

R277. Education, Administration.

R277-471. School Construction Oversight, Inspections, Training, and Reporting.

R277-471-1. 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)(ii), which permits the Board to withhold state funds from an education entity for non-compliance with the education code or administrative rules;

(d) Section 53E-3-706, which requires the Superintendent to enforce Title 53E, Chapter 3, Part 7, School Construction; and

(e) Section 53E-3-707, which requires the Board to adopt a school construction manual.

(2) The purpose of this rule is to:

(a) provide specific provisions for the oversight of permanent or temporary public school construction and renovation; and

(b) identify responsibilities of an LEA governing board in the school construction process.

R277-471-2. Definitions.

(1) "Certified plans examiner" means a professional who has current applicable commercial certification through the "International Code Council" or "ICC".

(2) "Charter school" means a school acknowledged as a charter school by a charter school authorizer consistent with Title 53G, Chapter 5, Part 3, Charter School Authorization.

(3) "Charter school responsible person or local charter school board building officer or designee" or "CSBBO" means the individual or authority designated by a charter school governing board who:

(a) has direct administrative and operational control of charter school construction or renovation; and

(b) has responsibility for a charter school's compliance with Utah law on behalf of the charter school governing board.

(4) "Certificate of inspection verification" means a form, available on the Board website, certifying that the entity responsible for providing inspection services has complied with the provisions of:

(a) Section 53E-3-706;

(b) Section 53E-3-708;

(c) Section 10-9a-305;

(d) Section 17-27a-305;

(e) Title 15A, State Construction and Fire Code Act;

(f) Rule R156-56; and

(g) this Rule R277-471.

(5) "Certificate of occupancy" means the document issued upon receipt of the final inspection from the inspector of record and the 'Certificate of Fire Clearance' issued by the Utah State Fire Marshal, verifying compliance with all minimum requirements to safeguard the public health, safety, and general welfare of occupants, which authorizes permanent usage or occupancy of:

(a) any new building or occupiable structure;

(b) any existing occupiable building or structure alteration; or

(c) a change of occupancy in an existing structure, building, or space.

(6) "General plan" means a document that a municipality adopts that sets forth general guidelines for proposed future development of the land within the municipality, consistent with Subsection 10-9a-103(13).

(7) "Inspector" means a professional who holds current applicable commercial certification through the International Code Council and is currently licensed in the in Utah in the applicable trades for which the inspector is performing inspections.

(8) "Manual" means the School Construction Resource Manual incorporated by reference in Section R277-471-3.

(9) "New school building project" means the construction of a school that did not previously exist in an LEA.

(10) "Public school construction" means construction work on a new or existing public school building.

(11) "School District Building Official or "SDBO" means the individual or authority designated by a school district who has direct administrative and operational control of school district construction or renovation and is responsible for the school district's compliance with Utah law.

(12) "Significant school remodel" means the upgrading, changing, alteration, refurbishment, modification, or complete substitution or replacement of an existing school in an LEA with a project cost equal to or in excess of \$2,000,000.

(13) "Temporary certificate of occupancy" means the document, valid for a limited time period, issued upon receipt of the temporary final inspection report from the inspector of record and the 'Temporary Certificate of Fire Clearance' issued by the Utah State Fire Marshal, verifying minimum requirements to safeguard the public health, safety, and general welfare of occupants, which authorizes temporary usage or occupancy of:

(a) any new building or occupiable structure;

(b) any existing occupiable building or structure alteration; or change of occupancy in an existing structure or building or space.

R277-471-3. Incorporation of School Construction Resource Manual by Reference.

(1) This rule incorporates by reference the School Construction Resource Manual dated April 30, 2013.

(2) The School Construction Resource Manual was developed by the Board in accordance with Section 53E-3-707.

(3) A copy of the manual is located at:

(a) <https://www.schools.utah.gov/administrativerules/documentsincorporated>;
and

(b) the offices of the Board.

(4) The Superintendent shall review the manual annually and recommended changes, if necessary, to the Board.

(5) Each public school construction project shall be conducted in accordance with the manual.

R277-471-4. LEA Responsible Person.

(1) An LEA board shall be accountable to ensure that all school district and charter school permanent or temporary construction, renovation, and inspections are conducted in accordance with the law to provide minimum requirements to safeguard the public health, safety, and general welfare of occupants while using the most comprehensive, cost-effective, and efficient design means and methods.

