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MEMORANDUM

TO: Members, Utah State Board of Education

FROM: Tim Donaldson, Director, School Children's Trust

DATE: April 14-15, 2016

ACTION: *R277-477 Distributions of Funds from the Interest and Dividends Account and Administration of the School LAND Trust Program (Amendment)*

Background: The School Children's Trust Section has come across a few funding-related questions that need clarification from a consistency standpoint. As charter schools add satellite schools, there have been some questions on how a new school should be treated within the current funding mechanism as to when schools would receive a "base." The legislative auditor issued an audit in the early years of the School LAND Trust Program that indicated nominal student incentives were appropriate as a component of an education goal. The definition of "nominal" has not been defined and should be more objective and consistent. In the past, schools have been allowed to overspend School LAND Trust funds if it was a small amount in a given year when the amount was repaid in the following year. The section has been informed that the practice needs to stop. Finally, as a step forward to increased transparency, each school community council member is required to sign a form at the end of each year indicating the council member's involvement in implementing and approving their school's School LAND Trust Plan. There are a number of methods available for council members to provide a signature, two of which are made available through the School Children's Trust Section website. The programmers of the website and the school community councils need clarification regarding the available options.

Board Strategic Plan: This item supports the following imperative(s) and strategies in the Board's Strategic Plan: Oversight.

Anticipated Action: It is proposed that the Law and Licensing Committee consider approving R277-477, as amended, on first reading and, if approved by the Committee, the Board consider approving R277-477, as amended, on second reading.

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1 **R277. Education, Administration.**

2 **R277-477. Distributions of Funds from the Interest and Dividends Account and**
3 **Administration of the School LAND Trust Program.**

4 **R277-477-1. Authority and Purpose.**

5 (1) This rule is authorized by:

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

8 (b) Subsection 53A-16-101.5(4), which allows the Board to adopt rules
9 regarding the time and manner in which a student count shall be made for allocation
10 of funds; and

11 (c) S[~~ubs~~]ubsection 53A-1-401[(3)], which allows the Board to [adopt rules in
12 accordance with its responsibilities]make rules to execute the Board's duties and
13 responsibilities under the Utah Constitution and state law.

14 (2) The Board is the primary beneficiary representative and advocate for the
15 beneficiaries of the School Trust corpus and the School LAND Trust Program.

16 (3) The purpose of this rule is to:

17 (a) provide financial resources to a public school to implement a component
18 of a school's improvement plan or charter document in order to enhance and improve
19 student academic achievement;

20 (b) provide a means to involve a parent of a school's student in
21 decision-making regarding the expenditure of School LAND Trust Program funds
22 allocated to the school;

23 (c) provide direction in the distribution of funds from the Interest and Dividends
24 Account, as funded in Subsection 53A-16-101.5(3);

25 (d) provide for appropriate and adequate oversight of the expenditure and use
26 of funds by a designated local board of education, an approving entity, and the
27 Board;

28 (e) provide for proper allocation of funds as stated in Subsections
29 53A-16-101.5(3) and (4), and the appropriate and timely distribution of the funds;

30 (f) enforce compliance with statutory and rule requirements, including the
31 responsibility for a school community council to notify school community members
32 regarding the use of funds; and

33 (g) define the roles, duties, and responsibilities of the School Children's Trust
34 Director within the USOE.

35 **R277-477-2. Definitions.**

36 (1) "Approving entity" means an LEA governing board, university, or other
37 legally authorized entity that may approve or reject a plan for a district or charter
38 school.

39 (2)(a) "Charter trust land council" means a council comprised of a two person
40 majority of elected parents of students attending the charter school convened to act
41 in lieu of the school community council for the charter school.

42 (b) "Charter trust land council" includes a charter school governing board if:

43 (i) the council meets the two-parent majority requirement; and

44 (ii) the charter school governing board chooses to serve as the charter trust
45 land council.

46 (3) "Council" means a school community council or a charter trust land
47 council.

48 (4) "Digital citizenship" means the same as that term is defined in Section
49 53A-1a-108.

