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## MEMORANDUM

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

**FROM:** Glenna Gallo, State Director of Special Education

**DATE:** November 3-4, 2016

**ACTION:** R277-801 *Services to Students with Sensory Disabilities (New)*

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**Background:** An Interagency Agreement (IA) between the Utah State Board of Education (USBE) Special Education Services, local education agencies (LEAs), and Utah Schools for the Deaf and Blind (USDB) has been in place for years. The IA, which is located at (<http://www.schools.utah.gov/sars/Laws/InteragencyAgreement.aspx>), assigns responsibility between USDB and LEAs for services for students with sensory disabilities, dependent upon specific scenarios and factors, and is referred to as part of R277-800.

As directed by the USBE Law and Licensing Committee in October, 2016, USBE staff will draft a Board Rule to replace the IA.

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

- System Values
- Educational Equity
- Quality Learning

**Anticipated Action:** It is proposed that the Law and Licensing Committee consider approving R277-801 on first reading and, if approved by the Committee, the Board consider approving R277-801 on second reading.

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1 **R277. Education, Administration.**

2 **R277-801. Services for Students with Sensory Impairments.**

3 **R277-801-1. 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 over public education in 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 (c) Section 53A-25b-103, which creates USDB, and authorizes USDB to  
10 provide services to qualifying students.

11 (2) The purpose of this rule is to establish rules for LEAs and USDB to  
12 provide services to students with sensory impairments.

13 **R277-801-2. Definitions.**

14 (1) "504 plan" means a plan required by Section 504, which is designed to  
15 accommodate an individual who has been determined, as a result of an evaluation,  
16 to have a physical or mental impairment that substantially limits one or more major  
17 life activities.

18 (2) "Intervener" means a specially trained paraprofessional who provides  
19 access to information and communication and facilitates the development of social  
20 and emotional well-being for children who are deaf-blind.

21 (3) "Minimum school program" or "MSP" means the same as that terms is  
22 defined in Section 53A-17a-103.

23 (4) "Qualifying student" means a student with sensory impairment who  
24 qualifies for services under the IDEA or Section 504.

25 (5) "Section 504" means Section 504 of the Rehabilitation Act of 1973.

26 (6) "Utah eTranscript and Record Exchange" or "UTREx" means a system that  
27 allows individual detailed student records to be exchanged electronically among  
28 public education LEAs and the Board, and allows electronic transcripts to be sent to  
29 any post-secondary institution, private or public, in-state or our-of-state, that  
30 participates in the e-transcript service.

31 (7) "Weighted pupil unit" or "WPU" means the basic per pupil unit used to

32 calculate the amount of state funds for which a school district is eligible.

33 **R277-801-3. Responsibilities of LEAs.**

34 (1)(a) An LEA is the single point of entry for USDB services for qualifying  
35 students.

36 (b) A qualifying student may not enroll in USDB programs without a referral  
37 from an LEA.

38 (c) When evaluating services for qualifying students, an LEA and the USDB  
39 shall consider:

40 (i) primary disabilities;

41 (ii) secondary disabilities; and

42 (iii) other factors, including:

43 (A) transportation needs; and

44 (B) length of time a student would spend in transport daily.

45 (2) Qualifying students may receive services under:

46 (a) IDEA;

47 (b) Section 504; or

48 (c) a USDB Preschool Services Plan.

49 (3) An LEA has the responsibility for the design and implementation of and  
50 IEP or Section 504 plan for qualifying students.

51 (a) Qualifying students who enroll in a Utah school district or charter school  
52 may be eligible to receive intensive services from sensory specialists employed by  
53 USDB, if appropriately designated as specialized instruction or a related services as  
54 part of an IEP or Section 504 plan.

55 (b) An LEA with greater than 3 percent of the student population statewide  
56 may elect to contract with USDB to provide outreach services.

57 (c) An LEA may employ their own sensory specialists to meet the IEP or 504  
58 plan needs of qualifying students.

