

R277-404 received final approval by the Utah State Board of Education on June 4, 2020. Due to technical issues with the Office of Administrative Rules website the rule did not get posted in the July 1, 2020 bulletin. R277-404 will be published in the July 15, 2020 Utah State Bulletin, subject to a 30-day comment period, with a first possible effective date of August 21, 2020.

## **R277. Education, Administration.**

### **R277-404. Requirements for Assessments of Student Achievement.**

#### **R277-404-1. Authority and Purpose.**

- (1) This rule is authorized by:
  - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over 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) Section 53E-4-302, which directs the Board to adopt rules for the administration of statewide assessments; and
  - (d) Subsection 53G-6-803(9)(b), which requires the Board to adopt rules to establish a statewide procedure for exempting a student from taking certain assessments.
- (2) The purpose of this rule is to:
  - (a) provide consistent definitions; and
  - (b) assign responsibilities and procedures for the administration of statewide assessments, as required by state and federal law.

#### **R277-404-2. Definitions.**

- (1) "Benchmark ~~[reading]~~assessment" means the Board approved literacy or mathematics assessment that is administered to a student in grade 1, grade 2, and grade 3 at the beginning, middle, and end of year.
- (2) "College readiness assessment" means the:
  - (a) same as that term is described in Section 53E-4-305; and
  - (b) ~~[American College Testing exam, or]~~the ACT.
- (3) "English Learner" or "EL student" means a student who is learning in English as a second language.
- (4) "English language proficiency assessment" means the ~~[World-class Instructional Design and Assessment (IWIDA)]~~ Assessing Comprehension in English

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State-to-State (ACCESS), which is designed to measure the acquisition of the academic English language for an English Learner student.

(5) "Family Educational Rights and Privacy Act of 1974" or "FERPA," 20 U.S.C. 1232g, means a federal law designed to protect the privacy of students' education records.

(6) "High school assessment":

(a) means the same as that term is described in Section 53E-4-304;

(b) means the "Utah Aspire Plus"; and

(c) includes the Utah Aspire Plus assessment of proficiency in:

(i) English;

(ii) math;

(iii) science; and

(iv) reading.

(7) "National Assessment of Education Progress" or "NAEP" means the national achievement assessment administered by the United States Department of Education to measure and track student academic progress.

(8) "Statewide ~~required~~ assessment" means an assessment described in Subsection 53G-6-803(9)(a).

(9) "Standards Assessment":

(a) means the same as that term is described in Subsection 53E-4-303(2)(a); and

(b) means the "Readiness Improvement Success Empowerment" or "RISE";

(c) for each school year, includes one writing prompt from the writing portion of the RISE English language arts assessment for grades 5 and 8.

(10) "Statewide assessment" means the:

(a) the same as that term is defined in Subsection 53E-4-301(2);

(b) Utah ~~alternative~~ alternate assessment; and

(c) English language proficiency assessment.

(11) "Section 504 accommodation plan" means a plan:

(a) required by Section 504 of the Rehabilitation Act of 1973; and

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(b) designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

(12)(a) "Utah alternate assessment" means an assessment instrument:

(i) for a student in special education with a disability so severe the student is not able to participate in a statewide assessment even with an assessment accommodation or modification; and

(ii) that measures progress on the Utah core instructional goals and objectives in the student's IEP.

(b) "Utah alternate assessment" means<sub>1</sub>:

~~[(i) for science, the Utah Alternate Assessment (UAA); and~~

~~—(ii) ]~~ for English language arts, science and mathematics, the Dynamic Learning Maps (DLM).

(13) "Utah eTranscript and Record Exchange" or "UTREx" means a system that allows:

(a) an LEA and the Superintendent to electronically exchange an individual detailed student record; and

(b) electronic transcripts to be sent to any post-secondary institution, private or public, in-state or out-of-state, that participates in the e-transcript service.

### **R277-404-3. Incorporation of Standard Test Administration and Testing Ethics Policy by Reference.**

(1) This rule incorporates by reference the Standard Test Administration and Testing Ethics Policy, ~~[June 6, 2019]~~ June 4, 2020, which establishes:

(a) the purpose of testing;

(b) the statewide assessments to which the policy applies;

(c) teaching practices before assessment occurs;

(d) required procedures for after an assessment is complete and for providing

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assessment results;

- (e) unethical practices;
- (f) accountability for ethical test administration;
- (g) procedures related to testing ethics violations; and
- (h) additional resources.

(2) A copy of the Standard Test Administration and Testing Ethics Policy is located at:

- (a) [\[https://www.schools.utah.gov/assessment?mid=1104&tid=5;\]](https://www.schools.utah.gov/assessment?mid=1104&tid=5;)

<https://schools.utah.gov/assessment?mid=1104&tid=4> and

(b) the Utah State Board of Education - 250 East 500 South, Salt Lake City, Utah 84111.

#### **R277-404-4. Superintendent Responsibilities.**

(1) The Superintendent shall facilitate:

- (a) administration of statewide assessments; and
- (b) participation in NAEP, in accordance with Subsection 53E-4-302(1)(b).

