

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

LCB File No. R106-15

December 8, 2017

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

AUTHORITY: §§1-17, NRS 385.080 and 388.405, as amended by section 26 of Assembly Bill No. 7, chapter 501, Statutes of Nevada 2017, at page 3233.

A REGULATION relating to education; prescribing requirements for a policy to teach English to pupils who are English learners; revising certain terms and definitions in conformance with revisions to federal law; 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 English learners; and (2) the State Board of Education to adopt regulations prescribing criteria for such policies. (NRS 388.405, as amended by section 26 of Assembly Bill No. 7, chapter 501, Statutes of Nevada 2017, at page 3233, NRS 388.407, as amended by section 27 of Assembly Bill No. 7, chapter 501, Statutes of Nevada 2017, at page 3234) **Sections 2-8** of this regulation prescribe requirements for such a policy.

Section 17 of this regulation repeals provisions requiring each school district to: (1) identify the primary language of pupils; and (2) administer certain examinations to pupils whose primary language is a language other than English. (NAC 388.620, 388.625) **Section 5** of this regulation enacts similar provisions to these repealed provisions. Specifically, **section 5** requires a policy for the instruction to teach English to pupils who are English learners to provide for the: (1) initial identification of such pupils; and (2) the periodic assessment and reassessment of such pupils. **Sections 11-13 and 15** of this regulation make conforming changes.

Section 14 of this regulation requires a school district to reassess a pupil who is classified as an English learner at least every year, rather than every 2 years, 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. (NAC 388.645) **Section 14** also requires this reassessment to include a determination of whether the pupil's performance on certain examinations is impacted by his or her level of English proficiency.

Existing regulations provide that an English learner may be reclassified if: (1) the pupil's teacher recommends the pupil for courses of study which are taught only in English; (2) the parent or legal guardian of the pupil is notified and allowed to participate in the determination; and (3) 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.

(NAC 388.645) **Section 14** replaces the requirement to administer an examination selected by the school district from a list of examinations with an assessment prescribed by the State Board pursuant to state law.

During the 2017 Legislative Session, the Nevada Legislature revised references and terms in state law in conformance with revisions to federal law. (Assembly Bill No. 7, chapter 501, Statutes of Nevada 2017, at page 3209) **Sections 9-11 and 13-15** of this regulation replace the term “English language learner” with the term “English learner” to conform with this change.

Section 1. Chapter 388 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 8, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 8 of this regulation, “a policy for the instruction to teach English to pupils who are English learners” means the policy developed pursuant to NRS 388.407, as amended by section 27 of Assembly Bill No. 7, chapter 501, Statutes of Nevada 2017, at page 3234.*

Sec. 3. 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 English learners.*

2. Such a policy must include, without limitation, the content set forth in sections 4 to 8, inclusive, of this regulation.

Sec. 4. *A policy for the instruction to teach English to pupils who are English learners 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 English learners; and*
 - (c) Addresses the manner in which services provided to pupils who are English learners 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 English learners.

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

(a) Design the program for the instruction to teach English to pupils who are English learners;

(b) Allocate resources; and

(c) Determine instructional practices.

4. Ensure equitable access to and participation by pupils who are English learners in programs of special education for pupils with disabilities or gifted and talented pupils and include safeguards to ensure the accurate identification of pupils who are English learners 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 English learners, including, without limitation, assessment practices.

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

7. Identify any existing plan or guide for the delivery of services by the school district to pupils.

Sec. 5. *A policy for the instruction to teach English to pupils who are English learners must, without limitation:*

1. Provide for the initial identification of pupils who are English learners using the standardized statewide entrance and exit procedures for identifying such pupils that are adopted by the Department and approved by the State Board.

2. Provide for the periodic assessment of pupils who are English learners by:

(a) Formally evaluating the proficiency in English and academic achievement of pupils who are English learners, including, without limitation, by annually administering the assessment prescribed by the State Board pursuant to subsection 3 of NRS 390.810, as amended by section 55 of Assembly Bill No. 7, chapter 501, Statutes of Nevada 2017, at page 3255; and

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

3. Provide for the reassessment of a pupil who is classified as an English learner pursuant to standardized statewide procedures for reassessing such pupils that are adopted by the Department and approved by the State Board.

Sec. 6. *A policy for the instruction to teach English to pupils who are English learners must, without limitation:*

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

2. Identify professional development for teachers and administrators relating to pupils who are English learners.

Sec. 7. *A policy for the instruction to teach English to pupils who are English learners must, without limitation:*

1. Provide for the selection of content and English language development curriculum that are based on peer-reviewed research and consider the language development needs of pupils who are English learners. Such content and 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 pursuant to NRS 389.520, as amended by section 5 of Senate Bill No. 200, chapter 597, Statutes of Nevada 2017, at page 4339, 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 English learners at each grade level through the use of culturally relevant materials designed to help students build background knowledge.

