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MEMORANDUM

TO: Members, Utah State Board of Education

FROM: Angie Stallings, Deputy Superintendent
Policy and Communication

DATE: November 3-4, 2016

ACTION: R277-602 *Special Needs Scholarships – Funding and Procedures* (Amendment)

Background:

R277-602 *Special Needs Scholarships – Funding and Procedures* is amended to implement certain provisions of Section 53A, Chapter 1a, Part 7, by clarifying certain student eligibility and private school eligibility provisions. The rule is also amended to provide other technical and clarifying changes, including extending the date by which a parent is required to provide certain notification to the Board regarding enrollment.

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 Standards and Assessment Committee consider approving R277-602, as amended on first reading and, if approved by the Committee, the Board consider approving R277-602, as amended on second reading.

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1 **R277. Education, Administration.**

2 **R277- 602. Special Needs Scholarships – Funding and Procedures.**

3 **R277-602-1. Authority and Purpose.**

4 (1) This rule is authorized by:

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

7 (b) Section 53A-1-401, which allows the Board to make rules to execute the
8 Board's duties and responsibilities under the Utah Constitution and state law; and

9 ~~[(b) Subsection 53A-1a-706(5)(b), which provides for Board rules to establish~~
10 ~~timelines for payments to private schools;~~

11 ~~—— (c) Title 53A, Chapter 15, Part 15, Background Checks, which provides for~~
12 ~~criminal background checks and ongoing monitoring for employees and volunteers;]~~

13 ~~[(d)c] Section 53A-1a-707, which [provides for Board rules about]~~authorizes
14 the Board to make rules establishing:

15 (i) the eligibility of students~~[for scholarships and the application process for~~
16 ~~students]~~ to participate in the scholarship program; and

17 (ii) the application process for the scholarship program.

18 ~~[(e) Subsection 53A-1-401(3), which allows the Board to adopt rules in~~
19 ~~accordance with its responsibilities.]~~

20 (2) The purpose of this rule is to:

21 (a) outline responsibilities of a parent, an LEA,~~[and]~~ an eligible private school,
22 ~~[that accepts a scholarship from a special needs student]~~ and the Board in providing
23 choice for a parent of a special needs student who chooses to have a student served
24 in a private school; and

25 (b) provide accountability for the citizenry in the administration and distribution
26 of the scholarship funds.

27 **R277-602-2. Definitions.**

28 (1) “Appeal” means an opportunity to discuss or contest a final administrative
29 decision consistent with and expressly limited to the procedures of this rule.

30 (2) “Appeals Committee” means a committee comprised of:

31 (a) the special needs scholarship coordinator;

32 (b) the ~~[USOE]~~Board's Special Education Director;

33 (c) one individual appointed by the Superintendent~~[-or designee]~~; and

34 (d) two Board-designated special education advocates.

35 (3) "Assessment" means a formal testing procedure carried out under

36 prescribed and uniform conditions that measures a student's academic progress,

37 consistent with Subsection 53A-1a-705(1)(f).

38 (4) "Assessment team" means the individuals designated under Subsection

39 53A-1a-703(1).

40 (5) "Days" means school days unless specifically designated otherwise in this

41 rule.

42 (6) "Eligible student" means a student who meets the qualifications described

43 in Section 53A-1a-704.

44 (7) "Enrollment" means that:

45 (a) the student has completed the school enrollment process;

46 (b) the school maintains required student enrollment information and

47 documentation of age eligibility;

48 (c) the student is scheduled to receive services at the school;

49 (d) the student attends regularly; and

50 (e) the school has accepted the student consistent with Rule R277-419 and

51 the student's IEP.

52 ~~[(8) "Final administrative action" means the concluding action under Title 53A,~~

53 ~~Chapter 1a, Part 7, Carson Smith Scholarships for Students with Special Needs Act~~

54 ~~and this rule.]~~

55 ~~[(9)]~~ (8) "Private school that has previously served a student with a disability"

56 means a school that:

57 (a) has enrolled a student within the last three years under the special needs

58 scholarship program;

59 (b) has enrolled a student within the last three years who has received special

60 education services under an Individual Services Plan (ISP) from an LEA where the

61 school is geographically located; or

62 (c) can provide other evidence to the Board that is determinative of having

63 enrolled a student with a disability within the last three years.

