

MEMORANDUM

TO: Members, Utah State Board of Education

FROM: Ben Rasmussen, Director
Law and Professional Practices

DATE: May 12-13, 2016

ACTION: *R277-516 Background Check Policies and Required Reports of Arrests for Licensed Educators, Volunteers, Non-licensed Employees, and Charter School Governing Board Members (Amendment)*

Background:

R277-516 has been reviewed recently in discussions by the UPPAC working group. The group has ongoing concerns about whether LEAs and educators are fulfilling their reporting obligations under the rule. Likewise, UPPAC has received feedback that the rule isn't clear enough as to what needs to be reported. Based on these issues, R277-516 has been amended to clarify when reporting is required, as well as to add provision for the Superintendent to withhold funds from an LEA if the LEA fails to meet reporting requirements under this rule.

Board Strategic Plan:

This item supports the following imperative and strategies in the Board's Strategic Plan:
Oversight - Monitor, review, and provide general supervision to all public education institutions and other entities for which the State Board has responsibility.

Anticipated Action:

It is proposed that the Law and Licensing Committee consider approving R277-516, as amended, on first reading and, if approved by the Committee, the Board consider approving R277-516, as amended on second reading.

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1 **R277. Education, Administration.**

2 **R277-516. Background Check Policies and Required Reports of Arrests for**
3 **Licensed Educators, Volunteers, Non-licensed Employees, and Charter School**
4 **Governing Board Members.**

5 **R277-516-1. Authority and Purpose.**

6 (1) This rule is authorized by:

7 (a) Utah Constitution Article X, Section 3, which vests the general control and
8 supervision of the public schools in the Board;

9 (b)(i) Subsections 53A-1-301(3)(a) and 53A-1-301(3)(d)(x), which instruct the
10 Superintendent to perform duties assigned by the Board that include:

11 (ii) presenting to the Governor and the Legislature each December a report
12 of the public school system for the preceding year that includes:

13 (A) investigation of all matters pertaining to the public schools; and

14 (B) statistical and financial information about the school system which the
15 Superintendent considers pertinent;

16 (c) Subsections 53A-1-402(1)(a)(i) and (iii), which direct the Board to:

17 (i) establish rules and minimum standards for the public schools regarding the
18 qualification and certification of educators and ancillary personnel who provide direct
19 student services; and

20 (ii) the evaluation of instructional personnel; and

21 (d) Title 53A, Chapter 15, Part 15, Background Checks, which directs the
22 Board to require educator license applicants to submit to background checks and
23 provide ongoing monitoring of licensed educators.

24 (2) The purpose of this rule is ensure that all students who are compelled by
25 law to attend public schools, subject to release from school attendance consistent
26 with Section 53A-11-102, are instructed and served by public school teachers and
27 employees who have not violated laws that would endanger students in any way.

28 **R277-516-2. Definitions.**

29 (1) "Charter school governing board" means a board designated by a charter
30 school to make decisions for the operation of the charter school.

31 (2) "Charter school board member" means a current member of a charter

32 school governing board.

33 (3) “Comprehensive Administration of Credentials for Teachers in Utah
34 Schools (CACTUS)” means the database maintained on all licensed Utah educators,
35 which includes information such as:

- 36 (a) personal directory information;
- 37 (b) educational background;
- 38 (c) endorsements;
- 39 (d) employment history;
- 40 (e) professional development information;
- 41 (f) completion of employee background checks; and
- 42 (g) a record of disciplinary action taken against the educator.

43 (4) “Contract employee” means an employee of a staffing service who works
44 at a public school under a contract between the staffing service and the public
45 school.

46 (5) “DPS” means the Department of Public Safety.

47 (6) “LEA” or “local education agency” for purposes of this rule includes the
48 Utah Schools for the Deaf and the Blind.

49 (7)(a) “Licensed educator” means an individual who holds a valid Utah
50 educator license and has satisfied all requirements to be a licensed educator in the
51 Utah public school system (examples are traditional public school teachers, charter
52 school teachers, school administrators, USOE and school district specialists).

53 (b) A licensed educator may or may not be employed in a position that
54 requires an educator license.

