

**PROPOSED REGULATION OF THE
STATE BOARD OF EDUCATION**

Occupational/Physical Therapy

NAC 388.150 Maximum number of cases per teacher in unit; maximum size of class; exceptions. (NRS 385.080, 388.520)

8. No later than October 1 of odd-numbered years, each public agency shall submit to the Nevada Department of Education a report concerning the caseloads for physical therapists and occupational therapists employed or contracted by the agency during the two previous school years. Such report must include:

(a) a description of the factors used by the agency in determining caseloads for physical therapists and occupational therapists, including:

- (1) the range of numbers of pupils at different school sites who require services;*
- (2) the range of intensity of the services required;*
- (3) the extent to which certified assistants are available to provide services;*
- (4) geographic factors which may affect therapist travel mode and travel time;*
- (5) agency expectations about therapist participation in meetings regarding pupils;*

(b) a description of any physical therapist or occupational therapist vacancies experienced by the agency during the two previous school years and a description of recruitment and retention activities designed to identify and retain therapists; and

(c) a list of physical therapy and occupational therapy positions employed or contracted by the public agency during the two previous school years, by full-time equivalency, and the maximum caseload assigned to each position during each of the two previous school years.

The descriptions provided in subsections (a) and (b) must be posted on the web site of the public agency, and updated no later than October 1 of odd-numbered years.

Transfer of Rights at 18—Revisions Pursuant to S.B. 115

NAC 388.195 Transfer of rights to pupil who attains age of majority. (NRS 385.080, 388.520)

~~[1. Except as otherwise provided in subsection 3, any right accorded a parent of a pupil under the provisions of this chapter 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.]~~

1. Except as otherwise provided in this section, any right accorded to a pupil 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. Not less than one year prior to the date on which a pupil with a disability attains the age of 18 years, the school district or state-sponsored charter school in which the pupil is enrolled shall provide notice to the parent and the pupil of the transfer of the parent's rights to the pupil.

2. Not less than one year prior to the date on which a pupil with a disability who has significant cognitive impairments and participates in the state alternate assessment attains the age of 18 years, the school district or state-sponsored charter school in which the pupil is enrolled shall provide notice to the parent and the pupil of the process for submission of an application to the school district or state-sponsored charter school pursuant to subsection 3.

The notice must describe the purpose for submitting an application, the parents who are authorized to submit an application, the process for submitting an application, the timelines for submitting an application, and the process for appealing a determination. The notice must include a copy of the application.

3. The parent of a pupil with a disability who has significant cognitive impairments and participates in the state alternate assessment is authorized to submit an application to the school district or state-sponsored charter school in which the pupil is enrolled to request appointment of the parent to represent the educational interests of the student. The application must be signed by the parent and must be submitted:

- (a) at least 90 days prior to the date on which the pupil attains the age of 18 years;*
- (b) on a form prescribed by the Nevada Department of Education;*
- (c) to the school district or state-sponsored charter school official whose name and address appear on the form; and*
- (d) contain statements affirming that:*
 - (1) the application is being submitted at least 90 days prior to the date on which the pupil attains the age of 18 years;*
 - (2) the pupil is at least 16 years of age;*
 - (3) the parent believes the pupil does not have the ability to provide informed consent with respect to his own educational program; and*
 - (4) the student has significant cognitive disabilities and participates in the state alternate assessment.*

4. The school district or state-sponsored charter school will review the application to verify completeness and accuracy and notify the parent and the pupil within 30 days of receipt of the application of the decision whether to grant or deny the application.

5. If the school district or state-sponsored charter school grants an application, 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, (and this act), or

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

6. If the parent or the pupil disagrees with the decision by the school district or state-sponsored charter school to grant or deny the application, the parent or the pupil may file a complaint with the Nevada Department of Education in accordance with the procedures set forth in NAC 388.318. If a complaint has been filed prior to the date on which the pupil attains the age of 18 years, any rights which would otherwise have transferred to the pupil in accordance with subsection 1 shall remain with the parent, pending the final decision from the Nevada Department of Education on the complaint.

7. 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 public agency 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 the regulations adopted pursuant thereto, to the pupil and the pupil's parents.

8. 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., or the regulations adopted pursuant thereto, remain with or otherwise transfer to the guardian.

Observation Requirement for Students with Learning Disabilities

NAC 388.380 Assessment of performance in current educational setting. (NRS 385.080, 388.470, 388.520)

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 **NAC 388.420.5(b)** ~~[paragraph (a) of subsection 1 must be conducted by a person other than the regular classroom teacher of the pupil.]~~

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.

**Definitions Aligned with IDEA Requirement that
Students Must Need Special Education and Related Services to be Eligible**

NAC 388.387 Eligibility of pupil with autism. (NRS 385.080, 388.470, 388.520)

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 by reason thereof needs special education and related services*.

NAC 388.390 Eligibility of pupil with hearing impairment. (NRS 385.080, 388.470, 388.520)

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 *the pupil has a hearing impairment and by reason thereof needs special education and related services. The eligibility team must also conclude that:*

(a) 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) 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) 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 *the pupil is hard-of-hearing and by reason thereof needs special education and related services. The eligibility team must also conclude that:*

NAC 388.395 Eligibility of pupil with visual impairment. (NRS 385.080, 388.470, 388.520)

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 *the pupil has a severe visual impairment and by reason thereof needs special education and related services. The eligibility team must also conclude that:*

(a) The visual acuity of the pupil does not exceed 20/200 in the better eye;

(b) 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) 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).

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. *the pupil has a moderate visual impairment and by reason thereof needs special education and related services, and that:*

NAC 388.400 Eligibility of pupil with orthopedic impairment. (NRS 385.080, 388.470, 388.520)

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 by reason thereof needs special education and related services*.

NAC 388.402 Eligibility of pupil with health impairment other than orthopedic impairment. (NRS 385.080, 388.470, 388.520)

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 *and by reason thereof needs special education and related services*.

NAC 388.405 Eligibility of pupil with speech and language impairment. (NRS 385.080, 388.470, 388.520)

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 *the pupil has a speech and language impairment and by reason thereof needs special education and related services. The eligibility team must also conclude that:*

NAC 388.407 Eligibility of pupil with traumatic brain injury. (NRS 385.080, 388.470, 388.520)

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 *and by reason thereof needs special education and related services*.

NAC 388.410 Eligibility of pupil with mental retardation. (NRS 385.080, 388.470, 388.520)

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 *the pupil has mental retardation and by reason thereof needs special education and related services. The eligibility team must also conclude that:*

NAC 388.415 Eligibility of pupil with emotional disturbance. (NRS 385.080, 388.470, 388.520)

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 *the pupil has a serious emotional disturbance and by reason thereof needs special education and related services. The eligibility team must also conclude that:*

NAC 388.420 Eligibility of pupil with specific learning disabilities. (NRS 385.080, 388.470, 388.520)

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 5, concludes

that *the pupil has a specific learning disability and by reason thereof needs special education and related services. The eligibility team must also conclude that:*

NAC 388.430 Identification of certain pupils with developmental delays. (NRS 385.080, 388.470, 388.520)

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. The eligibility team must also conclude that the pupil [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: