

MEMORANDUM

TO: Members, Utah State Board of Education

FROM: Angie Stallings, Associate Superintendent
Policy and Communication

DATE: January 6-7, 2016

ACTION: R277-716 *Alternative Language Services for Utah Students* (Continuation and Amendment)

Background:

R277-716 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 March 30, 2016. Staff have reviewed R277-716 and determined that the rule continues to be necessary. R277-716 is amended to provide technical and conforming changes to be in compliance with the Utah Administrative Rule Drafting Manual.

Key Points:

1. R277-716 continues to be necessary because it provides standards and procedures that clearly define the responsibility of the Board and LEAs to provide consistent and appropriate services to identified students.
2. The amendments for R277-716 provide technical and conforming changes throughout the rule.

Anticipated Action:

1. It is proposed that the Law and Licensing Committee consider approving R277-716 for continuation on first reading and, if approved by the Committee, the Board consider approving R277-716 for continuation on second reading.
2. It is proposed that the Law and Licensing Committee consider approving R277-716, as amended, on first reading and, if approved by the Committee, the Board consider approving R277-716, as amended, on second reading.

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1 **R277. Education Administration.**

2 **R277-716. Alternative Language Services for Utah Students.**

3 **R277-716-[2]1. Authority and Purpose.**

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

5 (a) Utah Constitution Article X, Section 3₁ which vests general control and
6 supervision of public education in the Board[~~, by~~];

7 (b) [~~No Child Left Behind~~]Title III[~~Language Instruction for Limited English~~
8 ~~Proficient and Immigrant Students~~]; and

9 (c) Subsection 53A-1-401(3)₁ which allows the Board to adopt rules in
10 accordance with its responsibilities.

11 [B-](2) The purpose[s] of this rule [are]is:

12 ([+]a) to address the requirements of Title [~~V~~]III and implementing regulations
13 and case law; and

14 ([2]b) to clearly define the respective responsibilities of the
15 [~~Board~~]Superintendent and [~~local boards of education~~]LEAs:

16 ([a]i) in identifying ELL/LEP students who are currently enrolled in Utah
17 schools;

18 ([b]ii) in providing consistent and appropriate services to identified students;
19 and

20 ([3]iii) in order to:

21 (A) meet [~~NCLB~~]Title III requirements[;];

22 (B) [~~to~~]meet [~~NCLB~~]funding eligibility requirements; and

23 (C) [~~to~~]appropriately distribute ELL/LEP funds to [~~school districts/charter~~
24 ~~schools~~]LEAs with adequate policies.

25 **R277-716-[4]2. Definitions.**

26 [A-](1) “Alternative language services program” or “ALS program” means a
27 research-based language acquisition instructional service model used to achieve
28 English proficiency and academic progress of identified students.

29 [B-](2) “Alternative language services” or [{"ALS}” means language services
30 designed to meet the education needs of all language minority students so that
31 students are able to participate effectively in the regular instruction program.

32 [G.](3) “Annual measurable achievement objectives” or [{"AMAOs}]" means
33 English Language Proficiency Performance Targets established by the
34 [USOE]Superintendent consistent with [NCLB]Title III requirements for public school
35 students who are receiving language acquisition services in the state of Utah as
36 required by [Title III, Section 3122]20 U.S.C. 6842.

37 [D.](4) “Approved language acquisition instructional services model” means
38 methods of ALS instruction that are evidence-based and recommended by the U.S.
39 Department of Education and the [USOE]Superintendent.

40 [E. ~~“Board” means the Utah State Board of Education.~~]

41 [F.](5) “Consolidated Utah Student Achievement Plan” means the application
42 for federal funds authorized under ESEA, and other federal sources submitted
43 annually to the [Utah State Office of Education]Superintendent.

