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## MEMORANDUM

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

**FROM:** Brad C. Smith  
Chief Executive Officer

**DATE:** August 6-7, 2015

**ACTION:** R277-417 *Prohibiting LEAs and Third Party Providers from Offering Incentives or Reimbursements for Enrollment or Participation*  
(Amendment)

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### **Background:**

R277-417 was adopted by the Board effective July 8, 2015. Since that time, staff received additional public comment and identified additional recommended changes. Technical and conforming changes are also provided.

### **Key Points:**

The amendments to R277-417 clarify that LEAs may use public funds for costs related to curriculum, instruction, private lessons, technology, and other educational services as long as the LEA selects and has oversight of the curriculum, instruction, private lessons, technology, and other educational services. The amendments also include changes to numbering and terminology throughout the rule.

### **Anticipated Action:**

It is proposed that the Law and Licensing Committee consider approving R277-417, as amended, on first reading and, if approved by the Committee, the Board consider approving R277-417, as amended, on second reading.

**Contact:** Angie Stallings, 801-538-7550  
Natalie Grange, 801-538-7668

1 **R277. Education, Administration.**

2 **R277-417. Prohibiting LEAs and Third Party Providers from Offering Incentives**  
3 **or Reimbursements for Enrollment or Participation.**

4 **R277-417-[2]1. Authority and Purpose.**

5 ~~[A.](1)~~ This rule is authorized ~~[under]~~by:

6 (a) Utah Constitution Article X, Section 3<sub>1</sub>, which vests general control and  
7 supervision over public education in the Board; and

8 (b) ~~[by]~~Subsection 53A-1-401(3)<sub>1</sub>, which allows the Board to adopt rules in  
9 accordance with its responsibilities.

10 ~~[B.](2)~~ The purpose of this rule is to provide standards and procedures for  
11 prohibiting LEAs and third party providers from offering incentives for student  
12 enrollment.

13 **R277-417-[4]2. Definitions.**

14 ~~[A. "Board" means the Utah State Board of Education.]~~

15 ~~[B.](1)~~ "Incentive" means one of the following given to a student or to the  
16 student's parent or guardian by an LEA or by a third party provider as a condition  
17 of the student's enrollment in an LEA or specific program for any length of time,  
18 during any school year:

19 ~~[(1)a]~~ money greater than \$10; or

20 ~~[(2)b]~~ an item of value greater than \$10.

21 ~~[C. "Individualized Education Program (IEP)" means a written statement for~~  
22 ~~a student with a disability that is developed, reviewed, and revised in accordance~~  
23 ~~with the Utah Special Education Rules and Part B of the Individuals with Disabilities~~  
24 ~~Education Act (IDEA).]~~

25 ~~[D. "LEA" or "local education agency" means a school district or charter~~  
26 ~~school.]~~

27 (2) "Program" means a program within a school that is designed to  
28 accomplish a predetermined curricular objective or set of objectives.

29 ~~[E]([1]3)~~(a) "Reimbursement" means the payment of money or provision of  
30 other item of value greater than \$10 offered as payment or compensation to a  
31 student or to a parent or guardian for:

32 ([a]i) a student's enrollment in an LEA; or  
33 ([b]ii) a student's participation in an LEA's program.

34 ([2]b) "Reimbursement" does not include a reimbursement paid by an LEA to  
35 a student, parent or guardian, for an expenditure incurred by the student, parent or  
36 guardian on behalf of the LEA if:

37 ([a]i) the expenditure is for an item that will be the property of the LEA; and  
38 ([b]ii) the expenditure was authorized by the LEA.

39 [F.](4) "Section 504 accommodation plan" required by Section 504 of the  
40 Rehabilitation Act of 1973, means a plan designed to accommodate an individual  
41 who has been determined, as a result of an evaluation, to have a physical or mental  
42 impairment that substantially limits one or more major life activities.

43 [G.](5) "Third party provider" means a third party who provides educational  
44 services on behalf of an LEA.

