

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

**LCB File No. R106-15**

December 21, 2015

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

AUTHORITY: §§1-7, NRS 385.080 and 388.405; §§8-15, NRS 385.080.

A REGULATION relating to education; prescribing requirements for a policy to teach English to pupils who are limited English proficient; replacing the term “English language learner” with the equivalent term “pupil who is limited English proficient”; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

Existing law requires: (1) the board of trustees of each school district to develop a policy for the instruction to teach English to pupils who are limited English proficient; and (2) the State Board of Education to adopt regulations prescribing criteria for such policies. (NRS 388.405, 388.407) **Sections 2-7** of this regulation prescribe requirements for such a policy. **Sections 8-15** of this regulation replace the term “English language learner” with the equivalent term “pupil who is limited English proficient” so that existing regulations use the same terminology used in state and federal law.

**Section 1.** Chapter 388 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this regulation.

**Sec. 2. 1.** *The board of trustees of each school district shall evaluate relevant research and consult with teachers, administrators, parents, legal guardians and pupils when developing a policy for the instruction to teach English to pupils who are limited English proficient pursuant to NRS 388.407.*

*2. A policy for the instruction to teach English to pupils who are limited English proficient developed pursuant to NRS 388.407 must include, without limitation, the content set forth in sections 3 to 7, inclusive, of this regulation.*

*Sec. 3. A policy for the instruction to teach English to pupils who are limited English proficient developed pursuant to NRS 388.407 must, without limitation:*

*1. Include a mission statement that:*

*(a) Is consistent with state and federal statutes, regulations, policies and guidelines;*

*(b) Describes the comprehensive approach that will be used by the school district to serve pupils who are limited English proficient; and*

*(c) Addresses the manner in which services provided to pupils who are limited English proficient are aligned and integrated with the priorities, goals and plans of the school district.*

*2. Delineate the desired outcomes and expectations of the school district concerning the proficiency in English and academic achievement of pupils who are limited English proficient.*

*3. Use data, including, without limitation, data reported pursuant to state and federal accountability measures for current and former pupils who are limited English proficient, to:*

*(a) Design the program for the instruction to teach English to pupils who are limited English proficient;*

*(b) Allocate resources; and*

*(c) Determine instructional practices.*

*4. Ensure equitable access to and participation by pupils who are limited English proficient in programs of special education for pupils with disabilities or gifted and talented pupils and include safeguards to prevent the underidentification and overidentification of pupils who are limited English proficient for participation in such programs.*

*5. Provide for an evaluation of the efficacy of specific practices and accommodations used to provide services to pupils who are limited English proficient.*

*6. Use definitions of terms and acronyms in a manner which is consistent with state and federal statutes, regulations, policies and guidelines.*

*7. Include a copy of any existing plan or guide for the delivery of services by the school district to pupils.*

**Sec. 4.** *A policy for the instruction to teach English to pupils who are limited English proficient developed pursuant to NRS 388.407 must, without limitation:*

*1. Provide for the initial identification of pupils who are limited English proficient by:*

*(a) Identifying the primary language of each pupil who enrolls in a school within the school district pursuant to NAC 388.620; and*

*(b) Assessing the proficiency of a pupil whose primary language is not English pursuant to NAC 388.625.*

*2. Provide for the periodic assessment of pupils who are limited English proficient by:*

*(a) Formally evaluating the proficiency in English and academic achievement of pupils who are limited English proficient, including, without limitation, by annually administering the assessment prescribed by the State Board of Education pursuant to subsection 3 of NRS 389.011; and*

*(b) Informally evaluating the proficiency in English and academic achievement of pupils who are limited English proficient.*

*3. Provide for the reassessment of a pupil who is classified as limited English proficient pursuant to NAC 388.645.*

*Sec. 5. A policy for the instruction to teach English to pupils who are limited English proficient developed pursuant to NRS 388.407 must, without limitation:*

*1. Ensure that human resources decisions, including, without limitation, decisions concerning staffing, infrastructure, the delineation of roles and opportunities for collaboration, are made with the intent to eliminate gaps in achievement between those pupils who are limited English proficient and pupils who are proficient in English.*

