

**SECOND REVISED PROPOSED REGULATION OF THE
DEPARTMENT OF EDUCATION**

LCB File No. R035-15

September 4, 2015

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

AUTHORITY: §§1-13, section 5 of Assembly Bill No. 165, chapter 22, Statutes of Nevada 2015, at page 87.

A REGULATION relating to education; requiring a scholarship organization to register to participate in the Nevada Educational Choice Scholarship Program; limiting the period that a donation to a scholarship organization may be carried forward; requiring the Department of Education to report certain information concerning the operations of the scholarship organization and each pupil on whose behalf a grant is awarded; providing the procedure for applying for a grant; requiring a scholarship organization to establish procedures for awarding a grant; establishing the priority in which grants must be awarded; prescribing the uses and maximum amount of a grant; requiring a school to register with the Department to participate in the Program; requiring a participating school to administer certain examinations to pupils on behalf of whom a grant was made and report certain information regarding the examinations; prescribing a procedure for filing and adjudicating complaints about violations of state laws or regulations concerning the Program; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes the Nevada Educational Choice Scholarship Program. (Sections 2-6 of Assembly Bill No. 165, chapter 22, Statutes of Nevada 2015, pp. 86-88) Pursuant to the Program, a taxpayer may receive a tax credit against its modified business tax for making a donation to a scholarship organization. (Section 4 of Assembly Bill No. 165, chapter 22, Statutes of Nevada 2015, p. 86) The scholarship organization uses such donations to provide grants to allow pupils who are members of certain low-income households to attend a private school, attend a different public school or participate in certain tuition-based programs at a public school chosen by the parents of the pupils. (Section 5 of Assembly Bill No. 165, chapter 22, Statutes of Nevada 2015, p. 87) **Section 3** of this regulation requires a scholarship organization to register with the Department of Education by submitting certain information.

Section 4 of this regulation: (1) requires a registered scholarship organization to provide to the Department electronically certain information concerning each pupil on behalf of whom it provides a grant; and (2) requires the Department to compile certain information submitted by

each scholarship organization and review the information to determine whether to seek a change in the priority for awarding grants. **Section 5** of this regulation requires a registered scholarship organization to: (1) provide to the Department certain financial statements; (2) notify the Department if the scholarship organization ceases to qualify as a scholarship organization; and (3) allow the Superintendent of Public Instruction or his or her designee to inspect the records of the organization. **Section 6** of this regulation requires a registered scholarship organization to notify the Department of Taxation of each donation received and prohibits a scholarship organization from carrying forward a donation for more than 5 years.

Section 7 of this regulation provides that the Department of Education will maintain a directory of registered scholarship organizations on its Internet website and submit a list of such scholarship organizations quarterly to the Department of Taxation. Existing law requires a scholarship organization to submit an annual report that contains certain information concerning donations made to the scholarship organization and grants provided by the scholarship organization. (Section 6 of Assembly Bill No. 165, chapter 22, Statutes of Nevada 2015, p. 88) **Section 7** also requires the Department of Education to submit to the Governor, the State Board of Education and the Director of the Legislative Counsel Bureau an annual summary of the information provided in these reports.

Section 8 of this regulation authorizes the parent or guardian of a pupil to apply directly to a scholarship organization for a grant. **Section 8** also requires a scholarship organization to establish written procedures for determining whether a pupil is qualified to receive a grant and award grants on behalf of qualified pupils. The scholarship organization is required to post these procedures on an Internet website and provide a written copy of the procedures with each application form. Finally, **section 8** prescribes the order of priority in which a scholarship organization must award grants.

Section 9 of this regulation requires the parent or guardian of a pupil on whose behalf a grant is made and who previously attended a public school to notify the public school that the child will no longer attend the public school. **Section 9** also: (1) provides for the transfer or termination of a grant if the pupil on behalf of whom the grant is made transfers to another school; and (2) limits the amount and uses of a grant.

Section 10 of this regulation requires a school to register with the Department of Education to participate in the Program.

Existing law requires each school in which a pupil on behalf of whom a grant is awarded is enrolled to maintain a record of the academic progress of the pupil. (Section 5 of Assembly Bill No. 165, chapter 22, Statutes of Nevada 2015, p. 87) **Section 11** of this regulation requires each registered private school to administer at least one nationally norm-referenced test each year to each pupil for whom grant money is provided and include the results of the test in the record of academic progress of the pupil. **Section 12** of this regulation requires the Department to collect records of academic progress and submit a biennial report of aggregated information contained in the records to the Governor, the State Board and the Legislative Counsel Bureau. **Section 12** also requires each school that receives grant money to submit quarterly to the Department an electronic list of pupils for whom the school has accepted grant money.