45 **R277-417-3. LEA and Third Party Provider Use of Public Funds for Incentives**  
46 **and Reimbursements.**

47 [A.](1) Except as provided in [R277-417-3B]Subsection (3), an LEA or a third  
48 party provider may not use public funds, as defined under Subsection 51-7-3(26),  
49 to provide the following to a student, parent or guardian, individual, or group of  
50 individuals:

- 51 ([1]a) an incentive for a student's:  
52 ([a]i) enrollment in an LEA; or  
53 ([b]ii) participation in an LEA's program; or  
54 ([2]b) a referral bonus for a student's:  
55 ([a]i) enrollment in an LEA; or  
56 ([b]ii) participation in an LEA's program.

57 ~~[B. An LEA or third party provider may use public funds to provide an~~  
58 ~~incentive to a student or the student's parent or guardian if the incentive is:~~

- 59 ~~——(1) provided to all students enrolled in the LEA; and~~  
60 ~~——(2) part of a school uniform used by the LEA.]~~

61 [C.](2) Except as provided in [R277-417-3D]Subsection (3), an LEA or third  
62 party provider may not use public funds to provide a reimbursement to a student or

63 the student's parent or guardian for:

64 ([1]a) curriculum selected by a parent;

65 ([2]b) instruction not provided by the LEA;

66 ([3]c) private lessons or classes not managed or facilitated by the LEA;

67 ([4]d) technology devices selected by a parent; or

68 ([5]e) other educational expense selected by a parent.

69 (3) An LEA may use public funds to provide:

70 (a) uniforms, technology devices, curriculum, materials and supplies, or  
71 instructional services to a student if the uniforms, technology devices, curriculum,  
72 materials and supplies, or instructional services are:

73 (i) available to all students enrolled in the LEA or program within the LEA; or

74 (ii) authorized by the student's college and career readiness plan, IEP, or 504  
75 accommodation plan; or

76 (b) internet access for instructional purposes to a student:

77 (i) in kindergarten through grade 6; or

78 (ii) in grade 7 through grade 12 if:

79 (A) the internet access is provided in accordance with the fee waiver policy  
80 requirements of Section R277-407-6; or

81 (B) failure to provide the internet access will cause economic hardship on the  
82 student or parent.

83 ~~[D. An LEA or third party provider may use public funds to provide a~~  
84 ~~reimbursement to a student or the student's parent or guardian if:~~

85 ~~—— (1) the reimbursement is required to be paid or provided pursuant to an IEP~~  
86 ~~or Section 504 accommodation plan that is approved by the LEA;~~

87 ~~—— (2) for a student in Kindergarten through grade 6, the reimbursement is~~  
88 ~~provided to a student's parent or guardian for internet accessibility; or~~

89 ~~—— (3) for a student in grade 7 through grade 12:~~

90 ~~—— (a) the reimbursement is provided to a student or student's parent or guardian~~  
91 ~~for internet access in accordance with the fee waiver policy requirements of R277-~~  
92 ~~407-6; and~~

93 ~~—— (b) failure to provide the reimbursement described in R277-417-3D(3)(a) will~~  
94 ~~cause economic hardship.]~~

95 [E.](4) An LEA or third party provider shall ensure that ~~[an item]~~equipment  
96 purchased~~[, rented,]~~ or leased by the LEA or third party provider remains the  
97 property of the LEA and is subject to the LEA's asset policies if:

98 ([1]a) the LEA or third party provider purchases ~~[an item]~~equipment; and

99 ([2]b) provides the ~~[item]~~equipment to a student or to the student's parent or  
100 guardian.

101 [F.](5) An LEA shall establish monitoring procedures to ensure that a third  
102 party provider who provides educational services to a student on behalf of the LEA  
103 complies with the provisions of ~~[R277-417]~~this rule.

104 [G.](6) The Board or the Superintendent may require an LEA to repay public  
105 funds to the Superintendent if:

106 ([1]a) an LEA or an LEA's third party provider fails to comply with the  
107 provisions of this ~~[R277-417]~~rule; and

108 ([2]b) the repayment is made in accordance with the procedures established  
109 in Rule R277-114.

110 **KEY: student, enrollment, incentives**

111 **Date of Enactment or Last Substantive Amendment: July 8, 2015**

112 **Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3)**