50 (5) "Fall enrollment report" means the audited census of students registered
51 in Utah public schools as reported in the audited October 1 Fall Enrollment Report
52 of the previous year.

53 (6) "Funds" means interest and dividends income as defined in Subsection
54 53A-16-101.5(3).

55 (7) "Interest and Dividends Account" means the restricted account within the
56 Uniform School Fund created under Subsection 53A-16-101(2).

57 (8) "Most critical academic need" means an academic need identified in a
58 school's improvement plan or school's charter.

59 (9)(a) "Principal" means an administrator licensed as a principal in the state
60 and employed in that capacity at a school.

61 (b) "Principal" includes the director of a charter school.

62 (10) "Satellite charter school" has the same meaning as that term is defined
63 in R277-482.

64 (1[0]1) "School Children's Trust Director" means the Director appointed by the
65 Board under Section 53A-16-101.6.

66 (1[4]2) "Student" means a child in public school grades kindergarten through
67 12 counted on the fall enrollment report of a school district, charter school, or USDB.

68 **R277-477-3. Distribution of Funds - Local Board or Local Charter Board**
69 **Approval of School LAND Trust Plans.**

70 (1) A public school receiving School LAND Trust Program funds shall have:

71 (a) a school community council as required by Section 53A-1a-108 and Rule
72 R277-491;

73 (b) a charter school trust land council as required by Subsection
74 53A-16-101.5(9); or

75 (c) an approved exemption under this rule.

76 (2) A public school receiving School LAND Trust Program funds shall submit
77 a principal assurance form, as described in Section R277-491-5 and Subsection
78 53A-16-101.5(5)(c), prior to the public school receiving a distribution of School LAND
79 Trust Program funds.

80 (3) A charter school that elects to receive School LAND Trust funds shall:

81 (a) have a charter trust land council;

82 (b) be subject to Section 53A-1a-108.1 if the charter trust land council is not
83 a charter school governing board; and

84 (c) receive training about Section 53A-1a-108.1.

85 (4) A charter school that is a small or special school may receive an
86 exemption from the charter land trust council composition requirements contained
87 in Subsection 53A-16-101.5(9) upon application to the Board if the small or special
88 school demonstrates and documents a good faith effort to recruit members to the
89 charter trust land council.

90 (5) The principal of a charter school that elects to receive School LAND Trust
91 funds shall submit a plan to the School Children's Trust Section on the School LAND
92 Trust website:

93 (a) no later than April 1; or

94 (b) for a newly opening charter school, no later than November 1 in the

95 school's first year in order to receive funding in the year the newly opening charter
96 school opens.

97 (6)(a) An approving entity:

98 (i) shall consider a plan annually; and

99 (ii) may approve or disapprove a school plan.

100 (b) If an approving entity does not approve a plan, the approving entity shall:

101 (i) provide a written explanation why the approving entity did not approve the
102 plan; and

103 (ii) request that the school revise the plan, consistent with Section
104 53A-16-101.5.

105 (7)(a) To receive funds, the principal of a public school shall submit a School
106 LAND Trust plan to the School Children's Trust Section annually through the School
107 LAND Trust website using the form provided.

108 (b) The Board may grant an exemption from a school using the
109 ~~[USOE]~~ Superintendent-provided form, described in Subsection (7)(a), on a
110 case-by-case basis.

111 (8) In addition to the requirements of Subsection (6), the School LAND Trust
112 plan described in Subsection (7)(a) shall include the date the council voted to
113 approve the plan.

114 (9)(a) ~~[A]~~The principal of a school shall ensure that a council member ~~[shall~~
115 ~~have the]~~has an opportunity to provide a ~~[digital]~~ signature indicating the member's
116 involvement in implementing the current School LAND Trust plan and developing the
117 school plan for the upcoming year.

118 ~~[(b) Entering the council member's name and email address into the Council~~
119 ~~Membership and Signature Form page on the School LAND Trust website and using~~
120 ~~that system to collect the digital signature shall suffice to meet the requirements of~~
121 ~~this Subsection (9).]~~

122 (b) The principal shall collect a council member's signature, as described in
123 Subsection (9)(a), digitally or through a paper form created by the Membership Form
124 on the website and uploaded to the database.

