

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 (b) Subsection 53F-2-304(7), which requires the Board to define isolating conditions,
14 which may qualify a non-NESS school for additional funding; and

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

17 (2)(a) The purpose of this rule is to specify the standards ~~[by which the Board~~
18 ~~classifies schools as necessarily existent, which qualifies the schools for additional funding]~~
19 for schools and districts to received funding under the NESS program.

20 **R277-445-2. Definitions.**

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

22 (2) "Isolating conditions" means that a school:

23 (a) is part of a school district that has a student population density of less than one
24 student enrolled per square mile;

25 (b) is located more than 25 miles by road from a city or town with a population of at
26 least 2,000 people; and

27 (c) does not qualify for NESS funding due to NESS formula limitations.

28 (~~2~~3) "NESS" means Necessarily Existent Small School.

29 (4) "Small district base funding" means the allocation provided to school districts with
30 NESS schools under Subsection 53F-2-304(8).

31 (~~3~~5) "Weighted Pupil Unit" or "WPU" means the basic unit used to calculate the
32 amount of state funds a school district may receive.

33 **R277-445-3. Standards.**

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

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

38 (b) 300 for one or two-year secondary schools;

39 (c) 450 for three-year secondary schools;

40 (d) 500 for four-year secondary schools; or

41 (e) 600 for six-year secondary schools.

42 (2) In addition to the requirements of Subsection (1), one-way bus travel for any
43 student from the assigned school to the nearest school of the same type within the same
44 district shall require:

45 (a) students in kindergarten through grade six to travel more than 45 minutes; or

46 (b) students in grades seven through twelve to travel more than one hour and 15
47 minutes.

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

50 (a) the school is in a district which has been consolidated to the maximum extent
51 possible;

52 (b) there is evidence acceptable to the Superintendent of increased growth in the
53 school sufficient to take it out of the small school classification within a period of three
54 years, provided that:

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

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

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

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

64 (i) the school has a safe and educationally adequate school facility with a life
65 expectancy of at least ten years, as judged, at least every five years, by the Superintendent
66 after consultation with the district; or

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

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

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

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

80 (4) The Superintendent may not recognize a school with less than six grades as a
81 necessarily existent small school if it is feasible in terms of school plant to consolidate the
82 school into a larger school, which, if consolidated, would meet the criteria of Subsections

83 (1) and (2).

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

88 (6)(a) In accordance with Subsection [53G-6-305](#)(3)(b)(ii), the Superintendent shall
89 use NESS Program funds to cover out-of-state tuition reimbursements under Rule [R277-](#)
90 [421](#).

91 (b) The Superintendent shall distribute any funding balance in the NESS Program
92 in the current year with:

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

95 (ii) the remaining funds distributed using a formula that considers the tax effort of
96 a local board of education.

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

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

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

103 (9) The Superintendent shall allocate funds to schools with isolating conditions
104 based on legislative appropriations.

105 (10) The Superintendent shall distribute small district base funding in accordance
106 with state law.

107 (11) If a school district receives small district base funding, the funding is not subject
108 to the restrictions of Subsection (7).

109 **R277-445-4. Application Procedures.**

110 (1) Beginning in FY2020, a school district shall apply for funding from the NESS
111 program for all eligible schools, including schools with isolating conditions, on a form
112 approved by the Superintendent by April 2.

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

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

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

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

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

122 **Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; [53E-3-401\(4\)](#);**
123 **[53F-2-304\(1\)](#)**