44 [G.](6) “English Language Learner/Limited English Proficient” or
45 [{"ELL/LEP}]" means an individual:

46 ([1]a) who has sufficient difficulty speaking, reading, [and] writing, or
47 understanding the English language, and whose difficulties may deny [~~such~~]the
48 individual the opportunity to:

49 (i) learn successfully in classrooms where the language of instruction is
50 English; or

51 (ii) [~~which may deny the individual the opportunity to~~]participate fully in
52 society;[or]

53 ([2]b) who was not born in the United States or whose native language is a
54 language other than English and who comes from an environment where a language
55 other than English is dominant; or

56 ([3]c) who is an American Indian or Alaskan native or who is a native resident
57 of the outlying areas and comes from an environment where a language other than
58 English has had a significant impact on such individual’s level of English language
59 proficiency.

60 [H. ~~“IEP” means Individualized Education Program for eligible students with
61 disabilities under the Individuals with Disabilities Education Act of 2004.~~]

62 [I.](7) “Immigrant children and youth” for purposes of this rule means
63 individuals who:

64 ([4]a) are ages 3 through 21;
65 ([2]b) were born outside of the United States; and
66 ([3]c) have not been attending one or more schools in any one or more states
67 of the United States for more than [3]three full academic years.

68 [J.](8) “Instructional Materials Commission” means a Commission appointed
69 by the Board to evaluate instructional materials for recommendation by the Board
70 consistent with [Section 53A-14-101]Title 53A, Chapter 14, State Instructional
71 Materials Commission.

72 [K.](9) “Language acquisition instructional program” means an instructional
73 program for students for the purpose of developing and attaining English proficiency,
74 while meeting state academic content and achievement standards.

75 [~~L. “Mountain West Consortium” means a committee consisting of 10~~
76 ~~Western state education agencies formed to develop a multi-state English~~
77 ~~proficiency test.~~]

78 [M.](10) “State Approved Endorsement Program” or [({“SAEP”})]” means a
79 professional development plan on which a licensed Utah educator is working to
80 obtain an endorsement.

81 [N. ~~“USOE” means the Utah State Office of Education.~~]

82 (11) “Title III” means federal provisions for providing language instruction to
83 ELL/LEP students under 20 U.S.C. 6801, et seq.

84 **R277-716-3. [State Board of Education]Superintendent Responsibilities.**

85 [A.](1) The [Board]Superintendent shall make available an identification and
86 placement procedure model to [~~local school boards~~]LEAs to provide language
87 acquisition services for [~~LEP/~~]ELL/LEP students.

88 [B.](2) The [Board]Superintendent shall develop and require all [~~school~~
89 ~~districts/charter schools~~]LEAs to use the statewide annual assessment based on the
90 AMAOs for English language acquisition to measure growth and progress in:

- 91 (a) listening[.];
- 92 (b) speaking[.];
- 93 (c) reading[, and];
- 94 (d) writing; and

95 (e) comprehension~~[based on the Title III AMAOs for English language~~
96 acquisition].

97 (3) ~~[For the 2005-2006 school year, t]~~The Utah Academic Language
98 Proficiency Assessment (UALPA) shall be administered~~[between January 1 and~~
99 May 1, 2006. Each year thereafter, the testing window shall be open] throughout the
100 school year.

101 (4) ~~[School districts]~~An LEA may determine restricted testing dates within the
102 school year.

103 ~~[C:]~~(5) The ~~[Board]~~Superintendent shall apply a formula and distribute funds
104 to ~~[local boards]~~LEAs for identification and services to ELL/LEP students and their
105 families.

106 ~~[(1)]~~a) The formula shall provide an amount based upon eligible students and
107 available funds, to be distributed to all eligible ~~[school districts/charter schools]~~LEAs
108 and consortia consistent with Title III requirements.

109 ~~[(2)]~~b) The formula shall provide for an additional amount to qualifying ~~[school~~
110 ~~districts/charter schools]~~LEAs based on numbers of immigrant children and youth.

111 ~~[D:]~~(6) The ~~[Board]~~Superintendent shall make~~[available to school~~
112 ~~districts/charter schools]~~ models and accountability measures in providing ALS
113 services to students ~~[School districts/charter schools]~~ available to LEAs.

