



UTAH STATE BOARD OF EDUCATION

David L. Crandall, Chair

David L. Thomas, First Vice Chair

Jennifer A. Johnson, Second Vice Chair

Dixie L. Allen

Laura Belnap

Leslie B. Castle

Barbara W. Corry

Brittney Cummins

Linda B. Hansen

Mark Huntsman

Stan Lockhart

Jefferson Moss

Spencer F. Stokes

Terryl Warner

Joel Wright

Brad C. Smith, Chief Executive Officer

Lorraine Austin, Board Secretary

MEMORANDUM

TO: Members, Utah State Board of Education

FROM: Brad C. Smith
Chief Executive Officer

DATE: August 6-7, 2015

ACTION: Utah Statute, Board Rules and Policies in Regard to the Statewide Online Education Program

Background: Utah Code 53A-11-102.5 and 53A-15-1202 through 1217, reference language specific to public education students (SEOP, LEA of enrollment, etc.). Beginning July 1, 2013 private and home school students may enroll in the Statewide Online Education Program (SEOP) 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*.

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 to 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.

Contact: Angie Stallings, 801-538-7550
Glenna Gallo, 801-538-7757
Natalie Grange, 801-538-7668
Cory Kanth, 801-538-7660

MEMORANDUM

TO: Members, Utah State Board of Education
Brad C. Smith, Chief Executive Officer

FROM: Angie Stallings, Glenna Gallo, Natalie Grange, and Cory Kanth

DATE: August 6, 2015

ACTION: Policy Direction 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 ensure students have access to coursework needed for college and career readiness, in addition to more flexible options, expanded curricular programs, and alternatives that meet their unique learning styles and needs. On July 1, 2013, student eligibility standards (UCA 53A-15-1202) widened to encompass home or private school students. During the 2015 Legislative session, statute was additionally amended to expand the range of Providers to public institutions of higher education. Modification of administrative rule is needed to accommodate expansions in eligible students and eligible Providers, and to address issues related to Special Education, 504 accommodations, the nature of a Primary School of Enrollment, Fee Waivers, and other issues.

Policy Options for the Board's Consideration:

§53A-15-1206(1) requires that Providers are compensated uniformly regardless of ELL or Poverty status, Disability and other factors which might generate additional funding for a student in regular membership. The SOEP funding structure allows a student to access courses outside of their Primary LEA in which they generate membership hours and access additional services including graduation, counseling services, IEP formation/management and dispute resolution. The Primary LEA provides facilities, sports and extracurricular participation, additionally. The student is enrolled *course-wise* in an external Online Course Provider LEA, for purposes of accessing supplemental courses, often in STEM, AP or advanced languages. In most other states having course access programs, Concurrent Enrollment makes up an additional and large component of enrollment. Utah is one of only three states to have both a course access program and a state virtual school (EHS); SOEP courses, unlike EHS courses, are used almost exclusively for purposes of original credit.

§53A-15-1204(2) allows students to earn five of eight credits through SOEP participation, during the 2014-15 school year, and six of eight credits yearly thereafter. Home and Private School students may access these courses, without enrollment in a Primary LEA.

SOEP participation as an Online Course Provider allows interested LEAs to supply curricular and instructional services to students of another LEA, online, under the assumption that the Primary LEA of Enrollment will continue to provide all other services necessary for that student's success. A student's Counselor at the Primary LEA must approve the course enrollment, as well as the student's College and Career Ready Plan more generally. A Provider LEA cannot graduate a student which is not in regular membership without jeopardizing its accreditation status as an online provider with AdvanceEd, and this status allows the Provider to receive authorization to function as an Online Course Provider. An Online Course Provider extends Special Education services to a student enrolling through the SOEP without membership-based funding "add-ons" for Special Education services. 53A-15-1208(3)(j) requires that, if a student has an Individual Education Plan (IEP) or 504 Accommodations, the Primary LEA of enrollment shall forward the IEP or description of 504 Accommodations to the Online Course Provider, wherein the Online Course Provider then ensures that reasonable accommodations are made.

ISSUES TO BE ADDRESSED IN RULE:

1) Section 504 Accommodations under the Americans with Disabilities Act:

Board Rule states that Provider LEAs shall provide services to students consistent with requirements of Section 504 (R277-726-7(R)(5)).

