

**ADOPTED REGULATION OF THE  
STATE BOARD OF EDUCATION**

**LCB File No. R064-08**

Effective September 18, 2008

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1, 2, 4 and 6-17, NRS 385.080 and 388.520; §3, NRS 385.080 and 388.493; §5, 385.080 and 388.492.

A REGULATION relating to education; requiring a public agency that serves pupils with disabilities to submit a report regarding the caseloads of physical therapists and occupational therapists; revising provisions governing the transfer of rights from a parent of a pupil with a disability to the pupil when the pupil attains the age of 18 years; prescribing the procedure by which the parent of a pupil with a disability may request to represent the educational interests of the pupil when the pupil attains the age of 18 years; revising provisions governing the determination of eligibility of certain pupils for special educational services; and providing other matters properly relating thereto.

**Section 1.** Chapter 388 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

**Sec. 2. 1.** *On or before October 1 of each odd-numbered year, each public agency shall submit a report to the Department, in a manner prescribed by the Department, regarding the caseloads of physical therapists and occupational therapists employed by or contracted with the public agency to provide services to pupils with disabilities during the immediately preceding 2 school years. Such a report must include, without limitation:*

*(a) A description of the factors used by the public agency in determining the caseloads of the physical therapists and occupational therapists, including, without limitation:*

*(1) The range of the number of pupils with disabilities at different school sites who require services from the public agency;*

- (2) The range of the levels of intensity of the services required;*
- (3) The availability of assistants who are appropriately certified to assist with the provision of the services;*
- (4) The geographic factors that affect the ability of the therapists to travel to provide the services; and*
- (5) The degree to which the public agency expects the therapists to participate in meetings pertaining to the pupils;*
- (b) The number of vacancies in the positions of physical therapist and occupational therapist experienced by the public agency in the immediately preceding 2 school years;*
- (c) A description of the efforts made by the public agency for the recruitment and retention of physical therapists and occupational therapists; and*
- (d) A list of each position of physical therapist and occupational therapist employed by or contracted with the public agency during the immediately preceding 2 school years, designated by full-time equivalency, including, without limitation, the maximum caseload assigned to each position.*

*2. Each public agency shall post a copy of the report described in subsection 1 on the Internet website maintained by the public agency, if applicable, on or before October 1 of each odd-numbered year.*

**Sec. 3.** *1. Not less than 1 year before the date on which a pupil with a disability who has a significant cognitive impairment and who participates in the alternate assessment developed by the State attains the age of 18 years, the school district or charter school in which the pupil is enrolled shall provide notice to the parent and the pupil of the procedure by which*

*the parent may submit an application to represent the educational interests of the pupil pursuant to subsection 2. The notice must include:*

*(a) A description of the purpose for the submission of an application to represent the educational interests of the pupil;*

*(b) An identification of the category of parents who are authorized to submit an application;*

*(c) The process and deadline for submission of an application;*

*(d) The procedure for appealing a decision made on an application by a school district or charter school; and*

*(e) A copy of the application.*

*2. A parent of a pupil with a disability who has a significant cognitive impairment and who participates in the alternate assessment developed by the State may submit to the designated official of the school district or charter school in which the pupil is enrolled, on a form prescribed by the Department, an application to represent the educational interests of the pupil. Such an application must be submitted at least 90 days before the date on which the pupil attains the age of 18 years. The application must include a signed statement by the parent declaring that:*

*(a) The parent believes that the pupil does not have the ability to provide informed consent with respect to his own educational program;*

*(b) The pupil is at least 16 years of age;*

*(c) The pupil has a significant cognitive impairment and participates in the alternate assessment developed by the State; and*

*(d) The date on which the application is being submitted is not less than 90 days before the date on which the pupil attains the age of 18 years.*

*3. Within 30 days after an application is received pursuant to subsection 2, the school district or charter school shall:*

*(a) Review the application for completeness and accuracy; and*

*(b) Provide notice in writing to the parent and the pupil of the determination of the school district or charter school.*

*4. If a school district or charter school approves an application for a parent to represent the educational interests of a pupil with a disability, the parent shall continue to represent the educational interests of the pupil until:*

*(a) The pupil receives a standard high school diploma or an adjusted diploma;*

*(b) The pupil is no longer enrolled in a program of special education pursuant to NRS 388.440 to 388.5315, inclusive; or*

*(c) The parent elects to transfer the right to represent the educational interests to the pupil.*

*5. If a parent or a pupil with a disability disagrees with the decision made on an application by a school district or charter school submitted pursuant to subsection 2, the parent or the pupil may file a complaint with the Department pursuant to NAC 388.318. If the complaint is filed before the date on which the pupil attains the age of 18 years, any rights which would have otherwise transferred to the pupil in accordance with NAC 388.195 must remain with the parent pending a final decision on the complaint by the Department.*

**Sec. 4.** NAC 388.001 is hereby amended to read as follows:

388.001 As used in NAC 388.001 to 388.450, inclusive, *and sections 2 and 3 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 388.005 to 388.141, inclusive, have the meanings ascribed to them in those sections.

