

**R277. Education, Administration.**

**R277-471. School Construction Oversight, Inspections, Training and Reporting.**

**R277-471-1. Definitions.**

A. "Board" means the Utah State Board of Education.

B. "Certified plans examiner" means a professional who has current applicable commercial certification through the International Code Council (ICC).

C. "Charter schools" means schools acknowledged as charter schools by charter school authorizers consistent with Sections 53G-5-305, 53G-5-306, and this rule or by the Board under Section 53G-5-304.

D. "Charter school responsible person or local charter school board building officer or designee (CSBBO)" means the individual or authority designated by the charter school board who has direct administrative and operational control of charter school construction/renovation and has responsibility for the charter school's compliance with Utah law and the Resource Manual on behalf of the charter school board.

E. "Certificate of inspection verification" means a form certifying that the entity responsible for providing inspection services has complied with the provisions of Sections 53E-3-706, 53E-3-708, 10-9a-305, 17-27a-305, 58-56, Section 15A, State Construction and Fire Code Act, as well as the provisions of R156-56 and this rule. The form is available on the USOE School Finance Section website.

F. "Certificate of occupancy" means the document issued upon receipt of the final inspection from the inspector of record and the 'Certificate of Fire Clearance' issued by the Utah State Fire Marshal, verifying compliance with all minimum requirements to safeguard the public health, safety and general welfare of occupants, which authorizes permanent usage or occupancy of any new building, occupiable structure or existing occupiable building or structure alteration (remodeling) or change of occupancy in an existing structure or building or space.

G. "Division" means the Division of Finance with technical assistance from the Department of Technology Services.

H. "General plan" means a document that a municipality adopts that sets forth general guidelines for proposed future development of the land within the municipality, consistent with Section 10-9a-103(13).

I. "Inspector" means a professional who holds current applicable commercial certification through the International Code Council (ICC) and is currently licensed in the state of Utah in the applicable trades the inspector is performing inspections.

J. "LEA" means local education agency, including local school boards/public school districts and charter schools.

K. "New school building project" means the construction of a school that did not previously exist in an LEA.

L. "Public school construction" means construction work on a new or existing public school building.

M. "School Building Construction and Inspection Resource Manual, April 30, 2013, (Resource Manual)" means a manual which identifies the processes and procedures an LEA shall follow when constructing a new public school building, maintenance, or renovating existing buildings. The Resource Manual was developed by the USOE consistent with Section 53E-3-707, is available on the USOE School Finance website, and is hereby incorporated by reference consistent with Section 63G-3-201(7).

N. "School District Building Official (SDBO)" means the individual or authority designated by the public school district who has direct administrative and operational control of school district construction/renovation and is responsible for the school district's compliance with Utah law and the Resource Manual.

O. "Significant school remodel" means the upgrading, changing, alteration, refurbishment, modification, or complete substitution or replacement of an existing school in an LEA with a project cost equal to or in excess of \$2,000,000.

P. "Superintendent" means the State Superintendent of Public Instruction.

Q. "Temporary certificate of occupancy" means the document issued upon receipt of the temporary final inspection report from the inspector of record and the 'Temporary Certificate of Fire Clearance' issued by the Utah State Fire Marshal, verifying minimum requirements to safeguard the public health, safety and general welfare of occupants, which authorizes temporary usage or occupancy of any new building, occupiable structure or existing occupiable building or structure alteration (remodeling) or change of occupancy in an existing structure or building or space, valid for a specific time period.

R. "USOE" means the Utah State Office of Education.

**R277-471-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Sections 53E-3-706 and 53E-3-707 which direct the Superintendent to enforce requirements and provisions about public school building and alteration, verify inspections of school buildings, and provide information annually to LEAs about the construction and inspection of public school buildings, and Subsection 53E-3-401(3) which permits the Board to adopt rules in accordance with its responsibilities and permits the Board to interrupt disbursements of state aid to any school district or charter school which fails to comply with rules adopted by the Board.