Section 13 of this regulation prescribes a procedure for filing and resolving a complaint concerning a violation of a law or regulation concerning the Program.

Section 1. Chapter 385 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 13, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 13, inclusive, of this regulation, unless the context otherwise requires, “registered private school” means a private school that is registered with the Department pursuant to section 10 of this regulation.*

Sec. 3. *To participate in the Nevada Educational Choice Scholarship Program, a scholarship organization must register with the Department by providing:*

- 1. On a form provided by the Superintendent of Public Instruction:*
 - (a) The name, address and contact information of the scholarship organization; and*
 - (b) If the scholarship organization uses a fiscal year other than July 1 to June 30, the period of the fiscal year used by the scholarship organization;*
- 2. Evidence of an official declaration by the Internal Revenue Service that the scholarship organization qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c);*
- 3. Confirmation that the scholarship organization has registered with the Secretary of State and holds a valid state business registration pursuant to chapter 76 of NRS;*
- 4. A copy of the written procedures established pursuant to section 8 of this regulation; and*
- 5. An affidavit signed by the chief executive officer or president or chair of the board of directors of the scholarship organization under penalty of perjury stating that:*
 - (a) No member of the board of directors or employee of the scholarship organization:*

(1) Has declared bankruptcy within the 7 years immediately preceding the date on which the affidavit is submitted; or

(2) Has ever been convicted of a felony; and

(b) Neither the scholarship organization nor any member of the board of directors or employee thereof owns or operates a school in this State that receives grant money from the Nevada Educational Choice Scholarship Program.

Sec. 4. 1. *Each scholarship organization that is registered with the Department pursuant to section 3 of this regulation shall:*

(a) By not later than August 15, October 15, January 15 and March 15 of each year, provide to the Department in a format prescribed by the Department an electronic list of each pupil on behalf of whom the scholarship organization awarded a grant pursuant to section 5 of Assembly Bill No. 165, chapter 22, Statutes of Nevada 2015, at page 87, for the previous quarter. The electronic list must include:

(1) Demographic information for each pupil, including the name, date of birth, grade level, gender and race or ethnicity of the pupil and the name and address of the parent or guardian of the pupil;

(2) The amount of each grant provided on behalf of a pupil;

(3) The manner in which money from each grant has been used, including, without limitation:

(I) The name of each school that has received money from a grant;

(II) The tuition and fees charged by each such school; and

(III) Any portion of such money that has been used to pay for the transportation to and from the school; and

(4) The number of applications for a grant received by the scholarship organization for which a grant was not awarded and the reason that a grant was not awarded in each case.

(b) Annually submit to the Department the name of the school attended by each pupil on whose behalf a grant is provided during the school year immediately preceding the school year for which the grant is awarded or, if such a pupil was not enrolled in a school, whether the pupil was a homeschooled child, an opt-in child or was not required to attend school pursuant to NRS 392.040 for that school year.

2. The Department will annually:

(a) Compile the information submitted by each scholarship organization pursuant to subsection 1; and

(b) Review the information to determine whether to change the priority for awarding grants prescribed by section 8 of this regulation or to recommend legislation to revise the priority for awarding grants to the Legislature.

Sec. 5. *Each scholarship organization that is registered with the Department pursuant to section 3 of this regulation shall:*

1. Not more than 180 days after the conclusion of the fiscal year of the scholarship organization, submit to the Department a copy of an audited or compiled financial statement of the scholarship organization prepared by an independent certified public accountant.

2. If the scholarship organization no longer meets the qualifications prescribed by law to participate in the Nevada Educational Choice Scholarship Program as a scholarship organization or ceases to exist, notify the Department of Education within 30 days. Upon receiving such notification, the Department of Education will update the directory maintained pursuant to section 7 of this regulation and notify the Department of Taxation.

3. Within 72 hours after receiving notice from the Superintendent of Public Instruction or his or her designee, make any financial records of the scholarship organization or records concerning a pupil maintained by the scholarship organization available to the Superintendent or his or her designee for inspection during regular business hours.

Sec. 6. 1. A scholarship organization that is registered with the Department of Education pursuant to section 3 of this regulation shall notify the Department of Taxation in writing not more than 10 days after receiving a donation from a taxpayer pursuant to section 4 of Assembly Bill No. 165, chapter 22, Statutes of Nevada 2015, at page 86, of the amount of the donation.

2. Any donation received by a scholarship organization must not be carried forward for more than 5 years after the last day of the calendar year in which the donation is made.

Sec. 7. The Department of Education will:

1. Maintain on its Internet website a directory of each scholarship organization that is registered with the Department of Education pursuant to section 3 of this regulation and, by not later than September 30, December 30, March 30 and June 30 of each year, submit to the Department of Taxation a list of each such scholarship organization.

