

1 **R277. Education, Administration.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 M. "School Building Construction and Inspection Resource Manual, April 30,
43 2013, (Resource Manual)" means a manual which identifies the processes and
44 procedures an LEA shall follow when constructing a new public school building,
45 maintenance, or renovating existing buildings. The Resource Manual was developed
46 by the USOE consistent with Section 53E-3-707, is available on the USOE School
47 Finance website, and is hereby incorporated by reference consistent with Section
48 63G-3-201(7).

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

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

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

57 Q. "Temporary certificate of occupancy" means the document issued upon
58 receipt of the temporary final inspection report from the inspector of record and the

59 'Temporary Certificate of Fire Clearance' issued by the Utah State Fire Marshal,
60 verifying minimum requirements to safeguard the public health, safety and general
61 welfare of occupants, which authorizes temporary usage or occupancy of any new
62 building, occupiable structure or existing occupiable building or structure alteration
63 (remodeling) or change of occupancy in an existing structure or building or space, valid
64 for a specific time period.

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

66

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

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

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

80

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

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

87 (1) Local school boards shall appoint a SDBO who has direct administrative and

88 operational control of all construction, renovation, and inspection of public school district
89 facilities within the school district and shall provide in writing the name of the SDBO to
90 the USOE.

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

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

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

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

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

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

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

110

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

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

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

116 (1) Independent inspectors:

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

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

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

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

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

130

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

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

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

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

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

145 (1) ensure that each inspector is adequately and appropriately credentialed;

146 (2) identify and provide to the USOE and local government entity building
147 official reports of all inspections with the name, state license number, and disciplines of
148 each inspector performing the project inspections;

149 (3) submit inspection certificates and all related submittals to the USOE and
150 appropriate local government entity building official;

151 (4) submit inspection summary reports monthly to the appropriate local
152 government entity building official and the USOE;

153 (5) sign the final certificate of inspection and verification form, certifying all
154 inspections were completed in compliance with all applicable laws and rules, and the
155 Resource Manual to safeguard the public health, safety and general welfare of
156 occupants;

157 (6) send the final inspection certification, inspection verification, and provide all
158 other related project closeout submittals to the USOE and to the appropriate local
159 government entity building official upon completion of the project; and

160 (7) maintain all submitted documentation at a designated LEA location for
161 auditing or monitoring.

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

164

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

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

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

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

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

178 (4) maximize school, student and site safety.

179 B. LEAs shall cooperate with municipalities and counties and conform to
180 municipal and county land use ordinances consistent with Sections 10-9a-305 and
181 17-27a-305.

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

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

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

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

193 G. Prior to developing plans and specifications for a public school construction
194 project, LEAs shall coordinate with local jurisdictions to comply with Federal Emergency
195 Management Agency flood plain requirements and restrictions, including applicable
196 mitigation measures.

197

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

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

203 B. The Superintendent may charge the LEA a fee not to exceed the actual cost

204 of performing the inspection(s) for inspection services.

205

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

207 A. School districts:

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

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

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

220 B. Charter schools:

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

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

231 (3) After completion of the project when independent inspectors provide
232 inspections, the CSBBO shall seek a certificate authorizing temporary or permanent

233 occupancy of the school from the Superintendent.

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

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

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

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

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

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

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

257

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

259 A. The USOE shall develop and distribute a Resource Manual, or provide an
260 electronic version, on the USOE School Finance website, consistent with Section
261 53E-3-707.

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

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

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

270

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

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

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

278

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

280 A. An LEA which fails to comply with the provisions of this rule is subject to
281 interruption of state dollars by the Board consistent with Subsections 53E-3-401(3) and
282 53F-2-202(4)(d).

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

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

290 (a) 10 percent of the total monthly Minimum School Program transfer amount

291 the first month;

292 (b) 25 percent in the second month; and

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

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

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

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

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

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

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

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

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

317

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

319 A. The Board designates the procedure outlined in R277-471-12 as an informal

320 adjudicative proceeding, under Section 63G-4-203.

321 B. LEA boards may appeal a fine assessed under R277-471-11C consistent
322 with the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

359

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

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

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

366 (1) the design, construction, operation and the inspection process of public
367 school buildings;

368 (2) public school building site selection;

369 (3) best building life-cycle costing;

370 (4) construction inspection requirements and schedules; and

371 (5) information to improve the existing public school building design,
372 construction, operation and safety inspection program.

373

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

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

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

385 C. The School Plant Capital Outlay Report shall include information required
386 under Section 63A-3-402(6)(c).

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

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

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

393

394 **KEY: educational facilities**

395 **Date of Enactment or Last Substantive Amendment: November 10, 2014**

396 **Notice of Continuation: September 9, 2014**

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

398 **53E-3-706; 53E-3-707; 10-9a-305; 17-27a-105; 53F-2-202(4)(d)**Authorizing, and

399 Implemented, or Interpreted Law: Art X Sec 3; 53A-1-401 (statutes separated by

400 semi-colons)