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

Sec. 8. *A policy for the instruction to teach English to pupils who are English learners must, without limitation:*

1. Provide opportunities for the parent or legal guardian of a pupil who is an English learner to participate in a bilingual program of instruction or a program of instruction that teaches English as a second language and specify the manner in which the school district will ensure family engagement and participation of parents and legal guardians.

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

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

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

388.610 “English ~~language~~ learner” ~~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.~~ *has the meaning ascribed to it in 20 U.S.C. § 7801(20).*

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

388.615 “Program of instruction that teaches English ~~as a second~~ language ~~”~~ *acquisition*” means a program of instruction for an English ~~language~~ learner which:

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

Sec. 11. 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~~ *identified* as an English ~~language~~ learner pursuant to ~~NAC 388.625~~ *the policy developed pursuant to section 5 of this regulation* 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. 12. NAC 388.635 is hereby amended to read as follows:

388.635 1. A school district shall assess and ~~classify~~ *identify* a pupil whose primary language is not English and whose eligibility for special services and programs of instruction for pupils with disabilities is being assessed pursuant to NAC 388.330 to 388.440, inclusive, in the manner required by NAC ~~388.625 and~~ 388.630 ~~and~~ *and the policy developed pursuant to section 5 of this regulation*. If the multidisciplinary team that is determining the eligibility of the pupil pursuant to NAC 388.330 to 388.440, inclusive, determines that the procedures for the assessments administered pursuant to NAC ~~388.625 and~~ 388.630 *and the policy developed pursuant to section 5 of this regulation* are inappropriate because of the nature of the disability

of the pupil, the district shall use alternative procedures for assessing the proficiency of the pupil to comprehend, speak, read and write English and his or her primary language. The person administering the assessment shall cooperate with the multidisciplinary team to determine the classification of the pupil.

2. A school district shall assess and classify a pupil whose primary language is not English and who is receiving special services and programs of instruction for pupils with disabilities in the manner required by NAC ~~{388.625 and}~~ 388.630 ~~{,}~~ *and the policy developed pursuant to section 5 of this regulation*. If the committee that develops the individualized educational program for the pupil pursuant to NAC 388.281 determines that the procedures for the assessments are inappropriate because of the nature of the disability of the pupil, the district shall use alternative procedures for assessing the proficiency of the pupil to comprehend, speak, read and write English and his or her primary language. The person administering the assessment shall cooperate with the committee to determine the classification of the pupil.

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}~~ *identified* as an English ~~{language}~~ learner ~~{pursuant to NAC 388.625}~~ *in accordance with the policy developed pursuant to section 5 of this regulation* a bilingual program of instruction or a program of instruction that teaches English ~~{as a second}~~ language ~~{,}~~ *acquisition*.

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 *acquisition* 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,~~ *once each school year*, reassess a pupil who is classified as an English ~~language~~ learner pursuant to ~~NAC 388.625~~ *the policy developed pursuant to section 5 of this regulation* to determine whether the pupil's proficiency in English is fluent and the ~~pupil~~ :

- (a) Pupil is able to succeed in courses of study that are taught only in English ~~H~~ ; and*
- (b) Pupil's performance on the examinations administered pursuant to NRS 390.105, as amended by section 43 of Assembly Bill No. 7, chapter 501, Statutes of Nevada 2017, at page 3246, or the college and career readiness assessment administered pursuant to NRS 390.610, as amended by section 53 of Assembly Bill No. 7, chapter 501, Statutes of Nevada 2017, at page 3253, is impacted by his or her level of English proficiency.*

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}~~ *the assessment prescribed* by the ~~{district from a list of examinations approved by the Department of Education to assess the pupil's proficiency}~~ *State Board pursuant 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.}* *subsection 3 of NRS 390.810, as amended by section 55 of Assembly Bill No. 7, chapter 501, Statutes of Nevada 2017, at page 3255.*

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 an English ~~{language}~~ learner pursuant to ~~{NAC 388.625}~~ *the policy developed pursuant to section 5 of this regulation* 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.

Sec. 16. NAC 388.655 is hereby amended to read as follows:

388.655 A school district may apply, in writing, to the Department of Education for a waiver from the provisions of NAC ~~388.625~~ **388.630** to 388.650, inclusive. Upon a showing of good cause and circumstances that are unique to the district, the Department may grant a waiver from any of those provisions.

Sec. 17. NAC 388.620 and 388.625 are hereby repealed.

TEXT OF REPEALED SECTIONS

388.620 Determination of primary language of pupil.

1. Each school district shall identify the primary language of each pupil who enrolls in a school within the district for the first time.

2. A pupil's primary language shall be deemed to be a language other than English if:

- (a) The pupil first spoke a language other than English;
- (b) The primary language spoken in the home of the pupil is not English; or
- (c) The language most often spoken by the pupil is not English.

388.625 Assessment of pupil's proficiency in English.

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 English language learner 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 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 English language learner 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.