2. By not later than March 30 of each year, submit to the Governor, the State Board and the Director of the Legislative Counsel Bureau a summary of the information reported to the Department by each scholarship organization pursuant to section 6 of Assembly Bill No. 165, chapter 22, Statutes of Nevada 2015, at page 88.

Sec. 8. 1. The parent or guardian of a pupil who meets the requirements to receive a grant pursuant to section 5 of Assembly Bill No. 165, chapter 22, Statutes of Nevada 2015, at page 87, may apply to a scholarship organization registered with the Department pursuant to

section 3 of this regulation for such a grant. A scholarship organization may charge each family that applies for a grant on behalf of one or more children of the family an administrative fee of not more than \$25.

2. A scholarship organization shall:

(a) Establish written procedures that the scholarship organization will use to determine whether a pupil meets the requirements to receive a grant pursuant to section 5 of Assembly Bill No. 165, chapter 22, Statutes of Nevada 2015, at page 87, and to award grants on behalf of qualified pupils.

(b) Post the procedures established pursuant to paragraph (a) on an Internet website maintained by the scholarship organization and provide a written copy of the procedures with each application form.

(c) Provide an application form to be completed by an applicant for a grant. A scholarship organization may only award a grant on behalf of a pupil for whom a complete application is submitted but is not required to award a grant to a pupil solely because his or her application is complete.

(d) Verify annually that each pupil on behalf of whom the organization awards a grant is a member of a household that has a household income which is not more than 300 percent of the federally designated level signifying poverty. Such verification must:

(1) Use the most recent federal poverty guidelines published in the Federal Register by the United States Department of Health and Human Services; and

(2) Calculate household income based on the most recent formulas established by the Food and Nutrition Service of the United States Department of Agriculture for determining eligibility of pupils for free and reduced-price meals.

3. *A scholarship organization shall award grants on behalf of pupils in the following order of priority:*

(a) A grant must be awarded for the current school year on behalf of a pupil on whose behalf a grant was awarded for the immediately preceding school year before a grant is awarded on behalf of any other pupil.

(b) A grant must be awarded on behalf of the sibling of a pupil on whose behalf a grant has been awarded for the current school year before a grant is awarded on behalf of other pupils.

(c) A grant must be awarded on behalf of a pupil who is not described in paragraph (a) or (b) in the order in which the application is received. If there are an insufficient number of grants available to award a grant on behalf of each pupil for whom a complete application was received on the same day:

(1) A grant must be awarded on behalf of a pupil who is a member of a household that has a lower household income before a grant is awarded on behalf of a pupil who is a member of a household that has a higher household income;

(2) If two or more applicants are members of households that have the same household income, a grant must be awarded on behalf of the pupil who is enrolled in a public school that has received a lower rating based on the most recent annual report of the statewide system of accountability for public schools before a grant is awarded on behalf of a pupil who is enrolled in a public school that has received higher ratings; and

(3) If two or more applicants are members of households that have the same household income and attend public schools that received the same rating based on the most recent

annual report of the statewide system of accountability for public schools, grants must be awarded on behalf of pupils in this category on a random basis.

Sec. 9. *1. If the pupil on behalf of whom a grant was awarded was enrolled in a public school in this State for the school year immediately preceding the school year for which the grant is awarded, the parent or guardian of the pupil must inform the school district in which the public school is located or the charter school that the pupil previously attended, as applicable, that the pupil will not attend the school for the current school year.*

2. A scholarship organization that awards a grant on behalf of a pupil pursuant to section 5 of Assembly Bill No. 165, chapter 22, Statutes of Nevada 2015, at page 87, shall:

(a) Obtain and maintain a written statement from the parent or guardian of a pupil on behalf of whom the scholarship organization has awarded a grant that the parent or guardian has provided the notice required pursuant to subsection 1 or is not required to provide such notice; and

(b) Make payments to the school in which the pupil has enrolled in quarterly installments.

3. If a pupil on behalf of whom a grant is awarded transfers during the school year:

(a) To another registered private school, the parent or guardian of the pupil must notify the scholarship organization and the scholarship organization must make payments to the registered private school that the pupil previously attended and the registered private school to which the pupil transferred on a pro rata basis for the quarter during which the pupil transferred.

(b) To a public school, the parent or guardian of the pupil must notify the scholarship organization and the scholarship organization:

(1) Must make payments to the registered private school that the pupil previously attended on a pro rata basis for the quarter during which the pupil transferred; and

(2) Must not make any further payments on behalf of the pupil unless the parent or guardian of the pupil amends the application to include eligible expenses at the public school.