114 (7) An LEA shall use ~~[Board]~~Superintendent-identified models or models
115 based upon educational research.

116 ~~[E:]~~(8) ~~[The Board shall require school districts/charter schools]~~An LEA that
117 receives ~~[NCLB]~~Title III funds under this rule ~~[to]~~shall provide the following to the
118 Superintendent:

119 ~~[(1)]~~a) ~~[provide]~~a budget as part of the Consolidated Utah Student
120 Achievement Plan data on student achievement;

121 ~~[(2)]~~b) ~~[provide]~~the number of students served with Title III funds;

122 ~~[(3)]~~c) ~~[provide]~~assurances and documentation maintained of services or a
123 program used to serve students~~;~~ ~~[school districts/charter schools shall maintain~~
124 ~~documentation of services or program];~~

125 ~~[(4)]~~d) ~~[provide]~~assurances and documentation maintained of required parent
126 notification~~;~~ ~~[school districts/charter schools shall maintain documentation of parent~~

127 notification]; and
128 ([5]e) [~~provide in~~] a biennial report[~~a~~] summar[y]izing [of] the [school
129 district's/charter school's]LEA's progress [under]in Subsection [R277-716-3G](10)
130 [~~over a two year period~~] in addition to the annual Consolidated Utah Student
131 Achievement Plan information.

132 [F.](9) The [Board]Superintendent shall provide timelines to [school
133 districts]LEAs for meeting Title III requirements.

134 [G.](10) The [Board]Superintendent shall assist and provide training to [school
135 districts/charter schools]LEAs in development of ALS and Title III services to
136 students who do not meet prescribed English proficiency AMAOs.

137 [H.](11) [~~Monitoring: the USOE shall remind school districts/charter schools~~
138 annually in November that school districts/charter schools]An LEA shall maintain:

139 ([1]a) an ALS budget plan;

140 ([2]b) a plan for delivering student instruction;

141 ([3]c) ALS assessments to date;

142 ([4]d) a sample of parent notification required under Subsection R277-716-
143 4[F](7); and

144 ([5]e) documentation or evidence of progress of required Title III AMAOs.

145 [I.](12) [~~USOE staff~~]The Superintendent shall [make]conduct on-site [visits
146 to]audits of all funded ALS programs [~~within every five year period beginning with~~
147 ~~2006~~]at least once every five years.

148 [J.](13) [~~USOE staff~~]The Superintendent shall provide technical assistance
149 during on-site [visits]audits and as the [~~USOE~~]Superintendent deems necessary.

150 **R277-716-4. [~~Local Board of Education~~]LEA Responsibilities.**

151 [A.](1) An [~~local board of education~~]LEA that receives funds under Title III[~~of~~
152 NCLB] shall assure as part of the Consolidated Utah Student Achievement Plan that
153 the [~~local board~~]LEA has a written plan that:

154 ([1]a) includes an ELL/LEP student find process, including a home language
155 survey and a language proficiency for program placement, that is implemented with
156 student registration;

157 ([2]b) uses a valid and reliable assessment of an ELL/LEP student's English

158 proficiency in:

159 (i) listening[;];

160 (ii) speaking[;];

161 (iii) reading[;];

162 (iv) writing[;]; and

163 (v) comprehension[~~of English of identified ELL/LEP students~~];

164 ([3]c) provides language acquisition instructional services based on
165 ~~[the]Board-approved Utah English Language Proficiency Standards[approved by the~~
166 ~~Board on September 1, 2005]~~;

167 ([4]d) establishes student exit criteria from ALS programs or services; and

168 ([5]e) includes the ELL/LEP student count, by classification, prior to July 1 of
169 each year.

