

R277-801 received final approval by the Utah State Board of Education on March 10, 2022. R277-801 was published in the April 15, 2022, Utah State Bulletin, subject to a 30-day comment period, with a first possible effective date of May 23, 2022.

R277. Education, Administration.

R277-801. Services for Students who are Deaf, Hard of Hearing, Blind, Visually Impaired, and Deaf-Blind.

R277-801-1. 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; and

(c) Section 53E-8-201, which creates USDB, and authorizes USDB to provide services to qualifying students.

(2) The purpose of this rule is to establish rules for LEAs and USDB to provide services to students who are deaf, hard of hearing, blind, visually impaired, and deaf-blind.

R277-801-2. Definitions.

(1) "504 plan" means a plan required by Section 504, which is 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.

(2)(a) "Intensive services" means services requiring vision, deaf-blind, or hearing services:

(i) in excess of 180 minutes per day for k-12 or post-high school students; or

(ii) in excess of 90 minutes per day for pre-school students.

(b) "Intensive services" does not include services that are not vision, deaf-blind, or hearing specific.

(3) "Intervener" means a specially trained paraprofessional who provides access to information and communication and facilitates the development of social and emotional well-being for children who are deaf-blind.

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(4) "Medicaid time study" means the primary mechanism for identifying and categorizing Medicaid administrative activities performed by an LEA's staff, which serves as the basis for developing claims for the costs of administrative activities that may be properly reimbursed under Medicaid.

(5) "Minimum school program" or "MSP" means the same as that term is defined in Section 53F-2-102.

(6) "Qualifying student" means a student who is deaf, hard of hearing, blind, visually impaired, or deaf-blind who qualifies for services in accordance with Subsection 53E-8-401(1).

(7) "Section 504" means Section 504 of the Rehabilitation Act of 1973, codified at 29 USC 701, et seq.

(8) "Utah eTranscript and Record Exchange" or "UTREx" means a system that allows individual detailed student records to be exchanged electronically among LEAs and the Board, and allows 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.

(9) "Weighted pupil unit" or "WPU" means the basic per pupil unit used to calculate the amount of state funds for which a school district is eligible.

R277-801-3. Responsibilities of LEAs.

(1)(a) An LEA is the single point of entry for USDB services for qualifying students.

(b) A qualifying student may not enroll in a USDB program without a referral from an LEA.

(c) When evaluating services for a qualifying student, an LEA and the USDB shall consider:

- (i) primary disabilities;
- (ii) secondary disabilities; and
- (iii) other factors, including:
 - (A) transportation needs; and

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(B) length of time the student would spend in transport daily.

(2) Notwithstanding Subsection (1), a qualifying student may enroll directly in USDB if:

(a) the student's previous primary instruction was in American Sign Language; and

(b) USDB's program most closely matches the qualifying student's prior program of instruction.

(3) A qualifying student may receive services under:

(a) IDEA;

(b) Section 504; or

(c) a USDB preschool services plan.

(4) An LEA shall annually provide to the Superintendent the name and contact information for any student with vision loss or hearing loss, even if it isn't the student's primary disability.

(5)(a) An LEA has the responsibility for the design and implementation of and IEP or Section 504 plan for qualifying students.

(b) Specific details of required intensive services for a student shall be defined within the student's IEP.

(c) A qualifying student who enrolls in a Utah school district or charter school may be eligible to receive intensive services from sensory specialists employed by USDB, if appropriately designated as specialized instruction or a related services as part of an IEP or Section 504 plan.

(6)(a) An LEA with greater than 3% of the student population statewide may elect to contract with USDB to provide outreach services.

(b) An LEA may employ their own sensory specialists to meet the IEP or 504 plan needs of qualifying students.

(7)(a) An LEA is responsible for the development of a qualifying student's IEP, including any assessments necessary for initial placement.

(b) Notwithstanding Subsection (7)(a), an LEA may not commit USDB to provide services to qualifying students unless USDB has participated in the IEP.

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(c)(i) An LEA and USDB shall consider least restrictive environment, as well as intensive services needs of a qualifying student in determining an appropriate placement.

(ii) In the case of deaf or hard of hearing students, an IEP team should consider the opportunity for a student to have direct communication with teachers and peers.