(2) The Superintendent shall provide guidelines, timelines, procedures, and assessment ethics training and requirements for all statewide assessments.

(3) The Superintendent shall designate a testing schedule for each statewide assessment and publish the testing window dates on the Board's website before the beginning of the school year.

#### **R277-404-5. LEA Responsibilities - Time Periods for Assessment Administration.**

(1)(a) Except as provided in Section (1)(b) and R277-404-7 an LEA shall administer statewide assessments to all students enrolled in the grade level or course to which the assessment applies.

(b) A student's IEP team, English Learner team, or Section 504 accommodation plan team shall determine an individual student's participation in statewide assessments

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consistent with the Utah Participation and Accommodations Policy.

- (2) An LEA shall develop a plan to administer statewide assessments.
- (3) The plan shall include:
  - (a) the dates that the LEA will administer each statewide assessment;
  - (b) professional development for an educator to fully implement the assessment system;
  - (c) training for an educator, ~~[and an]~~ appropriate paraprofessional, or third party proctor in the requirements of assessment administration ethics; and
  - (d) training for an educator and an appropriate paraprofessional to use statewide assessment results effectively to inform instruction.
- (4) An LEA shall submit the plan to the Superintendent by September 15 annually.
- (5) At least once each school year, an LEA shall provide professional development for all educators, administrators, and assessment administrators, including third party proctors, concerning guidelines and procedures for statewide assessment administration, including educator responsibility for assessment security and proper professional practices.
- (6) LEA assessment staff or third party proctor staff shall use the Standard Test Administration and Testing Ethics Policy in providing training for all assessment administrators and proctors.
- (7) An LEA may not release state assessment data publicly until authorized to do so by the Superintendent.
- (8) An LEA educator, third party proctor, or trained employee shall administer statewide assessments consistent with the testing schedule published on the Board's website.
- (9) An LEA educator, third party proctor, or trained employee shall complete all required assessment procedures prior to the end of the assessment window defined by the Superintendent.
- (10)(a) If an LEA requires an alternative schedule with assessment dates outside

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of the Superintendent's published schedule, the LEA shall submit the alternative testing plan to the Superintendent by September 15 annually.

(b) The alternative testing plan shall set dates for assessment administration for courses taught face-to-face or online.

#### **R277-404-6. School Responsibilities.**

(1) An LEA may not prohibit a student from enrolling in an honors, advanced placement, or International Baccalaureate course:

- (a) based on a student's score on a statewide ~~[required]~~ assessment; or
- (b) because the student was exempted from taking a statewide ~~[required]~~ assessment.

(2) An LEA and school shall require an educator, assessment administrator, and proctor, including a third party proctor, to individually sign a document provided by the Superintendent acknowledging or assuring that the educator administers statewide assessments consistent with ethics and protocol requirements.

(3) An educator and assessment administrator shall conduct assessment preparation, supervise assessment administration, and certify assessment results before providing results to the Superintendent.

(4) An educator, assessment administrator, and proctor shall securely handle and return all protected assessment materials, where instructed, in strict accordance with the procedures and directions specified in assessment administration manuals, LEA rules and policies, and the Standard Test Administration and Testing Ethics Policy.

#### **R277-404-7. Student and Parent Participation in Student Assessments in Public Schools; Parental Exclusion from Testing and Safe Harbor Provisions.**

(1) As used in this section, "penalize" means to put in an unfavorable position or at an unfair disadvantage.

(2)(a) A parent is primarily responsible for a child's education and has the

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constitutional right to determine which aspects of public education the child participates in, including assessment systems.

(b) Parents may further exercise their inherent rights to exempt their children from a statewide ~~[required]~~ assessment without further consequence by an LEA.

(3)(a) A parent may exercise the right to exempt their child from a statewide ~~[required]~~ assessment.

(b) Except as provided in Subsection (3)(c), an LEA may not penalize a student who is exempted from a statewide ~~[required]~~ assessment under this section.

(c) If a parent exempts the parent's child from the basic civics test required in Sections 53E-4-205 and R277-700-8, the parent's child is not exempt from the graduation requirement in Subsection 53E-4-205(2), and may not graduate without successfully completing the requirements of Sections 53E-4-205 and R277-700-8.

(4)(a) To exercise the right to exempt a child from a statewide ~~[required]~~ assessment under this provision and ensure the protections of this provision, a parent shall:

(i) fill out:

(A) the Parental Exclusion from State Assessment Form provided on the Board's website; or

(B) an LEA specific form as described in Subsection (4)(b); and

(ii) submit the form:

(A) to the principal or LEA either by email, mail, or in person; and

(B) on an annual basis; and

(C) except as provided in Subsection (4)(b), at least one day prior to the beginning of the assessment.

(b) An LEA may allow a parent to exempt a student from taking a statewide ~~[required]~~ assessment less than one day prior to the beginning of the assessment upon parental request.