4. A grant provided by a scholarship organization:

(a) May be used to pay for:

(1) Tuition and fees to attend a registered private school, the cost of purchasing textbooks and other supplies and the cost of transportation to and from a registered private school;

(2) If the public school, including, without limitation, a charter school, in which the pupil is enrolled does not provide transportation to the pupil, the cost of transportation to and from the public school; and

(3) The cost of tuition-based programs offered by a public school, including, without limitation, distance education and dual credit courses.

(b) May not be awarded on behalf of a homeschooled child or an opt-in child.

5. More than one scholarship organization may award a grant on behalf of a pupil. A parent shall ensure that grants awarded on behalf of a pupil do not exceed, in aggregate, the maximum amount authorized pursuant to section 5 of Assembly Bill No. 165, chapter 22, Statutes of Nevada 2015, at page 87, and a participating entity shall not accept grants on behalf of a pupil that, in aggregate, exceed that maximum amount.

Sec. 10. 1. *To be eligible to receive a grant on behalf of a pupil through the Nevada Educational Choice Scholarship Program, a school must register with the Department on a form prescribed by the Superintendent of Public Instruction.*

2. The Department will maintain a directory of each school that registers pursuant to subsection 1 on its Internet website.

Sec. 11. *1. At least once each school year, each registered private school shall administer at least one nationally norm-referenced test that has been approved by the Department pursuant to subsection 2 to each pupil on behalf of whom a grant is provided pursuant to section 5 of Assembly Bill No. 165, chapter 22, Statutes of Nevada 2015, at page 87. The registered private school must include the results of the test in the record of the academic progress of the pupil that the school is required to maintain pursuant to subsection 5 of section 5 of Assembly Bill No. 165, chapter 22, Statutes of Nevada 2015, at page 87.*

2. The Department will approve a nationally norm-referenced test for administration to pupils on behalf of whom grants are awarded if:

(a) The test has a reliability coefficient of at least 0.8 measuring the internal consistency of the test;

(b) The test has high validity as 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 have been conducted on the test within the immediately preceding 10 years; and

(d) The test serves as a measure of pupil achievement in core academic areas for pupils enrolled in kindergarten through grade 12.

3. The Department will maintain a list of each test that is approved pursuant to subsection 2.

Sec. 12. 1. By not later than August 15, October 15, January 15 and March 15 of each year, each school that is registered pursuant to section 10 of this regulation shall submit to the Department electronically a list of each pupil on behalf of whom the school received money from a grant for the previous quarter pursuant to section 5 of Assembly Bill No. 165, chapter 22, Statutes of Nevada 2015, at page 87. The electronic list must include, for each grant:

(a) Demographic information for each pupil on behalf of whom grant money is received, including the name, date of birth, grade level, gender and race or ethnicity of the pupil and the name and address of the parent or guardian of the pupil;

(b) The name of each scholarship organization that awarded a grant to the school on behalf of a pupil and the amount of each grant; and

(c) The manner in which money from each grant has been used, including, without limitation, any portion of such money that has been used to pay for:

(I) Tuition and fees charged by the school; and

(II) Transportation to and from the school.

2. The Department will collect the records of academic progress that each school that is registered pursuant to section 10 of this regulation is required to maintain pursuant to subsection 5 of section 5 of Assembly Bill No. 165, chapter 22, Statutes of Nevada 2015, at page 87, and aggregate the information contained in the records. By not later than December 15 of each even-numbered year, the Department will submit a report containing the aggregated information to the Governor, the State Board and the Director of the Legislative Counsel Bureau. The Department will not report information in a manner that discloses personally identifiable information of a pupil.

Sec. 13. 1. A person may file a complaint of a violation of state law or regulation concerning the Nevada Educational Choice Scholarship Program with the Superintendent of Public Instruction by mailing the complaint to:

Superintendent of Public Instruction

700 East Fifth Street

Carson City, Nevada 89701

2. An initial complaint filed pursuant to subsection 1 must include, without limitation, the name, telephone number and address of the complainant and the description of the alleged violation.

3. After a complaint is received, the Department will review the complaint for legal sufficiency and may request additional information from the complainant and any interested party. If, as a result of this review, the Superintendent of Public Instruction determines that:

(a) No further action is required, he or she may close the complaint.

(b) The complaint may have merit, the Department may:

(1) Conduct any further investigation it deems necessary and appropriate;

(2) Forward the complaint and the results of the review and any investigation to the Attorney General or a law enforcement agency for a criminal investigation;

(3) Issue a letter of admonition to the person or governmental agency that committed the violation; or

(4) After providing notice and the opportunity for a hearing to the person or governmental agency accused of the violation:

(I) Revoke the right of the person or governmental agency to participate in the Nevada Educational Choice Scholarship Program; or

(II) Find that a grant has been awarded in error and require money to be returned to the Department of Taxation.