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MEMORANDUM

TO: Members, Utah State Board of Education

FROM: Brad C. Smith
Chief Executive Officer

DATE: June 18-19, 2015

DISCUSSION: Utah Statute, Board Rules, and Policies Related to the Statewide Online Education Program

Background: Utah Code Sections 53A-11-102.5 and 53A-15-1202 through 1217, reference language specific to public education students participation in the Statewide Online Education Program (SOEP). Beginning July 1, 2013 private and home school students may enroll in the SOEP for up to three credits per year. Public education enrolled students may enroll or increase their enrollment in the SOEP for up to three credits per year. This change resulted in several issues that are not clearly resolved in the statutes. Rules related to the SOEP may also need to be amended in response to H.B. 282 *Online Education Program Amendments*, which, starting with the 2015-16 school year, allows a higher education entity to offer online courses through the SOEP.

Key Points: The statutes referenced above have resulted in unresolved issues related to an LEA or SOEP provider's responsibility to provide special education services related to the program. Additional clarity, policies and/or changes to Board rules need to be considered to resolve issues such as determine whether the SOEP is a public education program and if a primary LEA of enrollment is necessary for home and private school students to participate in the SOEP.

Anticipated Action: The Law and Licensing Committee will discuss the issues, determine policy clarifications and direct staff to revise Board rules to clarify the issues.

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MEMORANDUM

TO: Members, Utah State Board of Education
Brad C. Smith, State Superintendent of Public Instruction

FROM: Angela Stallings, Natalie Grange, Glenna Gallo, Cory Kanth

DATE: June 18-19, 2015

RE: Policy Options Regarding Necessary Revisions to R277-726 "Statewide Online Education Program"

Utah Code 53A-15-1201 created the Statewide Online Education Program (SOEP) in 2011 to enable students to earn high school graduation credit through the completion of online courses offered by eligible providers, who are LEAs. On July 1, 2013, student eligibility standards (UCA 53A-15-1202) widened to encompass home or private school students. Newly-eligible student's included those who attend a private school or home school, and whose custodial parent or legal guardian is a resident of Utah. During the 2015 Legislative session, program statutes were additionally amended to expand the range of providers from LEAs, to public institutions of higher education. Modification of administrative rule is needed to accommodate these expansions in eligible students, eligible providers, and to address issues related to special education, 504 accommodations, and fee waiver concerns that have arisen during the administration of the SOEP program.

Policy Options for the Board's Consideration:

With respect to students participating in the SOEP, clarification of responsibilities under IDEA and Section 504 of the Americans with Disabilities Act is required.

- 1) **Section 504 Accommodations under the Americans with Disabilities Act:** The SOEP law and current Board rules do not provide any guidance regarding 504 accommodations for SOEP students.

Recommendation: It is the recommendation of staff that 504 accommodations for SOEP courses should always be the responsibility of the SOEP Course provider. If an eligible student enrolls in the SOEP through their Primary LEA, the Primary LEA is responsible to provide any information regarding existing 504 plans to the provider within 72 business hours of notification of the student's enrollment in SOEP. Home and private school students enrolling in the SOEP will request accommodations or a 504 assessment directly through the SOEP course

provider. No funding is provided for any 504 accommodations under the public education system or the SOEP program.

2) Responsibilities under IDEA and associated funding concerns regarding SOEP students:

The SOEP statute and current Board rules do not provide any guidance regarding the responsibility for Free and Appropriate Public Education (FAPE) for the special education needs of SOEP students, nor provide a funding mechanism for to pay for the required services associated with students participating in the SOEP program which is part of public education. FAPE means special education and related services that are provided at public expense, under public supervision and direction, meet the standards of the USBE and Part B of the IDEA, and are provided in conformity with an Individualized Education program (IEP).

Because the SOEP program is a public education program, it was the opinion of the Attorney General's office that all students with disabilities enrolled in the SOEP are entitled to FAPE through the development and implementation of an IEP. Questions have arisen from Primary LEAs, SOEP providers, parents and USOE staff regarding:

- a. Which entity is responsible for providing FAPE to SOEP students?
- b. Institutions of Higher Education (IHEs) are required to follow the ADA and not the IDEA. However, the State is responsible to ensure that FAPE is available to all children residing in the state between the ages of 3 to 21 (§300.101). How will IHE providers offer FAPE to students who are eligible under IDEA and elect to participate in the SOEP program?
- c. When home school students enroll in the SOEP, they become public education students and, for home schooled students with disabilities, have all of the rights to FAPE as any other student in the state. Who is responsible for IEP services and FAPE for home school students?
- d. When students with disabilities are parentally placed in a private school, the parent and student give up all rights to FAPE. However, when these students enroll in the SOEP, they become public education students and have all of the rights to FAPE as any other student in the state. Who is responsible to provide IEP services and FAPE for parentally-placed private school students?
- e. Presently Board rule R277-726-6.H indicates "If a Board investigation finds that a Provider has violated IDEA or Section 504 provisions for students taking online courses, the Provider shall compensate the student's primary LEA of enrollment for all costs related to compliance." However, it is not practical for the Board or the Board's designee to bear the burden of ensuring compliance for each SOEP student.
- f. Can home or private school students be required to enroll in a primary LEA to receive special education services?
- g. What current funding mechanism is appropriate, or should be developed, to cover costs of IEP services provided for home and private school students, or those using IHE providers?
- h. Who should pay the costs for services required to be provided for home and private school students?

