

ADOPTED REGULATION OF THE OFFICE OF THE STATE TREASURER

LCB FILE No. R061-15

Authority: §§1-27, SB 302 (2015).

A REGULATION relating to education; providing for the establishment of education savings accounts; providing requirements concerning the application for education savings accounts; providing standards for certain private financial managements firms who manage education savings accounts; providing requirements for the application to become a participating entity; and providing other matters properly relating thereto.

Sec. 1. Chapter ____ of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 41, inclusive, of this regulation.

Sec. 2. *The provisions of sections 2 to 41, inclusive, may be cited as the Education Savings Account Regulations.*

Sec. 3.

1. *The purposes of sections 4 to 41, inclusive, are:*
 - (a) *To implement the intent of the legislature contained in SB 302 (2015) to provide parents with choices as to how his or her child shall be educated;*
 - (b) *To provide certain funds to a parent so that he or she may make the individual choice that best meets the educational needs of his or her child;*
 - (c) *To make these funds available for use to the most broad segment of parents permitted within the limitations contained in SB 302 (2015);*
2. *For the accomplishment of these purposes, the provisions of sections 4 to 41, inclusive, must be broadly and liberally construed.*

Sec. 4. *As used in sections 5 to 41, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 5 to 15, inclusive, have the meanings ascribed to them in those sections.*

Sec. 5. *“Administrator” means the person who directs or manages the affairs of a private school.*

Sec. 6. *“Agreement” means the written contract between the parent of a qualified student and Treasurer entered into pursuant to subsection 1 of section 7 of SB 302 (2015).*

Sec. 7. *“Applicant” includes any student seeking an Education Savings Account.*

Sec. 8. *“Education savings account” has the meaning ascribed to it in Section 3 of SB 302 (2015);*

Sec. 9. *“Qualified Student” means a student who meets the requirements contained in section 7 of SB 302 (2015) to have an education savings account established for him or her pursuant to subsection 2 of section 7 of SB 302 (2015).*

Sec. 10. *“Parent” has the meaning ascribed to it in Section 4 of SB 302 (2015).*

Sec. 11. *“Participating entity” has the meaning ascribed to it in Section 5 of SB 302 (2015).*

Sec. 12. *“Private school” has the meaning ascribed to it in NRS 394.103.*

Sec. 13. *“Reasonable cause to believe” means that in light of all the surrounding facts and circumstances which are known or which reasonably should be known to a reasonable person at the time, a reasonable person would believe, under those facts and circumstances, that an act, transaction, event, situation or condition exists, is occurring or has occurred.*

Sec. 14. *“Treasurer” means the office of the State Treasurer.*

Sec. 15. *“Tuition” as referenced in SB 302 means only the cost for enrolling a full-time student into a participating entity, except for any amounts charged:*

- 1. As application fees, entrance fees, parking fees, technology fees, athletic fees or studio fees, laboratory fees, surcharges or other fees imposed for specific courses, whether or not charged to all students; and*
- 2. For books, supplies, room or board, whether or not charged to all students.*

Sec. 16. *The Treasurer shall establish the dates for open enrollment, during which a parent may apply to determine if his or her child is an eligible student, on an annual basis. The Treasurer shall announce the dates for open enrollment for the upcoming school year during the 4th quarter of the preceding fiscal year.*

Sec. 17.

- 1. The parent of a child seeking to apply for an education savings account must submit, during an open enrollment period, to the Treasurer an application in the manner and on a form prescribed by the Treasurer.*
- 2. Upon receipt of an application on behalf of a child to apply for an education savings account, the Treasurer shall review and send to the parent, within 30 days, notification of whether his or her application for an education savings account has been approved or denied. If an application has been denied, the Treasurer shall provide the parents written notification by certified mail, or by electronic communication of the reason or reasons for the denial. If an application has been approved, that child classifies as a qualified student.*

Sec. 18. *A child who is required to attend a public school pursuant to NRS 392.040, and who applies during an open enrollment period will be approved as a qualified student if:*

- 1. The child submits evidence that he or she is enrolled in a public school, including charter schools, for at least 100 school days, without interruption, immediately*

preceding the receipt of an application to establish an education savings account by the Treasurer; or

- 2. The child submits evidence that he or she has been enrolled in one or more classes (including a class or classes offered online), at a public or charter school, pursuant to NRS 392.070(3) for at least 100 school days, without interruption, immediately preceding the receipt of an application to establish an education savings account by the Treasurer.*

