

R277-709 received final approval by the Utah State Board of Education on April 4, 2019. R277-709 is published in the June 1, 2019 Utah State Bulletin, subject to a 30-day comment period, with a first possible effective date of July 8, 2019.

R277. Education, Administration.

R277-709. Education Programs Serving Youth in Custody.

R277-709-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision of 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) Subsection 53E-3-503(2)(b) which requires the Board to adopt rules for the distribution of funds for the education of youth in custody.

(2) The purpose of this rule is to specify operation standards, procedures, and distribution of funds for youth in custody programs.

R277-709-2. Definitions.

(1) "Accreditation" means the formal process for evaluation and approval from a regional accrediting body.

(2) "Custody" means the status of being legally subject to the control of another person or a public agency.

(3)(a) "Youth in custody" means a person for whom the Board is responsible to provide educational services under Subsections 53E-3-503(2)(a) and 62A-15-609(1).

(b) "Youth in custody" does not include a person taken into custody for the primary purpose of obtaining access to education programs provided for youth in custody.

R277-709-3. Student Evaluation, Education Plans, and LEA Programs.

(1) Each student meeting the eligibility definition of youth in custody shall have a written [SEOP/]plan for college and career readiness defining the student's academic achievement, which shall specify known in-school and extra-school factors which may affect the student's school performance.

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[~~SEOP~~]plan for college and career readiness maintained in the student's file.

(3) A program receiving a youth in custody student is responsible for obtaining the student's evaluation records, and, in cases where the records are not current, for conducting the evaluation, which may include a special education eligibility evaluation, as quickly as possible so that unnecessary delay in developing a student's education program is avoided.

(4) The LEA in which a youth in custody program is located has the responsibility to conduct IDEA child find activities within the program, consistent with Section R277-750-2 and Utah State Board of Education Special Education Rule II.A.

(5)(a) A youth in custody program shall prepare an appropriate [~~SEOP~~]plan for college and career readiness and, as needed, an Individualized Education Program for each eligible youth in custody based upon the results of the student evaluation.

(b) A youth in custody program shall review and update the plans required under Subsection (5)(a) at least once each year or immediately following transfer of a student from one custody program to another, whichever is sooner.

(c) A youth in custody program shall develop the plans required under Subsection (5)(a) in cooperation with appropriate representatives of other service agencies working with a student, such as JJS, DCFS, DWS, etc.

(d) The plans required under Subsection (5)(a) shall specify the responsibilities of each of the agencies towards the student and shall be signed by each agency's representative.

(6)(a) All provisions of the IDEA and state special education rules apply to youth in custody programs.

(b) The USBE Special Education Department shall include youth in custody programs in annual general supervision monitoring.

(7)(a) An LEA shall provide an education program for the student which conforms as closely as possible to the student's education plan.

(b) An LEA shall provide educational services in the least restrictive environment

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appropriate for the student's behavior and educational performance.

(8) An LEA shall consider youth in custody who do not require educational services or supervision beyond students not in custody to be part of the district's regular enrollment and provided education services.

(9) An LEA shall only assign or allow youth in custody to remain in restrictive or mainstream programs if ~~[not assign or allow youth in custody to remain in restrictive or non-mainstream programs simply because of]~~:

- (a) their custodial status;
- (b) past behavior that does not put others at risk; or
- (c) the inappropriate behavior of other students.

(10)(a) Education programs to which youth in custody are assigned shall meet the standards which are adopted by the Board for that type program.

(b) The Superintendent shall monitor compliance in ~~[periodic]~~annual review visits.

(11) An LEA shall accept credit earned in youth in custody programs that are accredited at face value in Utah's public schools consistent with Section R277-410-9, Transfer or Acceptance of Credit.

(12) A youth in custody program shall ~~[sufficiently]~~ coordinate educational services with non-custody programs to enable youth in custody to continue their education ~~[with minimal disruption]~~ following discharge from custody.

(13)(a) A youth in custody program shall admit youth in custody to classes within five school days following arrival at a new residential placement.

(b) If a youth in custody program cannot complete an evaluation and ~~[SEOP/]~~plan for college and career readiness or IEP development within five school days, the program shall enroll the student temporarily based upon the best information available.

(c) A temporary schedule may be modified to meet the student's needs after the evaluation and planning process is complete.

(14)(a) Following a student's release from custody or transfer to a new program, the sending program shall bring all available school records up to date and forward them

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to the receiving program consistent with Section 53G-6-604.

(b) An LEA shall maintain all grades, attendance records and special education SCRAM records in the LEA's SIS system in compliance with Rule R277-484, Data Standards.