125 (c) An LEA or district school, upon the permission of the LEA's governing
126 board, may design the LEA or district school's own form to collect the information

127 required by this Subsection (9).

128 (10)(a) An approving entity shall establish a timeline, including a deadline, for
129 a school to submit a school's School LAND Trust plan.

130 (b) A timeline described in Subsection (10)(a) shall:

131 (i) require a school's School LAND Trust plan to be submitted to the approving
132 entity with sufficient time so that the approving entity may approve the school's
133 School LAND Trust plan no later than May 15 of each year; and

134 (ii) allow sufficient time for a council to reconsider and amend the council's
135 School LAND Trust plan if the approving entity rejects the school's plan and still allow
136 the school to meet the May 15 approving entity's approval deadline.

137 (c) After an approving entity has completed the approving entity's review, the
138 approving entity shall notify the School Children's Trust Section that the review is
139 complete.

140 (11)(a) Prior to approving a plan, an approving entity shall review a School
141 LAND Trust plan under the approving entity's purview to confirm that a School LAND
142 Trust plan contains:

143 (i) academic goals;

144 (ii) specific steps to meet the academic goals described in Subsection
145 (11)(a)(i);

146 (iii) measurements to assess improvement; and

147 (iv) specific expenditures focused on student academic improvement.

148 (b) The approving entity shall determine whether a School LAND Trust plan
149 is consistent with the approving entity's pedagogy, programs, and curriculum.

150 (c) Prior to approving a School LAND Trust plan, the president or chair of the
151 approving entity shall provide training annually on the requirements of Section
152 53A-16-101.5 to the members of the approving entity.

153 (12)(a) After receiving the notice described in Subsection (10)(c), the School
154 Children's Trust Section shall review each School LAND Trust plan for compliance
155 with the law governing School LAND Trust plans.

156 (b) The School Children's Trust Section shall report back to the approving
157 entity concerning which School LAND Trust plans were found to be out of
158 compliance with the law.

159 (c) An approving entity shall ensure that a School LAND Trust plan that is
160 found to be out of compliance with the law by the School Children's Trust Section is
161 amended or revised by the council to bring the school's School LAND Trust plan into
162 compliance with the law.

163 (13) If an approving entity fails to comply with Subsection (12)(c), the School
164 Children's Trust Director shall report the failure to the Audit Committee of the Board
165 as described in Section R277-477-9.

166 **R277-477-4. Appropriate Use of School LAND Trust Program Funds.**

167 (1) Parents, teachers, and the principal, in collaboration with an approving
168 entity, shall use School LAND Trust Program funds in data-driven and evidence-
169 based ways to improve educational outcomes.

170 (2) School LAND Trust Program expenditures are required to have a direct
171 impact on the instruction of students in the particular school's areas of most critical
172 academic need.

173 (3) A school may not use School LAND Trust Program funds for the following:

174 (a) to cover the fixed costs of doing business;

175 (b) for construction, maintenance, facilities, overhead, security, or athletics;

176 or

177 (c) to pay for non-academic in-school, co-curricular, or extracurricular
178 activities.

179 (4) A school district or local school board may not require a council or school
180 to spend the school's School LAND Trust Program funds on a specific use or set of
181 uses.

182 (5)(a) A council may budget and spend no more than the lesser of the
183 following for in-school civic and character education, including student leadership
184 skills training and positive behavior intervention:

185 (i) \$5,000; or

186 (ii) 20% of the school's annual allocation of School LAND Trust Program
187 funds.

188 (b) A school may designate School LAND Trust Program funds for an in-
189 school civic or character education program or activity only if the plan clearly

190 describes how the program or activity has a direct impact of the instruction of
191 students in school's areas of most critical academic need.

192 (c) A school may use a portion of the school's School LAND Trust Program
193 funds to provide digital citizenship training as described in Section 53A-1a-108.

194 (6) Notwithstanding other provisions in this rule, a school may use funds as
195 needed to implement a student's Individualized Education Plan.

196 (7) Student incentives implemented as part of an academic goal in the School
197 LAND Trust Program may not exceed \$2 per student in an academic school year.