B. The purpose of this rule is to provide specific provisions for the oversight of permanent or temporary public school construction/renovation inspections and to identify LEA board responsibilities and accountability to the Board.

**R277-471-3. LEA Responsible Person.**

A. LEA boards shall be accountable to ensure that all school district and charter school permanent or temporary construction, renovation, and inspections are conducted in accordance with the law to provide minimum requirements to safeguard the public health, safety and general welfare of occupants while using the most comprehensive, cost effective and efficient design means and methods.

(1) Local school boards shall appoint a SDBO who has direct administrative and operational control of all construction, renovation, and inspection of public school district facilities within the school district and shall provide in writing the name of the SDBO to the USOE.

(2) Charter school boards shall be accountable to the State Charter School Board and the Board to ensure that all charter school permanent or temporary construction, renovation, and inspections are conducted in accordance with Utah law and the Resource Manual. Each local charter school board shall appoint a CSBBO who has direct operational responsibility for construction, renovation, and inspection of the charter school. The CSBBO shall report regularly to the local charter school board.

(a) The local charter school board shall provide the name of this officer in writing to the Superintendent.

(b) The local charter school board shall promptly notify the Superintendent in writing of any changes of this individual.

B. The SDBO shall monitor school district building construction to ensure compliance with the provisions of Utah law and the Resource Manual.

C. The CSBBO shall monitor all charter school building construction to ensure compliance with the provisions of Utah law and the Resource Manual.

D. The SDBO and CSBBO shall ensure that public school construction conforms with the intent and purpose of Utah law and the Resource Manual.

E. The SDBO and CSBBO may adopt and enforce supplemental LEA policies under appropriate LEA policies to clarify the application of the provisions of Utah law and the Resource Manual for LEA personnel.

**R277-471-4. School Construction Inspectors.**

A. LEAs shall employ inspectors for school construction inspection who are currently ICC commercially certified and licensed in Utah, in the trade specific to the inspection, consistent with Utah law and the Resource Manual requirements.

B. LEAs shall choose one of three methods for inspections:

(1) Independent inspectors:

(a) shall be approved by the local jurisdiction in which the construction activity occurs;

(b) may include inspectors working outside the municipality, county, or school district in which they are employed; and

(c) shall not be any of the following, nor an employee of: the architect, developer, contractor, a subcontractor working on the project, any management company or other agency hired by the LEA to perform construction or construction administrative services.

(2) School district inspectors shall be employed by and perform school construction inspections within the boundaries of the school district.

(3) Inspectors employed by municipalities and counties may perform school construction inspections within the boundaries of the municipality or county where they are

employed.

**R277-471-5. School Construction Inspections.**

A. Before any school construction project begins, the SDBO or CSBBO shall obtain a construction project number from the USOE by completing and submitting construction project identification forms provided by the USOE and other required submittals for all projects consistent with Title 53E, Chapter 3, Part 7 and the Resource Manual.

B. The appropriate currently certified plans examiner shall approve all LEA school plans and specifications before any LEA construction project begins.

C. If an LEA is unable to provide appropriate and proper school construction inspection and plan review services, the Superintendent may procure inspection services and charge the LEA for those services. The approved inspector shall establish fees in advance of inspection services.

D. LEA construction projects shall comply with Title 53E, Chapter 3, Part 7 and the Resource Manual to:

- (1) ensure that each inspector is adequately and appropriately credentialed;
- (2) identify and provide to the USOE and local government entity building official reports of all inspections with the name, state license number, and disciplines of each inspector performing the project inspections;
- (3) submit inspection certificates and all related submittals to the USOE and appropriate local government entity building official;
- (4) submit inspection summary reports monthly to the appropriate local government entity building official and the USOE;
- (5) sign the final certificate of inspection and verification form, certifying all inspections were completed in compliance with all applicable laws and rules, and the Resource Manual to safeguard the public health, safety and general welfare of occupants;
- (6) send the final inspection certification, inspection verification, and provide all other related project closeout submittals to the USOE and to the appropriate local government entity building official upon completion of the project; and
- (7) maintain all submitted documentation at a designated LEA location for auditing

or monitoring.

