



# UTAH STATE BOARD OF EDUCATION

Martell Menlove, Chief Executive Officer  
Lorraine Austin, Board Secretary

David L. Crandall, Chair    David L. Thomas, First Vice Chair

Dixie L. Allen  
Kim R. Burningham  
Keith M. Buswell  
Leslie B. Castle

Barbara W. Corry  
Dan Griffiths  
Heather Groom  
Michael G. Jensen

Jennifer A. Johnson  
Jefferson Moss  
C. Mark Openshaw  
Debra G. Roberts

## **MEMORANDUM**

**TO:** Members, Utah State Board of Education

**FROM:** Martell Menlove, Ph.D.  
Chief Executive Officer

**DATE:** March 7, 2014

**ACTION:** R277-105 *Recognizing Constitutional Freedoms in the Schools*  
(Continuation)

---

### **Background:**

R277-105 *Recognizing Constitutional Freedoms in the Schools* is due for a five-year review and continuation consistent with the Utah Administrative Rulemaking Act. The rule must be approved for continuation by the Board or it will expire. Staff has reviewed R277-105 and determined that the rule continues to be necessary. Staff does not recommend any changes to the rule at this time.

### **Key Points:**

R277-105 continues to be necessary because it provides standards and procedures to help public school officials protect and accommodate individual rights in the operation of Utah's schools.

### **Anticipated Action:**

It is proposed that the Law and Licensing Committee consider approving R277-105 for continuation on first reading, and if approved by the Committee, the Board consider approving R277-105 for continuation on second reading.

**Contact:** Brenda Hales, 801-538-7515  
Carol Lear, 801-538-7835

**R277. Education, Administration.**

**R277-105. Recognizing Constitutional Freedoms in the Schools.**

**R277-105-1. Definitions.**

A. "Board" means the Utah State Board of Education.

B. "Conscience" means a standard based upon learned experiences, a personal philosophy or system of belief, religious teachings or doctrine, an absolute or external sense of right and wrong which is felt on an individual basis, a belief in an external Absolute, or any combination of the foregoing.

C. "Discretionary time" for students means school-related time that is not instructional time. It includes free time before and after school, during lunch and between classes or on buses, and private time before athletic and other events or activities.

D. "District" or "school district" means a public school district, the Utah Schools for the Deaf and the Blind, or an Applied Technology Center.

E. "Exercise of religious freedom" means the right to choose or reject religious, theistic, agnostic, or atheistic convictions and to act upon that choice.

F. "Guardian" means a person who has been granted legal guardianship of a child in accordance with state law.

G. "Instructional time" means time during which a school is responsible for a student and the student is required or expected to be actively engaged in a learning activity. It includes instructional activities in the classroom or study hall during regularly scheduled hours, required activities outside the classroom, and counseling, private conferences, or tutoring provided by school employees or volunteers acting in their official capacities during or outside of regular school hours.

H. "Parent" means a biological or adoptive parent who has legal custody of a child.

I. "USOE" means the Utah State Office of Education.

**R277-105-2. Authority and Purpose.**

A. This rule is adopted pursuant to Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board. The rule is based upon the First Amendment to the Constitution of the United States; Article I, Section 4, Article III, Sections 1 and 4, and Article X, Section 1 of the Utah State Constitution which speak of rights of conscience, perfect toleration of religious sentiment, the free exercise of religion, and prohibitions against the establishment of religion or the imposition of sectarian control in the schools; Section 53A-13-101(4), which directs that curriculum promoting respect for parents and home, morality, qualities of character and respect for and an understanding of the Constitutions of the United States and the State of Utah be taught in connection with regular school work; and Sections 53A-13-101.1 through 53A-13-101.3, which provide direction for the USOE and school districts regarding curriculum, freedom of conscience, exercise of religious freedoms, and student expression.

B. The purpose of this rule is to help public school officials to protect and accommodate individual rights in the operation of Utah's schools.

### **R277-105-3. Interpretive Context for the Rule.**

A. The Board recognizes the importance of religious belief and practice and other expressions of conscience in the lives of many people, the critical role that such beliefs have played in the development of societies and cultures throughout the world, and the influence that these beliefs continue to have on concepts and interpretations relating to school curricula. The Board also recognizes that Utah is becoming a pluralistic society with an increasing diversity of peoples and beliefs, and that this diversity will require the development of greater tolerance and understanding among the people of the state.