64 ([40]9) “Warrant” means payment by check to a private school.

65 **R277-602-3. Parent Responsibilities and Payment Provisions.**

66 (1) ~~[If the student is enrolled in a public school or was enrolled in a public~~
67 ~~school in the year previous to the year in which the scholarship is sought, the parent~~
68 ~~shall submit an application, available from the Superintendent or online, to the LEA~~
69 ~~within which the parent resides.]~~To receive a scholarship, a parent of a student shall
70 submit an application by the deadline described in Subsection 53A-1a-704(4), on a
71 form specified by the Superintendent to:

72 (a) the LEA that the student is or was enrolled in; or

73 (b) if the student was not enrolled in an LEA in the school year prior to the
74 school year in which the scholarship is sought, the school district that is responsible
75 for the education of the student under the Individuals with Disabilities Education Act,
76 20 U.S.C. Sec. 1414.

77 ~~[(a)2] [Consistent with the timeline provided in Subsection 53A-1a-704(4), the~~
78 ~~parent shall complete all required information on the application and submit,]~~Along
79 with the application described in Subsection (1), a parent shall submit documentation
80 that:

81 ~~[(i)a] the parent is a resident of the state;~~

82 ~~[(ii)b] the student is at least three years of age before September 2 of the year~~
83 ~~of enrollment;~~

84 ~~[(iii)c] the student is not more than 21 years of age and has not graduated~~
85 ~~from high school; and~~

86 ~~[(iv) the student has satisfied Subsection (1) or (2); and]~~

87 ~~[(v)d] the student has official acceptance at an eligible private school, as~~
88 ~~[established by] described in Section 53A-1a-705.~~

89 ~~[(b) The parent shall sign the acknowledgments and refusal to consent to~~
90 ~~services on the application form consistent with Section 53A-1a-704.]~~

91 ~~[(e)3] Any intentional falsification, misinformation, or incomplete information~~
92 ~~provided on the application may result in the cancellation of the scholarship to the~~
93 ~~student and non-payment to the private school.~~

94 ~~[(2) If the student was not enrolled in a public school in the year previous to~~

95 the year in which the scholarship is sought, the parent shall submit an application to
96 the school district responsible for child find under the Individuals with Disabilities
97 Education Act, 20 U.S.C Sec. 1414.

98 ~~—— (a) The parent shall complete all required information on the application and~~
99 ~~submit, with the application, documentation that:~~

100 ~~—— (i) the parent is a resident of the state;~~

101 ~~—— (ii) the student is at least three years of age before September 2 of the year~~
102 ~~of enrollment;~~

103 ~~—— (iii) the student is not more than 21 years of age and has not graduated from~~
104 ~~high school;~~

105 ~~—— (iv) the student has satisfied Subsection (1) or (2); and~~

106 ~~—— (v) the student has official acceptance at an eligible private school, as~~
107 ~~established by Section 53A-1a-705.~~

108 ~~—— (b) The parent shall sign the acknowledgments and refusal to consent to~~
109 ~~services on the application form consistent with Section 53A-1a-704.]~~

110 ([e]4) The parent shall participate in an assessment team meeting to make the
111 determin[e]ations described in Section 53A-1a-704[:

112 ~~—— (i) if a student would qualify for special education services; and~~

113 ~~—— (ii) the level of services for which the student would be eligible if enrolled in~~
114 ~~a public school].~~

115 ([3]5)(a) The [Board]Superintendent shall make a scholarship payment in
116 accordance with Section 53A-1a-706.

117 (b) [The]A parent shall, consistent with Subsection 53A-1a-706(8), endorse
118 the warrant received by the private school from the Superintendent no more than 15
119 calendar days after the private school's receipt of the warrant.

120 ([4]6)(a) [The]A parent shall notify the Board in writing within five days if the
121 student does not continue in enrollment in an eligible private school for any reason,
122 including:

123 (i) parent or student choice;

124 (ii) suspension or expulsion of the student; or

125 (iii) the student [~~misses more than~~]has unexcused absences during all of the
126 prior 10 consecutive school days.

