

NEVADA DEPARTMENT OF EDUCATION

Notice of Workshop to Solicit Comments on R035-15 This regulation was previously adopted as LCB File No. T010-15

The Nevada Department of Education is proposing regulation language pertaining to the Nevada Administrative Code. The Workshop has been scheduled for **Thursday, August 13, 2015** via video conference at the following locations: **Nevada Department of Education Offices, Board Conference Room, 700 East Fifth Street, Board Room, Carson City and 9890 South Maryland Parkway, 2nd Floor Board Conference Room, Las Vegas, Nevada.** The purpose of the Workshop is to solicit comments from interested person on the following general topics to be addressed in a proposed regulation:

9:05 A.M. Workshop to solicit comments on proposed amendments to NAC Chapter 385 to provide for the contents and procedures for applications for grants provided pursuant to the Nevada Educational Choice Scholarship Program (Statutes of Nevada 2015, Chapter 22) and other matters necessary to carry out the provisions of the Program.

A copy of all materials relating to the proposal may be obtained at the workshop or by contacting by telephone Karen Johansen, State Board of Education Office, Nevada Department of Education, at 775-687-9225, or in writing to the Department of Education, 700 East Fifth Street, Carson City, Nevada 89701-5096. A reasonable fee for copying may be charged.

This Notice of Workshop to Solicit Comments on Proposed Regulation has been sent to all persons on the agency's mailing list for administrative regulations and posted at the following locations: The offices of the Nevada Department of Education in Carson City and Las Vegas, the 17 Nevada County main public libraries, the Nevada State Library and Archives, and at the meeting locations.

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DALE A.R. ERQUIAGA
Superintendent of Public Instruction



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**SMALL BUSINESS IMPACT STATEMENT
PURSUANT TO NRS 233B.0608**

Date: July 20, 2015

Re: Workshop to Adopt Regulations Concerning the Nevada Educational Choice Scholarship Program, scheduled for August 13, 2015 at 9:05 a.m.

I, Dale A.R. Erquiaga, being the duly appointed Superintendent of Public Instruction, do hereby certify that, to the best of my knowledge or belief:

1. The proposed permanent regulations to be added the NAC Chapter 385 concerning the administration of the Nevada Educational Choice Scholarship Program are not likely to (a) impose a direct or significant economic burden upon a small business, or (b) directly restrict the formation, operation or expansion of a small business. The proposed regulations will implement a program that provides a tax credit under certain circumstances to businesses in this state required to pay a tax pursuant to NRS 363A.130 or 363B.110, and will provide procedures for non-profit organizations registering as a scholarship organization.
2. A concerted effort was made to determine any economic burden. The Department of Education has relied on expert knowledge of other states where similar programs have been enacted, as well as legislative testimony during the consideration and passage of Assembly Bill 165 (Statutes of Nevada 2015, Chapter 22) of the 78th Regular Legislative Session.
3. All relevant materials were reviewed and the Department considered its history with implementing similar regulations; the proposed changes are within the historic scope of the Department's activities and present no significant cost of enforcement.
4. Comment has not been solicited from small businesses, and no summary of their response is provided, because small businesses are not impacted by this regulation and thus no burden or economic impact can be assessed. Any impact is positive and was considered during legislative testimony.

I hereby further certify that, to the best of my knowledge or belief, a concerted effort was made to determine the impact of the regulation on small businesses and that the information contained in this statement was prepared properly and is accurate.

Respectfully submitted,

A handwritten signature in black ink that reads "Dale A.R. Erquiaga". The signature is written in a cursive style with a large, sweeping flourish at the end.

DALE A.R. ERQUIAGA
Superintendent of Public Instruction

The Nevada Educational Choice Scholarship Program

Topics proposed for permanent regulations pursuant to Statutes of Nevada 2015, Chapter 22 (Assembly Bill 165 of the 78th Regular Session).

Section 1. Scholarship organization registration and reporting requirements.

1. To participate in the Nevada Educational Choice Scholarship Program a scholarship organization shall register with the Department of Education by providing the following information on a form prescribed by the Superintendent of Public Instruction:
 - (a) The name, address, and contact information of the scholarship organization;
 - (b) Copies of current tax-exempt status documentation from the Internal Revenue Service;
 - (c) Evidence the organization is registered with the Nevada Secretary of State and qualified to do business in Nevada;
 - (d) An affidavit signed by the chief executive officer or president/chairman of the board of directors under penalty of perjury, which includes a statement that no member of the board of directors and no employee of the organization has been convicted of a felony, or has declared bankruptcy in the last seven years;
 - (e) An affidavit signed by the chief executive officer or president/chairman of the board of directors under penalty of perjury that neither the scholarship organization, member of the board of directors, nor any employee owns or operates any private school in this state that is registered to receive grants pursuant to this program;
 - (f) A statement of the period of the organization's fiscal year if the period is other than July 1 to June 30.

