

R277. Education, Administration.

R277-114. Response to Compliance and Related Issues.

R277-114-1. 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) 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;

(c) Subsection 53E-3-401(8), which allows the Board to make rules setting forth the procedures to be followed for enforcing Board rules;

(d) Section 53F-1-104, which requires the Board to monitor state-funded education programs and the expenditure of state funds in accordance with certain statutory provisions; and

(e) Section 53E-3-301, which requires the Superintendent to:

(i) administer programs assigned to the state board in accordance with the policies and the standards established by the state board; and

(ii) investigate matters pertaining to public schools.

(2) The purpose of the rule is to provide procedures for responses to compliance and related issues, including corrective action and related appeals procedures.

R277-114-2. Definitions.

(1) "Framework" means the Board Oversight Framework established in Rule R277-111.

(2) "Oversight entity" means the same as that term is defined in Rule R277-111.

(3) "Program or set of requirements" means the same as that term is defined in Rule R277-111.

R277-114-3. Use of Framework for Compliance and Related Issues.

(1)(a) Except as provided in Subsection (1)(b), for an alleged compliance issue regarding a program or set of requirements in framework category one or two, the

Superintendent shall refer reports and complaints back to the oversight entity for resolution.

(b) The Superintendent may work informally with an oversight entity to resolve an alleged compliance issue arising under a program or set of requirements in framework category one or two, including discussing whether:

- (i) the oversight entity had adequate time to comply; or
- (ii) the oversight entity needs additional training.

(2) For a compliance issue arising under a program or set of requirements in framework category three or four, the Superintendent shall pursue formal corrective action:

(a) as described in Section R277-114-4 or R277-114-5; and

(b) in accordance with a state law, administrative rule, or a contract associated with the program or set of requirements.

(3)(a) In response to an alleged compliance issue regarding a program or set of requirements, Board leadership may work informally with the oversight entity toward resolving the issue, which efforts may include:

(i) for an issue regarding an LEA, meeting with the chair of the LEA's governing board, the LEA's superintendent, or charter director; or

(ii) considering whether training or additional time will allow the oversight entity to resolve the issue.

(b) Before Board leadership works informally with an oversight entity as described in Subsection (3)(a), Board leadership shall notify the Board member or members who represent the area where the oversight entity is located.

(c)(i) For an alleged compliance issue regarding a program or set of requirements uncategorized or in framework category one or two, the Board's audit committee may determine an appropriate method to investigate the alleged compliance issue, including requesting the Board's internal audit function to investigate the alleged issue in accordance with Rule R277-116.

(ii) If the Board's audit committee directs an investigation as described in Subsection (3)(c)(i), the entity conducting the investigation shall notify the oversight

entity that the investigation will review an alleged compliance issue in accordance with this section.

(d) Based on the results of an investigation described in Subsection (3)(c), the Board may:

- (i) take no further action;
- (ii) resolve the issue informally;
- (iii) direct the Superintendent to pursue corrective action as described in Section R277-114-4 or R277-114-5; or
- (iv) take other action.

R277-114-4. Corrective Action for Contract Requirements.

For corrective action related to a program or set of requirements established or culminating in a contract between the Board and an oversight entity, the Superintendent shall take corrective action in accordance with the provisions of the contract.

R277-114-5. Corrective Action for Non-Contractual Requirements.

(1) For corrective action related to a program or set of requirements not established in contract, the Superintendent may take corrective action as described in this section.

(2)(a) In taking corrective action under this section, the Superintendent shall act in accordance with state and federal law applicable to the program or set of requirements.

(b) Before the Superintendent places an oversight entity on a corrective action plan as described in Subsection (3), the Superintendent shall:

(i) provide written notice of initiating the process 30 days before the day on which the corrective action plan is finalized; and

(ii) during the 30 days, discuss with the LEA's superintendent, charter director or the oversight entity's primary contact the nature of the issue and try to resolve the issue informally, including discussing whether:

- (A) the oversight entity has adequate time to comply; or
- (B) the oversight entity needs additional training.

(c) If the corrective action plan is due to an oversight entity's failure to provide information, the notice described in Subsection (2)(b)(i) shall include a statement confirming that the information is not available elsewhere.

