



UTAH STATE BOARD OF EDUCATION

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HEARING RECORD

To: Utah State Board of Education

From: Ben Rasmussen, Hearing Officer

Date: December 30, 2020

Re: December 22, 2020 public hearing on Proposed Amendments to R277-726, Statewide Online Education Program

This Hearing Record is submitted to the Utah State Board of Education ("Board") for the Board's review, evaluation, and consideration pursuant to Utah Admin. Code R15-1-5(5).

BACKGROUND

On December 1, 2020, proposed amendments to Rule R277-726 were published in the Utah State Bulletin. The Utah School Superintendents Association submitted a timely request for a public hearing. The hearing was held on December 22, 2020 before the State Board of Education.

An electronic verbatim recording of the Hearing was made and is accessible online at https://www.youtube.com/watch?v=VMjx_XOIWJI.

Pursuant to R15-1-5(5), the following items are attached hereto, as the hearing record:

Exhibit A Copy of proposed amendments to Rule R277-726
Exhibit B Request for Hearing
Exhibit C Notice of the hearing date, time, place, and subject on the Utah Public Notice Website
Exhibit D Written comments submitted by interested parties
Exhibit E Hearing recording
Exhibit F Hearing summary
Exhibit G List of persons who offered public comment at the Hearing
Exhibit H Memorandum describing hearing process dated December 17, 2020

Exhibit A

Copy of proposed amendments
to Rule R277-726

R277-726 received final approval by the Utah State Board of Education on November 5, 2020. R277-726 will be published in the December 1, 2020 Utah State Bulletin, subject to a 30-day comment period, with a first possible effective date of January 7, 2020.

R277. Education, Administration.

R277-726. Statewide Online Education Program.

R277-726-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Section 53F-4-514, which requires the Board to make rules;

(i) providing for the administration of the high school assessment~~[statewide assessments]~~to students enrolled in online courses; and

~~[(c) Section 53F-4-508, which requires the Board to make rules]~~

(ii) that establish a course credit acknowledgment form and procedures for completing and submitting the form to the Board; and

~~[(d)]~~(c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to:

(a) define necessary terms;

(b) provide and describe a program registration agreement; and

(c) provide other requirements for an LEA, the Superintendent, a parent and a student, and a provider for program implementation and accountability.

R277-726-2. Definitions.

(1) "Actively participates" means the student actively participates as defined by the provider.

(2) "Course completion" means that a student has completed a course with a passing grade and the provider has transmitted the grade and credit to the primary LEA of enrollment.

(3)(a) "Course Credit Acknowledgment" or "CCA" means an agreement and registration record using the Statewide Online Education Program application provided by the Superintendent.

(b) Except as provided in Subsection 53F-4-508(3)(h), the CCA shall be signed by the designee of the primary school of enrollment, and the qualified provider.

(4)(a) "Eligible student" means a student enrolled in grades 6-12 in a secondary environment in a course that:

(i) is offered by a public school; and

(ii) provides the student the opportunity to earn high school graduation credit.

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(b) "Eligible student" does not include a student enrolled in an adult education program.

(5) "Enrollment confirmation" means the student initially registered and actively participated, as defined under Subsection(1).

(6)(a) "Executed CCA" means a CCA that has been signed by all parties as provided in Subsection 53F-4-508(3)(h) and received by the Superintendent.

(b) Following enrollment confirmation and participation, Superintendent directs funds to the provider, consistent with Sections 53F-4-505 through 53F-4-507.

(7)(a) "High school assessment" means the high school assessment described in Section 53E-4-304 and Subsection R277-404-2(6).

(b) "High school assessment" includes the board-approved alternate assessment for high school.

~~[(7)](8)~~ "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

~~[(8)](9)~~ "Online course" means a course of instruction offered through the Statewide Online Education Program.

~~[(9)](10)~~ "Online course payment" means the amount withheld from a student's primary LEA and disbursed or otherwise paid to the designated provider following satisfaction of the requirements of the law, and as directed in Subsection 53F-4-507(2).

~~[(10)](11)~~ "Online course provider" or "provider" means:

- (a) a school district school;
- (b) a charter school;
- (c) an LEA program created for the purpose of serving Utah students in grades 9-12 online; or

(d) a program of an institution of higher education described in Subsection 53F-4-504(3).

~~[(11)](12)~~ "Primary LEA of enrollment" means the LEA in which an eligible student is enrolled for courses other than online courses offered through the Statewide Online Education Program, and which reports the student to be in regular membership, and special education membership, if applicable.

~~[(12)](13)~~ "Primary school of enrollment" means:

- (a) a student's school of record within a primary LEA of enrollment; and
- (b) the school that maintains the student's cumulative file, enrollment information, and transcript for purposes of high school graduation.

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~~[(13)]~~(14) "Resident school" means the district school within whose attendance boundaries the student's custodial parent or legal guardian resides.