Sec. 19. *If a child becomes a qualified student, the parent of the qualified student must enter into an agreement with the Treasurer. Once a parent of a qualified student enters into the agreement, the Treasurer shall open an education savings account on behalf of the qualified student at a private financial management firm, in accordance with section 7 of SB 302 (2015).*

Sec. 20. *For the purposes of section 7 of SB 302 (2015) and of section 17 of this regulation, the Treasurer shall interpret the term “without interruption” to mean attendance in a public or charter school without more than 15 consecutive school days absent from that school. The Treasurer may waive the requirement that a student not be absent for more than 15 consecutive days under extraordinary circumstances, such as, but not limited to:*

- 1. The death of a family member of the student; or*
- 2. The student suffered from a serious medical condition.*

Sec. 21. *Pursuant to paragraph (d) of subsection 1 of section 7 of SB 302 (2015), the Treasurer shall freeze money in the education savings account during any break in the school year, including any breaks between school years, if the parent of the qualified student only identified one participating entity.*

Sec. 22. *For the purposes of paragraph (d) of subsection 1 of section 7 of SB 302 (2015) and purposes of section 21 of this regulation, the Treasurer shall interpret the term “break in the school year” as used in that paragraph to mean any point in the calendar year where there are 15 or more consecutive days without required school attendance.*

Sec. 23. *For the purposes of section 17, the Treasurer shall not consider participation in after school extracurricular activities as counting toward the 100-day requirement.*

Sec. 24. *The Treasurer shall deposit the money for each grant into an education savings account in quarterly installments, pursuant to section 8 of SB 302 (2015), to be made during the first week of each of the following months:*

- 1. January;*
- 2. April;*
- 3. July; and*
- 4. October.*

Sec. 25. *The Treasurer shall establish, through guidance memorandum sent via electronic communication to each parent with an existing education savings account, payment processes for qualifying expenditures made by a parent pursuant to Section 9 of SB 302 (2015).*

Sec. 26. *The Treasurer shall appoint a committee that will determine whether certain expenditures meet the requirements of SB 302 (2015) and sections 16 through 41 of this regulation. The Treasurer may refer questionable expenditures to the committee and the committee may deny or approve certain expenditures by a majority vote.*

Sec. 27.

1. *The committee appointed by the Treasurer pursuant to section 26 of this regulation shall be composed of 5 members who are to serve as committee members for one calendar year as follows:*
 - (a) *Two members who are parents of qualified students who have educational savings accounts established and who reside in Clark County;*
 - (b) *One member who is a parent of qualified student(s) who have educational savings account(s) established and who reside in Washoe County;*
 - (c) *One member who is a parent of qualified student(s) who have educational savings account(s) established and who reside in counties that are not Clark or Washoe counties; and*
 - (d) *The Treasurer's Chief of Staff, or his designee.*
2. *The Treasurer's Chief of Staff shall serve as the Chairperson for the committee.*
3. *The Treasurer's Chief of Staff shall only vote if there is a tie between the other four members of the committee.*
4. *The committee members serve at the pleasure of the Treasurer and may be reappointed at the end of his or her term by the Treasurer.*
5. *The Chairman may call a meeting at any time with not less than 3 days notice in compliance with open meeting statutes and regulations.*

Sec. 28.

1. *A prospective participating entity that attempts to be classified as a participating entity must submit to the Treasurer an application in the manner and on a form prescribed by the Treasurer.*
2. *If a prospective participating entity is a tutor, tutoring facility or a program of distance education, that prospective participating entity must submit evidence that demonstrates that it qualifies as a participating entity pursuant to section 5 of SB 302 (2015), including, but not limited to, whether it has previously been accredited by any state or nationally recognized accreditation agencies, on forms prescribed by the Treasurer, to the Treasurer before it may be classified as a participating entity.*

Sec. 29. *A participating entity shall provide a record of the academic progress of a qualified student, which includes, without limitation, the results of at least one nationally norm-referenced test that has been approved by the Department of Education to the Treasurer on an annual basis. The Treasurer may disqualify a participating entity if the Treasurer has reasonable cause to believe that the qualified student is not making reasonable academic progress through the participating entity. "Reasonable academic progress" shall be defined annually by the Treasurer.*

Sec. 30. *If the Treasurer approves an application of a prospective participating entity, the Treasurer shall provide the administrator or other agent of the prospective participating entity with written notification or by electronic communication, of the approval.*

