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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: R277-100 *Rulemaking Policy* (Continuation and Amendment)

Background:

1. R277-100 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 10, 2015. Staff have reviewed R277-100 and determined that the rule continues to be necessary.
2. R277-100 is amended to provide technical and conforming changes to the rule.

Key Points:

1. R277-100 continues to be necessary because it provides rulemaking procedures for the Board as required under the Utah Administrative Rulemaking Act.
2. The amendments provide changes to numbering and terminology throughout the rule.

Anticipated Action:

1. It is proposed that the Law and Licensing Committee consider approving R277-100 for continuation on first reading and, if approved by the Committee, the Board consider approving R277-100 for continuation on second reading.
2. It is proposed that the Law and Licensing Committee consider approving R277-100, as amended, on first reading and, if approved by the Committee, the Board consider approving R277-100, as amended, on second reading.

Contact: Angie Stallings, 801-538-7550

1 **R277. Education, Administration.**

2 **R277-100. Rulemaking Policy.**

3 **R277-100-~~2~~1. Authority and Purpose.**

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

5 ~~(a)~~ Utah Constitution Article X, Section 3, which vests ~~[the]~~ general control
6 and supervision of public education in the Board~~;~~;

7 ~~(b)~~ ~~[by Section]~~ Title 63G~~[-3-401 et seq., the]~~, Chapter 3, the Utah
8 Administrative Rulemaking Act, which specifies procedures for a state agenc~~ies~~y
9 to follow in making rules~~;~~ and

10 ~~(c)~~ ~~[by]~~ Subsection 53A-1-401(3), which authorizes the Board to adopt rules
11 in accordance with its responsibilities.

12 ~~[B.](2)~~ The purpose of this rule is to conform the rulemaking procedures of
13 the Board and divisions supervised by the Board to those required under the Utah
14 Administrative Rulemaking Act.

15 **R277-100-~~4~~2. Definitions.**

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

17 ~~[B.](1)~~ "Bulletin" means the Utah State Bulletin.

18 ~~[C.](2)~~ "DAR" means the~~[State]~~ Division of Administrative Rules created in
19 Section 63G-3-401.

20 ~~[D.](3)~~ "Effective date" means the date on which a proposed rule becomes
21 enforceable.

22 ~~[E.](4)~~ "Hearing" means an administrative rulemaking hearing.

23 ~~[F.](5)~~ "LEA" or "local education agency" ~~[means a local education agency,~~
24 ~~including local school boards/public school districts, charter schools, and,]~~ for
25 purposes of this rule~~;~~ includes the Utah Schools for the Deaf and the Blind.

26 ~~[G.](6)~~ "Leadership Committee" means the Executive Committee of the Board
27 as defined in Board Bylaws.

28 ~~[H.](7)~~ "Publication date" means the date of the Bulletin in which the rule or
29 summary of the rule is printed.

30 ~~[I. "Rule"~~

31 ~~———(1) means a statement made by the Board that]~~

32 (8)(a) "Rule" means a statement by the Board that:
 33 (i) applies to a general class of persons, rather than specific persons; and:
 34 (~~a~~)ii)(A) implements or interprets a statutory policy;
 35 (~~b~~)B) prescribes the policy of the Board[~~in policy~~] consistent with Subsection
 36 53A-1-401(3);[~~or~~]
 37 (~~c~~)C) prescribes the administration of [~~the~~]a Board['s] function[s]; or
 38 (D) describes [~~its~~]the Board's organization, a procedure[s], or an[~~d~~]
 39 operation[s].
 40 (~~2~~)b) "Rule" does not include a declaratory order[s] under Section 63G-4-503.
 41 (~~J~~)(9) "Standing committee" means a committee consisting of Board
 42 members appointed by the[~~Board~~] Leadership Committee.
 43 [K. "Superintendent" means the State Superintendent of Public Instruction or
 44 the Superintendent's designee.
 45 —— L. "USOE" means the Utah State Office of Education.
 46 —— M. "USOR" means the Utah State Office of Rehabilitation.]