127 (b) If ~~the~~a student does not continue in enrollment, the
128 ~~Board~~Superintendent may:

129 (i) modify the payment to the private school~~[-]; or~~

130 (ii) request reimbursement from the private school if payment has already
131 been made.

132 ~~(5)7~~ ~~The~~A parent shall cooperate and respond within 10 days to an
133 enrollment cross-checking request from the ~~Board~~Superintendent.

134 ~~(6)8~~ The parent shall notify the ~~Board~~Superintendent in writing by
135 ~~March~~May 1 annually to indicate the student's continued enrollment.

136 **R277-602-4. LEA Responsibilities.**

137 (1) An LEA that receives a student's scholarship application consistent with
138 Subsection 53A-1a-704(4) shall:

139 (a) forward ~~an~~the application to the ~~Board~~Superintendent no more than 10
140 days following receipt of the application~~[-];~~

141 ~~(2) The LEA that receives a student's scholarship application shall:~~

142 ~~(a)~~b) verify enrollment of the student seeking a scholarship in a previous
143 school year within a reasonable time following contact by the ~~Board~~Superintendent;

144 ~~(b)~~c) verify the existence of the student's IEP and level of service to the
145 Superintendent within a reasonable time;

146 ~~(c)~~d) provide personnel to participate on an assessment team to~~determine:~~

147 ~~—— (i)(A) if a student who was previously enrolled in a private school that has~~
148 ~~previously served a student with a disability would qualify for special education~~
149 ~~services if enrolled in a public school; and~~

150 ~~—— (B) the appropriate level of special education services that would be provided~~
151 ~~were the child enrolled in a public school for purposes of determining the scholarship~~
152 ~~amount consistent with Subsection 53A-1a-706(2); or];~~

153 (i) make the determination described in Section 53A-1a-704; or

154 (ii) if determine whether a student who previously receiv~~ing~~ed a special
155 needs scholarship is entitled to receive the scholarship during the subsequent
156 eligibility period.

157 (3) A special needs scholarship student may not ~~enroll in an LEA for dual~~

158 ~~enrollment or~~ participate in an extracurricular or co-curricular activity at an LEA,
159 consistent with the parent's assumption of full responsibility for a student's services
160 under Subsection 53A-1a-704(5).

161 (4) An LEA shall cooperate with the ~~[Board]~~ Superintendent in cross-checking
162 special needs scholarship student enrollment information[, ~~as requested by the~~
163 ~~Board]~~ to ensure scholarship payments are not erroneously made.

164 (5)(a) An LEA shall provide written notice to a parent of a student who has an
165 IEP of the availability of a scholarship to attend a private school in accordance with
166 Subsection 53A-1a-704(10).

167 (b) The written notice shall consist of the following statement: A local
168 education agency is required by Utah law, Subsection 53A-1a-704(10), to inform
169 parents of students with IEPs enrolled in public schools, of the availability of a
170 scholarship to attend a private school through the Carson Smith Scholarship
171 Program.

172 **R277-602–5. State Board of Education Responsibilities.**

173 (1) No later than April 1, the ~~[Board]~~ Superintendent shall provide an
174 application containing acknowledgments required under Subsection 53A-1a-704(5),
175 for a parent seeking a special needs scholarship:

- 176 (a) online;
- 177 (b) at the Board office; and
- 178 (c) at LEA offices.

179 (2) The ~~[Board]~~ Superintendent shall provide a determination that a private
180 school meets the eligibility requirements of Section 53A-1a-705 as soon as possible
181 but no more than 30 calendar days after the private school submits an application
182 and completes documentation of eligibility.

183 (3) The ~~[Board]~~ Superintendent may:

- 184 (a) provide reasonable timelines within the application for satisfaction of
185 private school requirements;
- 186 (b) issue letters of warning;
- 187 (c) require the school to take corrective action within a time frame set by the
188 ~~[Board]~~ Superintendent;

189 (d) suspend the school from the program consistent with Section 53A-1a-708;
190 ~~[(e) impose a penalty as the Board determines appropriate under the~~
191 ~~circumstances;]~~

192 ([f]e) establish an appropriate penalty for a private school that fails to comply
193 with requirements described in Title 53A, Chapter 1a, Part 7, Carson Smith
194 Scholarships for Students with Special Needs, including:

195 (i) provid[e]ing an affidavit under Section 53A-1a-708;