R277-709-4. Program Fiscal and Accountability Procedures.

(1) The Superintendent shall allocate state funds appropriated for youth in custody, including the Utah State Hospital, in accordance with Section 53E-3-503 and Section 62A-15-609.

(2) Funds appropriated for youth in custody programs shall be subject to Board accounting, auditing, and budgeting rules and policies.

(3) The Superintendent shall, through an annually submitted and approved state application and plan, contract with LEAs to provide educational services for youth in custody.

(a) A contract required by Subsection (3) shall include the respective responsibilities of the Board, LEAs, and other local service providers for education.

(b) An LEA may subcontract with local non-district educational service providers for the provision of educational services.

(4) The Superintendent may only contract through an RFP process with an appropriate entity if the Superintendent determines that the LEA where the facility is located is unable or unwilling to provide adequate education services.

(5) Youth in custody students receiving education services by or through an LEA are students of that LEA.

(6) Notwithstanding the procedures for determining an alternative district of residency in Rule R277-621, an LEA may not create an alternative district of residency for a student who has been placed in custody primarily in an attempt to receive services in a state funded youth in custody program.

(7) The Superintendent shall allocate state funds appropriated for youth in custody

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on the basis of an annually submitted and approved application made by the LEA where a youth in custody program resides.

(8) The Superintendent shall base the share of funds distributed to an LEA upon criteria, which include:

- (a) the number of youth in custody served by the LEA;
- (b) the type of program required for the youth;
- (c) the setting for providing services; and
- (d) the length of the program.

(9) A youth in custody program shall expend funds approved for youth in custody projects solely for the purposes described in the respective funding application.

(10) The Superintendent may retain no more than five percent of the total youth in custody annual legislative appropriation for administration, oversight, monitoring, and evaluation of youth in custody programs and their compliance with law and this rule.

(11) Up to three percent of the five percent of administrative funds allowed under Subsection (9) may be withheld by the Superintendent and directed to students attending youth in custody programs for short periods of time or to new or beginning youth in custody programs or initiatives benefitting youth in custody students.

(12) The Superintendent may withhold federal or state funds for noncompliance with state policy and procedures and associated reporting timelines in accordance with Rule R277-114.

(13) The Superintendent shall develop uniform forms, deadlines, reporting and accounting procedures and guidelines to govern the youth in custody school-based programs and Utah State Hospital funded programs.

R277-709-5. Youth in Custody Programs and Students with Disabilities.

(1) The youth in custody program is separate from and not conducted under the state's education program for students with disabilities.

(2) Custodial status alone does not qualify a youth in custody student as a student

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with a disability under laws regulating education for students with disabilities.

(3) Youth in custody students may be eligible for special education funding and services based upon special education rules and regulations.

(4) Youth in custody students qualifying for special education services shall receive educational instruction as defined in Rule R277-750, Education Programs for Students with Disabilities.

(5) Special education procedural safeguards shall apply to all IDEA eligible youth in custody students regardless of instructional location.

(6) The Superintendent shall monitor special education programs provided through youth in custody programs on an annual basis in accordance with special education rules and policies.

R277-709-6. Youth in Custody Program Staffing and Monitoring.

(1) Education staff assigned to youth in custody shall be qualified and appropriate for their assignments in accordance with Board licensing rules.

(2) Youth in custody programs shall maintain accreditation as part of the LEA where the programs are located consistent with Rule R277-410, Accreditation of Schools.

(3) The Superintendent shall evaluate youth in custody programs through regular site monitoring visits and monthly desk monitoring.

(4) Monitored programs shall prepare and submit to the Superintendent a written corrective action plan for each monitoring finding, as requested by the Superintendent.

(5) A youth in custody program's failure to resolve monitoring findings as soon as possible, and, in no case, later than one calendar year from date of notice, may result in the termination of state funding as provided in Rule R277-114.

(6) The Superintendent may review LEA or State Hospital records and practices for compliance with the law and this rule.

~~**R277-709-7. Utah State Hospital.**~~

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~~———— (1) Funding for the education programs at the Utah State Hospital shall be contingent upon a legislative appropriation.~~

~~———— (2)(a) State education contract funds appropriated for State Hospital youth in custody are allocated to the LEA on a reimbursement basis.~~

~~———— (b) The State Hospital shall annually submit requests for reimbursement.~~

~~———— (3) Funding shall be distributed to the LEA on a reimbursement basis subject to required documentation that supports expenditures.~~

~~———— (4) Funds may be withheld or terminated for noncompliance with state and federal policies and procedures and associated reporting requirements and timelines as defined by the Superintendent and in accordance with Rule R277-114.~~

~~———— (5) The Utah State Hospital shall serve all students qualifying for special education services in accordance with the special education standards adopted in the Special Education Rules and Rule R277-750.]~~

R277-709-[8]7. Youth in Custody/LEA Fiscal Procedures.