47 **R277-100-3. Initiation, Amendment, or Repeal of a Rule.**

48 [A.](1) The Board may make, amend, or repeal a rule[s].
 49 (~~1~~)2)(a) [~~Rulemaking is required by the Board when]~~The Board shall make
 50 a rule if:
 51 (~~a~~)i) explicitly or implicitly required by statutory or federal mandate; and
 52 [either]
 53 (~~b~~)ii)(A) a Board action affects a class of persons; or
 54 (~~c~~)B) a Board action affects the operation[s] of another agency, except as
 55 provided in Subsection [~~R277-100-3A(2)(c)](2)(b)(iii).~~
 56 (~~2~~)b) [~~Rulemaking]~~The Board is not required [~~by the Board when]~~to make a
 57 rule if:
 58 (~~a~~)i) a procedure or standard is already described in statute;
 59 (~~b~~)ii) a Board action affects an individual person, not a class of persons;
 60 (~~c~~)iii) a Board action concerns only the internal management of the Board,
 61 USOR, or USOE;
 62 (~~d~~)iv) the Board or Agency action is a grammatical or other insignificant

63 revision that does not affect policy or the application of Board decisions; or
64 ~~(e)~~ the Board or Agency action meets the standards of Subsection 63G-3-
65 201(4).

66 ~~[B. Public Petition]~~

67 ~~(1)3(a)(i)~~ A~~ny~~ person may petition the Board to make, amend, or repeal a
68 rule.

69 (ii) The petition shall contain:

70 (A) the name and address of the person submitting the rule~~;~~₁;

71 (B) a written copy of the proposal~~;~~₁;

72 (C) a statement concerning the Board's legal authority to act~~;~~₁ and

73 (D) the reasons for the proposal.

74 (iii) A person shall submit ~~[F]the petition[is submitted]~~ to the Superintendent.

75 ~~(2)b~~ The Superintendent shall review~~s~~ a petition~~s~~ prior to consideration
76 by the Board.

77 (c) Within 30 days after receiving a petition, the Superintendent shall do~~es~~
78 one of the following:

79 ~~(a)i~~ ~~[N]notif[ies]y~~ the petitioner that the petition has been denied and give~~s~~
80 a reason~~s~~ for the denial; or

81 ~~(b)ii~~ ~~[N]notif[ies]y~~ the petitioner that the petition has been accepted, and
82 specif[ies]y a date on which the Board will initiate rulemaking procedures~~[will be~~
83 ~~initiated]~~.

84 (d) The Superintendent shall include in the notice any ~~[C]changes in the~~
85 petitioner's proposal suggested by the Superintendent~~[are included in the notice]~~.

86 ~~(3)e(i)~~ A petitioner may appeal a decision by the Superintendent by sending
87 a signed request for consideration of the appeal, including a copy of the original
88 proposal and copies of correspondence with the Superintendent, if any, to the Chair
89 of the Board.

90 (ii) The Chair shall present~~s~~ the appeal to the Board.

91 (iii) If the Board votes to review the proposal, ~~[it is]~~the Board shall schedule[d]
92 the petition for a future meeting of the Board.

93 (iv) The decision of the Board is final.

94 **R277-100-4. Procedures for Making, Amending, or Repealing a Rule.**

95 [A. Regular Rules]

96 (1)(a) Prior to submitting a proposed rule to the Board, the Superintendent
97 shall ~~[ensure that]~~make a reasonable effort~~[s have been made]~~ to solicit information
98 from LEA officials, professional associations, and other affected parties concerning
99 the need for, and content of, the proposed rule.

100 ((2)b) Upon receiving notice of a proposed rule, the Leadership Committee
101 ~~[of the Board]~~ shall assign[s] the proposed rule to a standing committee or to the
102 entire Board.

103 ((3)c) If a ~~[Board]~~ standing committee reads a proposed rule initially, the
104 Board shall read the proposed rule~~[shall be read]~~ a second time before the entire
105 Board and the second reading shall include discussion of the standing committee
106 report~~[; and]~~.

