

1 **R277. Education, Administration.**

2 **R277-445. Classifying Small Schools as Necessarily Existential.**

3 **R277-445-1. Authority, **[and]** Purpose, **and** Oversight Category.**

4 (1) This rule is authorized by:

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

7 (b) Subsection 53F-2-304(3), which requires the Board to adopt rules **[that:**

8 (i) ~~govern the approval of necessarily existent small schools consistent with state~~
9 ~~law; and~~

10 (ii) ~~ensure that districts are not building secondary schools in close proximity to~~
11 ~~one another where economy and efficiency would be better served by one school meeting~~
12 ~~the needs of secondary students in a designated geographical area]~~to adopt a formula to
13 calculate a scale of operations weighting for each student enrolled in a school district in
14 a county of the fourth, fifth, or sixth class as described in Section 17-50-501 or a school
15 district in a county of the third class with fewer than 2,000 students;

16 (c) ~~Subsection 53F-2-304(7), which requires the Board to define isolating~~
17 ~~conditions, which may qualify a non-NESS school for additional funding;]~~ and

18 [(d)](c) Subsection 53E-3-401(4), which allows the Board to make rules to execute
19 the Board's duties and responsibilities under the Utah Constitution and state law.

20 [(2)(a) ~~The purpose of this rule is to specify the standards for schools and districts~~
21 ~~to received funding under the NESS program.~~]

22 (2) This Rule R277-495 is categorized as Category 4 as described in Rule R277-
23 111.

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25 **R277-445-2. Definitions.**

26 (1) "ADM" means average daily membership derived from end-of-year data from
27 the previous school year.

28 [(2) "Isolating conditions" means that a school:

29 (a) is part of a school district that has a student population density of less than
30 one student enrolled per square mile;
31 (b) is located more than 25 miles by road from a city or town with a population of
32 at least 2,000 people; and
33 (c) does not qualify for NESS funding due to NESS formula limitations.]

34 [(3)](2) "NESS" means Necessarily Existential Small School as defined in
35 Subsection 53F-2-304(1).

36 [(4) "Small district base funding" means the allocation provided to school districts
37 with NESS schools under Subsection 53F-2-304(8).]

38 [(5)](3) "Weighted Pupil Unit" or "WPU" means the basic unit used to calculate the
39 amount of state funds a school district may receive.

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41 **[R277-445-3. Standards.]**

42 (1) A school may be classified as necessarily existent if the school's ADM does
43 not exceed:

44 (a) 160 for elementary schools, including kindergarten at a weighting of .55 per
45 average daily membership;

46 (b) 300 for one or two year secondary schools;

47 (c) 450 for three year secondary schools;

48 (d) 500 for four year secondary schools; or

49 (e) 600 for six year secondary schools.

50 (2) In addition to the requirements of Subsection (1), one way bus travel for any
51 student from the assigned school to the nearest school of the same type within the same
52 district shall require:

53 (a) students in kindergarten through grade six to travel more than 45 minutes; or

54 (b) students in grades seven through twelve to travel more than one hour and 15
55 minutes.

56 (3) Notwithstanding Subsection (2), the Superintendent may classify a school that
57 meets the criteria of Subsection (1), as necessarily existent if:

