

1 **R277. Education, Administration.**

2 ~~[R277-114. Corrective Action and Withdrawal or Reduction of Program Funds.~~

3 ~~R277-114-1. Authority and Purpose.~~

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

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

7 ~~—— (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the~~
8 ~~Board's duties and responsibilities under the Utah Constitution and state law; and~~

9 ~~—— (c) Subsection 53E-3-401(8)(c), which allows the Board to make rules setting forth~~
10 ~~the procedures to be followed for enforcing Board rules.~~

11 ~~—— (2) The purpose of the rule is to provide procedures for public education program~~
12 ~~monitoring and corrective action for noncompliance with identified:~~

13 ~~—— (a) program requirements;~~

14 ~~—— (b) program accountability standards; and~~

15 ~~—— (c) financial propriety.~~

16

17 ~~R277-114-2. Definitions.~~

18 ~~—— (1) "Program" means a public education project, plan, or other activity required by:~~

19 ~~—— (a) administrative rule;~~

20 ~~—— (b) state law; or~~

21 ~~—— (c) federal law.~~

22 ~~—— (2) "Recipient" means an LEA, school, or subrecipient.~~

23 ~~—— (3) "Subrecipient" means a non-Federal entity that receives an award through the~~
24 ~~Board to carry out part of a Federal program, or a non-Federal entity that is the direct~~
25 ~~awardee of other federal awards from a Federal awarding agency.~~

26

27 ~~R277-114-3. Program Monitoring.~~

28 ~~—— (1) For each program, the Superintendent shall design and implement a consistent~~
29 ~~monitoring plan or process that includes standards for both program outcomes and~~
30 ~~program financial compliance.~~

31 ~~_____ (2) The Superintendent shall notify all recipients of the initiation of or changes to~~
32 ~~any monitoring plan or process.~~

33 ~~_____ (3) The Superintendent shall monitor compliance with:~~

34 ~~_____ (a) program outcomes and requirements;~~

35 ~~_____ (b) reporting requirements; and~~

36 ~~_____ (c) financial requirements.~~

37 ~~_____ (4) An LEA shall provide the Superintendent all requested information or~~
38 ~~documents to comply with this Section.~~

39

40 **~~R277-114-4. Corrective Action Plans.~~**

41 ~~_____ (1) The Superintendent shall place a recipient on a corrective action plan when a~~
42 ~~recipient:~~

43 ~~_____ (a) does not demonstrate satisfactory program outcomes as described by the~~
44 ~~monitoring plan or process;~~

45 ~~_____ (b) demonstrates noncompliance with program requirements or allowable program~~
46 ~~expenditures; or~~

47 ~~_____ (c) does not comply with requests to provide accurate and complete program or~~
48 ~~financial information, as described by the monitoring plan or process.~~

49 ~~_____ (2) The Superintendent shall clearly outline in a corrective action plan:~~

50 ~~_____ (a) all areas of noncompliance;~~

51 ~~_____ (b) the specific conditions to be met as a result of noncompliance;~~

52 ~~_____ (c) steps required to satisfy the corrective action plan; and~~

53 ~~_____ (d) a reasonable time frame for the recipient to correct identified issues.~~

54 ~~_____ (3) The specific conditions described in Subsection (2)(b) may include:~~

55 ~~_____ (a) requiring payments as reimbursements rather than advance payments;~~

56 ~~_____ (b) withholding authority to proceed to the next step until receipt of evidence of~~
57 ~~acceptable performance within a given period of performance;~~

58 ~~_____ (c) requiring additional, more detailed financial reports;~~

59 ~~_____ (d) requiring additional project monitoring;~~

60 ~~_____ (e) requiring the recipient to obtain technical or management assistance; or~~