107 ((4)d) After the entire Board reads a proposed rule, the Board may~~[choose~~
108 ~~to]~~:

109 ((a)i) consider the rule again at a future meeting with revisions incorporating
110 Board suggestions, by directing the Superintendent to change the proposed rule;

111 ((b)ii) receive notice of the proposed rule in its final form on the next Board
112 agenda, by directing the Superintendent to put the rule with its effective date on the
113 consent calendar for the Board's next meeting;

114 ((c)iii) allow the rule to become effective no fewer than 30 days nor more than
115 90 days after publication in the ~~[State]~~ Bulletin if the proposed rule is not rewritten
116 to incorporate public comments or suggestions, by directing the Superintendent to
117 send DAR notice of an effective date for the proposed rule~~[. The date shall be no~~
118 ~~fewer than 30 days nor more than 90 days after the publication date of the proposed~~
119 ~~rule]~~; or

120 ((d)iv) direct the Superintendent to take no further action on the rule.

121 ((5)e) Following the Board's approval of a proposed rule, the Board shall
122 direct[s] the Superintendent to prepare a rule analysis form and file the form and a
123 copy of the proposed rule with DAR.

124 (f) The Superintendent shall also send a copy of the proposed rule or make
125 the rule available electronically to:

126 ~~(a)~~ i) a person[s] who ha~~ve~~s filed a timely request with the Superintendent;

127 ~~(b)~~ ii) school district superintendents and charter school directors;

128 ~~(c)~~ iii) a person[s] who must be given notice by statutory or federal mandate;

129 and

130 ~~(d)~~ iv) another person[s] who, in the judgment of the Superintendent, should

131 receive notice.

132 ~~(f)~~ g) The Board shall allow[s] at least 30 days after publication in the Bulletin

133 for public comment on the proposed rule.

134 ~~(a)~~ h) i) The Superintendent shall:

135 A) maintain[s] a file containing a copy of the proposed rule and the rule

136 analysis form[~~;~~]; and

137 B) make[s] the file available to the public during the regular business hours

138 of the USOE upon request.

139 ii) The Superintendent shall keep the following in the file:

140 A) a ~~[W]~~ written comment[~~s~~];

141 B) a note[s] on a verbal comment[~~s~~];

142 C) information received electronically[~~;~~]; and

143 D) a hearing record[s], if any[~~, are kept in the file~~].

144 ~~(b) Hearings may be held by the Board as described in Section R277-100-6.]~~

145 ~~(c)~~ iii) The Board may follow Subsections [R277-100-4B or R277-100-4C](2)

146 and (3) to amend a rule after reviewing public comment.

147 ~~(d)~~ iv) A) During the 30-day comment period, the Board may direct the

148 Superintendent to take no further action on a rule.

149 B) ~~[The]~~ A) proposed rule automatically expires 90 days after ~~[its]~~ the

150 publication date.

151 ~~[B. Nonsubstantive Changes in a Rule]~~

152 ~~(1)~~ 2) a) The Superintendent may make a [N] nonsubstantive change[s may

153 be made in] to a rule under this section both before and after the effective date[~~of~~

154 the rule].

155 ~~(2)~~ b) A change is nonsubstantive if, in the opinion of the Superintendent,

156 ~~[it]~~ the change does not affect Board policy, application of the rule, or results of Board

157 action under the rule.

158 (~~3~~c) To enact a nonsubstantive change, the Superintendent shall prepare[s]
159 a copy of the new version of the rule and file[s] it with the DAR. ~~[The new version~~
160 ~~is effective upon filing.]~~

161 ~~[C. Substantive Changes in a Proposed Rule]~~

162 (3)(a) The Board may make a change in a previously published proposed rule
163 prior to its effective date.

164 (b) The Board shall direct[s] the Superintendent to:

165 ~~(1)~~i) prepare a new rule analysis form describing the change ~~[, and];~~

166 ~~(ii)~~ file ~~[it]~~the form and a copy of the revised propos~~ed~~ed rule with DAR; and

167 ~~(2)~~iii(A) notify DAR of the effective date of the revised rule ~~[, or~~

168 (B) allow the rule ~~[will]~~to automatically become effective 30 days after its new
169 publication date ~~[if no other date is specified].~~

170 ~~[D. Emergency Rules]~~

171 ~~(1)~~4(a) An emergency rule may be adopted under this section if the
172 Superintendent finds that delay resulting from following normal procedures will:

173 ~~(a)~~i) result in imminent peril to the public health, safety, or welfare;

174 ~~(b)~~ii) cause an imminent budget reduction because of budget restraints or
175 federal requirements; or

176 ~~(c)~~iii) place the Board in violation of federal or state law.