(3) The Superintendent may place an oversight entity on a corrective action plan if the Board, the Superintendent, or an external or internal audit determines that the oversight entity:

(a) demonstrates non-compliance with published expectations for program outcomes or allowable program expenditures;

(b) demonstrates unsatisfactory outcomes in performance as evidenced by audit results or framework category three or four monitoring;

(c) demonstrates financial fraud, waste, or abuse; or

(d) did not comply with a request to provide timely, accurate and complete program or financial information, in accordance with oversight procedures.

(4) A corrective action plan shall contain the following elements:

(a) the background information that led to corrective action;

(b) each identified issue, including the reasons for the corrective action plan as described in Subsection (3);

(c) details of the identified issue, based on evidence gathered, including dates;

(d) the specific conditions the oversight entity must meet as a result of the issues;

(e) steps required to satisfy the corrective action plan and estimated time frame for completing the steps;

(f) a procedure for communication during the course of the corrective action, including:

(i) designation of a primary contact at the oversight entity;

(ii) a schedule for the frequency of updates provided by the contact;

(iii) the format of required updates; and

(iv) the designated recipient of the updates;

(g) a procedure to close the corrective action, including:

(i) designation of an individual authorized to close the corrective action;

(ii) the criteria for closing the corrective action;

(iii) an estimated schedule for closing the corrective action; and
(iv) how the authorized individual will communicate closure to the oversight entity; and

(h) notice of the option for appeal as described in Section R277-114-6.

(5) In creating a corrective action plan, the Superintendent shall emphasize providing technical support to assist the oversight entity to achieve compliance and performance.

(6) The specific conditions described in Subsection (4)(b) may include:

(a) requiring the oversight entity to obtain technical or management support, including program assistance such as mentoring;

(b) requiring the oversight entity to receive payment as a reimbursement instead of advance payment;

(c) requiring evidence of acceptable performance within a given period before the oversight entity may proceed to the next corrective action step;

(d) requiring more frequent or more intensive monitoring than what is required from the related program or set of requirements;

(e) requiring additional or more detailed financial or compliance reports; or

(f) establishing additional prior approvals.

(7) The Superintendent may also include in a corrective action plan a provision and timeline for:

(a) training for the oversight entity's staff;

(b) a referral for risk-based monitoring, for a program or set of requirements that does not already perform risk-based monitoring;

(c) a referral for an audit or other agreed-upon procedure by:

(i) an external auditor; or

(ii) the Board's internal audit section, with approval of the Board's Audit Committee;

(d) periodic meetings between an oversight entity administrator or governing board member and the Superintendent or a Deputy Superintendent; and

(e) a planned appearance before the Board or a Board committee to provide status updates

(8) For an oversight entity that is a charter school the Superintendent shall:

(a) consult with the charter authorizer in the creation of the corrective action plan; and

(b) report regularly to the charter authorizer about the status of the oversight entity.

(9) The Superintendent may implement escalating restrictive conditions in a corrective action plan based on:

(a) the severity of the violation as determined by the program's monitoring plan or process; or

(b) repeated violations by an oversight entity.

(10)(a) The Superintendent may include penalties for non-compliance with a corrective action plan in accordance with Subsection 53E-3-401(8).

(b) If the Superintendent determines to withhold funding as part of a corrective action plan, the corrective action plan will state:

(i) the circumstances that led to the determination;

(ii) a timeline for withholding funds; and

(iii) the steps the oversight entity is required to satisfy to reinstate funding.

(11) The Superintendent shall give notice and a hard or electronic copy of the corrective action plan to:

(a) the designated primary contact described in Subsection (4)(d)(i);

(b) the respective oversight entity's governing board; and

(c) the charter school authorizer, in accordance with Subsection (8).

(12) As requested, the Superintendent shall report to the Board about the status of a corrective action plan in force for an oversight entity.

R277-114-6. Corrective Action Appeals.

(1) An oversight entity may submit an appeal to the Board relating to:

(a) a reason the Superintendent is imposing the corrective action plan;

(b) the requirements of a corrective action plan; or

(c) an action the Superintendent takes to impose or implement a corrective action plan.

- (2) For an appeal described in Subsection (1), the oversight entity shall:
- (a) state in the appeal the plan requirement or action with which the oversight entity disagrees; and
 - (b) submit the appeal to the Board in accordance with Section R277-102-3.
- (3) Except for corrective action subject to 34 CFR 76.783, the Board may:
- (a) review the appeal as a full board;
 - (b) refer the matter to the Board audit committee to make a recommendation to the Board for action; or
 - (c) identify another method to review the appeal.

KEY: monitoring, corrective action, oversight

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Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401; 53E-3-401(4); 53F-1-104