

AUTHORIZED BY: Benjamin Rasmussen, UPPAC Director and Special Counsel

R277. Education, Administration.**R277-497. School Grading System.****R277-497-[2]1. Authority and Purpose.**

~~[A:]~~(1) This rule is authorized by:

- ~~(a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board[;];~~
- ~~(b) Section 53A-1-1113, which directs the Board to adopt rules to implement a school grading system[; and];~~
- ~~(c) Section 53A-1-1104, which authorizes the Board to make a rule to establish an accountability plan for an alternative school or special needs school that the Board has exempt from school grading; and~~
- ~~(d) Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.~~

~~[B:]~~(2) The purpose of this rule is to provide consistent definitions, standards, and procedures for LEAs to report school data through a school grading system.

R277-497-[1]2. Definitions.

- ~~A. "Board" means the Utah State Board of Education.~~
- ~~B. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.~~
- ~~(1) "Alternative school" means the same as that term is defined in Section 53A-1-1102.~~
- ~~(2) "Special needs school" means a school that only enrolls a student that:~~
 - ~~(a) has at least one of the following disabilities:~~
 - ~~(i) an intellectual disability;~~
 - ~~(ii) a hearing impairment or deafness;~~
 - ~~(iii) a speech or language impairment;~~
 - ~~(iv) a visual impairment, including blindness;~~
 - ~~(v) deafblindness;~~
 - ~~(vi) an emotional disturbance;~~
 - ~~(vii) an orthopedic impairment;~~
 - ~~(viii) autism;~~
 - ~~(ix) developmental delay;~~
 - ~~(x) traumatic brain injury;~~
 - ~~(xi) other health impairment;~~
 - ~~(xii) multiple disabilities; or~~
 - ~~(xiii) specific learning disabilities; and~~
 - ~~(b) has been determined to need placement in a special school by an IEP team.~~

~~[C-](3)~~ "Sufficient student growth" ~~[as determined by the Board,]~~ means a student growth percentile of 40 or above.

R277-497-3. Board Responsibilities.

~~[A.]~~ Beginning in the 2012-2013 school year, the Board shall implement a school grading system (A,B,C,D,F). The school grading system report provided by the Board shall include the following indicators:

- ~~(1) student proficiency on the Board-approved grade/subject level assessments in language arts, math and science;~~
- ~~(2) student growth as measured by student growth percentiles;~~
- ~~(3) sufficient student growth; and~~
- ~~(4) for high schools:

 - ~~(a) graduation rates; and~~
 - ~~(b) beginning in the 2013-14 school year, ACT scores.~~~~

~~B. School letter grades shall be determined as follows:~~

- ~~(1) 80 - 100 percent A;~~
- ~~(2) 70 - 79 percent B;~~
- ~~(3) 60 - 69 percent C;~~
- ~~(4) 50 - 59 percent D; and~~
- ~~(5) below 50 percent F.~~

~~C. Beginning with the 2012-2013 school year data, the Board shall:~~

- ~~(1) implement a school grading system that makes data and reports available to parents, educators and the public. The report shall include the elements described in R277-497-3A.~~
- ~~(2) School data and reports shall be available to parents, educators and the public through a public website that facilitates the comparison of public schools based on the school grading system and demographics.~~

~~D. The Board implemented school grading system shall include test scores for students with disabilities consistent with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1401(3).~~

~~E. For the 2013-2014 school year only, the Board shall adjust school grades to compensate for the new computer adaptive assessment results by adjusting the percentage of total points required for each letter grade so that the distribution of percentage of schools receiving each letter grade will be similar to the distribution of grades for the 2012-2013 school year. The percentages are as follows:~~

- ~~(1) Elementary/middle schools:

 - ~~(a) 64 - 100 percent A;~~
 - ~~(b) 51 - 63 percent B;~~
 - ~~(c) 39 - 50 percent C;~~
 - ~~(d) 30 - 38 percent D; and~~
 - ~~(e) 29 percent and below F.~~~~
- ~~(2) High schools:

 - ~~(a) 64 - 100 percent A;~~
 - ~~(b) 51 - 63 percent B;~~
 - ~~(c) 43 - 50 percent C;~~
 - ~~(d) 40 - 42 percent D; and~~
 - ~~(e) 39 percent and below F.~~~~

~~[F.](1)~~ ~~[Beginning with the 2013-2014 school year, students]~~The Board may not count a student who does not participate in required testing under Section 53A-1-603 due to parent ~~[opt-out]~~exclusion provisions of Subsection 53A-15-1403(9)~~[-~~

~~shall not be counted]~~ and Section R277-404-6 in determining the participation rate for purposes of school grades.

~~[G.](2)~~ The Board and LEAs shall take necessary actions within their authority to satisfy Subsection 53A-15-1403(9)(b).

R277-497-4. LEA Responsibilities.

~~[A.](1)~~ An LEA[s] shall provide accurate and timely data as required under Rule R277-484 to allow for the development of the school reports.

~~[B.](2)~~ An LEA[s] shall use the school reports as a communication tool to inform parents and the community about school performance.

~~[C.](3)~~ An LEA[s] shall ensure that the school reports are available for all parents.

R277-497-5. School Responsibilities.

~~[A.](1)~~ A [S]school[s] shall provide data for the school report[s] as provided in Rule R277-484.

~~[B.](2)~~ A [S]school[s] shall cooperate with the Board and LEAs to ensure that the school report[s-are] is available for all parents.

R277-497-6. Exemption from School Grading.

(1)(a) As authorized by Section 53A-1-1104, an alternative school or a special needs school may submit a request for an exemption from school grading for the next three school years to the Board by July 1.

(b) The request shall demonstrate that:

(i) the school meets the definition of an alternative school or a special needs school;

(ii) the school has the approval of:

(A) the school's LEA governing board; or

(B) if the school is the Utah Schools for the Deaf and the Blind, the USDB advisory committee; and

(iii) if the school has received an exemption for a previous school year, the school has timely submitted to the Superintendent all information necessary for the Board to evaluate the school as required by Section 53A-1-1104.

(2)(a) The Board shall exempt a school from school grading if the school meets the requirements of Subsection (1).

(b) Except as provided by Subsection (2)(c), an exemption from school grading is valid for three school years.

(c) The Board may revoke an exemption if a school fails to timely submit to the Superintendent all information necessary for the Board to annually evaluate the school in accordance with the accountability plan.

R277-497-7. Accountability Plan - General Provisions.

(1)(a) This rule incorporates by reference the Guide to Utah's Comprehensive Accountability System for Alternative Schools - June 6, 2014, which describes the accountability plan required by Section 53A-1-1104, with the exceptions for a special needs school described in Section R277-497-8.

(b) The Superintendent shall annually evaluate a school in accordance with the accountability plan by calculating a school's composite score, which has a maximum value of 1500, by summing the school's weighted indicator scores.

(2) The accountability plan consists of five indicators weighted as follows:

(a) growth, which measures student academic progress based on a school's median student growth percentile for all students and below proficient students, is 20% with a maximum score of 300;

(b) attendance, which is the higher of a school's attendance rate in the current year or improvement in cohort attendance rate from the previous year, is 25% with a maximum score of 375;

(c) credit earning, which measures the degree to which a student enrolled in the current year is successfully completing courses in which the student is enrolled or is making improvement in cohort credit earning rate from the previous year, is 25% with a maximum score of 375;

(d) attainment, which measures the extent to which a student successfully completes or make substantial progress toward completion of meaningful educational goals, is 20% with a maximum score of 300; and

(e) school climate, which measures whether a school is collecting data to evaluate school climate and using results to inform efforts to improve climate, is ten percent with a maximum score of 150.

(3) The Superintendent shall assign the scores based on the rubrics established in the guide.

R277-497-8. Accountability Plan Exceptions.

(1) At the request of a special needs school, the Superintendent may exempt a student from the attendance indicator score calculation if the student has a documented medical condition that prevents the student from attending 160 days of school.

(2) In accordance with a Section 53A-1-111, a student with a disability may take an alternative assessment to determine the student's growth instead of the Student Assessment of Growth and Excellence.

(3) If required by Section R277-410-5, a special needs school shall report on the school's progress on the school's accreditation improvement plan in the School Snapshot section of the school's report card published by the Superintendent under Subsection 53A-1-1104(5)(b)(ii).

KEY: school reports, grading systems

Date of Enactment or Last Substantive Amendment: [February 9, 2015]

Notice of Continuation: August 13, 2015

Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53A-1-1104; 53A-1-1113; 53A-1-401(3)

Education, Administration
R277-498
Grant for Math Teaching Training

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 39596
FILED: 08/13/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended in response to H.B. 30, 2015 General Session, that provides for an expansion to the grant program for teacher train in math. Technical and conforming changes are also provided.

SUMMARY OF THE RULE OR CHANGE: The amendments to this rule provide an expansion to the grant program for teacher training in math to allow a grant to be used to provide a stipend, professional development, and leadership opportunities to assist a teacher in becoming a teacher leader. The amendments also provide technical and conforming changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X, Section 3 and Subsection 53A-1-401(3) and Subsection 53A-6-901(2)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Expanding the grant program to allow the grant to be used for additional purposes will likely not result in a cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** Expanding the grant program to allow the grant to be used for additional purposes will likely not result in a cost or savings to local government.

◆ **SMALL BUSINESSES:** Expanding the grant program to allow the grant to be used for additional purposes will likely not result in a cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Expanding the grant program to allow the grant to be used for additional purposes will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Expanding the grant program to allow the grant to be used for additional purposes will likely not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I believe that there is likely no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2015

AUTHORIZED BY: Benjamin Rasmussen, UPPAC Director and Special Counsel

R277. Education, Administration.

R277-498. Grant for Math Teaching Training.

R277-498-[2]1. Authority and Purpose.

[A-](1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board[; by];

(b) Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities[; and [by]

(c) Subsection 53A-6-901(2), [that]which directs the Board to [write]make rules to provide criteria to award a grant[~~(s)~~] to a higher education institution(s) to encourage prospective educators to earn related to mathematics [endorsements]education.

[B-](2) The purpose of this rule is to establish criteria to award [funds, consistent with 2012 legislation, to institution(s) of higher education]a grant to:

(a) support and encourage prospective educators to earn mathematics endorsements[; and

(b) assist an experienced mathematics teacher in becoming a teacher leader.

R277-498-[4]2. Definitions.

[A-]A. "Board" means the Utah State Board of Education.

[B-](1) "Comprehensive Administration of Credentials for Teachers in Utah Schools" or "[~~(f)~~CACTUS~~(j)~~]" means the electronic file maintained on all licensed Utah educators[; The file]that includes[information such as]:

(1)a) personal directory information;

(2)b) educational background;

(3)c) endorsements;

(4)d) employment history; and

(5)e) a record of disciplinary action taken against the educator.

[C-](2) "Endorsements in mathematics" means one or more endorsements in the mathematics teaching field that:

(a) qualify an educator or prospective educator to teach a specific or specific level of mathematics course[; A notation indicating the educator's competency is maintained]; and

(b) is indicated by a notation on the educator's CACTUS record.

(3) "Grantee" or "prospective grantee" means:

(a) an institution of higher education; or

(b) a nonprofit educational organization.

[D-](4) "Matching funds" means funds provided by the grant recipient in order to receive state funds under Section 53A-6-901.

[E-]E. "Teaching license" or "educator license" means an authorization issued by the Board which permits the holder to serve in a professional capacity in the public schools.

[F-]F. "USOE" means the Utah State Office of Education.

R277-498-3. Board/[USOE] Procedures for Distributing Funds.

[A-](1) The [USOE]Superintendent shall [identify one or more institutions of higher education]select a grantee that meets the criteria of Section 53A-6-901 and the criteria of this rule from requests submitted by [interested institutions of higher education]a prospective grantee.

[B-](2) The [USOE]Superintendent shall notify a selected [institutions]grantee of [their]its eligibility to receive funds under this program following:

(a) review of the request; and

(b) the assurance of matching funds.

[C-](3) The [USOE]Superintendent may identify one eligible and qualified [institution of higher education]grantee and establish a funding schedule to distribute funds or allow [institutions]a prospective grantee to submit an application[s] until March 30[; 2013].

[D-](4) The [USOE]Superintendent, under the direction of the Board, shall distribute the appropriation provided for in Section 53A-6-901[; Section 2] by June 30[2013].

R277-498-4. Criteria for Awarding Grants.

[A-](1) The [USOE]Superintendent shall consider the amount or percent of matching funds that a[n institution of higher education]prospective grantee [shall]offers.

[B-](2) The [USOE]Superintendent shall determine that the [institution of higher education]prospective grantee requesting funds under Section 53A-6-901 shall use the funds[for teachers and training] consistent with Section 53A-6-901[~~(4)~~].

R277-498-5. Accountability and Documentation.

[A-](1) The [USOE]Superintendent shall maintain records of the distribution of funds to [institution(s) of higher education]a grantee that[~~made~~] requests[~~for~~] funds provided under Section 53A-6-901 and [R277-498]this rule.

[B-](2) The recipient of funds under Section 53A-6-901 shall maintain documentation of the matching funds offered by the [institution]grantee that established the [institution's]grantee's eligibility.

[C-](3) Both the [USOE]Superintendent and the eligible [institution(s)]grantee shall maintain documentation of:

(a) the number of prospective educators and the relevant training received from funding provided [in]by Section 53A-6-901; or

(b) the number of experienced mathematics teachers and the relevant training received from funding provided by Section 53A-6-901.

KEY: grants, educators, math teaching training

Date of Enactment or Last Substantive Amendment: [April 8, 2013]2015

Notice of Continuation: August 13, 2015

Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53A-1-401(3); 53A-6-901(2)

Education, Administration
R277-514
 Board Procedures: Sanctions for
 Educator Misconduct

NOTICE OF PROPOSED RULE

(Repeal)
 DAR FILE NO.: 39597
 FILED: 08/13/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is repealed because the substance of this rule has been moved to Rules R277-516, R277-201, R277-202, and R277-203. (DAR NOTE: The proposed amendments to Rule R277-516 is under DAR No. 39599, Rule R277-201 is under DAR No. 39586, Rule R277-202 is under DAR No. 39587, and Rule R277-203 is under DAR No. 39588 in this issue, September 1, 2015, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X, Section 3 and Section 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There is likely no fiscal impact on the state budget. Necessary procedures within this rule have been moved to other rules.
- ◆ LOCAL GOVERNMENTS: There is likely no fiscal impact on local government. Necessary procedures within this rule have been moved to other rules.
- ◆ SMALL BUSINESSES: There is likely no fiscal impact on small businesses. Necessary procedures within this rule have been moved to other rules.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is likely no fiscal impact on persons other than small businesses, businesses, or local government entities. Necessary procedures within this rule have been moved to other rules.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is likely no compliance costs for affected persons. Necessary procedures within this rule have been moved to other rules.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I believe that there is likely no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 EDUCATION
 ADMINISTRATION
 250 E 500 S

SALT LAKE CITY, UT 84111-3272
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Benjamin Rasmussen by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at benjamin.rasmussen@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2015

AUTHORIZED BY: Benjamin Rasmussen, UPPAC Director and Special Counsel

R277. Education, Administration.

~~**[R277-514. Board Procedures: Sanctions for Educator Misconduct.**~~

~~**R277-514-1. Definitions.**~~

~~In addition to terms defined in Section 53A-6-103, the following definitions apply:~~

~~A. "Allegation of misconduct" means a written or oral report alleging that an educator has engaged in unprofessional, criminal, or incompetent conduct; is unfit for duty; has lost licensure in another state due to revocation or suspension, or through voluntary surrender or lapse of a license in the face of an allegation of misconduct; or has committed some other violation of standards of ethical conduct, performance, or professional competence.~~

~~B. "Board" means the Utah State Board of Education.~~

~~C. "Commission" means the Utah Professional Practices Advisory Commission.~~

~~D. "Educator" means a person who currently holds a license, held a license at the time of an alleged offense, is an applicant for a license, or is a person in training to obtain a license.~~

~~E. "License" means an authorization issued by the Board which permits the holder to serve in a professional capacity in a unit of the public education system or an accredited private school.~~

~~F. "Party" means the complainant or the respondent.~~

~~G. "Recommended disposition" means a recommendation for resolution of a complaint.~~

~~H. "Serve" or "service," as used to refer to the provision of notice to a person, means delivery of a written document or its contents to the person or persons in question. Delivery may be made in person, by mail to the individual's last known address or by other means reasonably calculated, under all of the circumstances, to apprise the interested person or persons to the extent reasonably practical or practicable of the information contained in the document.~~

~~I. "Superintendent" means the State Superintendent of Public Instruction.~~

~~**R277-514-2. Authority and Purpose.**~~

~~A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public schools in the Board, Section 53A-6-405 relating to withdrawal or~~

denial of licensure by the Board for cause, Section 53A-6-307 in which the Board retains the power to issue or revoke licenses, hold hearings or take other disciplinary action as warranted, and Subsection 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

~~_____ B. The purpose of this rule is to provide an appeals process for recommendations and decisions made by the Commission, including a review by the Superintendent; and to specify the procedures under which the Board may take action against an educator's license for misconduct.~~

R277-514-3. Administrative Review by Superintendent.

~~_____ A. If an administrative action is taken by the Commission which results in a recommendation to the Board for:~~

~~_____ (1) suspension of an educator's license for two years or more, or~~

~~_____ (2) revocation of an educator's license;~~

~~_____ B. Either party may request review by the Superintendent within 15 days from the date that the Commission sends written notice to both parties that the Commission has made its administrative recommendation.~~

~~_____ C. The request for review shall consist of the following:~~

~~_____ (1) name, position, and address of appellant;~~

~~_____ (2) issue(s) being appealed; and~~

~~_____ (3) signature of appellant.~~

~~_____ D. If the Superintendent finds:~~

~~_____ (1) that procedural errors have occurred which violated fairness or due process issues, the Superintendent shall refer the case back to the Commission for reconsideration as to whether or not the findings, conclusions or decisions of the Commission are supported by a preponderance of the evidence, or direct the Executive Secretary for the Commission to take specific administrative action. After reconsideration is completed, the Superintendent shall notify all parties to the case, and refer the matter to the Board, if necessary, for final disposition consistent with this rule.~~

R277-514-4. Board Procedures.

~~_____ A. Except as provided under Subsection R277-514-4(E), if the Board receives an allegation of misconduct by an educator, the allegation shall be forwarded to the Executive Secretary for the Commission for action under R686-100.~~

~~_____ B. Following completion of procedures provided in R686-100, if the Commission recommends that an educator's license be suspended for any period of time or revoked, the recommendation shall be forwarded to the Board for action.~~

~~_____ C. Upon receiving a case from the Commission, the members of the Board shall review a summary of the case and may:~~

~~_____ (1) accept the recommendation of the Commission; or~~

~~_____ (2) review the case file, findings, conclusions, and recommended disposition of the case.~~

~~_____ (a) If the Board finds no serious procedural errors, that the findings and conclusions are reasonable and supported by a preponderance of the evidence, and that the recommended disposition presents a reasonable resolution of the case, then the Board shall approve the findings and recommended disposition.~~

~~_____ (b) If the Board finds serious procedural errors have violated the fundamental fairness of the process, then the Board shall refer the case back to the Commission to correct the errors.~~

~~_____ (c) If the Board determines that the findings or conclusions are not supported by a preponderance of the evidence, or that the recommended disposition does not present a reasonable resolution of the case, then the Board may refer the case back to the Commission for further action or may, in the alternative, prepare other findings, conclusions, or disposition.~~

~~_____ (d) If the Board finds that there is insufficient information in the case file to complete its work, the Board may direct the parties to appear and present additional evidence or clarification.~~

~~_____ (e) If the Board finds it advisable to do so, the Board may initiate investigations or hearings regarding the initial or continued licensure of an individual and take disciplinary action upon its own volition without referring a given case to the Commission.~~

~~_____ D. The Board shall issue a written order regarding its action which contains its conclusions and its disposition of the case, and direct the State Superintendent to serve a copy of the written order upon the parties.~~

~~_____ E. All documents used by the Board in reaching its decision, and a copy of the Board's final order, shall be made part of the permanent case file.~~

~~_____ F. The decision of the Board is final.~~

R277-514-5. Notification Requirements and Procedures.

~~_____ A. An educator who has reasonable cause to believe that a student may have been physically or sexually abused by a school employee shall immediately report that belief to the school principal, district superintendent, or the Commission. A school administrator receiving such a report shall immediately submit the information to the Commission if the employee is licensed as an educator.~~

~~_____ B. A local superintendent or charter school director shall notify the Commission if an educator is determined, pursuant to an administrative or judicial action, to have had disciplinary action taken for or to be guilty of:~~

~~_____ (1) unprofessional conduct or professional incompetence which results in suspension for more than one week or termination, or which otherwise warrants Commission review; or~~

~~_____ (2) immoral behavior.~~

~~_____ C. Failure of an educator to comply with Subsection A or B may constitute unprofessional conduct.~~

~~_____ D. The State Office of Education shall notify the educator's employer of any final action taken by the Board; and shall notify all Utah local education agencies (LEAs) and the NASDTEC Educator Information Clearinghouse whenever a license is revoked or suspended, or if an educator surrenders a license or allows it to lapse in the face of allegations of misconduct rather than accept an opportunity to defend against the allegations.~~

~~**KEY: disciplinary actions, professional competency, educator licensure**~~

~~**Date of Enactment or Last Substantive Amendment: October 9, 2012**~~

~~**Notice of Continuation: August 14, 2012**~~

~~**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-405; 53A-6-307; 53A-1-401(3)**~~

Education, Administration
R277-515
 Utah Educator Standards

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 39598
 FILED: 08/13/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide technical and conforming changes.

SUMMARY OF THE RULE OR CHANGE: Technical and conforming changes are provided throughout the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X, Section 3 and Subsection 53A-1-401(3) and Subsection 53A-1-402(1)(a)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: Technical and conforming changes will likely not result in a cost or savings to the state budget.
- ◆ LOCAL GOVERNMENTS: Technical and conforming changes will likely not result in a cost or savings to local government.
- ◆ SMALL BUSINESSES: Technical and conforming changes will likely not result in a cost or savings to small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Technical and conforming changes will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Technical and conforming changes will likely not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I believe that there is likely no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY, UT 84111-3272
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Benjamin Rasmussen by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at benjamin.rasmussen@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2015

AUTHORIZED BY: Benjamin Rasmussen, UPPAC Director and Special Counsel

R277. Education, Administration.

R277-515. Utah Educator Standards.

R277-515-[2]1. Authority and Purpose.

- [A-](1) This rule is authorized by:
- (a) Utah Constitution Article X, Section 3, which vests the general control and supervision of the public schools in the Board[;];
- (b) [by-]Subsection 53A-1-402(1)(a), which directs the Board to make rules regarding the certification of educators[;];
- (c) [by Section 53A-6]Title 53A, Chapter 6, Educator Licensing and Professional Practices Act, which provides all laws related to educator licensing and professional practices[;]; and
- (d) [by-]Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.

[B-](2) The purpose of this rule is to:

- (a) establish statewide standards for public school educators that provide notice to educators and prospective educators and notice and protection to public school students and parents[-The rule also];
- (b) recognize[s] that licensed public school educators are professionals and, as such, should share common professional standards, expectations, and role model responsibilities[-The rule]; and
- (c) distinguish[es] behavior for which educators shall receive license discipline from behavior that all Utah educators should aspire to and for which license discipline shall be initiated only in egregious circumstances or following a pattern of offenses.

R277-515-[1]2. Definitions.

[A-] A. "Board" means the Utah State Board of Education.

[B-] (1) "Core Standard" means a statement:

(a) of what a student enrolled in a public school is expected to know and be able to do at a specific grade level or following completion of an identified course; and

(b) established by the Board in Rule R277-700 as required by Section 53A-1-402.

[B-](2) "Diversion agreement" means an agreement between a prosecutor and defendant entered into prior to a conviction delaying prosecution of a criminal charge for a specified period of time and contingent upon the defendant satisfying certain conditions.

[C-](3)(a) "Educator" or "professional educator" means a person who currently holds a Utah educator license, held a license at the time of an alleged offense, is an applicant for a license, or is a person in training to obtain a license.

(b) "Professional educator" does not include[-The "professional" denotes that the individual holds or is seeking a Utah educator license as opposed to] a paraprofessional, [or-]a volunteer, or an unlicensed teacher in a classroom.

~~[D-](4)~~ "Felony offense" means any offense for which an individual is charged with a first, second, or third degree felony under:

- ~~(a) [the] Title 76, Utah Criminal Code[; Title 76];~~
- ~~(b) [the] Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act[; Title 67, Chapter 16];~~
- ~~(c) [the] Title 58, Chapter 37d, Clandestine Drug Lab Act[; Title 58 Chapter 37d];~~
- ~~(d) [the] Title 63G, Chapter 6a, Utah Procurement Code[; Title 63G, Chapter 6];~~ or
- ~~(e) any other statute in the Utah Code establishing a felony.~~

~~[E-](5)~~ "Illegal drug~~(s)~~" means a substance included in:

- ~~(a) Schedules I, II, III, IV, or V ~~of~~ established in Section 58-37-4[; and also includes a drug or substance included in];~~
- ~~(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.~~

~~[F-]~~ "Illegal sexual conduct" means any conduct proscribed under the Utah Criminal Code, Sections 76-5-401 through 406, Section 76-5a-1-4, and Section 76-9-704 through 704.