Staff Recommendations for Inclusion in Board Rule:

It is the recommendation of staff that 504 accommodations for SOEP courses should always be the responsibility of the SOEP Course Provider. Points for the Board to consider:

- a) If the student is regularly membered in a Primary LEA, an existing 504 plan may exist, and existing law provides that the Primary LEA is responsible to provide an existing 504 plans to the Online Course Provider within 72 hours of notification of the student's enrollment in SOEP (53A-15-1208(3)(j)).
- b) If the student is not regularly membered in a Primary LEA, as in the case of Home and Private School students accessing SOEP coursework, such students may request accommodations or a 504 assessment directly through the SOEP Online Course Provider, which will make reasonable accommodations required for the eligible student with a disability to perform essential functions in the online environment, or in the context of that individual course.

Unresolved Issues and Potential Solutions:

None

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

SOEP statute and Board Rule may not provide sufficient guidance regarding the responsibility for Free and Appropriate Public Education (FAPE), meaning Special

Education and related services provided in conformity with an Individualized Education Program (IEP) (§300.17). It was the opinion of the Utah State Attorney General's office that all students enrolled in the SOEP are entitled to FAPE, where students have disabilities.

Federal law appears to indicate that it is the responsibility of a school district of residence (or choice, if the student is currently enrolled in the public education system) to evaluate a student, and provide services. As a public agency under the definitions of federal law (§300.33), LEAs are responsible for FAPE to children with disabilities. Federal law requires that students not enrolled in a public LEA are located, identified, and evaluated, including all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA (§300.131). Federal law assigns these "Child Find" responsibilities to each LEA where students are enrolled by their parents in private schools located (§300.131).

Board Rule states that Provider LEAs shall provide services to students consistent with requirements of the IDEA (R277-726-7(R)(5), however Board Rule appears to assume that the student has an existing IEP. It is likely that Home and Private School students may not have an existing IEP, and Special Education services can only be rendered as directed by an existing IEP. Unless Home or Private School students wish to be guided through the process of accessing services by their boundary school or another school within their LEA of Residence, there is not a separate mechanism for funding Special Education services, including formation of an IEP, for students not otherwise regularly membered within the public education system. A funding mechanism may be established through membership at a boundary school, within an LEA of Residence.

Staff Recommendations for Inclusion in Board Rule:

Staff recommends the following for students enrolled in a Primary LEA, and requests policy direction from the Board:

- a) The Primary LEA is responsible for IEP services, Child Find, and to ensure that students with disabilities receive FAPE. The Primary LEA will continue to claim Special Education students in their Special Education membership (SCRAM membership).
- b) A Home and Private School student may enroll in a boundary school for assistance with accessing Special Education services. The Primary LEA will claim Special Education students in their Special Education membership (SCRAM membership).
- c) May Home and Private school students be allowed to waive rights to Special Education services when enrolling in the SOEP? This would require the parent or student to sign a document and return this to the USOE each year a student enrolls in the SOEP program. SOEP Enrollment could not be finalized without this document. If Home and Private school students wish to access Special Education services, these may be accessed through enrollment in a boundary school within their LEA of residence, parallel to all other SOEP students. The student would then

acquire a Primary LEA, which would then be required to provide services, and allowed to claim membership hours and days through the already established process.

- d) The Primary LEA shall monitor the SOEP Provider for compliance with the student's IEP, and conduct dispute resolution.

Possible Legislative and Policy Options:

The Board may recommend that the Legislature develop a Special Education services "add on" amount specifically for Home and Private school students enrolling in the SOEP and requesting 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" come from:

- a) The existing ongoing appropriation for Home and Private school students, managed by the USOE, that is currently only used to pay Providers 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 for this purpose. 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.
- b) A new appropriation may be requested to fund the additional Home and Private school add on amount for SOEP student.

3) Responsibilities of IHEs regarding SOEP students:

In the most recent legislative session, HB 282 expanded Providers from LEAs, to public institutions of Higher Education. It appears that Institutions of Higher Education (IHE) are not required to follow federal regulations regarding Special Education (§34 CFR 300.300 (3)(ii)(b)). However, it remains the responsibility of the state to ensure that students in need of services are identified, and a free and appropriate public education is rendered in line with those needs. IHE Providers do not, however, have the (clear) legal mandate, or the expertise to ensure that FAPE is provided.