**Sec. 5.** NAC 388.195 is hereby amended to read as follows:

388.195 1. Except as otherwise provided in ~~[subsection 3,]~~ *this section and section 3 of this regulation and NRS 388.492 and 388.493*, any right accorded *to* a parent of a pupil ~~[under the provisions of this chapter]~~ *with a disability pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., or the regulations adopted pursuant thereto*, transfers to the pupil when the pupil attains the age of 18 years. ~~[The public agency shall notify the pupil and parent that a transfer of rights has occurred in accordance with this subsection.~~

~~—2.— After the transfer of rights to the pupil, the public agency shall provide any notice required pursuant to this chapter to the pupil and the pupil's parents.~~

~~—3.— If the pupil is adjudged incompetent and a guardian is appointed for the pupil by a court of competent jurisdiction, any right which would otherwise transfer to the pupil pursuant to subsection 1 transfers to the pupil's guardian.]~~ *Not less than 1 year before the date on which the pupil with a disability attains the age of 18 years, the school district or charter school in which the pupil is enrolled shall provide notice to the parent of the pupil and to the pupil of the transfer of rights pursuant to this section.*

*2. If a pupil with a disability attains the age of 18 years and the pupil is enrolled in a program of special education pursuant to NRS 388.440 to 388.5315, inclusive, the school district or charter school in which the pupil is enrolled shall provide any notice required pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., and the*

*regulations adopted pursuant thereto, or NRS 388.440 to 388.5315, inclusive, and NAC 388.001 to 388.450, inclusive, and sections 2 and 3 of this regulation to the:*

*(a) Parent; and*

*(b) Pupil with a disability,*

*↪ regardless of whether the parent is appointed to represent the educational interests of the pupil pursuant to section 3 of this regulation or the rights transfer to the pupil pursuant to this section.*

*3. If a court of competent jurisdiction adjudicates a pupil with a disability incompetent and appoints a guardian for the pupil, all rights pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., and the regulations adopted pursuant thereto, remain with or otherwise transfer to the guardian.*

**Sec. 6.** NAC 388.380 is hereby amended to read as follows:

388.380 1. If the performance of a pupil with a disability in the pupil's current educational setting is assessed, the assessment may include:

- (a) Except as otherwise limited by subsection 2, observation of the pupil in that setting;
- (b) Review of any report from a parent or teacher of the pupil;
- (c) Review of samples of the work of the pupil; and
- (d) Curriculum-based assessment.

2. If the assessment of performance is required to determine the eligibility of the pupil for special services and programs of instruction for pupils with specific learning disabilities, any observation **must be** conducted pursuant to paragraph ~~[(a)]~~ **(b)** of subsection ~~[1-must be~~  
~~conducted by a person other than the regular classroom teacher of the pupil.]~~ **5 of NAC 388.420.**

3. Any interpretation of an assessment of performance in the current educational setting must be made by one or more members of the eligibility team having personal knowledge of the performance of the pupil.

**Sec. 7.** NAC 388.387 is hereby amended to read as follows:

388.387 1. A pupil is eligible for special services and programs of instruction if the eligibility team, comprised of the persons set forth in subsection 2, determines that the pupil has autism ~~and~~ *and, by reason thereof, needs special education and related services.*

2. The eligibility team must consist of:

- (a) A school psychologist.
- (b) A teacher of special education or a person with a specialized knowledge of autism.
- (c) The regular classroom teacher of the pupil ~~and~~ or, if none, a person qualified to teach the pupil.
- (d) A specialist of speech and language.
- (e) A parent of the pupil.
- (f) One or more persons who have sufficient knowledge of the pupil to interpret information relating to the pupil's social, emotional, developmental and familial condition. Such persons may include an administrator of the school, a nurse, a counselor, a school psychologist or any other certificated or licensed professional.

3. The eligibility team shall conduct an evaluation of the pupil to determine whether the pupil is eligible for special services and programs of instruction pursuant to this section. Such an evaluation must:

- (a) Assess the:
  - (1) Health and medical status;

(2) Developmental history, including, without limitation, the rate and sequence of development and a clear statement of strengths and weaknesses;

(3) Cognitive abilities;

(4) Social and emotional condition in multiple settings;

(5) Academic achievement;

(6) Adaptive skills; and

(7) Speech, language and other communication skills ,

↪ of the pupil; and

(b) Consider the:

(1) Sensory regulation;

(2) Self-help and independent living skills;

(3) Behavior problems;

(4) Symbolic and imaginative play;

(5) Activities and special interests; and

(6) Motor skills ,

↪ of the pupil.

**Sec. 8.** NAC 388.390 is hereby amended to read as follows:

388.390 1. Except as otherwise provided in subsection 3, a pupil with a hearing impairment who is deaf is eligible for special services and programs of instruction if the eligibility team, comprised of the persons described in subsections 6 and 7, concludes that:

(a) *The pupil has a hearing impairment and, by reason thereof, needs special education and related services;*



**(b)** Routine auditory communication is impossible for the pupil, or nearly so, because of the pupil's inability to discriminate among and understand the sounds that reach the pupil;

~~(b)~~ **(c)** The sense of hearing of the pupil is nonfunctional for the ordinary purposes of life, whether as the result of congenital or postlingual deafness; and

~~(c)~~ **(d)** The pupil has an average hearing threshold level, at 500, 1,000 and 2,000 Hz, of 92 decibels or more.

↪ As used in this subsection, “nonfunctional for the ordinary purposes of life” means that the pupil does not receive speech sounds clearly enough through hearing, with or without amplification and notwithstanding the fact that he may be aware of loud or random noises, to develop language.

2. Except as otherwise provided in subsection 3, a pupil with a hearing impairment who is hard-of-hearing is eligible for special services and programs of instruction if the eligibility team concludes that:

**(a) *The pupil is hard-of-hearing and, by reason thereof, needs special education and related services;***

**(b)** The pupil has the ability, if aided, to hear and understand most spoken words;

~~(b)~~ **(c)** The hearing mechanism of the pupil, though defective, is sufficiently functional with or without the use of a hearing aid to allow a receptive flow of information; and

~~(c)~~ **(d)** The pupil has an average hearing threshold level of 30 decibels or more.

3. A pupil with a hearing impairment who is deaf or hard-of-hearing is eligible for special services and programs of instruction if the eligibility team concludes that the pupil meets the criterion set forth in paragraph ~~(c)~~ **(d)** of subsection 1 or paragraph ~~(c)~~ **(d)** of subsection 2,

whichever applies, notwithstanding the pupil's failure to meet the other criteria set forth in subsection 1 or 2.