58 ——— (a) the school is in a district which has been consolidated to the maximum extent
59 possible;
60 ——— (b) there is evidence acceptable to the Superintendent of increased growth in the
61 school sufficient to take it out of the small school classification within a period of three
62 years, provided that:
63 ——— (i) the Superintendent may only classify the school as necessarily existent until its
64 ADM surpasses the size standard for small schools of the same type;
65 ——— (ii) the Superintendent shall annually compare the school's ADM to the school's
66 projected ADM to determine increases or decreases in enrollment; and
67 ——— (iii) if the assessment for the first or second year shows the increase in the school's
68 ADM is less than 80 percent of the projected annual increase, the school shall no longer
69 be classified as necessarily existent;
70 ——— (c) the Superintendent determines that consolidation may result in undesirable
71 social, cultural, and economic changes in the community, and:
72 ——— (i) the school has a safe and educationally adequate school facility with a life
73 expectancy of at least ten years, as judged, at least every five years, by the
74 Superintendent after consultation with the district; or
75 ——— (ii)(A) the district would incur construction costs by combining a school seeking
76 necessarily existent small school status with an existing school and such construction and
77 land costs would exceed the insurance replacement value of the exiting school by 30
78 percent;
79 ——— (B) the existing school has a life expectancy of at least ten years; but
80 ——— (C) In the event that the ADM from the school seeking necessarily existent small
81 school status under Subsection (3)(c)(ii), when combined with the ADM at the existing
82 school exceed criteria in Subsection (1), the Superintendent may not classify the existing
83 school as necessarily existent; or
84 ——— (d) the school does not qualify under Subsections (3)(a) through (c), and removal
85 of the necessarily existent status would result in capital costs that the school district

86 cannot meet within three years when utilizing all funds available from local, state, or
87 federal sources.

88 ——— (4) The Superintendent may not recognize a school with less than six grades as
89 a necessarily existent small school if it is feasible in terms of school plant to consolidate
90 the school into a larger school, which, if consolidated, would meet the criteria of
91 Subsections (1) and (2).

92 ——— (5) If the Superintendent determines that a secondary complex or attendance area
93 meets the criteria of necessarily existent when analyzed on a 7-12 grade basis, the
94 Superintendent shall not invalidate the qualifying status as a result of a reorganization
95 pattern by a district.

96 ——— (6)(a) In accordance with Subsection 53G-6-305(3)(b)(ii), the Superintendent shall
97 use NESS Program funds to cover out of state tuition reimbursements under Rule R277-
98 421.

99 ——— (b) The Superintendent shall distribute any funding balance in the NESS Program
100 in the current year with:

101 ——— (i) a minimum of 95% of the distribution based on the number of WPU funds
102 generated for eligible necessarily existent small schools; and

103 ——— (ii) the remaining funds distributed using a formula that considers the tax effort of
104 a local board of education.

105 ——— (7)(a) A school district shall utilize additional WPU funds allocated for necessarily
106 existent small schools for programs at the school for which the units were allocated.

107 ——— (b) Funds allocated under this rule shall supplement and not supplant other funds
108 allocated to schools by the local board of education.

109 ——— (8) The Superintendent shall classify a school after consultation with the district
110 and in accordance with applicable state statutes and Board rules.

111 ——— (9) The Superintendent shall allocate funds to schools with isolating conditions
112 based on legislative appropriations.

113 ——— (10) The Superintendent shall distribute small district base funding in accordance
114 with state law.

115 (11) If a school district receives small district base funding, the funding is not
116 subject to the restrictions of Subsection (7).]

R277-445-3. NESS WPUs.

118 (1) The Board shall award NESS Weighted Pupil Units as follows:

119 (a) A scale of operations WPU weighting based on a formula determined by a cost
120 function analysis.

121 (b) The table below shows the per ADM weighting for the formula at different K-
122 12 ADM totals:

123

<u>Total K-12 ADM</u>	<u>Scale of Operations Weighting</u>
<u>50</u>	<u>1.500</u>
<u>100</u>	<u>1.500</u>
<u>150</u>	<u>1.333</u>
<u>200</u>	<u>1.004</u>
<u>300</u>	<u>0.688</u>
<u>400</u>	<u>0.534</u>
<u>500</u>	<u>0.442</u>
<u>600</u>	<u>0.380</u>
<u>700</u>	<u>0.336</u>
<u>800</u>	<u>0.302</u>
<u>900</u>	<u>0.276</u>
<u>1,000</u>	<u>0.255</u>
<u>1,250</u>	<u>0.190</u>
<u>1,500</u>	<u>0.140</u>
<u>1,750</u>	<u>0.108</u>
<u>2,000</u>	<u>0.087</u>
<u>2,500</u>	<u>0.061</u>
<u>3,000</u>	<u>0.046</u>
<u>4,500</u>	<u>0.025</u>
<u>5,000</u>	<u>0.021</u>
<u>5,500</u>	<u>0.019</u>
<u>6,500</u>	<u>0.015</u>
<u>7,000</u>	<u>0.013</u>
<u>7,500</u>	<u>0.012</u>