Staff Recommendations:

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 receive FAPE.
- b) If the online course student has an individual education plan (IEP) or 504 Accommodations, the Primary LEA of enrollment shall forward the IEP or description of 504 Accommodations to the Online Course Provider within 72 business hours after the Primary LEA of enrollment receives notice that the Online Course Provider accepted the course credit acknowledgement (53A-15-1208(3)(j)).

- c) The Primary LEA will continue to claim Special Education students in their Special Education membership (SCRAM membership).
- d) The Primary LEA shall monitor the SOEP Provider for compliance with the student's IEP.

Unresolved Issues and Potential Solutions:

- a) It appears that Institutes of Higher Education (IHE) are not required to follow federal regulations regarding Special Education (§34 CFR 300.300 (3)(ii)(b)).
- b) Is a Primary LEA or USOE required to ensure that FAPE is extended in all course-specific interactions with K-12 students, regardless of the nature of the Provider as an IHE?
- c) Who will be responsible for generalized (non-course-specific) Special Education services including IEP formation and management, and FAPE generally, for Home and Private School students?
- d) Is it feasible for Home and Private School students to access to Special Education services without the aid of a Primary LEA?
- e) Is it feasible for Home and Private School students to access to Special Education services without the aid of a Primary LEA, under direction of USOE?
- f) What 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, if students are not required to enroll with their boundary school within an LEA of residence?
- g) If students are not required to enroll with their boundary school within an LEA of residence, who should pay the costs for services required to be provided for Home and Private School students?
- h) Capacity of IHEs to offer Special Education services, as noted above.
- i) IHE's are not accredited and as such cannot award graduation credit. What policies surround this issue to ensure students are awarded credit that will be accepted for purposes of high school graduation?

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 R277-726-1(M) and R277-419-1(X) defining "Primary School of enrollment" and "School of enrollment," respectively, as that school where a student takes a "majority" of their classes.

Neither rule nor statute clarifies Primary LEA responsibility for students during periods of enrollment in SOEP online courses, which may be for a minority or a majority of a student's credit hours. A Primary LEA retains funding for centralized services. It is requested that the Board will clarify which services this will include. It is suggested that access to facilities, counseling and graduation, extracurricular, co-curricular and sports activities are considered.

Staff Recommendations:

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 for purposes of high school graduation.” It is suggested that it is noted in Board Rule that 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 graduation, counseling, and access to facilities, sports, extra-curricular and co-curricular activities, and determination of fee waiver eligibility, 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)).

Unresolved Issues and Potential Solutions:

Policy clarification in this area is necessary.

5) Fee Waiver-Eligible Materials

Online 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” (R277-407-3), in which case these materials would be subject to fee waiver provisions.

Staff Recommendations:

Policy clarification in this area is necessary.

6) Concurrent Enrollment

State Concurrent Enrollment (CE) Program defined in Utah Code Sections 53A-15-101 and 53A-17a-120.5, is distinct from the Statewide Online Education Program (SOEP) defined in Section 53A-15-1201 et seq. Section 53A-15-1206 provides for supplemental funding for online courses and ensures that a USHE institution may charge a concurrent enrollment student no more than \$10-\$15 per credit hour for the concurrent enrollment course for which the student receives college credit, while a USHE institution may charge a concurrent enrollment student who qualifies for free or reduced school lunch partial tuition of no more than \$5 per credit hour for each concurrent enrollment course for which the student receives college credit. Concurrent courses taught through the Statewide Online Education Program are not subsumed within these provisions, and tuition and fees charged to students are not similarly limited because there is no definition or qualifier that links the generic “concurrent enrollment” in Section 53A-15-1206 to the more specific and statutorily-defined CE in Sections 53A-15-102 and 53A-17a-120.5. This has resulted in a lack of equity for students enrolling in concurrent coursework through SOEP. Students are required to pay regular tuition to higher education entities not required when students enroll through their Primary LEA.

Unresolved Issues and Potential Solutions:

Policy clarification in this area is necessary.

7) 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 continues to increase, 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.

Staff Recommendations:

Policy clarification in this area is necessary.

Anticipated Action:

The Law and Licensing Committee will provide policy direction and request staff begin drafting modifications and additions to R277-726.