(2) A school district governing board shall:

(a) appoint an SDBO who has direct administrative and operational control of all construction, renovation, and inspection of public school district facilities within the school district; and

(b) provide in writing the name of the SDBO to the Superintendent.

(3) A charter school governing board shall account to the school's authorizer and the Board to ensure that all charter school permanent or temporary construction, renovation, and inspections are conducted in accordance with Utah law.

(4)(a) A charter school governing board shall appoint a CSBBO who has direct operational responsibility for construction, renovation, and inspection of the charter school.

(b) The CSBBO shall report regularly to the charter school governing board.

(c) A charter school governing board shall provide the name of its CSBBO in writing to the Superintendent.

(d) A charter school governing board shall promptly notify the Superintendent in writing of any changes to the school's CSBBO.

(5) An SDBO or a CSBBO may adopt and enforce supplemental LEA policies under appropriate LEA policies to clarify the application of the provisions of Utah law for LEA personnel.

R277-471-5. School Construction Inspectors.

(1) An LEA shall employ or contract with inspectors for school construction inspection who are currently ICC commercially certified and licensed in Utah, in the trade specific to the inspection, consistent with Utah law.

(2) An LEA shall choose one of three methods for inspections:

(a) Independent inspectors:

(i) shall receive approval from the local jurisdiction in which the construction activity occurs;

(ii) may include inspectors working outside the municipality, county, or school district in which they are employed; and

(iii) may not be associated with:

(A) the architect, developer, contractor, or a subcontractor working on the project; or

(B) any management company or other agency hired by the LEA to perform construction or construction administrative services.

(3) Inspectors employed by school districts may only perform school construction inspections within the boundaries of the school district.

(4) Inspectors employed by municipalities and counties may only perform school construction inspections within the boundaries of the municipality or county where they are employed.

R277-471-6. School Construction Inspections.

(1) Before any school construction project begins, the SDBO or CSBBO shall obtain a construction project number from the Superintendent by completing and submitting construction project identification forms provided by the Superintendent and other required submittals for all projects consistent with Title 53E, Chapter 3, Part 7, School Construction, and the manual.

(2) A certified plans examiner shall approve all LEA school plans and specifications before any LEA construction project begins.

(3)(a) If an LEA cannot provide appropriate and proper school construction inspection and plan review services, the Superintendent may procure inspection services and charge the LEA for those services.

(b) An approved inspector shall establish fees in advance of inspection services.

(4) LEA construction projects shall comply with Title 53E, Chapter 3, Part 7, School Construction, and this Rule R277-471 to:

(a) ensure that each inspector is adequately and appropriately credentialed;

(b) identify and provide to the Superintendent and local government entity building official reports of all inspections with the name, state license number, and disciplines of each inspector performing the project inspections;

(c) submit inspection certificates and all related submittals to the Superintendent and appropriate local government entity building official;

(d) submit inspection summary reports monthly to the appropriate local government entity building official and the Superintendent;

(e) sign the final certificate of inspection and verification form, certifying all inspections were completed in compliance with all applicable laws and rules to safeguard the public health, safety, and general welfare of occupants;

(f) send the final inspection certification, inspection verification, and provide all other related project closeout submittals to the Superintendent and to the appropriate local government entity building official upon completion of the project; and

(g) maintain all submitted documentation at a designated LEA location for auditing or monitoring.

(5) The SDBO or CSBBO may submit either paper or electronic reports to satisfy this section.

R277-471-7. Coordination with Local Governments, Utility Providers, and the State Fire Marshal.

(1) Prior to developing plans and specifications for a public school construction project, an LEA shall coordinate with affected local government land use authorities and utility providers to:

(a) ensure that the siting or expansion of a school in the intended location will comply with applicable local general plans and land use laws and will not conflict with entitled land uses;

(b) ensure that all local government services and utilities required by the school construction activities can be provided in a logical and cost-effective manner;

(c) avoid or mitigate existing and potential traffic hazards, including consideration of the impacts between the public school construction and future roadways; and

(d) maximize school, student, and site safety.

(2) An LEA shall cooperate with municipalities and counties and conform to municipal and county land use ordinances consistent with Sections 10-9a-305 and 17-27a-305.

(3) Prior to developing plans and specifications for a public school construction project, an LEA shall coordinate with local health departments and the State Fire Marshal.