- 61 ~~_____ (f) establishing additional prior approvals.~~
- 62 ~~_____ (4) A corrective action plan may also include a provision and a timeline for:~~
- 63 ~~_____ (a) referral for risk-based monitoring;~~
- 64 ~~_____ (b) a referral for an audit by:~~
- 65 ~~_____ (i) an external auditor; or~~
- 66 ~~_____ (ii) the Board's internal audit department, with approval of the Board's Audit~~
- 67 ~~Committee;~~
- 68 ~~_____ (c) periodic meetings between a recipient administrator or governing board~~
- 69 ~~member and the State Superintendent of Public Instruction or a Deputy Superintendent;~~
- 70 ~~_____ (d) planned appearances before the Board to provide status updates; and~~
- 71 ~~_____ (e) training for the recipient's staff.~~
- 72 ~~_____ (5) If the recipient is a charter school, the Superintendent shall consult with the~~
- 73 ~~charter authorizer in the creation of the corrective action plan and report regularly to the~~
- 74 ~~charter authorizer about the status of the noncompliant program recipient.~~
- 75 ~~_____ (6) The Superintendent may employ escalating restrictive conditions in a corrective~~
- 76 ~~action plan based on:~~
- 77 ~~_____ (a) the severity of the violation as determined by the program's monitoring plan or~~
- 78 ~~process; or~~
- 79 ~~_____ (b) repeated violations by a recipient.~~
- 80 ~~_____ (7) The Superintendent may include penalties for non-compliance with a corrective~~
- 81 ~~action plan in accordance with Subsection 53E-3-401(8).~~
- 82 ~~_____ (8) The Superintendent shall give notice and a copy of the corrective action plan in~~
- 83 ~~writing to:~~
- 84 ~~_____ (a) the recipient's administrators;~~
- 85 ~~_____ (b) the respective recipient's governing board; and~~
- 86 ~~_____ (c) the charter school authorizer, if applicable.~~
- 87 ~~_____ (9) The Superintendent shall report to the Board regularly about the status of~~
- 88 ~~noncompliant program recipients.~~

89

90 **~~R277-114-5. Recipient Appeals.~~**

- 91 ——— (1) A recipient may file an appeal to the Board of any adverse decision of the
92 Superintendent resulting from a corrective action plan or penalty.
- 93 ——— (2) An appeal must be made in writing and within 30 days of the date of the
94 Superintendent's action.
- 95 ——— (3) Except for corrective action subject to 34 CFR 76.783, the Board may:
- 96 ——— (a) review the appeal as a full board; or
- 97 ——— (b) refer the matter to the Board audit committee to make a recommendation to the
98 Board for action.

99

100 **KEY: ~~programs, noncompliance, corrective action~~**

101 **~~Date of Enactment or Last Substantive Amendment: March 12, 2020~~**

102 **~~Notice of Continuation: January 13, 2020~~**

103 **~~Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4)]~~**

104 **R277-114. [USBE] Board Oversight Framework and Corrective Action**

105 **Procedures.**

106 **R277-114-1. Authority and Purpose.**

107 (1) This rule is authorized by:

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

110 (b) Subsection [53E-3-401\(4\)](#), which allows the Board to make rules to execute
111 the Board's duties and responsibilities under the Utah Constitution and state law;

112 (c) Subsections [53E-3-401\(8\)](#), which allows the Board to make rules setting forth
113 the procedures to be followed for enforcing Board rules; ~~and~~

114 ~~(e)~~(d) [Section 53F-1-104](#), which requires the Board to monitor state-funded
115 education programs and the expenditure of state funds in accordance with certain
116 statutory provisions; and

117 ~~(d)~~(e) [Section 53E-3-301](#), which requires the Superintendent to:

118 (i) administer programs assigned to the state board in accordance with the
119 policies and the standards established by the state board; and

120 (ii) investigate matters pertaining to public schools.

121 (2) The purpose of this rule is to define minimum ~~[USBE]~~Board oversight
122 standards, including ~~[creating]~~establishing an oversight framework for public education-
123 related requirements and ~~providing related~~ corrective action and appeals procedures.

124 **R277-114-2. Definitions.**

125 (1) “Framework” means the ~~[]~~Board Oversight Framework established in this
126 rule.

127 (2) “Oversight entity” means:

128 (a) an LEA;

129 (b) a regional service agency, as that term is defined in Section [53G-4-410](#);

130 (c) an entity that enters into a contract with the Board:

131 (i) to provide an educational good or service; or

132 (ii) as the Board is directed by the Legislature;

133 (d) a charter school authorizer, as that term is defined in Section [53G-5-102](#), if
134 the charter school authorizer has an approved charter school;

135 (e) an institution of higher education that is associated with an educator
136 preparation program, as defined in [R277-303-2](#);

137 ~~[(e)](f)~~ an entity that receives a distribution of state funds through a grant
138 program ~~[managed]~~funded by the state board; or

139 ~~[(e)](g)~~ a nonfederal entity that receives an award through the Board to carry out
140 part of a federal program.

141 (3) “Program or other set of requirements” means a ~~requirement or~~ set of
142 requirements in state or federal law that is related to:

143 (a) the public education system; and

144 (b) an oversight entity.

