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## MEMORANDUM

**TO:** Members, Utah State Board of Education

**FROM:** Martell Menlove, Ph.D.  
Chief Executive Officer

**DATE:** May 9, 2014

**ACTION:** *R277-516 Education Employee Required Reports of Arrests and Required Background Check Policies for Non-licensed Employees (Continuation)*

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### **Background:**

*R277-516 Education Employee Required Reports of Arrests and Required Background Check Policies for Non-licensed Employees* is due for a five-year review and continuation consistent with the Utah Administrative Rulemaking Act. The rule must be approved for continuation by the Board or it will expire on August 7, 2014. Staff has reviewed R277-516 and determined that the rule continues to be necessary.

### **Key Points:**

R277-516 continues to be necessary because it provides procedures for public education employees to report arrest information and also requires background check policies for non-licensed employees.

### **Anticipated Action:**

1. It is proposed that the Law and Licensing Committee consider approving R277-516 for continuation on first reading, and if approved by the Committee, the Board consider approving R277-516 for continuation on second reading.
2. It is anticipated that the Board will have a policy discussion on multiple issues in R277-516 for possible future amendments.

**Contact:** Brenda Hales, 801-538-7515

1 **R277. Education, Administration.**

2 **R277-516. Education Employee Required Reports of Arrests and**  
3 **Required Background Check Policies for Non-licensed Employees.**

4 **R277-516-1. Definitions.**

5 A. "Board" means the Utah State Board of Education.

6 B. "Comprehensive Administration of Credentials for  
7 Teachers in Utah Schools (CACTUS)" means the database  
8 maintained on all licensed Utah educators. The database  
9 includes information such as:

10 (1) personal directory information;

11 (2) educational background;

12 (3) endorsements;

13 (4) employment history;

14 (5) professional development information;

15 (6) completion of employee background checks; and

16 (7) a record of disciplinary action taken against the  
17 educator.

18 C. "DPS" means the Department of Public Safety.

19 D. "Licensed educator" means an individual who holds a  
20 valid Utah educator license and has satisfied all requirements  
21 to be a licensed educator in the Utah public school system  
22 (examples are traditional public school teachers, charter  
23 school teachers, school administrators, USOE and school  
24 district specialists). A licensed educator may or may not be  
25 employed in a position that requires an educator license.  
26 Licensed educators include individuals who are student  
27 teaching, who are in alternative routes to licensing programs  
28 or positions and individuals who hold district- or charter  
29 school-specific licenses.

30 E. "Public education employer" means the education entity  
31 that hires and employs an individual, including public school  
32 districts, the Utah State Office of Education, Regional  
33 Service Centers, and charter schools.

34 F. "USOE" means the Utah State Office of Education.

35 **R277-516-2. Authority and Purpose.**

36 A. This rule is authorized by Utah Constitution Article  
37 X, Section 3 which vests the general control and supervision  
38 of the public schools in the Board, by Sections  
39 53A-1-301(3)(a) and 53A-1-301(3)(d)(x) which instructs the  
40 State Superintendent of Public Instruction (Superintendent) to  
41 perform duties assigned by the Board that include presenting  
42 to the Governor and the Legislature each December a report of  
43 the public school system for the preceding year that includes  
44 investigation of all matters pertaining to the public schools,  
45 and statistical and financial information about the school  
46 system which the Superintendent considers pertinent; and by  
47 Sections 53A-1-402(1)(a)(i) and (iii) which direct the Board  
48 to establish rules and minimum standards for the public  
49 schools regarding the qualification and certification of  
50 educators and ancillary personnel who provide direct student  
51 services, and the evaluation of instructional personnel.

52 B. The purpose of this rule is ensure that all students  
53 who are compelled by law to attend public schools, subject to  
54 release from school attendance consistent with Section 53A-11-  
55 102, are instructed and served by public school teachers and  
56 employees who have not violated laws that would endanger  
57 students in any way.

58 **R277-516-3. Licensed Public Education Employee Personal**  
59 **Reporting of Arrests.**

60 A. A licensed educator who is arrested for the following  
61 alleged offenses shall report the arrest within 48 hours or as  
62 soon as possible to the licensed educator's district  
63 superintendent, charter school director or designee:

64 (1) any matters involving arrests for alleged sex  
65 offenses;

66 (2) any matters involving arrests for alleged drug-

67 related offenses;

68 (3) any matters involving arrests for alleged alcohol-  
69 related offenses; and

70 (4) any matters involving arrests for alleged offenses  
71 against the person under Title 76, Chapter 5, Offenses Against  
72 the Person.

73 B. A licensed educator shall report convictions,  
74 including pleas in abeyance and diversion agreements within 48  
75 hours or as soon as possible upon receipt of notice of the  
76 conviction, plea in abeyance or diversion agreement.

77 C. The district superintendent, charter school director  
78 or designee shall report conviction, arrest or offense  
79 information received from licensed educators to the USOE  
80 within 48 hours of receipt of information from licensed  
81 educators. The USOE shall develop an electronic reporting  
82 process on the USOE website.