170 ~~[B.](2) Following [funding, a school district/charter school]~~receipt of Title III
171 funds, an LEA shall:

172 ([4]a) determine what type of Title III ALS services are available and
173 appropriate for each student identified in need of ALS services[~~Examples include~~],
174 including:

175 (i) dual immersion[;];

176 (ii) ESL content-based[~~or~~]; and

177 (iii) sheltered instruction;

178 ([2]b) implement an approved language acquisition instructional program
179 designed to achieve English proficiency and academic progress of an identified
180 student[s];

181 ([3]c) ensure that all identified ELL/LEP students receive English language
182 ~~[development]~~instructional services, consistent with ~~[R277-716-4A(3)]~~Subsection
183 (1)(c);

184 ([4]d) provide adequate staff development to assist an ELL/LEP teacher[s]
185 and staff in meeting AMAOs; and

186 ([5]e) provide necessary staff[;] with:

187 (i) curricular materials approved by the Instructional Materials Commission
188 consistent with R277-469[;]; and

189 (ii) facilities for adequate and effective training[;].

190 ~~[G:]~~(3) If ~~[school districts/charter schools do]~~an LEA does not meet AMAOs,
191 the~~y]~~ LEA shall develop and implement improvement plans to satisfy AMAOs.

192 ~~[D:]~~(4) Following evaluation of student achievement and services, ~~an [school~~
193 ~~district/charter school]~~LEA shall:

194 ([1]a) analyze results and determine the program's^[?] success or failure; and
195 ([2]b) modify a program or services that are not effective in meeting the state
196 AMAOs.

197 ~~[E:]~~(5) An ~~[school district/charter school]~~LEA shall have a policy to identify
198 and serve students who qualify for services under IDEA, including:

199 ([1]a) implementing procedures and training, consistent with federal
200 regulations and state special education rules, that ensure ELL/LEP students are not
201 misidentified as students with disabilities due to their inability to speak and
202 understand English;

203 ([2]b) reviewing the assessment results of a student's^[?] language proficiency
204 in English and other language prior to initiating evaluation activities, including
205 selecting additional assessment tools;

206 ([3]c) conducting assessments for IDEA eligibility determination and
207 educational programming in a student's^[?] native language when appropriate;

208 ([4]d) using nonverbal assessment tools when appropriate;

209 ([5]e) ensuring that accurate information regarding a student's^[?] language
210 proficiency in English and another language~~(s)]~~ is considered in evaluating
211 assessment results;

212 ([6]f) considering results from assessments administered both in English and
213 in ~~[the]~~a student's^[?] ~~home]~~ native language;~~[-and]~~

214 ([7]g) ensuring that all required written notices and communications with a
215 parent~~s]~~ who ~~[are]~~is not proficient in English ~~[are]~~is provided in the parent's^[?]
216 preferred language to the extent practicable, including utilizing interpretation services
217 when appropriate; and

218 ([8]h) coordinating the language acquisition instructional services and special
219 education and related services to ensure that the IEP is implemented as written.

220 ~~[F:]~~(6) An ~~[school district/charter school]~~LEA shall~~[-also]~~ provide information
221 and training to staff that:

222 (a) limited English proficiency is not a disability; and
223 (b) if there is evidence that a student[s] with limited English proficiency ha[ve]s
224 a disabilityy, ~~[they shall be referred]~~the staff shall refer the student for possible
225 evaluation for eligibility under IDEA.

226 [G.](7)(a) ~~[Parent involvement and notification:~~

227 ~~—(1) Each school district/charter school]~~An LEA shall notify a parent[s] who
228 ~~[are]~~is not proficient in English of ~~[school district/charter school]~~the LEA's required
229 activities.

230 (b) A ~~[S]~~School[s] shall provide information about required and optional school
231 activities in ~~[the]~~a parent's² preferred language to the extent practicable.

232 ([2]c) ~~[School districts/charter schools]~~An LEA shall provide interpretation and
233 translation services for a parent[s] at:

234 (i) registration[;];

235 (ii) an IEP meeting[s;];

236 (iii) an SEOP meeting[s;];

237 (iv) a parent-teacher conference[s;]; and

238 (v) a student disciplinary meeting[s].