145 **R277-114-3. [Board Oversight of Public Education Programs and Requirements.**

146 (1) The Superintendent shall create a [Oversight-F]framework, as described in
147 R277-114-4, that sets minimum standards for [Board oversight of a program or other
148 set of requirements.

149 (2) In accordance with R277-114-~~5~~4, the Superintendent shall:

150 (a) on or before July 31, 2029, designate each program or other set of
151 requirements into a framework category that corresponds to [USBE]the Board's
152 oversight role for that program or set of requirements; and

153 (b) fulfill related oversight duties as described in rule and internal policy and
154 procedures.

155 (3) In accordance with R277-114-5, the Board or Superintendent may take
156 investigative or corrective action with regard to any program or set of requirements.

157 (4) An oversight entity shall provide all information and documents requested by
158 the Board or the Superintendent.

159 **R277-114-4. [Board Oversight Framework.**

160 (1) The [Oversight-F]framework shall consist of four categories that represent an
161 increasing degree of [USBE]Board oversight for each subsequent category.

162 (2) Before categorizing a program or set of requirements, the Superintendent
163 shall analyze the program or set of requirements based on the following factors:

164 (a) the quantity and content of the requirements;

165 (b) the risk inherent in:

166 (i) the requirements; and

167 (ii) ~~[the each oversight entity with responsibility for assuming risk, including the~~
168 ~~effectiveness of the entity's internal control system]~~individual oversight entities subject
169 to the requirements, with regard to the effectiveness of each oversight entity's internal
170 control system;~~[and]~~

171 (c) all general and dedicated resources available to carry out the requirements,
172 including:

173 (i) the restricted or unrestricted nature of applicable funding; and

174 (ii) options for using dedicated staff~~[-];~~ and

175 (d) any other factors the Superintendent considers relevant to the analysis.

176 (3) Based on the analysis described in Subsection (2), the Superintendent shall
177 typically categorize a program or set of requirements in the framework as follows:

178 (a) a program or set of requirements belongs in category one if the
179 Superintendent determines that:

180 (i) the Superintendent will not specifically dedicate staff to the program or set of
181 requirements; and

182 (ii) either:

183 (A) local control is critical to the purpose of the requirements; or

184 (B) the Superintendent will not use resources for implementing the requirements
185 and will typically refer complaints and allegations back to the oversight entity for
186 resolution;

187 (b) a program or set of requirements belongs in category two if the
188 Superintendent determines that:

189 (i) the Superintendent will not specifically dedicate staff to the program or set of
190 requirements; and

191 (ii) the Superintendent will provide assistance as needed to an oversight entity
192 implementing the requirements;

- 193 (c) a program or set of requirements belongs in category three if the
194 Superintendent determines:
- 195 (i) that the Superintendent will dedicate staff to the program or set of
196 requirements; and
- 197 (ii) at least one of the following:
- 198 (A) that ~~less than annual USBE~~less frequent than annual desk monitoring is
199 sufficient to fulfill the requirements; or
- 200 (B) that resources are limited to either completely fulfill ~~USBE's~~monitoring
201 requirements or to appropriately mitigate identified risks; and
- 202 (d) a program or set of requirements belongs in category four if the
203 Superintendent determines that:
- 204 (i) ~~USBE~~the Superintendent will dedicate staff to the program or set of
205 requirements;
- 206 (ii) annual or more frequent monitoring is necessary to ensure accountability of
207 the oversight entity;
- 208 (iii) monitoring may include on-site visits; and
- 209 ~~(iii)~~(iv) resources are sufficient to fulfill the requirements.
- 210 (4) When the Board makes, amends, or continues a rule regarding a program or
211 set of requirements, the rule:
- 212 (a) shall state the Board's oversight objectives and related duties, based on the
213 Superintendent's analysis and framework categorization of the program or set of
214 requirements; and
- 215 (b) may include, as necessary for the intended ~~level~~category of oversight:
- 216 (i) designing an internal control system to achieve the Board's oversight
217 objectives and creating an implementation plan;

218 (ii) creating a mechanism to check the effectiveness of the oversight process;

219 and

220 (iii) setting a standard for satisfactory outcomes for the program or set of

221 requirements.

222 (5) For a program or set of requirements that needs monitoring, the details of the
223 monitoring system shall be described:

224 (a) in the rule relating to the program or set of requirements; or

225 (b) in contract, if the program or set of requirements is established in contract.

226 **R277-114-5. Use of Framework for Compliance Issues.**

227 (1) The framework does not supersede or limit [USBE's]the Board's power of
228 general control and supervision and the Board may vote to change part or all of the
229 framework or categorizations within the framework at any time.

230 (2) The Board's internal audit function is not part of the framework and is not
231 limited by the framework.

232 (3) (a) Except as provided in Subsection[s] (3)(b) [and (c)], for an alleged
233 compliance issue regarding a program or set of requirements in category one or two,
234 the Superintendent [shall] refer reports and complaints back to the oversight entity for
235 resolution.

236 (b) The Superintendent may work informally with an oversight entity to resolve an
237 alleged compliance issue arising under a program or set or requirements in category
238 one or two.

239 ~~(c) The Board may determine that the individual circumstances of an alleged~~
240 ~~compliance issue arising under a program or set of requirements in category one or two~~
241 ~~warrants the use of the Board's internal audit function to investigate the alleged issue~~
242 ~~and possibly pursue formal corrective action as described in R277-114-6 and R277-~~
243 ~~1164-7.]~~

244 (4) alleged compliance issue arising under a program or set of requirements in
245 category three or four, the Superintendent may pursue formal corrective action:

246 (a) as described in R277-114-6 or R277-114-7; and

247 (b) in accordance with the administrative rule or contract associated with the
248 program or set of requirements.

249 (5)(a) For an alleged compliance issue regarding a program or set of
250 requirements, the Board or Board leadership may work informally with the oversight
251 entity to resolve the issue, including:

252 (i) for an issue regarding an LEA, meeting with the chair of the LEA's governing
253 board, the LEA's superintendent, or charter director; or

254 (ii) determining whether training or additional time will allow the oversight entity
255 to resolve the compliance issue and, as appropriate, providing resources and an
256 extended time frame to support the entity into compliance.

257 (b) For an alleged compliance issue regarding a program or set of requirements
258 uncategorized or in ~~category one or two~~, if the Board does not elect to resolve an issue
259 or if the issue is not resolved through efforts described in Subsection (5)(a), the Board
260 may use the Board's internal audit function to investigate the alleged issue.

261 (c) Based on the results of an investigation described in Subsection (5)(b), the
262 Board may:

263 (i) close the investigation and take no further action;

264 (ii) use the evidence gathered in the investigation to resolve the issue informally;
265 or

266 (iii) use the evidence gathered in the investigation to pursue corrective action as
267 described in R277-114-6 or R277-114-7.

268 **R277-114-6. Corrective Action for Contract Requirements.**

269 For corrective action related to a program or set of requirements established or
270 culminating in a contract, the Superintendent will take corrective action in accordance
271 with the provisions of the contract.

272 **R277-114-7. Corrective Action for Non-Contractual Requirements.**

273 (1) For corrective action related to a program or set of requirements not
274 established in contract, the Superintendent may take corrective action as described in
275 this section.

276 (2) In taking corrective action under this section, the Superintendent shall act in
277 accordance with state and federal law [and administrative rule.] applicable to the
278 program or set of requirements.

279 (3) The Superintendent may place an oversight entity on a corrective action plan
280 if the Board, the Superintendent, or an external or internal audit determines that the
281 oversight entity:

282 (a) demonstrates noncompliance with program outcomes or allowable program
283 expenditures;

284 (b) demonstrates unsatisfactory outcomes in performance as evidenced by audit
285 results or category three or four monitoring;

286 (c) demonstrates financial fraud, waste, or abuse;

287 (d) lacks a sufficient internal control system; or

288 (e) did not comply with a request to provide accurate and complete program or
289 financial information, in accordance with oversight procedures.

290 (4) A corrective action plan shall contain the following elements:

291 (a) the background information that led to corrective action, including:

292 (i) each identified issue and the related requirement or best practice citation; and

293 (ii) details of the discrepancy from the requirement or best practice, based on
294 evidence gathered, including dates;

295 (b) the specific conditions the oversight entity must meet as a result of the
296 issues;

297 (c) the steps required to satisfy the corrective action plan and estimated time
298 frame for completing the steps;

299 (d) a procedure for communication during the course of the corrective action,
300 including:

301 (i) designation of a primary contact at the oversight entity;

302 (ii) a schedule for the frequency of updates provided by the contact;

303 (iii) the format of required updates; and

304 (iv) the designated recipient of the updates;

305 (e) a procedure to close the corrective action, including:

306 (i) designation of an individual authorized to close the corrective action;

307 (ii) the criteria for closing the corrective action;

308 (iii) an estimated schedule for closing the corrective action; and

309 (iv) how the authorized individual will communicate closure to the oversight
310 entity; and

311 (f) notice of the option for appeal as described in R277-114-8.