83 D. The licensed educator shall report for work following  
84 the arrest and notice to the employer unless directed not to  
85 report for work by the employer, consistent with school  
86 district or charter school policy.

87 **R277-516-4. Non-licensed Public Education Employee Background**  
88 **Check Policies.**

89 A. School districts and charter schools shall adopt  
90 policies for non-licensed public education employee background  
91 checks that include at least the following components:

- 92 (1) periodic background checks of non-licensed employees;  
93 (2) non-licensed employees shall submit to criminal  
94 background checks at least every six years;

95 B. School district and charter school policies shall  
96 determine the background check process necessary based on the  
97 non-licensed employee's assignment.

98 C. School districts and charter schools shall submit to  
99 the Utah Department of Public Safety a complete list of

100 non-licensed employees including names, dates of birth, and  
101 social security numbers.

102 **R277-516-5. Non-licensed Public Education Employee Arrest**  
103 **Reporting Policy Required from School Districts and Charter**  
104 **Schools.**

105 A. School districts/charter schools shall have a policy  
106 requiring reporting of designated offenses by non-licensed  
107 public employees and all employees who drive motor vehicles as  
108 an employment responsibility.

109 B. School districts/charter schools shall have an  
110 employee reporting policy for non-licensed employees adopted  
111 in an open board meeting no later than September 15, 2009.  
112 The policy shall be available on the school district/charter  
113 school website or provided to the USOE or both.

114 C. The policy shall include the following minimum  
115 components:

116 (1) reporting of the following:

117 (a) convictions, including pleas in abeyance and  
118 diversion agreements;

119 (b) any matters involving arrests for alleged sex  
120 offenses;

121 (c) any matters involving arrests for alleged drug-  
122 related offenses;

123 (d) any matters involving arrests for alleged alcohol-  
124 related offenses; and

125 (e) any matters involving arrests for alleged offenses  
126 against the person under Title 76, Chapter 5, Offenses Against  
127 the Person.

128 (2) a timeline for receiving reports from non-licensed  
129 public education employees;

130 (3) immediate suspension from student supervision  
131 responsibilities for alleged sex offenses and other alleged  
132 offenses which may endanger students during the period of

133 investigation;

134 (4) immediate suspension from transporting students or  
135 public education vehicle operation or maintenance for alleged  
136 offenses involving alcohol or drugs during the period of  
137 investigation;

138 (5) adequate due process for the accused employee  
139 consistent with Section 53A-3-410(10);

140 (6) a process to review arrest information and make  
141 employment decisions that protect both the safety of students  
142 and the confidentiality and due process rights of employees;

143 (7) timelines and procedures for maintaining records of  
144 arrests and convictions of non-licensed public education  
145 employees. Records shall:

146 (a) include final administrative determinations and  
147 actions following investigation; and

148 (b) be maintained only as necessary to protect the safety  
149 of students and with strict requirements for the protection of  
150 confidential employment information.

151 **R277-516-6. Public Education Employer Responsibilities Upon**  
152 **Receipt of Arrest Information from Employees.**

153 A. A public education employer that receives arrest  
154 information about a licensed public education employee shall  
155 review arrest information and assess the employment status  
156 consistent with Section 53A-6-501, R277-515, and the school  
157 district/charter school's policy.

158 B. A public education employer that receives arrest  
159 information about a non-licensed public education employee  
160 shall review arrest information and assess the employee's  
161 employment status considering the non-licensed public  
162 education employee's assignment and consistent with a local  
163 board-approved policy for ethical behavior of non-licensed  
164 employees.

165 C. A local board shall provide appropriate training to

166 non-licensed public education employees about the provisions  
167 of the local board's policy for self-reporting and ethical  
168 behavior of non-licensed public education employees.

169 D. A public education employer shall cooperate with the  
170 USOE in investigations of licensed educators.

171 **R277-516-7. USOE Responsibility for Review of**  
172 **Arrest/Conviction Information Regarding Current or Prospective**  
173 **Licensees.**

174 A. The USOE shall review self-disclosure reports received  
175 from public education employers who received the information  
176 from licensed educators pursuant to this rule, or reports from  
177 DPS regarding arrests/convictions of current or prospective  
178 licensees in a timely manner.

179 B. The USOE shall:

180 (1) require the current or prospective licensee to  
181 immediately submit his fingerprints to DPS for a background  
182 check;

183 (2) place a flag on the licensee's CACTUS file indicating  
184 a background check issue;

185 (3) evaluate, after consultation with the public  
186 education employer and consistent with procedures under  
187 Section 53A-6-401 and R686-100, for potential licensing  
188 action.

189 **KEY: school employees, self reporting**

190 **Date of Enactment or Last Substantive Amendments: December 8,**  
191 **2009**

192 **Notice of Continuation: 2014**

193 **Authorizing, and Implemented or Interpreted Law: Art X Sec 3;**  
194 **53A-1-301(3) (a) ; 53A-1-301(3) (d) (x) ; 53A-1-402(1) (a) (i) ; 53A-**  
195 **1-402(1) (a) (iii)**