*2. Identify professional development for teachers and administrators relating to pupils who are limited English proficient.*

*Sec. 6. A policy for the instruction to teach English to pupils who are limited English proficient developed pursuant to NRS 388.407 must, without limitation:*

*1. Provide for the selection of curriculum that is based on peer-reviewed research and considers the language development needs of pupils who are limited English proficient. Such curriculum must include, without limitation, high quality, rigorous instructional materials and practices that:*

*(a) Align with the standards of content and performance adopted by the State Board of Education pursuant to NRS 389.520, as amended by section 12 of Senate Bill No. 25, chapter 371, Statutes of Nevada 2015, at page 2096, and any model of instruction or method of delivering instruction identified by the school district; and*

*(b) Facilitate the development and acquisition of English and provide access to instruction appropriate for pupils who are limited English proficient at each grade level through the use of culturally relevant materials.*

*2. Identify the models of instruction and methods of delivering instruction that are used by the school district to eliminate gaps in achievement between those pupils who are limited English proficient and pupils who are proficient in English.*

**Sec. 7.** *A policy for the instruction to teach English to pupils who are limited English proficient developed pursuant to NRS 388.407 must, without limitation:*

*1. Provide opportunities for the parent or legal guardian of a pupil who is limited English proficient to participate in the program and specify the manner in which the school district will ensure the participation of parents or legal guardians and family engagement.*

*2. Require that any notification of the parent or legal guardian of a pupil who is limited English proficient prescribed by state or federal law or a policy adopted by the State Board of Education must be provided in the primary language of the parent or legal guardian, to the extent practicable.*

*3. Provide the parents or legal guardians of pupils who are limited English proficient with information regarding other programs that are designed to improve the language acquisition and academic achievement and proficiency of pupils who are limited English proficient and assist such parents and legal guardians in enrolling those pupils in such programs.*

**Sec. 8.** NAC 388.605 is hereby amended to read as follows:

388.605 “Bilingual program of instruction” means a program of instruction for ~~English language learners~~ *pupils who are limited English proficient* in which pupils are taught the English language and the content of other courses of study is taught using the pupils’ primary language.

**Sec. 9.** NAC 388.610 is hereby amended to read as follows:

388.610 ~~“English language learner”~~ *“Pupil who is limited English proficient”* means a pupil whose:

1. Primary language is not English;
2. Proficiency in English is below the average proficiency of pupils at the same age or grade level whose primary language is English; and
3. Probability of success in a classroom in which courses of study are taught only in English is impaired because of his or her limited proficiency in English.

**Sec. 10.** NAC 388.615 is hereby amended to read as follows:

388.615 “Program of instruction that teaches English as a second language” means a program of instruction for ~~an~~ *a pupil who is limited* English ~~language learner~~ *proficient* which:

1. Provides instruction in the English language and other courses of study using teaching techniques for acquiring English; and
2. Incorporates the cultural aspects of the pupil’s experiences in his or her instruction.

**Sec. 11.** NAC 388.625 is hereby amended to read as follows:

388.625 1. Each school district shall administer to a pupil whose primary language is not English and who is enrolled in:

(a) Kindergarten or any grade from grade 1 to 12, inclusive, an oral examination approved by the Department of Education to assess the proficiency of the pupil to speak and comprehend English. A pupil must be classified as ~~an~~ *limited* English ~~language learner~~ *proficient* if his or her score on the examination is below the score for a person who communicates fluently in English, as established by the publisher of the examination.

(b) Any grade from ~~{grade}~~ *grades* 2 to 12, inclusive, an examination approved by the Department to assess the proficiency of the pupil to read and write English. A pupil must be classified as ~~{an}~~ *limited* English ~~{language learner}~~ *proficient* if his or her score on the examination is below the score for a person who is competent in reading and writing English, as established by the publisher of the examination.

2. An assessment administered pursuant to this section must be completed within 60 days after the date on which the pupil enrolls in a school in the district for the first time.

3. An assessment of a pupil's proficiency to comprehend, speak, read and write English must be administered by a person who is proficient in English and who has successfully completed training in the administration and scoring of the examination required for the assessment.