4. A pupil with a hearing impairment who has deaf-blindness is eligible for special services and programs of instruction if the eligibility team concludes that the pupil meets the criteria set forth in subsection 1, 2 or 3, whichever applies, and the criteria set forth in NAC 388.395.

5. A pupil under the age of 6 years is not ineligible, because of the pupil's age, for the special services and programs of instruction referred to in this section.

6. The eligibility team may include a teacher or specialist in the field of hearing impairment and must consist of a parent of the pupil and not fewer than three persons with expertise in one or more of the following areas:

(a) Audiology or the interpretation of an audiological report.

(b) Hearing impairment.

(c) The interpretation of an assessment of:

(1) Health.

(2) Communication skills and disorders.

(3) Academic achievement.

7. If the requirements of subsection 6 are satisfied, one or more of the following persons may serve on the eligibility team:

(a) A regular classroom teacher.

(b) One or more persons qualified to interpret an assessment of the social or emotional condition of the pupil, or of the cognitive abilities of the pupil, because of the person's personal knowledge of the pupil. Such persons may include, without limitation, an administrator, nurse, school counselor, school psychologist or any other certificated or licensed professional.

8. The conclusions of the eligibility team concerning the eligibility of the pupil for the special services and programs of instruction referred to in this section must be based upon an evaluation of the pupil. The evaluation must include:

- (a) A comprehensive audiological examination, including pure tone and speech discrimination tests, performed by an audiologist; and
- (b) An assessment of the:
  - (1) Health of the pupil, which must include a comprehensive examination of vision;
  - (2) Academic achievement of the pupil; and
  - (3) Speech and language of the pupil.

9. If the requirements of subsection 8 are satisfied, the evaluation of the pupil may include an assessment of the pupil's cognitive abilities and social and emotional condition.

**Sec. 9.** NAC 388.395 is hereby amended to read as follows:

388.395 1. A pupil with a severe visual impairment is eligible for special services and programs of instruction if the eligibility team, comprised of the persons described in subsections 5 and 6, concludes that:

- (a) *The pupil has a severe visual impairment and, by reason thereof, needs special education and related services;*
- (b) The visual acuity of the pupil does not exceed 20/200 in the better eye;
- ~~[(b)]~~ (c) The vision of the pupil in the better eye is restricted to a field which subtends an arc of not more than 20 degrees; or
- ~~[(c)]~~ (d) The pupil suffers from a progressive deterioration of the pupil's vision, the probable result of which will be one or both of the conditions described in paragraphs ~~[(a) and]~~ (b) ~~[(c)]~~ *and (c).*

2. A pupil with a moderate visual impairment is eligible for special services and programs of instruction if the eligibility team concludes that the pupil can use vision as the main channel of learning ~~and~~, *that the pupil has a moderate visual impairment and, by reason thereof, needs special education and related services and that:*

(a) The visual acuity of the pupil is 20/70 or less in the better eye with the best possible correction; or

(b) The pupil suffers from a progressive deterioration of the pupil's vision, the probable result of which will be the condition described in paragraph (a).

3. A pupil with a visual impairment who has deaf-blindness is eligible for special services and programs of instruction if the eligibility team concludes that the pupil meets the criteria set forth in subsection 1 or 2, whichever applies, and the criteria set forth in NAC 388.390.

4. A pupil under the age of 6 years is not ineligible, because of the pupil's age, for the special services and programs of instruction referred to in this section.

5. The eligibility team may include a teacher or specialist in the field of vision impairment and must consist of a parent of the pupil and not fewer than three persons with expertise in one or more of the following areas:

(a) Vision.

(b) Vision impairment.

(c) The interpretation of an assessment of health or academic achievement.

6. If the requirements of subsection 5 are satisfied, one or more of the following persons may serve on the eligibility team:

(a) A regular classroom teacher.

(b) One or more persons qualified to interpret an assessment of the social or emotional condition of the pupil, or of the cognitive abilities of the pupil, because of the person's personal knowledge of the pupil. Such persons may include, without limitation, an administrator, nurse, school counselor, school psychologist or any other certificated or licensed professional.

7. The conclusions of the eligibility team concerning the eligibility of the pupil for the special services and programs of instruction referred to in this section must be based upon an evaluation of the pupil. The evaluation must include:

- (a) A comprehensive examination of vision, performed by an eye specialist; and
- (b) An assessment of the health and academic achievement of the pupil.

8. If the requirements of subsection 7 are satisfied, the evaluation of the pupil may include an assessment of the pupil's cognitive abilities and social and emotional condition.

**Sec. 10.** NAC 388.400 is hereby amended to read as follows:

388.400 1. A pupil with an orthopedic impairment is eligible for special services and programs of instruction if the eligibility team, comprised of the persons described in subsection 3, concludes that the pupil suffers from a severe orthopedic impairment which adversely affects the pupil's educational performance ~~and~~ *and, by reason thereof, needs special education and related services.*

2. To determine whether an orthopedic impairment adversely affects the pupil's educational performance, an analysis must be conducted of the pupil's impairment to determine whether he can function in a regular classroom.

3. The eligibility team must consist of:

(a) A school nurse or other person qualified to interpret an assessment of the health of the pupil;

- (b) A regular classroom teacher of the pupil ~~H~~ or, if none, a person qualified to teach the pupil;
- (c) A parent of the pupil;
- (d) One of the following:
  - (1) A physical therapist;
  - (2) An occupational therapist; or
  - (3) Any other specialist whose presence on the team is deemed appropriate; and
- (e) One or more persons having personal knowledge of the pupil. Such persons may include, without limitation, an administrator, nurse, school counselor, school psychologist or any other certificated or licensed professional.