312 (5) In creating a corrective action plan, the Superintendent shall emphasize
313 providing technical support to assist the oversight entity to achieve compliance and
314 performance.

315 (6) The specific conditions described in Subsection (4)(b) may include:

316 (a) requiring the oversight entity to obtain technical or management support,
317 including program assistance like mentoring;

318 (b) requiring the oversight entity to receive payment as a reimbursement instead
319 of advance payment;

320 (c) requiring evidence of acceptable performance within a given period before
321 the oversight entity may proceed to the next corrective action step;

322 (d) requiring more frequent or more intensive monitoring than what is required
323 from the related program or other set of requirements;

324 (e) requiring additional or more detailed financial or compliance reports; or

325 (f) establishing additional prior approvals.

326 (7) The Superintendent may also include in a corrective action plan a provision
327 and timeline for:

328 (a) training for the oversight entity's staff;

329 (b) a referral for risk-based monitoring, for a program or set of requirements that
330 does not already perform risk-based monitoring;

331 (c) a referral for an audit or other agreed-upon procedure by:

332 (i) an external auditor; or

333 (ii) the Board's internal audit section, with approval of the Board's Audit
334 Committee;

335 (d) periodic meetings between an oversight entity administrator or governing
336 board member and the Superintendent or a Deputy Superintendent; and

337 (e) a planned appearance before the Board or a Board committee to provide
338 status updates.

339 (8) For an oversight entity that is a charter school, if the corrective action plan
340 addresses issues at the governance level, the Superintendent shall:

341 (a) consult with the charter authorizer in the creation of the corrective action
342 plan; and

343 (b) report regularly to the charter authorizer about the status of the corrective
344 action plan.

345 (9) The Superintendent may employ escalating restrictive conditions in a
346 corrective action plan based on:

347 (a) the severity of the violation as determined by the program’s monitoring plan
348 or process; or

349 (b) repeated violations by an oversight entity.

350 (10) (a) The Superintendent may include penalties for noncompliance with a
351 corrective action plan in accordance with Subsection 53E-3-401(8).

352 (b) If the Superintendent determines to withhold funding as part of a corrective
353 action plan, the corrective action plan will state:

354 (i) the circumstances that led to the determination;

355 (ii) a timeline for when the funds will be withheld; and

356 (iii) the steps the oversight entity ~~needs to complete to receive funding again~~
357 ~~]~~ must satisfy to reinstate funding.

358 (11) The Superintendent shall give notice and a hard or electronic copy of the
359 corrective action plan to:

360 (a) the designated primary contact described in Subsection (4)(d)(i);

361 (b) the respective oversight entity’s governing board; and

362 (c) the charter school authorizer, in accordance with Subsection (8).

363 (12) ~~The~~As requested, the Superintendent shall report to the Board ~~regularly~~
364 about the status of ~~each~~a corrective action plan in force for an oversight entity.

365 **R277-114-8. Corrective Action Appeals.**

366 (1) An oversight entity may submit an appeal to the Board relating to:

367 (a) the requirements of a corrective action plan; or

368 (b) an action the Superintendent takes to implement a corrective action plan.

369 (2) For an appeal described in Subsection (1), the oversight entity shall:

370 (a) state [in the appeal](#) the plan requirement or action with which the oversight
371 entity disagrees; and

372 (b) submit the appeal to the Board in [accordance with R277-102-3](#). ~~hard copy or~~
373 ~~electronically within 30 days after the day on which:~~

374 ~~(i) the plan was transmitted to the oversight entity, if the appeal relates to a~~
375 ~~requirement of the originally created plan; or~~

376 ~~(ii) the Superintendent took the action to implement corrective action, if the~~
377 ~~appeal relates to the action the Superintendent took to implement corrective action.]~~

378 (3) Except for corrective action subject to [34 CFR 76.783](#), the Board may:

379 (a) review the appeal as a full board; or

380 (b) refer the matter to the Board audit committee to make a recommendation to
381 the Board for action.

382 **KEY: monitoring, corrective action, oversight**

383 **Date of Enactment or Last Substantive Amendment:**

384 **Authorizing, and Implemented, or Interpreted Law: [Art X Sec 3](#); [53E-3-401](#); [53E-3-](#)**
385 **[401\(4\)](#); [53F-1-104](#)**