55 (c) A licensed educator includes an individual who:

- 56 (i) is student teaching;
- 57 (ii) is in an alternative route to licensing program or position; or
- 58 (iii) holds an LEA-specific competency-based license.

59 (8) “Non-licensed public education employee” means an employee of a an
60 LEA who:

61 (a) does not hold a current Utah educator license issued by the Board under
62 Title 53A, Chapter 6, Educator Licensing and Professional Practices; or

63 (b) is a contract employee.

64 (9) "Public education employer" means the education entity that hires and
65 employs an individual, including public school districts, the Utah State Office of
66 Education, Regional Service Centers, and charter schools.

67 (10) "Utah Professional Practices Advisory Commission" or "UPPAC" means
68 an advisory commission established to assist and advise the Board in matters
69 relating to the professional practices of educators, established in Section 53A-6-301.

70 (11) "Volunteer" means a volunteer who may be given significant
71 unsupervised access to children in connection with the volunteer's assignment.

72 **R277-516-3. Licensed Public Education Employee Personal Reporting of**
73 **Arrests.**

74 (1) A licensed educator who is arrested, cited or charged with the following
75 alleged offenses shall report the arrest, citation, or charge within 48 hours or as soon
76 as possible to the licensed educator's district superintendent, charter school director
77 or designee:

- 78 (a) any matters involving an alleged sex offense;
- 79 (b) any matters involving an alleged drug-related offense;
- 80 (c) any matters involving an alleged alcohol-related offense;
- 81 (d) any matters involving an alleged offense against the person under Title 76,
82 Chapter 5, Offenses Against the Person;
- 83 (e) any matters involving an alleged felony offense under Title 76, Chapter 6,
84 Offenses Against Property;
- 85 (f) any matters involving an alleged crime of domestic violence under Title 77,
86 Chapter 36, Cohabitant Abuse Procedures Act; and
- 87 (g) any matters involving an alleged crime under federal law or the laws of
88 another state comparable to the violations listed in Subsections (a) through (f).

89 (2) A licensed educator shall report convictions, including pleas in abeyance
90 and diversion agreements within 48 hours or as soon as possible upon receipt of
91 notice of the conviction, plea in abeyance or diversion agreement.

92 (3) An LEA superintendent, director, or designee shall report conviction, arrest
93 or offense information received from a licensed educator to the Superintendent
94 within 48 hours of receipt of information from a licensed educator.

95 (4) The Superintendent shall develop an electronic reporting process on the
96 USOE website.

97 (5) A licensed educator shall report for work following an arrest and provide
98 notice to the licensed educator’s employer unless directed not to report for work by
99 the employer, consistent with school district or charter school policy.

100 **R277-516-4. Non-licensed Public Education Employee, Volunteer, and Charter**
101 **School Board Member Background Check Policies.**

102 (1) An LEA shall adopt a policy for non-licensed public education employee,
103 volunteer, and charter school board member background checks that includes at
104 least the following components:

105 (a) a requirement that the individual submit to a background check and
106 ongoing monitoring through registration with the systems described in Section 53A-
107 15-1505 as a condition of employment or appointment; and

108 (b) identification of the appropriate privacy risk mitigation strategy that will be
109 used to ensure that the LEA only receives notifications for individuals with whom the
110 LEA maintains an authorizing relationship.

111 (2) An LEA policy shall describe the background check process necessary
112 based on the individual’s duties.

113 **R277-516-5. Non-licensed Public Education Employee, Volunteer, or Charter**
114 **School Board Member Arrest Reporting Policy Required from LEAs.**

115 (1) An LEA shall have a policy requiring a non-licensed public employee, a
116 volunteer, a charter school board member, or any other employee who drives a
117 motor vehicle as an employment responsibility, to report offenses specified in
118 Subsection (3).

119 (2) An LEA shall post the policy described in Subsection (1) on the LEA’s
120 website.