<u>8,000+</u>	<u>0,000</u>
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125 (c) For example, a school district with total K-12 ADM of 157 would receive a per
126 ADM weighting of 1.273.]

127 (d)(b) No scale of operations weightings shall be awarded to a school district with
128 an ADM greater than 7,700.

129 (2) Rural-school weightings for NESS schools that provide WPUs for each grade
130 band in accordance with Subsection 53F-2-304(2).

131 (3) The funding for ADM that falls within the weighting factors described in
132 Subsections (1)(a) and (1)(b) shall be computed under both weighting factors.

133 (4) In accordance with Subsection 53G-6-305(3)(b)(ii), the Superintendent shall
134 use NESS Program funds to cover out-of-state tuition reimbursements under Rule R277-
135 421.

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137 **[R277-445-4. Application Procedures.]**

138 (1) Beginning in FY2020, a school district shall apply for funding from the NESS
139 program for all eligible schools, including schools with isolating conditions, on a form
140 approved by the Superintendent by April 2.

141 (2) A school district shall certify that the information in the district's NESS program
142 application remains accurate in each ensuing fiscal year on a form provided by the
143 Superintendent by April 2.

144 (3) The Superintendent shall review no less than 20% of the certifications
145 submitted under Subsection (2) on a rotating basis annually to ensure compliance with
146 this Rule R277-445.]

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148 **R277-445-4. Splitting a School that Qualifies as a Necessarily Existential Small**
149 **School.**

150 (1) A school district that intends to split a school that qualifies as a necessarily
151 existent small school or has qualified as a necessarily existent small school within the
152 past five years shall submit a proposal to the state board as outlined in [53F-2-304\(8\)](#).

153 (2) An LEA shall submit a proposal under Subsection (1), no later than July 1 of
154 the fiscal year prior to the planned split.

155 (3) The Superintendent shall:

156 (a) review an LEA's waiver request; and

157 (b) may provide a recommendation to the Board.

158 (4) The Board Executive Committee may assign a waiver request made under
159 this Rule [R277-121](#) to a Board standing committee.

160 (5) The standing committee assigned in accordance with Subsection (2):

161 (a) may solicit additional information or testimony;

162 (b) shall review the request in an open meeting; and

163 (c) shall make a recommendation for consideration by the full Board.

164 (6) The Board shall consider available data in evaluating an LEA waiver request
165 and shall consider whether the split is:

166 (a) educationally and operationally necessary, and

167 (b) not primarily motivated by financial considerations related to necessarily
168 existent small school funding.

169 (7) The Board may request an LEA that receives approval for a split in
170 accordance with this Rule R277-445 and Section [53F-2-304](#) to report the following to a
171 Board committee:

172 (a) data that supports continuation of the requested split; and

173 (b) data related to the data the LEA presented as a part of the LEA's request for
174 the split.

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177 [R277-445-5. Incorporation by Reference of Least Restrictive Behavior](#)

178 [Intervention Manual](#).

179 (1) This rule incorporates by reference the NESS Scale of Operations
180 Weightings.

181 (2) A copy of this document is located at:
182 (a) <https://www.schools.utah.gov/administrative/rules/documentsincorporated>;
183 and
184 (b) the offices of the Utah State Board of Education.

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186 **KEY: school enrollment, educational facilities, small schools**

187 **Date of Last Change: January 8, 2021**

188 **Notice of Continuation: August 19, 2021**

189 **Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; 53E-3-401(4); 53F-
190 2-304(1)

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