All of these questions have varying considerations, and are best considered from the perspective of where the student's primary enrollment begins.

SOEP students who are also enrolled in a primary LEA.

1. LEAs submit student data regarding students with disabilities to USOE via the UTREx system in a set of reporting fields commonly called the "SCRAM" record. The primary LEA can claim SCRAM membership for students enrolled in their LEA and the SOEP program. SCRAM membership is generated specifically for students with disabilities and with an IEP and is used to allocate federal and state special education funds. SCRAM membership is not reduced for students participating in the SOEP program, because the primary LEA is still responsible for FAPE. Both Federal and State funds are provided to the LEA for each SCRAM student to provide services, monitor, and ensure students are receiving FAPE.

Staff recommends the following for students enrolled in a primary LEA and request policy direction from the Board:

- a. The Primary LEA is responsible for IEP services, child find, and to ensure that students with disabilities received FAPE.
- b. The Primary LEA is required to provide all information regarding existing IEPs or 504 accommodation plans to the SOEP provider within 72 business hours of receiving notice from the USOE that the provider has accepted the enrollment request.
- c. The primary LEA will continue to claim students with disabilities and an IEP in their special education membership (SCRAM membership).
- d. The Primary LEA shall monitor the SOEP provider for compliance with the IEP or 504 accommodation plan.

Unresolved issues: If the primary LEA finds the SOEP provider noncompliant with the IEP or FAPE can the primary LEA disallow enrollment in SOEP or be refunded portions of the WPU that were withheld from the primary LEA's WPU for that student to fund the SOEP course? Utah Code 53A-15-1204(1)(d) allows a student to enroll in the SOEP if it is consistent with a student's IEP. Can a student withdraw from their Primary LEA if the IEP team deems that SOEP courses will not be the best environment for a student to achieve success, and enroll in the SOEP as a home or private school student?

SOEP students who are home or private school students enrolling with an SOEP Provider who is an LEA:

SOEP providers who are also LEAs do not claim any regular or SCRAM membership for any SOEP students. These providers receive the established course fees, which are uniform regardless of whether the student is a public school student or a home or private school student, per course. Many providers are concerned they do not receive enough funds from the SOEP program to provide IEP directed services.

Home and private school students do not receive special education services through the state or an LEA because they have essentially opted out of them by being excused from the public school system. As such, there is no SCRAM membership or funding generated for students who are home or private school students participating in the SOEP program. However, once these students enroll in the SOEP program they are again considered public student students, entitled to FAPE and IEP related services.

Unresolved issues that require policy direction/Board rules:

Staff sees three potential solutions to address these concerns.

- a. Allow home and private school students enrolling in the SOEP to revoke special education services in writing as provided for in 34 CFR 300.300. This document must be signed and returned to the USOE each time a student enrolls in the SOEP program. SOEP Enrollment cannot be finalized without these documents.
- b. If home and private school students request special education services, this requires the student to enroll in a primary LEA. The primary LEA would be required to provide services, and allowed to claim SCRAM membership hours and days through the current process.
 - i. Some combination of a and b is most likely the best solution.
- c. The Board could develop a special education services "add on" amount specifically for home and private school students who enroll in the SOEP and request special education services. This "add on" would be paid to the SOEP provider LEA and responsibility for FAPE would be assigned to the provider LEA. Funding sources for this new "add on" could be:
 - i. The existing appropriation for home and private school students, managed by the USOE, that is presently only used to pay provider's course fees. Existing statute does not name special education services as an allowable use, but also does not specifically spell out what allowable uses are. Clarification should be sought from legal counsel to determine if the existing appropriation could be utilized. There is some carryover that could be utilized in the first year of a new add on program, but to fully fund both the course fees and a new special education services add on additional funds would need to be appropriated to ensure that services are not reduced to eligible recipients. The amount needed to fully fund the program cannot be determined until the amount of an "add on" is determined.
 - ii. A new appropriation could be requested to fund the additional home and private school "add on" amount for SOEP student.

SOEP students enrolling with an SOEP Provider who is an IHE:

Legislation created in the 2015 general session now allows IHE to become SOEP providers. There are various policy decisions required to develop board rules for implementation of legislation. See 3 below. Assuming that IHE's do become providers the following issues pertaining to special education services require policy direction.

