

1 **R277. Education, Administration.**

2 **R277-626. Special Needs Opportunity Scholarship Program.**

3 **R277-626-1. Authority and Purpose.**

4 (1) This rule is authorized by:

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

7 (b) Section [53E-3-401](#)(4), which allows the Board to make rules to execute the  
8 Board's duties and responsibilities under the Utah Constitution and state law; and

9 (c) Section [53E-7-404](#), which requires the Board to make rules to implement the  
10 Special Needs Opportunity Scholarship Program.

11 (2) The purpose of this rule is to provide guidelines for contracted scholarship  
12 granting organizations and the Superintendent to implement the Special Needs  
13 Opportunity Scholarship Program.

14 **R277-626-2. Definitions.**

15 (1) "Eligible student" has the same meaning as defined in Subsection [53E-7-](#)  
16 [401](#)(1).

17 (2) "Non-LEA multidisciplinary team" means a group of qualified professionals  
18 and the parent of a student or an adult student who determine a student's eligibility for a  
19 scholarship as described in Subsection [53E-7-401](#)(1)(c)(ii) based upon completion of  
20 the administration of assessments and other evaluation measures, consistent with Part  
21 B of the IDEA and USBE Special Education Rules, incorporated by reference in Rule  
22 R277-750, including whether that student is a student with a disability.

23 ([2]3) "Program donation" means a donation to a scholarship granting  
24 organization in accordance with Section [53E-7-405](#).

25 ([3]4) "Qualifying school" has the same meaning as defined in Subsection [53E-](#)  
26 [7-401](#)(7).

27 ([4]5) "Request for proposals" or "RFP" has the same meaning as defined

28 Subsection [63G-6a-103](#)(70).

29 ([5]6) “Scholarship expense” has the same meaning as defined in Subsection  
30 [53E-7-401](#)(10).

31 ([6]7)(a) “Scholarship granting organization” or “SGO” has the same meaning as  
32 defined in Subsection [53E-7-401](#)(11).

33 (b) An SGO may not be a qualifying school.

34 ([7]8) “Scholarship student” has the same meaning as defined in Subsection  
35 [53E-7-401](#)(12).

36 ([8]9) “Special Needs Opportunity Scholarship Program” or “the program” means  
37 the scholarship grant program established in Section [53E-7-402](#).

38 **R277-626-3. Superintendent Responsibilities.**

39 (1) The Superintendent shall conduct an RFP for an SGO in accordance with  
40 Subsection [53E-7-404](#)(3).

41 (2) The Superintendent shall provide all information required to the Utah State  
42 Tax Commission in accordance with Subsection [53E-7-404](#)(4)(c).

43 (3) The Superintendent shall provide a tax credit certificate form, in accordance  
44 with Subsection [53E-7-404](#)(2)(a) for use by an approved SGO.

45 (4) The Superintendent shall annually recommend to the Board a program  
46 donations cap for approval in accordance with Subsection [53E-7-407](#)(4).

47 (5)(a) The Superintendent shall monitor an SGO chosen under Subsection (1) to  
48 ensure compliance with state law, including Title 53E, Chapter 7, Part 4, Special Needs  
49 Opportunity Scholarship Program and this Rule R277-626.

50 (b) The Superintendent may recommend remedial action against an SGO in  
51 accordance with Rule [R277-114](#) and Subsection [53E-7-404](#)(5).

52 (6)(a) The Superintendent shall:

53 (i) recommend qualifying schools to the Board for approval in accordance with  
54 Subsection [53E-7-408](#)(6); and

55 (ii) require, as a condition for approval, that a qualifying school reimburse  
56 scholarship money to an SGO if an eligible student discontinues enrollment early.

57 (b) The Superintendent shall post a list of approved qualifying schools on the  
58 Board website.

59 (c) The Superintendent may monitor eligible schools for on-going compliance  
60 with the requirements of Section [53E-7-408](#).

61 (7)(a) The Superintendent shall monitor SGO employees and officers in  
62 accordance with Subsection [53E-7-410](#)(2).

63 (b) The Superintendent shall initiate corrective action against an SGO if an  
64 employee or officer of the SGO is facing charges for, or has been convicted or pled  
65 guilty or no contest to a violation of the following state laws or laws of another  
66 jurisdiction:

67 (i) any felony; or

68 (ii) an offense involving fraud, theft, embezzlement, breach of fiduciary  
69 responsibility, or other financial misconduct.

