

1 **R277. Education, Administration.**

2 **R277-445. Classifying Small Schools as Necessarily Existent.**

3 **R277-445-1. Authority and Purpose.**

4 (1) This rule is authorized by:

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

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

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

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

13 (c) Subsection [53E-3-401](#)(4), which allows the Board to make rules to execute the  
14 Board's duties and responsibilities under the Utah Constitution and state law.

15 (2)(a) The purpose of this rule is to specify the standards by which the Board  
16 classifies schools as necessarily existent, which qualifies the schools for additional funding.

17 **R277-445-2. Definitions.**

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

19 (2) "NESS" means Necessarily Existent Small School.

20 ([2]3) "Weighted Pupil Unit" or "WPU" means the basic unit used to calculate the  
21 amount of state funds a school district may receive.

22 **R277-445-3. Standards.**

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

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

- 27 (b) 300 for one or two-year secondary schools;  
28 (c) 450 for three-year secondary schools;  
29 (d) 500 for four-year secondary schools; or  
30 (e) 600 for six-year secondary schools.

31 (2) In addition to the requirements of Subsection (1), one-way bus travel [~~over Board~~  
32 ~~approved bus routes~~] for any student from the assigned school to the nearest school of the  
33 same type within the same district [~~of the same type~~] shall require:

- 34 (a) students in kindergarten through grade six to travel more than 45 minutes; or  
35 (b) students in grades seven through twelve to travel more than one hour and 15  
36 minutes.

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

39 (a) the school is in a district which has been consolidated to the maximum extent  
40 possible[~~, and activities in cooperation with neighboring districts within or across county~~  
41 ~~boundaries are appropriately combined~~];

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

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

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

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

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

54 (i) the school has a safe and educationally adequate school facility with a life

55 expectancy of at least ten years, as judged, at least every five years, by the Superintendent  
56 after consultation with the district; or

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

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

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

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

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

74 (5) If the Superintendent determines that a secondary complex or attendance area  
75 meets the criteria of necessarily existent when analyzed on a 7-12 grade basis, the  
76 Superintendent shall not invalidate the qualifying status as a result of a reorganization  
77 pattern by a district.

78 (6)(a) In accordance with Subsection [53G-6-305](#)(3)(b)(ii), the Superintendent shall  
79 use [~~Necessarily Existent Small Schools~~] NESS Program funds to cover out-of-state tuition  
80 reimbursements under [Rule R277-421](#).

81 (b) [~~Any prior year~~] The Superintendent shall distribute any funding balance in the  
82 [~~Necessarily Existent Small Schools~~] NESS Program in the current year with: [shall be

83 distributed by the ~~Superintendent]~~

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

86 (ii) the remaining funds distributed ~~[in the current year]~~ using a formula that  
87 considers the tax effort of a local board of education.

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

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

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

94 **R277-445-3. Application Procedures.**

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

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

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

103 **KEY: school enrollment, educational facilities, small schools**

104 **Date of Enactment or Last Substantive Amendment: September 21, 2017**

105 **Notice of Continuation: July 19, 2017**

106 **Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; [53E-3-401\(4\)](#);**  
107 **[53F-2-304\(1\)](#)**