177 ~~(2)~~b) The Superintendent shall notif~~ies~~y the Board Chair of the need to
178 enact an emergency rule.

179 ~~(3)~~c) If the Board Chair concurs in the recommendation, the Superintendent
180 shall:

181 ~~(a)~~i) prepare[s] and file[s] a copy of the proposed emergency rule and the
182 rule analysis form with DAR, stating the specific reason[s] for the adoption of the
183 rule;

184 ~~(b)~~ii) notif~~ies~~y DAR of the effective date and the lapsing date for the
185 proposed emergency rule ~~[. If no effective date is specified, the proposed emergency~~
186 ~~rule becomes effective on the filing date. If no lapsing date is specified, the~~
187 ~~proposed emergency rule lapses 120 days after the filing date. No emergency rule~~
188 ~~may remain in effect for more than 120 days]; and~~

189 ~~(c)~~iii) mail[s] a copy of the rule analysis form to the members of the Board

190 and to persons specified in Subsection ~~[R277-100-4A(5)](1)(f)~~.

191 (d)(i) If no effective date is specified, the proposed emergency rule becomes
192 effective on the filing date.

193 (ii) If no lapsing date is specified, the proposed emergency rule lapses 120
194 days after the filing date.

195 (iii) An emergency rule may not remain in effect for more than 120 days.

196 **R277-100-5. Formal Adoption by the Board of Procedures, Handbooks, and**
197 **Manuals, and Reference to those Documents in Rules.**

198 ~~[A.](1)(a)~~ Under Board direction, a division[s] under the supervision of the
199 Board[;] may periodically develop or amend ~~[various]~~a policy manual[s] or policy
200 handbook[s ~~which may~~] that does not~~[necessarily]~~ qualify ~~[to be]~~as a rule[s] or
201 ~~[are]~~is not suitable for the normal rulemaking procedures.

202 ~~(b) [These]~~A division shall~~[be]~~ present~~[ed]~~ a policy manual or handbook
203 described in Subsection (1)(a) to the Board for ~~[purposes of]~~the Board's formal
204 adoption or amendment.

205 ~~[B.](2)~~ An LEA[s] shall have electronic access to ~~[such documents which are~~
206 ~~to be]~~the policy manual or handbook considered for adoption by the Board.

207 ~~[C.](3)~~ An LEA[s] shall comply with ~~[the provisions of such documents,]~~a
208 policy manual or handbook after the formal adoption or amendment by the Board~~[~~
209 ~~of a USOE policy manual or policy handbook]~~.

210 ~~[D.](4)~~ Following formal review by the Board, the Board's designation of a
211 handbook, manual, or similar document as a policy manual or policy handbook is
212 conclusive for purposes of this rule.

213 **R277-100-6. Hearings.**

214 ~~[A. When to hold hearings]~~

215 (1)(a) The Board may hold a hearing[s] during a regular or special meeting.

216 ~~(2)~~(b) The Board shall hold a hearing[s] if:

217 ~~(a)~~(i) required by state or federal law; or

218 ~~(b)~~(ii) an affected agency, ten persons, or an organization having not fewer
219 than ten members submits a written request for a hearing to the Superintendent not

220 more than 15 days after the publication date of the proposed rule, amendment, or
221 rule repeal.

222 (c) The Board shall hold a~~[The]~~ hearing ~~[shall be held]~~described in
223 Subsection (1)(b) within 30 days of receipt of the request.

