



Utah State Board of Education

USBE MONITORING IN NONLOCAL EDUCATION AGENCY SETTINGS

A TECHNICAL ASSISTANCE DOCUMENT

February 13, 2025

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INTRODUCTION

The purpose of this technical assistance document is to outline the relationship and responsibilities of the Utah State Board of Education (USBE) in Nonlocal Education Agency settings, specifically regarding their authority to monitor and enforce compliance.

This document will:

- Define a nonlocal education agency (NEA) setting.
- Provide an overview of who is responsible for education of students in NEAs and how this is determined.
- Describe how placement affects local education agency (LEA) responsibilities.
- Describe how placement affects Child Find.
- Provide a thorough description of USBE authority in NEA settings.
- Give guidelines and procedures for USBE interaction in NEAs.
- Give an overview of complaints, received including—possible complaints, recurring issues, etc.
- Describe the complaint process in relationship to NEAs.
- Describe USBE's monitoring ability.
- Address additional questions around LEA obligation to enroll students in NEAs, educator licensing within NEAs, etc.

DEFINITIONS

A nonlocal education agency (NEA) setting is defined as a private or publicly funded agency providing educational services to eligible children and youth through LEAs that do not receive state or federal education funds through the USBE.

A NEA setting includes any location a student is placed or identified that is not owned by the LEA in which it is located. **The LEA may provide educational services within the NEA.** These locations include:

- Contracting private placements with the Utah Department of Health and Human Services (DHHS) and Human Services Programs (HSP) as defined in [Utah Code 26B-2-101](#), including state and county:
 - Proctor Homes
 - Professional Parent Homes

- Certified Residential Support Homes
- Therapeutic Schools
- Group Homes
- Youth Programs
- Residential Treatment Programs
- Residential Support Programs
- Recovery Residences
- Day Treatment Centers
- Domestic Violence Shelters
- Homeless Shelters
- Refugee Resettlement
- Nursing Facilities
- Intermediate Care Facilities
- State and County owned facilities:
 - Utah State Developmental Center
 - Utah State Hospital
 - Juvenile Detention Centers
 - Juvenile Long Term Secure Care
 - County Jails
 - State Correctional Facilities
- Private Nursing Homes
- Private Residential Treatment Centers
- Private Schools

The Youth in Care (YIC) legislative line item prioritizes funding for students in state custody and those served by DHHS as outlined in [Utah Code 53E-3-503](#). LEAs apply for YIC funding on an annual basis and when awarded, are held to the responsibilities outlined in [Utah State Board of Education Rule R277-709-3](#) (Board Rule).¹ It is the responsibility of USBE to regularly monitor those LEA's awarded funding for compliance ([Board Rule R277-709-10](#)).

¹ N.B.: Utah State Board of Education Administrative Rules (Board Rules) fall under the Utah Admin. Code under title R277. These rules can be found in two places: the [USBE Administrative Rules webpage](#) or the [Utah Office Administrative Rules webpage](#). Therefore, Board Rule R277-609 refers to the same rule as Utah Admin. Code R277-609. Similarly, though the Utah State Board of Education Special Education Rules (SpEd Rules) appear as a separate set of rules distinguished from Board Rules, they are in fact incorporated into Board Rules by reference ([see Board Rules R277-750](#)).

MONITORING

Monitoring means to formally supervise, inspect, or examine compliance, performance, or finance for a program ([Board Rule R277-100-2 \(19\)](#)). Programs that receive funds through USBE grants are typically monitored as a part of the grant. Special education, YIC programs, and adult education programs are common programs monitored within an LEA.

NEAs are not monitored by USBE unless they receive funding for a program from USBE or require monitoring to become certified to provide educational services. For example, private residential treatment centers (RTCs) seek certification of special education programs by USBE, but they do not receive USBE funds ([Board Rule R277-926](#)).

An LEA educational program within an NEA is monitored as any other program within an LEA would be. For example, USBE works collaboratively with LEA's youth in care programs and Juvenile Justice and Youth Services (JJYS) to provide education to incarcerated students. LEA's YIC programs are funded and monitored by USBE within secure care and youth detention facilities.

RESPONSIBILITY FOR EDUCATION

The responsibility for the education of students placed in NEA settings is typically the school district where the parent resides. When a student is placed in a day treatment center, but goes home at night, the place where the parent resides is the district of residence and will provide educational services.