121 (3) An LEA’s policy described in Subsection (1) shall include the following
122 minimum components:

123 (a) reporting of the following:

124 (i) convictions, including pleas in abeyance and diversion agreements;

125 (ii) any matters involving arrests for alleged sex offenses;
126 (iii) any matters involving arrests for alleged drug-related offenses;
127 (iv) any matters involving arrests for alleged alcohol-related offenses; and
128 (v) any matters involving arrests for alleged offenses against the person under
129 Title 76, Chapter 5, Offenses Against the Person.

130 (b) a timeline for receiving reports from non-licensed public education
131 employees;

132 (c) immediate suspension from student supervision responsibilities for alleged
133 sex offenses and other alleged offenses which may endanger students during the
134 period of investigation;

135 (d) immediate suspension from transporting students or public education
136 vehicle operation or maintenance for alleged offenses involving alcohol or drugs
137 during the period of investigation;

138 (e) adequate due process for the accused employee consistent with Section
139 53A-15-1506;

140 (f) a process to review arrest information and make employment or
141 appointment decisions that protect both the safety of students and the confidentiality
142 and due process rights of employees and charter school board members; and

143 (g) timelines and procedures for maintaining records of arrests and
144 convictions of non-licensed public education employees and charter school board
145 members.

146 (4) An LEA shall ensure that the records described in R277-516-5(3)(g):

147 (a) include final administrative determinations and actions following
148 investigation; and

149 (b) are maintained:

150 (i) only as necessary to protect the safety of students; and

151 (ii) with strict requirements for the protection of confidential employment
152 information.

153 **R277-516-6. Public Education Employer Responsibilities Upon Receipt of**
154 **Arrest Information.**

155 (1) A public education employer that receives arrest information about a

156 licensed public education employee shall review the arrest information and assess
157 the employment status consistent with Section 53A-6-501, Rule R277-515, and the
158 LEA's policy.

159 (2) A public education employer that receives arrest information about a non-
160 licensed public education employee, volunteer, or charter school board member
161 shall review the arrest information and assess the individual's employment or
162 appointment status:

163 (a) considering the individual's assignment and duties; and

164 (b) consistent with a local board-approved policy for ethical behavior of non-
165 licensed employees, volunteers, and charter school board members.

166 (3) A local board shall provide appropriate training to non-licensed public
167 education employees, volunteers, and charter school board members about the
168 provisions of the local board's policy for self-reporting and ethical behavior of non-
169 licensed public education employees, volunteers, and charter school board
170 members.

171 (4) A public education employer shall cooperate with the Superintendent in
172 investigations of licensed educators.

173 **R277-516-7. Misconduct Notification Requirements and Procedures.**

174 (1)(a) An educator who has reasonable cause to believe that a student may
175 have been physically or sexually abused by a school's employee shall immediately
176 report that belief to:

177 (i) law enforcement;

178 (ii) the school principal [~~district superintendent, or UPPAC, in addition~~]; and

179 (iii) to any other entity to which a report[s] is required by law.

180 (b) A school administrator who receives a report described in Subsection
181 (1)(a) shall immediately submit the information to UPPAC if the employee is licensed
182 as an educator.

183 (2) A local superintendent or charter school director shall notify UPPAC if an
184 educator is determined, pursuant to an administrative or judicial action, or internal
185 LEA investigation, to have had disciplinary action taken for, or, to ~~[be guilty of]~~ have
186 engaged in:

187 (a) unprofessional conduct or professional incompetence that:
188 (i) results in suspension for more than one week or termination;[~~or~~]
189 (ii) requires mandatory licensing discipline under R277-515; or
190 (iii) otherwise warrants UPPAC review; or
191 (b) immoral behavior.
192 (3) An educator who fails to comply with Subsection (1) may:
193 (a) be found guilty of unprofessional conduct; and
194 (b) have disciplinary action taken against the educator.
195 (4) The Superintendent may withhold, reduce, or terminate funding to an LEA
196 for failure to make a required report under R277-516 through the process described
197 in Rule R277-114.

198 **KEY: school employees, self reporting**

199 **Date of Enactment or Last Substantive Amendments: [~~October 8, 2015~~2016**

200 **Notice of Continuation: June 10, 2014**

201 **Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-301(3)(a);**
202 **53A-1-301(3)(d)(x); 53A-1-402(1)(a)(i); 53A-1-402(1)(a)(iii)**