~~[(14) "Statewide assessment" means a test or assessment required under Rule R277-404.]~~

(15) "Statewide Online Education Program" or "program" means courses offered to students under Title 53F, Chapter 4, Part 5, Statewide Online Education Program Act.

(16) "Teacher of record" means the teacher who is employed by a provider and to whom students are assigned for purposes of reporting and data submissions to the Superintendent in accordance with Section R277-484-3.

(17) "Underenrolled student" means a student with less than a full course load, as defined by the LEA, during the regular school day at the student's primary school of enrollment.

(18) "USBE course code" means a code for a designated subject matter course assigned by the Superintendent.

(19) "Withdrawal from online course" means that a student withdraws or ceases participation in an online course as follows:

(a) within 20 calendar days of the start date of the course, if the student enrolls on or before the start date;

(b) within 20 calendar days of enrolling in a course, if the student enrolls after the start date; or

(c) within 20 calendar days after the start date of the second 0.5 credit of a 1.0 credit course; or

(d) as the result of a student suspension from an online course following adequate documented due process by the provider.

R277-726-3. Course Credit Acknowledgment (CCA) Process.

(1) A student, a student's parent, a counselor, or a provider may initiate a CCA.

(2)(a) A counselor designated by a student's primary school of enrollment shall review the student's CCA to ensure consistency with:

(i) graduation requirements;

(ii) the student's plan for college and career readiness;

(iii) the student's IEP;

(iv) the student's Section 504 plan; or

(v) the student's international baccalaureate program.

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(b) The primary school of enrollment shall return the CCA to the Superintendent within 72 business hours.

(3)(a) The primary school of enrollment is not required to meet with the student or parent for approval of a course request.

(b) The Superintendent shall notify a primary school of enrollment of a student's enrollment in the program.

(4) If a student enrolling in the program has an IEP or a Section 504 plan, the primary LEA or school of enrollment shall forward the IEP or description of 504 accommodations to the provider within 72 business hours of receiving notice from the Superintendent that the provider has accepted the enrollment request.

(5) The Superintendent shall develop and administer procedures for facilitation of a CCA that informs all appropriate parties.

R277-726-4. Eligible Student and Parent Rights and Responsibilities.

(1) An eligible student may register for program credits consistent with Section 53F-4-503.

(2) An eligible student may exceed a full course load during a regular school year if:

(a) the student's plan for college and career readiness indicates that the student intends to complete high school graduation requirements and exit high school before the rest of the student's high school cohort; and

(b) the student's schedule demonstrates progress toward early graduation.

(3) In accordance with Section 53F-4-509(5), if a student enrolled in a program course exceeds a full course load during a regular school year, a primary LEA of enrollment may mark the student as an early graduate and increase membership in accordance with Section R277-419-6 and Rule R277-484 to account for credits in excess of full-time enrollment in a local Student Information System.

(4)(a) An eligible student is expected to complete courses in which the student enrolls in a timely manner consistent with Section 53F-4-505 and requirements for attendance and participation in accordance with Subsection R277-726-7(15).

(b) If a student changes the student's enrollment for any reason, it is the student's or student's parent's responsibility to notify the provider immediately.

(5) A student should enroll in online courses, or declare an intention to enroll, during the school course registration period designated by the primary LEA of enrollment for regular course registration.

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(6) A student may alter a course schedule by dropping a traditional course and adding an online course in accordance with the primary school of enrollment's same established deadline for dropping and adding traditional courses.

(7)(a) Notwithstanding Subsection (6), an underenrolled student may enroll in an online course at any time during a calendar year.

(b) If an underenrolled student enrolls in an online course as described in Subsection (7)(a), the primary school of enrollment may immediately claim the student for the adjusted portion of enrollment.

R277-726-5. LEA Requirements and Responsibilities.

(1) A primary school of enrollment shall facilitate student enrollment with any and all eligible providers selected by an eligible student consistent with course credit limits.

(2) A primary school of enrollment or a provider LEA shall use the CCA application, records, and processes provided by the Superintendent for the program.

(3) A primary school or LEA of enrollment shall provide information about available online courses and programs:

- (a) in registration materials;
- (b) on the LEA's website; and
- (c) on the school's website.

(4) A primary school or LEA of enrollment shall provide the notice required under Subsection (3) concurrent with the high school course registration period designated by the LEA for the upcoming school year to facilitate enrollment as required by Section 53F-4-513.

(5) A primary school of enrollment shall include a student's online courses in the student's enrollment records and, upon course completion, include online course grades and credits on the student's transcripts.

(6) A primary school of enrollment shall recognize credit earned by a participating secondary student through courses completed prior to grade 9 for purposes of high school graduation provided that:

(a) the student has in the student's records documentation of the student's intention to graduate early; and

(b) the student is enrolled at a middle school or junior high school and a high school accredited in accordance with Rule R277-410.

