

1 **R277. Education, Administration.**

2 **R277-114. ~~Corrective Action and Withdrawal or Reduction of Program~~**
3 **Funds Response to Compliance and Related Issues.**

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

5 (1) This rule is authorized by:

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

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

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

12 (d) Section 53F-1-104, which requires the Board to monitor state-funded
13 education programs and the expenditure of state funds in accordance with certain
14 statutory provisions; and

15 (e) Section 53E-3-301, which requires the Superintendent to:

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

18 (ii) investigate matters pertaining to public schools.

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

21 ~~——(a) program requirements;~~

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

23 ~~——(c) financial propriety.~~ responses to compliance and related issues, including
24 corrective action and related appeals procedures.

25

26 **R277-114-2. Definitions.**

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

28 ~~——(a) administrative rule;~~

29 ~~——(b) state law; or~~

30 ——— (c) federal law.
31 ——— (2) "Recipient" means an LEA, school, or subrecipient.
32 ——— (3) "Subrecipient" means a non-Federal entity that receives an award through the
33 Board to carry out part of a Federal program, or a non-Federal entity that is the direct
34 awardee of other federal awards from a Federal awarding agency.

35 (1) "Framework" means the Board Oversight Framework established in R277-
36 111.

37 (2) "Oversight entity" means the same as that term is defined in R277-111.:

38 (a) an LEA;

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

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

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

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

43 (d) a charter school authorizer, as that term is defined in Section 53G-5-102, if
44 the charter school authorizer has an approved charter school;

45 (e) an institution of higher education that is associated with an educator
46 preparation program, as defined in R277-303-2;

47 (f) an entity that receives a distribution of state funds through a grant program
48 funded by the state board; or

49 (g) a nonfederal entity that receives an award through the Board to carry out part
50 of a federal program.

51 (3) "Program or other set of requirements" means the same as that term is
52 defined in R277-111. a requirement or set of requirements in state or federal law that is
53 related to:

54 (a) the public education system; and

55 (b) an oversight entity.

56

57 **R277-114-3. Use of Framework for Compliance and Related Issues.**

58 (1) (a) Except as provided in Subsection (1)(b), for an alleged compliance issue

59 regarding a program or set of requirements in [framework](#) category one or two, the
60 Superintendent shall refer reports and complaints back to the oversight entity for
61 resolution.

62 (b) The Superintendent may work informally with an oversight entity to resolve an
63 alleged compliance issue arising under a program or set of requirements in [framework](#)
64 category one or two, [including discussing whether:](#)

65 (i) [the oversight entity had adequate time to comply; or](#)
66 (ii) [the oversight entity needs additional training.](#)

67 (2) For a compliance issue arising under a program or set of requirements in
68 [framework](#) category three or four, the Superintendent shall pursue formal corrective
69 action:

70 (a) as described in [R277-114-4](#) or [R277-114-5](#); and

71 (b) in accordance with ~~[an]~~ [a state law](#), administrative rule, or a contract
72 associated with the program or set of requirements.

73 (3)(a) For an alleged compliance issue regarding a program or set of
74 requirements, the Board or Board leadership may work informally with the oversight
75 entity to resolve the issue, including:

76 (i) [for an issue regarding an LEA, meeting with the chair of the LEA's governing](#)
77 [board, the LEA's superintendent, or charter director; or](#)

78 (ii) [determining whether training or additional time will allow the oversight entity](#)
79 [to resolve the compliance issue and, as appropriate, providing resources and an](#)
80 [extended deadline to support the entity into compliance.](#)

81 (b)(i) For an alleged compliance issue regarding a program or set of
82 requirements uncategorized or in [framework](#) category one or two, if the Board or Board
83 leadership [does](#) not elect to resolve an issue or if the issue is not resolved through
84 efforts described in Subsection (3)(a), the Board's audit committee may determine an
85 appropriate method to investigate the alleged compliance issue, including requesting
86 the Board's internal audit function to investigate the alleged issue in accordance with
87 Rule [R277-116](#).

88 (ii) If the Board’s audit committee directs an investigation as described in
89 Subsection (3)(b)(i), the entity conducting the investigation shall notify the oversight
90 entity that the investigation will review an alleged compliance issue in accordance with
91 this Section.

