

PROPOSED REGULATION OF THE STATE TREASURER

LCB File No. R061-15

September 2, 2015

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

AUTHORITY: §§1-4, section 15 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at page 1831; §§5-7, 9, 12 and 13, sections 7 and 15 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at pages 1826 and 1831; §8 and 11, sections 9 and 15 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at pages 1828 and 1831; §10, 15 and 19, sections 7, 8 and 15 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at pages 1826, 1827 and 1831; §§14 and 16, sections 10 and 15 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at pages 1829 and 1831; §§17 and 18, sections 11 and 15 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at pages 1829 and 1831.

A REGULATION relating to education; prescribing the requirements and procedures for applying to establish and establishing an education savings account; establishing the Committee to Review Payments to determine whether certain expenditures of money from an education savings account are authorized; prescribing the procedure by which an agreement to establish an education savings account may be terminated; requiring the annual audit of certain education savings accounts; establishing the requirements to become a participating entity; prescribing the procedure by which the State Treasurer may terminate the participation of an entity under certain circumstances; requiring certain participating entities to post a bond or provide certain documentation to the State Treasurer; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law allows the parents of a child who is required by law to attend public school and who has been enrolled in a public school for not less than 100 consecutive school days without interruption to establish an education savings account for the child by entering into an agreement with the State Treasurer. (Section 7 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, p. 1826) If a parent enters into such an agreement, a grant of money on behalf of the child must be deposited into the education savings account. (Section 8 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, p. 1827) The parent may use money in the education savings account to pay certain expenses to enable the child to receive instruction from a participating entity, including tuition at a private school, a program of distance education or a college or university. (Section 9 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at p. 1828) **Section 8** of this regulation clarifies the expenses that are considered tuition. If an expense is considered tuition or is another expense authorized in statute, a parent may use money

from an education savings account to pay the expense. (Section 9 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at p. 1828)

Existing law requires the State Treasurer to freeze an education savings account during any break in the school year. (Section 7 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, p. 1826) **Section 7** of this regulation provides that any period of 15 or more consecutive school days during which a child for whom an education savings account has been established is not required to receive instruction will be considered a “break in the school year.”

Section 9 of this regulation requires a parent who wishes to establish an education savings account on behalf of his or her child to submit an application to the State Treasurer during the open enrollment period prescribed by the State Treasurer. **Section 9** also provides that the State Treasurer will approve an application made on behalf of any child who: (1) has been enrolled in a public school or participated in one or more classes at a public school for the 100 school days immediately preceding the date on which the application is received; and (2) unless the State Treasurer authorizes a waiver for extraordinary circumstances, has not been absent from the public school for more than 15 consecutive school days during that period of 100 school days.

Section 10 of this regulation allows a parent whose application has been approved to enter into an agreement with the State Treasurer and establish an education savings account. **Section 10** also prescribes the dates on which the State Treasurer will deposit grants of money into education savings accounts. Finally, **section 10** states that the State Treasurer will provide a memorandum to each parent who establishes an education savings account that sets forth the procedures to be followed by a parent when making payments from the education savings account. **Section 11** of this regulation establishes the Committee to Review Payments and authorizes the State Treasurer to submit a request to the Committee for a determination on whether an expenditure of money from an education savings account is authorized.

Existing law provides for the early termination of an agreement to establish an education savings account before the account is scheduled to expire or be renewed. If an agreement is terminated early, existing law prohibits the child from receiving instruction from a public school, other than instruction that is authorized under the agreement, until the end of the period for which the last deposit was made into the education savings account. (Section 7 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, p. 1826) **Section 12** of this regulation authorizes a parent to terminate an agreement by providing written notice to the State Treasurer. If a parent provides such notice by not later than the last business day of the calendar quarter for which the most recent deposit was made into the education savings account, **section 12** authorizes the child to enroll in a public school on the first school day of the next calendar quarter. **Section 13** of this regulation provides that, if the State Treasurer reasonably believes that a child for whom an education savings account has been established no longer resides in this State, the State Treasurer will freeze the account and ask the parent of the child for proof that the child resides in this State. If a parent fails to provide such proof, **section 13** provides that the State Treasurer will dissolve the account.

Existing law requires an education savings account to be audited randomly each year by a certified or licensed public accountant. If the State Treasurer determines that there has been a

violation of law, regulation or the agreement pursuant to which the account was established or a substantial misuse of funds, the State Treasurer is authorized to freeze or dissolve the account. (Section 10 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, p. 1829) **Section 14** of this regulation provides for the annual random audit of 10 percent of education savings accounts in existence on January 1 of that calendar year. If 5 percent or more of the audits reveal a violation of law, regulation or the agreement or a substantial misuse of funds, **section 14** requires all education savings accounts to be audited.