(7) A primary school of enrollment shall determine fee waiver eligibility for participating public school students pursuant to R277-407.

(8)(a) If a participating student qualifies for a fee waiver, the student's primary LEA or school of enrollment shall provide the participating student access to an online course by:

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(i) allowing a student access to necessary technology in a computer lab or other space within the school building during a school period or during the regular school day for the student to participate in an online course; or

(ii) providing a participating student technology [e]and wifi needed for the student to participate outside of the school building.

(b) If a participating student who qualifies for a fee waiver is a home or private school student, the online course provider shall provide the participating home or private school student access to the online course.

[(8)](9) A primary school of enrollment shall provide participating students access to facilities for the student to participate in an online course during the regular school day, sports, extracurricular and co-curricular activities, and graduation services consistent with local policies governing participation irrespective of relative levels of participation in traditional courses versus Statewide Online Education courses.

[(9)](10) If a participating student's primary school of enrollment is a middle school or junior high as defined in Rule R277-700, course completions will be recorded in a student's record of credit and course completion for grade 9 to allow recognition toward grades 9-12, high school graduation requirements, and post-secondary requirements.

[(10)](11) When a student satisfactorily completes an online semester or quarter course, in accordance with the LEA's procedures, a designated counselor or registrar at the primary school of enrollment shall forward records of grades and credit for students participating prior to grade 9 to the student's grade 9 primary school of enrollment for recording grades and credit per Subsection [R277-726-5(8)](10) once a student completes grade 8.

R277-726-6. Superintendent Requirements and Responsibilities.

(1) The Superintendent shall provide a website for the program, including information required under Section 53F-4-512 and other information as determined by the Board.

(2) The Superintendent shall direct a provider to administer [statewide assessments consistent with Rule R277-404 and Section 53F-4-514 for identified courses using LEA-adopted and state-approved assessments]the high school assessment consistent with Section 53F-4-514 and Rule R277-404.

(3)(a) The Board may determine space availability standards and appropriate course load standards for online courses consistent with Subsection 53F-4-512(3)(d).

(b) Course load standards may differ based on subject matter.

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(4) The Board shall withhold funds from a primary LEA of enrollment and make payments to a provider consistent with Sections 53F-4-505 through 53F-4-507.

(5) The Board may refuse to provide funds under a CCA if the Board finds that information has been submitted fraudulently or in violation of the law or Board rule by any of the parties to a CCA.

(6) The Superintendent shall receive and investigate complaints, and impose sanctions, if appropriate, regarding course integrity, financial mismanagement, enrollment fraud or inaccuracy, or violations of the law or this rule specific to the requirements and provisions of the program.

(7) If a Board investigation finds that a provider has violated the IDEA or Section 504 provisions for a student taking online courses, the provider shall compensate the student's primary LEA of enrollment for all costs related to compliance.

(8)(a) The Superintendent may audit, at the Board's sole discretion, an LEA's or program participant's compliance with any requirement of state or federal law or Board rule under the program.

(b) All participants shall provide timely access to all records, student information, financial data or other information requested by the Board, the Board's auditors, or the Superintendent upon request.

(9) The Board may withhold funds from a program participant for the participant's failure to comply with a reasonable request for records or information.

(10) Program records are available to the public subject to Title 63G, Chapter 2, Government Records Access and Management Act.

(11) The Superintendent shall withhold online course payment from a primary LEA of enrollment and payments to an eligible provider at the nearest monthly transfer of funds, subject to verification of information, in an amount consistent with, and at the time a provider qualifies to receive payment, under Subsection 53F-4-505(4).

(12) The Superintendent shall pay a provider consistent with Minimum School Program funding transfer schedules.

(13)(a) The Superintendent may make decisions on questions or issues unresolved by Title 53F, Chapter 4, Part 5, Statewide Online Program Act or this rule on a case-by-case basis.

(b) The Superintendent shall report decisions described in Subsection (13)(a) to the Board consistent with the purposes of the law and this rule.

R277-726-7. Provider Requirements and Responsibilities.

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(1)(a) A provider shall administer the high school assessment to a participating private or home school student as directed by the Superintendent, including proctoring the high school assessment, consistent with Section 53F-4-510 and Rule R277-404~~[statewide assessments as directed by the Superintendent, including proctoring statewide assessments, consistent with Section 53F-4-415 and Rule R277-404].~~

(b) A provider shall pay administrative and proctoring costs for the high school assessment described in Subsection (1)(a)~~[all statewide assessments].~~

(2) A provider shall provide a parent or a student with email and telephone contacts for the provider during regular business hours to facilitate parent contact.

(3) A provider and any third party working with a provider shall, for all eligible students, satisfy all Board requirements for:

- (a) consistency with course standards;
- (b) criminal background checks for provider employees;
- (c) documentation of student enrollment and participation; and
- (d) compliance with:
 - (i) the IDEA;
 - (ii) Section 504; and
 - (iii) requirements for ELL students.