224 ~~[B. Hearing Procedures]~~

225 ~~(1)~~2(a) Notice of a hearing regarding a proposed rule[s] published in the
226 Bulletin is provided by:

227 ~~(a)~~i publication of the hearing date, time, place, and subject matter in the
228 Bulletin;

229 ~~(b)~~ii posting of the notice of information contained on the rule analysis form
230 in a place frequented by the public consistent with Title 52, Chapter 4, Open and
231 Public Meetings Act;

232 ~~(c)~~iii sending persons who receive rule analysis forms under Subsection
233 R277-100-4~~[A(5)]~~(1)(f) written notice of any changes made in the notice information
234 contained on the rule analysis form;

235 ~~(d)~~iv giving further notice required by law or regulation; and

236 ~~(e)~~v sending notice to those requesting the hearing, if the hearing is
237 requested under Subsection ~~[R277-100-6A(2)(b)]~~(1)(b)(ii).

238 ~~(2)~~b Notice of a hearing[s] held prior to proposing the rule is given by:

239 ~~(a)~~i posting the hearing date, time, place, and subject in a place frequented
240 by the public consistent with Title 52, Chapter 4, Open and Public Meetings Act; and

241 ~~(b)~~ii providing the notice information to persons specified in Subsection
242 ~~[R277-100-4A(1)]~~(1)(a).

243 ~~[C:]~~(3)(a) The Board may hold the hearing itself[;] or appoint any person who
244 can fairly conduct the hearing, other than the Superintendent, ~~[to be the]~~as a hearing
245 officer.

246 (b) The hearing officer shall know rulemaking procedures, but may not be
247 directly responsible for administering the rule.

248 ~~[D. Conducting the Hearing]~~

249 ~~(1)~~4(a)(i) Upon opening the hearing, the hearing officer shall explain[s] the
250 purpose of the hearing and invite[s] orderly, germane comment.

251 (ii) The hearing officer may set time limits for speakers and otherwise control

252 prudent use of time.

253 ~~([2]b)~~(i) The hearing officer shall rule[s] on a question[s] of relevance and
254 redundancy.

255 (ii) An ~~[O]~~oath[s], cross-examination, and rules of evidence are not required.

256 ~~(iii) The hearing officer shall conduct [F]the hearing[is conducted]~~ as an open,
257 informal, orderly, and informative meeting.

258 ~~([3]c)~~ A person familiar with the rule at issue may be asked to be present at
259 the hearing to respond to inquiries and to provide information.

260 ~~([4]d)~~(i) The hearing officer may invite written comment to be submitted at the
261 hearing or within a reasonable time thereafter.

262 (ii) A ~~[W]~~written comment[s] shall include the name, address, and, if
263 applicable, the organization represented by the person making the comment[s].

264 (iii) A ~~[W]~~written comment or electronically received comment shall be
265 appended to the hearing minutes.

266 ~~[E. The Record]~~

267 ~~([1]5)~~(a) The hearing officer or a person appointed to take minutes shall
268 record[s] the name, address, and organization represented by each person speaking
269 at the hearing, and a brief summary of the remarks.

270 ~~([2]b)~~ In the alternative, a hearing may be recorded by audio or video.

271 ~~([3]c)~~(i) Hearing minutes, a hearing recording, ~~[{if available}]~~, a copy of the
272 proposed rule, written comments, the findings and recommendations of the hearing
273 officer, the decision of the Board, and other pertinent documents constitute the
274 record of the hearing.

275 (ii) The record is maintained in a file available to the public at the USOE
276 during regular business hours by appointment.

277 ~~[F. Findings and Recommendations]~~

278 ~~([4]6)~~(a) The hearing officer shall make[s] written findings and
279 recommendations, including any facts pertinent to the hearing, recommendations for
280 Board action, and reasons for the recommendations.

281 ~~([2]b)~~ The hearing officer shall transmit[s] the findings, recommendations,
282 and the complete record of the hearing to the Board as soon as possible following
283 the close of the hearing.

284 ~~(3)c~~ ~~[When]~~ If the Board conducts the hearing, the Chair shall prepare~~s~~
285 written findings, the decision, and reasons for the decision.

286 ~~[G. The Decision]~~

287 ~~(4)7(a)~~(i) The Board shall issue~~s~~ a written decision as soon as possible
288 after the close of the hearing and before the rule becomes effective.

