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MEMORANDUM

TO: Members, Utah State Board of Education

FROM: Brad C. Smith
Chief Executive Officer

DATE: May 7, 2015

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

Background:

R277-516 *Education Employee Required Reports of Arrests and Required Background Check Policies for Non-licensed Employees* needs to be amended in response to the recent passage of HB 124 S1 *Education Background Check Amendments*.

Key Points:

1. Effective July 1, 2015, HB 124 S1 requires local education agencies to require that employees, volunteers, and charter school governing board members submit to a background check and ongoing monitoring.
2. LEAs are required to have completed a background check and submitted for ongoing monitoring all individuals appointed or hired prior to July 1, 2015 by September 1, 2018.
3. The Board is required to notify the employing LEA or qualifying private school of a licensed educator of any criminal history information reported to the Board.
4. Additional amendments to the rule have been made to make the rule consistent with other licensing rules and to provide additional clarity.

Anticipated Action:

It is proposed that the Law and Licensing Committee consider approving R277-516, as amended, on first reading and, if approved by the Committee, the Board consider approving R277-516, as amended, on second reading.

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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 which 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. "LEA" or "local education agency" means a school
20 district, a charter school, and, for purposes of this rule,
21 the Utah Schools for the Deaf and the Blind.

22 [D]E.(1) "Licensed educator" means an individual who
23 holds a valid Utah educator license and has satisfied all
24 requirements to be a licensed educator in the Utah public
25 school system (examples are traditional public school
26 teachers, charter school teachers, school administrators, USOE
27 and school district specialists).

28 (2) A licensed educator may or may not be employed in a
29 position that requires an educator license.

30 (3) A [E] licensed educator[s] includes an individual[s]
31 who:

32 (a) [are] is student teaching[7];

33 (b) [who are] is in an alternative route[s] to licensing
34 program[s] or position[s]; [and] or

35 (c) an individual[s] who holds an [district— or charter
36 school]LEA-specific competency-based license[s].

37 [E]F. "Public education employer" means the education
38 entity that hires and employs an individual, including public
39 school districts, the Utah State Office of Education, Regional
40 Service Centers, and charter schools.

41 G. "Superintendent" means the State Superintendent of
42 Public Instruction or the Superintendent's designee.

43 [F]H. "USOE" means the Utah State Office of Education.

44 I. "Volunteer" means a volunteer who may be given
45 significant unsupervised access to children in connection with
46 the volunteer's assignment.

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

48 A. This rule is authorized by Utah Constitution Article
49 X, Section 3 which vests the general control and supervision
50 of the public schools in the Board, by Sections
51 53A-1-301(3)(a) and 53A-1-301(3)(d)(x) which instructs the
52 [~~State~~]Superintendent[~~of Public Instruction~~
53 (~~Superintendent~~)] to perform duties assigned by the Board that
54 include presenting to the Governor and the Legislature each
55 December a report of the public school system for the
56 preceding year that includes investigation of all matters
57 pertaining to the public schools, and statistical and
58 financial information about the school system which the
59 Superintendent considers pertinent;[~~and~~] by Sections
60 53A-1-402(1)(a)(i) and (iii) which direct the Board to
61 establish rules and minimum standards for the public schools
62 regarding the qualification and certification of educators and
63 ancillary personnel who provide direct student services, and
64 the evaluation of instructional personnel[~~;~~]; and by Title
65 53A, Chapter 15, Part 15, Background Checks, which directs the
66 Board to require educator license applicants to submit to
67 background checks and provide ongoing monitoring of licensed

68 educators.

69 B. The purpose of this rule is ensure that all students
70 who are compelled by law to attend public schools, subject to
71 release from school attendance consistent with Section 53A-11-
72 102, are instructed and served by public school teachers and
73 employees who have not violated laws that would endanger
74 students in any way.