70 **R277-626-4. SGO Responsibilities.**

71 (1) An SGO approved in accordance with Subsection R277-626-3(1) shall  
72 administer the program in accordance with Section [53E-7-405](#).

73 (2)(a) An SGO shall maintain separate accounts for all scholarship donations,  
74 including any interest or other income from the scholarship funds.

75 (b) An SGO may not comingle the scholarship funds with any other funds and  
76 may only use funds from the account to cover scholarship expenses.

77 (3)(a)(I) Prior to an SGO paying expenses for tuition and fees, a parent of an  
78 eligible student shall personally approve a funds transfer to the qualifying school.

79 (ii) A student may not approve a funds transfer under a power of attorney from  
80 the student's parent.

81 (iii) After approval as required under Subsection (3)(a)(i), an SGO shall pay

82 costs for tuition and school fees for an eligible student directly to a qualifying school.

83 (b) An SGO may disburse reimbursements to an eligible student's parent upon  
84 proof of payment of other approved scholarship expenses.

85 (3) If an eligible student discontinues enrollment in a qualifying school, the SGO  
86 shall:

87 (a) notify the Superintendent; and

88 (b) obtain reimbursement of scholarship money from the qualifying school.

89 (4) An SGO shall provide the following information to the Superintendent  
90 biannually by January 31 and July 31:

91 (a) the amount of tuition and fees each qualifying school charges for the 2020-21  
92 through the 2023-24 school years;

93 (b) financial records of the SGO annually, including administrative costs incurred  
94 by the SGO to administer the program;

95 (c) the number of scholarship students from each school district of residence  
96 annually;

97 (d) the number of first time scholarship students annually;

98 (e) the amount disbursed for scholarship expenses annually, provided with any  
99 detail requested by the Superintendent;

100 (f) the standards used by the SGO to determine whether a student is an eligible  
101 student;

102 (g) data reflecting savings to the state and LEAs, if any, as a result of  
103 scholarship students exiting the public school system;

104 (h) demographic information on scholarship students, including:

105 (i) name

106 (ii) date of birth;

107 (iii) gender;

108 (iv) race; and

109 (v) last public school attended, if applicable;

110 (i) whether the SGO has received complaints of discrimination, and any steps  
111 taken by the SGO to remedy the complaints; and

112 (j) any other information requested by the Superintendent to facilitate monitoring  
113 of the program and preparation of the annual report required by Section [53E-1-202](#).1.

114 (5) An SGO may not have a personal or professional relationship with a  
115 qualifying school or an employee of a qualifying school that would create a conflict of  
116 interest, favoritism, or bias in making awards from program donations.

117 (6) An SGO is subject to monitoring and corrective action in the same manner as  
118 a recipient under Rule [R277-114](#).

119 **R277-626-5. Evaluation of Eligible Students.**

120 (1) A student may be evaluated to determine if the student qualifies as an eligible  
121 student under Subsection [53E-7-401](#)(1)(c)(ii) by:

122 (a) an LEA; or

123 (b) a non-LEA multidisciplinary team.

124 (2) If a non-LEA multidisciplinary team evaluates a student under Subsection  
125 (1)(b), the SGO shall obtain a written waiver from the student's parent or the adult  
126 student, which waives the student's eligibility under the IDEA.

127 (3) A non-LEA multidisciplinary team shall base its eligibility determination on the  
128 criteria described in Subsection II.J of the USBE Special Education Rules, incorporated  
129 by reference in Rule [R277-750](#).

130 (4) A non-LEA multidisciplinary team may not develop an IEP.

131 (5) A determination from a non-LEA multidisciplinary team that a student qualifies  
132 as an eligible student does not mean the student qualifies for special education under  
133 the IDEA.

134 (6) Only an LEA may make a determination that a student is entitled to special  
135 education services from the LEA.

136 **KEY: special needs opportunity scholarship**  
137 **Date of Enactment or Last Substantive Amendment: January 8, 2021**  
138 **Authorizing, and Implemented, or Interpreted Law: Art X, Sec 3; [53E-3-401](#)(4);**  
139 **Title 53E, Chapter 7, Part 4**