4. The conclusions of the eligibility team concerning the eligibility of the pupil for the special services and programs of instruction referred to in this section must be based upon an evaluation of the pupil. The evaluation must include an assessment of:

- (a) The health of the pupil, which must include a physical examination; and
- (b) The pupil's functional limitations in relation to the demands of a regular classroom.

5. If the requirements of subsection 4 are satisfied, the evaluation of the pupil may include physical therapy, occupational therapy and an assessment of the pupil's:

- (a) Cognitive abilities;
- (b) Social and emotional condition; and
- (c) Academic achievement.

**Sec. 11.** NAC 388.402 is hereby amended to read as follows:

388.402 1. A pupil is eligible for special services and programs of instruction if the eligibility team, comprised of the persons described in subsection 3, concludes that the pupil has

a health impairment other than an orthopedic impairment which could reasonably be interpreted as adversely affecting the educational performance of a pupil ~~H~~ *and, by reason thereof, needs special education and related services.*

2. As used in subsection 1, “adversely affecting the educational performance of a pupil” includes, without limitation, difficulty concentrating, chronic fatigue and impulsiveness which interfere with a pupil’s ability to be educated.

3. The eligibility team must consist of:

- (a) A school psychologist;
- (b) A teacher of special education;
- (c) The regular teacher of the pupil ~~H~~ or, if none, a person qualified to teach the pupil;
- (d) A school nurse or other person qualified to interpret an assessment of the health of the pupil;
- (e) A parent of the pupil; and
- (f) One or more persons with sufficient knowledge of the pupil to interpret information relating to the pupil’s social, emotional, developmental and familial condition. Such persons may include an administrator of the school, a nurse, a counselor, a school psychologist or any other certificated or licensed professional.

4. The eligibility team shall conduct an evaluation of the pupil to determine eligibility for special services and programs of instruction pursuant to this section. Such an evaluation must:

- (a) Assess the health of the pupil; and
- (b) Analyze the ability of the pupil to perform in a regular classroom.

5. The evaluation conducted pursuant to subsection 4 may also include an assessment of the:

- (a) Developmental history;

- (b) Cognitive abilities;
- (c) Social and emotional condition;
- (d) Academic achievement; and
- (e) Language and motor skills,

↪ of the pupil.

**Sec. 12.** NAC 388.405 is hereby amended to read as follows:

388.405 1. A pupil with a speech and language impairment is eligible for special services and programs of instruction if the eligibility team, comprised of the persons described in subsection 5, concludes that:

(a) ~~[An impairment exists]~~ *The pupil has a speech and language impairment and, by reason thereof, needs special education and related services;*

(b) The pupil has demonstrated the ability to profit from speech and language therapy; and

(c) The pupil requires a program of instruction, because of the nature or severity of the pupil's impairment, which is not feasible in the current educational setting of the pupil because:

(1) Intensive remedial techniques or strategies, which can only be implemented in a clinical or therapeutic setting, are required to improve the communication skills of the pupil;

(2) The nature of the pupil's impairment requires that the pupil receive the services of a teacher of the speech and language impaired; or

(3) The pupil's impairment is of such severity or multiplicity that individual or small group management, available only in a speech and language program, is required.

2. For the purposes of this section, an impairment exists if the pupil suffers from a deficit or disorder with respect to:



(a) Phonology or articulation, as indicated by the presence of three or more of the following conditions:

(1) The pupil has the physiological potential to make the neuromuscular adjustments necessary for oral expression;

(2) The communicative ability of the pupil is interfered with by the pupil's lack of intelligibility;

(3) The pupil cannot adequately discriminate, imitate or sequence sound patterns;

(4) The ability of the pupil to articulate is significantly less than that which is expected in view of the cognitive abilities and level of development of the pupil; or

(5) The deficit or disorder has an adverse social, emotional or academic effect upon the pupil;

(b) The use and comprehension of language, as indicated by the presence of two or more of the following conditions:

(1) The ability of the pupil to comprehend language is significantly less than that which is expected in view of the cognitive abilities and level of development of the pupil;

(2) The use of expressive language by the pupil is significantly less than that which is expected in view of the cognitive abilities and level of development of the pupil;

(3) Pragmatic use of language by the pupil is inappropriate; or

(4) The deficit or disorder has an adverse social, emotional or academic effect upon the pupil;

(c) Fluency of speech, as indicated by the presence of two or more of the following conditions:

(1) The speech of the pupil is observed to be dysfluent;

(2) The severity of the deficit or disorder is such that it interferes with communication by the pupil; or

(3) The deficit or disorder has an adverse social, emotional or academic effect upon the pupil; or

(d) The quality, pitch or intensity of the pupil's voice, as indicated by the presence of two or more of the following conditions:

(1) Voice therapy is recommended by:

(I) A physician; or

(II) Another person certified as a specialist in the identification and treatment of oral, nasal or laryngeal anomalies;

(2) The severity of the deficit or disorder is such that it interferes with communication by the pupil; or

(3) The deficit or disorder has an adverse social, emotional or academic effect upon the pupil.

3. A pupil with limited proficiency in English is eligible for the special services and programs of instruction referred to in this section, on the same basis as other pupils, if the pupil's impairment:

(a) Manifests itself in the pupil's native language and in English; and

(b) Is not attributable to the phonological system of the pupil's native language, or to dialectal differences of articulation and language form between that language and English.

4. A pupil under the age of 6 years is not ineligible, because of the age of the pupil for the special services and programs referred to in this section.

5. The eligibility team must consist of:

- (a) A speech and language specialist;
- (b) A regular classroom teacher;
- (c) If the pupil has another disability in addition to the pupil's speech and language impairment, a special education teacher;
- (d) A parent of the pupil; and
- (e) If not otherwise a member of the team, a person having personal knowledge of the pupil.