Sec. 31. *If more than 10 education savings accounts name a participating entity as potentially receiving funds from an education savings account, prior to the next quarterly funding installment, the participating entity shall be required to:*

- 1. Post a surety bond in the amount equal to the amount reasonably expected to be paid as determined by the Treasurer to the participating entity; or*
- 2. Provide audited financial documentation to the Treasurer that the participating entity has unencumbered assets sufficient to pay the Treasurer the amount described in subsection 1.*

Sec. 32. *If the Treasurer denies an application of a prospective participating entity, the Treasurer shall provide the administrator or other agent of the prospective participating entity with written notice of its denial by certified mail.*

Sec. 33. *The Treasurer shall, in accordance with section 7 of SB 302 (2015) and, when applicable, in compliance with NRS chapter 333, contract with one or more private financial management firms, each of which shall be a financial institution (1) licensed by the State to accept deposits or (2) authorized to accept deposits in the State as a Federally chartered bank, credit union or savings and loan association .*

Sec. 34. *A contract entered into by the Treasurer and a selected private financial management firm in accordance with section 33 shall contain termination and market performance clauses authorizing the Treasurer to terminate the contract based on legal, performance and qualitative criteria.*

Sec. 35. *In managing the education savings accounts, the private financial management firm selected by the Treasurer shall:*

- 1. Maintain and manage education savings accounts;*
- 2. Comply with generally accepted accounting principles; and*
- 3. Be insured by the Federal Deposit Insurance Corporation or be a credit union in this State whose deposits are insured by the National Credit Union Share Insurance Fund or by a private insurer approved pursuant to NRS 678.755.*

Sec. 36. *If a parent of a qualified student chooses to terminate the agreement prior to the renewal date of the agreement, the parent must provide written notice to the Treasurer, by certified mail. This notice must be received by the Treasurer prior to the last business day of the calendar quarter for which the last deposit was made to enable the student to return to a public or charter school.*

Sec. 37. *If there are any funds remaining in the education saving account after the termination of the agreement, the remaining funds will be returned to the State General Fund within 10 business days.*

Sec. 38. *The Treasurer shall provide a list of any terminated agreements to the Department of Education no less than quarterly.*

Sec. 39. *If the Treasurer has reasonable cause to believe that a qualified student no longer resides in the State, the Treasurer shall freeze the education saving account created for that qualified student. The Treasurer shall send a written notice by certified mail to the parent of the qualified student, requesting information concerning the residency status of the qualified student. The qualified student will be required to resubmit proof of residency prior to the reactivation of the education saving account. If the qualified student fails to respond to the Treasurer within 15 calendar days, the Treasurer shall terminate the education savings account and return any remaining funds to the State General Fund.*

Sec. 40. *The Treasurer shall conduct or contract for annual audits of at least ten percent of randomly selected education savings accounts to ensure compliance with SB 302 (2015) and Sections 16 to 41, inclusive, of this regulation. If five percent or more of the randomly selected ten percent of educational savings accounts are found not to be in compliance, the Treasurer shall conduct or contract for an audit of all educational savings accounts to ensure compliance with SB 302 (2015) and Sections 16 to 41, inclusive.*

Sec. 41.

- 1. The Treasurer shall terminate the agreement and freeze the education savings account of any parent or qualified student if the parent or qualified student fails to comply with the terms of the agreement or applicable laws or regulations, or substantially misuses funds.*
- 2. The Treasurer shall send certified written notice to the parent stating the reason for termination of the agreement.*
- 3. A parent may petition the Treasurer for redetermination of the Treasurer's termination of the agreement by providing the Treasurer, within 5 business days of receipt of the Treasurer's notice, a written explanation why the Treasurer was incorrect in determining the parent or qualified student did not comply with the terms of the agreement or applicable laws or regulations, or there was a substantial misuse of the funds.*
- 4. The Treasurer shall review the written explanation and issue a redetermination letter to the parent within 5 business days of receipt of the explanation letter.*
 - (a) If the Treasurer overturns its prior action, the Treasurer shall immediately reinstate the agreement and unfreeze the education savings account.*
 - (b) If the Treasurer does not overturn its prior action, the Treasurer shall, pursuant to Section 10, subsection 3 of SB 302 (2015) give notice of his or her determination to the Attorney General or the district attorney of the county in which the parent resides.*

Sec. 42. Sections 1 through 23 and 15 through 41 become effective upon adoption. Section 24 becomes effective on April 1, 2016.