239 ([3]d) ~~[School districts/charter schools]~~An LEA shall provide annual notice to
240 a parent[s] of a student[s] placed in a language acquisition instructional program[s]
241 at the beginning of the school year or no later than 30 days after identification.

242 (e) If a ~~[child]~~student has been identified as requiring ALS services after the
243 school year has started, ~~[parent notification shall take place]~~the LEA shall notify the
244 student's parent within 14 days of the student's identification and placement.

245 (8) ~~[The]~~A required notice described in Subsection (7) shall include:

246 (a) the student's¹ ~~[level of]~~ English proficiency level[;];

247 (b) how ~~[such]~~the student's English proficiency level was assessed¹, ~~[and]~~;

248 (c) the status of the student's academic achievement;

249 (b)d) the methods of instruction proposed to increase language acquisition,
250 including using both the student's native language and English if necessary;

251 (e)e) ~~[specifically,]~~specifics regarding how the methods of instruction will help
252 the child learn English and meet age-appropriate academic achievement standards
253 for grade promotion and graduation; and

254 ([d]f) the specific exit requirements for the program including:
255 (i) the student's expected rate of transition from the program into a
256 classroom[s] that [are]is not tailored for an LEP student[s]; and
257 (ii) the student's expected high school graduation ~~[from secondary~~
258 ~~school(s)]date~~ if funds appropriated consistent with this rule are used for a
259 secondary school student[s].
260 ([4]9)(a) ~~[School districts/charter schools]~~An LEA shall provide notice to a
261 parent[~~s~~] of an ELL/LEP student[s ~~in addition to other required parent notification~~]
262 if the ~~[school district/school]~~LEA fails to meet AMAOs.
263 (b) ~~[Notice shall be provided]~~An LEA shall provide a parent the notice
264 described in Subsection (9)(a) within 30 days of the [school district's/charter
265 school's]LEA's receipt of the annual State Title III Accountability Report from the
266 ~~[USOE]~~Superintendent.

267 **R277-716-5. Teacher Qualifications.**

268 ~~[A.]~~(1) A Utah educator[s] who [are]is assigned to provide instruction in a
269 language acquisition instructional program[s] shall comply with the State ESL
270 Endorsement requirements provided in Rule R277-520.

271 ~~[B.]~~(2) A ~~[teachers]~~Utah educator whose primary assignment is to provide
272 English language instruction to an ELL/LEP student[s] shall have an ESL or ESL[f]
273 or Bilingual endorsement consistent with the educator's assignment.

274 **R277-716-6. Miscellaneous Provisions.**

275 ~~[A.]~~(1)(a) ~~[School districts/charter schools]~~An LEA that generates less than
276 \$10,000 from the ~~[if]~~ LEA's ELL/LEP student count, ~~[are encouraged to]~~may form a
277 consortium with other similar ~~[school districts/charter schools]~~LEAs.

278 ([1]b) ~~[The]~~A consortium described in Subsection (1)(a) shall designate a
279 fiscal agent and shall submit all budget and reporting information from all of the
280 member ~~[school districts/charter schools]~~LEAs of the consortium.

281 ([2]c) Each member of ~~[the]~~a consortium shall submit plans and materials to
282 the fiscal agent of the consortium for final reporting submission to the
283 ~~[USOE]~~Superintendent.

284 (~~3~~)d) [~~The consortium~~]A fiscal agent of a consortium described in Subsection
285 (1)(a) shall assume[s] all responsibility of an [~~local board~~]LEA under Section R277-
286 716-4.

287 [B.](2) No [~~school district, charter school~~]LEA or consortium may withhold
288 more than two percent of[~~NCLB~~] Title III funding for administrative costs in serving
289 ELL/LEP students.

290 **KEY: alternative language services**

291 **Date of Enactment or Last Substantive Amendment: [~~April 3, 2006~~]2016**

292 **Notice of Continuation: [~~March 30, 2011~~]2016**

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