(4) A provider shall receive payments for a student properly enrolled in the program from the Superintendent consistent with:

- (a) Board procedures;
- (b) Board timelines; and
- (c) Sections 53F-4-505 through 53F-4-508.

(5)(a) A provider may charge a fee consistent with other secondary schools.

(b) If a provider intends to charge a fee of any kind, the provider:

(i) shall notify the primary school of enrollment with whom the provider has the CCA of the purpose for fees and amounts of fees;

(ii) shall provide timely notice to a parent of required fees and fee waiver opportunities;

(iii) shall post fees on the provider website;

(iv) shall be responsible for fee waivers for an eligible student, including all materials for a student designated fee waiver eligible by a student's primary school of enrollment;

(v) shall satisfy all requirements of Rule R277-407, as applicable; and

(vi) shall provide fee waivers to home school or private school students who meet fee waiver eligibility at the provider's expense.

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(6) A provider shall maintain a student's records and comply with the federal Family Educational Rights and Privacy Act, Title 53E, Chapter 9, Part 3, Utah Family Educational Rights and Privacy Act, and Rule R277-487, including protecting the confidentiality of a student's records and providing a parent and an eligible student access to records.

(7) Except as otherwise provided in this Rule R277-726, a provider shall submit a student's credit and grade to the Superintendent, using processes and applications provided by the Superintendent for this purpose, to a designated counselor or registrar at the primary school of enrollment, and the student's parent no later than:

(a) 30 days after a student satisfactorily completes an online semester or quarter course; or

(b) June 30 of the school year.

(8) A provider may not withhold a student's credits, grades, or transcripts from the student, parent, or the student's school of enrollment for any reason.

(9)(a) If a provider suspends or expels a student from an online course for disciplinary reasons, the provider shall notify the student's primary LEA of enrollment.

(b) A provider is responsible for all due process procedures for student disciplinary actions in the provider's online program.

(c) A provider shall notify the Superintendent of a student's administrative withdrawal, if the student is suspended for more than ten days, using forms and processes developed by the Superintendent for this purpose.

(10)(a) A provider shall provide to the Superintendent a list of course options using USBE-provided course codes.

(b) All program courses shall be coded as semester or quarter courses.

(c) A provider shall update the provider's course offerings annually.

(11) A provider shall serve a student on a first-come-first-served basis who desires to take courses and who is designated eligible by a primary school of enrollment if desired courses have space available.

(12) A provider shall provide all records maintained as part of a public online school or program, including:

(a) financial and enrollment records; and

(b) information for accountability and audit purposes upon request by the Superintendent and the provider's external auditors.

(13) A provider shall maintain documentation of student work, including dates of submission, for program audit purposes.

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(14) A provider is responsible for complete and timely submissions of record changes to executed CCAs and submission of other reports and records as required by the Superintendent.

(15) A provider shall inform a student and the student's parent of expectations for active participation in course work, including informing the student and the student's parent of travel expectations to fulfill course requirements.

(16) An LEA may participate in the program as a provider by offering a school or program to Utah secondary students in grades 6-12 who is not a resident student of the LEA and a regularly-enrolled student of the LEA consistent with Sections 53F-4-501 and 53F-4-503.

(17) A program school or program shall:

(a) be accredited by the accrediting entity adopted by the Board consistent with Rule R277-410;

(b) have a designated administrator who meets the requirements of Rule R277-520;

(c) ensure that a student who qualifies for a fee waiver shall receive all services offered by and through the public schools consistent with Section 53G-7-504 and Rule R277-407;

(d) maintain student records consistent with:

(i) the federal Family Educational Rights and Privacy Act, 20 U.S.C. Sec 1232g and 34 CFR Part 99; and

(ii) Rule R277-487; and

(e) shall offer course work:

(i) aligned with Utah Core standards;

(ii) in accordance with program requirements; and

(iii) in accordance with the provisions of Rules R277-700 and R277-404; and

(f) shall not issue transcripts under the name of a third-party provider.

(18) An LEA that offers an online program or school as a provider under the program:

(a) shall employ only educators licensed in Utah as teachers;

(b) may not employ an individual whose educator license has been suspended or revoked;

(c) shall require all employees to meet requirements of Title 53G, Chapter 11, Part 4, Background Checks, prior to the provider offering services to a student;

(d) may only employ teachers who meet the requirements of Rule R277-~~540~~301, Educator Licensing - Highly Qualified Assignment;

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(e) for a provider that provides an online course to a private or home school student, shall agree to administer and have the capacity to proctor and carry out the high school assessment, [~~statewide assessments, including proctoring statewide assessments,~~] consistent with Section 53F-4-510[4] and Rule R277-404;

(f) in accordance with Section R277-726-8, shall provide services to a student consistent with requirements of the IDEA, Section 504, and Title VI of the Civil Rights Act of 1964 for English Language Learners (ELL);

(g) shall maintain copies of all CCAs for audit purposes; and

(h) shall agree that funds shall be withheld by the Superintendent consistent with Sections 53F-4-505, 53F-4-506, and 53F-4-508.

