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## MEMORANDUM

**TO:** Members, Utah State Board of Education

**FROM:** Brad C. Smith  
Chief Executive Officer

**DATE:** August 6-7, 2015

**ACTION:** R277-616 *Education for Homeless and Emancipated Students*  
(Continuation and Amendment)

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### Background:

1. R277-616 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 November 8, 2015. Staff have reviewed R277-616 and determined that the rule continues to be necessary.
2. R277-616 is amended to provide technical and conforming changes.

### Key Points:

1. R277-616 continues to be necessary because it provides criteria for LEAs to follow to ensure that homeless children and youth have the opportunity to attend school with as little disruption as reasonably possible.
2. Technical and conforming changes are made throughout the rule.

### Anticipated Action:

1. It is proposed that the Standards and Assessment Committee consider approving R277-616 for continuation on first reading and, if approved by the Committee, the Board consider approving R277-616 for continuation on second reading.
2. It is proposed that the Standards and Assessment Committee consider approving R277-616, as amended, on first reading and, if approved by the Committee, the Board consider approving R277-616, as amended, on second reading.

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1 **R277. Education, Administration.**

2 **R277-616. Education for Homeless and Emancipated Students.**

3 **R277-616-[2]1. Authority and Purpose.**

4 ~~[A.](1)~~ This rule is authorized ~~[under]~~by:

5 ~~(a) Utah Constitution Article X, Section 3, [of the Utah State~~  
6 ~~Constitution,]~~which vests general control and supervision of the public school system  
7 under the Board;

8 ~~(b) Subsection 53A-1-401(3), which allows the Board to adopt rules in~~  
9 ~~accordance with its responsibilities[;];~~

10 ~~(c) Section 53A-11-101.5, which requires that minors between the ages of 6~~  
11 ~~and 18 attend school during the school year[;];~~

12 ~~(d) Subsection 53A-2-201(5), which makes each school district or charter~~  
13 ~~school responsible for providing educational services for all children of school age~~  
14 ~~who reside in the school district or attend the school[;]; and~~

15 ~~(e) the McKinney-Vento Homeless Assistance Act of 1987, Title VII, Subtitle~~  
16 ~~B, as amended, 42 U.S.C. 11431 through 11435.~~

17 ~~[B.](2)~~ The purpose of this rule is to ensure that homeless children/youth  
18 have the opportunity to attend school with as little disruption as reasonably possible.

19 **R277-616-[4]2. Definitions.**

20 ~~[A. "Board" means the Utah State Board of Education.]~~

21 ~~[B.](1)~~ "Domicile" means the place which a person considers to be the  
22 permanent home, even though temporarily residing elsewhere.

23 ~~[C.](2)~~ "Emancipated minor" means:

24 ~~([4]a)~~ a child under the age of 18 who has become emancipated through  
25 marriage or by order of a court consistent with Section 78A-6-801 et seq.; or

26 ~~([2]b)~~ a child recommended for school enrollment as an emancipated or  
27 independent or homeless child/youth by an authorized representative of the Utah  
28 State Department of Social Services.

29 ~~[D.](3)~~ "Enrolled" for purposes of this rule means a student has the  
30 opportunity to attend classes and participate fully in school and extracurricular  
31 activities based on academic and citizenship requirements of all students.

32           [E-](4) “Homeless child~~[f]~~” or “homeless youth” means a child who:  
33           ([1]a) lacks a fixed, regular, and adequate nighttime residence;  
34           ([2]b) has primary nighttime residence in a homeless shelter, welfare hotel,  
35 motel, congregate shelter, domestic violence shelter, car, abandoned building, bus  
36 or train station, trailer park, or camping ground;  
37           ([3]c) sleeps in a public or private place not ordinarily used as a regular  
38 sleeping accommodation for human beings;  
39           ([4]d) is, due to loss of housing or economic hardship, or a similar reason,  
40 living with relatives or friends usually on a temporary or emergency basis due to lack  
41 of housing; or  
42           ([5]e) is a runaway, a child or youth denied housing by his family, or school-  
43 age unwed mother living in a home for unwed mothers, who has no other housing  
44 available.