59 (d) An LEA is responsible for the development of a qualifying student's IEP,  
60 including any assessments necessary for initial placement.

61 (e) Notwithstanding Subsection (3)(d), an LEA may not commit USDB to  
62 provide services to qualifying students unless USDB has participated in the IEP.

63 (f)(i) An LEA and USDB shall consider least restrictive environment, as well  
64 as intensive services needs of a qualifying student in determining an appropriate  
65 placement.

66 (ii) In the case of deaf or hard of hearing students, an IEP team should  
67 consider the opportunity for a student to have direct communication with teachers  
68 and peers.

69 (g) If an LEA is working with USDB staff:

70 (i) the LEA shall provide internet access and technical support to permit  
71 USDB staff to access the internet through technology and hardware;

72 (ii) the LEA and USDB technology staff will jointly determine procedures to  
73 ensure access to LEA technology systems; and

74 (iii) USDB shall provide and maintain all needed hardware and software  
75 provided to USDB staff.

76 (h) An LEA shall provide an assistive technology devices required for the  
77 implementation of a student's IEP.

#### 78 **R277-801-4. Designation of USDB as LEA.**

79 (1)(a) In order to meet the educational needs of qualifying students, an IEP  
80 team may enroll a qualifying student in a USDB program and may designate USDB  
81 as the LEA for the qualifying student.

82 (b) If USDB is designated as the LEA under Subsection (1)(a), the USDB  
83 program shall be treated as a placement option within the LEA continuum, and the  
84 referring LEA staff must continue to attend IEP meetings.

85 (2)(a) If USDB is designated as a qualifying student's LEA, USDB is  
86 responsible from that point on for the design and implementation of the student's  
87 IEP, 504 Plan, or USDB Preschool Service Plan.

88 (b) USDB shall provide all special education and related services and costs  
89 documented in an IEP.

90 (c) USDB may request consultation from the referring LEA for the design of  
91 services that are required by the student beyond the student's sensory needs.

#### 92 **R277-801-5. Correlation of Responsibilities.**

93 (1) For qualifying students enrolled with USDB as the designated LEA, USDB  
94 will provide a list of students and their IEP due dates for the upcoming school year  
95 to the special education director of the referring LEA no later than June 30.

96 (2) For qualifying students currently enrolled with an LEA and receiving  
97 services through USDB outreach programs, an LEA will provide a list of students and  
98 their IEP due dates for the upcoming school year to the USDB Assistant  
99 Superintendent no later than June 30.

100 (3) An LEA may invite USDB staff to attend IEP or 504 plan meetings for  
101 qualifying students, including meetings for:

102 (a) students transitioning from Part C to Part B;

103 (b) students moving from out of state; and

104 (c) students transferring between LEAs.

105 (4) An LEA shall consider the need to invite USDB to any meetings discussing  
106 evaluation and eligibility.

107 (5)(a) For qualifying students enrolled in an LEA and receiving no services  
108 from USDB, an LEA shall invite USDB to attend any meeting where USDB services  
109 may be considered for that student.

110 (b) If a change of placement is considered:

111 (i) both the referring LEA and USDB will participate and establish a timeline  
112 to ensure a successful transition for the student.

113 (ii) both the referring LEA and USDB will participate in the IEP or 504 meeting.

114 (6) IEP or 504 plan meetings shall be held at a mutually agreed upon time  
115 and location, with appropriate notification to all parties.

116 (7)(a) The Board and USDB shall provide ongoing interpreter training toward  
117 certification and mentoring for all interpreters, as requested by individual LEAs.

118 (b) Training provided under Subsection (7)(a) shall provide certified  
119 interpreters with the opportunity to improve skills and move up to a higher level of  
120 certification.

121 (c) An LEA may contract with USDB to provide interpreter services for  
122 students attending the LEA or an LEA school where a USDB extension classroom  
123 is located.