(8) Notwithstanding Subsection (7), if a qualifying student enrolls directly with USDB in accordance with Subsection (2), USDB shall develop the student's IEP, including any assessments necessary for initial placement.

(9) If an LEA is working with USDB staff:

(a) the LEA shall provide internet access and technical support to permit USDB staff to access the internet through technology and hardware;

(b) the LEA and USDB technology staff will jointly determine procedures to ensure access to LEA technology systems; and

(c) USDB shall provide and maintain all needed hardware and software provided to USDB staff.

(10) An LEA shall provide an assistive technology device a student if the assistive technology device is required for the implementation of the student's IEP.

R277-801-4. Designation of USDB as an LEA.

(1)(a) In order to meet the educational needs of qualifying students, an IEP team may enroll a qualifying student in a USDB program and may designate USDB as the LEA for the qualifying student.

(b) If USDB is designated as the LEA under Subsection (1)(a), the USDB program shall be treated as a placement option within the LEA continuum, and the referring LEA staff shall continue to attend IEP meetings.

(2)(a) If USDB is designated as a qualifying student's LEA, USDB is responsible from that point on for the design and implementation of the student's IEP, 504 Plan, or USDB ~~[P]~~preschool ~~[S]~~service ~~[P]~~plan.

(b) USDB shall provide all special education and related services and costs documented in an IEP for a qualifying student described in Subsection (2)(a).

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(c) USDB may request consultation from the referring LEA for the design of services that are required by the student beyond the student's sensory needs.

R277-801-5. Correlation of Responsibilities.

(1) For qualifying students currently enrolled with an LEA and receiving services through USDB outreach programs, an LEA will provide a list of students and their IEP due dates for the upcoming school year to ~~the~~ USDB ~~[Assistant Superintendent]~~ no later than June 30 annually.

(2) An LEA shall invite USDB staff to attend IEP or 504 plan meetings for qualifying students, including meetings for:

- (a) students transitioning from Part C to Part B;
- (b) students moving from out of state; and
- (c) students transferring between LEAs.

(3)(a) For qualifying students enrolled in an LEA and receiving no services from USDB, an LEA shall invite USDB to attend any meeting where USDB services may be considered for that student.

(b) If a change of placement is considered~~[:]~~,

~~[(i)]~~ both the referring LEA and USDB will participate and establish a timeline to ensure a successful transition for the student.

~~[(ii)]~~ both the referring LEA and USDB will participate in the IEP or 504 meeting.]

(4) IEP or 504 plan meetings shall be ~~held~~ at a mutually agreed upon time and location, with appropriate notification to all parties.

(5)(a) The Board and USDB shall provide ongoing interpreter training toward certification and mentoring for all interpreters, as requested by individual LEAs.

(b) Training provided under Subsection (~~[7]~~5)(a) shall provide certified interpreters with the opportunity to improve skills and move up to a higher level of certification.

(c) An LEA may contract with USDB to provide interpreter services for students attending the LEA or an LEA school where a USDB extension classroom is located.

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(6)(a) Each LEA, including USDB as the designated LEA, is responsible for ensuring the timely provision of textbooks and material as required by the IDEA.

(b) The Board shall[:

~~——(i)] annually provide information to LEAs regarding the costs of accessible materials in the state[; and~~

~~——(ii) determine an equitable cost-sharing plan].~~

R277-801-6. Services for Qualifying Students.

(1) If a qualifying student is enrolled with USDB as the designated LEA:

(a) USDB shall include the qualifying student in all Board-required enrollment reports including:

(i) fall enrollment counts;

(ii) the child count of students with disabilities; and

(iii) the end-of-year enrollment report;

(b) Any agreements between the referring LEA and USDB shall be documented as part of a written agreement, which shall be reviewed at least annually;

(c)(i) A qualifying student's IEP team shall determine the student's transportation needs;

(ii) USDB shall provide transportation as a related service in an IEP or if required to implement a 504 plan; and

(iii) A referring LEA shall combine resources with USDB, whenever possible, to provide within-LEA transportation;

(d)(i) USDB shall annually administer all Board-required assessments.

(ii) USDB may provide alternate tests in accordance with a student's IEP and state law; and

(e) USDB shall develop and implement all programs, policies, and procedures required of an LEA by the Board and state law.