This person may be, without limitation, an administrator, nurse, school counselor, school psychologist or any other certificated or licensed professional.

6. The conclusions of the eligibility team concerning the eligibility of the pupil for the special services and programs of instruction referred to in this section must be based upon an evaluation of the pupil. The evaluation must include an assessment of:

- (a) The performance of the pupil relating to language, articulation, fluency or voice, as relevant to the pupil's impairment;
- (b) The health of the pupil; and
- (c) If relevant to the pupil's eligibility for the special services and programs of instruction referred to in this section, the cognitive abilities, academic achievement, and social and emotional condition of the pupil.

**Sec. 13.** NAC 388.407 is hereby amended to read as follows:

388.407 1. A pupil is eligible for special services and programs of instruction if the eligibility team, comprised of the persons described in subsection 2, concludes that the pupil has a traumatic brain injury ~~H~~ *and, by reason thereof, needs special education and related services.*

2. The eligibility team must consist of:

- (a) A school psychologist;

(b) A teacher of special education or a person with a specialized knowledge of traumatic brain injuries;

(c) The regular teacher of the pupil ~~H~~ or, if none, a person qualified to teach the pupil;

(d) A specialist of speech and language;

(e) A school nurse or other person who is qualified to assess the health of the pupil;

(f) A parent of the pupil; and

(g) One or more persons with sufficient knowledge of the pupil to interpret information relating to the social, emotional, developmental and familial condition of the pupil. Such persons may include an administrator of the school, a nurse, a counselor, a school psychologist or any other certificated or licensed professional.

3. In making a determination pursuant to subsection 1, the eligibility team shall consider, without limitation:

(a) Medical documentation of the injury;

(b) The pupil's educational performance relative to a normative population;

(c) The pupil's strengths and weaknesses; and

(d) If possible, the pupil's educational performance before and after the pupil acquired the injury.

4. In addition to the considerations required pursuant to subsection 3, the eligibility team shall conduct an evaluation of the pupil to determine whether the pupil is eligible for special services and programs of instruction pursuant to this section. Such an evaluation must assess the:

(a) Health;

(b) Developmental history;

(c) Cognitive abilities;

- (d) Social and emotional condition;
- (e) Academic achievement;
- (f) Language and motor skills;
- (g) Sensory and perceptual abilities; and
- (h) Attention, comprehension, judgment and problem-solving skills,

↪ of the pupil.

**Sec. 14.** NAC 388.410 is hereby amended to read as follows:

388.410 1. A pupil with mild mental retardation is eligible for special services and programs of instruction if the eligibility team, comprised of the persons described in subsections 5 and 6, concludes that:

(a) *The pupil has mild mental retardation and, by reason thereof, needs special education and related services;*

(b) The measured cognitive abilities of the pupil, as determined by an acceptable individual standardized test, are at least two standard deviations below the mean score for that test;

~~(b)~~ (c) The adaptive skills of the pupil, in comparison with those of members of the pupil's chronological peer group, indicate that the pupil is experiencing difficulty; and

~~(c)~~ (d) The academic achievement of the pupil is generally consistent with the cognitive abilities and adaptive skills of the pupil.

2. A pupil with moderate mental retardation is eligible for special services and programs of instruction if the eligibility team concludes that:

(a) *The pupil has moderate mental retardation and, by reason thereof, needs special education and related services;*

(b) The measured cognitive abilities of the pupil, as determined by an acceptable individual standardized test, are at least three standard deviations below the mean score for that test;

~~(b)~~ (c) The adaptive skills of the pupil, in comparison with those of members of the pupil's chronological peer group, indicate that the pupil has markedly lower capabilities; and

~~(c)~~ (d) The academic achievement and speech and language development of the pupil is generally consistent with the cognitive abilities and adaptive skills of the pupil.

3. A pupil with severe mental retardation is eligible for special services and programs of instruction if the eligibility team concludes that:

(a) *The pupil has severe mental retardation and, by reason thereof, needs special education and related services;*

(b) The measured cognitive abilities of the pupil, as determined by an acceptable individual standardized test, are at least four standard deviations below the mean score for that test;

~~(b)~~ (c) The adaptive skills of the pupil, in comparison with those of members of the pupil's chronological peer group, indicate that the pupil has extensively lower capabilities; and

~~(c)~~ (d) The developmental functioning of the pupil is generally consistent with the cognitive abilities and adaptive skills of the pupil.

4. A pupil with profound mental retardation is eligible for special services and programs of instruction if the eligibility team concludes that:

(a) *The pupil has profound mental retardation and, by reason thereof, needs special education and related services;*

(b) The measured cognitive abilities of the pupil, as determined by an acceptable individual standardized test, are at least five standard deviations below the mean score for that test;

~~(b)~~ (c) The adaptive skills of the pupil, in comparison with those of members of the pupil's chronological peer group, indicate that the pupil has extremely limited capabilities; and

~~(c)~~ (d) The developmental functioning of the pupil is generally consistent with the cognitive abilities and adaptive skills of the pupil.

5. The eligibility team must consist of:

- (a) A school psychologist;
- (b) A special education teacher or specialist in the field of mental retardation;
- (c) A speech and language specialist;
- (d) A parent of the pupil; and
- (e) One or more persons qualified, because of personal knowledge of the pupil, to interpret:
  - (1) Assessments of the health and adaptive skills of the pupil; and
  - (2) Information relating to the family of the pupil.

↪ The person or persons described in this paragraph may be one or more of the persons described in paragraphs (a), (b) and (c) of this subsection and may, without limitation, be an administrator, nurse, school counselor, school psychologist or any other certificated or licensed professional.