2. The Department shall maintain on its Internet website a directory of all scholarship organizations registered in this state. No later than September 30, 2015, and quarterly thereafter, the Department shall submit to the Nevada Department of Taxation a list of organizations that have registered to be listed in the directory.
3. Each scholarship organization participating in the Nevada Educational Choice Scholarship Program shall:
 - (a) Within 120 days of the conclusion of its fiscal year file a copy of audited or compiled financial statements prepared by an independent certified public accountant with the Department.
 - (b) Notify the Department within 30 days of any date which the scholarship organization no longer meets the eligibility requirements pursuant to state law or this regulation, or if the organization ceases to exist, so the Department can update its directory and notify the Department of Taxation.
 - (c) Submit in a format to be specified by the Department an electronic list of all participating scholarship pupils not less than four times a year, no later than August 15, October 15, January 15, and March 15 of each year. The list shall include the following information:
 - 1) Demographic information for each pupil, including name, date of birth, grade level, gender, race or ethnicity, parent's or guardian's name, and address;
 - 2) The amount of each pupil's scholarship;
 - 3) Information on the pupil's school of attendance, including tuition, fees, and transportation amounts; and

- 4) The number of applications that were received by the organization that did not result in the award of a grant and the reason that the grant was denied.
- (d) Notify the Department of Taxation within 10 days of receipt of every donation from a taxpayer. The notice shall include the amount of the donation to allow the Department of Taxation to make any necessary adjustment to its records.
- (e) Allow open inspection of its financial and pupil records by the Superintendent of Public Instruction or his designee during normal business hours upon 72 hour notice.
4. The Department shall use the information provided in subsection 3(c) to verify that each pupil receiving a grant is not also enrolled in a public school in this state, for purposes of making only the appropriate payments to school districts and charters schools.
5. A scholarship organization may not carry forward any donation for more than five years after the end of the calendar year in which the donation is made.
6. A scholarship organization must annually report to the Department each school in which a pupil receiving a grant was previously enrolled during the calendar year immediately preceding the grant award, either in a public or private school, or if the pupil was home schooled, or if the pupil was not yet of age to attend any school. The Department shall compile and review this information to determine if changes should be made to this regulation or state law regarding the prioritization of pupils for scholarship eligibility.
7. Upon the receipt of the annual reports of scholarship organizations required by law, the Department will prepare a summary for transmittal to the Governor, State Board of Education, and director of the Legislative Counsel Bureau.

Section 2. Contents and procedures for applications for grants.

1. Applications for a Nevada Educational Scholarship grant shall be made by parents or guardians directly through any scholarship organization registered with the Department.
2. A scholarship organization shall establish and make available written procedures to identify qualified pupils and award grants. These procedures shall clearly state when an application is considered complete and accepted by the organization. Acceptance of a completed application does not constitute the award of a scholarship grant.
3. A scholarship organization's written procedures shall include, without limitation:
 - (a) The means by which the organization will identify, on an annual basis, that a pupil receiving a grant is a member of a household that has a household income which is not more than 300 percent of the federally designated level signifying poverty. Organizations shall use the most recent federal poverty guidelines published in the Federal Register by the U.S. Department of Health and Human Services and shall calculate household income based on the most recent formulas established by the U.S. Department of Agriculture, Food and Nutrition Service, for free and reduced price meals.
 - (b) A process to ensure that grants are awarded in the order in which a completed application is received and accepted, with the following exceptions:
 - 1) Siblings of pupils already receiving grants shall have priority in receiving grants.
 - 2) If completed applications are received and accepted on the same day and there is an insufficient number of grants to meet all applications, priority shall be given to:
 - i. Pupils from a household with a lower household income; and

ii. Pupils who are enrolled in a public school receiving the lowest rating on the report of the statewide system of accountability published by the Department on its Internet website.

3) Beginning in School Year 2016-17, a pupil who has previously received a scholarship shall have priority for renewal.