The school district where the student resides may be responsible if:

- The student is in the custody or supervision of a Utah state agency including Utah Department of Health and HSP local health mental health authority, or substance abuse authority.
- The student lives with a responsible adult resident of the district and fulfills requirements outlined in [Utah Code 53G-6-302\(2\)\(b\)\(III\)](#).
- The student is receiving services from a health care facility or HSP and fulfills requirements outlined in [Utah Code 53G-6-302\(2\)\(b\)\(IV\)](#).
- The student is married or determined to be an emancipated minor by a court of law or by a state administrative agency authorized to make that determination.

If a student in an NEA setting enrolls in a charter school, the responsibility for education transfers from the district, as outlined above, to the charter school. Charter schools are expected to follow the enrollment policies and procedures that they would apply to any student seeking to enroll in the charter school.

A notable exception to the rules outlined above is the obligations of Division of Child and Family Services (DCFS). When a student is in the care of DCFS they may live with foster parents outside of the LEA where the parent resides. DCFS is allowed to enroll a student in any charter school or other traditional public school in any district, including a district where the student does not reside to ensure educational stability, if the enrollment is necessary, as determined by DCFS.

See [Utah Code 53G-6-302](#) and [Utah Code 53G-6-402 \(12\)](#).

ENROLLMENT

The responsibility for education of a student placed in NEA settings is typically determined by who places the student in that setting (i.e., the parent, state agency, IEP team, etc.).

LOCAL EDUCATION AGENCY (LEA)

When a LEA enrolls a student in a NEA for any reason, the LEA is responsible for the education of that student as long as the parent continues to reside in the school district or the student qualifies as residing under [Utah Code 53G-6-302](#). The LEA can contract with the NEA or provide qualified staff at the NEA to provide for the educational needs of the students.

If an LEA is placing a student with a disability in any of these locations as a means of providing a free appropriate public education (FAPE), then the LEA must ensure the provisions of special education and related services as outlined in [Utah State Board of Education Special Education Rule VI.A.5. \(SpEd Rules\)](#) are provided and provided by qualified staff.

PARENT

If the parent resides within Utah and they chose to place a student in a NEA, the LEA in which the parent resides is not generally obligated to provide educational services to the student while placed in the NEA.

If the student has a disability and qualifies for special education services, the LEA where the parent resides is responsible for making an offer of FAPE available to the student no matter where the NEA is located. The parent can choose to accept the offer of FAPE and enroll the student in the LEA of residence or make clear the intent to keep the student enrolled in the NEA.

Parent placement within an NEA may be for a limited time with the expectation that the student will return to the LEA. The LEA in which the parent resides prepares for the student to return to the LEA. The LEA should work with the NEA to ensure a return to the LEA meets the student's needs.

CHILD FIND AND SPECIAL EDUCATION

Child Find is an affirmative obligation of LEAs to ensure that all students with disabilities residing within the jurisdiction of the LEA who are in need of special education and related services are identified located and evaluated ([34 CFR § 300.111](#); [SpEd Rules II.A.](#)). If an LEA enrolls a student in an NEA that is outside of the LEA's jurisdiction, the LEA will be responsible for Child Find for the student.

If the student is enrolled by a parent in an NEA and the student is suspected of having a disability, they are entitled to Child Find by the school district in which the NEA is located ([SpEd Rules II.A. and VI.B.3.](#)).

If the student is enrolled by the parent in an NEA that is a private, nonprofit school and the student is identified through Child Find as having a disability that qualifies for special education, they may be entitled to a service plan in the district where the private nonprofit school is located under [SpEd Rule VI.B.](#)

CHILD FIND AND SECTION 504 OF THE REHABILITATION ACT

Section 504 of the Rehabilitation act of 1973, commonly called "Section 504," is a federal law that protects students from discrimination based on disability. Section 504 assures that students with disabilities have educational opportunities and benefits equal to those provided to students without disabilities. To be eligible, a student must have a physical or mental impairment that substantially limits one or more major life activities.

LEAs that operate within NEAs shall undertake Child Find activities to identify, locate and evaluate students with disabilities and assure educational opportunities and benefits equal to those provided to student without disabilities ([34 CFR §104.32-33](#)).

MONITORING NONLOCAL EDUCATION AGENCY SETTINGS

In order to address how the USBE monitors in NEA settings, it is first necessary to describe the USBE's authority and how that authority is determined.

USBE's authority determines how USBE interacts with NEAs, and how complaints are received and addressed as a result.