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

- 94 (i) take no further action;
- 95 (ii) resolve the issue informally;
- 96 (iii) pursue corrective action as described in R277-114-4 or R277-114-5; or
- 97 (iv) take other action~~[as the Board determines].~~

98
99
100 **R277-114-34. Program Monitoring, Corrective Action for Contract Requirements.**

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

104 ~~— (2) The Superintendent shall notify all recipients of the initiation of or changes to any~~
105 ~~monitoring plan or process.~~

106 ~~— (3) The Superintendent shall monitor compliance with:~~

- 107 ~~— (a) program outcomes and requirements;~~
- 108 ~~— (b) reporting requirements; and~~
- 109 ~~— (c) financial requirements.~~

110 ~~— (4) An LEA shall provide the Superintendent all requested information or documents~~
111 ~~to comply with this Section.~~

112 For corrective action related to a program or set of requirements established or
113 culminating in a contract [between the Board and an oversight entity](#), the Superintendent
114 ~~[will]~~shall take corrective action in accordance with the provisions of the contract.

115
116 **R277-114-45. Corrective Action Plans, Corrective Action for Non-Contractual**
117 **Requirements.**

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

121 (2)(a) In taking corrective action under this section, the Superintendent shall act
122 in accordance with state and federal law applicable to the program or set of
123 requirements.

124 (b) Before the Superintendent places an oversight entity on a corrective action
125 plan as described in Subsection (3), the Superintendent shall:

126 (i) provide written notice of initiating the process 30 days before the day on
127 which the corrective action plan is finalized; and

128 (ii) during the 30 days, discuss with the LEA's superintendent, charter director or
129 the oversight entity's primary contact the nature of the issue and attempt to resolve the
130 issue informally, including discussing whether:

131 (A) the oversight entity has adequate time to comply; or

132 (B) the oversight entity needs additional training.

133 (c) If the corrective action plan is due to an oversight entity's failure to provide
134 information, the notice described in Subsection (2)(b)(i) shall include a statement
135 confirming that the information is not available elsewhere.

136 ~~(4)(3)~~ The Superintendent shall ~~may~~ place a recipient ~~an~~ oversight entity on a
137 corrective action plan ~~when a recipient~~ if the Board, the Superintendent, or an external or
138 internal audit determines that the oversight entity:

139 ~~(a) does not demonstrate satisfactory program outcomes as described by the~~
140 ~~monitoring plan or process;~~

141 ~~(b)(a)~~ demonstrates noncompliance with published expectations for program
142 requirements ~~outcomes~~ or allowable program expenditures; ~~or~~

143 (b) demonstrates unsatisfactory outcomes in performance as evidenced by audit
144 results or ~~framework~~ category three or four monitoring;

145 (c) demonstrates financial fraud, waste, or abuse; ~~or~~

146 ~~[(d) lacks a sufficient internal control system; or]~~

147 (e)(d) does ~~did~~ not comply with a requests to provide timely, accurate and
148 complete program or financial information, ~~as described by the monitoring plan or process~~
149 in accordance with oversight procedures.

150 ~~— (2) (4) The Superintendent shall clearly outline in a~~ A corrective action plan shall
151 contain the following elements:

152 (a) ~~all areas of noncompliance~~ the background information that led to corrective
153 action; ~~[-, including:]~~

154 ~~[(i)](b)~~ each identified issue and ~~the related requirement or best practice a~~
155 citation ~~to the law related to the issue;~~ ~~and~~

156 ~~[(ii)](c)~~ details of the discrepancy from the requirement ~~[-or best practice], based~~
157 on evidence gathered, including dates;

158 ~~[(b)](d)~~ the specific conditions ~~to be met as a result of noncompliance~~ the oversight
159 entity must meet as a result of the issues;

160 ~~[(e)](e)~~ steps required to satisfy the corrective action plan and estimated time frame
161 for completing the steps; ~~and~~

162 ~~— (d) a reasonable time frame for the recipient to correct identified issues~~

163 ~~[(e)](f)~~ a procedure for communication during the course of the corrective action,
164 including:

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

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

167 (iii) the format of required updates; and

168 (iv) the designated recipient of the updates;

169 ~~[(e)](g)~~ a procedure to close the corrective action, including:

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

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

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

173 (iv) how the authorized individual will communicate closure to the oversight
174 entity; and

175 ~~[(f)](h)~~ notice of the option for appeal as described in R277-114-~~86~~.

