

R277-445 received final approval by the Utah State Board of Education on November 5, 2020. R277-445 will be published in the December 1, 2020 Utah State Bulletin, subject to a 30-day comment period, with a first possible effective date of January 7, 2021.

R277. Education, Administration.

R277-445. Classifying Small Schools as Necessarily Existent.

R277-445-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Article X, Section 3 of the Utah Constitution, which vests general control and supervision over public education in the Board;

(b) Subsection 53F-2-304(3), which requires the Board to adopt rules that:

(i) govern the approval of necessarily existent small schools consistent with state law; and

(ii) ensure that districts are not building secondary schools in close proximity to one another where economy and efficiency would be better served by one school meeting the needs of secondary students in a designated geographical area; ~~and]~~

(b) Subsection 53F-2-304(7), which requires the Board to define isolating conditions, which may qualify a non-NESS school for additional funding; and

(c) 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.

(2)(a) The purpose of this rule is to specify the standards ~~[by which the Board classifies schools as necessarily existent, which qualifies the schools for additional funding]~~for schools and districts to received funding under the NESS program.

R277-445-2. Definitions.

(1) "ADM" means average daily membership derived from end-of-year data.

(2) "Isolating conditions" means that a school:

(a) is part of a school district that has a student population density of less than one student enrolled per square mile;

(b) is located more than 25 miles by road from a city or town with a population of at least 2,000 people; and

(c) does not qualify for NESS funding due to NESS formula limitations.

([2]3) "NESS" means Necessarily Existent Small School.

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(4) "Small district base funding" means the allocation provided to school districts with NESS schools under Subsection 53F-2-304(8).

([3]5) "Weighted Pupil Unit" or "WPU" means the basic unit used to calculate the amount of state funds a school district may receive.

R277-445-3. Standards.

(1) A school may be classified as necessarily existent if the school's ADM does not exceed:

(a) 160 for elementary schools, including kindergarten at a weighting of .55 per average daily membership;

(b) 300 for one or two-year secondary schools;

(c) 450 for three-year secondary schools;

(d) 500 for four-year secondary schools; or

(e) 600 for six-year secondary schools.

(2) In addition to the requirements of Subsection (1), one-way bus travel for any student from the assigned school to the nearest school of the same type within the same district shall require:

(a) students in kindergarten through grade six to travel more than 45 minutes; or

(b) students in grades seven through twelve to travel more than one hour and 15 minutes.

(3) Notwithstanding Subsection (2), the Superintendent may classify a school that meets the criteria of Subsection(1), as necessarily existent if:

(a) the school is in a district which has been consolidated to the maximum extent possible;

(b) there is evidence acceptable to the Superintendent of increased growth in the school sufficient to take it out of the small school classification within a period of three years, provided that:

(i) the Superintendent may only classify the school as necessarily existent until its ADM surpasses the size standard for small schools of the same type;

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(ii) the Superintendent shall annually compare the school's ADM to the school's projected ADM to determine increases or decreases in enrollment; and

(iii) if the assessment for the first or second year shows the increase in the school's ADM is less than 80 percent of the projected annual increase, the school shall no longer be classified as necessarily existent;

(c) the Superintendent determines that consolidation may result in undesirable social, cultural, and economic changes in the community, and:

(i) the school has a safe and educationally adequate school facility with a life expectancy of at least ten years, as judged, at least every five years, by the Superintendent after consultation with the district; or

(ii)(A) the district would incur construction costs by combining a school seeking necessarily existent small school status with an existing school and such construction and land costs would exceed the insurance replacement value of the exiting school by 30 percent;

(B) the existing school has a life expectancy of at least ten years; but

(C) In the event that the ADM from the school seeking necessarily existent small school status under Subsection (3)(c)(ii), when combined with the ADM at the existing school exceed criteria in Subsection (1), the Superintendent may not classify the existing school as necessarily existent; or

(d) the school does not qualify under Subsections (3)(a) through (c), and removal of the necessarily existent status would result in capital costs that the school district cannot meet within three years when utilizing all funds available from local, state, or federal sources.

(4) The Superintendent may not recognize a school with less than six grades as a necessarily existent small school if it is feasible in terms of school plant to consolidate the school into a larger school, which, if consolidated, would meet the criteria of Subsections (1) and (2).

(5) If the Superintendent determines that a secondary complex or attendance area meets the criteria of necessarily existent when analyzed on a 7-12 grade basis, the

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Superintendent shall not invalidate the qualifying status as a result of a reorganization pattern by a district.

(6)(a) In accordance with Subsection 53G-6-305(3)(b)(ii), the Superintendent shall use NESS Program funds to cover out-of-state tuition reimbursements under Rule R277-421.

(b) The Superintendent shall distribute any funding balance in the NESS Program in the current year with:

(i) a minimum of 95% of the distribution based on the number of WPU funds generated for eligible necessarily existent small schools; and

(ii) the remaining funds distributed using a formula that considers the tax effort of a local board of education.

(7)(a) A school district shall utilize additional WPU funds allocated for necessarily existent small schools for programs at the school for which the units were allocated.

(b) Funds allocated under this rule shall supplement and not supplant other funds allocated to schools by the local board of education.

(8) The Superintendent shall classify a school after consultation with the district and in accordance with applicable state statutes and Board rules.

(9) The Superintendent shall allocate funds to schools with isolating conditions based on legislative appropriations.

(10) The Superintendent shall distribute small district base funding in accordance with state law.

(11) If a school district receives small district base funding, the funding is not subject to the restrictions of Subsection (7).

R277-445-4. Application Procedures.

(1) Beginning in FY2020, a school district shall apply for funding from the NESS program for all eligible schools, including schools with isolating conditions, on a form approved by the Superintendent by April 2.

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(2) A school district shall certify that the information in the district's NESS program application remains accurate in each ensuing fiscal year on a form provided by the Superintendent by April 2.

(3) The Superintendent shall review no less than 20% of the certifications submitted under Subsection (2) on a rotating basis annually to ensure compliance with this Rule R277-445.

KEY: school enrollment, educational facilities, small schools

Date of Enactment or Last Substantive Amendment: March 12, 2020

Notice of Continuation: July 19, 2017

Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53F-2-304(1)