

R277-625 received final approval by the Utah State Board of Education on December 3, 2020. R277-625 will be published in the January 1, 2021 Utah State Bulletin, subject to a 30-day comment period, with a first possible effective date of February 8, 2021.

**R277. Education, Administration.**

**R277-625. Mental Health Screeners.**

**R277-625-1. 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) Section 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 53F-2-522 which directs the board to make rules regarding the selection of a mental health screener and financial aid for qualifying parents.

(2) The purpose of this rule is to:

(a) provide the approval process for a mental health screener chosen by an LEA;  
and

(b) establish the approval and distribution of funds for a qualifying parent to receive financial assistance for related mental health services.

**R277-625-2. Definitions.**

(1) "Division of Substance Abuse and Mental Health" or "DSAMH" means the same as the term is defined in Subsection 62A-15-103.

(2) "Mental health" means a person's emotional, psychological, and social well-being which can affect how a person thinks, feels, and acts including how a person handles stress, relates to others, and makes healthy choices.

(3) "Mental health screener" or "screener" means the use of-a systematic tool or process:

(a) to identify if a student is experiencing, or is at risk of experiencing, issues related to the student's mental health;

(b) for an early identification strategy to detect the onset of mental health conditions, enabling the mental health conditions to be potentially addressed; and

(c) that is not:

(i) a diagnostic tool or process; or

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(ii) a system or process used by a student's teacher to observe behavior for the purpose of targeted learning interventions.

(4) "Mental health services" means the same as the term is defined in Subsection R523-1-3(3).

(5) "Qualifies for financial assistance" means a qualifying parent that has a student receiving educational services through an LEA who:

(a) receives free or reduced lunch; or

(b) as recommended by the local mental health authority, demonstrates need including being:

(i) uninsured;

(ii) underinsured;

(iii) ineligible for Medicaid to cover part or all of any recommended mental health treatments; or

(iv) demonstrates a high need for interventions based upon results of the LEA's mental health screener.

(6) "Qualifying parent" means the same as the term is defined in Subsection 53F-2-522(1)(d).

(7) "Relevant services" means mental health services provided to a student that are directly related to mental health needs identified by a student's mental health screening.

### **R277-625-3. Approval of Mental Health Screeners.**

(1)(a) The Superintendent, in consultation with DSAMH, shall publish annually a list of pre-approved mental health screeners to the Board's website.

(b) the published pre-approved list shall include:

(i) the name or brand of the mental health screener including a link to the screener's website;

(ii) the recommended ages for the mental health screener;

(ii) any limitations of the mental health screener including the typical level of false positives;

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- (iii) the mental health conditions the mental health screener can detect; and
- (iv) the scientific data or research used to verify a screener is evidence-based.

(2) The Board shall approve:

- (a) the pre-approved mental health screener list; and
- (b) the mental health conditions for which a screener can be used.

(3) All pre-approved mental health screeners shall comply with the requirements as described in Title 53E, Chapter 9, Student Privacy and Data Protection, and the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g.

(4) Except as provided for in Subsection (4)(c) and (d), an LEA shall notify the Superintendent by May 1:

(a) if the LEA plans to:

(i) use a mental health screener from the pre-approved list; or

(ii) apply to the Superintendent for approval of a mental health screener that is not on the pre-approved list;

(b) whether an LEA elects to participate in providing a qualifying parent with financial assistance;

(c) In accordance with Subsections (4)(a) and (b) and for the 2020-2021 school year, an LEA shall notify the Superintendent by August 15; and

(d) An LEA is not required to comply with Subsection (4) if the LEA chooses not to offer a mental health screener.

(5) If the LEA chooses to apply for use of a mental health screener that is not on the pre-approved list, the LEA shall submit an application in a form prescribed by the Superintendent specifying:

(a) the mental health screener proposed for use by the LEA;

(b) the reason for choosing the mental health screener over a screener from the pre-approved list;

(c) the approved mental health conditions the mental health screener measures;

(d) how the mental health screener complies with all state and federal data privacy laws; and

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(e) the scientific data or research demonstrating the mental health screener is evidence based and meets industry standards;

(f) why the mental health screener is age appropriate for each grade the screener is administered; and

(g) why the mental health screener is an effective tool for identifying whether a student has a mental health condition that requires intervention.