Section 15 of this regulation provides that: (1) the State Treasurer will quarterly provide to the Department of Education notice of all agreements that have been terminated; and (2) money remaining in an education savings account when an agreement is terminated or expires reverts to the State General Fund and must be transferred to the Fund within 10 days after the termination or expiration.

Existing law provides that an education savings account may only be maintained at a financial management firm qualified by the State Treasurer. (Section 7 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, p. 1826) **Section 16** of this regulation provides that the State Treasurer will enter into a contract with one or more financial management firms that meet certain qualifications to manage education savings accounts.

Existing law provides that a private school, a college or university, a program of distance education, a tutor or an accredited tutoring facility or the parent of a child can become eligible to receive money from an education savings account by applying to the State Treasurer. (Section 11 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, p. 1829) **Section 17** of this regulation requires an application submitted by any entity other than the parent of a child to include proof that the entity is qualified to receive such money.

Existing law authorizes the State Treasurer to refuse to allow a participating entity that receives money from an education savings account to continue receiving such money if the entity has failed to provide any educational services required by law to the child for whom the entity receives such money. (Section 11 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, p. 1829) **Section 17** provides that, if the State Treasurer determines that a participating entity may have failed to provide such educational services, the State Treasurer will conduct an investigation. If the investigation reveals that the participating entity has failed to provide such services, **section 17** provides that the State Treasurer may, after providing notice and the opportunity for a hearing, terminate the entity's participation in the program.

Existing law authorizes the State Treasurer to require a participating entity that is reasonably expected to receive more than \$50,000 in payments from education savings accounts during any school year to: (1) post a surety bond in an amount equal to the amount the entity receives from education savings accounts; or (2) provide evidence that the entity has unencumbered assets sufficient to pay an amount equal to the amount that it receives from education savings accounts. (Section 11 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, p. 1829) **Section 18** of this regulation provides that such a reasonable expectation will exist and a participating entity will be required to comply with those requirements if more than 10 agreements authorize the entity to receive money from an education savings account.

Section 1. Chapter 385 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 18, inclusive, of this regulation.

Sec. 2. *The provisions of sections 2 to 18, inclusive, of this regulation may be cited as the Education Savings Account Regulations.*

Sec. 3. 1. *The purposes of sections 2 to 18, inclusive, of this regulation are to:*

(a) Award grants of money made available pursuant to section 8 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at page 1827, on behalf of children who qualify for such grants so that the parents of such children have choices concerning the education of the children; and

(b) Make the grants of money described in paragraph (a) available to be awarded on behalf of the largest number of children allowable under sections 2 to 15, inclusive, of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at pages 1826-31.

2. For the accomplishment of these purposes, the provisions of sections 2 to 18, inclusive, of this regulation must be broadly and liberally construed.

Sec. 4. *As used in sections 2 to 18, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 5 and 6 of this regulation have the meanings ascribed to them in those sections.*

Sec. 5. *“Agreement” means a written agreement between a parent and the State Treasurer to establish an education savings account entered into pursuant to section 7 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at page 1826.*

Sec. 6. *“School day” means any day, including a partial day, that pupils are required to attend school for instructional purposes.*

Sec. 7. For the purpose of carrying out the provisions of section 7 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at page 1826, the State Treasurer will construe the term “break in the school year” to mean 15 or more consecutive days that are not school days.

Sec. 8. For the purpose of carrying out the provisions of sections 2 to 15, inclusive, of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at pages 1826-31, the State Treasurer will construe the term “tuition” to include only the cost of enrolling a pupil in a school or program of distance education that is a participating entity, except that the term does not include:

1. An application fee, entrance fee, parking fee, technology fee, athletic fee, studio fee, laboratory fee or any fee or surcharge imposed in connection with a specific course, whether or not the fee or surcharge is imposed on all pupils enrolled in the participating entity or the course; or

2. A charge imposed for books, supplies or room and board, whether or not the charge is imposed on all pupils enrolled in the participating entity.

Sec. 9. 1. A parent who wishes to establish an education savings account on behalf of his or her child must submit an application to the State Treasurer on a form made available by the State Treasurer during the open enrollment period established pursuant to subsection 2.

2. At least one time each year, the State Treasurer will establish an open enrollment period during which the State Treasurer will accept applications to establish an education savings account. The State Treasurer will announce the dates of the open enrollment period during the fourth quarter of the calendar year immediately preceding the school year for which the open enrollment period applies.

3. The State Treasurer will review each application submitted pursuant to subsection 1 and, by not later than 30 days after the date on which the application is received, notify the applicant by certified mail or electronic communication whether the application has been approved or denied. If the application is denied, the notification must include, without limitation, the reasons for the denial.