289 ~~(ii)~~ The decision shall state~~s~~:

290 ~~(A)~~ whether the proposed rule will be adopted, changed, or withdrawn;

291 ~~(B)~~ any alternative action, such as whether a rule will be proposed on the
292 subject matter of the hearing; and

293 ~~(C)~~ reasons for the decision.

294 ~~(iii)~~ The written decision is included in the hearing record.

295 ~~(2)b~~ If the hearing is held under Subsection [R277-100-6A(2)](1)(b), the
296 Board shall mail~~s~~ a copy of or send~~s~~ electronically the decision to the person who
297 requested the hearing.

298 ~~[H:]~~(8) A decision of the Board may be appealed to a district court.

299 **R277-100-7. Board Review of Rules and Declaratory Judgments.**

300 ~~[A. Five Year Review]~~

301 ~~(1)a~~ The Board shall review~~s~~ each rule within five years of its effective
302 date and at five year intervals thereafter.

303 ~~(2)b~~ The Superintendent shall coordinate with DAR to ensure that ~~[all~~
304 ~~Administrative rules are]~~ the Board adequately reviews~~[ed by the Board]~~ a rule prior
305 to the five year review deadline.

306 ~~(3)c~~ The Superintendent shall complete ~~[A] all [other-]paperwork[- shall be~~
307 ~~completed by the Superintendent]~~ to repeal or reenact ~~[the]~~ a rule[s].

308 ~~[B. Declaratory Judgments on the Applicability of a Rule]~~

309 ~~(4)2~~(a) An interested person may petition the Board for a ruling on the
310 applicability of a particular Board provision, rule, or order in a stated case by filing
311 a petition for a declaratory judgment with the Superintendent.

312 ~~(2)b~~(i) The petition shall contain:

313 ~~(A)~~ the petitioner's name, address, and phone number;

314 ~~(B)~~ the Board provision, rule, or order; and

315 (C) a statement of the facts of the case.

316 (ii) The person shall file the petition~~[shall be filed]~~ within six months of the
317 application of the rule to the interested party or to a person represented by the
318 interested party.

319 ~~(3)~~(c) Within 15 days of the filing of the petition, the Superintendent shall
320 make~~s~~ a recommendation to the Board regarding the applicability of the provision,
321 rule, or order to the case.

322 ~~(4)~~(d) Prior to issuing a decision, the Board may:

323 ~~(a)~~(i) conduct a hearing on the matter under Section R277-100-6~~[-The~~
324 ~~hearing shall begin]~~, no sooner than 15 days and no later than 45 days after
325 receiving the petition; or

326 ~~(b)~~(ii) appoint a staff member to conduct an investigation of the case.

327 (e) The investigator shall make~~s~~ a recommendation to the Board as soon
328 as possible after the close of the investigation.

329 ~~(5)~~(f)(i) The Board shall notif~~ies~~y the petitioner by certified mail of its
330 decision to conduct a hearing or investigation.

331 (ii) The ~~(N)~~notice shall include~~s~~:

332 (A) the time, date, and place of the hearing and the name of the hearing
333 officer; or~~;~~

334 (B) in the case of an investigation, the name of the staff member responsible
335 for conducting the investigation.

336 ~~(6)~~(g)(i) The Board shall issue~~s~~ a ruling regarding the applicability of the
337 provision, rule, or order within:

338 (A) 60 days of the filing of the petition~~;~~₁; or

339 (B) if a hearing is held, as soon as possible after the close of a hearing.

340 (ii) The Board's ruling shall include~~s~~:

341 (A) reasons for the decision₁; and

342 (B) ~~is~~be sent by certified mail to the petitioner.

343 ~~(7)~~(h) The Superintendent shall maintain~~s~~ a complete copy of the Board's
344 current rules for public inspection at the ~~[Superintendent's Office]~~USOE during
345 regular business hours.

346 **KEY: administrative procedures, rules and procedures**
347 **Date of Enactment or Last Substantive Amendment: [~~January 10, 2012~~2015**
348 **Notice of Continuation: [~~November 11, 2010~~2015**
349 **Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 63G-3-101 et**
350 **seq.; 53A-1-401(3)**