E. The SDBO/CSBBO may submit paper or electronic reports to satisfy this section.

**R277-471-6. Coordination with Local Governments, Utility Providers and State Fire Marshal.**

A. Prior to developing plans and specifications for a public school construction project, LEAs shall coordinate with affected local government land use authorities and utility providers to:

(1) ensure that the siting or expansion of a school in the intended location will comply with applicable local general plans and land use laws and will not conflict with entitled land uses;

(2) ensure that all local government services and utilities required by the school construction activities can be provided in a logical and cost-effective manner;

(3) avoid or mitigate existing and potential traffic hazards, including consideration of the impacts between the public school construction and future roadways; and

(4) maximize school, student and site safety.

B. LEAs shall cooperate with municipalities and counties and conform to municipal and county land use ordinances consistent with Sections 10-9a-305 and 17-27a-305.

C. Prior to developing plans and specifications for a public school construction project, LEAs shall coordinate with local health departments and the State Fire Marshal.

D. A charter school shall have an open meeting to seek and secure a variance from the appropriate government entity if the LEA selects a school site in a municipality or county-designated zone for sexually oriented businesses or businesses that sell alcohol.

E. Parking requirements for a charter school may not exceed the minimum parking requirements for a traditional public school of a like size and grade levels or other institutional public use throughout the municipality or county.

F. LEAs shall maintain documentation for audit purposes of coordination, meetings, and agreements required under this section.

G. Prior to developing plans and specifications for a public school construction project, LEAs shall coordinate with local jurisdictions to comply with Federal Emergency

Management Agency flood plain requirements and restrictions, including applicable mitigation measures.

**R277-471-7. Superintendent's Authority to Request Additional Inspections.**

A. The Superintendent may contract with any appropriately qualified entity or person(s) to provide inspection services that the Superintendent considers necessary to enable the Superintendent to issue a certificate authorizing temporary or permanent occupancy of the public school building.

B. The Superintendent may charge the LEA a fee not to exceed the actual cost of performing the inspection(s) for inspection services.

**R277-471-8. Certification of Occupancy.**

A. School districts:

(1) After completion of the project when a school district's appropriately credentialed inspector provides inspections, the SDBO shall sign a certificate of inspection verification form certifying that all inspections were completed in accordance with Utah law and the Resource Manual, and file the form with the USOE and the building official of the jurisdiction in which the building is located.

(2) After completion of the project when a local jurisdiction provides inspections, the school district shall seek a certificate authorizing permanent occupancy of a school building from the jurisdiction in which the building is located; a copy of the certificate of occupancy shall be filed with the USOE.

(3) After completion of the project when independent inspectors provide inspections, the SDBO shall seek a certificate authorizing temporary or permanent occupancy of the school from the Superintendent.

B. Charter schools:

(1) After completion of the project and inspection by an appropriately credentialed inspector when a charter school contracts with a school district for inspections, the CSBBO shall obtain a completed certificate of inspection verification form from the SDBO certifying that all inspections were completed in accordance with Utah law and the Resource Manual, and file the form with the USOE and the jurisdiction where the public school is

located.

(2) After completion of the project when a local jurisdiction provides inspections, a charter school shall seek a certificate authorizing permanent occupancy of a school building from the jurisdiction in which the building is located; a copy of the certificate of occupancy shall be filed with the USOE.

(3) After completion of the project when independent inspectors provide inspections, the CSBBO shall seek a certificate authorizing temporary or permanent occupancy of the school from the Superintendent.

C. Within 30 days after the LEA files a request for the issuance of a certificate authorizing permanent occupancy of the school building from the USOE, the Superintendent shall:

(1) issue to the LEA a certificate authorizing permanent occupancy of the school building; or

(2) deliver to the LEA board a written notice indicating deficiencies in the LEA's compliance with the inspection findings.