(c) An LEA may create an LEA specific form for a parent to fill out as described in

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Subsection (4)(a)(i)(B) if:

(i) the LEA includes a list of local LEA assessments that a parent may exempt the parent's student from as part of the LEA specific form; and

(ii) the LEA specific form includes all of the information described in the Parental Exclusion from State Assessment Form provided on the Board's website as described in Subsection (4)(a)(i)(A).

(5)(a) A teacher, principal, or other LEA administrator may contact a parent to verify that the parent submitted a parental exclusion form described in Subsection (4)(a)(i).

(b) An LEA may request, but may not require, a parent to meet with a teacher, principal, or other LEA administrator regarding the parent's request to exclude the parent's student from taking a statewide ~~[required]~~ assessment.

(6) The administration of any assessment that is not a statewide ~~[required]~~ assessment, including consequences associated with taking or failing to take the assessment, is governed by policy adopted by each LEA.

(7) An LEA shall provide a student's individual test results and scores to the student's parent or guardian upon request and consistent with the protection of student privacy.

(8) An LEA may not provide a nonacademic reward to a student for a student's participation in or performance on a statewide ~~[required]~~ assessment.

(9) An LEA shall allow an educator to provide an academic incentive for a student's performance on a statewide ~~[required]~~ assessment in accordance with Subsections 53E-4-303(4)(b), 304(3), and 305(4).

(10) An LEA shall ensure that a student who has been exempted from participating in a statewide ~~[required]~~ assessment under this section is provided with an alternative learning experience if the student is in attendance during test administration.

(11) An LEA may allow a student who has been exempted from participating in a statewide ~~[required]~~ assessment under this section to be physically present in the room during test administration.

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**R277-404-8. Public Education Employee Compliance with Assessment Requirements, Protocols, and Security.**

(1) An educator, test administrator or proctor, administrator, or school employee may not:

~~[(a) provide a student directly or indirectly with a specific question, answer, or the content of any specific item in a statewide assessment prior to assessment administration;~~

~~— (b) download, copy, print, take a picture of, or make any facsimile of protected assessment material prior to, during, or after assessment administration without express permission of the Superintendent and an LEA administrator;~~

~~— (c) change, alter, or amend any student online or paper response answer or any other statewide material at any time in a way that alters the student's intended response;~~

~~— (d) use any prior form of any statewide assessment, including pilot assessment materials, that the Superintendent has not released in assessment preparation without express permission of the Superintendent and an LEA administrator;]~~

~~[(e)a] violate any specific assessment administrative procedure specified in the assessment administration manual, violate any state or LEA statewide assessment policy or procedure, or violate any procedure specified in the Standard Test Administration and Testing Ethics Policy;~~

~~[(f)b] fail to administer a statewide assessment;~~

~~[(g)c] fail to administer a statewide assessment within the designated assessment window;~~

~~[(h)d] submit falsified data;~~

~~[(i)e] allow a student to copy, reproduce, or photograph an assessment item or component; or~~

~~[(j)f] knowingly do anything that would affect the security, validity, or reliability of statewide assessment scores of any individual student, class, or school.~~

(2) A school employee or third party proctor shall promptly report an assessment

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violation or irregularity to a building administrator, an LEA superintendent or director, or the Superintendent.

(3) An educator who violates this rule or an assessment protocol is subject to Utah Professional Practices Advisory Commission or Board disciplinary action consistent with R277-215.

(4) All assessment material, questions, and student responses for required assessments is designated protected, consistent with Subsection 63G-2-305v(5), until released by the Superintendent.

(5)(a) Each LEA shall ensure that all assessment content is secured so that only authorized personnel have access and that assessment materials are returned to Superintendent following testing, as required by the Superintendent.

(b) An individual educator, third party proctor, or school employee may not retain or distribute test materials, in either paper or electronic form, for purposes inconsistent with ethical test administration or beyond the time period allowed for test administration.

#### **R277-404-9. Data Exchanges.**

(1) The Board's IT Section shall communicate regularly with an LEA regarding the required format for electronic submission of required data.

(2) An LEA shall update UTREx data using the processes and according to schedules determined by the Superintendent.

(3) An LEA shall ensure that any computer software for maintaining or submitting LEA data is compatible with data reporting requirements established in Rule R277-484.

(4) The Superintendent shall provide direction to an LEA detailing the data exchange requirements for each statewide assessment.

(5) An LEA shall ensure that all statewide assessment data have been collected and certify that the data are ready for accountability purposes no later than July 12.

(6) An LEA shall verify that it has satisfied all the requirements of the Superintendent's directions described in this section.

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(7) Beginning with the 2021-2022 school year and c[G]onsistent with Utah law, the Superintendent shall return assessment results from all statewide assessments to the school before the end of the school year.

**KEY: assessments, student achievements**

**Date of Enactment or Last Substantive Amendment: November 8, 2019**

**Notice of Continuation: November 29, 2016**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-4-302; 53E-3-401(4); 53G-6-803(9)(b)**