

R277-107 received final approval by the Utah State Board of Education on May 3, 2018. R277-107 is published in the June 1, 2018 Utah State Bulletin, subject to a 30-day comment period, with a first possible effective date of July 9, 2018.

R277. Education, Administration.

R277-107. Educational Services Outside of Educator's Regular Employment.

R277-107-1. Definitions.

A. "Activity sponsor" means a private or public individual or entity that employs an employee in any program in which public school students participate.

B. "Board" means the Utah State Board of Education.

C. "Extracurricular activity" means an activity for students recognized or sanctioned by an LEA which may supplement or compliment, but is not part of, the LEA's required program or regular curriculum.

D. "LEA" or "local education agency" means a school district, charter school or, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

E. "Public education employee (employee)" means a person who is employed on a full-time, part-time, or contract basis by any LEA.

F(1) "Private, but public education-related activity" means any type of activity for which:

- (a) a public education employee receives compensation; and
 - (b) the principle clients are students at the school where the employee works.
- (2) "Private, but public education-related activity" may include:
- (a) tutoring;
 - (b) lessons;
 - (c) clinics;
 - (d) camps; or
 - (e) travel opportunities.

R277-107-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-402.5 which directs the Board to make rules that establish basic ethical conduct standards for employees who provide public education-related services or activities outside of their regular employment, and 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide direction and parameters for employees who provide or participate in public education-related services or activities outside of their regular public education employment.

C. The Board recognizes that public school educators have expertise and training in various subjects and skills and should have the opportunity to enrich the community with their skills and expertise while still respecting the unique public trust that public educators have.

R277-107-3. LEA Responsibility.

An LEA may have policies providing for the following, consistent with the provisions of this R277-107 and the law:

- A. sponsorship or specific non-sponsorship of extracurricular activities; or
- B. opportunities for students.

R277-107-4. LEA Relationship to Activities Involving Educators.

- A(1) An LEA may sponsor extracurricular activities or opportunities for students.
- (2) Extracurricular activities are subject to Utah's school fee laws and rules, fee waivers, procurement and all other applicable laws and rules.
- B. An employee that participates in a private, but public education-related activity, is subject to the following:
 - (1) the employee's participation in the activity shall be separate and distinguishable from the employee's public employment as required by this rule;
 - (2) the employee may not, in promoting the activity:
 - (a) contact students at the public schools, except as permitted by this rule; or
 - (b) use education records, resources, or information obtained through the employee's public employment unless the records, resources, or information are readily available to the general public;
 - (3) the employee may not use school time to discuss, promote, or prepare for:
 - (a) a private activity; or
 - (b) a private, but public education-related activity;
 - (4) the employee may:
 - (a) offer private, but public education-related services, programs or activities to students provided that they are not advertised or promoted by the employee during school time;
 - (b) discuss a private, but public education-related activity with students or parents outside of the classroom and the regular school day;
 - (c) use student directories or online resources which are available to the general public; and
 - (d) use student or school publications in which commercial advertising is allowed, to advertise and promote the activity.
- C. Credit and participation in a public school program or activity may not be conditioned on a student's participation in such activities as clinics, camps, private programs, or travel activities not equally and freely available to all students.
- D. No employee may state or imply to any person that participation in a regular school activity or program is conditioned on participation in a private activity.
- E. No provision of this rule shall preclude a student from requesting or petitioning a teacher or school for approval of credit based on an extracurricular educational experience consistent with LEA policy.

R277-107-5. Advertising.

- A. An employee may purchase advertising space to advertise an activity or service in a publication, whether or not sponsored by the public schools, that accepts paid or community advertising.
- B. The advertisement may identify the activity, participants, and leaders or service providers by name, provide non-school contact information, and provide details of the employee's employment experience and qualification.

C. Posters or brochures may be posted or distributed in the same manner as could be done by a member of the general public, advertising an employee's services, consistent with LEA policy.

D. Unless an activity is sponsored by the LEA, the advertisement shall state clearly and distinctly that the activity is NOT sponsored by the LEA.

E. The name of an LEA may not be used in the advertisement except as the LEA's name may relate to the employee's employment history or if school facilities have been rented for the activity.

F. If the name of the employee offering the service or participating in the activity is stated in any advertisement sent to the employee's students, or is posted, distributed, or otherwise made available in the employee's school, the advertisement shall state that the activity is not school sponsored.

R277-107-6. Public Education Employees.

A. Public education employees shall comply with Title 63G, Chapter 6a, Utah Procurement Code.

B. Public education employees shall comply with Title 67, Chapter 16, Public Officers' and Employees' Ethics Act.

C. Except as provided in R277-107-6D, consistent with Section 63G-6a-2404 and Title 67, Chapter 16, Public Officers' and Employees' Ethics Act, a public education employee may not solicit or accept gifts, incentives, honoraria, or stipends from private sources:

(1) for the employee's personal or family use;

(2) in exchange for payment for advertising placed by the employee; or

(3) in exchange for payment for securing agreements, contracts or purchases between private company and public education employer, programs or teams.

D. A public education employee may accept a gift, incentive, honoraria, or stipend from a private source if the gift, incentive, honoraria, or stipend is:

(1)(a) of nominal value and is for birthdays, holidays, or teacher appreciation occasions; or

(b) a public award in recognition of public service; and

(2) consistent with school or LEA policies and the Utah Public Employees Ethics Act.

E. A public education employee who holds a Utah educator license shall be subject to license discipline (including license suspension or revocation) for violation of this R277-107 and applicable provisions of Utah law.

R277-107-7. Public Education Employee/Sponsor Agreements or Contracts.

A. An agreement between an employee and an activity sponsor shall be signed by the employee and include a statement that reads substantially: I understand that this activity is not sponsored by an LEA, that my responsibilities to the activity sponsor are outside the scope of and unrelated to any public duties or responsibilities I may have as a public education employee, and I agree to comply with laws and rules of the state and policies regarding my advertising and participation.

B. An employee shall provide the LEA business administrator, superintendent, or charter school director with a signed copy of all contracts between the employee and a private activity sponsor.

C. An LEA shall maintain a copy of a contract described in R277-107-7B in the employee's personnel file.

KEY: school personnel

Date of Enactment or Last Substantive Amendment: 2018

Notice of Continuation: June 25, 2015

Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53A-1-402.5; 53A-1-401(3); 28 CFR 35.107