

R277-926 received final approval by the Utah State Board of Education on April 6, 2023. R277-926 will be published in the May 1, 2023, Utah State Bulletin, subject to a 30-day comment period, with a planned effective date of June 7, 2023.

**R277. Education, Administration.**

**R277-926. Certification of Residential Treatment Center Special Education Program.**

**R277-926-1. 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; and

(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 of Utah law.

(2) The purpose of this rule is to provide a certification process and procedure for residential treatment centers where IEP teams place an in-state or out-of-state special education students for purposes of receiving a free and appropriate public education.

**R277-926-2. Definitions.**

(1) "Nonsectarian" means a nonpublic school or agency that is not owned, operated, controlled by, or formally affiliated with a religious group or sect, whatever might be the actual character of the education program or the primary purpose of the facility.

(2)(a) "Residential Treatment Center" or "RTC" means a private, or nonsectarian establishment that provides related services necessary for a student with special needs to benefit educationally from the student's IEP.

(b) "Residential Treatment Center" or "RTC" does not include an organization or agency that operates as a public agency or offers public service, including:

(i) a state or local agency;

(ii) an affiliate of a state or local agency including:

(A) a private, nonprofit corporation established or operated by a state or local agency;

(B) a public university or college; or

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(C) a public hospital.

(3) "Qualified personnel" means an in-classroom staff member who:

(a) provides assistance with a student's education;

(b) has met requirements for federal and state certification and licensing requirements that apply to the area in which the staff member is providing services, including board approved or Utah Department of Professional Licensing requirements; and

(c) actively adheres to the standards of professional practice established in federal and State of Utah law or regulation.

### **R277-926-3. Certification of a Residential Treatment Center.**

(1) An RTC shall have the RTC's special needs program certified by the Superintendent before providing services for a free and appropriate public education to in-state or out-of-state students with special education needs and a current IEP from an LEA.

(2) An RTC seeking certification shall apply for an initial or renewal certification in a form prescribed by the Superintendent.

(3) An RTC's application shall include:

(a) a detailed description of the RTC's general and special education program provided, including:

(i) minimum instructional minutes for each grade level served;

(ii) specially designed instruction and related services;

(iii) evidence of age appropriate core curriculum that aligns with the Utah core standards or aligns with the core standards of the student's state of origin;

(iv) for grades K-8, evidence showing the use of at least one resource, including a textbook or curricular program, adopted by the student's state of origin or Utah for each core standard subject;

(v) for grades 9-12, evidence showing alignment of curriculum for core standard subjects with an LEA's curriculum in Utah or the student's state of origin;

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(b) evidence, including educator licenses of qualified personnel for each subject area including:

- (i) English language arts;
- (ii) Math;
- (iii) Science;
- (iv) Special Education; and
- (v) Related services.

(c) documentation of training implementation and supervision in a special education program of paraprofessionals as described by the Special Education Rules Manual incorporated by reference in Rule R277-750;

(d) an assurance that each student, aged 14 years and above, has a transition plan as described in Subsection R277-926-4(3)(b);

(e) evidence that an RTC is collaborating with a student's LEA of origin's fully constituted IEP team to:

(i) carry out the specific requirements of the student's IEP, including the general requirements described in Subsection R277-926-4(3)(b);

(ii) facilitate an annual IEP review; and

(iii) when necessary, participate in the student's triennial evaluation, including:

(A) an outlined process for the evaluation;

(B) the ability to allow on-site accessibility to third parties required for evaluation participation; and

(C) collaborate with the LEA of origin for the administration of the assessment.

(f) a description of the RTC's incident management process and procedures for a student, and reporting requirements described in Subsection R277-926-4(3)(c);

(g) evidence of how meaningful parental involvement is facilitated;

(h) documentation showing all staff at the RTC have been fingerprinted and have passed state and federal criminal background checks before being allowed to have contact with any student;

(i) an assurance showing participation in the LEA of origin with federal Child Find mandates as outlined in 20 U.S.C. 1412(a)(3);

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(j) an assurance that the RTC is a nonsectarian RTC; and

(k) if applicable, a copy of the Private School Affidavit filed with a student's state of origin.

(4) Except as provided in Subsection (7), an RTC may apply for an initial certification and receive notification of certification approval or denial within 60 days of an on-site review.

(5) An RTC shall apply for certification renewal no later than 60 days ~~[prior to]~~before the expiration of the RTC's current certification.

(6) Except as provided in Subsection (7), the Superintendent shall provide the RTC notice of the Superintendent's approval or denial of the RTC's application for certification within 60 days of an on-site review.

(7) For an application received before January 1, 2020, the Superintendent shall notify an RTC of the Superintendent's approval or denial of the RTC's request for certification within 45 days.

(8) An RTC with a pending application shall be subject to an on-site review by the Superintendent within 60 days of the RTC submitting the RTC's application.