196 (ii) administering ~~[an-]~~assessments or reporting an assessment to a parent or
197 assessment team under Subsection 53a-1a-705(1)(f);

198 (iii) employing teachers with credentials required under Subsection 53A-1a-
199 705(g);

200 (iv) provid[e]ing to a parent relevant credentials of teachers under Subsection
201 53A-1a-705(i); or

202 (v) requir[e]ing a completed criminal background and ongoing monitoring
203 under Title 53A, Chapter 15, Part 15, Background Checks and take appropriate
204 action consistent with information received; ~~[and]or~~

205 ([g]f) initiate a complaint and hold an administrative hearing, as appropriate,
206 and consistent with this rule.

207 (4) The ~~[Board]~~Superintendent shall make a list of eligible private schools
208 updated annually and available no later than June 1 of each year.

209 (5) ~~[The Board shall provide information about an approved scholarship and~~
210 ~~availability and level of funding to a scholarship applicant parent no later than March~~
211 ~~1 of each year]~~On or before July 1, the Superintendent shall annually publish
212 information regarding the level of funding available for scholarships for the fiscal
213 year.

214 (6) The ~~[Board]~~Superintendent shall mail a scholarship payment directly to
215 a private school ~~[as soon as reasonably possible consistent]~~in accordance with
216 Subsection 53A-1a-706(8) as soon as reasonably possible.

217 ~~[(7) If an annual legislative appropriation is inadequate to cover all~~
218 ~~scholarship applicants and documented levels of service, the Board shall establish~~
219 ~~by rule a lottery system for determining the scholarship recipients, with preference~~
220 ~~provided for under Subsection 53A-1a-706(1)(e).~~

221 ~~——(8) The Board shall verify and cross-check, using USOE technology services,~~
222 ~~special needs scholarship student enrollment information consistent with Subsection~~
223 ~~53A-1a-706(7).]~~

224 **R277-602-6. Responsibilities of Private Schools that Receive Special Needs**
225 **Scholarships.**

226 (1) ~~[A private school that intends to enroll a scholarship student]~~To be eligible
227 to enroll a scholarship student, a private school shall:

228 (a) meet the criteria described in Section 53A-1a-705; and

229 (b) submit an application and appropriate documentation by the deadline
230 established in Section 53A-1a-705 to the Superintendent on a form designated by
231 the Superintendent.

232 ~~[(2) A private school shall submit an application and appropriate~~
233 ~~documentation for eligibility to receive a special needs scholarship student to the~~
234 ~~Superintendent on forms designated by the Superintendent.]~~

235 (2) A licensed independent certified public account that a private school
236 contracts with to determine whether the private school has adequate working capital
237 in accordance with Section 53A-1a-705 shall define adequate working capital as a
238 working capital ratio of greater than one calculated by dividing current assets by
239 current liabilities.

240 ~~[(3) A private school shall satisfy criminal background check and ongoing~~
241 ~~monitoring requirements for an employee and a volunteer consistent with Title 53A,~~
242 ~~Chapter 15, Part 15, Background Checks.]~~

243 ~~[(4)]~~(a) A private school that seeks to enroll a special needs scholarship
244 student shall, in concert with the parent seeking a special needs scholarship for a
245 student, initiate the assessment team meetings required under Section 53A-1a-704.

246 ~~[(a)]~~(b) A private school shall schedule a meeting at a time and location
247 mutually acceptable to the private school, the applicant parent, and participating
248 public school personnel.

249 ~~[(b) Designated private school and public school personnel shall maintain~~
250 ~~documentation of the meeting and the decision made for a student.]~~

251 (c)(i) ~~[Except as provided by Subsection (4)(c)(ii), a]~~A private school and

252 public school shall confidentially maintain documentation regarding an ~~[required]~~
253 assessment team meeting, including documentation of:

254 (A) a meeting for a student denied a scholarship or service; and

255 (B) a student admitted into a private school and the student's level of service.

256 (ii) Upon request by the Superintendent, a private school and public school
257 shall provide the documentation described in Subsection (~~[4]~~3)(c)(i) to the
258 Superintendent for purposes of determining student scholarship eligibility or for
259 verification of compliance.