(6) The Superintendent shall review the application in consultation with DSAMH and approve or deny the application within 30 days of receipt.

(7) If the application is approved, the Superintendent shall submit the approved application to the Board for final approval.

(8) Subject to legislative appropriation, the Superintendent shall provide annually a maximum reimbursement amount an LEA may receive for use of a mental health screener.

(9) An LEA may request in writing a reimbursement from the Superintendent in an amount not to exceed the amount described in Subsection (8).

(10)(a) An LEA shall require relevant staff, who will be administering a mental health screener, to attend an annual mental health screener training provided by the Superintendent in collaboration with DSAMH;

(b) the training described in Subsection (10)(a) shall provide an LEA with information needed for appropriate parental consent including:

(i) consent shall be obtained:

(A) within eight weeks prior to administration of the mental health screener; and

(B) in accordance with Subsection 53E-9-203(4);

(ii) the consent form shall be provided separately from other consent forms given to a parent pursuant to other state or federal laws;

(iii) additional variables that might influence a screener's results; and

(iv) a statement that:

(A) the mental health screener is optional;

(B) a screener is not a diagnostic tool;

(C) a parent has the right to seek outside resources or opinions; and

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(D) specifies which board approved mental health conditions the mental health screener measures.

(11) An LEA may not administer a mental health screener if the LEA has not attended the annual mental health screener training described in Subsection (10).

(12) An LEA shall report annually to the Superintendent aggregate data regarding the types of LEA provided mental health interventions, referrals, or other actions taken based on screener results.

#### **R277-625-4. Data Privacy.**

(1)(a) An LEA shall ensure all data collected or stored by a mental health screener complies with all state and federal data privacy laws and requirements, including those described in Subsection R277-625-3(3).

(b) notwithstanding Subsection (1)(a), an LEA shall provide a parent with a list of all parties that may receive any data related to a student's mental health screener prior to the parent providing consent.

(2) An LEA shall provide a parent with a list of all data potentially collected by the mental health screener prior to consenting to a student's mental health screening.

(3) An LEA shall provide the parent of a screened student with:

(a) results as described in Subsection 53F-2-522(4)(d);

(b) applicable available resources; and

(c) who has access to the screener data

(4) If an LEA has received parental consent, an LEA may share data collected from the mental health screener with a school's multi-disciplinary team.

(5) An LEA shall retain and dispose of all data related to a student's mental health screener in accordance with an approved retention schedule not to exceed three years.

#### **R277-625-5. Financial Assistance for a Qualifying Parent.**

(1) An LEA that has elected to participate as described in Subsection R277-625-3(4)(b), may receive reimbursement for relevant services obtained by a qualifying parent who receives financial assistance.

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- (2) An LEA may not receive reimbursement for a qualifying parent if:
  - (a) the qualifying parent's student has begun to receive relevant services outside of the school setting prior to seeking reimbursement;
  - (b) the LEA can provide the relevant services, including relevant services provided by a third party through a contract with the LEA;
  - (c) except for as provided in Subsection (d), the qualifying parent has received reimbursement for the same relevant services within one year from the date the relevant services began for the student; or
  - (d) an LEA may provide reimbursement to a qualifying parent for the same relevant services within one year from the date relevant services began for the student if:
    - (i) the LEA has no other qualifying parents seeking reimbursement by April 1 and;
    - (ii) has reimbursement funds remaining.
- (3) An LEA may not receive reimbursements that exceed the LEA's award amount as described in Subsection (4).
- (4) An LEA that has elected to participate as described in Subsection R277-625-3(4)(b), shall receive a total award amount based on need as determined by the Superintendent.
- (5) The Superintendent shall determine a participating LEA's need by considering the LEA's ability to support and provide mental health services for a student including:
  - (a) the availability of mental health services within the LEA;
  - (b) the availability of mental health services within the LEA's surrounding community;
  - (c) the overall accessibility of mental health services for students within the LEA;
  - (d) the current student demand for mental health services within an LEA; and
  - (e) capacity of the LEA to meet existing and future student demands for mental health services.

**KEY: mental health screener, mental health, prevention**

**Date of Enactment or Last Substantive Amendment: August 12, 2020**

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**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53F-2-522**