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MEMORANDUM

TO: Members, Utah State Board of Education

FROM: Brad C. Smith
Chief Executive Officer

DATE: May 7-8, 2015

ACTION: R277-107 *Educational Services Outside of Educator's Regular Employment*
(Continuation and Amendment)

Background:

1. R277-107 *Educational Services Outside of Educator's Regular Employment* is due for its 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 July 1, 2015. Staff have reviewed R277-107 and determined that the rule continues to be necessary.
2. In addition to continuing the rule, technical changes have been made.

Key Points:

1. R277-107 continues to be necessary because it provides direction and parameters for employees who provide or participate in public education-related services or activities outside of their regular public education employment.
2. Technical changes are made throughout the rule to make it consistent with the Board's stylistic and formatting preferences.

Anticipated Action:

1. It is proposed that the Standards and Assessment Committee consider approving R277-107 for continuation on first reading and, if approved by the Committee, the Board consider approving R277-107 for continuation on second reading.
2. It is proposed that the Standards and Assessment Committee consider approving R277-107, as amended, on first reading and, if approved by the Committee, the Board consider approving R277-107, as amended, on second reading.

Contact: Angie Stallings, 801-538-7550

1 **R277. Education, Administration.**

2 **R277-107. Educational Services Outside of Educator's Regular**
3 **Employment.**

4 **R277-107-1. Definitions.**

5 A. "Activity sponsor" means a private or public
6 individual or entity that employs an employee in any program
7 in which public school students participate.

8 B. "Board" means the Utah State Board of Education.

9 C. "Extracurricular activit[ies]y" means [~~those~~]an
10 activit[ies]y for students recognized or sanctioned by an
11 [~~educational institution~~]LEA which may supplement or
12 compliment, but [~~are~~]is not part of, [~~its~~]the LEA's required
13 program or regular curriculum.

14 D. "LEA" or "local education agency" means a [~~local~~
15 ~~education agency, including local school boards/public~~]school
16 district[~~s~~], a charter school[~~s~~], [~~and~~]or, for purposes of
17 this rule, the Utah Schools for the Deaf and the Blind.

18 E. "Public education employee (employee)" means a person
19 who is employed on a full-time, part-time, or contract basis
20 by any LEA.

21 F[~~-~~](1) "Private, but public education-related activity"
22 means any type of activity for which:

23 (a) [~~the~~]a public education employee receives
24 compensation; and

25 (b) the principle clients are students at the school
26 where the employee works.

27 (2) [~~Such activities~~] "Private, but public education-
28 related activity" may include:

29 ([~~1~~]a) tutoring;

30 ([~~2~~]b) lessons;

31 ([~~3~~]c) clinics;

32 ([~~4~~]d) camps; or

33 ([~~5~~]e) travel opportunities.

34 **R277-107-2. Authority and Purpose.**

35 A. This rule is authorized by Utah Constitution Article
36 X, Section 3 which vests general control and supervision of

37 public education in the Board, Section 53A-1-402.5 which
38 directs the Board to make rules that establish basic ethical
39 conduct standards for employees who provide public education-
40 related services or activities outside of their regular
41 employment, and 53A-1-401(3) which permits the Board to adopt
42 rules in accordance with its responsibilities.

43 B. The purpose of this rule is to provide direction and
44 parameters for employees who provide or participate in public
45 education-related services or activities outside of their
46 regular public education employment.

47 C. The Board recognizes that public school educators
48 have expertise and training in various subjects and skills and
49 should have the opportunity to enrich the community with their
50 skills and expertise while still respecting the unique public
51 trust that public educators have.

52 **R277-107-3. LEA Responsibility.**

53 An LEA may have policies providing for the following,
54 consistent with the provisions of this R277-107 and the law:

55 A. sponsorship or specific non-sponsorship of
56 extracurricular activities; or

57 B. opportunities for students [~~consistent with the~~
58 ~~provisions of this rule and the law~~].

59 **R277-107-4. LEA Relationship to Activities Involving**
60 **Educators.**

61 A[~~7~~](1) An LEA may sponsor extracurricular activities or
62 opportunities for students.

63 (2) Extracurricular activities are subject to Utah's
64 school fee laws and rules, fee waivers, procurement and all
65 other applicable laws and rules.

66 B. An employee that participates in a private, but
67 public education-related activity, is subject to the
68 following:

69 (1) the employee's participation in the activity shall
70 be separate and distinguishable from the employee's public
71 employment as required by this rule;