**Sec. 12.** NAC 388.630 is hereby amended to read as follows:

388.630 1. Except as otherwise provided in this subsection, each school district shall administer to a pupil who is classified as ~~{an}~~ *limited* English ~~{language learner}~~ *proficient* pursuant to NAC 388.625 and who is enrolled in a bilingual program of instruction an examination approved by the Department of Education to assess the proficiency of the pupil to comprehend, speak, read and write his or her primary language. A school district is not required to assess the proficiency of a pupil to read and write his or her primary language if the pupil is enrolled in kindergarten or the first grade or his or her primary language is not commonly written.

2. An assessment administered pursuant to this section must be completed within 60 days after the date on which the pupil enrolls in a school in the district for the first time.

3. An assessment of a pupil's proficiency to comprehend, speak, read and write his or her primary language must be conducted by a person who is proficient in the primary language of the pupil and who has successfully completed training in the administration and scoring of the examination required for the assessment.

**Sec. 13.** NAC 388.640 is hereby amended to read as follows:

388.640 1. A school district shall make available to each pupil classified as ~~an~~ *limited* English ~~language learner~~ *proficient* pursuant to NAC 388.625 a bilingual program of instruction or a program of instruction that teaches English as a second language.

2. The school district shall notify the parents or legal guardian of such a pupil of the eligibility of the pupil to participate in such a program of instruction. The notification must be given in the primary language of the parents or legal guardian of the pupil. The pupil may not participate in such a program of instruction without the consent of his or her parents or legal guardian.

3. A bilingual program of instruction or a program of instruction that teaches English as a second language must:

- (a) Be based on a sound educational theory for acquiring English;
- (b) Use procedures and allocate resources that are reasonably calculated to carry out that educational theory in an effective manner; and
- (c) Produce results which indicate that the pupils in the program are acquiring English.

**Sec. 14.** NAC 388.645 is hereby amended to read as follows:

388.645 1. A school district may, at any time, but shall, at least every 2 years, reassess a pupil who is classified as ~~an~~ *limited* English ~~language learner~~ *proficient* pursuant to NAC



388.625 to determine whether the pupil's proficiency in English is fluent and the pupil is able to succeed in courses of study that are taught only in English.

2. A pupil may be reclassified pursuant to this section only if:

(a) The pupil's academic performance and his or her proficiency to comprehend, speak, read and write English is assessed by the pupil's teacher and the teacher documents his or her rationale for recommending the pupil for courses of study which are taught only in English without further instruction in the English language;

(b) The parents or legal guardian of the pupil is:

(1) Notified, in the primary language of the parents or legal guardian, that the pupil is being considered for reclassification;

(2) Given an opportunity to review the data relating to the performance of the pupil; and

(3) Allowed to participate in the determination of whether the pupil should be reclassified; and

(c) The school district administers to the pupil an examination selected by the district from a list of examinations approved by the Department of Education to assess the pupil's proficiency to comprehend, speak, read and write English and the pupil obtains a score on the examination that is equal to or greater than a score for a person who is fluent in speaking, reading and writing English, as established by the publisher of the examination.

3. A reassessment of a pupil's proficiency to comprehend, speak, read and write English must be administered by a person who is proficient in the language in which the examination is given and who has successfully completed training in the administration and scoring of the examination required for the reassessment.

**Sec. 15.** NAC 388.650 is hereby amended to read as follows:

388.650 1. A school district shall reassess a pupil who is classified as ~~lan~~ *limited* English ~~language learner~~ *proficient* pursuant to NAC 388.625 and who is receiving special services and programs of instruction for pupils with disabilities in the manner required by NAC 388.645. The reassessment must be conducted in conjunction with a review of the individualized educational program of the pupil conducted pursuant to NAC 388.281.

2. If the committee that develops the individualized educational program for the pupil pursuant to NAC 388.281 determines that the procedures for the reassessment are inappropriate because of the nature of the disability of the pupil, the district shall use alternative procedures for reassessing the proficiency of the pupil to comprehend, speak, read and write English.

3. The person administering the reassessment shall cooperate with the committee to determine whether the pupil will be reclassified.