B. The Constitution of Utah prohibits the use of the powers of government to encourage or discourage religious beliefs or practices, or to repress rights of conscience. Given their unique relationship to children attending the public schools, school officials must be particularly careful to remain neutral in matters relating to religion, while striving to accommodate the religious beliefs and practices and the freedom of conscience of students and their parents.

C. Court decisions interpreting Constitutional establishment clause provisions are a commonly used source for information about acceptable relationships between government and religion. The Board has attempted to reflect applicable rulings in the development of this rule. Because of the relative absence of court interpretations concerning the meaning of the Utah Constitution as applied to the public schools, this rule places primary reliance upon interpretations of related clauses in the First Amendment to the United States Constitution. In applying the rule, school officials may presume that any accommodation of religion which would be permissible under applicable rulings interpreting the First Amendment to the United States Constitution, and has not been prohibited in a decision interpreting Utah law which is binding upon the Utah public education system, is permissible in the schools of the State of Utah.

### **R277-105-4. Creation and Implementation of Curriculum.**

A. A study, performance, or display which includes examination of or presentations about religion, religious thought or expression, or the influence thereof in music, art, literature, law, politics, history, or any other portion of the curriculum may be undertaken in the public schools so long as it is designed to achieve permissible educational objectives and is presented within the context of the approved curriculum.

B. The objective study of comparative religions is permissible, but no religious tenet, belief, or denomination may be given inappropriate emphasis.

C. No aspect of cultural heritage, political or moral theory, or societal value may be either included or excluded from consideration in the public schools primarily because it explicitly or implicitly contains theistic, agnostic, or atheistic assumptions.

D. An analysis of religion, deity, an absolute moral principle, or any other concept that may contain a theistic, agnostic, or non-theistic assumption, may be presented when

included as an appropriate component or aspect of a broader study, display, presentation, or discussion regarding cultural heritage, political theory, moral theory or a societal value.

**R277-105-5. Requests for Waiver of Participation in School Activities.**

A. A parent, a legal guardian of a student, or a secondary student may request a waiver of participation in any portion of the curriculum or school activity which the requesting party believes to be an infringement upon a right of conscience or the exercise of religious freedom in any of the following ways:

(1) it would require an affirmance or denial of a religious belief or right of conscience;

(2) it would require participation in a practice forbidden by a religious belief or practice, or right of conscience; or

(3) it would bar participation in a practice required by a religious belief or practice, or right of conscience.

B. A claimed infringement under Subsection A must rise to a level of belief that the requested conduct violates a superior duty which is more than personal preference.

C. If a minor student seeks a waiver of participation under Subsection A, the school shall promptly notify the student's parent or legal guardian about the student's choice. In the event of a conflict, a parent's or legal guardian's wishes shall prevail over those of a minor student.

D. A parent, guardian, or secondary student requesting a waiver of participation under Subsection A may also suggest an alternative that requires reasonably equivalent performance by the student of the objective of the curriculum or activity that is believed to be objectionable.

E. In responding to a request under Subsection A, the school shall:

(1) waive participation by the student in the objectionable curriculum or activity;

(2) provide a reasonable alternative as suggested by the parent or secondary student, or other reasonable alternative developed in consultation with the requesting party, that will achieve the objectives of the portion of the curriculum or activity for which waiver is sought; or

(3) deny the request.

F. A request for waiver of required participation shall not be denied unless the responsible school official finds that requiring the participation of that particular student is the least restrictive means necessary to achieve a specifically identified educational objective in furtherance of a compelling governmental interest.

G. In responding to a request under Subsection A, the school shall not require an affected student to accept a sub-standard or educationally deficient alternative that is unreasonably burdensome.

H. Permitting the submission of requests for participation waivers, and the provision of reasonable alternatives, is intended to facilitate appropriate protection and accommodation of a requesting party's asserted right of conscience or exercise of

religious freedom, and shall not be considered to be an attempt by a school official to endorse, promote or disparage a particular religious or non-religious viewpoint.

**R277-105-6. Student Expression.**

A. A student participating in a classroom discussion, presentation, or assignment, or in a school sponsored activity, shall not be prohibited from expressing personal beliefs of any kind nor be penalized for so doing, unless the conduct:

- (1) unreasonably interferes with order or discipline;
- (2) threatens the well-being of persons or property; or
- (3) violates concepts of civility or propriety appropriate in a school setting.