124 (8)(a) Each LEA, including USDB as the designated LEA, is responsible for

125 ensuring the timely provision of textbooks and material as required by the IDEA.

126 (b) The Board shall:

127 (i) annually provide information to LEAs regarding the costs of accessible  
128 materials in the state; and

129 (ii) determine an equitable cost-sharing plan.

130 **R277-801-6. Services for Qualifying Students.**

131 (1) If a qualifying student is enrolled with USDB as the designated LEA:

132 (a) USDB shall include the qualifying student in all Board-required enrollment  
133 reports including:

134 (i) fall enrollment counts;

135 (ii) the child count of students with disabilities; and

136 (iii) the end-of-year enrollment report;

137 (b) Any agreements between the referring LEA and USDB shall be  
138 documented as part of a written agreement, which shall be reviewed at least  
139 annually;

140 (c)(i) A qualifying student's IEP team shall determine the student's  
141 transportation needs;

142 (ii) USDB shall provide transportation as a related service in an IEP or if  
143 required to implement a 504 plan; and

144 (iii) A referring LEA shall combine resources with USDB, whenever possible,  
145 to provide within-LEA transportation;

146 (d)(i) USDB shall annually administer all Board-required assessments.

147 (ii) USDB may provide alternate tests in accordance with a student's IEP and  
148 state law; and

149 (e) USDB shall develop and implement all programs, policies, and procedures  
150 required of an LEA by the Board and state law.

151 (2) If a qualifying student attends USDB extension classrooms located within  
152 an LEA:

153 (a) the student shall be enrolled in the general education program of the LEA  
154 school the student is attending;

155 (b) the LEA school shall be designated as the "school of record" for the

156 student;

157 (c) the student shall be included by the LEA school or district in all required

158 reports and uploads to UTREx;

159 (d) the student shall be counted in the LEA school or district total enrollment,

160 and will be included in the calculation of all funding formulas, including Weighted

161 Pupil Units and Minimum School Program;

162 (e) the student shall receive access to LEA programs and services consistent

163 with their IEP or 504 plan, consistent with services available to other students

164 enrolled in the student's school;

165 (f) the student may not be enrolled in the special education program of the

166 LEA school the student is attending;

167 (g) USDB shall ensure the student receives a free appropriate public

168 education;

169 (h) USDB shall ensure the student receives all special education and related

170 services, including interpreting services, as required on the student's IEP or 504

171 plan;

172 (i) the LEA school shall generate general education funding or WPU for the

173 student;

174 (j) USDB shall receive federal IDEA funding in accordance with USDB's

175 legislative line item funding;

176 (k) the LEA school shall receive no state or federal special education funding

177 for the student;

178 (l)(i) USDB shall provide transportation for the student as a related service

179 when it is included in an IEP.

180 (ii) an LEA school shall combine resources with USDB, whenever possible,

181 to provide within-LEA transportation; and

182 (m) an LEA school and USDB shall jointly ensure that any portable

183 classrooms have access to intercom and phone service.

184 (3) If a qualifying student receives USDB outreach or consulting services:

185 (a) the student shall be enrolled in the general and special education

186 programs of the LEA school the student attends;