198 **R277-477-5. Distribution of Funds - Determination of Proportionate Share.**

199 (1)(a) A local school board or charter school governing board shall report the
200 prior year expenditure of distributions for each school~~[-and]~~.

201 (b) The total expenditures each year described in Subsection (1)(a) may not
202 be greater than the total available funds for any school or school district.

203 (c) A school district shall adjust the current year distribution of funds received
204 from the School LAND Trust Program as described in Section 53A-16-101.5, as
205 necessary to maintain an equal per student distribution within a school district based
206 on school openings and closings, boundary changes, and other enrollment changes
207 occurring after the fall enrollment report.

208 (2) A charter school and each of the charter school's satellite charter schools
209 are a single LEA for purposes of public school funding.

210 ~~(2)(a)~~ For purposes of this Subsection ~~(2)(a)~~ and Subsection ~~(3)(a)~~,
211 "qualifying charter school" means a charter school that:

212 (i) would receive more funds from a per pupil distribution than the charter
213 school receives from the base payment described in Subsection (2)(c); and

214 (ii) is not a newly opening charter school as described in Subsection (3).

215 (b) The Superintendent shall distribute the funds allocated to charter schools
216 as described in this Subsection (2).

217 (c) The Superintendent shall first distribute a base payment to each charter
218 school that is equal to the product of:

219 (i) an amount equal to the total funds available for all charter schools; and

220 (ii) at least 0.4%.

221 (d) After the Superintendent distributes the amount described in Subsection
222 (2)(c), the Superintendent shall distribute the remaining funds to qualifying charter
223 schools on a per pupil basis.

224 ([3]4)(a) The Superintendent shall distribute an amount of funds to a newly
225 opening charter school that is equal to the greater of:

226 (i) the base payment described in Subsection (2)(c); or

227 (ii) a per pupil amount based on the newly opened charter school's projected
228 October 1 enrollment count.

229 (b) The Superintendent shall increase or decrease a newly opening charter
230 school's first year distribution of funds in the school's second year to reflect the newly
231 opening charter school's actual first year October 1 enrollment.

232 ([4]5) If a school chooses not to apply for funds or does not meet the
233 requirements for receiving funds, the USOE shall retain the funds allocated for that
234 school and include those funds in the statewide distribution for the following school
235 year.

236 **R277-477-6. School LAND Trust Program - Implementation of Plans and**
237 **Required Reporting.**

238 (1) A school shall implement a plan as approved.

239 (2)(a) The principal shall submit a plan amendment authorized by Subsection
240 53A-16-101.5(6)(d)(iii) through the School LAND Trust website for approval,
241 including the date the council approved the amendment and the number of votes for,
242 against, and absent.

243 (b) The approving entity shall:

244 (i) consider the amendment for approval; and

245 (ii) approve an amendment before the school uses funds according to the
246 amendment.

247 (c) The School Children's Trust Section shall review an amendment for
248 compliance with statute and rule before the school uses funds according to the
249 amendment.

250 (3)(a) A school shall provide an explanation for any carryover that exceeds
251 one-tenth of the school's allocation in a given year in the School LAND Trust Plan or
252 final report.

253 (b) The USOE shall consider a district or school with a consistently large
254 carryover balance over multiple years as not making adequate and appropriate
255 progress on an approved plan.

256 (c) The Board may take corrective action to remedy excessive carryover
257 balances as outlined in Section R277-477-9.

258 (4) By approving a plan on the School LAND Trust website, the approving
259 entity affirms that:

260 (a) the entity has reviewed the plan; and

261 (b) the plan meets the requirements of statute and rule.

262 (5)(a) A district or charter school business official shall enter prior year audited
263 expenditures by specific category on the School LAND Trust website on or before
264 October 1.

265 (b) The expenditure data shall appear in the final report submitted online by
266 a principal, as required by Section 53A-16-101.5.

267 (6) A principal shall submit a final report on the School LAND Trust website
268 by October 20 annually.

269 **R277-477-7. School LAND Trust Program - School Children's Trust Section to**
270 **Review Compliance.**

271 (1)(a) The School Children's Trust Section shall review each school's final
272 report for consistency with the approved school plan.