4. Except as otherwise provided in subsection 5, the State Treasurer will approve an application if the applicant submits proof that the child on behalf of whom the application is submitted, for the 100 school days immediately preceding the date on which the application is received:

(a) Was enrolled in a public school; or

(b) Participated in one or more classes at a public school pursuant to subsection 5 of NRS 386.580 or subsection 3 of NRS 392.070. The State Treasurer will not approve an application submitted on behalf of a pupil who has only participated in after-school extracurricular activities at a public school.

5. Except as otherwise provided in subsection 6, the State Treasurer will not approve an application submitted on behalf of a pupil who was absent from the public school or class, as applicable, in which the pupil is enrolled for more than 15 consecutive school days during the 100 school days immediately preceding the date on which the application is received.

6. An applicant may apply, in writing, to the State Treasurer for a waiver of the provisions of subsection 5. Upon a showing that an absence of more than 15 consecutive school days was caused by extraordinary circumstances, which may include, without limitation, the death of a family member of the pupil or a serious medical condition, the State Treasurer may grant the waiver.

Sec. 10. 1. *If the State Treasurer approves an application submitted pursuant to section 9 of this regulation, the State Treasurer will enter into an agreement with the parent who submitted the application. The agreement must designate the participating entities that will be paid from money in the education savings account established pursuant to the agreement. After a parent enters into an agreement with the State Treasurer, the parent may open an education savings account at a financial management firm with which the State Treasurer has entered into a contract pursuant to section 16 of this regulation.*

2. The State Treasurer will deposit money into each education savings account in equal quarterly installments on the dates on which the Superintendent of Public Instruction apportions the State Distributive School Account in the State General Fund pursuant to NRS 387.124.

3. The State Treasurer will provide each parent who establishes an education savings account with a memorandum outlining the procedures to follow in making payments from the account.

Sec. 11. 1. *There is hereby created the Committee to Review Payments consisting of seven members as follows:*

- (a) The State Treasurer or his or her designee;*
- (b) Two voting members appointed by the State Treasurer who are parents of children on behalf of whom an education savings account has been established and who reside in Clark County;*
- (c) One voting member appointed by the State Treasurer who is the parent of a child on behalf of whom an education savings account has been established and who resides in Washoe County;*

(d) One voting member appointed by the State Treasurer who is the parent of a child on behalf of whom an education savings account has been established and who resides in a county other than Clark County or Washoe County; and

(e) Two nonvoting advisory members who are educators or administrators at a participating entity, other than the parent of a child.

2. The members of the Committee serve at the pleasure of the State Treasurer. A member of the Committee serves for a term of 1 year and may be reappointed.

3. The State Treasurer or his or her designee will serve as Chair of the Committee and will vote only in the case of a tie.

4. The State Treasurer may request the Committee to determine whether an expenditure of money from an education savings account is authorized pursuant to section 9 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at page 1828.

5. The Committee shall:

(a) Meet at the call of the Chair upon the receipt of a request to determine whether an expenditure of money from an education savings account submitted to the Committee by the State Treasurer pursuant to subsection 4 is authorized pursuant to section 9 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at page 1828.

(b) Comply with the provisions of chapter 241 of NRS.

6. As used in this section, “administrator” means the person who directs or manages the affairs of a private school, as defined in NRS 394.103.

Sec. 12. *1. The parent of a child on behalf of whom an education savings account has been established may terminate an agreement with the State Treasurer at any time by providing written notice by certified mail to the State Treasurer.*

2. If an agreement is terminated pursuant to subsection 1, the child on behalf of whom the education savings account was established may enroll in a public school on the first day after the expiration of the quarter for which the last deposit was made into the education savings account of the child.

Sec. 13. *If the State Treasurer reasonably believes that a child on behalf of whom an education savings account has been established no longer resides in this State, the State Treasurer will freeze the education savings account and send a written notice by certified mail to the parent of the child requesting the parent to submit proof that the child resides in this State. If the parent:*

1. Provides satisfactory proof by not later than 15 business days after the date on which the notice is received, the State Treasurer will remove the freeze on the education savings account.

2. Fails to provide satisfactory proof by not later than 15 days after the date of the notice, the State Treasurer will terminate the agreement pursuant to which the education savings account was established and dissolve the education savings account.

Sec. 14. *1. Each calendar year, the State Treasurer will randomly select not fewer than 10 percent of the education savings accounts in existence on January 1 of that year to be audited.*

2. The State Treasurer will cause an audit to be conducted of each education savings account then in existence if 5 percent or more of the audits conducted pursuant to subsection 1 indicate any of the following irregularities:

(a) Failure to comply with an agreement pursuant to which an education savings account was established, sections 2 to 15, inclusive, of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at pages 1826-31, or sections 2 to 18, inclusive, of this regulation; or

(b) A substantial misuse of money in an education savings account.