6. If the requirements of subsection 5 are met, one or more of the following persons may serve on the eligibility team:

- (a) The principal of the school attended by the pupil;
- (b) A regular classroom teacher;
- (c) An occupational therapist;
- (d) A physical therapist; and
- (e) Any other specialist whose presence on the team is deemed appropriate.

7. The conclusions of the eligibility team concerning the eligibility of the pupil for the special services and programs of instruction referred to in this section must be based upon an evaluation of the pupil. The evaluation must include an assessment of:

- (a) The cognitive abilities of the pupil;
- (b) The adaptive skills of the pupil, including prevocational and vocational assessments if appropriate;
- (c) The health of the pupil, including a developmental history;
- (d) The academic achievement of the pupil; and
- (e) The performance of the pupil relating to speech and language.

**Sec. 15.** NAC 388.415 is hereby amended to read as follows:

388.415 1. A pupil with a serious emotional disturbance is eligible for special services and programs of instruction if the eligibility team, comprised of the persons described in subsection 4, concludes that:

(a) *The pupil has a serious emotional disturbance and, by reason thereof, needs special education and related services;*

(b) The pupil exhibits one or more of the characteristics described in subsection 2;

~~[(b)]~~ (c) These characteristics have been evident for at least 3 months;

~~[(c)]~~ (d) The characteristics adversely affect the ability of the pupil to perform developmental tasks appropriate to the pupil's age:

- (1) Within the educational environment, despite the provision of intervention strategies; or
  - (2) In the case of a pupil under school age, in the home, child care or preschool setting;
- and

~~[(d)]~~ (e) Special education support is required to alleviate these adverse effects.



2. The requirement of paragraph ~~(a)~~ (b) of subsection 1 is satisfied by the consistent manifestation of any of the following characteristics:

(a) An inability of the pupil to build or maintain satisfactory interpersonal relationships within the school environment, including:

(1) Withdrawal and isolation of the pupil from others.

(2) Efforts by the pupil to obtain negative attention from others through punishment, ostracism or excessive approval.

(b) Inappropriate behavior or feelings under normal circumstances, including atypical behavior such as outbursts of anger, crying or head banging, without apparent cause or reason.

(c) A pervasive mood of unhappiness or depression.

(d) Fears or a tendency to develop physical symptoms associated with personal or school problems.

3. A pupil is not eligible for the special services and programs of instruction referred to in subsection 1 solely because:

(a) The pupil exhibits the characteristics described in subsection 2 because of sensory, intellectual or health factors; or

(b) The pupil is socially maladjusted or has a conduct problem.

↪ A pupil who is socially maladjusted or has a conduct problem may not be determined to be eligible for special services and programs of instruction unless the eligibility team concludes, based upon an evaluation of the pupil, that the pupil meets the criteria of eligibility set forth in NAC 388.330 to 388.440, inclusive.

4. The eligibility team must consist of:

(a) A school psychologist;

- (b) A regular classroom teacher;
- (c) A special education teacher or specialist in the field of serious emotional disturbances;
- (d) A parent of the pupil; and
- (e) One or more persons qualified, because of personal knowledge of the pupil, to interpret information relating to the health, development, family, and social and emotional condition of the pupil. This person may be, without limitation, an administrator, nurse, school counselor, school psychologist or any other certificated or licensed professional.

5. The conclusions of the eligibility team concerning the eligibility of the pupil for the special services and programs of instruction referred to in this section must be based upon an evaluation of the pupil. The evaluation must include an assessment of:

- (a) The social and emotional condition of the pupil, based in part upon information from the pupil;
- (b) The health and cognitive abilities of the pupil;
- (c) The performance of the pupil in the pupil's current educational setting; and
- (d) Any intervention on behalf of the pupil.

6. As used in this section, "socially maladjusted" and "conduct problem" mean behavior characterized by knowledge of social expectations and intentional disregard of those expectations.

**Sec. 16.** NAC 388.420 is hereby amended to read as follows:

388.420 1. A pupil with specific learning disabilities is eligible for special services and programs of instruction if the eligibility team, comprised of the persons described in subsection 4, concludes that:

(a) *The pupil has a specific learning disability and, by reason thereof, needs special education and related services;*

(b) The pupil does not achieve adequately for the pupil's age or to meet the state-approved grade level standards when provided with learning experiences and instruction appropriate for the age of the pupil or the state-approved grade level standards in one or more of the following areas:

- (1) Oral expression;
- (2) Listening comprehension;
- (3) Written expression;
- (4) Basic reading skills;
- (5) Reading fluency skills;
- (6) Reading comprehension;
- (7) Mathematics calculation; or
- (8) Mathematics problem solving;

~~(b)~~ (c) The pupil:

(1) Does not make sufficient progress to meet the age appropriate standards or the state-approved grade level standards in one or more of the areas set forth in paragraph ~~(a)~~ (b) when using a process based on the pupil's response to scientific, research-based intervention; or

(2) Exhibits a pattern of strengths and weaknesses in performance or achievement, or both, relative to the pupil's age, the state-approved grade level standards or intellectual development, that is determined by the eligibility team to be relevant to the identification of a specific learning disability using appropriate assessments;

~~(c)~~ (d) The findings in this subsection are not primarily the result of:

- (1) A visual, hearing or motor disability;
- (2) Mental retardation;
- (3) Emotional disturbance;
- (4) Cultural factors;
- (5) Environmental or economic disadvantage; or
- (6) Limited English proficiency;

~~[(d)]~~ **(e)** Interventions implemented in general education classrooms have not remedied any identified underachievement; and

~~[(e)]~~ **(f)** Any identified underachievement or severe discrepancy between achievement and intellectual ability is not correctable without special education services.

