

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 Oversight Framework and Corrective Action Procedures.**~~

105 ~~**R277-114-1. Authority and Purpose.**~~

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

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

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

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

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

114 ~~(i) administer programs assigned to the state board in accordance with the~~
115 ~~policies and the standards established by the state board; and~~

116 ~~(ii) investigate matters pertaining to public schools.~~

117 ~~(2) The purpose of this rule is to define minimum USBE oversight standards,~~
118 ~~including an oversight framework for public education-related requirements and~~
119 ~~corrective action and appeals procedures.~~

120 **R277-114-2. Definitions.**

121 (1) “Framework” means the USBE Oversight Framework established in this rule.

122 (2) “Oversight entity” means:

123 (a) an LEA;

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

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

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

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

128 (d) an entity that receives a distribution of state funds through a grant program
129 managed by the state board; or

130 (e) a nonfederal entity that receives an award through the Board to carry out part
131 of a federal program.

132 (3) “Program or other set of requirements” means a set of requirements in state
133 or federal law that is related to the public education system.

134 **R277-114-3. USBE Oversight of Public Education Programs and Requirements.**

135 (1) The Superintendent shall create a USBE Oversight Framework, as described
136 in R277-114-4, that sets minimum standards for USBE oversight of a program or other
137 set of requirements.

138 (2) In accordance with R277-114-5, the Superintendent shall:

139 (a) on or before July 31, 2029, designate each program or other set of
140 requirements into a framework category that corresponds to USBE’s oversight role for
141 that program or set of requirements; and

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

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

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

148 **R277-114-4. USBE Oversight Framework.**

149 (1) The USBE Oversight Framework shall consist of four categories that
150 represent an increasing degree of USBE oversight for each subsequent category.

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

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

154 (b) the risk inherent in:

155 (i) the requirements; and

156 (ii) the oversight entity with responsibility for assuming risk, including the
157 effectiveness of the entity's internal control system; and

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

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

161 (ii) options for using dedicated staff.

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

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

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

168 (ii) either:

- 169 (A) local control is critical to the purpose of the requirements; or
- 170 (B) the Superintendent will not use resources for implementing the requirements
171 and will typically refer complaints and allegations back to the oversight entity for
172 resolution;
- 173 (b) a program or set of requirements belongs in category two if the
174 Superintendent determines that:
- 175 (i) the Superintendent will not specifically dedicate staff to the program or set of
176 requirements; and
- 177 (ii) the Superintendent will provide assistance as needed to an oversight entity
178 implementing the requirements;
- 179 (c) a program or set of requirements belongs in category three if the
180 Superintendent determines:
- 181 (i) that the Superintendent will dedicate staff to the program or set of
182 requirements; and
- 183 (ii) at least one of the following:
- 184 (A) that less than annual USBE monitoring is sufficient to fulfill the requirements;
185 or
- 186 (B) that resources are limited to either completely fulfill USBE's monitoring
187 requirements or to appropriately mitigate identified risks; and
- 188 (d) a program or set of requirements belongs in category four if the
189 Superintendent determines that:
- 190 (i) USBE will dedicate staff to the program or set of requirements;
- 191 (ii) annual or more frequent monitoring is necessary to ensure accountability of
192 the oversight entity; and
- 193 (iii) resources are sufficient to fulfill the requirements.

194 (4) When the Board makes, amends, or continues a rule regarding a program or
195 set of requirements, the rule:

196 (a) shall state the Board's oversight objectives and related duties, based on the
197 Superintendent's analysis and framework categorization of the program or set of
198 requirements; and

199 (b) may include, as necessary for the intended level of oversight:

200 (i) designing an internal control system to achieve the Board's oversight
201 objectives and creating an implementation plan;

202 (ii) creating a mechanism to check the effectiveness of the oversight process;
203 and

204 (iii) setting a standard for satisfactory outcomes for the program or set of
205 requirements.

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

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

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

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

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

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

216 (3) (a) Except as provided in Subsections (3)(b) and (c), for an alleged
217 compliance issue regarding a program or set of requirements in category one or two,
218 the Superintendent will refer reports and complaints back to the oversight entity for
219 resolution.

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

223 (c) The Board may determine that the individual circumstances of an alleged
224 compliance issue arising under a program or set of requirements in category one or two
225 warrants the use of the Board's internal audit function to investigate the alleged issue
226 and possibly pursue formal corrective action as described in R277-114-6 and [R277-116-](#)
227 7.

228 (4) For an alleged compliance issue arising under a program or set of
229 requirements in category three or four, the Superintendent may pursue formal corrective
230 action as described in R277-114-6 or R277-114-7.

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

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

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

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

239 (2) In taking corrective action under this section, the Superintendent shall act in
240 accordance with federal law and administrative rule applicable to the program or set of
241 requirements.

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

245 (a) demonstrates noncompliance with program outcomes or allowable program
246 expenditures;

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

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

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

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

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

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

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

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

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

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

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

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

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

266 (iii) the format of required updates; and

267 (iv) the designated recipient of the updates;

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

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

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

- 271 (iii) an estimated schedule for closing the corrective action; and
- 272 (iv) how the authorized individual will communicate closure to the oversight
273 entity; and
- 274 (f) notice of the option for appeal as described in R277-114-8.
- 275 (5) In creating a corrective action plan, the Superintendent shall emphasize
276 providing technical support to assist the oversight entity to achieve compliance.
- 277 (6) The specific conditions described in Subsection (4)(b) may include:
- 278 (a) requiring the oversight entity to obtain technical or management support,
279 including program assistance like mentoring;
- 280 (b) requiring the oversight entity to receive payment as a reimbursement instead
281 of advance payment;
- 282 (c) requiring evidence of acceptable performance within a given period before
283 the oversight entity may proceed to the next corrective action step;
- 284 (d) requiring more frequent or more intensive monitoring than what is required
285 from the related program or other set of requirements;
- 286 (e) requiring additional or more detailed financial or compliance reports; or
- 287 (f) establishing additional prior approvals.
- 288 (7) The Superintendent may also include in a corrective action plan a provision
289 and timeline for:
- 290 (a) training for the oversight entity's staff;
- 291 (b) a referral for risk-based monitoring, for a program or set of requirements that
292 does not already perform risk-based monitoring;
- 293 (c) a referral for an audit or other agreed-upon procedure by:
- 294 (i) an external auditor; or

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

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

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

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

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

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

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

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

311 (b) repeated violations by an oversight entity.

312 (10) (a) The Superintendent may include penalties for noncompliance with
313 corrective action plan in accordance with Subsection [53E-3-401\(8\)](#).

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

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

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

318 (iii) steps the oversight entity needs to complete to receive funding again.

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

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

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

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

324 (12) The Superintendent shall report to the Board regularly about the status of
325 each corrective action plan in force for an oversight entity.

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

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

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

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

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

331 (a) state the plan requirement or action with which the oversight entity disagrees;
332 and

333 (b) submit the appeal to the Board in hard copy or electronically within 30 days
334 after the day on which:

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

337 (ii) the Superintendent took the action to implement corrective action, if the
338 appeal relates to the action the Superintendent took to implement corrective action.

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

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

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

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

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

345 **Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53E-3-401; 53E-3-**
346 **401(4)**