B. Students may initiate and conduct voluntary religious activities or otherwise exercise their religious freedom on school grounds during discretionary time. Individuals not currently enrolled as students in the school may neither conduct nor regularly attend the activities. School officials may neither conduct nor actively participate in the activities, but may be present as necessary to ensure proper observance of school rules and may limit or prohibit student activities under this section which:

- (1) unreasonably interfere with the ability of school officials to maintain order and discipline;
- (2) threaten the well-being of persons or property; or
- (3) violate concepts of civility or propriety appropriate in a school setting.

**R277-105-7. Religious Services and Church-Owned Facilities.**

A. Public school officers and employees may neither authorize nor encourage prayer or devotional activities in connection with any class, program, presentation or other student activity which is under the control, direction, or sponsorship of a public school or school district. This Subsection shall not act to restrict student rights under R277-105-6.

B. No school employee or student may be required to attend or participate in any religious service, whether in an individual capacity or as a member of a performing group, regardless of where or when the service is held. No penalty may be assessed for failure to attend or perform in such an activity.

C. Subject to the requirements of Subsection R277-105-5, students who are members of performing groups such as school choirs may be required to rehearse or otherwise perform in a church-owned or operated facility if the following conditions are met:

- (1) the performance is not part of a religious service;
- (2) the activity of which the performance is a part is neither intended to further a religious objective nor under the direction of a church official; and
- (3) the activity is open to the general public.

D. Students may voluntarily attend and perform during a religious service as individuals or as members of a group, provided all arrangements are made by students or non-school personnel.

E. Religious activities may be conducted on the same basis as any other non-school activity outside of regular school hours.

F. Subject to the requirements of R277-105-5, students may be required to visit church-owned facilities when religious services are not being conducted if the visit is intended solely for the purpose of pursuing permissible educational objectives such as those relating to art, music, architecture, or history.

**R277-105-8. Expressions of Personal Belief by Employees.**

A. An employee's rights relating to voluntary religious practices and freedom of speech do not include proselytizing of any student regarding atheistic, agnostic, sectarian, religious, or denominational doctrine while the employee is acting in the employee's official capacity, nor may an employee attempt to use his position to influence a student regarding the student's religious beliefs or lack thereof.

B. Even though acting in an official capacity, an employee may respond in an appropriate and restrained manner to a spontaneous question from a student regarding the employee's personal belief or perspective. Nevertheless, because of the special position of trust held by school employees, employees may not advocate or encourage acceptance of a belief or perspective; but may, by exercising due caution, explain or define personal religious beliefs or perspectives, or opinions about the rightfulness or wrongfulness of his/her own, or any other person's religious beliefs or lack thereof.

**R277-105-9. Mandatory Responsibilities of School Districts.**

A. Supervision and Training

(1) Local school boards and their employees shall cooperate and share responsibilities in implementing Sections 53A-13-101 et seq. U.C.A.

(2) Each local school board shall adopt and implement policies and training in accordance with this rule and the provisions of Sections 53A-13-101 et seq. U.C.A., to include the following:

(a) the person to whom a request for waiver of participation or substitution of another activity is to be directed;

(b) how notice is to be given to the parent of a minor secondary student who makes a request pursuant to an exercise of freedom of conscience or exercise of religious freedom under Sections 53A-13-101.2 and 53A-13-101.3 U.C.A. (1993);

(c) how appeals may be taken from a decision to require participation in any curriculum or activity after a request to either waive participation or allow substitution of another activity has been made by a parent, legal guardian or secondary student, including suspension of participation requirements until a ruling on the appeal is issued;

(d) establish procedures whereby students are not compelled to participate in any curriculum or activity after a request to waive participation or allow substitution of another activity has been submitted unless it is determined that requiring the participation of that particular student is the least restrictive means necessary to achieve a specifically identified educational objective in furtherance of a compelling governmental interest; and

(e) establish procedures whereby any portion of any

curriculum or activity that is repeatedly alleged to interfere with the rights of conscience or exercise of religious freedom of students, parents or legal guardians shall be evaluated to determine whether the educational objectives could be achieved by less intrusive means.

**KEY: freedom of religion, public education**

**Date of Enactment or Last Substantive Amendment: 1994**

**Notice of Continuation: [~~May 4, 2009~~]2014**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-13-101(4); 53A-13-101.1 through 53A-13-101.3**