2. If the public agency determines that a pupil exhibits a pattern of strengths and weaknesses in performance or achievement, or both, relative to the pupil's age, the state-approved grade level standards or intellectual development, the public agency shall determine whether the pupil has a severe discrepancy between achievement and intellectual ability in the areas set forth in paragraph ~~[(a)]~~ **(b)** of subsection 1. Except as otherwise provided in this subsection, if the public agency considers the existence of a discrepancy between achievement and intellectual ability, the discrepancy must be determined through the use of a statistically valid formula, as prescribed by the Department, which takes into account the age and level of ability of the pupil, the correlation between tests of ability and achievement, and the reliability of each test used. The Department shall prescribe the formula on the basis of consultation with an appropriate representative of each public agency affected. In the case of a pupil under the age of 6 years, a discrepancy may be identified through the use of one or more tests of language concepts or academic readiness skills. If the public agency considers the existence of a severe discrepancy between achievement and

intellectual ability, the discrepancy between achievement and intellectual ability must be corroborated by classroom-based assessment. If the public agency considers the continuing existence of a severe discrepancy between achievement and intellectual ability in a reevaluation of the pupil, the determination of a severe discrepancy may be made based upon information other than the statistically valid formula prescribed by the Department pursuant to this subsection.

3. If the public agency determines that a pupil has not made sufficient progress to meet the age appropriate standards or the state-approved grade level standards in one or more of the areas set forth in paragraph ~~(a)~~ (b) of subsection 1 when using a process based on the pupil's response to scientific, research-based intervention, the public agency shall document:

(a) The instructional strategies used and the pupil-centered data collected; and

(b) The notice provided to the parents of the pupil concerning:

(1) The policies of the Department regarding the amount and nature of the data relating to the performance of the pupil that will be collected and the general educational services that will be provided;

(2) Strategies to increase the rate of learning of the pupil; and

(3) The right of the parents to request an evaluation to determine whether the pupil is eligible for special education and related services.

4. The eligibility team must consist of:

(a) The regular classroom teacher of the pupil or, if the pupil does not have a regular teacher, a teacher qualified to teach a pupil of the pupil's age;

(b) A special education teacher or specialist with knowledge in the area of the suspected disability;

- (c) A school psychologist;
- (d) A parent of the pupil; and
- (e) One or more persons qualified, because of personal knowledge of the pupil, to interpret information relating to the pupil's health, family, and social and emotional condition. This person may be, without limitation, an administrator, nurse, school counselor, school psychologist or any other certificated or licensed professional.

5. The conclusions of the eligibility team concerning the eligibility of the pupil must be based upon an evaluation of the pupil. The evaluation must include:

- (a) An assessment of:
  - (1) The cognitive abilities of the pupil, if the public agency determines the existence of a severe discrepancy between achievement and intellectual ability;
  - (2) The social and emotional condition of the pupil;
  - (3) The academic achievement of the pupil;
  - (4) The performance of the pupil in the pupil's current educational setting;
  - (5) Any scientific, research-based intervention provided to the pupil; and
  - (6) The health and developmental history of the pupil; and
- (b) An observation of the academic performance of the pupil pursuant to paragraph (b) of subsection 6.

6. In determining whether a pupil has a specific learning disability, the eligibility team shall:

- (a) Use information from an observation in routine classroom instruction and monitoring of the performance of the pupil that was conducted before the pupil was referred for an evaluation;

or

(b) Have at least one member of the eligibility team conduct an observation of the academic progress of the pupil in the regular classroom after the pupil was referred for an evaluation and parental consent is obtained pursuant to NAC 388.300.

➡ If a child is less than school age or out of school, an eligibility team member shall observe the pupil in an environment appropriate for a pupil of that age.

7. To ensure that the underachievement of a pupil who is suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the eligibility team shall consider as part of the evaluation:

(a) Data that demonstrates that before, or as part of, the referral process, the pupil was provided appropriate instruction in regular educational settings, delivered by qualified personnel; and

(b) Data-based documentation of repeated assessments of achievement at reasonable intervals that reflects formal assessments of the progress of the pupil during instruction. The documentation must be provided to the parents of the pupil.

8. The eligibility team shall document the determination of eligibility of the pupil which must include:

(a) A statement as to whether the pupil has a specific learning disability;

(b) The basis for making that determination, including an assurance that the determination has been made in accordance with NAC 388.340;

(c) A description of the relevant behavior noted during the observation of the pupil;

(d) A statement of the relationship of that behavior to the academic functioning of the pupil;

(e) Any educationally relevant medical findings;

(f) A statement as to whether the pupil does not achieve adequately for the pupil's age or to meet the state-approved grade level standards and whether the pupil:

(1) Has not made sufficient progress to meet the age appropriate standards or the state-approved grade level standards when a process based on the pupil's response to scientific, research-based intervention is used; or

(2) Exhibits a pattern of strengths and weaknesses in performance or achievement, or both, relative to the pupil's age, the state-approved grade level standards or intellectual development;

(g) A statement that any identified underachievement or severe discrepancy between achievement and intellectual development is not correctable without special education and related services;

(h) The conclusion of the team concerning the effect upon the achievement of the pupil of any visual disability, hearing disability, motor disability, mental retardation, emotional disturbance, cultural factors, environmental  or economic disadvantage, or limited English proficiency;

(i) If the pupil has participated in a process that assesses the response of the pupil to scientific, research-based intervention:

(1) The instructional strategies used and the pupil-centered data that was collected; and

(2) Documentation that the parents of the pupil were notified about:

(I) The policies of the Department regarding the amount and nature of the data relating to the performance of a pupil that will be collected and the general educational services that will be provided;

(II) Strategies to increase the rate of learning of the pupil; and



(III) The right of the parents to request an evaluation to determine whether the pupil is eligible for special education and related services; and

(j) A certification by each member of the team that the report reflects the member's conclusions or, if the report does not reflect the conclusions of a member, a minority report of the conclusions of that member.