D. If the Superintendent does not issue the certificate authorizing permanent occupancy, the LEA shall provide notice of the deficiency to the building official of the local government entity in which the public school building is located.

E. Upon the LEA board filing the certificate of inspection verification and requesting the issuance of a certificate authorizing permanent occupancy of the school building with the USOE, the LEA shall be entitled to temporary occupancy of the school building for a period up to 90 days, beginning on the date the request is filed, if the LEA has complied with all minimum requirements to safeguard the public health, safety and general welfare of occupants.

F. Upon the LEA remedying any deficiencies and notifying the Superintendent that the deficiencies have been remedied, following certification of the information, the Superintendent shall issue a certificate authorizing permanent occupancy of the school building.

G. Upon receipt of the certificate of occupancy, the LEA shall provide a copy of the certificate to the building official of the local governmental entity in which the school building is located authorizing permanent occupancy of the school building.

**R277-471-9. School Building Construction and Inspection Resource Manual.**

A. The USOE shall develop and distribute a Resource Manual, or provide an electronic version, on the USOE School Finance website, consistent with Section 53E-3-707.

B. The Resource Manual shall include process, legal requirements and resource information on school building construction, operations, maintenance, minimum requirements to safeguard the public health, safety and general welfare of occupants, and inspections.

C. The USOE shall review and, if necessary, update the Resource Manual annually.

D. The Board and LEA boards, as well as LEA personnel, shall act consistent with the Resource Manual.

**R277-471-10. School Construction Guidelines.**

A. The Board shall adopt public school construction guidelines that take into consideration the factors identified in Section 53E-3-702 and other factors identified by USOE staff or the Division of Facilities Construction and Management Administration staff.

B. LEAs shall review and take into consideration the school construction guidelines when planning and prior to proceeding with public school construction.

**R277-471-11. Enforcement.**

A. An LEA which fails to comply with the provisions of this rule is subject to interruption of state dollars by the Board consistent with Subsections 53E-3-401(3) and 53F-2-202(4)(d).

(1) If an LEA fails to meet or satisfy a school construction inspection requirement or timeline designation under this rule, the Superintendent shall, as directed by the Board, send the school district superintendent or local charter school director notice by certified mail; and

(2) If after 30 days the requirement has not been met, the USOE may, as directed by the Board, interrupt the Minimum School Program fund transfer process to the following

extent:

(a) 10 percent of the total monthly Minimum School Program transfer amount the first month;

(b) 25 percent in the second month; and

(c) 50 percent in the third and subsequent months.

B. If the USOE interrupts the Minimum School Program fund transfer process, the USOE shall:

(1) upon receipt of confirmation that the proper inspection(s) has (have) taken place or upon receipt of a late report, restart the transfer process within the month (if the confirmation or report is submitted before the tenth working day of the month) or in the following month (if the confirmation or report is submitted after 10:00 a.m. on or after the tenth working day of the month);

(2) inform the Board at its next regularly scheduled meeting; and

(3) inform the chair of the local governing board if the school district superintendent or charter school director is not responsive in correcting ongoing school construction inspection and reporting problems.

C. An LEA may be subject to a nonrefundable fine in the amount of one half of one percent of the total construction costs if an LEA fails to report a public school construction project consistent with Title 53E, Chapter 3, Part 7 and the Resource Manual to the USOE.

(1) The USOE, under the direction of the Board, shall deduct nonrefundable fine amounts from the respective LEA's Minimum School Program allotment at a rate sufficient to complete collection of the nonrefundable fine by the end of the current fiscal year.

(a) The USOE shall deposit school district nonrefundable fine amounts into the School Building Revolving Account; and

(b) The USOE shall deposit charter school nonrefundable fine amounts into the Charter School Building Subaccount within the School Building Revolving Account.