45           ~~[F. “Parent” means a parent or guardian having legal custody of a minor~~  
46 ~~child.]~~

47           [G-](5) “School district of residence for a homeless child/youth” means the  
48 school district in which the student or the student's legal guardian or both currently  
49 resides or the charter school that the student is attending for the period that the  
50 student or student's family satisfies the homeless criteria.

51           ~~[H. “USOE” means the Utah State Office of Education.]~~

52           **R277-616-3. Criteria for Determining Where a Homeless or Emancipated**  
53 **Student Shall Attend School.**

54           [A-](1) Under the McKinney-Vento Homeless Assistance Act of 1987, Title  
55 VII, Subtitle B, as amended, 42 U.S.C. 11431 through 11435, homeless  
56 ~~[students]~~children are entitled to immediate enrollment and full participation even if  
57 they are unable to produce records which may include medical records, birth  
58 certificates, school records, or proof of residency normally required for enrollment.

59           [B-](2) A homeless ~~[student]~~child or homeless youth shall:

60           ([1]a) be immediately enrolled even if the ~~[student]~~homeless youth does not  
61 have documentation required under Sections 53A-11-201, 301, 302, 302.5 and  
62 Section 53A-2-201 through 213;

63 ([2]b) be allowed to continue to attend his school of origin, to the extent  
64 feasible, unless it is against the parent[/~~guardian~~]'s wishes;

65 (c) be permitted to remain in the student's school of origin for the duration of  
66 the homelessness and until the end of any academic year in which the student  
67 moves into permanent housing; or

68 ([3]d) transfer to the school district of residence or charter school if space is  
69 available as defined under Subsection R277-616-11.

70 [~~B.~~](2) A [~~D.~~]determination of a residence or domicile for a homeless youth or  
71 emancipated minor may include consideration of the following criteria:

72 ([4]a) the place, however temporary, where the child actually sleeps;

73 ([2]b) the place where an emancipated minor or an unaccompanied  
74 [~~child/~~]youth or accompanied [~~child's/~~]youth's family keeps [~~its~~]the family's  
75 belongings;

76 ([3]c) the place which an emancipated minor or an unaccompanied  
77 [~~child/~~]youth or accompanied [~~child's/~~]youth's parent considers to be home; or

78 ([4]d) such recommendations concerning a child's domicile as made by the  
79 State Department of Human Services.

80 [~~E.~~](3) Determination of a residence or domicile for a homeless youth or  
81 emancipated minor may not be based upon:

82 ([4]a) rent or lease receipts for an apartment or home;

83 ([2]b) the existence or absence of a permanent address; or

84 ([3]c) a required length of residence in a given location.

85 [~~D.~~](4) If there is a dispute as to the residence or the status of an  
86 emancipated minor or an unaccompanied [~~child/~~]youth, the issue may be referred  
87 to the [~~USOE~~]Superintendent for resolution.

88 [~~E.~~](5) The purpose of federal homeless education legislation is to ensure  
89 that a child's education is not needlessly disrupted because of homelessness.

90 (6) If a child's residence or eligibility is in question, the child shall be admitted  
91 to school until the issue is resolved.

92 **R277-616-4. Transfer of Guardianship.**

93 [~~A.~~](1) If guardianship of a minor child is awarded to a resident of a school

94 district by action of a court or through appointment by a school district under Section  
95 53A-2-202, the child becomes a resident of the school district in which the guardian  
96 resides.

97 [B.](2) If a child's residence has been established by transfer of legal  
98 guardianship, no tuition may be charged by the new school district of residence.

99 **KEY: compulsory education, students' rights**

100 **Date of Enactment or Last Substantive Amendment: [August 8, 2011]2015**

101 **Notice of Continuation: [November 10, 2010]2015**

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

103 **53A-2-201(5); 53A-2-202**