

**NOTICE OF INTENT TO ACT UPON A REGULATION  
NOTICE OF HEARING FOR THE ADOPTION OF TEMPORARY REGULATIONS  
OF THE NEADA DEPARTMENT OF EDUCATION**

The Nevada Department of Education will hold a public hearing on **Thursday, June 18, 2015 at 1:00 P.M. via video conference in the Board Room at the Nevada Department of Education Offices, 700 East Fifth Street Carson City Nevada and 9890 South Maryland Parkway, Las Vegas, Nevada.**

The purpose of the hearing is to receive comments from all interested persons regarding revisions to regulations language that pertain to the Nevada Administrative Code (NAC) 385.

**1:00 P.M Public Hearing and Possible Adoption 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.**

**The following information is provided pursuant to the requirements of NRS 233B.0603:**

1. The need and the purpose of the proposed changes to NAC chapter 385: As required by recently adopted state law, the Department must prescribe the contents of and procedures for applications for grants provided to pupils by scholarship organizations and adopt other temporary regulations to implement a new program of school choice.
2. The Subjects and Issues involved in this regulation are procedures for applications for grants provided to pupils by scholarship organizations and other regulations necessary to implement the Nevada Educational Choice Scholarship Program.
3. There is no economic effect of the regulation on the public (neither adverse nor beneficial. There are no immediate or long-term effects on the public
4. The estimated cost to the agency for enforcement of the proposed regulation is none.
5. There is no duplication or overlap of regulations of state of local government agencies.
6. This regulation is not required pursuant to federal law.
7. There is no federal law affecting or overlapping the proposed regulations.
8. The proposed regulations do not establish a new fee nor increase an existing fee of the regulating agency.

Persons wishing to comment upon the proposed action of the Nevada Department of Education/ may appear at the scheduled public hearing or may address their comments data, views, arguments, in written form, to the Nevada Department of Education, 700 E. 5<sup>th</sup> St, Carson City, NV 89701 on or before **June 4, 2015**. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Nevada Department of Education may proceed immediately to act upon any written submissions

A copy of this notice and the regulation will be on file at the State Library and Archives, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed will be available at the Nevada Department of Education, 700 E. 5th St, Carson City NV and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653 and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies, if it is deemed necessary.

Upon adoption of the regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of hearing has been filed at the following locations: The offices of the Nevada Department of Education, both Locations: 17 Nevada County School District Offices, 16 Public Libraries, and at the Nevada State Library and Archives.

BRIAN SANDOVAL  
Governor

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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: May 15, 2015

Re: Workshop to Adopt Regulations Concerning the Nevada Educational Choice Scholarship Program, scheduled for June 18, 2015 at 1:00 p.m.

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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 new 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 78<sup>th</sup> 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".

DALE A.R. ERQUIAGA  
Superintendent of Public Instruction

## **The Nevada Educational Choice Scholarship Program**

*These temporary regulations are proposed pursuant to the authority granted to the Department of Education under Assembly Bill 165 of the 78<sup>th</sup> Session (Statutes of Nevada 2015, Chapter 22).*

### **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 for the Internal Revenue Service;
  - (c) Evidence of nonprofit incorporation status in this state;
  - (d) An affidavit, signed by a member 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, has declared bankruptcy in the last seven years, and that neither the scholarship organization, no 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;
  - (e) Evidence of a background check by a law enforcement agency for any employee who will receive, review, or distribute personal information, including family financial status and student educational records;
  - (f) Evidence of a surety bond or letter of credit in an amount equal to 25 percent of the scholarship funds anticipated for each school year or \$100,000, whichever is greater.

- (g) 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 financial statements prepared by an independent certified public accountant with the Department. At this time of this filing, the scholarship organization shall update the evidence of a surety bond or letter of credit in an amount equal to 25 percent of the scholarship funds anticipated for each school year or \$100,000, whichever is greater.
    - (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)
      - i. Submit in a format to be specified by the Department an electronic list of all participating scholarship students not less than Four (4) 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: Demographic information for each

student, including name, date of birth, grade level, gender, race, parent's name, and address; and

ii. Information on the student's school of attendance, including tuition, fees, and transportation amounts; and

iii. The amount of each student's scholarship.

iv. 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) When a scholarship organization receives a donation from a taxpayer, the organization shall notify the Department of Taxation within 10 days of receipt. The notice shall include the amount of the donation to allow the Department of Taxation to make any necessary adjustment to its records.

(e) 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.

(f) Expend for annual or partial-year scholarships an amount equal to or greater than 75 percent of the net eligible contributions remaining after administrative expenses during the state fiscal year in which such contributions are collected. No more than 25 percent of such net eligible contributions may be carried forward to the following state fiscal year.

(g) allow open to inspection of its records by the Superintendent of Public Instruction or his designee during normal business hours upon 48 hours' notice.

(h)

4. The Department shall use the information provided in subsection 3(c) to verify that each student 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 5 years after the end of the calendar year in which the donation is made, or until the balance of the credit is applied to grants, whichever is earlier.
6. 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, 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 students and award grants.
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 the pupil 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.
  - (b) A process to ensure that grants are awarded in the order in which an application is received, with the following exceptions:
    - 1) A pupil not already enrolled in private school shall have priority in receiving grants.

- 2) Siblings of pupils already receiving grants shall have priority in receiving grants.
- 3) Beginning in 2016, a pupil who has previously received a scholarship has priority for renewal.
- 4) If applications are received on the same day and there is insufficient number of grants to meet all applications, priority shall be given to:
  - i. Students from a household with the lower household income; and
  - ii. Students 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.
4. A scholarship organization which awards a grant shall obtain a written statement that the parent has informed the student'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 student, or a student 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 that pupil continues to be enrolled at the school. If a student transfers to another school, the parents shall notify the scholarship organization so that payments may be made on a prorated basis.
6. Grants may be made by 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. No grants may be awarded to a pupil who is home schooled.

7. A scholarship organization may not charge any administrative or application processing fee in excess of \$20 per family. If an organization does charge a fee, it must be refunded to an applicant who is not awarded a grant.
8. A pupil may receive a grant from more than one scholarship organization.

**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 (4) 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 students. The list shall include the following information:
    - 1) Demographic information for each student, including name, date of birth, grade level, gender, race, parent's name, and address; and
    - 2) Information on the student's school of attendance, including tuition, fees, and transportation amounts; and
    - 3) The amount of each student's scholarship(s) and the organization 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 78<sup>th</sup> 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 may but is not required to 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 (5) to ten (10) years, with norming within five (5) years being preferable; and
  - (d) Serves as a measure of K-12 student 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 State Board of Education and the director of Legislative Counsel Bureau for transmittal to the appropriate legislative committees. 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, school districts, or charter schools 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 Department 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.
  - (d) Forwarding the results of the investigation to the Attorney General or other law enforcement agency for criminal investigation.