~~(6) "LEA" or "local education agency" for purposes of this rule includes the Utah Schools for the Deaf and the Blind.~~

~~[G-](7)~~ "Licensing discipline" means a sanction~~s ranging from~~, including an admonition, a letter of warning, a written reprimand, suspension of license, and revocation of license, or other appropriate disciplinary measure~~s~~, for violation of a professional educator standard~~s~~.

~~[H-](8)~~ "Misdemeanor offense" means any offense for which an individual is charged with a Class A, B, or C misdemeanor under:

- ~~(a) [the] Title 76, Utah Criminal Code[; Title 76];~~
- ~~(b) [the] Title 67, Chapter 16, Utah Officers' and Public Employees' Ethics Act[; Title 67, Chapter 16];~~
- ~~(c) [the] Title 58, Chapter 37d, Clandestine Drug Lab Act[; Title 58 Chapter 37d];~~
- ~~(d) [the] Title 63G, Chapter 6a, Utah Procurement Code[; Title 63G, Chapter 6];~~ or
- ~~(e) any other statute in the Utah Code establishing a misdemeanor.~~

~~[I-](9)~~ "Plea in abeyance" means a plea of guilty or no contest ~~which that~~ is not entered as a judgment or conviction but is held by a court in abeyance for a specified period of time.

~~[J-](10)~~ "School-related activity" means any event, activity, or program:

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

~~[K-](11)~~ "Stalking" means the act of intentionally or knowingly engaging in a course of conduct directed at a specific person as defined in Section 76-5-106.5.

~~[L-]~~ "Utah Core Curriculum" means minimum academic standards provided through courses as established by the Board which shall be mastered by all students K-12 as a requisite for graduation from Utah's secondary schools.

~~M-]~~ "Utah Public Employees Ethics Act" means the provisions established in Section 67-16-1-14.

~~[N-](12)~~ "Utah Professional Practices Advisory Commission" or ~~(Commission)~~ "UPPAC" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, as established ~~under~~ by Section 53A-6-301.

~~[O-]~~ "USOE" means the Utah State Office of Education.

~~[P-](13)~~ "Weapon~~(s)~~" means any item that in the manner of its use or intended use is capable of causing death or serious bodily injury.

R277-515-3. Educator as a Role Model of Civic and Societal Responsibility.

~~[A-](1)~~ The professional educator is responsible for compliance with federal, state, and local laws.

~~[B-](2)~~ The professional educator shall familiarize himself or herself with professional ethics and is responsible for compliance with applicable professional standards.

~~[C-](3)~~ Failing to strictly adhere to ~~the~~ following Subsection (4) shall result in licensing discipline~~as defined in R277-515-1G~~.

(4) The professional educator, upon receiving a Utah educator license:

([1]a) ~~shall~~ may not be convicted of any felony or misdemeanor offense ~~which that~~ adversely affects the individual's ability to perform an assigned dut~~ies~~y and carry out the responsibilities of the profession, including role model responsibilit~~ies~~y;

([2]b) ~~shall~~ may not be convicted of or commit any act of violence or abuse, including physical, sexual, or emotional abuse of any person;

([3]c) ~~shall~~ may not commit any act of cruelty to a child~~ren~~ or any criminal offense involving a child~~ren~~;

([4]d) ~~shall~~ may not be convicted of a stalking crime;

([5]e) ~~shall~~ may not possess or distribute an illegal drug~~s~~; or be convicted of any crime related to an illegal drug~~s~~, including a prescription drug~~s~~ not specifically prescribed for the individual;

~~([6]f) [shall not be convicted of any illegal sexual conduct, including offenses that are plea bargained to lesser offenses from an initial sexual offense] may not engage in conduct of a sexual nature described in Section 53A-6-405;~~

([7]g) ~~shall~~ may not be subject to a diversion agreement specific to a sex-related or drug-related offense~~s~~, plea in abeyance, court-imposed probation, or court supervision related to a criminal charge~~s which that~~ could adversely impact the educator's ability to perform the duties and responsibilities of the profession;

([8]h) ~~shall~~ may not provide to a student~~s~~ or allow a student~~s~~ under the educator's supervision or control to consume an alcoholic beverage~~s~~ or unauthorized drug~~s~~;

([9]i) ~~shall~~ may not attend school or a school-related activity in an assigned supervisory capacity~~s~~ while possessing, using, or under the influence of alcohol or an illegal drug~~s~~;

([10]j) ~~shall~~ may not intentionally exceed the prescribed dosage~~s~~ of a prescription medication~~s~~ while at school or a school-related activity;

([11]k) shall cooperate in providing all relevant information and evidence to the proper authorit~~ies~~y in the course of an investigation by a law enforcement agency or by the Division of Child ~~Protective~~ and Family Services regarding potential

criminal activity[.]. ~~However,~~ except that an educator ~~shall be entitled to~~ may decline to give evidence against himself or herself in an ~~such~~ investigation if the ~~same~~ evidence may tend to incriminate the educator as that term is defined by the Fifth Amendment of the U.S. Constitution;

(~~12~~) l shall report suspected child abuse or neglect to law enforcement or the Division of Child and Family Services pursuant to Sections 53A-6-502 and 62A-4a-409 and comply with ~~Board~~ rules and ~~school district~~ LEA polic[ies]y regarding the reporting of suspected child abuse;

(~~13~~) m shall strictly adhere to state laws regarding the possession of a firearm[s], while on school property or at a school-sponsored activit[ies]y and enforce ~~district~~ an LEA polic[ies]y related to student access to or possession of a weapon[s];

(~~14~~) n ~~shall~~ may not solicit, encourage, or consummate an inappropriate relationship, whether written, verbal, or physical, with a student or minor;

(~~15~~) o ~~shall~~ may not:

(i) participate in sexual, physical, or emotional harassment ~~or any combination~~ towards any public school-age student or colleague ~~or~~; or

(ii) knowingly allow harassment toward a student[s] or colleague[s];

(~~16~~) p ~~shall~~ may not make inappropriate contact in any communication ~~or~~, including written, verbal, or electronic ~~or~~, with a minor, student, or colleague, regardless of age or location;

(~~17~~) q ~~shall~~ may not interfere or discourage a student[s]' or colleague[s]' legitimate exercise of political and civil rights, acting consistent with law and ~~school district/school~~ LEA polic[ies]y;

(~~18~~) r shall provide accurate and complete information in a required evaluation[s] of himself or herself, another educator[s], or student[s], as directed, consistent with the law;

(~~19~~) s shall be forthcoming with accurate and complete information to an appropriate authorit[ies]y regarding known educator misconduct ~~which~~ that could adversely impact performance of a professional responsibilit[ies]y, including a role model responsibilit[ies]y, by himself or herself, or another[s];

(~~20~~) t shall provide accurate and complete information required for licensure, transfer, or employment purposes; ~~and~~

(~~21~~) u shall provide accurate and complete information regarding qualifications, degrees, academic or professional awards or honors, and related employment history when applying for employment or licensure ~~or~~;

(~~22~~) v shall notify the USOE at the time of application for licensure of past license disciplinary action or license discipline from another jurisdiction[s];

(~~23~~) w shall notify the USOE honestly and completely of past criminal convictions at the time of the license application and renewal of licenses; and

(~~24~~) x shall provide complete and accurate information during an official inquiry or investigation by ~~school district~~ LEA, state, or law enforcement personnel.

~~D-](5)(a)~~ Failure to adhere to ~~the following~~ this Subsection (5) may result in licensing discipline ~~as defined in R277-515-1G~~.

(b) A Ppenalt[ies]y shall be imposed, most readily, if an educator[s] ~~has~~ has received a previous documented warning ~~(s)~~ from the educator's employer.

(~~1~~) c An educator ~~shall~~ may not:

(i) exclude a student from participating in any program ~~or~~ deny or grant any benefit to any student on the basis of race, color, creed, sex, national origin, marital status, political or religious belief[s], physical or mental condition[s], family, social, or cultural background, or sexual orientation ~~or~~; and

(ii) ~~shall~~ may not engage in conduct that would encourage a student ~~(s)~~ to develop a prejudice on the ~~(se)~~ grounds described in Subsection (5)(c)(i) or any other, consistent with the law.

(~~2~~) d An educator shall maintain confidentiality concerning a student unless revealing confidential information to an authorized person[s] serves the best interest of the student and serves a lawful purpose, consistent with ~~federal and state~~;

(i) Title 53A, Chapter 13, Part 3, Utah Family Educational Rights and Privacy Act; and

(ii) the Federal Family Educational Rights and Privacy Acts ~~(FERPA)~~, 20 U.S.C. Sec. 1232g and 34 CFR Part 99.

(~~3~~) e Consistent with ~~the~~ Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act, Section 53A-1-402.5, and ~~Board~~ rule[s], a professional educator:

(~~a~~) i ~~shall~~ may not accept a bonus ~~(es)~~ or incentive ~~(s)~~ from a vendor ~~(s)~~ or potential vendor ~~(s)~~ or a gift ~~(s)~~ from a parent ~~(s)~~ of a student ~~(s)~~, or a student ~~(s)~~ where there may be the appearance of a conflict of interest or impropriety;

(~~b~~) ii ~~shall~~ may not accept or give a gift ~~(s)~~ to a student ~~(s)~~ that would suggest or further an inappropriate relationship;

(~~c~~) iii ~~shall~~ may not accept or give a gift ~~(s)~~ to a colleague ~~(s)~~ that ~~are~~ is inappropriate or furthers the appearance of impropriety;

(~~d~~) iv may accept a donation ~~(s)~~ from a student ~~(s)~~, parent ~~(s)~~, ~~and~~ or business ~~(es)~~ donating specifically and strictly to benefit a student ~~(s)~~;

(~~e~~) v may accept, but not solicit, a nominal appropriate personal gift ~~(s)~~ for a birthday ~~(s)~~, holiday ~~(s)~~ ~~and~~, or teacher appreciation occasion ~~(s)~~, consistent with ~~school or school district~~ LEA polic[ies]y and ~~the~~ Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act;

(~~f~~) vi ~~shall~~ may not use ~~his~~ the educator's position or influence to:

(~~i~~) A solicit a colleague ~~(s)~~, student ~~(s)~~, or parent ~~(s)~~ ~~or~~ of a student ~~(s)~~ to purchase equipment, supplies, or services from the educator or participate in an activit[ies]y that financially benefits the educator unless approved in writing by the ~~local school board or governing board~~ LEA; or

(~~ii~~) B promote an athletic camp ~~(s)~~, summer league ~~(s)~~, travel opportunit[ies]y, or other outside instructional opportunit[ies]y from which the educator receives personal remuneration ~~(s)~~; and that involve students in the educator's school system, unless approved in writing consistent with ~~local school board or governing board~~ LEA policy and ~~Board~~ rule; and

(~~g~~) vii ~~shall~~ may not use school property, a facilit[ies]y, or equipment for personal enrichment, commercial gain, or for personal uses without express supervisor permission.

R277-515-4. Educator Responsibility for Maintaining a Safe Learning Environment and Educational Standards.

~~[A-](1)~~ A professional educator maintains a positive and safe learning environment for a student[s] and works toward meeting an educational standard[s] required by law.

~~[B-](2)(a)~~ Failure to strictly adhere to ~~[the following]~~ this Subsection (2) shall result in licensing discipline ~~[-as defined in R277-515-4G]~~.

~~(b)~~ The professional educator, upon receiving a Utah educator license:

~~(1)~~ shall take prompt and appropriate action to prevent harassment or discriminatory conduct toward a student[s] or school employee[s] that may result in a hostile, intimidating, abusive, offensive, or oppressive learning environment;

~~(2)~~ shall resolve a disciplinary problem[s] according to law, ~~[school board]~~ LEA policy, and local building procedures and strictly protect student confidentiality and understand laws relating to student information and records;

~~(3)~~ shall supervise a student[s] appropriately at school and a school-related activit[ies]y, home or away, consistent with ~~[district]~~ LEA policy and building procedures and the age of the students;

~~(4)~~ shall take action to protect a student from any known condition detrimental to that student's physical health, mental health, safety, or learning;

~~(5)(A)~~ shall demonstrate honesty and integrity by strictly adhering to all state and ~~[district]~~ LEA instructions and protocols in managing and administering a standardized test[s] to a student[s] consistent with Section 53A-1-608 and Rule R277-473404;

~~(a)~~ shall cooperate in good faith with a required student assessment[s];

~~(b)~~ shall encourage a student's['] best effort[s] in a H assessment[s];

~~(d)~~ shall submit and include all required student information and assessments, as required by ~~[state law and State Board of Education]~~ statute and rule[s]; and

~~(e)~~ shall attend training and cooperate with assessment training and assessment directives at all levels[-];

~~(6)~~ shall ~~may~~ not use or attempt to use ~~[school district or school]~~ an LEA computer[s] or information system[s] in violation of the ~~[school district's]~~ LEA's acceptable use policy for an employee[s] or access information that may be detrimental to young people or inconsistent with the educator's role model responsibility; and

~~(7)~~ shall ~~may~~ not knowingly possess, while at school or any school-related activity, any pornographic material in any form.

~~(3)(a)~~ Failure to adhere to ~~[the following]~~ this Subsection (3) may result in licensing discipline ~~[-as defined in R277-515-4G]~~.

~~(b)~~ A [P]penalt[ies]y shall be imposed, most readily, if an educator[s-have] has received a previous documented warning[~~(s)~~] from the educator's employer[-];

~~(c)~~ A professional educator:

~~(1)~~ shall demonstrate respect for a diverse perspective[s], idea[s], and opinion[s] and encourage contributions from a broad spectrum of school and community sources, including a communit[ies]y whose heritage language is not English;

~~(2)~~ shall use appropriate language, eschewing profane, foul, offensive, or derogatory comments or language;

~~(3)~~ shall maintain a positive and safe learning environment for a student[s];

~~(4)~~ shall work toward meeting an educational standard[s] required by law;

~~(5)~~ shall teach the objectives contained in ~~[the Utah]~~ a Core ~~[Curriculum]~~ Standard;

~~(6)~~ shall ~~may~~ not distort or alter subject matter from ~~[the]~~ a Core Standard in a manner inconsistent with the law ~~[-and shall use instructional time effectively]~~; and

~~(7)~~ shall use instructional time effectively consistent with ~~[school and school district]~~ LEA polic[ies]y.

R277-515-5. Professional Educator Responsibility for Compliance with [School District]LEA Polic[ies]y.

~~[A-](1)(a)~~ Failure to strictly adhere to ~~[the following]~~ this Subsection (1) shall result in licensing discipline ~~[-as defined in R277-515-4G]~~.

~~(b)~~ The professional educator:

~~(1)~~ understands and follows ~~[Board]~~ a rule[s] and ~~[local board]~~ LEA polic[ies]y;

~~(2)~~ understands and follows a school ~~[and]~~ or administrative polic[ies]y ~~[and]~~ or procedure[s];

~~(3)~~ understands and respects appropriate boundaries[-] established by ethical rules and school polic[ies]y and directive[s-] in teaching, supervising, and interacting with a student[s-and] or colleague[s]; and

~~(4)~~ shall conduct financial business with integrity by honestly accounting for all funds committed to the educator's charge, as school responsibilities require, consistent with ~~[school and school district]~~ LEA policy.

~~[B-](2)(a)~~ Failure to adhere to ~~[the following]~~ this Subsection (2) may result in licensing discipline ~~[-as defined in R277-515-4G]~~.

~~(b)~~ A [P]penalt[ies]y shall be imposed most readily, if an educator[s-have] has received a previous documented warning[~~(s)~~] from the educator's employer.

~~(c)~~ The professional educator:

~~(1)~~ shall resolve a grievance[s] with a student[s], colleague[s], school community member[s], and parent[s] professionally, with civility, and in accordance with ~~[school district charter school]~~ LEA polic[ies]y; and

~~(2)~~ shall follow ~~[school district/charter school]~~ LEA polic[ies]y for collecting money from a student[s], accounting for all money collected, and not commingling any school funds with personal funds.

R277-515-6. Professional Educator Conduct.

~~[A-](1)~~ A professional educator exhibits integrity and honesty in relationships with ~~[school and district]~~ an LEA administrator[s-and] or personnel.

~~[B-](2)(a)~~ Failure to adhere to ~~[the following] this Subsection (2)~~ may result in licensing discipline ~~[as defined in R277-515-1G]~~.

~~(b)~~ A ~~[P]~~penalt[ies]y shall be imposed most readily, if an educator~~[s have]~~ has received a previous documented warning~~(s)~~ from the educator's employer.

~~(c)~~ The professional educator:

~~(1)~~i) shall communicate professionally and with civility with a colleague[s], school and community specialist[s], administrator[s], and other personnel;

~~(2)~~ii) shall maintain[s] a professional and appropriate relationship and demeanor with a student[s], colleague~~[s and]~~ school community member[s], and parent[s];

~~(3)~~iii) shall~~##~~may not promote a personal opinion[s], personal issue[s], or political position[s] as part of the instructional process in a manner inconsistent with law;

~~(4)~~iv) shall express~~[es]~~ a personal opinion[s] professionally and responsibly in the community served by the school;

~~(4)~~v) shall comply with ~~[school and district]~~an LEA polic[ies]y, supervisory directive[s], and generally-accepted professional standard[s] regarding appropriate dress and grooming at school and at a school-related event[s];

~~(5)~~vi) shall work diligently to improve the educator's own professional understanding, judgment, and expertise;

~~(6)~~vii) shall honor all contracts for a professional service[s];

~~(7)~~viii) shall perform all services required or directed by the educator's contract with the ~~[school district, school, or charter school]~~LEA with professionalism consistent with ~~[local]~~LEA polic[ies]y and ~~[Board]~~rule[s]; and

~~(8)~~ix) shall recruit another educator[s] for employment in another position only within ~~[district]~~a LEA timeline[s] and guideline[s].

R277-515-7. Violations of Professional Ethics.

~~[A-](1)~~ This rule establishes standards of ethical decorum and behavior for licensed educators in ~~[Utah]~~the state.

~~[B-](2)~~ Provisions of this rule do not prevent, circumvent, replace, nor mirror criminal or potential charges that may be issued against a professional educator[s].

~~[C-](3)~~ The Board and USOE shall adhere to the provisions of this rule in licensing and disciplining a licensed Utah educator[s].

~~[D-](4)~~ Reporting and employment provisions related to professional ethics are provided in:

~~(1)~~a) Section ~~[53A-3-410]~~53A-15-1507;

~~(2)~~b) Section 53A-6-501;

~~(3)~~c) Section 53A-11-403; and

~~(4)~~d) Section ~~[R277-514-5]~~R277-516-7.

KEY: educators, professional, standards

Date of Enactment or Last Substantive Amendments: ~~[August 7, 2008]~~2015

Notice of Continuation: November 15, 2012

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(a); 53A-6; 53A-1-401(3)

Education, Administration R277-516

Education Employee Required Reports of Arrests and Required Background Check Policies for Non-licensed Employees

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39599

FILED: 08/13/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to incorporate reporting requirements from Rule R277-514, which is being repealed. Technical and conforming changes are also provided. (DAR NOTE: The proposed repeal of Rule R277-514 is under DAR No. 39597 in this issue, September 1, 2015, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: A new section on misconduct notification requirements and procedures is added to the rule and technical and conforming change are made throughout the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X, Section 3 and Subsections 53A-1-402(1)(a)(i) and (iii)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Adding language from Rule R277-514 and making technical and conforming changes to the rule will likely not result in a cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** Adding language from Rule R277-514 and making technical and conforming changes to the rule will likely not result in a cost or savings to local government.

◆ **SMALL BUSINESSES:** Adding language from Rule R277-514 and making technical and conforming changes to the rule will likely not result in a cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Adding language from Rule R277-514 and making technical and conforming changes to the rule will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Adding language from R277-514 and making technical and conforming changes to the rule will likely not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I believe that there is likely no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Benjamin Rasmussen by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at benjamin.rasmussen@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2015

AUTHORIZED BY: Benjamin Rasmussen, UPPAC Director and Special Counsel

R277. Education, Administration.
R277-516. ~~[Education-Employee]~~Background Check Policies and Required Reports of Arrests [and Required Background Check Policies] for Licensed Educators, Volunteers, Non-licensed Employees, and Charter School Governing Board Members.

R277-516-[2]1. Authority and Purpose.
[A-](1) This rule is authorized by:
_____ (a) Utah Constitution Article X, Section 3, which vests the general control and supervision of the public schools in the Board[;];
_____ (b)(i) ~~[by-]~~Subsections 53A-1-301(3)(a) and 53A-1-301(3)(d)(x), which instruct the Superintendent to perform duties assigned by the Board that include;
_____ (ii) presenting to the Governor and the Legislature each December a report of the public school system for the preceding year that includes:
_____ (A) investigation of all matters pertaining to the public schools[;]; and
_____ (B) statistical and financial information about the school system which the Superintendent considers pertinent;
_____ (c) ~~[by-]~~Subsections 53A-1-402(1)(a)(i) and (iii), which direct the Board to:
_____ (i) establish rules and minimum standards for the public schools regarding the qualification and certification of educators and ancillary personnel who provide direct student services[;]; and
_____ (ii) the evaluation of instructional personnel; and
_____ (d) ~~[by-]~~Title 53A, Chapter 15, Part 15, Background Checks, which directs the Board to require educator license applicants to submit to background checks and provide ongoing monitoring of licensed educators.

[B-](2) The purpose of this rule is ensure that all students who are compelled by law to attend public schools, subject to release from school attendance consistent with Section 53A-11-102, are instructed and served by public school teachers and employees

who have not violated laws that would endanger students in any way.

R277-516-[1]2. Definitions.
[_____] A. "Board" means the Utah State Board of Education.
] [B-](1) "Charter school governing board" means a board designated by a charter school to make decisions for the operation of the charter school.

[E-](2) "Charter school board member" means a current member of a charter school governing board.

[D-](3) "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the database maintained on all licensed Utah educators, which includes information such as:

- ([1]a) personal directory information;
- ([2]b) educational background;
- ([3]c) endorsements;
- ([4]d) employment history;
- ([5]e) professional development information;
- ([6]f) completion of employee background checks; and
- ([7]g) a record of disciplinary action taken against the educator.

[E-](4) "Contract employee" means an employee of a staffing service who works at a public school under a contract between the staffing service and the public school.

[F-](5) "DPS" means the Department of Public Safety.

[G-](6) "LEA" or "local education agency" ~~[means a school district, a charter school, or,]~~ for purposes of this rule[;] includes the Utah Schools for the Deaf and the Blind.

[H-](17)(a) "Licensed educator" means an individual who holds a valid Utah educator license and has satisfied all requirements to be a licensed educator in the Utah public school system (examples are traditional public school teachers, charter school teachers, school administrators, USOE and school district specialists).

([2]b) A licensed educator may or may not be employed in a position that requires an educator license.

([3]c) A licensed educator includes an individual who:

- ([a]i) is student teaching;
- ([b]ii) is in an alternative route to licensing program or position; or

([e]iii) ~~[an individual who]~~ holds an LEA-specific competency-based license.

[I-](8) "Non-licensed public education employee" means an employee of an LEA who:

([1]a) does not hold a current Utah educator license issued by the Board under Title 53A, Chapter 6, Educator Licensing and Professional Practices; or

([2]b) is a contract employee.

[J-](9) "Public education employer" means the education entity that hires and employs an individual, including public school districts, the Utah State Office of Education, Regional Service Centers, and charter schools.

[_____] K. "Superintendent" means the State Superintendent of Public Instruction or the Superintendent's designee.

[_____] L. "USOE" means the Utah State Office of Education.

] (10) "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 53A-6-301.

~~[M-](11)~~ "Volunteer" means a volunteer who may be given significant unsupervised access to children in connection with the volunteer's assignment.

R277-516-3. Licensed Public Education Employee Personal Reporting of Arrests.

~~[A-](1)~~ A licensed educator who is arrested, cited or charged with the following alleged offenses shall report the arrest, citation, or charge within 48 hours or as soon as possible to the licensed educator's district superintendent, charter school director or designee:

- ~~(1)~~a any matters involving an alleged sex offense;
- ~~(2)~~b any matters involving an alleged drug-related offense;
- ~~(3)~~c any matters involving an alleged alcohol-related offense;
- ~~(4)~~d any matters involving an alleged offense against the person under Title 76, Chapter 5, Offenses Against the Person;
- ~~(5)~~e any matters involving an alleged felony offense under Title 76, Chapter 6, Offenses Against Property;
- ~~(6)~~f any matters involving an alleged crime of domestic violence under Title 77, Chapter 36, Cohabitant Abuse Procedures Act; and

~~(7)~~g any matters involving an alleged crime under federal law or the laws of another state comparable to the violations listed in Subsections [R277-516-3A(1)-(6)](a) through (f).

~~[B-](2)~~ A licensed educator shall report convictions, including pleas in abeyance and diversion agreements within 48 hours or as soon as possible upon receipt of notice of the conviction, plea in abeyance or diversion agreement.

~~[C-](3)~~ An LEA superintendent, director, or designee shall report conviction, arrest or offense information received from a licensed educator to the Superintendent within 48 hours of receipt of information from a licensed educator.

~~[D-](4)~~ The Superintendent shall develop an electronic reporting process on the USOE website.

~~[E-](5)~~ A licensed educator shall report for work following an arrest and provide notice to the licensed educator's employer unless directed not to report for work by the employer, consistent with school district or charter school policy.

R277-516-4. Non-licensed Public Education Employee, Volunteer, and Charter School Board Member Background Check Policies.

~~[A-](1)~~ An LEA shall adopt a policy for non-licensed public education employee, volunteer, and charter school board member background checks that includes at least the following components:

~~(1)~~a a requirement that the individual submit to a background check and ongoing monitoring through registration with the systems described in Section 53A-15-1505 as a condition of employment or appointment; and

~~(2)~~b identification of the appropriate privacy risk mitigation strategy that will be used to ensure that the LEA only receives notifications for individuals with whom the LEA maintains an authorizing relationship.

~~[B-](2)~~ An LEA policy shall describe the background check process necessary based on the individual's duties.

R277-516-5. Non-licensed Public Education Employee~~[-or]~~, Volunteer, or Charter School Board Member Arrest Reporting Policy Required from LEAs.

~~[A-](1)~~ An LEA shall have a policy requiring a non-licensed public employee[s], a volunteer, a charter school board member[s], ~~and at~~ or any other employee[s] who drives a motor vehicle[s] as an employment responsibility, to report offenses specified in Subsection [R277-516-5C](3).

~~[B-](2)~~ An LEA shall post the policy described in Subsection [R277-516-5A](1) on the LEA's website.

~~[C-](3)~~ An LEA's policy described in Subsection [R277-516-5A](1) shall include the following minimum components:

- ~~(1)~~a reporting of the following:
 - ~~(a)~~i convictions, including pleas in abeyance and diversion agreements;
 - ~~(b)~~ii any matters involving arrests for alleged sex offenses;
 - ~~(e)~~iii any matters involving arrests for alleged drug-related offenses;
 - ~~(d)~~iv any matters involving arrests for alleged alcohol-related offenses; and
 - ~~(e)~~v any matters involving arrests for alleged offenses against the person under Title 76, Chapter 5, Offenses Against the Person.

~~(2)~~b a timeline for receiving reports from non-licensed public education employees;

~~(3)~~c immediate suspension from student supervision responsibilities for alleged sex offenses and other alleged offenses which may endanger students during the period of investigation;

~~(4)~~d immediate suspension from transporting students or public education vehicle operation or maintenance for alleged offenses involving alcohol or drugs during the period of investigation;

~~(5)~~e adequate due process for the accused employee consistent with S[ub]section 53A-~~(3-410(10))15-1506;~~

~~(6)~~f a process to review arrest information and make employment or appointment decisions that protect both the safety of students and the confidentiality and due process rights of employees and charter school board members; and

~~(7)~~g timelines and procedures for maintaining records of arrests and convictions of non-licensed public education employees and charter school board members.

~~[D-](4)~~ An LEA shall ensure that the records described in R277-516-5~~[C-](3)~~(7)g:

~~(a)~~ include final administrative determinations and actions following investigation; and

- ~~(b)~~ are maintained:
 - ~~(i)~~ only as necessary to protect the safety of students; and
 - ~~(ii)~~ with strict requirements for the protection of confidential employment information.

R277-516-6. Public Education Employer Responsibilities Upon Receipt of Arrest Information.

~~[A-](1)~~ A public education employer that receives arrest information about a licensed public education employee shall

review the arrest information and assess the employment status consistent with Section 53A-6-501, Rule R277-515, and the LEA's policy.

~~[B-]~~(2) A public education employer that receives arrest information about a non-licensed public education employee, volunteer, or charter school board member shall review the arrest information and assess the individual's employment or appointment status:

~~[1-]~~(a) considering the individual's assignment and duties; and

~~[2-]~~(b) consistent with a local board-approved policy for ethical behavior of non-licensed employees, volunteers, and charter school board members.

~~[C-]~~(3) A local board shall provide appropriate training to non-licensed public education employees, volunteers, and charter school board members about the provisions of the local board's policy for self-reporting and ethical behavior of non-licensed public education employees, volunteers, and charter school board members.

~~[D-]~~(4) A public education employer shall cooperate with the Superintendent in investigations of licensed educators.

R277-516-7. Misconduct Notification Requirements and Procedures.

(1)(a) An educator who has reasonable cause to believe that a student may have been physically or sexually abused by a school's employee shall immediately report that belief to the school principal, district superintendent, or UPPAC, in addition to any other reports required by law.

(b) A school administrator who receives a report described in Subsection (1)(a) shall immediately submit the information to UPPAC if the employee is licensed as an educator.

(2) A local superintendent or charter school director shall notify UPPAC if an educator is determined, pursuant to an administrative or judicial action, to have had disciplinary action taken for, or, to be guilty of:

(a) unprofessional conduct or professional incompetence that:

(i) results in suspension for more than one week or termination; or

(ii) otherwise warrants UPPAC review; or

(b) immoral behavior.

(3) An educator who fails to comply with Subsection (1) may:

(a) be found guilty of unprofessional conduct; and

(b) have disciplinary action taken against the educator.

KEY: school employees, self reporting

Date of Enactment or Last Substantive Amendments: 2015

Notice of Continuation: June 10, 2014

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-301(3)(a); 53A-1-301(3)(d)(x); 53A-1-402(1)(a)(i); 53A-1-402(1)(a)(iii)

**Education, Administration
R277-517
Board and UPPAC Disciplinary
Definitions and Actions**

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 39600

FILED: 08/13/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-517 is repealed because it conflicts with H.B. 345, 2015 General Session. Some provisions were combined with Rules R277-201, R277-202, and R277-203. (DAR NOTE: The proposed amendments to Rule R277-201 is under DAR No. 39586, Rule R277-202 is under DAR No. 39587, and Rule R277-203 is under DAR No. 39588 in this issue, September 1, 2015, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X, Section 3 and Subsection 53A-1-401(3) and Subsection 53A-1-402(1)(a)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** Repealing this rule will likely not result in a cost or savings to the state budget. Necessary provisions within this rule have been moved to other rules.

♦ **LOCAL GOVERNMENTS:** Repealing this rule will likely not result in a cost or savings to local government. Necessary provisions within this rule have been moved to other rules.

♦ **SMALL BUSINESSES:** Repealing this rule will likely not result in a cost or savings to small businesses. Necessary provisions within this rule have been moved to other rules.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Repealing this rule will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities. Necessary provisions within this rule have been moved to other rules.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Repealing this rule will likely not result in any compliance costs for affected persons. Necessary provisions within this rule have been moved to other rules.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I believe that there is likely no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED,
DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Benjamin Rasmussen by phone at 801-538-7835, by FAX
at 801-538-7768, or by Internet E-mail at benjamin.
rasmussen@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON
THIS RULE BY SUBMITTING WRITTEN COMMENTS NO
LATER THAN AT 5:00 PM ON 10/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2015

AUTHORIZED BY: Benjamin Rasmussen, UPPAC Director
and Special Counsel

R277. Education, Administration.

[R277-517. Board and UPPAC Disciplinary Definitions and Actions.

R277-517-1. Definitions.

A. "Administrative hearing" means a formal adjudicative proceeding consistent with 53A-6-601. The Utah State Board of Education and Utah State Office of Education licensing process is not governed by the Utah Administrative Procedures Act Section 63G-4.

B. "Board" means the Utah State Board of Education.

C. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file owned and maintained on all licensed Utah educators. The file includes information such as:

(1) personal directory information;

(2) educational background;

(3) endorsements;

(4) employment history; and

(5) a record of disciplinary action taken against the educator.

D. "Educator paper licensing file" means the file maintained securely by UPPAC on an educator. The file is opened following UPPAC's direction to investigate alleged misconduct. The file contains the original complaint, subsequent correspondence and the final disposition of the case.

E. "Revocation" means a permanent invalidation of a Utah educator license.

F. "Stipulated agreement" means an agreement between a respondent/educator and the Board or between a respondent/educator and UPPAC under which disciplinary action against an educator's license status will be taken, in lieu of a hearing. At any time after an investigative letter has been sent, a stipulated agreement may be negotiated between the parties and becomes binding when approved by the Board.

G. "Suspension" means an invalidation of a Utah educator license. A suspension may include specific conditions that an educator shall satisfy and shall identify a minimum time period that shall elapse before the educator can request a reinstatement hearing before UPPAC.

H. "Utah Professional Practices Advisory Commission (Commission or UPPAC)" means a commission established to assist and advise the Board in matters relating to the professional practices of educators, as established under Section 53A-6-301.

I. "UPPAC disciplinary letters or action" means letters sent or action taken by UPPAC informing the educator of licensing disciplinary action not rising to the level of license suspension. Disciplinary letters and action include the following:

(1) Letter of admonishment is a letter sent by UPPAC to the educator cautioning the educator to avoid or take specific actions in the future;

(2) Letter of warning is a letter sent by UPPAC to an educator for misconduct that was inappropriate or unethical that does not warrant longer term or more serious discipline;

(3) Letter of reprimand is a letter sent by UPPAC to an educator for misconduct that was longer term or more seriously unethical or inappropriate than conduct warranting a letter of warning, but not warranting more serious discipline;

(4) Probation is an action directed by UPPAC for an indefinite or designated time period usually accompanied by a disciplinary letter.

J. "UPPAC investigative letter" means a letter sent by UPPAC to an educator notifying the educator that an allegation of misconduct has been received against him and UPPAC has directed that an investigation of the educator's alleged actions take place.

K. "USOE" means the Utah State Office of Education.

R277-517-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests the general control and supervision of the public schools in the Board, by Section 53A-1-402(1)(a) which directs the Board to make rules regarding the certification of educators, by Section 53A-6 which establishes provisions related to educator licensing and professional practices, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to:

(1) provide standards and procedures to ensure protection of students' physical, emotional, academic and social well-being at school by all the adults who work for Utah public schools.

(2) provide definitions and provisions explaining UPPAC actions and recommendations that do not rise to the level of action against an educator's license and to provide definitions and criteria for Board disciplinary actions against educator licenses.

R277-517-3. UPPAC Disciplinary Actions.

A. UPPAC is an advisory body to the Board.

B. Unlike Board action, a UPPAC action does not affect the validity of a Utah educator license.

C. UPPAC may issue the following disciplinary actions:

(1) Letter of admonishment:

(a) sent directly to the educator;

~~(b) cautioning the educator to avoid or take specific actions in the future;~~

~~(c) does not show as a notation on CACTUS;~~

~~(d) is maintained permanently in educator's paper licensing file.~~

~~(2) Letter of warning:~~

~~(a) sent directly to the educator;~~

~~(b) warns the educator that specific behavior or conduct was inappropriate or unethical and directs the educator to avoid or take specific actions in the future;~~

~~(c) does not show as a notation on CACTUS;~~

~~(d) is maintained permanently in educator's paper licensing file;~~

~~(e) notice sent by UPPAC to employer or former employer that investigation was closed with a letter of warning.~~

~~(3) Letter of reprimand:~~

~~(a) sent to educator and to educator's employer or former employer, if the employer is a public or private school;~~

~~(b) strongly reprimands the educator that specific behavior or conduct was unethical or unacceptable among professional educators and directing the educator to avoid or take specific action in the future;~~

~~(c) shows as a notation on educator's CACTUS file which directs those with CACTUS access to contact USOE for further information;~~

~~(d) often, but not always, includes a period of probation during which educator must meet specific conditions;~~

~~(e) remains as a notation on educator's CACTUS file for at least two years from the date of UPPAC action unless a different time period is identified by the reprimand letter or in the stipulated agreement for the letter;~~

~~(f) is maintained permanently in educator's paper licensing file.~~

~~(g) may be removed from educator's active CACTUS file, upon educator's request, following designated time period and satisfaction of conditions by educator. UPPAC shall review the request, review educator's file and subsequent actions and may require educator to meet with UPPAC prior to granting the request;~~

~~(4) probation:~~

~~(a) usually, but not always, accompanies a warning or reprimand letter and~~

~~(b) designates time period and conditions that educator receiving other UPPAC discipline may be asked to satisfy prior to lifting of the probation or to avoid further UPPAC discipline;~~

~~(c) shows as a notation on an educator's CACTUS file and directs those with CACTUS access to contact USOE for further information.~~

~~(d) remains on educator's CACTUS file for at least 2 years from the date of UPPAC action unless a different time period is designated;~~

~~(e) may be lifted upon educator's request following designated time period and satisfaction of all conditions; UPPAC shall review the request, review educator's file and subsequent action and may require educator to meet with UPPAC prior to granting the request;~~

~~(5) other disciplinary action or letter that is appropriate and reasonable to address or remediate educator misconduct, or both, that is not suspension or revocation.~~

~~D. UPPAC shall make written recommendations to the Board for disciplinary actions that affect educator licenses including suspension, revocation and reinstatement.~~

~~E. UPPAC action is a final administrative action for those disciplinary actions found in R277-517-3C, and the existence of such action is public information under Section 63G-2-201(2)(e). The substance of disciplinary letters is protected under Section 63G-2-305(25), (33) and (34).~~

~~F. UPPAC shall send notice of final UPPAC action to an educator no more than 30 days following a final UPPAC action.~~

~~G. UPPAC shall not provide information to the public about UPPAC actions until they have been reviewed or acted upon or both by the Board.~~

~~**R277-517-4. Board Receipt and Review of UPPAC Recommendations.**~~

~~A. The Board shall review UPPAC recommendations for suspension, revocations, reinstatements, and other disciplinary actions upon request in executive sessions consistent with Section 52-4-204 through 206.~~

~~B. UPPAC shall make Hearing Reports and stipulated agreements available for a confidential review by Board members prior to and during the Board's discussion of cases.~~

~~C. UPPAC shall make case files, hearing recordings and exhibits available for review by Board members as directed by the Board.~~

~~D. UPPAC shall forward the completed UPPAC Recommendation Report Form to the Board for its consideration.~~

~~E. If the Board takes final action to accept the recommendations of a UPPAC hearing report, the final hearing report is a public record, but may be redacted prior to release to protect the names of students or information consistent with Section 63G-2-202(3).~~

~~F. If the Board does not accept a UPPAC recommendation, the Board shall prepare written findings and conclusions based on the record and take any other action consistent with procedures in R277-514-4C, and provide the findings to the educator consistent with R277-517-5D and E, below. The Board findings and conclusions are a public record, but may be redacted prior to release to protect the names of students or information consistent with Section 63G-2-202(3).~~

~~G. The Board shall initially review UPPAC recommendations at the next regularly scheduled Board meeting following receipt of written recommendations.~~

~~**R277-517-5. Board Disciplinary Actions.**~~

~~A. Board disciplinary actions:~~

~~(1) The Board may suspend an educator's license consistent with R277-517-1G:~~

~~(a) A suspension may be recommended by a Stipulated Agreement negotiated between UPPAC and an educator; or~~

~~(b) A suspension may be recommended following an administrative hearing under the provisions of R686-100;~~

~~(c) A suspension may include specific conditions which shall be satisfied by the educator prior to requesting a reinstatement hearing from UPPAC under R686-100;~~

~~(d) A suspension shall provide a minimum time period after which the educator may request a reinstatement hearing from UPPAC.~~

~~(2) The Board may revoke an educator's license:~~

~~(a) A revocation is permanent, except as provided under R277-517-5A(2)(e) below;~~

~~(b) A revocation is required under Section 53A-6-405(2);~~

~~(c) An individual whose license has been revoked may seek reinstatement of his license only in the following limited circumstances:~~

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

~~(ii) the individual identifies material procedural UPPAC or Board error in the revocation process.~~

~~(3) If a complaint is filed against an educator and the educator fails to respond to the complaint or fails to appear for a hearing before the Board or UPPAC, the Board may revoke or suspend the educator's license. This action may be taken only if UPPAC has documentation of attempts to contact the educator, consistent with R686-100.~~

~~(4) The Board may reinstate an educator's license:~~

~~(a) An educator may request a reinstatement hearing following a license suspension. The reinstatement request shall be made consistent with R686-100.~~

~~(b) An educator has a reasonable expectation of a reinstatement hearing, consistent with due process and reinstatement hearing conditions set by UPPAC, but no expectation of license reinstatement by the Board.~~

~~(c) An educator whose license has been suspended and the reinstatement denied by the Board may request an additional reinstatement hearing once every 24 months unless otherwise directed by the Board.~~

~~(d) An educator requesting a reinstatement hearing shall have a criminal background check, that was conducted not more than six months prior to the requested hearing, on file with the USOE. The background check and review of any offenses must be completed prior to reinstatement.~~

~~(e) Prior to sending a reinstatement recommendation to the Board for its consideration, UPPAC shall provide evidence to the Board of its consideration of Board-identified criteria central to the Board's authority to reinstate an educator's license.~~

~~D. The Board has sole discretion in final administrative decisions.~~

~~E. The Board shall send written notice to an educator of Board action no more than 30 days following the Board's final action.~~

~~F. The Board shall send written notice of an educator's license suspension or revocation to an educator's former employer if the employer was a public or private school.~~

KEY: educator, professional, standards

Date of Enactment or Last Substantive Amendments: June 8, 2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(a); 53A-6; 53A-1-401(3)]

Education, Administration R277-602 Special Needs Scholarships - Funding and Procedures

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 39601

FILED: 08/13/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended in response to S.B. 270, 2015 General Session. The amended rule also provides technical and conforming changes.

SUMMARY OF THE RULE OR CHANGE: The amendments to this rule change the minimum age that a student can receive a special needs scholarship from five to three and provide numerous technical and conforming changes throughout the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X, Section 3 and Section 53A-1a-707 and Subsection 53A-1-401(3) and Subsection 53A-1a-706(5) (b)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There will be additional costs to the state for providing eligible private schools with Carson Smith scholarship funds for enrolling qualified three and four year old special needs students as mandated in S.B. 270 (2015). Costs are speculative and difficult to determine at this time.

♦ **LOCAL GOVERNMENTS:** There is likely no cost or savings to local government. Costs will be to the state and savings will be to individuals.

♦ **SMALL BUSINESSES:** An eligible private school may generate additional income by enrolling qualified three and four year old special needs students as provided for in S.B. 270 (2015). The income that the eligible private school may receive is speculative and difficult to determine at this time.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** A Carson Smith scholarship payment that an eligible private school receives for enrolling a qualified three or four year old special needs student as provided for in S.B. 270 (2015) will assist a parent with the costs associated with attending the private school. Savings to individuals are speculative and difficult to determine at this time.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Qualified special needs students who are three and four are now eligible to receive the Carson Smith scholarship which likely will not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I believe that there is likely no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2015

AUTHORIZED BY: Benjamin Rasmussen, UPPAC Director and Special Counsel

R277. Education, Administration.

R277-602. Special Needs Scholarships - Funding and Procedures.

R277-602-[2]1. Authority and Purpose.

~~[A-](1)~~ This rule is authorized by:
~~(a)~~ Utah Constitution Article X, Section 3, which vests general control and supervision of the public school system under the Board[;];
~~(b)~~ Subsection 53A-1a-706(5)(b), which provides for Board rules to establish timelines for payments to private schools[;];
~~(c)~~ ~~[Section 53A-3-410(6)(b)(i)(e)]~~ Title 53A, Chapter 15, Part 15, Background Checks, which provides for criminal background checks and ongoing monitoring for employees and volunteers[;];
~~(d)~~ Section 53A-1a-707, which provides for Board rules about eligibility of students for scholarships and the application process for students to participate in the scholarship program[;]; and ~~by~~
~~(e)~~ Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.
~~[B-](2)~~ The purpose of this rule is to:
~~(a)~~ outline responsibilities ~~[for parents/students, public schools, school districts or charter schools]~~ of a parent, an LEA, and an eligible private school[s] that accepts a scholarship[s] from a special needs student[s] and the ~~[State-]Board[-of Education]~~ in providing choice for a parent[s] of a special needs student[s] who chooses to have ~~[their children]~~ a student served in a private school[s]; and
~~(b)~~ ~~[-in]~~ provid[ing]e accountability for the citizenry in the administration and distribution of the scholarship funds.

R277-602-[4]2. Definitions.

~~[A-]~~ "Agreed upon procedure" for purposes of this rule means the agreed upon procedure as provided for under Section 53A-1a-705(1)(b)(i)(B).
~~[C-](1)~~ "Appeal" ~~[for purposes of the rule-]~~ means an opportunity to discuss~~[/]~~ or contest a final administrative decision consistent with and expressly limited to the procedures of this rule.
~~[N-](2)~~ "~~Special Needs Scholarship~~ Appeals Committee~~[-(Appeals Committee)]~~" means a committee comprised of:
~~(1)a)~~ the special needs scholarship coordinator;
~~(2)b)~~ the USOE Special Education Director;
~~(3)c)~~ one individual appointed by the Superintendent or designee; and
~~(4)d)~~ two Board-designated special education advocates.
~~[B-](3)~~ "~~Annual a~~ Assessment" ~~[for purposes of this rule]~~ means a formal testing procedure carried out under prescribed and uniform conditions that measures a student's~~[']~~ academic progress, consistent with Subsection 53A-1a-705(1)(f).
~~[D-](4)~~ "Assessment team" means the individuals designated under Subsection 53A-1a-703(1).
~~[E-]~~ "Audit of a private school" for purposes of this rule means a financial audit provided by an independent certified public accountant, as provided under Section 53A-1a-705(1)(b).
~~[F-]~~ "Board" means the Utah State Board of Education.
~~[G-](5)~~ "Days" means school days unless specifically designated otherwise in this rule.
~~[H-]~~ "Disclosure to parents" for purposes of this rule means the express acknowledgments and acceptance required under Section 53A-1a-704(5) as part of parent application available through schools districts.
~~[I-](6)~~ "Eligible student" ~~[for purposes of this rule-]~~ means~~[;]~~ a student who meets the qualifications described in Section 53A-1a-704.
~~(1)~~ the student's parent resides in Utah;
~~(2)~~ the student has a disability as designated in 53A-1a-704(2)(b); and
~~(3)~~ the student is school age.
~~(4)~~ Eligible student also means that the student was enrolled in a public school in the school year prior to the school year in which the student will be enrolled in a private school, has an IEP and has obtained acceptance for admission to an eligible private school; and
~~(5)~~ The requirement to be enrolled in a public school in the year prior and have an IEP does not apply if:
~~(a)~~ the student is enrolled or has obtained acceptance for admission to an eligible private school that has previously served students with disabilities; and
~~(b)~~ an assessment team is able to readily determine with reasonable certainty that the student has a disability and would qualify for special education services if enrolled in a public school and the appropriate level of special education services which would be provided were the student enrolled in a public school.
~~[J-](7)~~ "Enrollment" ~~[for purposes of this rule-]~~ means that:
~~(a)~~ the student has completed the school enrollment process[;];

~~_____~~ (b) the school maintains required student enrollment information and documentation of age eligibility[;];

~~_____~~ (c) the student is scheduled to receive services at the school[;];

~~_____~~ (d) the student attends regularly[;]; and

~~_____~~ (e) the school has ~~been~~ accepted the student consistent with Rule R277-419 and the student's IEP.

~~[K-](8)~~ "Final administrative action" ~~[for purposes of this rule]~~ means the concluding action under ~~[Section 53A-1a-701 through 53A-1a-710]~~ Title 53A, Chapter 1a, Part 7, Carson Smith Scholarships for Students with Special Needs Act and this rule.

~~[L-]~~ "Individual education program (IEP)" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with Board Special Education Rules and Part B of the Individuals with Disabilities Education Act (IDEA):

~~[M-](9)~~ "Private school that has previously served a student[s] with a disability[ies]" means a school that:

(1)a) has enrolled a student[s] within the last three years under the special needs scholarship program;

(2)b) has enrolled a student[s] within the last three years who ha[ve]s received special education services under an Individual Services Plan[s] (ISP) from ~~[the school district]~~ an LEA where the school is geographically located; or

(3)c) can provide other evidence to the Board that is determinative of having enrolled a student[s] with a disability[ies] within the last three years.

~~[O-]~~ "USOE" means the Utah State Office of Education.

~~[P-](10)~~ "Warrant" means payment by check to a private school.

R277-602-3. Parent[/Guardian] Responsibilities and Payment Provisions.

~~[A-](1)~~ If the student is enrolled in a public school or was enrolled in a public school in the year previous to the year in which the scholarship is sought, the parent[/guardian] shall submit an application, available from the ~~[USOE]~~ Superintendent or online, to the ~~[school district or charter school]~~ LEA within which the parent[/guardian] resides.

~~(1)a)~~ Consistent with the timeline provided in Subsection 53A-1a-704(4), ~~[T]~~ the parent shall complete all required information on the application and submit, ~~[the following documentation]~~ with the application ~~[form]~~, ~~[consistent with the timeline provided in Section 53A-1a-704(4)]~~ documentation that:

(a)i) ~~[documentation that]~~ the parent[/guardian] is a resident of the state ~~[of Utah]~~;

(b)ii) ~~[documentation that]~~ the student is at least ~~[five]~~ three years of age before September 2 of the year of enrollment ~~[consistent with Section 53A-3-402(6)]~~;

(c)iii) ~~[documentation that]~~ the student is not more than 21 years of age and has not graduated from high school ~~[consistent with Section 53A-15-301(1)(a)]~~;

(d)iv) ~~[documentation that]~~ the student has satisfied ~~[R277-602-3A or B]~~ Subsection (1) or (2); and

(e)v) ~~[documentation that]~~ the student has official acceptance at an eligible private school, as ~~[defined under]~~ established by Section 53A-1a-705[;].

(2)b) The parent shall sign the acknowledgments and refusal to consent to services on the application form consistent with Section 53A-1a-704.

~~(3)c)~~ Any intentional falsification, misinformation, or incomplete information provided on the application may result in the cancellation of the scholarship to the student and non-payment to the private school.

~~[B-](2)~~ If the student was not enrolled in a public school in the year previous to the year in which the scholarship is sought, the parent[/guardian] shall submit an application to the school district ~~[in which the private school is geographically located (school district)]~~ responsible for child find under ~~[IDEA]~~ the Individuals with Disabilities Education Act, ~~[See. 612(a)(3)]~~ 20 U.S.C. Sec. 1414.

(1)a) The parent shall complete all required information on the application and submit, ~~[the following]~~ with the application, documentation ~~[with application form]~~ that:

(a)i) ~~[documentation that]~~ the parent[/guardian] is a resident of the state ~~[of Utah]~~;

(b)ii) ~~[documentation that]~~ the student is at least ~~[five]~~ three years of age[;] before September 2 of the year of enrollment;

(c)iii) ~~[documentation that]~~ the student is not more than 21 years of age and has not graduated from high school ~~[consistent with Section 53A-15-301(1)(a)]~~;

(d)iv) ~~[documentation that]~~ the student has satisfied ~~[R277-602-3A or B]~~ Subsection (1) or (2); and

(e)v) ~~[documentation that]~~ the student has official acceptance at an eligible private school, as ~~[defined under]~~ established by Section 53A-1a-705.

(2)b) The parent shall sign the acknowledgments and refusal to consent to services on the application form consistent with Section 53A-1a-704.

(3)c) The parent shall participate in an assessment team meeting to determine:

(i) if a student would qualify for special education services; and

(ii) the level of services for which the student would be eligible if enrolled in a public school.

~~[C-](3)(a)~~ ~~[Payment provisions]~~ Upon review and receipt of ~~[documentation that verifies a student's admission to, or continuing enrollment and attendance at, a private school]~~, the Board shall make scholarship payments quarterly in equal amounts in each school year in which a scholarship is in force ~~[The Board shall make a scholarship payment in accordance with Section 53A-1a-706]~~.

~~[D-]~~ A special needs scholarship shall be effective for three years subject to renewal under Section 53A-1a-704(6):

~~[E-](b)~~ The parent shall, consistent with Subsection 53A-1a-706(8), endorse the warrant received by the private school from the ~~[USOE]~~ Superintendent no more than 15 ~~[school]~~ calendar days after the private school's receipt of the warrant.

~~[F-](4)(a)~~ The parent shall notify the Board in writing within five days if the student does not continue in enrollment in an eligible private school for any reason, including:

(i) parent['] or student choice[;];

(ii) suspension or expulsion of the student; or

(iii) the student misses more than 10 consecutive days ~~[at which point]~~.

(b) If the student does not continue in enrollment, the Board may modify the payment to the private school ~~[consistent with R277-419-1]~~.

~~[G-](5)~~ The parent shall cooperate and respond within 10 days to an enrollment cross-checking request from the Board.

~~[H-](6)~~ The parent shall notify the Board in writing by March 1 annually to indicate the student's continued enrollment.

R277-602-4. ~~[School District or Charter School]LEA Responsibilities.~~

~~[A-](1)~~ ~~[The school district or charter school]~~An LEA that receives ~~[the]~~a student's scholarship application consistent with Subsection 53A-1a-704(4) shall forward an application[s] to the Board no more than 10 days following receipt of the application.

~~[B-](2)~~ The ~~[school district or charter school]~~LEA that receive~~[d]~~s ~~[the]~~a student's scholarship application shall:

~~(1)a~~ ~~[receive applications from students/parents;~~

~~(2)~~ ~~—]~~verify enrollment of the student seeking a scholarship in a previous school year within a reasonable time following contact by the Board;

~~(3)b~~ verify the existence of the student's IEP and level of service to the ~~[USOE]~~Superintendent within a reasonable time;

~~(4)c~~ provide personnel to participate on an assessment team to determine:

~~(a)i(A)~~ if a student who was previously enrolled in a private school that has previously served a student[s] with a disability~~[ies]~~y would qualify for special education services if enrolled in a public school; and

~~(B)~~ the appropriate level of special education services ~~[which]that~~ would be provided were the child enrolled in a public school for purposes of determining the scholarship amount consistent with Subsection 53A-1a-706(2); or

~~(b)ii~~ if a student previously receiving a special needs scholarship is entitled to receive the scholarship during the subsequent eligibility period.

~~[C-](3)~~ A [S]special needs scholarship student[s shall] may not [be-]enroll[ed] in [public or charter schools]an LEA for dual enrollment or an extracurricular activit[ies]y, consistent with the parent[s]/guardians' assumption of full responsibility for a student[s]' services under Subsection 53A-1a-704(5).

~~[D-](4)~~ ~~[School districts and charter schools]~~An LEA shall cooperate with the Board in cross-checking special needs scholarship student enrollment information, as requested by the Board.

~~[E-] School district and charter school notification to students with IEPs:~~

~~(1)5(a)~~ ~~[School districts and charter schools]~~An LEA shall provide written notice to a parent[s or guardians] of a student[s] who ha~~[ve]~~s an IEP of the availability of a scholarship to attend a private school ~~[through the Special Needs Scholarship Program through state special education monitoring procedures]in accordance with Subsection 53A-1a-704(10).~~

~~(2)b~~ The written notice shall consist of the following statement: ~~[School districts and charter schools are]~~A local education agency is required by Utah law, Subsection 53A-1a-704(10), to inform parents of students with IEPs enrolled in public schools, of the availability of a scholarship to attend a private school through the Carson Smith Scholarship Program.

~~(3)~~ ~~The written notice shall be provided no later than 30 days after the student initially qualifies for an IEP.~~

~~(4)~~ ~~The written notice shall be provided annually no later than February 1 to all students who have IEPs.~~

~~(5)~~ ~~The written notice shall include the address of the Internet website maintained by the Board that provides prospective applicants and their parents with program information and application forms for the Carson Smith Scholarship Program.~~

~~(6)~~ ~~A school district, school within a school district, or charter school that has an enrolled student who has an IEP shall post the address of the Carson Smith Internet website maintained by the Board on the school district's or school's website, if the school district or school has one.~~

R277-602-5. State Board of Education Responsibilities.

~~[A-](1)~~ No later than April 1, ~~[F]~~the Board shall provide an application[s]; containing acknowledgments required under Subsection 53A-1a-704(5), for a parent[s] seeking a special needs scholarship:

~~(a)~~ ~~online[-];~~

~~(b)~~ ~~at the Board office[-]; and~~

~~(c)~~ ~~at [school district or charter school]LEA offices[-, and at charter schools no later than April 1 prior to the school year in which admission is sought].~~

~~[B-](2)~~ The Board shall provide a determination that a private school meets the eligibility requirements of Section 53A-1a-705 as soon as possible but no more than 30 calendar days after the private school submits an application and complete~~[d]~~s documentation of eligibility.

~~(3)~~ The Board may:

~~(1)a~~ provide reasonable timelines within the application for satisfaction of private school requirements;

~~(2)b~~ issue letters of warning[-];

~~(c)~~ require the school to take corrective action within a time frame set by the Board[-];

~~(d)~~ suspend the school from the program consistent with Section 53A-1a-708[-]; ~~[-or]~~

~~(e)~~ impose ~~[such other-]a~~ penalt[ies]y as the Board determines appropriate under the circumstances[-];

~~(3)f~~ ~~[fail to-]establish an appropriate[-consequences-]or~~ penalt[ies]y for a private school[s] that fails to:

~~(a)i~~ ~~[fail to-]provide an~~ affidavit[s] under Section 53A-1a-708;

~~(b)ii~~ ~~[fail to-]administer an~~ assessments[-, fail to-] or report an assessment[s] to a parent[s] or [fail to report assessments to-]assessment team under Subsection 53a-1a-705(1)(f);

~~(e)iii~~ ~~[fail to-]employ teachers with credentials required under Subsection 53A-1a-705(g);~~

~~(d)iv~~ ~~[fail to-]provide to a parent[s] relevant credentials of teachers under Subsection 53A-1a-705([h]i); or~~

~~(e)v~~ ~~[fail to-]require a completed criminal background [echecks] and ongoing monitoring under [Section 53A-3-410(2) and (3)]Title 53A, Chapter 15, Part 15, Background Checks and take appropriate action consistent with information received[-]; and~~

~~(4)g~~ ~~initiate a complaint[s] and hold an administrative hearing[s], as appropriate, and consistent with [R277-602]this rule.~~

~~[C-](4)~~ The Board shall make a list of eligible private schools updated annually and available no later than June 1 of each year.

~~[D-](5)~~ ~~The Board shall provide [F]information about an approved scholarship[s] and availability and level of funding [shall be provided] to a scholarship applicant parent[s/guardians] no later than March 1 of each year.~~

~~[E-](6)~~ The Board shall mail a scholarship payment[s] directly to a private school[s] as soon as reasonably possible consistent with Subsection 53A-1a-706(8).

~~[F-](7)~~ If an annual legislative appropriation is inadequate to cover all scholarship applicants and documented levels of service, the Board shall establish by rule a lottery system for determining the scholarship recipients, with preference provided for under Subsection 53A-1a-706(1)(~~e~~).

~~[G-](8)~~ The Board shall verify and cross-check, using USOE technology services, special needs scholarship student enrollment information consistent with Subsection 53A-1a-706(7).

R277-602-6. Responsibilities of Private Schools that Receive Special Needs Scholarships.

~~[A-](1)~~ A [P]private school[s] that intends to enroll a scholarship student shall submit [applications by March 1 prior to the school year in which it intends to enroll scholarship students] an application by the deadline established in Section 53A-1a-705.

~~[B-](2)~~ A private school shall submit an [A]application[s] and appropriate documentation[from private schools] for eligibility to receive a special needs scholarship student[s shall be provided] to the [USOE]Superintendent on forms designated by the [USOE] consistent with Section 53A-1a-705(3)]Superintendent.

~~[C-](3)~~ A [P]private school[s] shall satisfy criminal background check and ongoing monitoring requirements for an employee[s] and a volunteer[s] consistent with [Section 53A-3-440]Title 53A, Chapter 15, Part 15, Background Checks.

~~[D-](4)~~ A [P]private school[s] that seeks to enroll a special needs scholarship student[s] shall, in concert with the parent seeking a special needs scholarship for a student, initiate the assessment team meetings required under Section[s] 53A-1a-704(3) and 53A-1a-704(6).

~~([+])a~~ A private school shall schedule a [M]meeting[s shall be scheduled] at a time[s] and location[s] mutually acceptable to the private school[s], the applicant parent[s], and participating public school personnel.

~~([2])b~~ Designated private school and public school personnel shall maintain documentation of the meeting[s] and the decision[s] made for [the]a student[s].

~~([3])c(i)~~ Except as provided by Subsection (4)(c)(ii), a private school and public school shall confidentially maintain [D]documentation regarding a required assessment team meeting[s], including documentation of:

(A) a meeting[s] for a student[s] denied a scholarship[s] or service[s]; and

(B) a student[s] admitted into a private school[s] and the[~~#~~] student's level[s] of service[~~shall be maintained confidentially by the private and public schools, except the information shall be provided~~].

(ii) Upon request by the Superintendent, a private school and public school shall provide the documentation described in Subsection (4)(c)(i) to the [USOE]Superintendent for purposes of determining student scholarship eligibility[;] or for verification of compliance[upon request by the USOE].

~~[E-](5)~~ A [P]private school[s] that receive[ing]es a scholarship payment[s] under this rule shall provide complete student records in a timely manner to another private school[s] or a public school[s] that request[ing]s student records if a parent[s have] transfer[red]s a student[s] under Subsection 53A-1a-704(7).

~~[F-](6)~~ A [P]private school[s] shall notify the Board within five days if the student does not continue in enrollment in an eligible private school for any reason, including:

(a) parent['] or student choice[;];
(b) suspension or expulsion of the student; or
(c) the student misses more than [40]ten consecutive days of school.

~~[G-](7)~~ A [P]private school[s] shall satisfy health and safety laws and codes [under]required by Subsection 53A-1a-705(1) (d), including:

([+])a the adoption of emergency preparedness response plans that include training for school personnel and parent notification for fire drills, natural disasters, and school safety emergencies; and

([2])b compliance with Rule R392-200, Design, Construction, Operation, Sanitation, and Safety of Schools.

~~[H-](8)(a)~~ An approved eligible private school that changes ownership shall submit a new application for eligibility to receive a Carson Smith scholarship payment[s] from the Board[; the application shall demonstrate]:

(i) that demonstrates that the school continues to meet the eligibility requirements of [R277-602]this rule; and

([+])ii [The application for renewed eligibility shall be received from the school]within 60 calendar days of the [change of ownership.

(2) Ownership changes on the]date that an agreement is signed between previous owner and new owner.

([3])b If the Superintendent does not receive the application[is not received by the USOE] within the [60 days]time described in Subsection (8)(a)(ii):

(i) the new owner['] of the school is presumed ineligible to receive continued Carson Smith scholarship payments from the [USOE and;]Superintendent;

(ii) at the discretion of the Board, the [USOE]Superintendent may reclaim any payments made to a school within the previous 60 calendar days[;];

([4])iii [If the application is not received by the USOE within 60 days after the change of ownership,]the private school is not an eligible school; and

(iv) the private school shall submit a new application for Carson Smith eligibility consistent with the requirements and timelines of [R277-602]this rule.

R277-602-7. Special Needs Scholarship Appeals.

~~[A-](1)(a)~~ A parent[~~or legal guardian~~] of an eligible student or a parent[~~or legal guardian~~] of a prospective eligible student may appeal only the following actions under this rule:

([+])i an alleged [USOE]violation[s] by the Superintendent of Sections 53A-1a-701 through 710 or [R277-602]this rule; or

([2])ii an alleged [USOE]violation[s] by the Superintendent of a required timeline[s].

(b) An appellant has no right to additional elements of due process beyond the specific provisions of this rule.

~~[B-](2)~~ The Appeals Committee may not grant an appeal contrary to [the statutory provisions of]Sections 53A-1a-701 through 53A-1a-710.

~~[C-](3)~~ A parent shall submit [A]an appeal[~~shall be submitted~~];

~~(a) in writing to the USOE Special Needs Scholarship Coordinator at: Utah State Office of Education, 250 East 500 South, P.O. Box 144200, Salt Lake City, UT 84114-4200; and~~

~~(b) within 15 calendar days of written notification of the final administrative decision.~~

~~(1)(4)(a) [The appeal opportunity is expressly limited to an appeal submitted in writing for USOE consideration.]The appeal opportunity does not include an investigation required under or similar to an IDEA state complaint investigation.~~

~~[(2) Appellants have no right to additional elements of due process beyond the specific provisions of this rule.]~~

~~[(3)b] Nothing in the appeals process established under [R277-602]this rule shall be construed to limit, replace, or adversely affect parental appeal rights available under IDEA.~~

~~[D. Appeals shall be made within 15 days of written notification of the final administrative decision.]~~

~~[E.](5) [Appeals shall be considered by t]The Appeals Committee shall:~~

~~(a) consider an appeal within 15 calendar days of receipt of the written appeal[-];~~

~~[F.](b) [The decision of the Appeals Committee shall be transmitted]transmit the decision to a parent[s] no more than ten calendar days following consideration by the Appeals Committee[-]; and~~

~~[G.](c) [Appeals shall be -]finalize[d] an appeal as expeditiously as possible in the joint interest of schools and students involved.~~

~~[H.](6) The Appeals Committee's decision is the final administrative action.~~

KEY: special needs students, scholarships

Date of Enactment or Last Substantive Amendment: [August 7, 2014]2015

Notice of Continuation: August 13, 2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1a-706(5)(b); [53A-3-410(6)(i)(e)]Title 53A, Chapter 15, Part 15; 53A-1a-707; 53A-1-401(3)

Health, Administration

R380-200

Patient Safety Sentinel Event Reporting

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 39574

FILED: 08/12/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this repeal and reenactment is to update, streamline, make consistent with national standards, provide flexibility in conducting causal analyses, expand representation in advisory panel and establish annual report function.

SUMMARY OF THE RULE OR CHANGE: This rule establishes a Patient Safety Surveillance and Improvement program (PSSIP) which extends the past Sentinel Event Reporting program and consists of two components. The first component includes a reportable events program intended to meet public accountability and transparency needs at a state-wide level. The second component uses the data obtained from the reportable events requirement as a foundation intended to develop state-wide patient safety related improvement solutions. The intent of the rule has shifted from reporting rare and egregious events to a system wide surveillance approach which includes the rare and egregious events but also acknowledges other rules that are in effect. It also introduces a harm scale, extends to other licensed facilities and defined both an accountability function, as well as an improvement function. The new rule also makes an annual report mandatory rather than at the discretion of the program.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 26-1-30(3) and Subsection 26-1-30(4) and Subsection 26-1-30(6) and Subsection 26-1-30(7) and Subsection 26-1-30(8) and Subsection 26-1-30(9)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** No changes in state budget is anticipated as this is a redesign of the program's responsibilities.
- ◆ **LOCAL GOVERNMENTS:** Local government is not impacted by this rule as there is no surveillance of patient safety events at the local level.
- ◆ **SMALL BUSINESSES:** Small businesses are not impacted by this rule as the rule oversees large healthcare systems.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Local healthcare systems may experience a change in reporting requirements that should lower the burden of reporting by about 20% as a result of streamlining, consolidation, and the establishment of definitions and requirements consistent with national standards.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No changes are anticipated since this is an ongoing program within healthcare systems and is an updating and streamlining of the reporting function allowing for more efficient and robust surveillance.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is limited fiscal impact on businesses as this is a streamlining of existing rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
ADMINISTRATION
CANNON HEALTH BLDG

288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Iona Thraen by phone at 801-273-6643, by FAX at 801-273-4150, or by Internet E-mail at ithraen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/30/2015

AUTHORIZED BY: Robert Rolfs, Interim Executive Director

R380. Health, Administration.

[R380-200. Patient Safety Sentinel Event Reporting.

R380-200-1. Purpose and Authority.

(1) This rule establishes a patient safety sentinel event reporting program. It requires certain health care facilities to report serious patient injuries and to allow an independent, external review of and response to the thoroughness and credibility of the processes of investigating and responding to these events. The reporting under this rule will also help the Department and health care providers to understand patterns of failures in the health care system and to recommend statewide resolutions. It limits access to identifiable health information that facilities report to the Department under this rule.

(2) This rule is authorized by Utah Code Subsections 26-1-30(2)(a), (b), (d), (e), and (g) and Section 26-3-8.

R380-200-2. Definitions.

"Contaminated" means contamination that can be seen with the naked eye, or with use of detection mechanisms in general use, as they become reported or known to the health care facility.

"Facility" means a general acute hospital, critical access hospital, ambulatory surgical center, psychiatric hospital, orthopedic hospital, rehabilitation hospital, chemical dependency/substance abuse hospital or long-term acute care hospital as those terms are defined in Title 26, Chapter 21.

"Incident facility" means a facility where the patient safety sentinel event occurred.

"Medication Error" means medication administration:

- (a) of a drug other than as prescribed or indicated;
- (b) of a dose other than as prescribed or indicated;
- (c) to a patient who was not prescribed the drug;
- (d) at a time other than prescribed or indicated;
- (e) at a rate other than as prescribed or indicated;
- (f) of a improperly prepared drug;
- (g) by a means other than as prescribed or indicated; and
- (h) administration of a medication to which the patient has a known allergy or drug interaction to the prescribed medication.

"Major permanent loss of function" means sensory, motor, physiologic, or intellectual impairment not present on admission requiring continued treatment or life-style change. When major loss of function cannot be immediately determined, applicability of the policy is not established until either the patient is discharged with

continued major loss of function, or two weeks have elapsed with persistent major loss of function, whichever occurs first.

"Patient safety sentinel event" means an event which has resulted in an unanticipated death or major permanent loss of function, not related to the natural course of the patient's illness or underlying condition or is an unexpected occurrence involving death or serious physical or psychological injury, or the risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or the risk thereof" includes any process variation for which a recurrence would carry a significant chance of adverse outcome. Such events are called "sentinel" because they signal the need for immediate investigation and response.

"Root cause analysis" means a process for identifying the basic or causal factor(s) that underlie variation in performance, resulting in the occurrence or possible occurrence of a patient safety sentinel event.

R380-200-3. Reporting of Patient Safety Sentinel Events.

(1) Each facility shall report to the Department all patient safety sentinel events within seventy-two hours of the facility's determination that a patient safety event may have occurred, but in no event later than four hours prior to convening a formal root cause analysis.

(2) Patient safety sentinel events include:

- (a) Surgical Events:
 - (i) Surgery performed on the wrong body part;
 - (ii) Surgery performed on the wrong patient;
 - (iii) Incorrect surgical procedure performed on a patient;
 - (iv) Retention of a foreign object in a patient after surgery or other procedure, except for:
 - (A) objects intentionally implanted as a part of a planned intervention;
 - (B) objects present prior to surgery that were intentionally left in place, and
 - (C) broken microneedles; and
 - (v) Intraoperative or immediately post-operative death of a patient who the facility classified prior to surgery as Anesthesia-Surgical Assessment Class I. "Intraoperative" means literally during surgery. "Immediately post-operative" means within 24 hours after surgery, or other invasive procedure was completed, or after induction of anesthesia if surgery not completed.

(b) Product or Device Events:

- (i) Patient death or disability arising from the use of contaminated drugs, devices, or biologics provided by the facility.
- (ii) Patient death or disability associated with the use or function of a device in patient care in which the device is used for an off-label use, except where the off-label use is pursuant to informed consent.
- (iii) Patient death or disability associated with intravascular air embolism that occurs while being cared for in the facility, except for intravascular air emboli associated with neurosurgical procedures.

(c) Patient Protection Events:

- (i) Infant discharged to the wrong person;
- (ii) Patient death or disability arising from a patient elopement or the disappearance of other than competent adults;
- (iii) Patient suicide while in the facility or within 72 hours of discharge.