75 **R277-516-3. Licensed Public Education Employee Personal**
76 **Reporting of Arrests.**

77 A. A licensed educator who is arrested, cited or charged
78 with the following alleged offenses shall report the arrest,
79 citation, or charge within 48 hours or as soon as possible to
80 the licensed educator's district superintendent, charter
81 school director or designee:

82 (1) any matters involving an alleged sex offense;

83 (2) any matters involving an alleged drug-related
84 offense;

85 (3) any matters involving an alleged alcohol-related
86 offense;

87 (4) any matters involving an alleged offense against the
88 person under Title 76, Chapter 5, Offenses Against the Person;

89 (5) any matters involving an alleged felony offense under
90 Title 76, Chapter 6, Offenses Against Property;

91 (6) any matters involving an alleged crime of domestic
92 violence under Title 77, Chapter 36, Cohabitant Abuse
93 Procedures Act; and

94 (7) any matters involving an alleged crime under federal
95 law or the laws of another state comparable to the violations
96 listed in R277-516-3A(1)-(6).

97 B. A licensed educator shall report convictions,
98 including pleas in abeyance and diversion agreements within 48
99 hours or as soon as possible upon receipt of notice of the
100 conviction, plea in abeyance or diversion agreement.

101 C. [~~The district~~]An LEA superintendent, [~~charter~~
102 ~~school~~]director, or designee shall report conviction, arrest
103 or offense information received from a licensed educator[s] to
104 the [~~USOE~~]Superintendent within 48 hours of receipt of
105 information from a licensed educator[s].

106 D. The [~~USOE~~]Superintendent shall develop an electronic
107 reporting process on the USOE website.

108 [~~D~~]E. [~~The~~]A licensed educator shall report for work
109 following [~~the~~]an arrest and provide notice to the licensed
110 educator's employer unless directed not to report for work by
111 the employer, consistent with school district or charter
112 school policy.

113 **R277-516-4. Non-licensed Public Education Employee,**
114 **Volunteer, and Charter School Board Member Background Check**
115 **Policies.**

116 A. [~~School districts and charter schools~~]An LEA shall
117 adopt a polic[ies]y for non-licensed public education
118 employee, volunteer, and charter school board member
119 background checks that include at least the following
120 components:

121 (1) [~~periodic background checks of non-licensed~~
122 ~~employees~~] a requirement that the individual submit to a
123 background check and ongoing monitoring through registration
124 with the systems described in Section 53A-15-1505 as a
125 condition of employment or appointment; and

126 (2) [~~non-licensed employees shall submit to criminal~~
127 ~~background checks at least every six years;~~] identification of
128 the appropriate privacy risk mitigation strategy that will be
129 used to ensure that the LEA only receives notifications for
130 individuals with whom the LEA maintains an authorizing
131 relationship.

132 B. [~~School district and charter school~~]An LEA polic[ies]y
133 shall [~~determine~~]describe the background check process

134 necessary based on the ~~[non-licensed employee's~~
135 ~~assignment]~~individual's duties.

136 ~~[C. School districts and charter schools shall submit to~~
137 ~~the Utah Department of Public Safety a complete list of~~
138 ~~non-licensed employees including names, dates of birth, and~~
139 ~~social security numbers.]~~

140 **R277-516-5. Non-licensed Public Education Employee or Charter**
141 **School Board Member Arrest Reporting Policy Required from**
142 **[School Districts and Charter Schools]LEAs.**

143 A. An [School districts/charter schools]LEA shall have a
144 policy requiring ~~[reporting of designated offenses by]~~
145 non-licensed public employees, charter school board members,
146 and all employees who drive motor vehicles as an employment
147 responsibility to report offenses specified in R277-516-5C.

148 B. ~~[School districts/charter schools shall have an~~
149 ~~employee reporting policy for non-licensed employees adopted~~
150 ~~in an open board meeting no later than September 15, 2009.]~~
151 An LEA shall post [F]the policy described in R277-516-5A
152 [shall be available]on the [school district/charter school]
153 LEA's website[or provided to the USOE or both].

154 C. ~~[The]~~An LEA's policy described in R277-516-5A shall
155 include the following minimum components:

156 (1) reporting of the following:

157 (a) convictions, including pleas in abeyance and
158 diversion agreements;

159 (b) any matters involving arrests for alleged sex
160 offenses;

161 (c) any matters involving arrests for alleged drug-
162 related offenses;

163 (d) any matters involving arrests for alleged alcohol-
164 related offenses; and

165 (e) any matters involving arrests for alleged offenses
166 against the person under Title 76, Chapter 5, Offenses Against

167 the Person.