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

179 ~~—(3)(6)~~ The specific conditions described in Subsection ~~(2)(4)~~(b) may include:

180 (a) requiring the oversight entity to obtain technical or management support,
181 including program assistance ~~like~~such as mentoring;

182 (b) requiring the oversight entity to receive payments as a reimbursements rather
183 than ~~instead of~~ advance payments;

184 ~~(b)(c) withholding authority to proceed to the next step until receipt of~~ requiring
185 evidence of acceptable performance within a given period of performance before the
186 oversight entity may proceed to the next corrective action step;

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

188 (d) requiring additional project monitoring more frequent or more intensive
189 monitoring than what is typically required from the related program or other set of
190 requirements;

191 ~~(e) requiring the recipient to obtain technical or management assistance; or~~
192 additional or more detailed financial or compliance reports; or

193 (f) establishing additional prior approvals.

194 ~~—(4) A(7)~~ The Superintendent may also include in a corrective action plan may also
195 include a provision and a timeline for:

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

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

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

200 (i) an external auditor; or

201 (ii) the Board's internal audit ~~department~~ section, with approval of the Board's Audit
202 Committee;

203 ~~(c)~~(d) periodic meetings between a ~~recipient~~ an oversight entity administrator or
204 governing board member and the State Superintendent of ~~Public Instruction~~ or a Deputy
205 Superintendent; and

206 ~~(d)~~(e) a planned appearances before the Board or a Board committee to provide
207 status updates; and

208 ~~(e)~~ training for the recipient's staff.

209 ~~(5)~~ If the recipient ~~(8)~~ For an oversight entity that is a charter school, if the corrective
210 action plan addresses issues at the governance level, the Superintendent shall:

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

213 (b) report regularly to the charter authorizer about the status of the noncompliant
214 program recipient.

215 ~~(6)~~(9) The Superintendent may employ escalating restrictive conditions in a
216 corrective action plan based on:

217 (a) the severity of the violation as determined by the program's monitoring plan or
218 process; or

219 (b) repeated violations by a ~~recipient~~ an oversight entity.

220 ~~(7)~~(10)(a) The Superintendent may include penalties for non-compliance with a
221 corrective action plan in accordance with Subsection 53E-3-401(8).

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

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

225 (ii) a timeline for withholding funds~~[when the funds will be withheld];~~ and

226 (iii) the steps the oversight entity ~~[must]~~is required to satisfy to reinstate funding.

227 ~~(8)~~(11) The Superintendent shall give notice and a hard or electronic copy of the
228 corrective action plan ~~in writing~~ to:

229 ~~(a)~~ the recipient's administrators; the designated primary contact described in
230 Subsection (4)(d)(i);

231 (b) the respective recipient's oversight entity's governing board; and

232 (c) the charter school authorizer, if applicable in accordance with Subsection (8).

233 ~~—(9) The(12) As requested, the Superintendent shall report to the Board regularly~~
234 ~~about the status of noncompliant program recipients~~ a corrective action plan in force for an
235 oversight entity.

236

237 **R277-114-56. Recipient Appeals. Corrective Action Appeals.**

238 (1) ~~A recipient~~ An oversight entity may file submit an appeal to the Board of any
239 ~~adverse decision of the Superintendent resulting from a corrective action plan or penalty~~
240 relating to:

241 (a) a reason the Superintendent is imposing the corrective action plan;

242 ~~(a)~~ (b) the requirements of a corrective action plan; or

243 ~~(b)~~ (c) an action the Superintendent takes to impose or implement a corrective
244 action plan.

245 (2) ~~An appeal must be made in writing and within 30 days of the date of the~~
246 ~~Superintendent's action.~~ For an appeal described in Subsection (1), the oversight entity
247 shall:

248 (a) state in the appeal the plan requirement or action with which the oversight
249 entity disagrees; and

250 (b) submit the appeal to the Board in accordance with [R277-102-3](#).

251 (3) Except for corrective action subject to 34 CFR 76.783, the Board may:

252 (a) review the appeal as a full board; ~~or~~

253 (b) refer the matter to the Board audit committee to make a recommendation to the
254 Board for action; or

255 (c) ~~choose~~ identify another method to review the appeal.

256

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

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

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

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

Blue Text – Additions
~~Red Text~~ – Deletions

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261 **KEY: monitoring, corrective action, oversight,**
262 **Date of Enactment or Last Substantive Amendment:**
263 **Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53E-3-401; 53E-3-**
264 **401(4); 53F-1-104**