(9) An RTC's application for certification and on-site review shall be reviewed collectively by the Superintendent in considering approval or denial of certification.

(10) An RTC shall be informed of compliance errors at the time of the on-site review and will be provided six weeks to correct the compliance errors before a final certification decision is made.

(11) If approved, an RTC's certification lasts for two years from the date of approval and is subject to monitoring protocols as described in ~~S[ub]s~~ection R277-926-4.

(12) If the Superintendent denies an RTC's application for certification, the Superintendent shall provide the reason for the denial in writing to the RTC.

(13) If an RTC operates a special needs program at more than one site, the RTC shall submit a separate certification application for each site.

#### **R277-926-4. Certification Maintenance and General Monitoring.**

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- (1) An RTC that has been certified is subject to periodic monitoring and review.
- (2) An RTC shall ensure general compliance with the requirements of this rule, state law, and federal law by providing the Superintendent with:
  - (a) documentation, including:
    - (i) applicable student and program records; and
    - (ii) information for which the Board is responsible;
  - (b) access to on-site visits at any time; and
  - (c) any combination of Subsections (a) and (b).
- (3) An RTC that has been certified shall comply with all requirements of this rule, State of Utah law and federal law, including the following requirements:
  - (a) collaborating with an LEA of origin to maintain and facilitate a plan for transition from the RTC to a less restrictive setting or from a less restrictive setting to an RTC;
  - (b) collaborating with the LEA of origin on a student's IEP through:
    - (i) timely and appropriate IEP progress monitoring;
    - (ii) documentation of a student's specially designed instruction and related services such as:
      - (A) service provisions;
      - (B) treatment notes; and
      - (C) service logs;
    - (iii) post secondary transition plans for students age 14 and older including:
      - (A) a list of a relevant course of study related to needs and ability of the student;
      - (B) a list of all required transition assessments needed; and
      - (C) age of majority documentation;
    - (iv) sign-in or attendance sheets for each IEP meeting held for a student; and
    - (iv) adhering to all other applicable state and federal laws;
  - (c) when appropriate, establishing a discipline guide consistent with IDEA that includes a behavior intervention plan with the following minimum components:
    - (i) general behavior goals;
    - (ii) crisis de-escalation and restraint training and training frequency;

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(iii) restraint and seclusion policies and procedures consistent with state and federal law; and

(iv) parental notification policies requiring notice within at least 24-hours.

(4) An RTC shall notify the Superintendent within 45 days if the RTC makes any material change to the RTC's special education program.

(5) An RTC shall notify the Superintendent within 48 hours if:

(a) any staff member is charged with a felony or misdemeanor, other than a Class C violation of Title 41, Motor Vehicles; or

(b) a law enforcement agency or the Division of Child and Family Services initiates an investigation regarding a student health or safety concern.

~~(5)~~6 If a certified RTC is found to be noncompliant with ~~[a provision of]~~ Rule R277-926, State of Utah law, or federal law, the Superintendent may suspend or revoke the RTC's certification as outlined in ~~S[ub]s~~ection R277-926-5.

#### **R277-926-5. Revocation of Certification.**

(1) The Superintendent may revoke an RTC's certification at any time if the RTC fails to comply with the requirements of Rule R277-926, State of Utah law, or federal law.

(2) The Superintendent shall provide the reason for revocation of the RTC's certification in writing to the RTC and provide a 30-day cure period before revocation may occur.

(3) If an RTC does not correct identified non-compliance described in Subsection (2) within the 45-day correction period, the Superintendent shall revoke the RTC's certification.

(4) If an RTC's certification is revoked, the RTC:

(a) may not receive new students into the RTC's special education program; and

(b) may maintain the students currently attending the RTC's special education program.

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(5) An RTC may reapply for certification within 12 months following the RTC's completed corrective action in response to the Superintendent's reasons for revocation described in Subsection (2).

#### **R277-926-6. Request for Review.**

(1) A public education agency that contracts with a certified RTC may request the Superintendent to review the status of the RTC's certification.

(2) The Superintendent shall establish a mechanism for referrals, complaints, and information related to the status of an RTC's certification.

(3) The Superintendent shall conduct a review pursuant to this in accordance with all requirements in Sections R277-926-4 and R277-926-5.

#### **R277-926-7. RTC Appeal of Certification Application Denial or Certification Revocation.**

(1) An RTC may file an appeal to the Board of an adverse decision of the Superintendent resulting in the denial of application or revocation of a certification.

(2) An appeal pursuant to this rule shall be an informal adjudication.

(3) An appeal described in Subsection (1) shall be made in writing and within 30 days of the date of the Superintendent's action.

(4) The Board may:

(a) review the appeal as a full board; or

(b) refer the appeal to the Board's audit committee to make a recommendation to the Board for action.

**KEY: residential treatment centers, special education, certification**

**Date of Last Change: 2023[March 11, 2021]**

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