

R277-121 received final approval by the Utah State Board of Education on August 4, 2022. R277-121 was published in the September 1, 2022, Utah State Bulletin, subject to a 30-day comment period, with a first possible effective date of October 10, 2022.

R277. Education, Administration.

R277-121. Board Waiver of Administrative Rules.

R277-121-1. 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 53G-7-202, which allows the Board to grant an LEA's request for a waiver from a Board rule.

(2) The purpose of this rule is to establish procedures for an LEA to request a waiver from a Board rule.

R277-121-2. Procedures for Waiver Requests.

(1)(a) An LEA board may request a waiver from a Board rule by filing a written request with the Superintendent.

(b) Except for a request for a waiver due to snow, inclement weather, or other emergency school closure described in Section R277-121-5, a written request under Subsection (1)(a) shall include:

(i) verification that the LEA board voted to request the waiver in an open meeting;

(ii) data that support the requested waiver, which may include:

(A) student achievement data;

(B) community, staff, or student survey data;

(C) student enrollment data; or

(D) data demonstrating the cost effectiveness of the waiver request;

(iii) a proposed agreement with the Board that includes:

(A) a proposed effective date;

(B) provisions for public review and accountability;

(C) data gathering and reporting timelines; and

R277-121 received final approval by the Utah State Board of Education on August 4, 2022. R277-121 was published in the September 1, 2022, Utah State Bulletin, subject to a 30-day comment period, with a first possible effective date of October 10, 2022.

- (D) a sunset date; and
- (iv) in the case of a charter school, a recommendation from the board of the school's authorizer.
- (2) An LEA board may not request a waiver from a Board rule:
 - (a) that is required by or adopts criteria from a federal statute, federal regulation, or state law;
 - (b) that would negatively affect the health, safety, or welfare of public education students;
 - (c) that could reasonably result in discrimination or harassment of public school students or employees;
 - (d) that would benefit one element of the public education system to the detriment of another; or
 - (e) when the concerns giving rise to an LEA board's request could be addressed through means other than waiver of Board rules.

R277-121-3. Board Review of Waiver Requests.

- (1) The Superintendent shall:
 - (a) review an LEA's waiver request; and
 - (b) may provide a recommendation to the Board.
- (2) The Board Executive Committee may assign a waiver request made under this Rule R277-121 to a Board standing committee.
- (3) The standing committee assigned in accordance with Subsection (2):
 - (a) may solicit additional information or testimony;
 - (b) shall review the request in an open meeting; and
 - (c) shall make a recommendation for consideration by the full Board.
- (4) The Board Executive Committee may consolidate consideration of duplicate or similar requests.
- (5) The Board shall consider available data in evaluating an LEA waiver request and shall make data driven decisions.

R277-121 received final approval by the Utah State Board of Education on August 4, 2022. R277-121 was published in the September 1, 2022, Utah State Bulletin, subject to a 30-day comment period, with a first possible effective date of October 10, 2022.

R277-121-4. Annual Review of Approved Waivers.

(1) The Board may request an LEA that receives a waiver from Board rule in accordance with this Rule R277-121 for more than one year to report the following to a Board committee:

- (a) data that supports continuation of the requested waiver; and
- (b) data related to the data the LEA presented as apart of the LEA's request for waiver.

(2) During a review described in Subsection (1), the Board may, with notice to the LEA, move to rescind or modify the waiver, unless the waiver agreement explicitly states otherwise.

R277-121-5. Snow, Inclement Weather, or Other Emergency School Closure Days.

(1) An LEA may seek a waiver directly from the Superintendent from the 180 day requirement described in Subsection R277-419-4(1) if:

- (a) the LEA closes a school due to excessive snow, inclement weather, or an other emergency; and
- (b) the school closure will result in the LEA not meeting the 180 day requirement described in Section R277-419-4.

(2) The Superintendent may grant a waiver due to excessive snow, inclement weather, or other emergency without Board approval if the LEA has provided contingency school days and hours into the LEA's calendar as required in Subsection R277-419-4(5), or has another plan in place to minimize the negative impact on the educational process caused by the waiver.

(3)(a) An LEA may request the Superintendent to waive the school day and hour requirement pursuant to a directive from the Utah State Health Department or a local health department, that results in the closure of a school in the event of a pandemic or other public health emergency.

(b) A waiver described in this Subsection (3) may be for a designated time period, for a specific area, or for a specific LEA in the state, as determined by the health department directive.

R277-121 received final approval by the Utah State Board of Education on August 4, 2022. R277-121 was published in the September 1, 2022, Utah State Bulletin, subject to a 30-day comment period, with a first possible effective date of October 10, 2022.

(c) A waiver may allow an LEA to continue to receive state funds for pupil services and reimbursements.

(d) A waiver granted by the Superintendent as described in this Subsection (3) shall direct an LEA to provide as much notice to students and parents of the suspension of school services, as is reasonably possible.

(e) A waiver granted as described in this Subsection (3) shall direct an LEA to comply with health department directives, but to continue to provide any services to students that are not inconsistent with the directive.

(f) The Superintendent may encourage an LEA to provide electronic or distance learning services to affected students for the period of the pandemic or other public health emergency to the extent of personnel and funds available.

(4) An LEA request for a waiver due to snow, inclement weather, or other emergency school closure described in this [S]ection is not required to include the information described in Subsections R277-121-2(1)(b)(ii) through (iv) unless requested by the Superintendent.

(5) If the Superintendent denies an LEA's request described in this [S]ection, the LEA may appeal the Superintendent's decision by making the request of the full Board.

KEY: Utah State Board of Education, waivers, administrative rules

Date of Last Change: 2022[April 9, 2020]

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