4. A scholarship organization which awards a grant shall obtain a written statement from a parent or guardian that the parent or guardian has informed the pupil's school district or charter school that the child will be attending an eligible private school. This requirement shall not apply to a kindergarten or first grade pupil, or a pupil placed in foster care, who was not enrolled in a Nevada public school prior to entering the scholarship program.
5. A scholarship organization shall make payments to the school selected by the parents of the pupil receiving a grant in quarterly installments, ensuring that the pupil continues to be enrolled at the school. If a pupil transfers to another school that is registered with the Department, the parents and the school receiving the original grant shall notify the scholarship organization so that payments may be made on a prorated basis. If a pupil transfers to a public school, the scholarship organization shall not make any further payments unless the pupil's parents amend the application to cover eligible expenses at the new public school.
6. Grants may be made by a scholarship organization to cover tuition, fees, and textbooks or other supplies at a private school, and for transportation costs. Grants may also be made to a public school to defray transportation expense or tuition-based programs such as kindergarten or distance education.

7. No grants may be awarded to a pupil who is home schooled for purposes of defraying the costs associated with home schooling.
8. A scholarship organization may not charge an administrative or application processing fee in excess of \$25 per family. If an organization does charge a fee, it must be refunded to an applicant who is not awarded a grant.
9. A pupil may receive a grant from more than one scholarship organization, but may not receive multiple grants that in total exceed the statutory maximum amount per pupil in any year.

Section 3. School requirements.

1. To participate in the Nevada Educational Choice Scholarship Program, a school shall:
 - (a) Register its intent to participate in the scholarship program with the Department on a form prescribed by the Superintendent of Public Instruction.
 - (b) Four times a year, no later than August 15, October 15, January 15, and March 15 of each year, submit in a format to be specified by the Department an electronic list of all participating scholarship pupils. The list shall include the following information:
 - 1) Demographic information for each pupil, including name, date of birth, grade level, gender, race or ethnicity, parent's or guardian's name, and address; and
 - 2) Information on the pupil's school of attendance, including tuition, fees, and transportation amounts; and
 - 3) The amount of each pupil's scholarship(s) and the organization(s) providing the scholarship.
2. The Department shall maintain a directory of participating schools on its Internet website.

3. As used in subsection 5 of Section 5 of Assembly Bill 165 of the 78th Session (Statutes of Nevada 2015, Chapter 22), if the school receiving a grant is a private school, “record of the academic progress” includes, without limitation, the results of at least one nationally norm-referenced test that has been approved by the Department. The Department shall maintain a list of the tests it has approved.
4. The Department shall approve the use of a test if it meets the following criteria:
 - (a) Internal consistency reliability coefficients of at least 0.8;
 - (b) High validity evidenced by the alignment of the test with nationally recognized content standards, as well as specific evidence of content, concurrent, or criterion validity;
 - (c) Norming studies within the last five to ten years, with norming within five years being preferable; and
 - (d) Serves as a measure of K-12 pupil achievement in core academic areas.
5. Not later than December 15 of each even-numbered year, the Department shall collect records of academic progress from schools in such a manner that the information may be aggregated and reported to the Governor, State Board of Education, and the director of Legislative Counsel Bureau. Nothing in this section shall be deemed to require the Department to report information in a manner that discloses any Personally Identifiable Information.

Section 4. Complaint process.

1. The following process is established to allow individuals to notify the Department of any violation by scholarship organizations, schools, parents, or school districts of laws or rules related to scholarship program participation:

- (a) Persons interested in filing a complaint shall write to the Superintendent of Public Instruction at the primary office address in Carson City.
 - (b) An initial complaint shall include, at a minimum, the complainant's name, phone number, address, and details of the situation.
 - (c) The Superintendent may request additional information from the complainant.
2. Upon receipt of a complaint, the Department shall review the complaint for legal sufficiency and may request information from any interested party. If the Superintendent of Public Instruction determines no further action is warranted he may close the complaint. If the Superintendent determines there is merit to the complaint, the Department may investigate the matter as it deems appropriate and may take any or several of the following possible actions, including but not limited to:
- (a) A letter of admonition;
 - (b) A revocation of the right to participate in the Nevada Educational Choice Scholarship Program;
 - (c) A finding that a scholarship was erroneously awarded, which would result in a requirement that the scholarship be returned or forfeit to the Department of Taxation; and
 - (d) Forwarding the results of the investigation to the Attorney General or other law enforcement agency for criminal investigation.