USBE AUTHORITY IN NONLOCAL EDUCATION AGENCIES

USBE authority is typically determined by programs funded by USBE, or certification sought by NEAs. USBE funding to LEAs often leads to educational services provided in NEAs. Examples include YIC programs, and special education services.

Some NEAs also seek special education certification from the USBE to accept students from out of state locations for the purposes of a FAPE. USBE has the authority to grant or deny certification every other year ([Board Rule R277-926](#)).

WHEN STUDENTS ARE PLACED IN NEAs BY STATE AND PUBLIC AGENCIES

The Utah Department of Health and Human Services (DHHS) places students in a variety of homes, treatment centers, shelters, and facilities through the Division of Child and Family Services (DCFS) and Juvenile Justice and Youth Services (JJYS).

USBE funds and supports a YIC educational program within LEA's when a DCFS/JJYS owned or contracted home, treatment center, shelter or facility exists within the LEA's boundaries. These students are in the care of DCFS and JJYS who are given placement authority of these youth. In rare circumstances, providers contract with DHHS under the Division of Services for People with Disabilities (DSPD) and primarily serve students, up to age 18, in state care. Students under the care of DSPD are supported by YIC educational programs.

Students are entitled to Child Find in special education and under Section 504 when placed in DCFS and JJYS homes, treatment centers, shelters, and facilities and under DSPD when in state care.

The DHHS places some students in NEAs using a sole source contract (i.e., an agreement between DHHS and a non-contracted private provider). The student is not provided services through a LEA because sole source contract includes tuition for educational programs. The student would still be entitled to Child Find under special education and Section 504.

The Utah Department of Corrections, including state prisons and county jails, house students who are incarcerated. USBE funds and supports adult education programs within LEAs when a prison or jail exists within the LEA boundaries. Adult education provides the educational services for students in prisons and jails. Students under age 22 are entitled to Child Find under special education and Section 504.

USBE INTERACTION WITH NONLOCAL EDUCATION AGENCIES

USBE interacts with NEAs through a variety of processes that may impact or require monitoring of educational services in the NEAs. Processes are specific to programs that include YIC educational programs, special education services, special education scholarships, and RTC certification.

YOUTH IN CUSTODY APPLICATION PROCESS

Because the Utah State Board of Education is directly responsible for the education of YIC students, USBE fulfills this duty by contracting with school districts to provide education to these students. This is accomplished through a two-part grant application process:

1. Part 1: Minimum School Programs (MSP) Residential Grant

The **MSP Residential Grant** is only available to districts that serve YIC students who are currently receiving services from state-run or contracted Day Treatment, Detention, Long-term Secure Care, Residential Treatment, Shelter facilities, or the Utah State Hospital.

LEA's are informed of NEAs through the completion of the NEA's licensing requirement to submit [The Youth Education Coordinating Form](#) to the LEA in which they are located.

2. Part 2: MSP School-Based Grant

MSP School-Based Supports Grants are available to all districts who serve YIC students. Funding for this portion of the grant is determined after fiscal obligations for YIC Residential Grants are met. Like Part 1, this is a competitive process and will be reviewed by the YIC team to ensure funds are spent appropriately on YIC students as defined in [Utah Code 53E-3-503](#).

SPECIAL EDUCATION IN PRIVATE SCHOOLS

STUDENTS ENROLLED IN PRIVATE NONPROFIT SCHOOLS

Students in NEAs are entitled to Child Find as outlined previously. If the NEA is a private, nonprofit school, then a student who is eligible for special education may be eligible for special education services through a service plan.

Each school district, in which private nonprofit elementary schools or secondary schools are located, is responsible for timely and meaningful consultation with the private, nonprofit school regarding students with disabilities who are eligible for special education services. This consultation leads to decisions regarding special education service plans as outlined in [SpEd Rules VI.B](#).

Each school district maintains records, and annually provides USBE the following information related to nonprofit private school students:

1. The number of students evaluated and reevaluated within three years;
2. The number of students determined to be students with disabilities; and
3. The number of students served.

This data is reported to the federal government and considered in determining monitoring activities related to special education.

STUDENTS ENROLLED BY PARENTS IN NEAS WHEN A FREE APPROPRIATE PUBLIC EDUCATION IS AT ISSUE

Parents and LEAs may disagree about a free appropriate public education (FAPE) for a student with a disability. Parents may seek out an NEA as an alternative to the LEA and may request dispute resolution procedures under the Individuals with Disabilities Education Act (IDEA).