187 (b) the LEA shall included the student in the calculation of state special

188 education and IDEA funds for the school district or charter school;  
189 (c) USDB may not submit the students to UTREx and may not receive state  
190 or federal special education funding;  
191 (d) USDB will provide services at no cost for students within an LEA with less  
192 than three percent of the student population statewide; and  
193 (e) An LEA may contract with USDB to provide services for students if an LEA  
194 has greater than three percent of the student population statewide;  
195 (i) The Superintendent shall provide a list of LEAs that exceed the three  
196 percent threshold by December 15 for the upcoming school year;  
197 (ii) An LEA and USDB shall sign contracts prior to initiation of services;  
198 (iii) An LEA shall make payments in two installments, in January and June;  
199 and  
200 (iv) The Board may assist USDB in collection of outstanding balances upon  
201 request.  
202 (4) USDB may provide orientation and mobility or “O&M” services subject to  
203 the following:  
204 (a) USDB shall provide eligible O&M services at no cost to an LEA if the LEA  
205 requests the services by September 1 for the next school year;  
206 (b) USDB shall provide O&M services within normal contract hours;  
207 (c) An LEA requesting O&M services outside of the a student’s school day  
208 may contract with USDB to provide the additional services;  
209 (d) Notwithstanding Subsection (4)(b), an LEA may choose to provide its own  
210 O&M services; and  
211 (e) An LEA and USDB shall approve O&M services in a qualifying student’s  
212 IEP or 504 plan.  
213 (5) USDB shall provide deaf-blind services to all eligible Utah students at no  
214 cost to the student’s LEA in accordance with the student’s IEP or 504 plan.  
215 (6) USDB shall provide interveners to all eligible Utah students subject to the  
216 following:  
217 (a) USDB shall provide interveners to an LEA at no cost to the LEA;  
218 (b)(i) Notwithstanding Subsection (6)(a), an LEA may provide their own  
219 intervenors or substitute intervenors and may receive financial support from USDB

220 at the LEA's rate of pay for comparable paraprofessionals;

221 (ii) Financial support from USDB to an LEA for interveners or substitute  
222 interveners may not exceed the amount paid for comparable paraprofessionals in  
223 the USDB salary schedule;

224 (c) All interveners or substitute interveners must complete the USDB  
225 intervener training or a national certification;

226 (d) An LEA will provide documentation for reimbursement of an intervener or  
227 substitute intervener it hires according to USDB's reimbursement schedule;

228 (e) USDB shall provide a plan for training of all interveners and substitute  
229 interveners to an LEA annually; and

230 (f) An LEA and USDB shall develop a plan for the provision of a substitute  
231 intervener to meet an eligible student's needs, which may include:

232 (i) a USDB-hired substitute intervener;

233 (ii) an LEA-hired substitute intervener; or

234 (iii) other mutually agreeable arrangements.

235 (7) USDB shall provide a variety of diagnostic assessment services to an LEA  
236 to support the appropriate evaluation of students with sensory impairments.

237 (8) USDB may provide audiological services to an eligible student through a  
238 referral from an LEA or early intervention provider.

239 (a) Audiological services shall be provided at no cost to an LEA with less than  
240 three percent of the state's student population.

241 (b) An LEA with greater than three percent of the state's student population  
242 may contract for audiological services with USDB.

243 (9) An LEA and USDB may contract for services beyond those specified in  
244 this R277-801.

245 **R277-801-8. Dispute Resolution Procedure.**

246 (1) When there is a dispute about an issue arising under this R277-801, the  
247 parties shall submit the dispute to the Superintendent, who shall establish a dispute  
248 resolution panel as provided herein no later than two weeks after the notification of  
249 the dispute.

250 (2) A dispute resolution panel shall be comprised of three members, including:

- 251 (a) A compliance officer designated by the Superintendent;  
252 (b) A dispute resolution hearing officer chosen by the Superintendent from a  
253 list of qualified persons; and  
254 (c) A panelist chosen by the Superintendent from a pool of predetermined  
255 qualified special educators.  
256 (i) An LEA or USDB may veto one individual chose under Subsection (2)(c).  
257 (ii) If both vetoes are used, the third choice of the Superintendent shall be  
258 final.  
259 (3) A dispute resolution panel established under this section shall:  
260 (a) meet within 30 days from the date of notification of the dispute;  
261 (b) review all information submitted by the LEA and USDB; and  
262 (c) make recommendations regarding the outcome of the dispute no later than  
263 two weeks after the meeting, which shall be binding upon the LEA and USDB.

264 **KEY: students, services, sensory impairments**

265 **Date of Enactment of Last Substantive Amendment: 2017**

266 **Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401; 53A-**  
267 **25b-103**