(2) If a qualifying student attends USDB extension classrooms located within an LEA:

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(a) the student shall be enrolled in the general education program of the LEA school the student is attending;

(b) the LEA school shall be designated as the "school of record" for the student;

(c) the student shall be included by the LEA school or district in all required reports and uploads to UTREx;

(d) the student shall be counted in the LEA school or district total enrollment, and will be included in the calculation of all funding formulas, including Weighted Pupil Units and Minimum School Program;

(e) the student shall receive access to LEA programs and services consistent with their IEP or 504 plan, consistent with services available to other students enrolled in the student's school;

(f) the student may not be enrolled in the special education program of the LEA school the student is attending;

(g) USDB shall ensure the student receives a free appropriate public education;

(h) USDB shall ensure the student receives all special education and related services, including interpreting services, as required on the student's IEP or 504 plan;

(i) the LEA school shall generate general education funding or WPU for the student;

(j) USDB shall receive federal IDEA funding in accordance with USDB's legislative line item funding;

(k) the LEA school shall receive no state or federal special education funding for the student;

(l)(i) USDB shall provide transportation for the student as a related service when it is included in an IEP.

(ii) an LEA school shall combine resources with USDB, whenever possible, to provide within-LEA transportation; and

(m) an LEA school and USDB shall jointly ensure that any portable classrooms have access to intercom and phone service.

(3) If a qualifying student receives USDB outreach or consulting services:

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(a) the student shall be enrolled in the general and special education programs of the LEA school the student attends;

(b) the LEA shall include[d] the student in the calculation of state special education and IDEA funds for the school district or charter school; and

(c) USDB may not submit the students to UTREx and may not receive state or federal special education funding.

(4) USDB shall provide the following services free of charge to every LEA, regardless of size, exclusive of additional related services:

(a) Educational Resource Center resources, including loaner equipment;

(b) USIMAC materials;

(c) [H]interpreter training;

(d) [P]professional development;

(e) [E]expanded core curriculum;

(f) [E]enrichment programs and activities;

(g) [C]consultations;

(h) [P]psychological assessments for the [D]deaf and the [B]blind;

(i) [S]speech assessments for [D]deaf students;

(j) [B]behavioral intervention and supports;

(k) [D]deaf-[B]blind [S]specialists; and

(l) [D]deaf-[B]blind [H]interveners.

(5) USDB may offer to provide the following other services to LEAs for ~~[Deaf, Blind, and Deaf-Blind]~~ deaf, blind, and deaf-blind qualifying students, exclusive of additional related services:

(a) Teachers of the Blind and Visually Impaired or "TVI;"

(b) Orientation and Mobility or "O & M;"

(c) [E]educational and [A]assistive [T]technology;

(d) [V]vision [S]screenings;

(e) [L]low vision support and evaluations;

(f) [E]extended [S]school [Y]year services in accordance with R277-751;

(g) [T]teachers for the [D]deaf and [H]hard of [H]hearing;

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(h) [A]audiological services; and

(i) American Sign Language[~~A~~]-English interpreters.

(6) USDB shall provide all funded outreach services at no cost for qualifying students within an LEA with less than 3% of the student population statewide.

(7) An LEA with greater than 3% of the student population statewide shall provide services for qualifying students.

(a) An LEA may contract with USDB to provide services for students if an LEA has greater than 3% of the student population statewide.

(i) An LEA and USDB shall sign contracts prior to initiation of services.

(ii) An LEA shall make payments in two installments, in January and June.

(iii) The Board may assist USDB in collection of outstanding balances upon request.

(b) An LEA with greater than 3% of the student population statewide may opt out and transfer responsibilities for providing services to USDB subject to legislative appropriation of funds.

(8) The Superintendent shall provide a list of LEAs that exceed the 3% threshold by December 15 for the upcoming school year.

(9) An LEA and USDB may contract for services beyond those specified in this Rule R277-801.

(10) Notwithstanding this Section R277-801-6, USDB shall maintain all funded outreach services offered to each LEA, as of the 2017-18 school year.

(11)(a) USDB may participate in Medicaid time studies for services provided directly by USDB.

(b) An LEA may not include services provided directly by USDB in the LEA's Medicaid time studies.

(c) If an LEA contracts with USDB for payable services, an LEA shall include those services in the LEA's Medicaid time study.

KEY: deaf, blind, students, services

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Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53E-8-401