(19) A provider shall cooperate with the Superintendent in providing timely documentation of student participation, enrollment, educator credentials, and other additional data consistent with Board directives and procedures and as requested.

(20) A provider shall post required information online on the provider's individual website including required assessment and accountability information.

(21)(a) A provider contracting with a third-party to provide educational services to students participating with the provider through the Statewide Online Education Program shall:

(b) develop a written monitoring plan to supervise the activities and services provided by the third-party provider to ensure:

(i) a third-party provider is complying with:

(A) federal law;

(B) state law; and

(C) Board rules;

(ii) curriculum provided by a third-party provider is aligned with the Board's core standards and rules;

(iii) supervision of third-party facilitation and instruction by an educator licensed in Utah:

(A) employed by the provider, and

(B) reported as teacher of record per Section R277-484-3 and Subsection R277-726-2(3); and

(iv) consistent with the LEA's administrative records retention schedule, maintenance of documentation of the LEA's supervisory activities.

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(22) A provider shall offer courses consistent with standards outlined in an applicable Statewide Services Agreement, which may be updated or amended to reflect changes in law, rule or recommended practice.

R277-726-8. Services to Students with Disabilities Participating in the Program.

(1)(a) If a student wishes to receive services under Section 504 of the Rehabilitation Act of 1973, the student shall make a request with the student's primary school of enrollment.

(b) The primary school of enrollment shall evaluate a student's request under Subsection (1)(a) and determine if a student is eligible for Section 504 accommodations.

(c) If the primary school of enrollment determines the student is eligible, the school shall prepare a Section 504 plan and implement the plan in accordance with Subsection (2)(b).

(2)(a) If a student requests services related to an existing Section 504 accommodation, a provider shall:

(i) except as provided in Subsection (2)(b), review and implement the plan for the student; and

(ii) provide the services or accommodations to the student in accordance with the student's Section 504 plan.

(b) An LEA of enrollment shall provide a Section 504 plan of a student to a provider within 72 business hours if:

(i) the student is enrolled in a primary LEA of enrollment; and

(ii) the primary LEA of enrollment has a current Section 504 plan for the student.

(2) For a student enrolled in a primary LEA of enrollment, if a student participating in the program qualifies to receive services under the IDEA:

(a) the student's primary LEA of enrollment shall:

(i) working with a provider LEA representative, review or develop an IEP for the student within ten days of enrollment;

(ii) working with a provider LEA representative, update an existing IEP with necessary accommodations and services, considering the courses selected by the student;

(iii) provide the IEP described in Subsection (2)(a)(i) to the provider within 72 business hours of completion of the student's IEP; and

(iv) continue to claim the student in the primary LEA of enrollment's membership; and

(b) the provider shall provide special education services and accommodations to the student in accordance with the student's IEP described in Subsection (2)(a)(i).

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(3) If a home or private school student requests an evaluation for eligibility to receive special education services:

(a) the home or private school student's resident school shall:

(i) evaluate the student's eligibility for services under the IDEA;

(ii) if eligible, prepare an IEP for the student, with input from the provider LEA, in accordance with the timelines required by the IDEA;

(iii) provide the IEP described in Subsection (4)(a)(ii) to the provider within 72 business hours of completion of the student's IEP; and

(iv) claim the student in the resident school's membership; and

(b) the provider shall provide special education services and accommodations to the student in accordance with the student's IEP described in Subsection (4)(a)(i).

R277-726-9. Home and Private School Appropriation.

(1) The Superintendent shall allocate the annual appropriation for home and private school tuition, along with any carryover or unobligated funds, as follows:

(a) 50% of the total appropriation for home school students; and

(b) 50% of the total appropriation for private school students.

(2) The Superintendent shall receive and accept enrollment requests on a first come, first served basis until all available funds are obligated.

(3) If home school or private school student funds remain by March 1, the Superintendent may release the funds for any pending enrollment requests.

R277-726-10. Other Information.

(1) A primary school of enrollment shall set reasonable timelines and standards.

(2) A provider shall adhere to timelines and standards described in Subsection (1) for student grades and enrollment in online courses for purposes of:

(a) school awards and honors;

(b) Utah High School Activities Association participation; and

(c) high school graduation.