(4) A charter school shall have an open meeting to seek and secure a variance from the appropriate government entity if the LEA selects a school site in a municipality or county-designated zone for sexually oriented businesses or businesses that sell alcohol.

(5) Parking requirements for a charter school may not exceed the minimum parking requirements for a traditional public school of a like size and grade levels or other institutional public use throughout the municipality or county.

(6) An LEA shall maintain documentation for audit or monitoring purposes of coordination, meetings, and agreements required under this section.

(7) Prior to developing plans and specifications for a public school construction project, an LEA shall coordinate with local jurisdictions to comply with Federal Emergency Management Agency flood plain requirements and restrictions, including applicable mitigation measures.

R277-471-8. Superintendent's Authority to Request Additional Inspections.

(1) The Superintendent may contract with any appropriately qualified entity or person to provide inspection services that the Superintendent considers necessary to enable the Superintendent to issue a certificate authorizing temporary or permanent occupancy of a public school building.

(2) The Superintendent may charge an LEA a fee, not to exceed the actual cost of performing the inspection, for inspection services.

R277-471-9. Certification of Occupancy.

(1) For a school district:

(a) After completion of a project when a school district's appropriately credentialed inspector provides inspections, an SDBO shall sign a certificate of inspection verification form certifying that all inspections were completed in accordance with Utah law, and file the form with the Superintendent and the building official of the jurisdiction in which the building is located.

(b)(i) After completion of a project when a local jurisdiction provides inspections, the school district shall obtain a certificate authorizing permanent occupancy of a school building from the jurisdiction in which the building is located.

(ii) A school district shall provide a copy of the certificate of occupancy to the Superintendent.

(c) After completion of a project when independent inspectors provide inspections, an SDBO shall seek a certificate authorizing temporary or permanent occupancy of the school from the Superintendent.

(2) For a charter school:

(a) After completion of a project and inspection by an appropriately credentialed inspector when a charter school contracts with a school district for inspections, the CSBBO shall obtain a completed certificate of inspection verification form from the SDBO certifying that all inspections were completed in accordance with Utah law, and file the form with the Superintendent and the building official of the jurisdiction where the charter school is located.

(b)(i) After completion of a project when a local jurisdiction provides inspections, a charter school shall obtain a certificate authorizing permanent occupancy of a school building from the jurisdiction in which the building is located.

(ii) The CSBBO shall provide a copy of the certificate of occupancy to the Superintendent.

(c) After completion of a project when independent inspectors provide inspections, the CSBBO shall seek a certificate authorizing temporary or permanent occupancy of the school from the Superintendent.

(3) Within 30 days after an LEA files a request for the issuance of a certificate authorizing permanent occupancy of a school building from the Superintendent, the Superintendent shall:

(a) issue to the LEA a certificate authorizing permanent occupancy of the school building; or

(b) deliver to the LEA board a written notice indicating deficiencies in the LEA's compliance with the inspection findings.

(4) If the Superintendent does not issue the certificate authorizing permanent occupancy, an LEA shall provide notice of the deficiency to the building official of the local government entity in which the public school building is located.

(5) Upon an LEA board filing the certificate of inspection verification and requesting the issuance of a certificate authorizing permanent occupancy of the school building with the Superintendent, the LEA shall be entitled to temporary occupancy of the school building for a period up to 90 days, beginning on the date the request is filed, if the LEA has complied with all minimum requirements to safeguard the public health, safety, and general welfare of occupants.

(6) Upon an LEA remedying any deficiencies and notifying the Superintendent that the deficiencies have been remedied, following certification of the information, the Superintendent shall issue a certificate authorizing permanent occupancy of the school building.

(7) Upon receipt of the certificate of occupancy, an LEA shall provide a copy of the certificate to the building official of the local jurisdiction in which the school building is located authorizing permanent occupancy of the school building.

R277-471-10. Enforcement.

(1) An LEA which fails to comply with the provisions of this rule is subject to consequences from the Board consistent with Subsections 53E-3-401(8) and 53F-2-202(4)(d).

(a) If an LEA fails to meet or satisfy a school construction inspection requirement or timeline designation under this rule, the Superintendent shall, as directed by the Board, send the school district superintendent or local charter school director notice by certified mail; and

(b) If after 30 days the requirement has not been met, the Superintendent may, as directed by the Board, interrupt the Minimum School Program fund transfer process to the following extent:

(i) 10% of the total monthly Minimum School Program transfer amount the first month;

(ii) 25% in the second month; and

(iii) 50% in the third and subsequent months.