260 (~~[5]~~4) A private school that receives a scholarship payment~~[under this rule]~~
261 shall provide complete student records in a timely manner to another private school
262 or a public school that requests student records if a parent transfers a student under
263 Subsection 53A-1a-704(7).

264 (~~[6]~~5) A private school shall notify the Board within five days if the student
265 does not continue in enrollment in an eligible private school for any reason,
266 including:

267 (a) parent or student choice;

268 (b) suspension or expulsion of the student; or

269 (c) the student ~~[misses more than]~~has unexcused absences during all of the
270 prior ten consecutive school days~~[of school]~~.

271 (~~[7]~~6) A private school shall satisfy health and safety laws and codes required
272 by Subsection 53A-1a-705(1)(d), including:

273 (a) the adoption of emergency preparedness response plans that include
274 training for school personnel and parent notification for fire drills, natural disasters,
275 and school safety emergencies; and

276 (b) compliance with Rule R392-200, Design, Construction, Operation,
277 Sanitation, and Safety of Schools.

278 (~~[8]~~7)(a) An approved eligible private school that changes ownership shall
279 submit a new application for eligibility to receive~~[a Carson Smith]~~a special needs
280 scholarship payment from the ~~[Board]~~Superintendent:

281 (i) that demonstrates that the school continues to meet the eligibility
282 requirements of Section 53A-1a-705 and this rule; and

283 (ii) within 60 calendar days of the date that an agreement is signed between

284 previous owner and new owner.

285 (b) If the Superintendent does not receive the application within the time
286 described in Subsection (~~[8]7~~)(a)(ii):

287 (i) the new owner of the school is presumed ineligible to receive continued
288 ~~[Carson Smith]~~special needs scholarship payments from the Superintendent;

289 (ii) at the discretion of the Board, the Superintendent may reclaim any
290 payments made to a school within the previous 60 calendar days; and

291 ~~[(iii) the private school is not an eligible school; and]~~

292 ~~[(iv)iii]~~ the private school shall submit a new application for ~~[Carson Smith]~~
293 eligibility to enroll special needs scholarship students consistent with the
294 requirements and timelines of this rule.

295 **R277-602-7. Special Needs Scholarship Appeals.**

296 (1)(a) A parent of an eligible student or a parent of a prospective eligible
297 student may appeal only the following actions under this rule:

298 (i) an alleged violation by the Superintendent of Sections 53A-1a-701 through
299 710 or this rule; or

300 (ii) an alleged violation by the Superintendent of a required timeline.

301 (b) An appellant has no right to additional elements of due process beyond
302 the specific provisions of this rule.

303 (2) The Appeals Committee may not grant an appeal contrary to Sections
304 53A-1a-701 through 53A-1a-710.

305 (3) A parent shall submit an appeal:

306 (a) in writing to the ~~[USOE]~~Board's Special Needs Scholarship Coordinator
307 at: Utah State ~~[Office]~~Board of Education, 250 East 500 South, P.O. Box 144200,
308 Salt Lake City, UT 84114-4200; and

309 (b) within 15 calendar days of written notification of the final administrative
310 ~~[decision]~~action described in Subsection (1)(a).

311 (4)(a) The appeal opportunity does not include an investigation required under
312 or similar to an IDEA state complaint investigation.

313 (b) Nothing in the appeals process established under this rule shall be
314 construed to limit, replace, or adversely affect parental appeal rights available under

315 IDEA.

316 (5) The Appeals Committee shall:

317 (a) consider an appeal within 15 calendar days of receipt of the written
318 appeal;

319 (b) transmit the decision to a parent no more than ten calendar days following
320 consideration by the Appeals Committee; and

321 (c) finalize an appeal as expeditiously as possible in the joint interest of
322 schools and students involved.

323 (6) The Appeals Committee's decision is ~~the~~a final administrative action.

324 **KEY: special needs students, scholarships**

325 **Date of Enactment or Last Substantive Amendment: ~~[October 8, 2015]~~2017**

326 **Notice of Continuation: August 13, 2015**

327 **Authorizing, and Implemented or Interpreted Law: Art X Sec 3; ~~53A-1a-~~**

328 **~~706(5)(b); Title 53A, Chapter 15, Part 15;~~ 53A-1a-707; 53A-1-401~~[(3)]~~**