9. If the public agency considers the continuing existence of a severe discrepancy between predicted and actual achievement in a reevaluation of the pupil, the determination of a severe discrepancy may be made based upon information other than the statistically valid formula prescribed by the Department pursuant to subsection 2.

**Sec. 17.** NAC 388.430 is hereby amended to read as follows:

388.430 1. Except as otherwise provided in subsection 5, a pupil under the age of 6 years may be identified with a developmental delay if the eligibility team, comprised of the persons described in subsections 2 and 3, concludes that *the pupil has a developmental delay and, by reason thereof, needs special education and related services and that* he demonstrates a delay of at least two standard deviations in one, or at least one standard deviation in two or more, of the following areas:

- (a) Receptive or expressive language.
- (b) Cognitive abilities.
- (c) Gross or fine motor function.
- (d) Self-help.
- (e) Social or emotional condition.

2. In a case governed by this section, the eligibility team must consist of:

- (a) A special education teacher or specialist in the field of early childhood education;

(b) A licensed school psychologist or a licensed or certified psychologist with documented training in the assessment of preschool pupils with disabilities;

(c) A parent of the pupil; and

(d) One or more persons qualified, because of personal knowledge of the pupil, to interpret information relating to the pupil's health, family, and social and emotional condition. This person may be, without limitation, an administrator, nurse, school counselor, school psychologist or any other certificated or licensed professional.

3. If the requirements of subsection 2 are satisfied, the eligibility team may include one or more persons who provide related services, including speech and language therapy, physical or occupational therapy, and psychological services.

4. The conclusions of the eligibility team concerning the identification of the pupil with a developmental delay must be based upon an evaluation of the pupil. The evaluation must include an assessment of the health, developmental functioning, and social and emotional condition of the pupil.

5. In a case governed by this section, a pupil may no longer be identified with a developmental delay if the pupil maintains appropriate developmental functioning in all developmental areas for 6 months or more  and the eligibility team concludes that special education services are no longer necessary.

**NOTICE OF ADOPTION OF PROPOSED REGULATION**  
**LCB File No. R064-08**

The State Board of Education adopted regulations assigned LCB File No. R064-08 which pertain to chapter 388 of the Nevada Administrative Code.

**INFORMATIONAL STATEMENT**

1. A description of how public comment was solicited, a summary of public response, and explanation how other interested persons may obtain a copy of the summary.

Notice of Workshop to Solicit Comments on Proposed Regulations was sent to approximately 200 individuals and educational organizations. A workshop was held on May 3, 2008. There was public comment.

The Notice of Intent to Act Upon a Regulation for public hearing and adoption of the amendments to Chapter 388 – Special Education and Modifications to the following regulations: NAC 388.150; 388.195; 388.380; 388.387; 388.390; 388.395; 388.400; 388.402; 388.405; 388.407; 388.410; 388.415; 388.420; and 388.430. Public hearing was conducted on June 14, 2008 to provide the opportunity for comments by affected parties and the public. There was no public comment. The State Board of Education adopted the proposed amendments to the regulations.

2. The Number of Persons Who:

a) Attended Each Hearing: First Workshop: 13; First Hearing: 15; Second Hearing: N/A

b) Testified at Each Hearing: First Workshop: 1; First Hearing: 0; Second Hearing: N/A

c) Submitted Written Statement: First Workshop: 0; First Hearing: 0; Second Hearing: N/A

A copy of any written comments may be obtained by contacting Doris Arnold, Executive Assistant, Nevada Department of Education, 775-687-9217, or by writing to the Nevada Department of Education, 700 East Fifth Street, Carson City, Nevada 89701-5096.

3. A description of how comments were solicited from affected businesses, a summary of the response and an explanation how other interested parties may obtain a copy of the summary.

Comments were solicited through the workshop notice of March 27, 2008; and a public hearing notice of May 8, 2008. At the May 3, 2008 Workshop to Solicit Comments, there was public comment to the proposed amendments to the regulation language. At the June 14, 2008 public hearing there were no public comments to the proposed amendments to the regulation language.

Summary of Comments:

Workshop comments:

- (a) Karen Thatcher, Chair of the Advisory and Director of PEB – SEAC, expressed support for the Advisory Groups work and recommendation on the proposed regulations.

Public Hearing comments:

There were no public hearing comments.

A copy of the summary and/or minutes of the public hearing may be obtained by contacting Doris Arnold, Executive Assistant, Nevada Department of Education, 775-687-9217, or by writing to the Nevada Department of Education at 700 East Fifth Street, Carson City, Nevada 89701-5096.

4. If the regulation was adopted with or without change to any part of the proposed regulation, a summary of the reasons for adopting.

The Nevada State Board of Education adopted the proposed amendments to the regulation language at the public hearing held June 14, 2008. The reason for adopting the regulations in order for Nevada State Administrative Code to conform to state and federal requirements per IDEA-04.

5. The estimated economic effect of the adopted regulation on the business that it is to regulate and on the public. These must be stated separately and each case must include:

The economic effect is unknown on the Department of Education, as the estimated costs for the recommended changes are unknown. However, the changes to the state code have been developed with input from those individuals that will be most impacted by the changes. Additionally, many of the changes are necessary in order to align and conform to the federal IDEA -04, final regulations issued in 2006.

With regards to the federal law affecting the proposed regulations, the changes to Chapter 388 have been made based on the IDEA-04; final regulations issued in 2006 and newly enacted state requirements.

6. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the agency for enforcement of this regulation.

7. A description of any regulations of other state or governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

No other state or governmental agency regulations will be overlapped or duplicated by the above noted regulation. There is no duplication or overlap of federal regulations.

8. If the regulation includes provisions which are more stringent than a federal regulation, which regulates the same activity, a summary of such provisions.

There are none.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

This regulation does not provide for a new fee or increase an existing fee.