(d) Care management Events:

- ~~_____ (i) Patient death or major permanent loss of function arising from a medication error;~~
- ~~_____ (ii) Patient death or major permanent loss of function arising from a hemolytic reaction due to the administration of ABO/HLA incompatible blood or blood products;~~
- ~~_____ (iii) Maternal death or major permanent loss of function in a low risk pregnancy arising from labor or delivery while being cared for in a facility, except deaths from pulmonary or amniotic fluid embolism, acute fatty liver of pregnancy or cardiomyopathy. "Low Risk Pregnancy" refers to a woman aged 18-39, with no previous diagnosis of essential hypertension, renal disease, collagen-vascular disease, liver disease, cardiovascular disease, placenta previa, multiple gestation, intrauterine growth retardation, smoking, pregnancy-induced hypertension, premature rupture of membranes, or other previously documented condition that poses a high risk of poor pregnancy outcome.~~
- ~~_____ (iv) Unanticipated death of a full-term newborn;~~
- ~~_____ (v) Patient death or major permanent loss of function arising from hypoglycemia, the onset of hypoglycemia which occurs while the patient is being cared for in the facility;~~
- ~~_____ (vi) Kernicterus associated with failure to identify and treat hyperbilirubinemia, bilirubin greater than 30 milligrams per deciliter, in neonates.~~
- ~~_____ (vii) Stage 3 or 4 pressure ulcers acquired after admission to the facility, except for pressure ulcers that progress from stage 2 to stage 3, if the stage 2 ulcer was documented upon admission.~~
- ~~_____ (viii) Patient death or major permanent loss of function due to spinal manipulative therapy; and~~
- ~~_____ (ix) Prolonged fluoroscopy with cumulative dose greater than 1500 rads to a single field;~~
- ~~_____ (x) Radiotherapy to the wrong body region;~~
- ~~_____ (xi) Radiotherapy greater than 25% above the prescribed radiotherapy dose; and~~
- ~~_____ (xii) Death or major permanent loss of function related to a health care-acquired infection.~~
- ~~_____ (e) Environmental Events.~~
 - ~~_____ (i) Patient death or major permanent loss of function arising from an electric shock while being cared for at a health care facility, excluding emergency defibrillation in ventricular fibrillation and electroconvulsive therapies;~~
 - ~~_____ (ii) Any incident in which a line designated for oxygen or other gas to be delivered to a patient contains the wrong gas or is contaminated by a toxic substance;~~
 - ~~_____ (iii) Patient death or major permanent loss of function arising from a burn incurred from any source while being cared for in a facility;~~
 - ~~_____ (iv) Patient death or major permanent loss of function associated with the use of restraints or bedrails while being cared for in a facility; and~~
 - ~~_____ (v) Patient death or major permanent loss of function arising from a fall while being cared for in a health care facility, including fractures and intracranial hemorrhage.~~
- ~~_____ (f) Criminal Events.~~
 - ~~_____ (i) Any care ordered by or provided by someone impersonating a physician, nurse, pharmacist, or other licensed or certified health care provider;~~
 - ~~_____ (ii) Abduction of a patient of any age;~~

- ~~_____ (iii) Non-consensual sexual contact on a patient, staff member, or visitor by another patient, staff member or unknown perpetrator while on the premises of the facility; or~~
- ~~_____ (iv) Patient death or major permanent loss of function resulting from a criminal assault or battery that occurs on the premises of the health care facility.~~
- ~~_____ (3) If a facility suspects that a patient safety sentinel event may have occurred to a patient who was transferred from another facility, the receiving facility shall report the suspected patient safety sentinel event to the facility that initiated the transfer.~~
- ~~_____ (4) The report shall be submitted in a Department-approved paper or electronic format and shall include at a minimum:~~
 - ~~_____ (a) facility information;~~
 - ~~_____ (b) patient information;~~
 - ~~_____ (c) event information~~
 - ~~_____ (d) type of occurrence;~~
 - ~~_____ (e) analysis;~~
 - ~~_____ (f) corrective action.~~

R380-200-4. Root Cause Analysis.

- ~~_____ (1) The incident facility shall establish a root cause analysis process and designate a responsible individual to be the facility lead for each patient safety sentinel event.~~
- ~~_____ (2) The Department representative may participate in the facility's root cause analysis in a consultative role with the facility lead to enhance the credibility and thoroughness of the root cause analysis. The Department shall notify the facility lead within 72 hours of receiving the report of the patient safety sentinel event if it intends to participate in the facility's root cause analysis. The Department representative shall not be present at the facility's internal root cause analysis meetings unless invited by the facility lead.~~
- ~~_____ (3) Participation in the facility's root cause analysis by the Department representative shall not be construed to imply Department endorsement of the facility's final findings or action plan.~~
- ~~_____ (4) The incident facility and the Department shall each make reasonable accommodations when necessary to allow for the Department representative's participation in the root cause analysis.~~
- ~~_____ (5) If, during the review process, the Department representative discovers problems with the facility's processes that limit either the thoroughness or credibility of the findings or recommendations, the representative shall report these to the designated responsible individual orally within 24 hours of discovery and in writing within 72 hours.~~
- ~~_____ (6) The facility shall conduct a root cause analysis which is timely, thorough and credible to determine whether reasonable system changes would likely prevent a patient safety sentinel event in similar circumstances.~~
- ~~_____ (7) The root cause analysis shall:~~
 - ~~_____ (a) focus primarily on systems and processes, not individual performance;~~
 - ~~_____ (b) progress from specific, direct causes in clinical processes to contributing causes in organizational processes;~~
 - ~~_____ (c) seek to determine related and underlying causes for identified causes; and~~

~~_____ (d) identify changes which could be made in systems and processes, either through redesign or development of new systems or processes, that would reduce the risk of such events occurring in the future.~~

~~_____ (8) The Department shall determine the root cause analysis to be thorough if it:~~

~~_____ (a) involves a complete review of the patient safety sentinel event including interviews with all readily identifiable witnesses and participants and a review of all related documentation;~~

~~_____ (b) identifies the human and other factors in the chain of events leading to the final patient safety sentinel event, and the process and system limitations related to their occurrence;~~

~~_____ (c) searches readily retrievable records to analyze the underlying systems and processes to determine where redesign might reduce risk;~~

~~_____ (d) inquires into all areas appropriate to the specific type of event as described in the Joint Commission for the Accreditation of Healthcare Organizations' "Root Cause Analysis Matrix, Minimum Scope of Root Cause Analysis for Specific Types of Sentinel Events - October 2005" found at http://www.jointcommission.org/NR/rdonlyres/3CBB064AC-2CEB-4CBF-85B8-CFC9E7837323/0/se_root_cause_analysis_matrix.pdf, last viewed on February 22, 2007, which is incorporated by reference.~~

~~_____ (e) makes reasonable attempts to identify and analyze trends of similar events which have occurred at the facility in the past;~~

~~_____ (f) identifies risk points and their potential contributions to this type of event; and~~

~~_____ (g) determines potential improvement in processes or systems that would tend to decrease the likelihood of such events in the future, or determining, after analysis, that no such improvement opportunities exist.~~

~~_____ (9) The Department shall determine the root cause analysis to be credible if it:~~

~~_____ (a) is led by someone with training in root cause analysis processes and who was not involved in the patient safety sentinel event;~~

~~_____ (b) involves, if necessary, consultation with either internal or external experts in the processes in question who were not involved in the patient safety sentinel event;~~

~~_____ (c) includes participation by the leadership of the organization and by the individuals most closely involved in the processes and systems under review;~~

~~_____ (d) is internally consistent, i.e., not contradicting itself or leaving obvious questions unanswered;~~

~~_____ (e) provides an explanation for all findings of "not applicable" or "no problem"; and~~

~~_____ (f) includes consideration of relevant, available literature.~~

R380-200-5. Reports and Action Plan.

~~_____ (1) Within 60 calendar days of determination of the patient safety sentinel event, the incident facility shall submit a final report with an action plan that:~~

~~_____ (a) identifies changes that can be implemented to reduce risk, or formulates a rationale for not implementing changes; and~~

~~_____ (b) where improvement actions are planned, identifies who is responsible for implementation, when the action will be implemented (including any pilot testing), and how the effectiveness of the actions will be evaluated.~~

~~_____ (2) The incident facility shall provide a final report to the facility's administration and the Department in a Department-approved paper or electronic format that includes:~~

~~_____ (a) type of harm;~~

~~_____ (b) contributing factors;~~

~~_____ (c) actions taken.~~

~~_____ (3) If the Department representative identifies problems with the processes that limit the thoroughness or credibility of the findings and recommendations and that have not been corrected after reporting them to the designated responsible individual, the representative may submit a separate written dissenting report to the administrator of the incident facility, and the Department.~~

~~_____ (4) The incident facility may seek review of the dissenting report by filing a request for agency as allowed by the Utah Administrative Procedures Act and Department rule. If a dissenting report is not challenged or is upheld on review:~~

~~_____ (a) the facility shall include it in the facility's records of the root cause analysis; and~~

~~_____ (b) the Department may forward it, together with the facility's report, to the appropriate state agencies responsible for licensing the facility.~~

R380-200-6. Confidentiality.

~~_____ (1) Information that the Department holds under this rule is confidential under the provisions of Title 26, Chapter 3. Because of the public interest needs to foster health care systems improvements, the Department exercises its discretion under Section 26-3-8 and shall not release information collected under this rule to any person pursuant to the provisions of Subsections 26-3-7(1) or (8).~~

~~_____ (2) Information produced or collected by a facility is confidential and privileged under the provisions of Title 26, Chapter 25.~~

R380-200-7. Extensions and Waivers.

~~_____ (1) The Department may grant an extension of any time requirement of this rule if the facility demonstrates that the delay is due to factors beyond its control or that the delay will not adversely affect the required root cause analysis and the purposes of this rule. A facility requesting a waiver must submit the request to the department representative prior to the deadline for the required action.~~

~~_____ (2) The Department may grant a waiver of any other provision of this rule if the facility demonstrates that the waiver will not adversely affect the required root cause analysis and the purposes of this rule.~~

R380-200-8. Advisory Panel.

~~_____ The department shall establish a multi-disciplinary advisory panel to assist it in carrying out its responsibilities under this rule. Representatives from facilities that are required to report under this rule shall be included as members of the advisory panel.~~

R380-200-9. Penalties.

~~_____ As required by Section 63G-3-201(5): An entity that violates any provision of this rule may be assessed a civil money~~

penalty not to exceed the sum of \$5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.]

R380-200. Patient Safety Surveillance and Improvement Program (PSSIP).

R380-200-1. Purpose and Authority.

(1) These rules establish a Patient Safety Surveillance and Improvement program (PSSIP) which extends the past Sentinel Event Reporting program and consists of two components. The first component includes a reportable events program intended to meet public accountability and transparency needs at a state-wide level. The second component uses the data obtained from the reportable events requirement as a foundation intended to develop state-wide patient safety related improvement solutions.

(2) The rule requires certain health care facilities to report patient safety events specified in this rule as determined by PSSIP in consultation with the patient safety quality work group.

(3) Reporting requirements for this rule will provide an annual state-wide report released in March of each year for public accountability and transparency. Additionally, data obtained from the reporting requirements will be used to help the Utah Department of Health and Health Care Providers understand patterns of failures, identify and implement state-wide improvement interventions, and evaluate state-wide interventions for improved outcomes. The PSSIP intends to be consistent with national regulatory and quality organizational standards to which facilities currently report and may include requirements from the Joint Commission, Agency for Healthcare Research and Quality, American Association of Ambulatory Surgical Centers, DNV Healthcare, Patient Safety Organizations, National Healthcare Safety Network, Centers for Medicaid and Medicare, and the National Quality Forum. As national standards for condition reporting change so may the PSSIP reporting requirements. The quality work output of the PSSIP provides limited access to identifiable health information that facilities report.

(4) This rule is authorized by Utah Code Subsections "Utah Code Ann. Subsections 26-1-30(3), (4), (6), (7), (8), and (9)".

R380-200-2. Definitions.

(1) "Adverse event" is an injury associated with healthcare processes rather than the underlying patient condition or disease itself and that prolongs medical intervention or results in harm, disability or death.

(2) "Causal analysis" means a process for identifying the basic or causal factor(s) that underlie variation in performance, resulting in the occurrence or possible occurrence of a patient safety event, which may include a Root Cause Analysis, a Failure Mode and Effect Analysis, hazards analysis, evidence review, observation or any other relevant analytical process aimed at identifying and understanding contributing factors.

(3) "Contaminated" means contamination that can be seen with the naked eye, or with use of detection mechanisms in general use, as they become reported or known to the health care facility.

(4) "Harm Scale" is a systematic method to designate a patient's level of harm that includes:

- (a) unsafe conditions,
- (b) near miss which is an event that was stopped prior to reaching the patient,

(c) no harm,

(d) additional monitoring or treatment to prevent harm,

(e) temporary harm requiring intervention,

(f) temporary harm requiring hospitalization,

(g) permanent patient harm,

(h) intervention to sustain life, or

(i) patient death.

(5) "Health care facility" as defined in Title 26, Chapter 21 Part 1, Section 2, (13)(a).

(6) "Incident facility" means a facility where the patient safety event occurred while in the facility or immediately following discharge within a certain time period defined by specifically by the type of event from that facility.

(7) "Medication Error" means medication administration:

(a) of a drug other than as prescribed or indicated;

(b) of a dose other than as prescribed or indicated;

(c) to a patient who was not prescribed the drug;

(d) at a time other than prescribed or indicated;

(e) at a rate other than as prescribed or indicated;

(f) of an improperly prepared drug;

(g) by a means other than as prescribed or indicated; or

(h) unintentional administration of a drug to a patient who has a known allergy or drug interaction to the prescribed medication.

(8) "Patient safety events" are a compilation of serious, largely preventable, and harmful clinical adverse events that includes but are not limited to surgical events, product or device events, patient protection events, care management events, environmental events and criminal events.

R380-200-3. Reporting of Patient Safety Events.

(1) Each facility shall report to the Department all patient safety events within seventy-two hours of the facility's determination that a patient safety event may have occurred.

(2) Patient safety events are categorized as:

(a) Reportable Events with outcome assessed by harm scale;

(b) Reportable Events resulting in permanent patient harm, intervention to sustain life, or patient death; and

(c) Reportable Events referenced by other reporting rules.

(3) Patient Safety Events include:

(a) Reportable Events required to be reported through the reporting portal and with the outcome level assessed by a harm scale:

(i) Surgery or procedures requiring consent performed on the wrong body part;

(ii) Surgery or procedures requiring consent performed on the wrong patient;

(iii) Incorrect surgery or procedures requiring consent performed on a patient;

(iv) Unintended retention of a foreign object in a patient after surgery or other procedures requiring consent;

(v) Infant discharged to the wrong person;

(vi) Neonatal hyperbilirubinemia, where bilirubin is greater than 25 milligrams per deciliter;

(vii) Stage 3 or 4 pressure ulcers acquired after admission to the facility, except for pressure ulcers that progress from Stage 2 to Stage 3, if the Stage 2 ulcer was documented upon admission;

(viii) Any incident in which a line designated for oxygen or other gas to be delivered to a patient contains the wrong gas or is contaminated by a toxic substance;

_____ (ix) Unexpected flame or unanticipated smoke during and episode of care;

_____ (x) Any care ordered by or provided by someone impersonating a physician, nurse, pharmacist, or other licensed or certified health care provider;

_____ (xi) Abduction of a patient of any age;

_____ (xii) Non-consensual sexual contact on a patient, staff member, or visitor by another patient, staff member or unknown perpetrator while on the premises of the facility; or

_____ (xiii) Elopement or disappearance of a patient with cognitive impairment for more than 4 hours;

_____ (b) Reportable Events resulting in permanent patient harm, intervention to sustain life, or patient death required to be reported to the reporting portal;

_____ (i) Arising from Intraoperative or immediately post-operative death of a patient who the facility classified prior to surgery as Anesthesia Surgical Assessment Class I or discharged home from an Ambulatory Surgical Center. "Intraoperative" means literally during surgery. "Immediately post-operative" means within 24 hours after surgery, or other invasive procedure was completed, or after induction of anesthesia if surgery not completed;

_____ (ii) Arising from the use of contaminated drugs, devices, or biologics provided by the facility;

_____ (iii) Arising from the use or function of a device in patient care in which the device is used for an off-label use, except where the off-label use is pursuant to informed consent;

_____ (iv) Arising from intravascular air embolism that occurs while being cared for in the facility, except for intravascular air emboli associated with neurosurgical procedures;

_____ (v) Arising from Patient suicide or unsuccessful attempt while in the facility or ER within 72 hours of discharge;

_____ (vi) Arising from a medication error;

_____ (vii) Arising from a hemolytic reaction due to the administration of ABO/HLA incompatible blood or blood products;

_____ (viii) Arising from hypoglycemia, the onset of hypoglycemia which occurs while the patient is being cared for in the facility;

_____ (ix) Arising from the irretrievable loss of an irreplaceable biological specimen;

_____ (x) Arising from failure to follow up or communicate laboratory, pathology, or imaging test results;

_____ (xi) Arising from an unintended electric shock while being cared for at a health care facility, excluding emergency defibrillation in ventricular fibrillation and electroconvulsive therapies;

_____ (xii) Arising from a burn incurred from any source while being cared for in a facility;

_____ (xiii) Arising from the use of restraints or bedrails while being cared for in a facility;

_____ (xiv) Arising from a fall while being cared for in a health care facility;

_____ (xv) Arising from a criminal assault or battery that occurs on the premises of the health care facility;

_____ (xvi) Arising from the introduction of a metallic object into the MRI area;

_____ (xvii) Arising from labor or delivery while being cared for in a facility; or

_____ (xviii) Of an infant born at gestation equal to or greater than 32 weeks excluding congenital causes.

_____ (c) Reportable events required by other reporting rules;

_____ The following set of reportable events is governed by other existing Utah law or rule and facility reporting to the reporting portal under this rule is not needed.

_____ (i) Prolonged fluoroscopy with cumulative dose greater than 1500 rads to single field (R313-20-5);

_____ (ii) Radiology to the wrong body region (R313-20-5);

_____ (iii) Radiotherapy greater than 25% above the prescribed radiotherapy dose(R313-20-5);

_____ (iv) Death or permanent loss of function related to a healthcare acquired infection (R386-705); and

_____ (v) Provider Preventable Conditions (R414-1-29).

_____ (4) If a facility suspects that a patient safety event may have occurred to a patient who was transferred from another facility, the receiving facility shall report the suspected patient safety event to the transferring facility.

_____ (5) All facility required reports will be submitted through a secured reporting portal and consist of the following:

_____ (a) facility information;

_____ (b) patient information;

_____ (c) condition information

_____ (d) type of occurrence;

_____ (e) analysis findings; and

_____ (f) corrective actions.

R380-200-4. Causal Analysis.

_____ (1) The incident facility shall establish a causal analysis process.

_____ (2) The incident facility shall designate a responsible individual to be the facility lead for each patient safety event.

_____ (3) The incident facility may request the Department representative to participate in the facility's causal analysis in a consultative role to enhance the reliability and thoroughness of the causal analysis.

_____ (4) The Department shall notify the facility's lead within 72 hours of receiving the patient safety event report whether the Department intends to participate in the facility's root cause analysis.

_____ (5) Participation in the facility's causal analysis by the Department representative shall not be construed to imply Department endorsement of the facility's final findings or action plan.

_____ (6) The incident facility and the Department shall each make reasonable accommodations when necessary to allow for the Department representative's participation in the causal analysis.

_____ (7) If, during the review process, the Department representative discovers problems with the facility's processes that limit either the thoroughness or credibility of the findings or recommendations, the representative shall report these to the designated responsible individual orally within 24 hours of discovery and in writing within 72 hours.

_____ (8) The facility shall conduct a causal analysis which is timely, thorough and credible to determine whether reasonable system changes would likely prevent a patient safety event in similar circumstances.

_____ (9) The causal analysis shall:

_____ (a) focus primarily on systems and processes, not individual performance;

_____ (b) progress from specific, direct causes in clinical processes to contributing causes in organizational processes;

_____ (c) seek to determine related and underlying causes for identified causes;

(d) identify changes which could be made in systems and processes, either through redesign or development of new systems or processes, that would reduce the risk of such events occurring in the future; and

(e) may include a Known Complication Test Revision set of questions to be utilized when requesting a more thorough response from a unit or physician on evaluation of a known complication related to a procedure, treatment or test. These questions should address:

(i) Whether the procedure/treatment/test was appropriate and Warranted and based on nationally recognized standards of care;

(ii) Whether the complication is a known risk, was anticipated before the procedure and that the standard of care applied to mitigate the risk;

(iii) Whether the complication was identified in a timely manner (i.e. at the time of the occurrence);

(iv) Whether the complication treatment was according to the standard of care and in a timely manner; and

(v) Whether the treatment of the complication follows a nationally recognized standard of care.

(10) The Department shall determine the causal analysis to be complete if it:

(a) involves a complete review of the patient safety event including interviews with all readily identifiable witnesses and participants and a review of all related documentation;

(b) identifies the human and other factors in the chain of events leading to the final patient safety event, and the process and system limitations related to the occurrence;

(c) searches readily retrievable records to analyze the underlying systems and processes to determine where redesign might reduce risk;

(d) makes reasonable attempts to identify and analyze trends of similar events which have occurred at the facility in the past;

(e) identifies risk points and their potential contributions to this type of event;

(f) determines potential improvement in processes or systems that would tend to decrease the likelihood of such events in the future, or that no such improvement opportunities exist; and

(g) is based on the evidence from the research literature, data from other sources, or is derived from a formal organizational improvement strategy.

(11) The Department shall determine the causal analysis to be credible if it:

(a) is led by someone with training in causal analysis processes and who was not involved in the patient safety event;

(b) involves any necessary consultation with either internal or external experts in the processes in question who were not involved in the patient safety event;

(c) includes participation by the leadership of the organization;

(d) includes individuals most closely involved in the processes and systems under review;

(e) is internally consistent, does not contradicting itself or leave obvious questions unanswered;

(f) provides an explanation for all findings of "not applicable" or "no problem"; and

(g) includes consideration of relevant, available literature.

R380-200-5. Reports and Action Plan.

(1) Within 60 calendar days of determination of the patient safety event, the incident facility shall submit to the department a final report with an action plan that:

(a) identifies changes that can be implemented to reduce risk or formulates a rationale for not implementing changes; and

(b) where improvement actions are planned, identifies who is responsible for implementation, when the action will be implemented (including any pilot testing), and how the effectiveness of the actions will be evaluated.

(2) The incident facility shall provide a final report to the facility's administration and the Department in a Department-approved electronic format that includes:

(a) type of harm;

(b) contributing factors;

(c) preventability; and

(d) actions taken.

(3) The Department representative may submit a separate written dissenting report to the administrator of the incident facility and the Department if the Department representative identifies problems with the processes that limit the thoroughness or credibility of the findings and recommendations and that have not been corrected after reporting them to the designated responsible individual.

(4) The incident facility may seek review of the dissenting report by filing a request for agency as allowed by the Utah Administrative Procedures Act and Department rule.

(5) If a dissenting report is not challenged or is upheld on review:

(a) the facility shall include it in the facility's records of the causal analysis; and

(b) the Department may forward it, together with the facility's report, to the appropriate state agencies responsible for licensing the facility.

R380-200-6. Confidentiality.

(1) Information that the Department holds under this rule is confidential under the provisions of Title 26, Chapter 3. Because of the public interest to foster health care systems improvements, the Department may exercise its discretion under Section 26-3-8 and shall not release information collected under this rule to any person pursuant to the provisions of Subsections 26-3-7(1) or (8).

(2) Information produced or collected by a facility is confidential and privileged under the provisions of Title 26, Chapter 25.

R380-200-7. Extensions and Waivers.

(1) The Department may grant an extension of any time requirement of this rule if the facility demonstrates that the delay is due to factors beyond its control or that the delay will not adversely affect the required root cause analysis and the purposes of this rule.

(2) A facility requesting a waiver must submit the request to the Department representative prior to the deadline for the required action.

(3) The Department may grant a waiver of any other provision of this rule if the facility demonstrates that the waiver will not adversely affect the required root cause analysis and the purposes of this rule.

R380-280-8. Advisory Panel.

(1) The Department shall establish a multi-disciplinary advisory panel to assist in carrying out the Department's responsibilities under this rule.

(2) At least one representative from each healthcare system that is required to report under this rule shall be invited to be members of the advisory panel.

(3) Representatives from other Department patient safety initiatives and Health Care Associations shall be invited to participate and include but are not limited to:

(a) infection control,

(b) maternal and infant mortality,

(c) women and infant care, and

(d) other participants, as identified.

(4) Members of the advisory panel will complete confidentiality documents.

(5) The advisory panel will meet at least quarterly in person or via electronic meeting.

(6) An annual report will be provided to the panel one month prior to public release for review and corrections.

R380-200-9. Reporting.

(1) The Department will report at a minimum one time a year in March on all events occurring in the state the previous year.

(2) This report will be de-identified and publicly available.

(3) Internal reports may be generated for quality improvement initiatives and shared with members of the advisory panel.

(4) An annual report of events will be requested from the governing program and incorporated in the annual March Patient Safety Report.

R380-200-10. Penalties.

An entity that violates any provision of this rule may be assessed a civil money penalty not to exceed the sum of \$5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

KEY: hospitals, sentinel events, quality improvement, patient safety

Date of Enactment or Last Substantive Amendment: [~~April 26, 2007~~]2015

Notice of Continuation: September 14, 2011

Authorizing, and Implemented or Interpreted Law: 26-1-30(2)(a); 26-1-30(2)(b); 26-1-30(2)(d); 26-1-30(2)(e); 26-1-30(2)(g); 26-3-8

Insurance, Administration
R590-154
 Unfair Marketing Practices Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39603

FILED: 08/14/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The change allows an insurance licensee to do business under an assumed name or alias, and clarifies rules regarding the sale, solicitation, or negotiation of insurance, as well as consultation.

SUMMARY OF THE RULE OR CHANGE: The change allows an insurance licensee to do business under a name other than the licensee's legal name by notifying the commissioner. It defines the term "licensee" as used in the rule to be more inclusive. The rule also clarifies how licensees should present themselves when consulting, selling, soliciting, or negotiating insurance.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-23a-402 and Subsection 31A-2-201(3) and Subsection 31A-23a-110(2)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. The rule is of a clerical nature, and it governs interactions between licensees and the Department, as well as licensees and their clients. It requires no fees of any type to be exchanged between any parties.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to the local budget. The rule is of a clerical nature, and it governs interactions between licensees and the Department, as well as licensees and their clients. It requires no fees of any type to be exchanged between any parties.

◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. The rule is of a clerical nature, and it governs interactions between licensees and the Department, as well as licensees and their clients. It requires no fees of any type to be exchanged between any parties.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to any other persons. The rule is of a clerical nature, and it governs interactions between licensees and the Department, as well as licensees and their clients. It requires no fees of any type to be exchanged between any parties.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any affected persons. The rule is of a clerical nature, and it governs interactions between licensees and the Department, as well as licensees and their clients. It requires no fees of any type to be exchanged between any parties.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Insurance Department is amending this rule to allow greater flexibility to licensees in how they operate their businesses. The rule lets them use names other than their full legal name when selling insurance products, as long as they notify the Department of their intent. There will be no fiscal impact to any businesses that choose to use an alias or assumed name.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2015

AUTHORIZED BY: Todd Kiser, Commissioner

R590. Insurance, Administration.

R590-154. Unfair Marketing Practices Rule; Misleading Names.

R590-154-1. Authority.

This rule is adopted pursuant to Subsection 31A-2-201(3) in which the commissioner is empowered to adopt rules to implement the provisions of the Utah Insurance Code, ~~and~~ Section[s] 31A-23a-402 ~~and 31A-23a-402.5~~, which provides that the commissioner may find certain practices to be misleading, deceptive, unfairly discriminatory, ~~provide an unfair inducement,~~ or unreasonably restrain competition, and to prohibit them by rule, ~~and Section 31A-23a-110(2), which provides that a licensee may do business under a name other than the licensee's legal name by notifying the commissioner.~~

R590-154-2. Purpose and Scope.

(1) The purpose of this rule is to provide guidance to all licensees regarding unfair marketing practices.

(2) This rule applies to all insurance producers, limited lines producers, consultants and insurers licensed under Title 31A, Utah Insurance Code.

R590-154-3. Definitions.

(1) "Licensee" means, as used in this rule, all individual producers, all agency producers, all individual limited line producers, all agency limited line producers, all individual consultants, all agency consultants, and all insurers. "Agency" means:

(a) A person other than an individual, including a sole proprietorship by which a natural person does business under an assumed name; and

(b) An insurance organization licensed or required to be licensed under Section 31A-23a-301.

(2) "Arm's length" means a transaction between two or more parties who are unrelated and unaffiliated by family, marriage or commercial enterprise. This transaction entails that the contract or price has been negotiated by parties, each party acting in his or her own self-interest, and that the sale price is based on fair market value.

(3) "Barter" means the sale of an insurance or annuity contract for anything of value other than cash or other negotiable instruments.

(4) "Discrimination testing" in 31A-23a-402.5(5)(b)(xii)(K) means either eligibility testing or utilization testing.

(a) Eligibility test results must demonstrate that eligibility is not limited to or weighted in favor of key or highly compensated employees. Self-funded plans (such as a cafeteria plan) may not exclude non-highly compensated employees from participating in favor of highly compensated or key employees. In accordance with Internal Revenue Service 26 USC 125(4) and 26 USC 410 the exclusion of certain groups of employees is allowed, including:

(i) employees with less than three years of service;

(ii) employees under age 25;

(iii) part-time or seasonal employees;

(iv) non-resident aliens; and

(v) collective bargaining employees.

(b) Utilization test results must demonstrate that comparable benefits are utilized by a fair number of employees at all compensation levels and for all positions. See 26 CFR Part 1.41, REG-156518-04, RIN 1545-BE10.

(5) "Fair market value" means what a knowledgeable, willing, and unpressured buyer would pay for a product or service to a knowledgeable, willing, and unpressured seller in the open market without any connection to other goods, services or contracts sold by the licensee.

(6) "Social courtesy" means a respectful act or expression of generosity that is not connected with the sale or retention of an insurance product, the fair market value of which is less than or equal to \$25.00.]

R590-154-4. Findings.

The commissioner finds that each of the practices prohibited in this rule constitute misleading, deceptive or unfairly discriminatory practices ~~or provide an unfair inducement~~ or unreasonably restrain competition, except as specifically allowed in this rule.

R590-154-5. [Producer, Limited Lines Producer or Consultant Agency] Licensee Name.

(1) [An insurance producer, limited lines producer or consultant agency] A licensee licensed under the [laws of this state] Utah Insurance Code shall not use any name that is:

(a) misleading or deceptive;

(b) likely to be mistaken for another licensee already in business; or

(c) implies association or connection with any other organization where actual bona fide association or connection does not exist.

(2) [A producer, limited line producer or consultant agency licensee shall comply with either of the following:

(a) The agency shall include words such as "insurance agency" or "insurance consultant" or other similar words in the agency's name.

(i) Other similar words such as "insurance services", "insurance benefits", "insurance counselors", or "insurance advisors" may also be used.

(ii) "Insurance consulting," "insurance consultants" or similar words shall only be used if the licensee [agency] is licensed as a consultant.

~~_____ (b) The agency shall state that the licensee is an insurance agency in any letterhead, business cards, advertising, slogan, emblem, or other promotional material used or distributed by the agency in the State of Utah.~~

~~_____ (3) An individual shall be licensed using the individual's full legal name. The full legal name shall include first name or initial, middle name or initial, last name, and suffix.~~

~~_____ (4) An individual may file with the commissioner a preferred name or nickname to use with the individual's full legal name, consistent with Section 31A-23a-110(2).~~

~~_____ (5)(a) Section 31A-23a-110(2) permits a licensee to use an assumed name by notifying the commissioner.~~

~~_____ (b) In order to give notice of an assumed name as required by Section 31A-23a-110(2), the licensee shall comply with R590-244-13.~~

~~_____ (6) A licensee may use its legal name or an assumed name provided the commissioner is properly notified.~~

~~[R590-154-6. Individual Licensee Name.~~

~~_____ (1) An individual shall be licensed using the individual's full legal name - first name or initial, middle name or initial, last name, suffix, jr/sr/II/III/etc.~~

~~_____ (2) An individual may file with the department a preferred name or nickname to use in combination with the individual's full legal name.~~

~~[R590-154-7]6. Sale, Solicitation, or Negotiation of Insurance; Consultation.~~

~~_____ (1) An individual licensee and a producer, limited line producer or consultant agency licensee shall not mislead or deceive a person or organization through oral contact or through any letterhead, business cards, advertising, slogan, emblem, or other promotional material used or distributed in Utah by:~~

~~_____ (a) failing to disclose that the licensee is an individual insurance licensee or a producer, limited line producer or consultant agency licensee in every oral or written contact;~~

~~_____ (b) using or implying license classifications not held by the individual licensee or natural persons designated to the producer, limited line producer or consultant agency licensee;~~

~~_____ (c) using a name other than the exact name appearing on the producer, limited line producer or consultant agency license;~~

~~_____ (d) using a name other than the individual licensee's full legal name exactly as filed with the department; or~~

~~_____ (e) using an individual's preferred name or nickname when the preferred name or nickname has not been filed with the department.~~

~~_____ (2) The use of an initial letter, rather than the full first or middle name is not a violation of this section.~~

~~_____ (3) An individual may only use the name of a producer, limited line producer, or consultant agency that has its own separate agency license if the individual licensee is designated to act under that agency's license.~~

~~_____ (4) An individual may not sell, solicit, or negotiate insurance as a producer, limited line producer, or consultant agency, unless the individual has a separate producer, limited line producer, or consultant agency license, and the individual is designated to act under the agency's license.~~

~~_____ (1) A licensee shall not, orally or in writing, fail to disclose that the licensee is an insurance licensee.~~

~~_____ (2) A licensee shall not use or imply license types or lines of authority not held by the licensee.~~

~~_____ (3) An individual licensee may only use the name of an agency licensee if the individual licensee is designated to act under the agency's license.~~

~~_____ (4) An individual licensee may not sell, solicit, or negotiate insurance; or consult or advise for an agency licensee unless the individual licensee is designated to act under the agency's license.~~

~~R590-154-[8]7. Claiming or Representing Department Approval.~~

~~_____ (1) A licensee may not represent, either directly or indirectly, that the department, the [insurance-]commissioner, or any employee of the department, has approved, reviewed, or endorsed[~~-or in any way favorably passed upon~~] any marketing program, insurance product, insurance company, practice or act.~~

~~_____ (2) A licensee may report the fact of the filing of any form, financial report, or other document with the department, or of licensure, examination or other action involving the department, or the commissioner but may not misrepresent their effect or import.~~

~~R590-154-[9]8. Bartering for Insurance.~~

~~Any licensee bartering for the sale of insurance or an annuity contract shall fully document the receipt of goods, services or other thing of value, establishing the value of the thing received and how the value was established, from whom received, the date received, and the premium cost of the insurance or annuity contract bartered for, and shall retain said documentation for three years following the expiration of the policy period or bartering transaction, whichever is longer. Any licensee bartering for the sale of an insurance or annuity contract shall disclose at the time of application to the insurer said bartering arrangement.~~

~~R590-154-[10]9. Prohibited Insurance Sales Tie-Ins.~~

~~Multi-level marketing programs, investment programs, memberships, or other similar programs, designed or represented to produce or provide funds to pay all or any part of the cost of insurance constitutes an illegal inducement. This does not preclude the provision of insurance through a bona fide employee benefits program.~~

~~[R590-154-11. Electronic Platform and Application Systems.~~

~~Producers or agencies may provide electronic platforms that provide directly related services of the insurance products to the employer. Fair market value must be charged for items such as human resources and legal services whether electronic or paper.~~

~~[R590-154-[12]10. [Commission Contributions]Commissions or Consulting Fees.~~

~~A licensee shall not give or offer to give a premium reduction by means of commission [contribution]or consulting fee back to the insurer for any purpose, including competition, unless the reduction is for expense savings and is justified by a reasonable standard and with reasonable accuracy. The insurer's underwriting files must document the savings in order to enable the commissioner to verify compliance. This documentation must demonstrate legitimate expense savings realized by the insurer and its producer.~~

R590-154-[13]11. Prohibited Financing Arrangements.

A licensee may not obtain or arrange for third party financing of premium without the knowledge and consent of the insured.

R590-154-[14]12. Acting as ~~[An Individual or Agency]~~ A Licensee in Other Jurisdictions.

~~[An individual or agency licensee licensed in the State of Utah under a]~~ A resident licensee~~[-]~~ may not sell, solicit, or negotiate insurance or advise or consult about insurance in another jurisdiction unless licensed or permitted by law to do so in that jurisdiction.

R590-154-[15]13. Use of Comparative Information.

(1) Every insurer marketing insurance in the State of Utah shall establish written marketing procedures to assure that any comparison of insurance contracts, annuities or insurance companies by its producers will be fair and accurate.

(2) A licensee may not use any published rating information regarding an insurer in connection with the marketing of any insurance contract or annuity unless that person also provides at the same time an explanation of what the rating means as defined by the rating service.

R590-154-[16]14. Disclosure of Insurer in Group Insurance.

Every certificate of insurance or booklet describing coverage of a group insurance policy shall prominently state on the cover of the certificate or booklet the full legal name and address of the actual insurer.

R590-154-[17]15. Enforcement Date.

The commissioner shall begin enforcing the revised provisions of this rule on the rule's effective date.

R590-154-[18]16. Severability.

If any provision of this rule or the application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provision of this rule are declared to be severable.

KEY: insurance, unfair marketing practices, misleading names
Date of Enactment or Last Substantive Amendment: ~~[October 3, 2012]~~ 2015
Notice of Continuation: March 20, 2013
Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-23a-402; ~~[31A-23a-402.5]~~ 31A-23a-110

Labor Commission, Adjudication
R602-1-4
 Filing of Documents

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 39567
 FILED: 08/10/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule change will allow administrative law judges and parties to file documents that have been signed electronically.

SUMMARY OF THE RULE OR CHANGE: The rule change allows administrative law judges and parties to file documents with electronic signatures. It also defines "electronic signature" and the requirements for affidavits or documents needing a notarized, verified, or acknowledged signature that are filed with the Commission.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-1-302 and Section 34A-1-304 and Section 36G-4-102 et seq.

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The Commission does not anticipate that the change to the rule will have any impact on the state budget.
- ◆ **LOCAL GOVERNMENTS:** The Commission does not anticipate that the change to the rule will have any impact on the local government.
- ◆ **SMALL BUSINESSES:** The Commission does not anticipate that the change to the rule will have any impact on small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Commission does not anticipate that the change to the rule will have any impact on persons other than small businesses, businesses or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Commission does not anticipate that the change to the rule will have any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Commission does not anticipate that the rule change will have any fiscal impact on businesses. The proposed rule change will allow parties to submit documents that have been signed electronically, but they will not be required to do so. Parties will still be able to file paper copies with physical signatures.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

LABOR COMMISSION
 ADJUDICATION
 HEBER M WELLS BLDG
 160 E 300 S
 SALT LAKE CITY, UT 84111-2316
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Heather Gunnarson by phone at 801-536-7928, by FAX at 801-530-6333, or by Internet E-mail at hgunnarson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2015

AUTHORIZED BY: Sherrie Hayashi, Commissioner

Pardons (Board of), Administration
R671-311
 Special Attention Hearings and
 Decisions Reviews

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39570

FILED: 08/11/2015

R602. Labor Commission, Adjudication.

R602-1. General Provisions.

R602-1-4. Filing of Documents.

1. Pursuant to Section 34A-1-304 and subject to the limitations and requirements of this rule, a document required or permitted by statute or rule may be delivered by electronic means. All documents filed with the administrative law judge shall be filed with all other parties to the adjudicative proceeding and shall provide verification of mailing, electronic transmittal, or service on, all parties to whom copies of the documents are mailed or personally delivered.

2. Parties shall not file courtesy copies with the Division.

3. Delivery by electronic transmittal is limited to documents in PDF format delivered to sites specified by the Adjudication Division or the Commission. Documents delivered by electronic transmittal must include signatures. Electronic documents filed in non-PDF format are not considered delivered to the Division of Adjudication.

4. Each electronically transmitted document shall include a delivery certificate that lists the time and date on which the document was transmitted, the name of the person who transmitted the document, and the name and email address of each person or entity to which the document was transmitted. If a party utilizes delivery by electronic transmittal, the document filed must include an electronic address where the party may receive documents. The Adjudication Division and all opposing parties may use electronic transmittal as the sole method of delivery to that party.

5. The Adjudication Division and parties may sign an order, letter, pleading or other document using any form of signature recognized by law as binding including an electronic signature.

A. An "electronic signature" means an electronic process, symbol or other data in digital form attached to an electronically transmitted document and executed or adopted by a person with the intent to sign the record.

B. If a rule requires an affidavit or a notarized, verified or acknowledged signature the person may submit a declaration pursuant to Utah Code Section 78B-5-705. If a statute requires an affidavit or a notarized, verified or acknowledged signature and the party electronically files the paper, the signature shall be notarized pursuant to Utah Code Section 46-1-16.

[5]6. The first document delivered to the Adjudication Division becomes the original document filed. Any copies of the document filed with the Adjudication Division will not be retained.

KEY: witness fees, time, administrative procedures, filing deadlines

Date of Enactment or Last Substantive Amendment: [~~June 22, 2011~~]2015

Notice of Continuation: June 19, 2012

Authorizing, and Implemented or Interpreted Law: 34A-1-302; 34A-1-304; 63G-4-102 et seq.

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 348 (2015 General Session) enacted Utah Code Section 77-27-5.4 also known as the Earned Time Program. The statute mandates an earlier release date or time cut for offenders who successfully complete case action plan priorities. Although the Board has been granting time cuts, the proposed rule is necessary to codify how the Board will comply with the statute.

SUMMARY OF THE RULE OR CHANGE: The proposed rule establishes a reduction of incarceration time (time cut) of at least four months for an individual who successfully completes the highest ranked case action plan priority. An additional four month time cut will be granted for completing a second case action plan program. Individuals with a life without parole sentence or who have been ordered to expire a life sentence by the Board are not eligible. The Board may order the forfeiture of earned time credits for a major disciplinary infraction. There may be circumstances when the previously ordered release date does not allow enough time for the full four or eight month time cut however the Board will approve as much of a time cut as is practical (see Utah Code Subsection 77-27-5.4(3)(a)).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art. VII, Sec. 12 and Section 64-13-1 and Section 64-13-25 and Section 64-13-7.5 and Section 77-27-1 et seq. and Section 77-27-11 and Section 77-27-5 and Section 77-27-5.4 and Section 77-27-6 and Section 77-27-7 and Subsection 63G-3-201(3) and Subsection 77-27-10(2)(b) and Subsection 77-27-9(4)(a)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The proposed rule does not create a cost to the state. The Department of Corrections already provides programming to inmates and submits recommendations to the Board. The Board will use internal resources to conduct the special attention reviews required by the rule. The Legislature anticipated that the Justice Reinvestment Initiative will slow the growth of the prison population. This rule is one piece of the Justice Reinvestment Initiative.

♦ **LOCAL GOVERNMENTS:** Local governments do not participate in the process of submitting or approving time

cuts. Programming is provided by the Department of Corrections. The Department will submit information to the Board about which inmates have completed programming and qualify for the time cut.

♦ **SMALL BUSINESSES:** Small businesses do not have a role in the time cut process. Programming is provided by the Department of Corrections. The Department will submit information to the Board about which inmates have completed programming and qualify for the time cut.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The rule offers a structured way for an inmate to reduce time spent in prison if the inmate successfully completes programming that reduces recidivism.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule does not impose any costs on the inmate. Programming is provided by the Department of Corrections.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule provides a formal way for inmates to reduce their sentences by completing case action plan priorities. The rule does not impose any requirements on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

PARDONS (BOARD OF)
ADMINISTRATION
ROOM 300
448 E 6400 S
SALT LAKE CITY, UT 84107-8530
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Greg Johnson by phone at 801-261-6454, by FAX at 801-261-6481, or by Internet E-mail at gregjohnson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/02/2015

THIS RULE MAY BECOME EFFECTIVE ON: 10/12/2015

AUTHORIZED BY: Angela Micklos, Chair

R671. Pardons (Board of), Administration.
R671-311. Special Attention Reviews, Hearings and Decisions[Reviews].

[R671-311-1. General.

~~In exceptional circumstances the Board may adjust its prior decisions through a special attention review or hearing. This type of review or hearing may be used to adjust parole conditions; review board decisions, and grant relief when exceptional circumstances exist, or upon board initiative action. This process is initiated by the receipt of a written request explaining the special circumstances for which relief may be warranted. Exceptional~~

~~circumstances may include, but are not limited to, illness of the offender requiring extensive medical attention, exceptional performance or progress in the institution, exceptional family circumstances, verified opportunity for employment and information that was not previously considered by the Board. The board may request the Department of Corrections to review and make a recommendation on requests not submitted by the Department.~~

~~Special Attention requests that are considered to be repetitive, frivolous or lacking in substantial merit may be placed in the offenders file without formal action or response.~~

R671-311-2. Special Attention Hearing.

~~A Special Attention Hearing may be convened or conducted when, the Board determines, a personal appearance will assist the Board in resolving the issue. Special Attention Hearings are open to the public, are hearings of record and the offender should receive seven days notice of the purpose, place, date and time of the hearing.~~

R671-311-3. Special Attention Review.

~~A Special Attention Review will be processed administratively based on written reports supplied to the Board without the personal appearance of the offender.]~~

R671-311-1. Special Attention Reviews and Decisions.

~~(1) The Board may use special attention reviews or hearings to adjust parole conditions, review prior board decisions, and modify prior decisions when exceptional circumstances exist.~~

~~(2) Special attention reviews shall be initiated by Board staff when necessary to correct clerical or other errors in Board orders, or upon the receipt of a written request explaining the exceptional circumstances for which modification is sought.~~

~~(3) Exceptional circumstances which may result in a special attention review and decision may include, but are not limited to:~~

- ~~(a) clerical errors in a prior order;~~
- ~~(b) changes to the special conditions of parole requested by the Department of Corrections (Department);~~
- ~~(c) determination of restitution obligations;~~
- ~~(d) payment of restitution obligations prior to release;~~
- ~~(e) reinstatement of a rescinded release prior to a rescission hearing;~~

~~(f) modification of a prior decision due to changes in credit for time served as calculated by the Board;~~

~~(g) modification of a prior decision due to changes in applicable guidelines as calculated by the Board;~~

~~(h) granting alternative events in lieu of revocation for parole violations;~~

~~(i) imposing parole violation sanctions pursuant to a request from the Department and a waiver from the offender;~~

~~(j) granting incentives and parole condition changes pursuant to a request from the Department;~~

~~(k) exceptional performance or progress in the institution;~~

~~(l) case action plan completion or compliance over a significant period of time;~~

~~(m) Earned Time adjustments made pursuant to R671-311-3;~~

~~(n) exceptional circumstances not previously considered by the Board; or~~

(o) review of new and significant information not previously considered by the Board.

(4) Unless the request for a special attention review is made by the Department or Board staff, the Board shall request that the Department review the request and make a recommendation.

(5) Special attention requests that are repetitive, frivolous, or lacking in substantial merit shall be summarily denied and placed in the offender's file without formal action or response.

(6) Unless otherwise ordered by the Board, special attention reviews shall be processed administratively based on written or electronic reports supplied to the Board without the personal appearance of the offender.

R671-311-2. Special Attention Hearing.

(1) The Board may schedule a special attention hearing if it determines that a personal appearance hearing will assist in making a decision regarding a special attention request.

(2) A special attention hearing shall be scheduled if an alternative parole violation sanction is to be imposed and the offender requests a hearing.

R671-311-3. Earned Time Adjustments.

(1) Earned Time adjustments shall reduce the period of incarceration for offenders who have been granted a release from prison and who successfully complete recidivism risk reduction programming or objectives, as defined and specified herein.

(2) Definitions.

(a) "Adjustment" means:

(i) a reduction of an offender's period of incarceration when a release date has been ordered by the Board; and

(ii) has the same meaning as "credit" as used in Utah Code Ann. Section 77-27-5.4.

(b) "Case Action Plan" means the plan, developed by the Department pursuant to Utah Code Ann. Subsection 64-13-1(1), that identifies the program priorities that will reduce the offender's criminal risk factors as determined by a risk and needs assessment.

(c) "Department" refers to the Utah Department of Corrections and any of its divisions, bureaus, or departments.

(d) "Earned time adjustment" has the same meaning as, and comprises the program mandated in, Utah Code Ann. Section 77-27-5.4 and as defined in this Rule.

(e) "Forfeiture" and "Forfeiture of Earned Time Credits" as used in Utah Code Ann. Subsection 77-27-5.4(4) means that a release date granted by the Board following an earned time adjustment is rescinded due to a major disciplinary violation, new criminal conviction, new criminal activity, or other similar action committed by the offender.

(f) "Programming" means a component, objective, requirement, or program identified in an offender's case action plan that:

(i) meets the minimum standards and qualifications for programs established by the Department pursuant to Utah Code Ann. Section 64-13-7.5 or 64-13-25; and

(ii) has been shown by scientific research to reduce recidivism by addressing an offender's criminal risk factors.

(g) "Successful completion" means that an offender has completed a case action plan component, objective, requirement or programming and has earned a completion rating of "successful" as determined by standards set by the Department.

(2) Earned Time Adjustments.

(a) An offender shall earn an adjustment of four months for the successful completion of a program identified by the Department as pertaining to, satisfying, or applying within the highest ranked priority in the offender's case action plan.

(b) An offender shall earn an adjustment of four months for successful completion of one additional program as identified by the Department in the offender's case action plan.

(c) The earned time adjustment shall change the previously ordered release date, resulting in a reduction in the length of incarceration.

(d) If an offender earns a time adjustment prior to a Board decision setting release, the earned time and programming completion shall be considered by the Board when making subsequent release decisions.

(e) The Board, in its discretion, may grant earned time adjustments in excess of four months to recognize additional or extraordinary programming performance or achievement.

(3) Exclusions:

(a) Offenders whose previously ordered release date does not provide enough time for the adjustment may not be granted a full earned time adjustment, but shall receive a partial adjustment if the previously ordered release date allows for the same.

(b) Earned time adjustments may not be used to change an offender's original hearing as scheduled by the Board.

(c) Offenders who have been sentenced to life without parole are ineligible for earned time adjustments.

(d) Offenders who have been ordered by the Board to serve a life sentence to expiration are ineligible for earned time adjustments.

(e) Earned time adjustments may not be granted for a second or subsequent completion of the same classes, programs, or case action plan priorities during the same term of incarceration without an intervening release.

(4) The Department shall notify the Board, within 30 days, of an offender's successful completion of a case action plan program that is eligible for an earned time adjustment.