Unresolved Issues related to students enrolled in a primary LEA and an IHE SOEP Provider

Staff recommends the following and requests policy direction:

- a. The Primary LEA is responsible for IEP services, child find, and to ensure that students with disabilities received FAPE.
- b. The Primary LEA is required to provide all information regarding existing IEP's to the SOEP provider within 72 business hours of receiving notice from the USOE that the provider has accepted the enrollment request.
- c. The primary LEA will continue to claim students with disabilities in their special education membership (SCRAM membership).
- d. The Primary LEA shall monitor the SOEP provider for compliance with the students IEP.

Unresolved issues:

1. IHEs do not generally have the capability to provide special education services to k-12 students. IHEs provide accommodations in compliance with ADA, not the IDEA. How will services under IDEA be provided in a satisfactory manner?
2. If the primary LEA finds the SOEP provider noncompliant with the IEP or the provision of FAPE, can the primary LEA disallow enrollment in SOEP or be refunded portions of the WPU that were withheld from the primary LEA's WPU for that student to fund the SOEP course? Utah Code 53A-15-1204(1)(d) allows a student to enroll in the SOEP if it is consistent with a student's IEP. Can a student withdraw from their Primary LEA if the IEP team deems that SOEP courses will not be the best environment for a student to achieve success, and enroll as a home or private school student in the SOEP?

Home and Private School Students enrolled in an IHE SOEP Provider

Home and private school students do not receive special education services through the state or an LEA because they have essentially opted out of them by being excused from the public school system. However, once these students enroll in the SOEP program they are again considered public student students, entitled to FAPE and IEP related services for the courses provided by the SOEP. The IHE will not receive funding for special education services, and do not have the training or personnel to provide IEP services.

Unresolved issues that require policy direction/Board rules:

Staff sees three potential solutions to address these concerns.

- a. Allow home and private school students enrolling in the SOEP to revoke special education services. This written document must be signed and returned to the USOE each time a student enrolls in the SOEP program. SOEP Enrollment cannot be finalized without these documents.
- b. If home and private school students request special education services, require the student to enroll in a primary LEA. The primary LEA would be required to provide services, and allowed to claim SCRAM membership hours and days through the already established process.

- c. The Board could develop a special education services “add on” amount specifically for home and private school students who enroll in the SOEP and request special education services. This “add on” would be paid to the SOEP provider and responsibility for FAPE would be assigned to the provider. However, this will most likely not work for IHE who do not have the capabilities to deliver IEP services, and staff is unsure if IHE can be responsible for FAPE. Funding sources for this new “add on” would be as identified above.

3) Higher Education Providers:

Expansion of providers to encompass IHE results in many questions:

- a. IHEs do not have student information systems like LEAs, how will student information, course completion and credit hours be recorded for students and reported back to LEAs? IHEs do have an established data transfer process as part of the Utah Data Alliance and transcript exchange. That same system could potentially be expanded to include information that flows from the IHE to USOE, and not only from USOE to IHE.
- b. IHEs are not accredited to award K-12 course credit for graduation. What policies should surround this issue to ensure students are awarded credit that will be accepted for graduation?
- c. How will IHEs provide special education services as noted above.

4) Definition of Primary School of Enrollment in Rule:

During the 2015-16 school year, students are able to take up to five of eight credits (with eight credits being considered to be full-time enrollment), through the Statewide Online Education Program. During the 2016-17 school year and thereafter, students will be able to take up to six of eight credits online, outside of their Primary school of enrollment. This provision of law is in conflict with language in R277-726 and R277-419 defining “Primary School of enrollment” as that school where a student “takes a majority of their classes.” It is suggested that Primary school of enrollment, for purposes of R277-726, is defined as “a student’s school of record, and the school that maintains the student’s cumulative file, enrollment information and transcript.” The Primary LEA, and specifically the Primary School of Enrollment within that LEA, where the student is in regular membership, remains responsible for centralized services including IEP oversight as well as graduation and counseling regardless of the number of courses taken externally. Statute defines Primary LEA, in the context of SOEP participation, as “the LEA in which an eligible student is enrolled for courses other than online courses offered through the Statewide Online Education Program” (53A-15-1202(5)).

5) Fee Waiver-Eligible Materials

The issue of fee waiver eligible materials becomes important in the case of online courses, where coursework may be interpreted to require a computer and internet access in order to allow a student “to participate fully and to have the opportunity to acquire all skills and knowledge required for full credit and highest grades,” per R277-407-3. Can SOEP providers charge fees to students? Should SOEP providers be required to honor fee waiver status, determined by the student’s primary LEA? How does this information get communicated to

the provider, and ensure privacy and discretion for the student? Policy clarification in this area is necessary.

6) Procedure for home and private school appropriation

As the number of home and private school students participating in the SOEP program continues to increase, and the number of courses students can enroll in increases, staff requests policy direction in the event current year appropriations and prior year carryover are not sufficient to pay current year course fees. Options include:

- a. Institute a priority or lottery system when the appropriation reaches a certain "level".
- b. Enroll all students who qualify and ask for supplementation appropriations (although this could result in violation of the budgetary management law).
- c. Limit the number of students or courses that can be obligated each school year to manage the appropriation.