If a parent files a due process complaint under the IDEA regarding FAPE for the student, then USBE would facilitate the process outlined in the Procedural Safeguards and Due Process Procedures. More information is outlined in [SpEd Rules IV. and VI.C.](#)

SPECIAL EDUCATION SCHOLARSHIPS

Parents of students with disabilities, who are eligible for special education, can apply for the Carson Smith Opportunity Scholarship.

Carson Smith Opportunity Scholarships applications are processed and approved through Children First Education Fund. It is a parent choice model for Utah residents that provides tuition assistance for eligible special needs students enrolled in private schools.

Students identified under any special education scholarship are considered in monitoring to ensure evaluations are completed in a timely and appropriate manner.

RESIDENTIAL TREATMENT CENTER CERTIFICATION

To become certified through the USBE, an RTC submits an application for initial or renewal certification, the application is reviewed and accepted, and an on-site visit is completed to verify the information submitted with the application. Several methods of data collection are utilized during the on-site visit including reviewing student records, interviewing school staff and parents, and conducting classroom observations in both general and special education settings. The results of that visit are presented in a report.

COMPLAINTS

Complaints brought to the USBE by parents, community members, the media, or other state agencies are reviewed to determine if they are specific to an educational service/program funded by USBE, or if they are related to a certification issued by USBE.

ADDRESSING COMPLAINTS

If the educational service/program is funded by USBE, additional investigations and potential monitoring activities may occur. If findings of noncompliance are identified corrective action may be required by USBE as outlined in [USBE Board Rule R277-114](#).

Complaints related to certification are also investigated. If the NEA is out of compliance the certification will be revoked under [USBE Board Rule R277-926](#).

USBE collaborates with DHHS regarding complaints related to educational programs/services that occur in licensed or owned facilities of DHHS.

USBE MONITORING IN NONLOCAL EDUCATION AGENCIES

USBE monitoring occurs in LEAs when an educational program/service is funded by USBE or when the NEA is seeking certification of an educational program.

For example, special education programs are monitored at least once every six years. If the USBE received a complaint about an LEA's special education services within an NEA, the monitoring visit may occur within the current year, even if the LEA received monitoring recently.

Certification monitoring happens at the request of the NEA through an application and renewal process or related to a complaint.

YOUTH IN CARE MONITORING PROCESS

In accordance with [Board Rule R277-709-3\(10\)](#), the USBE is required to evaluate YIC programs through regular site monitoring visits.

LEAs receiving State YIC funds are subject to compliance with the purposes and requirements of the funds as discussed earlier in this document. The collaborative goal of program monitoring is to identify quality indicators, gather evidence, analyze the educational program to ensure that they are following board rule, and determine areas for program improvement and/or technical support. Monitoring documents are used as a tool to provide direct assistance to LEA YIC programs according to their individual program strengths and needs. The USBE will use what is learned through monitoring individual programs throughout the state to identify areas of statewide need and establish a plan to meet those needs.

USBE monitors the LEA YIC programs at least once every three years. This monitoring process includes site visits to NEA(s) within the LEA.

PROGRAM SUPPORT MONITORING IN SPECIAL EDUCATION

The USBE is required to monitor the implementation of IDEA Part B and the Rules ([SpEd Rules VIII.C.](#)). This is done through the Special Education Program Support Team. The USBE selects a sample of LEAs for a program support monitoring visit each school year. LEAs are selected to receive a monitoring visit based on multiple factors including length of time between visits, risk scores, dispute resolution, investigations related to a hotline tip, fiscal concerns, specific populations (YIC), and other areas as determined by the USBE. LEAs will receive a program support monitoring visit at least once every six years based on concerns within the LEA as determined by USBE.

When an LEA is providing special education services in an NEA, this is a part of the special education monitoring visit. Individuals are interviewed, observations are conducted, student files are reviewed, and licenses of individuals working for the LEA are verified.

Any noncompliance found during the monitoring visit must be corrected by the LEA. The monitoring conducted is specific to the LEA and the funding provided through USBE.

RESOURCES

- [Educating Youth in Care](#)
- [RTC Special Education Certification Application](#)

- [RTC Monitoring Visit Expectations](#)
- [Utah Program Improvement Planning System \(UPIPS\) Manual](#)
- [Utah State Board of Education Administrative Rules](#)
- [Utah State Board of Education Special Education Rules](#)