KEY: inmates, parole, sentences, time cut

Date of Enactment or Last Substantive Amendment: [~~October 4, 2012~~]2015

Notice of Continuation: January 31, 2012

Authorizing, and Implemented or Interpreted Law: **Art. VII, Sec. 12; 63G-3-201(3); 64-13-1; 64-13-7.5; 64-13-25; 77-27-1 et seq.; 77-27-5.4; 77-27-7; 77-27-5; 77-27-6; 77-27-9(4)(a); 77-27-10(2)(b); 77-27-11**

Public Service Commission,
Administration
R746-100-3
Pleadings

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39566

FILED: 08/10/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this proposed rule amendment is to reduce the amount of paperwork that filers must submit to the Commission when filing pleadings containing confidential and highly confidential information. With this change, only an electronic copy (rather than a paper copy along with an electronic copy) will be required when filing the non-confidential/redacted version. Paper copies will still be required when filing "confidential" (yellow) and "highly confidential" (pink) pleadings.

SUMMARY OF THE RULE OR CHANGE: Currently, filers are required to file a paper copy of pleadings along with an electronic copy when filing pleadings with the Commission that contain confidential and highly confidential information. Changing the current process will eliminate the paper copy and reduce paperwork that filers must submit when filing the non-confidential/redacted version. Paper copies will still be required when filing "confidential" (yellow) and "highly confidential" (pink) pleadings.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-1-1 and Section 54-1-3 and Section 54-1-6 and Section 54-3-21 and Section 54-4-1 and Section 54-4-1.5 and Section 54-4-2 and Section 54-7-17 and Title 63G, Chapter 4

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The proposed rule should result in a slight decrease in costs for the Division of Public Utilities, the Office of Consumer Services, and any other state governmental agency intervenors.
- ◆ **LOCAL GOVERNMENTS:** This rule does not apply to public utilities operated by municipalities, and local governments will be affected only to the extent they intervene in a matter and, even then, the impact should result in a negligible cost savings.
- ◆ **SMALL BUSINESSES:** The proposed rule change should result in a negligible cost savings for public utilities or intervenors.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed rule change should result in a negligible cost savings for public utilities or intervenors.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be a negligible compliance cost savings for public utilities, intervenors, the Division of Public Utilities, and the Office of Consumer Services.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed rule change will eliminate the requirement that parties file a paper copy, leaving only an electronic copy, when filing the non-confidential/redacted copy of confidential and highly confidential pleadings. A negligible cost savings should result.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 PUBLIC SERVICE COMMISSION
 ADMINISTRATION
 HEBER M WELLS BLDG
 160 E 300 S
 SALT LAKE CITY, UT 84111-2316
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Melanie Reif by phone at 801-530-6709, by FAX at 801-530-6796, or by Internet E-mail at mreif@utah.gov
- ◆ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2015

AUTHORIZED BY: Melanie Reif, Administrative Law Judge

R746. Public Service Commission, Administration.

R746-100. Practice and Procedures Governing Formal Hearings.

R746-100-3. Pleadings.

A. Pleadings Enumerated -- Applications, petitions, complaints, orders to show cause, and other traditional initiatory pleadings may be filed with the Commission. Traditional pleadings will be considered requests for agency action, pursuant to Section 63G-4-201, concerning adjudicative proceedings. Answers, protests, and other traditional responsive pleadings may be filed with the Commission and will be considered responses, subject to the requirements of Section 63G-4-204.

1. The following filings are not requests for agency action or responses, pursuant to Sections 63G-4-201 and 63G-4-204:

- a. motions, oppositions, and similar filings in existing Commission proceedings;
- b. informational filings which do not request or require affirmative action, such as Commission approval.

B. Docket Number and Title --

1. Docket number -- Upon the filing of an initiatory pleading, or upon initiation of a generic proceeding, the Commission shall assign a docket number to the proceeding which shall consist of the year in which the pleading was filed, a code identifying the public utility appearing as applicant, petitioner, or respondent, or generic code designation and another number showing its numerical position among the filings involving the utility or generic proceeding filed during the year.

2. Headings and titles -- Pleadings shall bear a heading substantially as follows:

.....

C. Form of Pleadings --

1. With the exception of consumer complaints, pleadings shall be double-spaced and in a font of at least 12 points.

2. Pleadings shall be presented for filing on paper 8-1/2 x 11 inches, shall include the docket number, if known, and shall be dated and time stamped upon receipt by the Commission.

3. Pleadings also shall be presented as an electronic word processing document that is substantially the same as the paper version filed, and may be transmitted electronically to the e-mail address the Commission designates for such purposes or presented in electronic media (i.e., compact disc (CD)), using a Commission-approved format.

4. In electronic pleadings, each file shall be identified by an electronic file name that includes at least the following, if applicable to the specific file:

- a. the word "direct" "rebuttal" or "surrebuttal";
- b. the last name of the witness; and
- c. the word "exhibit" or "workpapers" followed by any applicable identification number or letter.

5. Pleadings over five pages shall be double sided and three-hole punched.

6. A filing is not complete until the original and all required copies -- both paper and electronic -- are provided to the Commission in the form described. If an electronic document is filed in Portable Document Format (PDF) and PDF is not the format of the filing party's source document:

- a. the electronic document shall also be provided in its original format; and
- b. the PDF document shall include footnote references describing the name and location of the source document in the filed electronic media.

D. Certificate of Service -- a Certificate of Service must be attached to all pleadings filed with the Commission, certifying that a true and correct copy of the pleading was served upon each of the parties in the manner and on the date specified. A filing is not complete without this certificate of service.

E. Pleadings Containing Confidential and Highly Confidential Information --

1. Pleadings, including all accompanying documents, containing information claimed to be confidential or highly confidential, as described in R746-100-16, shall be filed in accordance with R746-100-3(C) and shall conform to the following additional requirements:

a. The paper version of a pleading containing confidential information shall be filed on yellow paper with the confidential portion of the pleading denoted by shading, highlighting, or other readily identifiable means. Both the paper and the electronic versions presented for filing shall be designated confidential in accordance with R746-100-16(A)(1)(b).

b. The paper version of a pleading containing highly confidential information shall be filed on pink paper with the highly confidential portions of the pleadings denoted by shading, highlighting, or other readily identifiable means. Both the paper and electronic versions presented for filing shall be designated highly confidential in accordance with R746-100-16(A)(1)(g).

c. A non-confidential version ~~shall~~ also shall be filed~~;~~ in ~~both paper and~~ electronic form, from which all confidential and highly confidential information must be redacted. All copies of this version shall ~~be~~ clearly be labeled as "Non-Confidential - Redacted Version."

F. Amendments to Pleadings -- The Commission may allow pleadings to be amended or corrected at any time. Initiatory pleadings may be amended without leave of the Commission at any time before a

responsive pleading has been filed or the time for filing the pleading has expired. Defects in pleadings which do not affect substantial rights of the parties shall be disregarded.

G. Signing of Pleadings -- Pleadings shall be signed by the party, or by the party's attorney or other authorized representative if the party is represented by an attorney or other authorized representative, and shall show the signer's address. The signature shall be considered a certification by the signer that he has read the pleading and that, to the best of his knowledge and belief, there is good ground to support it.

H. Consumer Complaints --

1. Alternative dispute resolution, mediation procedures -- Before a proceeding on a consumer complaint is initiated before the Commission, the Commission shall try to resolve the matter through referral first to the customer relations department, if any, of the public utility complained of and then to the Division for investigation and mediation. Only after these resolution efforts have failed will the Commission entertain a proceeding on the matter.

2. Request for agency action -- Persons requesting Commission action shall be required to file a complaint in writing, requesting agency action. The Commission shall not act on illegible or incomplete complaints and shall return those complaints to the complainant with instructions for correction or completion.

3. The Division of Public Utilities may participate in a consumer complaint proceeding as determined by the Division or as requested by the Commission.

I. Content of Pleadings --

1. Pleadings filed with the Commission shall include the following information as applicable:

a. if known, the reference numbers, docket numbers, or other identifying symbols of relevant tariffs, rates, schedules, contracts, applications, rules, or similar matter or material;

b. the name of each participant for whom the filing is made or, if the filing is made for a group of participants, the name of the group, if the name of each member of the group is set forth in a previously filed document which is identified in the filing being made;

c. if statute, rule, regulation, or other authority requires the Commission to act within a specific time period for a matter at issue, a specific section of the pleading, located after the heading or caption, entitled "Proceeding Time Period," shall include: reference or citation to the statute, rule, regulation, or other authority; identification of the time period; and the expiration date of the time period identified by day, month, and year;

d. the specific authorization or relief sought;

e. copies of, or references to, tariff or rate sheets relevant to the pleading;

f. the name and address of each person against whom the complaint is directed;

g. the relevant facts, if not set forth in a previously filed document which is identified in the filing being made;

h. the position taken by the participant filing a pleading, to the extent known when the pleading is filed, and the basis in fact and law for the position;

i. the name, address, and telephone number of an individual who, with respect to a matter contained in the filing, represents the person for whom the filing is made;

j. additional information required to be included by Section 63G-4-201, concerning commencement of adjudicative proceedings, or other statute, rule, or order.

J. Motions -- Motions may be submitted for the Commission's decision on either written or oral argument, and the filing of affidavits in support or contravention of the motion is permitted. If oral argument is sought, the party seeking oral argument shall arrange a hearing date with the secretary of the Commission and provide at least five days written notice to affected parties, unless the Commission determines a shorter time period is needed.

K. Responsive Pleadings --

1. Responsive pleadings to applications, petitions, or requests for agency action shall be filed in accordance with Section 63G-4-204.

2. Response and reply pleadings may be filed to pleadings other than applications, petitions or requests for agency action.

KEY: government hearings, public utilities, rules and procedures, confidential information

Date of Enactment or Last Substantive Amendment: [~~May 27,~~] 2015

Notice of Continuation: November 28, 2012

Authorizing, and Implemented or Interpreted Law: 54-1-1; 54-1-3; 54-1-6; 54-3-21; 54-4-1; 54-4-1.5; 54-4-2; 54-7-17; 63G-4

End of the Notices of Proposed Rules Section

NOTICES OF CHANGES IN PROPOSED RULES

After an agency has published a **PROPOSED RULE** in the *Utah State Bulletin*, it may receive comment that requires the **PROPOSED RULE** to be altered before it goes into effect. A **CHANGE IN PROPOSED RULE** allows an agency to respond to comments it receives.

As with a **PROPOSED RULE**, a **CHANGE IN PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **CHANGE IN PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends October 1, 2015.

Following the **RULE ANALYSIS**, the text of the **CHANGE IN PROPOSED RULE** is usually printed. The text shows only those changes made since the **PROPOSED RULE** was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (*example*). Deletions made to the rule appear struck out with brackets surrounding them (~~example~~). A row of dots in the text between paragraphs (.) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a **CHANGE IN PROPOSED RULE** is too long to print, the Division of Administrative Rules may include only the **RULE ANALYSIS**. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

From the end of the 30-day waiting period through December 30, 2015, an agency may notify the Division of Administrative Rules that it wants to make the **CHANGE IN PROPOSED RULE** effective. When an agency submits a **NOTICE OF EFFECTIVE DATE** for a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** as amended by the **CHANGE IN PROPOSED RULE** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses.

CHANGES IN PROPOSED RULES are governed by Section 63G-3-303, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5b, R15-4-7, R15-4-9, and R15-4-10.

The Changes in Proposed Rules Begin on the Following Page

Pardons (Board of), Administration
R671-201
Original Parole Grant Hearing
Schedule and Notice

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 39419
 FILED: 08/11/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Newly enacted Section 77-27-5.4 offers a potential reduction of eight months to the time served in prison for inmates completing case action plan priorities. In order to afford the inmate the opportunity to take advantage of this Earned Time Program, the Board must set original hearings early enough that the inmate can complete treatment and receive the appropriate reduction without going over the sentencing guideline.

SUMMARY OF THE RULE OR CHANGE: The time frame for setting a hearing on a second degree felony sex offense will be reduced from 18 months to 12 months. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the July 1, 2015, issue of the Utah State Bulletin, on page 41. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 77-27-5 and Section 77-27-5.4 and Section 77-27-7 and Section 77-27-9

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** Hearings are already conducted for each eligible sentence. The proposed changes do not increase or decrease the number of hearings. The change is to the timing of the hearing or how the date is set. The proposed changes do not increase costs or create savings for the state.
- ◆ **LOCAL GOVERNMENTS:** Local governments do not participate in parole hearings. Changing the schedule does not affect local governments.
- ◆ **SMALL BUSINESSES:** Small businesses do not participate in parole hearings. Changing the schedule does not affect small business.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Unless an individual is sentenced to life without parole, the individual will have a hearing with the Board. The proposed

changes do not limit the hearings. The change is in how the hearing is scheduled.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no cost to the individual for a parole hearing. The proposed change is in the way the original hearing date will be determined.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Business does not participate in parole hearings. There is no fiscal impact to business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

PARDONS (BOARD OF)
 ADMINISTRATION
 ROOM 300
 448 E 6400 S
 SALT LAKE CITY, UT 84107-8530
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Greg Johnson by phone at 801-261-6454, by FAX at 801-261-6481, or by Internet E-mail at gregjohnson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 10/12/2015

AUTHORIZED BY: Angela Micklos, Chair

R671. Pardons (Board of), Administration.
R671-201. Original Hearing Schedule and Notice.
R671-201-1. Schedule and Notice.

(1)(a) Within six months of an offender's commitment to prison the Board shall give notice of the month and year in which the inmate's original hearing will be conducted.

(b) A minimum of seven days prior notice should be given regarding the specific day and approximate time of such hearing.

(2)(a) Homicide offense commitment, for purposes of this rule, means a prison commitment to serve a sentence for a conviction of aggravated murder (if the sentence includes the possibility of parole), murder, felony murder, manslaughter, child abuse homicide, negligent homicide, automobile homicide, homicide by assault, any attempt, conspiracy or solicitation to commit any of these offenses, and any other offense, regardless of title, description or severity, when it is known at the time of sentencing that the offense conduct resulted in the death of any person.

(b) Sexual offense commitment, for purposes of this rule, means a prison commitment to serve a sentence for a conviction of any crime for which an offender is defined as a kidnap offender pursuant to Utah Code Ann. Subsection 77-41-102(9); or for which an offender is defined as a sex offender pursuant to Utah Code Ann. Subsection 77-

41-102(16); or any attempt, conspiracy or solicitation to commit any of the offenses listed in those sections.

(3)(a) All homicide offense commitments eligible for parole shall be routed to the Board as soon as practicable for the determination of the month and year for an original hearing.

(b) The Board shall determine, by majority vote, the month and year of an original hearing for an offender serving a homicide offense commitment.

(c) In setting an original hearing for a homicide offense commitment, the Board shall only consider information available to the court or offender at the time of sentencing.

(d) Homicide offense commitments not eligible for parole (including sentences of life without parole or death) shall not be scheduled for original hearings.

(4) If the offender is less than 18 years of age at the time of commitment and the offense is eligible for parole, the case shall be routed to the Board as soon as practicable for the determination, by majority vote, of the month and year for an original hearing.

(5) When an offender's prison commitment does not include a homicide offense commitment, an offender is eligible to have an original hearing before the Board as follows:

(a) After the service of fifteen years for first degree felony commitments when the most severe sentence imposed and being served is a sentence greater than 15 years to life, excluding enhancements.

(b) After the service of seven years for first degree felony commitments when the most severe sentence imposed and being served is a sentence of 10 years to life, or 15 years to life, excluding enhancements.

(c) After the service of three years for all other first degree felony commitments.

(d) After the service of ~~eighteen~~ twelve months if the most serious offense of incarceration is a second degree felony sexual offense commitment.

(e) After the service of six months for all other second degree felony commitments.

(f) After the service of six months if the most serious offense of incarceration is a third degree felony sexual offense commitment.

(g) After the service of three months for all other third degree felony and class A misdemeanor commitments.

(6)(a) An offender may request that their original appearance and hearing before the Board be scheduled other than as provided by this rule. An offender's request shall specify the extraordinary circumstances or reasons which give rise to the request. The Board may grant or deny the offender's request in its sole discretion.

(b) The Board may, in its discretion, depart from the schedule as provided by this rule if:

(i) an offender requests a continuance due to extraordinary circumstances;

(ii) an offender has unadjudicated criminal charges pending at the time a hearing would normally be scheduled;

(iii) a Class A misdemeanor commitment has expired prior to an original hearing; or

(iv) the Board determines that other unusual or extraordinary circumstances impact the setting of an original hearing.

KEY: parole, inmates, hearings

Date of Enactment or Last Substantive Amendment: 2015

Notice of Continuation: September 22, 2014

Authorizing, and Implemented or Interpreted Law: Art. VII, Sec. 12; 77-27-5, 77-27-7, 77-27-9

Pardons (Board of), Administration **R671-316** Redetermination

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 39421

FILED: 08/11/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Board received public comment recommending expanding the scope of the rule and for more clear language.

SUMMARY OF THE RULE OR CHANGE: Offenders with homicide commitments have original hearing dates set by administrative review. The original hearing date for these offenses may be many years in the future. The current rule does not allow any avenue for the offender to present new information and petition to change the original hearing date. The proposed rule allows an inmate to petition for a redetermination of the original hearing date. Additionally the Board used language more accessible to the public. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the July 1, 2015, issue of the Utah State Bulletin, on page 44. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art. VII, Sec. 12 and Section 77-27-5 and Section 77-27-7 and Section 77-27-9 and Subsection 63G-3-201(3)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The proposed change may allow more offenders to petition for redetermination of a prior Board decision. The Board anticipates the workload increase to be minimal and will absorb it with existing resources.

◆ **LOCAL GOVERNMENTS:** Local governments do not participate in the setting of Board hearings and are not impacted by this rule.

- ◆ **SMALL BUSINESSES:** Small businesses do not participate in parole hearings or the Board's decision-making process. Small businesses will not be affected.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The rule expands the scope of offenders who can petition for a redetermination of a prior Board decision. The rule increases the options available to the individual but does not constrain individuals to petition the Board.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Filing a petition for redetermination does not have fee.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses do not have a role in petitioning for redetermination or the Board's decision process. The proposed rule does not fiscally impact businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 PARDONS (BOARD OF)
 ADMINISTRATION
 ROOM 300
 448 E 6400 S
 SALT LAKE CITY, UT 84107-8530
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Greg Johnson by phone at 801-261-6454, by FAX at 801-261-6481, or by Internet E-mail at gregjohnson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 10/12/2015

AUTHORIZED BY: Angela Micklos, Chair

**R671. Pardons (Board of), Administration.
 R671-316. Redetermination.
 R671-316-1. Redetermination Review.**

- (1) Redetermination is a process whereby the Department of Corrections (Department) or an offender may request that the Board review new, material, and significant information, or reconsider a prior decision.
- (2) Redetermination of a previous decision may be considered if:
 - (a) the time requirements of this rule are met;
 - (b) the offender has no new criminal convictions since the entry of the decision for which redetermination is sought;
 - (c) the offender has no pending major disciplinary violations; and
 - (d) the Board finds that a significant and material change in circumstances has occurred which it has not previously considered.

(3) The Department or an offender may submit a redetermination request, asking the Board to [the Board requesting that the Board]reconsider a [prior decision, if:

(a) the]prior decision[granted parole, terminated the offender's sentence,], if:

(a) the decision ordered the expiration of [the offender's sentence or]a life sentence, and at least ten years have passed since the Board's decision or any subsequent redetermination decision;

(b) the decision ordered a [re-hearing, and]release, rehearing, or expiration of any sentence not involving the expiration of a life sentence, and at least five years have passed since the Board's decision or any subsequent redetermination decision; or
[(b) the offender's current release or rehearing date is more than five years in the future.]

(2) An offender may not seek a redetermination regarding](c)(i) the decision set an original hearing [scheduled by the Board]for a homicide offense, pursuant to Utah R. Admin. [R-671]P. R671-201[-]-1(3)(a);

(3)(a) An offender seeking a redetermination of a decision which expired a life sentence is eligible to petition for redetermination not sooner than ten years following the decision, and thereafter in ten year intervals;

(b) All other offenders seeking](ii) the original hearing was set more than fifteen years following the offender's arrival at the prison; and

(iii) at least ten years have passed since the administrative review decision or any subsequent redetermination [of a parole, termination, expiration or rehearing decision are eligible to petition for redetermination not sooner than five years following the decision, and thereafter in five year intervals]decision.

(4) A redetermination request shall[originate with and be signed by the offender, shall];

(a) clearly and specifically state [with particularity the grounds or]the reasons supporting the redetermination request[; and shall be routed through the offender's case worker.];

(5) A petition](b) include a current report detailing the offender's case action plan compliance, treatment participation and history, disciplinary history, and current risk assessment; and

(c) be signed by the offender if not submitted [through a easeworker shall also include a current progress report and, if]by the [easeworker supports]Department.

(5) If the request for redetermination[; is not submitted by the Department, the Board may request that the Department review the request, provide any updated institutional, medical, or other report requested by the Board, and make a recommendation [with supporting rationale]regarding the request.

(6) The Board may make a decision regarding a redetermination request with or without a hearing. [All decisions are final and non-appealable.]

(7) If the Board denies a redetermination request, the decision shall be accompanied by a brief statement or rationale giving the reason for the denial.

KEY: parole, inmates
Date of Enactment or Last Substantive Amendment: 2015
Notice of Continuation: January 31, 2012
Authorizing, and Implemented or Interpreted Law: Art. VII, Sec. 12; 63G-3-201(3); 77-27-5; 77-27-7; 77-27-9

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <http://www.rules.utah.gov/publicat/code.htm>. The rule text may also be inspected at the agency or the Division of Administrative Rules. **REVIEWS** are effective upon filing.

REVIEWS are governed by Section 63G-3-305.