3. If the State Treasurer determines, based on an audit conducted pursuant to subsection 1 or 2, or for any other reason, that an irregularity described in subsection 2 has occurred, the State Treasurer will:

(a) Freeze the education savings account; and

(b) Send to the parent of the child on behalf of whom the education savings account was established by certified mail written notice of the reason that the account is frozen and the manner in which to petition for reconsideration as set forth in subsections 4 and 5.

4. A parent who receives notice that the State Treasurer has placed a freeze on an education savings account pursuant to subsection 3 may submit a petition for reconsideration by providing to the State Treasurer, not later than 5 business days after receiving the notice, a written explanation of the reasons that the parent believes the determination of the State Treasurer was incorrect. If the State Treasurer does not receive such a petition within that time, the State Treasurer will dissolve the education savings account and terminate the agreement pursuant to which the account was established.

5. Upon receipt of a petition pursuant to subsection 4, the State Treasurer will review the written explanation included in the petition and determine whether an irregularity described in subsection 2 occurred. Not later than 5 business days after receiving the petition, the State Treasurer will notify the parent of the determination. If the State Treasurer determines that:

(a) An irregularity occurred, the State Treasurer will dissolve the education savings account and terminate the agreement pursuant to which the education savings account was established.

(b) No irregularity occurred, the State Treasurer will remove the freeze on the education savings account.

Sec. 15. 1. *Each calendar quarter, the State Treasurer will provide to the Department a list of each child for whom an agreement pursuant to which an education savings account was established has been terminated for any reason.*

2. If any money remains in an education savings account after the agreement pursuant to which the account was established is terminated or expires, the money in the account reverts and must be transferred to the State General Fund by the State Treasurer by not later than 10 days after the date of the termination or expiration.

Sec. 16. 1. *The State Treasurer will enter into a contract to manage education savings accounts with one or more financial management firms. Any such firm must:*

(a) Be authorized to accept deposits under the laws of this State or the United States; and
(b) Insure the accounts that it maintains with the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or a private insurer approved pursuant to NRS 678.755.

2. A contract entered into pursuant to subsection 1 must include a provision allowing the State Treasurer to terminate the contract if:

(a) The financial management firm fails to comply with applicable law or the provisions of the contract; or

(b) The State Treasurer determines that the financial management firm is not performing adequately.

3. A financial management firm with whom the State Treasurer enters into a contract pursuant to subsection 1 shall maintain and manage education savings accounts in compliance with generally accepted accounting principles.

Sec. 17. 1. To become a participating entity, an entity must submit an application to the State Treasurer on a form made available by the State Treasurer.

2. Each applicant, other than the parent of a child, must submit proof that the applicant is eligible to become a participating entity pursuant to section 11 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at page 1829. If an applicant is a tutor or tutoring facility, such proof must include, without limitation, proof that the applicant is accredited by a state, regional or national accrediting agency.

3. If the State Treasurer:

(a) Approves an application, the State Treasurer will provide notice to the applicant through written or electronic communication to the person designated on the application.

(b) Does not approve an application, the State Treasurer will provide notice to the applicant by certified mail to the person designated on the application.

4. If the State Treasurer determines, based on the results of the examinations administered pursuant to section 12 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at page 1830, or for any other reason, that a participating entity that accepts payments from the educational savings account of a child may have failed to provide an educational service required by law to the child, the State Treasurer will conduct an investigation. If, after conducting an investigation, the State Treasurer determines that the participating entity has

failed to provide an educational service required by law to the child, the State Treasurer may, after providing notice and the opportunity for a hearing, refuse to allow the entity to continue as a participating entity.

Sec. 18. *1. If the State Treasurer reasonably expects that a participating entity will receive, from payments made from education savings accounts, an amount that exceeds \$50,000 for a school year, the State Treasurer will:*

(a) Determine the amount reasonably expected to be paid to such a participating entity from education savings accounts during the school year; and

(b) Provide notice to the participating entity of the amount determined pursuant to paragraph (a) and the requirements set forth in subsection 2.

2. A participating entity that receives a notice pursuant to subsection 1 shall, not more than 10 business days after the next deposit of money into education savings accounts pursuant to section 10 of this regulation:

(a) Post a surety bond in an amount equal to the amount determined by the State Treasurer pursuant to subsection 1; or

(b) Provide to the State Treasurer documentation of a financial audit demonstrating that the participating entity has unencumbered assets sufficient to pay the State Treasurer an amount equal to the amount determined by the State Treasurer pursuant to subsection 1.

3. For the purposes of this section and section 11 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at page 1829, a participating entity will be deemed by the State Treasurer to be reasonably expected to receive more than \$50,000 in a school year from education savings accounts if, at the beginning of the school year, 10 or more agreements authorize the participating entity to receive money from an education savings account.

Sec. 19. Notwithstanding the provisions of section 10 of this regulation, the State Treasurer will begin making deposits of money into education savings accounts pursuant to subsection 2 of section 10 of this regulation on or before May 1, 2016.