(2) If the Superintendent interrupts the Minimum School Program fund transfer process, the Superintendent shall:

(i) upon receipt of confirmation that the proper inspections have taken place or upon receipt of a late report:

(A) restart the transfer process within the month if the confirmation or report is submitted before the tenth working day of the month; or

(B) restart the transfer process in the following month if the confirmation or report is submitted after 10 a.m. on or after the tenth working day of the month;

(ii) inform the Board at its next regularly scheduled meeting; and

(iii) inform the chair of the local governing board if the school district superintendent or charter school director is not responsive in correcting ongoing school construction inspection and reporting problems.

(3) An LEA may be subject to a nonrefundable fine in the amount of one half of one percent of the total construction costs of a public school construction project if an

LEA fails to report a public school construction project consistent with Title 53E, Chapter 3, Part 7, School Construction and the manual to the Superintendent.

(4) The Superintendent, with approval from the Board, shall deduct nonrefundable fine amounts from the respective LEA's Minimum School Program allotment at a rate sufficient to complete collection of the nonrefundable fine by the end of the current fiscal year.

(a) The Superintendent shall deposit school district nonrefundable fine amounts into the School Building Revolving Account; and

(b) The Superintendent shall deposit charter school nonrefundable fine amounts into the Charter School Building Subaccount within the School Building Revolving Account.

R277-471-11. Appeals Procedure for Nonrefundable Fines.

(1) The Board designates the procedure outlined in this Section R277-471-11 as an informal adjudicative proceeding, under Section 63G-4-203.

(2) An LEA board may appeal a fine assessed under this rule consistent with the following:

(a) An LEA may not appeal a fine until a final administrative decision has been made to assess the fine by the Board.

(b) A district superintendent on behalf of a local school board or a local charter board chair on behalf of a local charter school board may appeal an assessed fine by filing an appeal on a form, and in the manner prescribed by the Superintendent.

(c) An LEA must file the appeal within ten business days of final Board action.

(d) An LEA shall provide, as stated on the form, an explanation of unanticipated or compelling circumstances that resulted in the local board's or charter school's failure to report new construction or remodeling projects as required.

(e) The school district superintendent or local charter board chair shall provide a notarized statement that the information and explanation of circumstances are true and factual statements.

(3) At least three members of the Finance Committee appointed by the Board shall act as a review committee to review the written appeal.

(a) The appeal committee may request additional information from the LEA board.

(b) The appeal committee may ask the district superintendent or local school district or charter school board chair or LEA business staff to appear personally and provide information.

(c) The appeal committee shall presume the fine appropriate and legitimate.

(d) The appeal committee shall make a written recommendation within ten business days of receipt of the appeal request.

(e) The full Finance Committee of the Board shall review the recommendation.

(f) The Finance Committee shall make a formal recommendation to the Board to accept, modify, or reject the appeal explanation and fine.

(4) The Board, in a regular monthly meeting, may accept or reject the Finance Committee's final recommendation to affirm the fine, modify the fine, or grant the appeal.

(5) Consistent with the Board's general control and supervision of the Utah public school system and given the significant public policy concern for safe schools and cost-effective public school building projects, a local board of education or a local charter board has no further administrative appeal opportunity.

R277-471-12. Annual Construction and Inspection Conference.

(1) The Superintendent shall sponsor an annual school construction conference for representatives from each LEA and interested persons involved in the school building construction, design, operation, maintenance, safety and related industries.

(2) Conference presenters and participants shall provide and discuss current information and training on public school building construction and inspection, including:

(a) the design, construction, operation, and inspection process of public school buildings;

(b) public school building site selection;

(c) best building life-cycle costing;

(d) construction inspection requirements and schedules; and

(e) information to improve the existing public school building design, construction, operation, and safety inspection program.

R277-471-13. School Plant Capital Outlay Report.

(1) The Superintendent shall prepare an annual School Plant Capital Outlay Report of all school construction projects completed and under construction, including information on the number and size of buildings.

(2) An LEA shall prepare and submit the School Plant Capital Outlay Report to the Office of the State Auditor annually, by a date designated by the State Auditor.

(3) The School Plant Capital Outlay Report shall include information as required by the Superintendent.

KEY: educational facilities

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Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(3); 53E-3-706; 53E-3-707; 10-9a-305; 17-27-105; 53F-2-202(4)(d)