Agriculture and Food, Animal Industry **R58-12** Record Keeping and Carcass Identification at Meat Exempt (Custom Cut) Establishments

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 39573
FILED: 08/12/2015

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Meat and Poultry Act, Section 4-32-7, authorizes the department to administer an inspection program for meat and poultry.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received supporting or opposing by the department since the last five-year review of the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule insures that meat that is being slaughtered for the consumption of the owner of the animal is not sold to for public consumption. It requires record keeping and labeling to take place at the meat establishment facilities. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AGRICULTURE AND FOOD
ANIMAL INDUSTRY
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Cody James by phone at 801-538-7166, by FAX at 801-538-7169, or by Internet E-mail at codyjames@utah.gov
♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
♦ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at sericson@utah.gov

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 08/12/2015

Agriculture and Food, Animal Industry **R58-15** Collection of Annual Fees for the Wildlife Damage Prevention Act

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 39602
FILED: 08/13/2015

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS

ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Agricultural and Wildlife Damage Prevention Act, Section 4-23-7, requires the department to establish rules regarding the collection a non-collection exemption of annual fees assessed.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received by the department opposing or supporting the rule since the last five-year review of the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The fees collected help to fund the predator control efforts of the agency and supports the livestock industry. Therefore, this rules should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 AGRICULTURE AND FOOD
 ANIMAL INDUSTRY
 350 N REDWOOD RD
 SALT LAKE CITY, UT 84116-3034
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Cody James by phone at 801-538-7166, by FAX at 801-538-7169, or by Internet E-mail at codyjames@utah.gov
 ♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
 ♦ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at sericson@utah.gov

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 08/13/2015

Agriculture and Food, Regulatory Services
R70-610
Uniform Retail Wheat Standards of Identify

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 39561
 FILED: 08/05/2015

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS

ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Utah Wholesome Food Act, Section 4-5-17, is designed to protect the public from adulterated or misbranded food. The statute authorizes the department to make rules, inspect food manufacturers and retailers to prevent the sale of adulterated or misbranded food.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received by the department since the last five-year review supporting or opposing this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Uniform Retail Wheat Standard of identity ensures that the public has knowledge of what they are purchasing, the quality of the food item, and that the item is of standard that is not adulterated. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 AGRICULTURE AND FOOD
 REGULATORY SERVICES
 350 N REDWOOD RD
 SALT LAKE CITY, UT 84116-3034
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
 ♦ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at sericson@utah.gov
 ♦ Travis Waller by phone at 801-538-7150, by FAX at 801-538-7124, or by Internet E-mail at twaller@utah.gov

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 08/05/2015

Agriculture and Food, Regulatory Services
R70-620
Enrichment of Flour and Cereal Products

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 39560
 FILED: 08/05/2015

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Utah Wholesome Food Act, Title 4, Chapter 5, grants the department authority to make rules to prevent adulterated and misbranded food.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received by the department since the last five-year review supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The purpose of this rule is to ensure that the flour and cereal products are properly labeled. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 AGRICULTURE AND FOOD
 REGULATORY SERVICES
 350 N REDWOOD RD
 SALT LAKE CITY, UT 84116-3034
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
 ♦ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at sericson@utah.gov
 ♦ Travis Waller by phone at 801-538-7150, by FAX at 801-538-7124, or by Internet E-mail at twaller@utah.gov

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 08/05/2015

Agriculture and Food, Regulatory Services

R70-910

Registration of Servicepersons for Commercial Weighing and Measuring Devices

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 39562
 FILED: 08/05/2015

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 4-9-2 authorizes the department to promulgate rules regarding the standards for weights and measures. The statute also requires registration of servicepersons who use devices for commercial weighing and measuring.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received by the department since the last five-year review of the rule supporting or opposing this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule requires individuals involved in this service to be able to demonstrate competence to utilize the equipment that has been certified. This allows companies to know that these individuals are licensed to perform this critical work. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 AGRICULTURE AND FOOD
 REGULATORY SERVICES
 350 N REDWOOD RD
 SALT LAKE CITY, UT 84116-3034
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
 ♦ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at sericson@utah.gov
 ♦ Travis Waller by phone at 801-538-7150, by FAX at 801-538-7124, or by Internet E-mail at twaller@utah.gov

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 08/05/2015

Agriculture and Food, Regulatory Services

R70-950

Uniform National Type Evaluation

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 39563
FILED: 08/05/2015

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 4-9-2 authorizes the department to promulgate rules regarding the standards for weights and measures.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received by the department since the last five-year review in supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The purpose of this rule is to enable the State Metrology Laboratory to maintain its certification from the National Institute of Standards and Technology. This certification is required for weights and measures in Utah to be recognized as meeting national and international standards for commerce. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

AGRICULTURE AND FOOD
REGULATORY SERVICES
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
- ◆ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at sericson@utah.gov
- ◆ Travis Waller by phone at 801-538-7150, by FAX at 801-538-7124, or by Internet E-mail at twaller@utah.gov

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 08/05/2015

Commerce, Real Estate**R162-2a****Utah Housing Opportunity Restricted
Account****FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 39575
FILED: 08/13/2015

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule was adopted under the statutory provisions of Section 61-2-204. The purpose of the rule is to provide procedures that a qualifying organization may follow to apply to receive money from the Utah Housing Opportunity Restricted Account.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received during and since the last five-year review of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The statutory requirement that the division of real estate make rules providing procedures for an organization to apply to receive money from the Utah Housing Restricted Account remains in effect. The rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE
REAL ESTATE
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Justin Barney by phone at 801-530-6603, or by Internet E-mail at justinbarney@utah.gov

AUTHORIZED BY: Jonathan Stewart, Director

EFFECTIVE: 08/13/2015

Commerce, Real Estate
R162-2f
Real Estate Licensing and Practices
Rules

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 39572
FILED: 08/12/2015

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule was adopted under the statutory provisions of Title 61, Chapter 2f, the Real Estate Licensing and Practices Act (Act). The purpose of the rule was to reorganize the real estate rules in place at the time of adoption into a statutory numbering format and to update rules that, given online technologies, no longer tracked with general real estate business practices. Section 61-2f-103 provides that the Real Estate Commission shall make rules for the administration of Chapter 2f that are not inconsistent with the Act. Other sections which authorize the rulemaking process are Sections 61-2f-203, 61-2f-204, 61-2f-206, 61-2f-208, 61-2f-305, 61-2f-307, and 61-2f-401. Changes and updates to the rule have been made since its adoption. The rule provides direction to the staff of the division of real estate regarding the administration and enforcement of the Act and helps guide real estate licensees such that they might satisfy the statutory requirements found in the Act. As a result, the rule should be continued.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: This rule has been amended numerous times since it became effective. In response to a proposed amendment to Sections R162-2f-205, R162-2f-401a, and R162-2f-403, filed 02/23/2011, several written comments were received in opposition to the proposed amendment of Section R162-2f-401a. The division received one written comment in favor of the amendment of Section R162-2f-205 and no comment regarding the proposed amendment to Section R162-2f-403. After considering the comments, the commission determined to take no further action on the proposed rule amendment and the rule filing lapsed. Later in the year, proposed rule amendments to Sections R162-2f-205 and R162-2f-403 were adopted without any additional public comment. In response to a proposed amendment to Section R162-2f-401a filed 03/03/2015, several written comments were received in opposition to the proposed amendment. The Commission determined to hold a public hearing to allow for additional public comment on the proposed amendment. Following the public hearing, the

commission determined to take no further action on the proposed rule amendment and the rule filing lapsed. Except as summarized above, the division has no record of any other written comments received during and since the adoption of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The statutory requirements found in Title 61, Chapter 2f, remain in effect or have been updated at the time of this five-year review. The rulemaking authority from the statute continues in effect as does the need for rules to implement and administer the statute. As a result, the rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE
REAL ESTATE
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Justin Barney by phone at 801-530-6603, or by Internet E-mail at justinbarney@utah.gov

AUTHORIZED BY: Jonathan Stewart, Director

EFFECTIVE: 08/12/2015

Education, Administration
R277-444
Distribution of Funds to Arts and
Science Organizations

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 39578
FILED: 08/13/2015

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-401(3) allows the Utah State Board of Education (Board) to adopt rules in accordance with its responsibilities and Section 53A-1-402 directs the Board to establish rules and standards for the public schools, including curriculum and instruction requirements.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Utah Education Association submitted the following concerns on 06/17/2015: 1) the design, implementation and requirements control is taken away from LEAs and turned over to the superintendent and the Board; 2) it is not clear who or when a group would be required to submit an RFP; 3) provides that only superintendent can provide an application--is there anyone else?; 4) rule is not clear on how many community representatives there can be; and 5) is "education service plan" defined anywhere?

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides standards and procedures for the distribution of money appropriated by the state to arts or science organizations. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY, UT 84111-3272
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

AUTHORIZED BY: Benjamin Rasmussen, UPPAC Director and Special Counsel

EFFECTIVE: 08/13/2015

**Education, Administration
 R277-477**

**Distribution of Funds from the Interest
 and Dividend Account and
 Administration of the School LAND
 Trust Program**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION
 DAR FILE NO.: 39579
 FILED: 08/13/2015**

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-16-101.5(4) allows the Utah State Board of Education (Board) to adopt rules regarding the time and manner in which a student count shall be made for allocation of funds and Subsection 53A-1-401(3) allows the Board to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides standards and procedures for public schools to receive financial resources to implement a component of a school's improvement plan or charter document in order to enhance and improve student academic achievement. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY, UT 84111-3272
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

AUTHORIZED BY: Benjamin Rasmussen, UPPAC Director and Special Counsel

EFFECTIVE: 08/13/2015

**Education, Administration
 R277-491**

School Community Councils

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION
 DAR FILE NO.: 39580
 FILED: 08/13/2015**

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-401(3) allows the Utah State Board of Education to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides procedures and clarifying information for school community councils to assist the councils in fulfilling school community council responsibilities consistent with Sections 53A-1a-108 and 53A-1a-108.1. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

AUTHORIZED BY: Benjamin Rasmussen, UPPAC Director and Special Counsel

EFFECTIVE: 08/13/2015

Education, Administration
R277-497
School Grading System

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 39581
FILED: 08/13/2015

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53A-1-1113 directs the Utah State Board of Education (Board) to adopt rules to implement a school grading system; Section 53A-1-1104 authorizes the Board to make a rule to establish an accountability plan for an alternative school or special needs school that the Board has exempted from school grading; and Subsection 53A-1-401(3) allows the Board to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides standards, and procedures for local education agencies to report school data through a school grading system. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

AUTHORIZED BY: Benjamin Rasmussen, UPPAC Director and Special Counsel

EFFECTIVE: 08/13/2015

Education, Administration
R277-498
Grant for Math Teaching Training

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 39582
FILED: 08/13/2015

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-401(3) allows the Utah State Board of Education (Board) to adopt rules in accordance with its responsibilities and Subsection 53A-6-901(2) directs the Board to make rules to provide criteria to award grants related to mathematics education.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Utah Education Association (UEA) submitted the following concern on 06/17/2015: It appears that the USOE is being replaced by the Superintendent. UEA states that they suspect that intent is "under the direction of the Superintendent" but feel it should be more explicit in the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides to establish criteria to award a grant to support and encourage prospective educators to earn mathematics endorsements and assist an experienced mathematics teacher in becoming a teacher leader. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY, UT 84111-3272
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

AUTHORIZED BY: Benjamin Rasmussen, UPPAC Director and Special Counsel

EFFECTIVE: 08/13/2015

Education, Administration
R277-602
Special Needs Scholarships - Funding and Procedures

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 39583
 FILED: 08/13/2015

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1a-706(5)(b) provides for Utah State Board of Education (Board) rules to establish timelines for payments to private schools; Title 53A, Chapter 15, Part 15, Background Checks provides for criminal background checks and ongoing monitoring for employees and volunteers; Section 53A-1a-707 provides for Board rules about eligibility of students for scholarships and the application process for students to participate in the scholarship program; and Subsection 53A-1-401(3) allows the Board to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it outlines the responsibilities of a parent, a local education agency (LEA), and an eligible private school that accepts a scholarship from a special needs student and the Board in providing choices for a parent of a special needs student who chooses to have the student served in a private school. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY, UT 84111-3272
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

AUTHORIZED BY: Benjamin Rasmussen, UPPAC Director and Special Counsel

EFFECTIVE: 08/13/2015

Natural Resources, Wildlife Resources
R657-24
Compensation for Mountain Lion, Bear,
Wolf or Eagle Damage

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 39559
FILED: 08/03/2015

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Under Section 23-24-1, the Wildlife Board is authorized to provide rules to administer and enforce the procedures to obtain compensation for livestock damage done by mountain lion, bear, or eagle.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Division of Wildlife Resources and the Wildlife Board have not received any comments, either in support or opposition to Rule R657-24. Any comments received in opposition to the rule are resolved using existing policies and procedures or the issue is placed on the Regional Advisory Council and Wildlife Board agendas for review and discussion during the process for taking public input. The public is welcome to view the administrative record for this rule at the Division of Wildlife Resources.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-24 provides the procedures, standards, requirements, and limits for obtaining compensation for damages to livestock by mountain lion, bear, or eagle. Continuation of this rule is necessary for continued success of this program.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

AUTHORIZED BY: Gregory Sheehan, Director

EFFECTIVE: 08/03/2015

Public Service Commission,
Administration
R746-510
Funding for Speech and Hearing
Impaired Certified Interpreter Training

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 39568
FILED: 08/11/2015

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule establishes uniform administrative requirements for the use of funds from the Hearing and Speech Impaired telephone surcharge pursuant to Subsection 54-8b-10(5)(b)(vi).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The reason for continuing this rule is to allow the commission to carry out its statutory mandate under the above cited statutes. This rule is to establish uniform administrative requirements for the distribution of funds from the telephone surcharge to be awarded by contract to institutions within the state system of higher education, or to the Division of Services of the Deaf and Hard of Hearing. The funds would be used to train persons so they can qualify as certified interpreters for deaf, hard of hearing, or severely speech-impaired persons. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

PUBLIC SERVICE COMMISSION
ADMINISTRATION
HEBER M WELLS BLDG
160 E 300 S

SALT LAKE CITY, UT 84111-2316
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Melanie Reif by phone at 801-530-6709, by FAX at 801-530-6796, or by Internet E-mail at mreif@utah.gov
 ♦ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

AUTHORIZED BY: Melanie Reif, Administrative Law Judge

EFFECTIVE: 08/11/2015

**Tax Commission, Auditing
 R865-21U
 Use Tax**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 39564
 FILED: 08/06/2015

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 59-12-103 imposes a tax on sales and uses of tangible personal property and services, but leaves unclear how the two taxes work together. Section 59-12-107 places responsibility for collecting use tax upon vendors, but does not provide adequate detail to determine if a taxable use has occurred, and is silent on the issue of whether the vendor should collect use tax on goods purchased in interstate commerce, but stored, used or consumed within the state. Section 59-12-107 also imposes a use tax upon users if a sales or use tax was not collected by the vendor, but does not provide detail on how the user should pay or account for those payments. Section 59-12-118 gives the Tax Commission rulemaking authority to administer the sales and use tax.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section R865-21U-1 clarifies the purpose of the use tax and when the use tax applies. Section R865-21U-2 clarifies that all rules promulgated for sales taxes are applicable to use taxes. Section R865-21U-6 sets forth a purchaser's responsibilities with regard to payment of and

accounting for use tax. Section R865-21U-16 clarifies that use tax is required on goods sold in interstate commerce but stored, used or consumed within the state. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 TAX COMMISSION
 AUDITING
 210 N 1950 W
 SALT LAKE CITY, UT 84134
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

AUTHORIZED BY: Rebecca Rockwell, Commissioner

EFFECTIVE: 08/06/2015

**Tax Commission, Collections
 R867-2B
 Delinquent Tax Collection**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 39565
 FILED: 08/06/2015

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 59-1-302 allows the Tax Commission to impose a penalty upon the officers/director of a corporation for unpaid tax. The rule clarifies that the Tax Commission may impose a lien for those penalties if they remain unpaid. Section 59-1-703 provides that property seized under a jeopardy assessment may be sold prior to the close of appeals on the assessment if certain conditions are met.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section R867-2B-1 clarifies that certain individuals may be subject to a tax lien. Section R867-2B-3 clarifies the procedures the Tax Commission follows prior to

sale of property seized under a jeopardy assessment. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION
COLLECTIONS
210 N 1950 W
SALT LAKE CITY, UT 84134
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

AUTHORIZED BY: Rebecca Rockwell, Commissioner

EFFECTIVE: 08/06/2015

**Workforce Services, Unemployment
Insurance
R994-207
Unemployment**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 39577
FILED: 08/13/2015

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR
STATUTORY PROVISIONS UNDER WHICH THE RULE IS

ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The statute, Section 35A-4-207, provides a broad definition of unemployment. Section 35A-1-104 authorizes the Department to file rules, Subsection 35A-1-104(4) authorizes the Department to establish eligibility standards for its programs. Subsection 35A-4-502(1)(b) authorizes the Department to make rules necessary for the administration of the Employment Security Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary to explain what is considered to be unemployment and what is not. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
140 E 300 S
SALT LAKE CITY, UT 84111-2333
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

AUTHORIZED BY: Jon Pierpont, Executive Director

EFFECTIVE: 08/13/2015

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Division of Administrative Rules that the rules listed below have been made effective.

NOTICES OF EFFECTIVE DATE are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

Abbreviations

AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal & Reenact
REP = Repeal

Financial Institutions

Nondepository Lenders
No. 39442 (NEW): R343-10. Title Lenders Registration with the Nationwide Database
Published: 07/01/2015
Effective: 08/12/2015

Administrative Services

Purchasing and General Services
No. 39432 (AMD): R33-7-702. Only One Proposal Received
Published: 07/01/2015
Effective: 08/07/2015

Health

Center for Health Data, Health Care Statistics
No. 39416 (AMD): R428-1. Health Data Plan and Incorporated Documents
Published: 06/15/2015
Effective: 10/01/2015

Agriculture and Food

Animal Industry
No. 39423 (AMD): R58-1. Admission, Identification, and Inspection of Livestock, Poultry and other Animals
Published: 07/01/2015
Effective: 08/12/2015

No. 39415 (AMD): R428-11. Health Data Authority Ambulatory Surgical Data Reporting Rule
Published: 06/15/2015
Effective: 10/01/2015

No. 39422 (AMD): R58-2. Disease, Inspections, and Quarantines
Published: 07/01/2015
Effective: 08/12/2015

Insurance

Title and Escrow Commission
No. 39412 (AMD): R592-6. Unfair Inducements and Marketing Practices in Obtaining Title Insurance Business
Published: 06/15/2015
Effective: 08/11/2015

No. 39424 (AMD): R58-22. Equine Infectious Anemia (EIA)
Published: 07/01/2015
Effective: 08/12/2015

Natural Resources

Wildlife Resources
No. 39435 (AMD): R657-9. Taking Waterfowl, Common Snipe and Coot
Published: 07/01/2015
Effective: 08/07/2015

Attorney General

Administration
No. 39445 (NEW): R105-3. White Collar Crime Registry
Published: 07/01/2015
Effective: 08/10/2015

No. 39434 (AMD): R657-65. Urban Deer Control
Published: 07/01/2015
Effective: 08/07/2015

NOTICES OF RULE EFFECTIVE DATES

No. 39436 (AMD): R657-70. Taking Utah Prairie Dogs
Published: 07/01/2015
Effective: 08/07/2015

Pardons (Board of)

Administration

No. 39420 (AMD): R671-205. Credit for Time Served
Published: 07/01/2015
Effective: 08/11/2015

School and Institutional Trust Lands

Administration

No. 39430 (AMD): R850-1-200. Definitions
Published: 07/01/2015
Effective: 08/11/2015

No. 39429 (AMD): R850-50. Range Management
Published: 07/01/2015
Effective: 08/11/2015

Technology Services

Administration

No. 39427 (NEW): R895-14. Access to Information
Technology for Users with Disabilities
Published: 07/01/2015
Effective: 08/07/2015

Transportation

Operations, Traffic and Safety

No. 39433 (NEW): R920-8. Flashing Light Usage on
Highway Construction or Maintenance Vehicles
Published: 07/01/2015
Effective: 08/07/2015

Workforce Services

Administration

No. 39441 (AMD): R982-402-8. Eligible HEAT Household
Published: 07/01/2015
Effective: 08/11/2015

Employment Development

No. 39439 (AMD): R986-200. Family Employment Program
Published: 07/01/2015
Effective: 09/01/2015

No. 39395 (AMD): R986-700. Child Care Assistance
Published: 06/01/2015
Effective: 09/01/2015

Unemployment Insurance

No. 39440 (AMD): R994-312-103. Confidentiality of Records
Published: 07/01/2015
Effective: 08/11/2015

End of the Notices of Rule Effective Dates Section

**RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)**

The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2015 through August 14, 2015. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

Questions regarding the index and the information it contains should be addressed to the Division of Administrative Rules (801-538-3764).

A copy of the **RULES INDEX** is available for public inspection at the Division of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
<u>Facilities Construction and Management</u>					
R23-1	Procurement of Construction	39033	R&R	03/03/2015	2015-2/4
R23-2	Procurement of Architect-Engineer Services	39061	REP	03/16/2015	2015-3/4
R23-7	State Construction Contracts and Drug and Alcohol Testing	39482	5YR	06/30/2015	2015-14/139
<u>Finance</u>					
R25-7	Travel-Related Reimbursements for State Employees	39301	AMD	06/22/2015	2015-10/6
R25-10	State Entities Posting of Financial Information to the Utah Public Finance Website	39360	AMD	07/08/2015	2015-11/4
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ABBREVIATIONS

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

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	39581	R277-497	5YR	08/13/2015	Not Printed	
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	39287	R277-474	AMD	06/08/2015	2015-9/13	
	39579	R277-477	5YR	08/13/2015	Not Printed	
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	39366	R33-6-109	AMD	07/09/2015	2015-11/5	
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	38926	R164-15-2	AMD	03/10/2015	2014-22/20	
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	39300	R164-32	NEW	06/22/2015	2015-10/26	
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	39396	R628-15	NEW	07/13/2015	2015-11/126	
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	38908	R313-37	CPR	06/29/2015	2015-5/98	
<u>security guards</u>						
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	39368	R156-63a	AMD	07/23/2015	2015-11/22	
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	39369	R156-63b	AMD	07/23/2015	2015-11/25	
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	39287	R277-474	AMD	06/08/2015	2015-9/13	
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	39078	R277-111	AMD	03/10/2015	2015-3/13	
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Governor, Economic Development	39346	R357-10	NEW	07/08/2015	2015-11/105	
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	39409	R512-300	AMD	07/22/2015	2015-12/20	
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<u>waste disposal</u> Environmental Quality, Radiation Control	39082	R313-15-1208	AMD	03/17/2015	2015-3/21
<u>wastewater treatment</u> Environmental Quality, Water Quality	39105	R317-10-8	AMD	04/29/2015	2015-4/10
<u>water conservation</u> Environmental Quality, Drinking Water	39186 39399	R309-510 R309-510	5YR AMD	03/13/2015 07/15/2015	2015-7/66 2015-11/92
<u>water hauling</u> Environmental Quality, Drinking Water	39195	R309-550	5YR	03/13/2015	2015-7/70
<u>water pollution</u> Environmental Quality, Water Quality	39105	R317-10-8	AMD	04/29/2015	2015-4/10
<u>water quality</u> Environmental Quality, Drinking Water	39205	R309-225	5YR	03/13/2015	2015-7/62
<u>water rights</u> Natural Resources, Water Rights	39153 39152	R655-14 R655-16	5YR 5YR	02/24/2015 02/24/2015	2015-6/47 2015-6/47
<u>water system rating</u> Environmental Quality, Drinking Water	39208	R309-400	5YR	03/13/2015	2015-7/64
<u>waterfowl</u> Natural Resources, Wildlife Resources	39435	R657-9	AMD	08/07/2015	2015-13/29
<u>watershed management</u> Environmental Quality, Drinking Water	39197	R309-105	5YR	03/13/2015	2015-7/58
<u>web accessibility</u> Technology Services, Administration	39427	R895-14	NEW	08/07/2015	2015-13/52
<u>website</u> Workforce Services, Administration	38938	R982-700	NEW	01/29/2015	2014-23/44
<u>weights</u> Agriculture and Food, Regulatory Services	39563	R70-950	5YR	08/05/2015	Not Printed
<u>weights and measures</u> Agriculture and Food, Regulatory Services	39562	R70-910	5YR	08/05/2015	Not Printed
<u>well logging</u> Environmental Quality, Radiation Control	39083	R313-38-3	AMD	03/17/2015	2015-3/22
<u>white collar crime registry</u> Attorney General, Administration	39445	R105-3	NEW	08/10/2015	2015-13/17
<u>wilderness</u> Natural Resources, Forestry, Fire and State Lands	38942	R652-160	NEW	01/27/2015	2014-23/36
<u>wildland fires</u> Environmental Quality, Air Quality	39114	R307-204	5YR	02/05/2015	2015-5/104
<u>wildlife</u> Natural Resources, Wildlife Resources	39217 38996 39062 39431 39435 39509 39162	R657-3 R657-5 R657-5 R657-6 R657-9 R657-11 R657-15	AMD AMD AMD 5YR AMD 5YR 5YR	05/08/2015 02/09/2015 03/16/2015 06/08/2015 08/07/2015 07/13/2015 03/03/2015	2015-7/29 2015-1/26 2015-3/30 2015-13/63 2015-13/29 2015-15/34 2015-7/75

	39215	R657-19	AMD	05/08/2015	2015-7/33
	39163	R657-21	5YR	03/03/2015	2015-7/76
	39559	R657-24	5YR	08/03/2015	Not Printed
	39063	R657-33	AMD	03/16/2015	2015-3/31
	39064	R657-38	AMD	03/16/2015	2015-3/39
	39065	R657-41	AMD	03/16/2015	2015-3/40
	39362	R657-41	AMD	07/09/2015	2015-11/129
	39066	R657-42	AMD	03/16/2015	2015-3/42
	38995	R657-43	AMD	02/09/2015	2015-1/33
	39067	R657-55	AMD	03/16/2015	2015-3/43
	39345	R657-55	5YR	05/05/2015	2015-11/188
	39068	R657-57	AMD	03/16/2015	2015-3/48
	39069	R657-59	AMD	03/16/2015	2015-3/50
	39070	R657-62	AMD	03/16/2015	2015-3/52
	39434	R657-65	AMD	08/07/2015	2015-13/33
	39071	R657-68	AMD	03/16/2015	2015-3/54
	38949	R657-69	AMD	01/08/2015	2014-23/39
	39216	R657-70	NEW	05/08/2015	2015-7/36
	39436	R657-70	AMD	08/07/2015	2015-13/36
<u>wildlife conservation</u>					
Natural Resources, Wildlife Resources	39064	R657-38	AMD	03/16/2015	2015-3/39
<u>wildlife law</u>					
Natural Resources, Wildlife Resources	39509	R657-11	5YR	07/13/2015	2015-15/34
	39163	R657-21	5YR	03/03/2015	2015-7/76
<u>wildlife management</u>					
Natural Resources, Wildlife Resources	39162	R657-15	5YR	03/03/2015	2015-7/75
<u>wildlife permits</u>					
Natural Resources, Wildlife Resources	39065	R657-41	AMD	03/16/2015	2015-3/40
	39362	R657-41	AMD	07/09/2015	2015-11/129
	39067	R657-55	AMD	03/16/2015	2015-3/43
	39345	R657-55	5YR	05/05/2015	2015-11/188
<u>workers' compensation</u>					
Labor Commission, Adjudication	39380	R602-2-4	AMD	07/08/2015	2015-11/117
<u>workers' compensation insurance</u>					
Insurance, Administration	39313	R590-231	5YR	04/29/2015	2015-10/106
<u>x-rays</u>					
Environmental Quality, Radiation Control	39016	R313-28-31	AMD	03/24/2015	2015-2/85
	39017	R313-35	AMD	05/22/2015	2015-2/89
	39017	R313-35	CPR	05/22/2015	2015-8/30
<u>youth corrections</u>					
Human Services, Administration	39500	R495-883	5YR	07/06/2015	2015-15/33
<u>zoological animals</u>					
Natural Resources, Wildlife Resources	39217	R657-3	AMD	05/08/2015	2015-7/29