#### **R277-471-12. Appeals Procedure for Nonrefundable Fines.**

A. The Board designates the procedure outlined in R277-471-12 as an informal adjudicative proceeding, under Section 63G-4-203.

B. LEA boards may appeal a fine assessed under R277-471-11C consistent with

the following:

(1) An LEA may not appeal a fine until a final administrative decision has been made to assess the fine by the USOE and the fine has been affirmed by the Board.

(2) A district superintendent on behalf of a local school board or a local charter board chair on behalf of a local charter school board may appeal an assessed fine by filing an appeal form provided on the USOE website.

(3) An LEA must file the appeal within 10 business days of final affirmation of USOE action/withholding by the Board.

(4) An LEA shall deliver or provide electronically the appeal to the USOE as provided by the appeal form.

(5) An LEA shall provide, as stated on the form, an explanation of unanticipated or compelling circumstances that resulted in the local board's or charter school's failure to report new construction or remodeling projects as required.

(6) The school district superintendent or local charter board chair shall provide a notarized statement that the information and explanation of circumstances are true and factual statements.

(7) At least three members of the Finance Committee appointed by the Board shall act as a review committee to review the written appeal.

(a) The appeal committee may request additional information from the LEA board.

(b) The appeal committee may ask the district superintendent or local school district or charter school board chair or LEA business staff to appear personally and provide information.

(c) The fine shall be presumed appropriate and legitimate when reviewed by the appeal committee.

(d) The appeal committee shall make a written recommendation within 10 business days of receipt of the appeal request.

(e) The full Finance Committee of the Board shall review the recommendation.

(f) The Finance Committee shall make a formal recommendation to the Board to accept, modify or reject the appeal explanation and fine.

C. The Board, in a regular monthly meeting, may accept or reject the Finance Committee's final recommendation to affirm the fine, modify the fine, or grant the appeal.

D. Consistent with the Board's general control and supervision of the Utah public school system and given the significant public policy concern for safe schools and cost-effective public school building projects, a local board of education or a local charter board has no further administrative appeal opportunity.

**R277-471-13. Annual Construction and Inspection Conference.**

A. The USOE shall sponsor an annual school construction conference for representative(s) from each LEA and interested persons involved in the school building construction, design, operation, maintenance, safety and related industries.

B. Conference presenters and participants shall provide and discuss current information and training on public school building construction and inspection, including:

- (1) the design, construction, operation and the inspection process of public school buildings;
- (2) public school building site selection;
- (3) best building life-cycle costing;
- (4) construction inspection requirements and schedules; and
- (5) information to improve the existing public school building design, construction, operation and safety inspection program.

**R277-471-14. School Plant Capital Outlay Report.**

A. The Board shall prepare an annual School Plant Capital Outlay Report of all school construction projects completed and under construction, including information on the number and size of buildings.

B. An LEA shall prepare and submit an annual School Plant Capital Outlay Report to the Utah Public Finance website, consistent with Section 63A-3-402, for each new school building construction project or significant school remodel, completed between July 1, 2004 and May 13, 2014. An LEA shall submit the report no later than May 15, 2015. For new school building projects or significant remodel projects completed after May 13, 2014, the LEA shall provide the School Plant Capital Outlay Report to the Division annually, by a date designated by the Division.

C. The School Plant Capital Outlay Report shall include information required under

Section 63A-3-402(6)(c).

D. The LEA shall report to the Utah Public Finance website the actual cost, fee, or other expense for any figures required to be reported under R277-471-14B.

E. The report shall be in a format, including any raw data or electronic formatting, prescribed by applicable Division policy.

F. The Division may require an LEA to provide further itemized data on information listed in Section 63A-3-402(b) or R277-471-14B.

**KEY: educational facilities**

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**Notice of Continuation: August 6, 2019**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(3); 53E-3-706; 53E-3-707; 10-9a-305; 17-27-105; 53F-2-202(4)(d)**