KEY: statewide online education program

Date of Enactment or Last Substantive Amendment: May 23, 2019

Notice of Continuation: December 15, 2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; ~~53A-15-1210; 53A-15-1213; 53A-1-401;~~53F-4-510; 53F-4-514; 53E-3-401

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Exhibit B

Request for Hearing



Utah School Superintendents Association

860 E. 9085 S. Sandy, UT 84094
(801) 878-0660

December 15, 2020

Mark Huntsman, Chair, Utah State Board of Education
Sydnee Dickson, State Superintendent of Public Instruction
Angela Stallings, Deputy Superintendent of Policy
250 East 500 South
Salt Lake City, UT 84111

RE: Request for public hearing on proposed rule R277-726-Statewide Online Education Program

Dear Chair Huntsman, Superintendent Dickson and Deputy Superintendent Stallings,

Please accept this letter as a request for a public hearing before the Utah State Board of Education pursuant to Utah Code 63G-3-302(2)(b). This request is made on behalf of the Utah School Superintendents Association, an interested association having not fewer than ten members. This request is made not more than 15 days after the publication date of the proposed rule. The rule for which USSA is requesting this hearing is R277-726-Statewide Online Education Program.

Thank you for your consideration of this request. We look forward to receiving notice on the date and time of the hearing.

Sincerely,

Lexi Cunningham

Lexi Cunningham, Ed.D.
Executive Director, USSA

cc: Shannon Dulaney, USSA President
Ben Dalton, USSA 1st Vice President
Reid Newey, USSA 2nd Vice President
Rick Nielsen, USSA Past President

Exhibit C

Notice of the hearing date,
time, place, and subject on the
Utah Public Notice Website

Entity: State Board of Education

Body: State Board of Education

Subject:	Education
Notice Title:	Utah State Board of Education administrative rule hearing (Online Only)
Meeting Location:	250 E 500 South Salt Lake City UT 84111
Event Date & Time:	December 22, 2020 December 22, 2020 11:00 AM
Description/Agenda:	<p style="text-align: center;">UTAH STATE BOARD OF EDUCATION ADMINISTRATIVE RULE HEARING</p> <p>Board Members will participate via teleconference. Members of the public may view the meeting live at https://www.youtube.com/c/USBEMedia.</p> <ol style="list-style-type: none">1. Opening Business - 11:00 a.m. Statement Concerning Electronic Meeting2. Hearing on Board Administrative Rule R277-726 Public Hearing on Proposed Amendments to Rule R277-726 Statewide Online Education Program. To sign up for public comment, contact lorraine.austin@schools.utah.gov by December 21, 4:00 p.m.3. Adjournment
Notice of Special Accommodations:	In compliance with the Americans with Disabilities Act, persons needing auxiliary communicative aids and services for these meetings should call Lorraine Austin at (801) 538-7517, giving at least three working days notice.

Notice of Electronic or telephone participation:

This meeting will be streamed live. To view the broadcast please visit:
<https://www.youtube.com/c/USBEMedia>.

Other information:

As authorized by Utah Code 52-4 , this meeting is being held electronically without an anchor location to reduce the risk to health and safety from COVID-19 by limiting the frequency of in-person meetings. Members the public may comment through e-mail at board@schools.utah.gov.

Contact Information:

Lorraine Austin
(801)538-7517
lorraine.austin@schools.utah.gov

Posted on:

December 21, 2020 10:13 AM

Last edited on:

December 21, 2020 10:13 AM

Printed from Utah's Public Notice Website (<http://pmn.utah.gov/>)

Exhibit D

Written comments submitted
by interested parties

**2020
PUBLIC COMMENT FOR R277-726**

Updated December 22, 2020

From: Nan Ault <nan.ault@nsanpete.org>
Sent: Sunday, December 20, 2020 8:31:55 PM
To: Board Rule Comments <rule.comments@schools.utah.gov>
Subject: Public Hearing

I support all changes to R277-726 be put on hold until a workgroup/committee can be formed to examine this rule and online learning in Utah.

Thank you,

Nan Ault

Superintendent

North Sanpete School District

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Nan Ault

North Sanpete School District

Superintendent

435-462-2485 ext. 1815

<https://.nsanpete.org>

"Children are apt to live up to what you believe in them."

From: Mike Liechty <Mike.Liechty@ccsdut.org>
Sent: Monday, December 21, 2020 3:33:37 PM
To: Board Rule Comments <rule.comments@schools.utah.gov>
Subject: Comments Regarding R277-726-5

R277-726-5 LEA Requirements and Responsibilities

(8) and (9) requires that a school create a school within a school to provide for online learning. Who now has the responsibility to monitor/help these students? It's not the school's course. They can't be left alone. They are not in a regular classroom. The labs and resources are already being used by the attending students. If a student chooses to take an online class, that's fine. But not to add an additional burden to an already overloaded school.

Suggestion: Take online courses at home at the beginning of the school day or at the end of the school day. Transportation is the responsibility of the parent(s) making the decision.

Taking an online course at the school during the school day is telling every teacher and administrator that they have nothing of value to offer the student within the current schedule. Wrong message.

December 21, 2020

Dear Hearing Committee:

I am writing to address concerns with Rule R277-726. I appreciate your willingness to hold a hearing, and offer the following written comments, prior to the hearing.