(1) Ten percent [~~or \$50,000, whichever is less,~~] of state youth in custody funds or educational contract funds not expended in the current fiscal year may be carried over by eligible LEAs and spent in the next fiscal year with written approval of the Superintendent.

(2) An LEA shall submit a request to carry over funds for approval by August 1.

(3) If approved, an LEA shall detail carry over amounts in a revised budget submitted to the Superintendent no later than October 1 in the year requested.

(4) The Superintendent [~~may~~shall] consider excess funds in determining the LEA's allocation for the next fiscal year.

(5)(a) The Superintendent shall annually recapture fund balances in excess of ten percent [~~or \$50,000~~] no later than February 1.

(b) The Superintendent shall reallocate funds recaptured in accordance with Subsection (5)(a) to the youth in custody programs based on the criteria and procedures provided by this rule.

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R277-709-[9]8. Program, Curriculum, Outcomes and Student Mastery.

(1) Youth in custody programs shall offer courses consistent with the Utah Core standards under Rule R277-700.

(2) A youth in custody program may modify or adjust Utah core standards and teaching strategies to meet the individual needs of youth in custody students.

(3) Youth in custody programs shall stress course content mastery rather than completion of predetermined seat time in a classroom.

(4) The Superintendent shall make available written course descriptions for GED Test preparation for youth in custody students who consider pursuing GED Tests as an alternative to traditional Carnegie diploma courses.

R277-709-[10]9. Confidentiality.

(1) An LEA shall issue transcripts and diplomas prepared for youth in custody in the name of an existing LEA, which also serves non-custodial youth and shall not bear references to custodial status.

(2) School records which refer to custodial status, juvenile court records, and related matters shall be kept separate from permanent school records, but are nonetheless student records if retained by the LEA.

(3)(a) Members of the interagency team which design and oversee student education plans shall have access, through team member representatives of the participating agencies, to relevant records of the various agencies.

(b) The records and information obtained from the records remain the property of the supplying agency and shall not be transferred or shared with other persons or agencies without the permission of the supplying agency, the student's legal guardian, or the eligible student, as defined under 20 U.S.C. 1232g(d).

(4) Youth in custody programs shall comply with all state and federal privacy requirements for student records.

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R277-709-1[1]0. Coordinating Council.

(1)(a) The Department of Human Services and the Board shall appoint a coordinating council in accordance with Subsection 53E-3-503(6)(a) to plan, coordinate, and recommend budget, policy, and program guidelines for the education and treatment of persons in the custody of the Division of Juvenile Justice Services and the Division of Child and Family Services.

(b) The coordinating council shall operate under guidelines developed and approved by the Department of Human Services and the Board.

(2) Coordinating council membership shall include a representative of the following:

- (a) the Department of Human Services;
- (b) the Division of Substance Abuse and Mental Health;
- (c) the Division of Juvenile Justice Services;
- (d) the Division of Child and Family Services;
- (e) the Board;
- (f) the Administrative Office of the Courts;
- (g) school district superintendents; and
- (h) a Native American tribe.

R277-709-1[2]1. Advisory Councils.

(1)(a) Each LEA serving youth in custody shall establish a local interagency advisory council which shall be responsible for advising member agencies concerning coordination of youth in custody programs.

(b) Members of council required under Subsection (1)(a) shall include, if applicable to the LEA, the following:

- (i) a representative of the Division of Child and Family Services;
- (ii) a representative of the Division of Juvenile Justice Services;

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(iii) directors of agencies located in an LEA such as detention centers, secure lockup facilities, observation and assessment units, and the Utah State Hospital;

(iv) a representative of community-based alternative programs for custodial juveniles; and

(v) a representative of the LEA.

(2) A local interagency advisory council required under Subsection (1)(a) shall:

(a) adopt by-laws for its operation; and

(b) meet at least quarterly.

KEY: students, education, juvenile courts

Date of Enactment or Last Substantive Amendment: ~~[April 9, 2018]~~2019

Notice of Continuation: February 26, 2018

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; ~~[53A-1-403(1)]~~

53E-3-401(4); ~~[53A-1-401]~~ 53E-3-503(2)(b)