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

170 (3) immediate suspension from student supervision
171 responsibilities for alleged sex offenses and other alleged
172 offenses which may endanger students during the period of
173 investigation;

174 (4) immediate suspension from transporting students or
175 public education vehicle operation or maintenance for alleged
176 offenses involving alcohol or drugs during the period of
177 investigation;

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

180 (6) a process to review arrest information and make
181 employment or appointment decisions that protect both the
182 safety of students and the confidentiality and due process
183 rights of employees and charter school board members; and

184 (7) timelines and procedures for maintaining records of
185 arrests and convictions of non-licensed public education
186 employees and charter school board members.

187 D. An LEA shall ensure that the [R]records described in
188 R277-516-5C(7)[~~shall~~]:

189 (a) include final administrative determinations and
190 actions following investigation; and

191 (b) ~~be~~are maintained:

192 (i) only as necessary to protect the safety of students;

193 and

194 (ii) with strict requirements for the protection of
195 confidential employment information.

196 **R277-516-6. Public Education Employer Responsibilities Upon**
197 **Receipt of Arrest Information[~~from Employees~~].**

198 A. A public education employer that receives arrest
199 information about a licensed public education employee shall

200 review the arrest information and assess the employment status
201 consistent with Section 53A-6-501, R277-515, and the [~~school~~
202 ~~district/charter school's~~]LEA's policy.

203 B. A public education employer that receives arrest
204 information about a non-licensed public education employee,
205 volunteer, or charter school board member shall review the
206 arrest information and assess the [~~employee's~~]individual's
207 employment or appointment status:

208 (1) considering the [~~non-licensed public education~~
209 ~~employee's~~]individual's assignment and duties; and

210 (2) consistent with a local board-approved policy for
211 ethical behavior of non-licensed employees, volunteers, and
212 charter school board members.

213 C. A local board shall provide appropriate training to
214 non-licensed public education employees, volunteers, and
215 charter school board members about the provisions of the local
216 board's policy for self-reporting and ethical behavior of non-
217 licensed public education employees, volunteers, and charter
218 school board members.

219 D. A public education employer shall cooperate with the
220 [~~USOE~~]Superintendent in investigations of licensed educators.

221 **R277-516-7. [~~USOE~~]Responsibility for Review of**
222 **Arrest/Conviction Information Regarding Current or Prospective**
223 **Licensees.**

224 A. The [~~USOE~~]Superintendent shall review the following in
225 a timely manner:

226 (1) self-disclosure reports received from public
227 education employers who received the information from licensed
228 educators pursuant to this rule[~~7~~]; or

229 (2) reports from DPS regarding arrests/convictions of
230 current or prospective licensees[~~in a timely manner~~].

231 B. [~~The USOE~~]After a review described in R277-516-7A, the
232 Superintendent[~~shall~~]:

233 (1) may require the current or prospective licensee to
234 [~~immediately~~]submit [~~his~~]the current or prospective
235 licensee's fingerprints to DPS for a background check;

236 (2) shall place a flag on the current or prospective
237 licensee's CACTUS file indicating a background check issue;
238 and

239 (3) shall evaluate the reports and results of a
240 background check for potential licensing action[~~7~~]:

241 (a) after [~~consultation~~]consulting with the public
242 education employer; and

243 (b) consistent with procedures under Section 53A-6-401
244 and [~~R686-100~~]R277-203[~~, for potential licensing action~~].

245

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

247 **Date of Enactment or Last Substantive Amendments: [~~December 8,~~**
248 **2009]2015**

249 **Notice of Continuation: June 10, 2014**

250 **Authorizing, and Implemented or Interpreted Law: Art X Sec 3;**
251 **53A-1-301(3)(a); 53A-1-301(3)(d)(x); 53A-1-402(1)(a)(i); 53A-**
252 **1-402(1)(a)(iii)**