72 (2) the employee may not, in promoting the activity:
73 (a) contact students at the public schools, except as
74 permitted by this rule; or
75 (b) use education records, resources, or information
76 obtained through [~~his~~]the employee's public employment unless
77 the records, resources, or information are readily available
78 to the general public[-];
79 (3) the employee may not use school time to discuss,
80 promote, or prepare for:
81 (a) a[ny] private activity; or
82 (b) a private, but public education-related activity;
83 (4) the employee may:
84 (a) offer private, but public education-related
85 services, programs or activities to students provided that
86 they are not advertised or promoted by the employee during
87 school time[-];
88 (b) discuss [~~the~~]a private, but public education-related
89 activity with students or parents outside of the classroom and
90 the regular school day;
91 (c) use student directories or online resources which
92 are available to the general public; and
93 (d) use student or school publications in which
94 commercial advertising is allowed, to advertise and promote
95 the activity.
96 C. Credit and participation in a public school program
97 or activity may not be conditioned on a student's
98 participation in such activities as clinics, camps, private
99 programs, or travel activities not equally and freely
100 available to all students.
101 D. No employee may state or imply to any person that
102 participation in a regular school activity or program is
103 conditioned on participation in a private activity.
104 E. No provision of this rule shall preclude a student
105 from requesting or petitioning a teacher or school for
106 approval of credit based on an extracurricular educational
107 experience consistent with LEA policy.

108 **R277-107-5. Advertising.**

109 A. An employee may purchase advertising space to
110 advertise an activity or service in a publication, whether or
111 not sponsored by the public schools, that accepts paid or
112 community advertising.

113 B. The advertisement may identify the activity,
114 participants, and leaders or service providers by name,
115 provide non-school contact information, and provide details of
116 the employee's employment experience and qualification.

117 C. Posters or brochures may be posted or distributed in
118 the same manner as could be done by a member of the general
119 public, advertising an employee's services, consistent with
120 LEA policy.

121 D. Unless an activity is sponsored by the LEA, the
122 advertisement shall state clearly and distinctly that the
123 activity is NOT sponsored by the LEA.

124 E. The name of an LEA [~~shall~~may] not be used in the
125 advertisement except as the LEA's name may relate to the
126 employee's employment history or if school facilities have
127 been rented for the activity.

128 F. If the name of the employee offering the service or
129 participating in the activity is stated in any advertisement
130 sent to the employee's students, or is posted, distributed, or
131 otherwise made available in the employee's school, the
132 advertisement shall state that the activity is not school
133 sponsored.

134 **R277-107-6. Public Education Employees.**

135 A. Public education employees shall comply with [~~Section~~
136 ~~63G-6-1001, Felony to accept emolument~~] Title 63G, Chapter 6a,
137 Utah Procurement Code.

138 B. Public education employees shall comply with Title 67,
139 Chapter 16, [~~Utah~~]Public Officers' and Employees' Ethics Act.

140 C. Except as provided in R277-107-6D, [e]consistent with
141 Section 63G-[~~6-1001~~]6a-2404 and Title 67, Chapter 16, Public
142 Officers' and Employees' Ethics Act, a public education
143 employee[~~s shall~~may] not solicit or accept gifts, incentives,

144 honoraria, or stipends from private sources:

145 (1) for the~~[ir]~~ employee's personal or family use~~[-unless~~
146 ~~the gift is of nominal value and is for birthdays, holidays,~~
147 ~~or teacher appreciation occasions or is a public award in~~
148 ~~recognition of public service, consistent with school or LEA~~
149 ~~policies and the Utah Public Employees Ethics Act];~~

150 (2) in exchange or payment for advertising placed by the
151 employee; or

152 (3) in exchange or payment for securing agreements,
153 contracts or purchases between private company and public
154 education employer, programs or teams.

155 D. A public education employee may accept a gift,
156 incentive, honoraria, or stipend from a private source if the
157 gift, incentive, honoraria, or stipend is:

158 (1)(a) of nominal value and is for birthdays, holidays,
159 or teacher appreciation occasions; or

160 (b) a public award in recognition of public service; and

161 (2) consistent with school or LEA policies and the Utah
162 Public Employees Ethics Act.

163 ~~[D]~~E. A [P]public education employee[~~s~~] who holds a Utah
164 educator license[~~s~~] shall be subject to license discipline
165 (including license suspension or revocation) for violation of
166 this ~~[rule]~~R277-107 and applicable provisions of Utah law.

167 **R277-107-7. Public Education Employee/Sponsor Agreements or**
168 **Contracts.**

169 A. An agreement between an employee and an activity
170 sponsor shall be signed by the employee and include a
171 statement that reads substantially: I understand that this
172 activity is not sponsored by an~~[y]~~ LEA, that my
173 responsibilities to the activity sponsor are outside the scope
174 of and unrelated to any public duties or responsibilities I
175 may have as a public education employee, and I agree to comply
176 with laws and rules of the state and policies regarding my
177 advertising and participation.

178 B. ~~[The]~~An employee shall provide the LEA business
179 administrator, superintendent, or charter school director with

180 a signed copy of all contracts between the employee and a
181 private activity sponsor.

182 C. ~~The~~An LEA shall maintain a copy of a contract
183 described in R277-107-7B in the employee's personnel file.

184 **KEY: school personnel**

185 **Date of Enactment or Last Substantive Amendment: ~~[May 8,~~**
186 **~~2012]~~2015**

187 **Notice of Continuation: ~~[July 1, 2010]~~2015**

188 **Authorizing, and Implemented or Interpreted Law: Art X Sec 3;**
189 **53A-1-402.5; 53A-1-401(3)**