273 (b) The School Children's Trust Section shall create a list of all schools whose
274 final reports indicate that funds from the School LAND Trust Program were expended
275 inconsistent with the statute, rule, or the school's approved plan.

276 (c) The School Children's Trust Section shall annually report a school
277 described in Subsection (1)(b) to the school district contact person, district
278 superintendent, and president of the local board of education or charter board, as
279 applicable.

280 (2) The School Children's Trust Section may visit a school receiving funds
281 from the School LAND Trust Program to discuss the program, receive information
282 and suggestions, provide training, and answer questions.

283 (3)(a) The School Children's Trust Director shall supervise annual compliance
284 reviews to review expenditure of funds consistent with the approved plan, allowable
285 expenses, and the law.

286 (b) The School Children's Trust Director shall report annually to the Board
287 Audit Committee on compliance review findings and other compliance issues.

288 (c) After receiving the report described in Subsection (3)(b) and any other
289 relevant information requested by the committee, the Board Audit Committee may
290 make a determination regarding questioned expenditures and corrective action as
291 outlined in Section R277-477-9.

292 **R277-477-8. School Children's Trust Director - Other Provisions.**

293 (1)(a) The School Children's Trust Director is an employee of the Board,
294 pursuant to Section 53A-16-101.6 and Board bylaws.

295 (b) The School Children's Trust Director shall report to the Board Audit
296 Committee monthly.

297 (c) The School Children's Trust Director shall report day-to-day to the
298 Superintendent or the Superintendent's designee.

299 (2)(a) The School Children's Trust Director shall submit a draft section budget
300 to the Board Audit Committee annually, consistent with Subsection
301 53A-16-101.6(5)(a).

302 (b) The School Children's Trust Director shall include in the draft budget a
303 proposed School LAND Trust Program and training schedule, as described in
304 Subsection 53A-16-101.6(13).

305 (3) In addition to the duties established in Section 53A-16-101.6, the School
306 Children's Trust Director shall:

307 (a) assist the Board as needed as its designee in fulfilling its duties as primary
308 beneficiary representative for school trust lands and funds;

309 (b) provide independent oversight of an agency managing school trust lands
310 and the permanent State School Fund to ensure the trust assets are managed
311 prudently, profitably, and in the best interest of the beneficiaries;

312 (c) review and approve a charter school plan on behalf of the State Charter
313 School Board;

314 (d) provide notice as necessary to the State Charter School Board of changes
315 required of charter schools for compliance with state statute and rule;

316 (e) review and approve a plan submitted by the USDB governing board as
317 necessary; and

318 (f) carry out the policy direction of the Board under law and faithfully adhere
319 to the Board-approved budget.

320 (4) The employees of the School Children's Trust Section report to the School
321 Children's Trust Director.

322 **R277-477-9. Failure to Comply with Rule.**

323 (1) If a local school board, school district, district or charter school, or council
324 fails to comply with the provisions of this rule, the School Children's Trust Director
325 may report the failure to the Audit Committee of the Board.

326 (2) If the Audit Committee of the Board finds that any local school board,
327 school district, district or charter school, or council failed to comply with statute or
328 rule, the Audit Committee may recommend that the Board take any or all of the
329 following actions:

330 (a) in cooperation with the local school board or charter school governing
331 board, develop a corrective action plan for the school district, district or charter
332 school, or council;

333 (b) require the school to reimburse the School LAND Trust Program for any
334 inappropriate expenditures;

335 (c) reduce, eliminate, or withhold future funding; or

336 (d) any other necessary and appropriate corrective action.

337 (3) The Board may, by majority vote, take any of the actions outlined in
338 Subsection (2) to correct or remedy a violation of statute or rule by a local school
339 board, school district, district or charter school, or council.

340 **KEY: schools, trust lands funds**
341 **Date of Enactment or Last Substantive Amendment: [~~December 8, 2015~~2016]**
342 **Notice of Continuation: August 13, 2015**
343 **Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-16-**
344 **101.5([3]4)[(c)]; 53A-1-401[(3)]**