My major area of concern is found in R277-726-5 item number 9, "A primary school of enrollment shall provide participating students access to facilities for the student to participate in an online course during the regular school day..." I find this problematic in many ways I will briefly address some of the concerns:

1. There is no stipulation in the rule regarding a maximum number of students that may take advantage of this provision. If the numbers are relatively low, a school may be able to accommodate the students, as participation numbers increase, the accommodation will become increasingly difficult.
2. In many high schools, there is neither physical space nor staff supervision available to accommodate this request. The most common response to this concern has been: (1) "Put the students in a library or computer lab and let existing staff accommodate them." This may work if it is one or two students, it becomes increasingly difficult as the numbers increase. However, even if it is one or two students it takes time away from the face to face students who are involved in learning activities in the respective venues. (2) "Allow them to sit in a class with the face to face students." The argument is the same, if it is a few students it could work but as numbers grow it becomes increasingly difficult, and in any scenario it takes teacher time and resources away from the face to face students.
3. We support student/parent rights to access education opportunities outside of our LEA. However, in so doing they are making a choice which involves some natural consequences. It appears that this rule seeks to avoid a natural consequence at the expense (not just WPU funding, but also staff and facility costs) of the LEA.
4. Specific to Rich School District; a majority of the students utilizing the services of the "Statewide Online Education Program" are doing so for a portion of the school day, usually one or two periods in the secondary schools. In a majority of those cases it is an avenue to avoid a particular class or teacher. Physical Education, which is a required course for graduation under State Graduation Requirements, is one of the classes most avoided by enrolling in the SOEP program. I am fine with students having that choice, but not sure it is our responsibility to then provide staff and space to facilitate that choice. I could give similar antidotal examples from other curriculum areas, but the underlying issues are the same; student/parents make a choice to utilize SOEP, to avoid our curriculum offerings, but don't like some of the consequences that accompany that decision.
5. I think this decision should be left up to the LEA, I realize that some are accommodating this request and have found ways to make it work, they should have that prerogative. In other

cases, it becomes very problematic; I do not think Board Rule should mandate compliance. I realize this creates some differences that have to be addressed by USBE, but the answer is relatively simple, in referencing LEA autonomy.

A separate concern is R-277-726-3, item 10:

I have asked multiple times exactly what amount will be “withheld from a student’s primary LEA...” The rule references 53F-4-507(2), but there are different interpretations regarding the statute. I submit there should be clear understanding on the funding formula prior to moving forward.

Again, I appreciate your willingness to seek input relative to this issue. I believe it would be in the best interest of all involved to put all changes specific to R277-726 on hold until a workgroup/committee can be formed to examine the rule and the intended and non-intended consequences it poses.

Regards,

Dale Lamborn

Superintendent Rich School District

From: Tim Smith <Tim.Smith@ccsdut.org>
Sent: Tuesday, December 22, 2020 3:07 PM
To: Board Rule Comments <rule.comments@schools.utah.gov>
Subject: Feedback

Today our district attended the public comment meeting for the proposed changes to the State Board Rule for online education. We do have some concerns regarding the requirements for schools to provide supervision, space and technology for online students that are taking courses. These concerns are mainly centered around funding to support these changes as well as space in our schools. We would appreciate that before these changes are implemented that a working group with representation and feedback from Superintendents and district and school administrators be considered.

Tim G. Smith

Chief Information/Academic Officer

Cache County School District

tim.smith@ccsdut.org

435-994-0307

Help Desk (435) 792-7614

<https://helpdesk.ccsdut.org>



Exhibit E

Hearing recording

A recording of the hearing may be accessed at

https://www.youtube.com/watch?v=VMjx_XOIWJI.

The audio recording is also available on the

Utah Public Notice Website:

<https://www.utah.gov/pmn/index.html>.

Exhibit F

Hearing Summary

**SUMMARY OF THE UTAH STATE BOARD OF EDUCATION HEARING ON
ADMINISTRATIVE RULE R277-726**

December 22, 2020

State Board of Education Members Attending:

Chair Mark Huntsman	Member Jennie Earl
Vice Chair Brittney Cummins	Member Jennifer Graviet
Member Laura Belnap	Member Scott Hansen
Member Michelle Boulter	Member Mike Haynes
Member Janet Cannon	Member Carol Lear
Member Brittney Cummins	Member Shawn Newell
Member Cindy Davis	Member Laurieann Thorpe

Others Attending:

Ben Rasmussen, Hearing Officer
Sydnee Dickson, State Superintendent of Public Instruction
Angie Stallings, USBE Deputy Superintendent
Patty Norman, USBE Deputy Superintendent
Darin Nielsen, USBE Assistant Superintendent
Debbie Davis, USBE Internal Audit Director
Jennifer Thronsen, USBE Director of Teaching and Learning
Lorraine Austin, Board Secretary
Jerry Record, USBE IT staff
Jeff Van Hulsten, USBE Director of Public Affairs
Bryan Quesenberry, Assistant Attorney General
Michelle Beus, Assistant Attorney General
Member-elect Natalie Cline
Member-elect Molly Hart
Member-elect Matt Hymas
Member-elect James Moss
Member-elect Brent Strate
Lexi Cunningham, Executive Director, Utah School Superintendents Association
Shannon Dulaney, President, Utah School Superintendents Association and Superintendent,
Iron School District
Reid Newey, 2nd Vice President, Utah School Superintendents Association and
Superintendent, Davis School District
Rick Nielsen, Past President, Utah School Superintendents Association and Superintendent,
Nebo School District

The Utah State Board of Education held a hearing on administrative rule R277-726 *Statewide Online Education Program* on December 22, 2020. As authorized by Utah Code 52-4, the meeting was held electronically without an anchor location to reduce the risk to health and safety from COVID-19 by limiting the frequency of in-person meetings.

Hearing Officer Ben Rasmussen called the meeting to order at 11:00 a.m. and read a statement outlining the hearing procedures.

Deputy Superintendent Angie Stallings provide background on proposed changes to R277-726.

Lexi Cunningham, Executive Director of the Utah School Superintendents Association (USSA), introduced Shannon Dulaney, USSA President, USSA 2nd Vice President Reid Newey, and past-president Rick Nielsen. They provided comment, requesting that a working group be formed to address online learning in the state.

Mr. Rasmussen stated that written comment from the public would be accepted until December 29 at 4:00 p.m.

The hearing adjourned at 11:39 a.m.

Exhibit G

List of persons who offered
public comment at the Hearing

UTAH STATE BOARD OF EDUCATION HEARING ON R277-726

December 22, 2020

PUBLIC COMMENT

Name	Address
Lexi Cunningham	USBA Office 860 East 9085 South, Sandy, Utah
Shannon Dulaney	Iron School District 2077 W Royal Hunte Dr, Cedar City, Utah
Reid Newey	Davis School District 45 East State Street, Farmington, Utah
Rick Nielsen	Nebo School District 350 South Main, Spanish Fork, Utah

Exhibit H

Memorandum describing
hearing process dated
December 17, 2020



UTAH STATE BOARD OF EDUCATION

Mark Huntsman, Chair

Brittney Cummins, Vice Chair

Laura Belnap
Michelle Boulter
Janet A. Cannon
Cindy Davis
Jennie Earl

Jennifer Graviet
Scott L. Hansen
Mike Haynes
Carol Barlow Lear

Mark R. Marsh
Scott B. Neilson
Shawn E. Newell
Lauricann Thorpe

Sydnee Dickson, State Superintendent of Public Instruction
Lorraine Austin, Secretary to the Board

MEMORANDUM

To: Utah State Board of Education

From: Ben Rasmussen, Director of Law and Professional Practices

Date: December 17, 2020

Re: Public Hearing on Proposed Amendments to Rule R277-726 Statewide Online Education Program

This memorandum will serve to outline the procedures that will be followed in conjunction with the public hearing scheduled for December 22, 2020 regarding proposed amendments to Rule R277-726. Pursuant to R15-1-5(2), I have been appointed as hearing officer for this public hearing.

The public hearing will commence at 11:00 a.m. The meeting will be conducted virtually using the Zoom platform and is scheduled for at least one hour.

Interested parties are encouraged to submit written comments, statements, or other feedback, which will be made part of the hearing record and posted on the State Board of Education's website. Written comment should be submitted to rule.comments@schools.utah.gov. Written comment to be posted prior to the hearing will be accepted until close of business, Monday, December 21, 2020.

This hearing follows a public hearing request by the Utah School Superintendents Association. The Board will allow representatives of this group twenty minutes to make a presentation on the rule.

Other parties will be permitted to present public comment as time allows. Individuals wishing to address the Board regarding this rule should request to be heard in advance by emailing Lorraine Austin, Board Secretary, at lorraine.austin@schools.utah.gov, by 4:00 p.m. Monday, December 21, 2020. Individuals should provide their name and address and indicate whether they wish to speak in favor of or in opposition to the proposed amendments to the rule. Ms.

Austin will arrange for individuals wishing to give public comment to receive meeting login information.

Individuals may be allowed between 2-3 minutes as determined by the hearing officer. An individual may not yield time to another speaker. Those making public comment are encouraged to avoid restating points made in previous comments and to avoid reading written comments that may be submitted to the hearing officer.

Following the hearing, the Board will continue to accept written comment by email through close of business December 29, 2020.

It is anticipated that the hearing record will be submitted to the full Board for consideration at the Board's January 6, 2021 meeting. Further questions regarding the conduct of the hearing may be directed to the hearing officer at ben.rasmussen@schools.utah.gov.