

**PROPOSED REGULATION OF THE
DEPARTMENT OF EDUCATION**

LCB File No. R108-15

March 25, 2016

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

AUTHORITY: §§1-5, 7, 9, 12, 13, 15 and 16 and section 34 of Assembly Bill No. 448, chapter 539, Statutes of Nevada 2015, at page 3798; §6, sections 20 and 34 of Assembly Bill No. 448, chapter 539, Statutes of Nevada 2015, at pages 3789 and 3798; §8, sections 20, 21 and 34 of Assembly Bill No. 448, chapter 539, Statutes of Nevada 2015, at pages 3789, 3790 and 3798; §§10 and 11, sections 21 and 34 of Assembly Bill No. 448, chapter 539, Statutes of Nevada 2015, at pages 3790 and 3798; §14, sections 22 and 34 of Assembly Bill No. 448, chapter 539, Statutes of Nevada 2015, at pages 3791 and 3798; §§17 and 18, sections 21.5 and 34 of Assembly Bill No. 448, chapter 539, Statutes of Nevada 2015, at pages 3790 and 3798.

A REGULATION relating to education; establishing the process for selecting public schools for conversion to achievement charter schools; prescribing the procedure by which an operator will be selected for an achievement charter school; prescribing the order of priority for enrolling pupils in an achievement charter school; authorizing homeschooled children and opt-in children to participate in classes and extracurricular activities at an achievement charter school under certain conditions; clarifying provisions of law governing improvements to the building in which an achievement charter school operates; providing that multiple achievement charter schools may be considered one achievement charter school for purposes of its designation as a local educational agency; authorizing the early termination of a contract to operate an achievement charter school under certain conditions; making various other changes relating to achievement charter schools; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the conversion of certain underachieving public schools into achievement charter schools and establishes the procedure for the operation of achievement charter schools. (Sections 11-34 of Assembly Bill No. 448, chapter 539, Statutes of Nevada 2015, at pages 3788-98) Existing law authorizes the Department of Education to adopt any regulations necessary or convenient to carry out these provisions. (Section 34 of Assembly Bill No. 448, chapter 539, Statutes of Nevada 2015, at page 3798)

Existing law establishes the criteria for a public school to be eligible for conversion to an achievement charter school, which include pupil achievement and school performance at the school being unsatisfactory as determined by the Department pursuant to criteria established by regulation of the Department. (Section 20 of Assembly Bill No. 448, chapter 539, Statutes of Nevada 2015, at page 3789) **Section 6** of this regulation prescribes the criteria that the Department will use to make such a determination. **Section 6** requires the Department to publish annually a list of public schools that are eligible for conversion to an achievement charter school. **Section 7** of this regulation authorizes the Executive Director of the Achievement School District to enter into a memorandum of understanding with a public school that is eligible for conversion to an achievement charter school but is not selected for such conversion. If the public school complies with the memorandum of understanding, the Executive Director will not include the school on the list of schools that are eligible for conversion to an achievement charter school for the school year following the school year in which the memorandum of understanding expires.

Existing law requires the Executive Director to solicit and consider input from parents of pupils enrolled in a public school and other members of the community in which the school is located: (1) before designating the school for conversion to an achievement charter school; and (2) before selecting a charter management organization, educational management organization or other person to operate the achievement charter school. (Sections 20 and 21 of Assembly Bill No. 448, chapter 539, Statutes of Nevada 2015, at pages 3789 and 3790) **Section 8** of this regulation prescribes the procedure that the Executive Director must use to solicit such input. **Section 9** of this regulation prescribes the dates by which the Executive Director must: (1) submit the list of public schools that are eligible for conversion to an achievement charter school to the State Board of Education for approval; and (2) select public schools for conversion to achievement charter schools.

Existing law requires the Department to adopt regulations that prescribe the process by which a charter management organization, educational management organization or other person may apply to operate an achievement charter school. (Section 21 of Assembly Bill No. 448, chapter 539, Statutes of Nevada 2015, at pages 3790) **Section 10** of this regulation establishes the requirements to apply for authorization to operate an achievement charter school and the procedure by which the Executive Director will review and approve such applications. **Section 11** of this regulation prescribes the process by which: (1) a charter management organization, educational management organization or other person whose application for approval as an operator has been approved may apply to operate a public school selected for conversion to an achievement charter school; and (2) the Executive Director will select an applicant to operate the school. **Section 12** of this regulation: (1) authorizes the parent or guardian of any child who resides within this State to apply for enrollment at an achievement charter school; and (2) establishes the order of priority in which applicants must be enrolled in the achievement charter school.

Existing law: (1) requires the governing body of a charter school to authorize a child enrolled in a public school of a school district or a private school, a homeschooled child or an opt-in child to participate in a class that is not available to the child or an extracurricular activity at the charter school if space is available and certain other requirements are met; (2) provides that, if the governing body of a charter school authorizes a child enrolled in a public school of a

school district or a private school, a homeschooled child or an opt-in child to participate in a class or activity, the charter school is not required to provide transportation for the child; (3) authorizes the governing body to revoke such authorization if the governing body determines that the child has failed to comply with applicable statutes, rules or regulations; and (4) authorizes the governing body of a charter school to require proof of the identity of a homeschooled or opt-in child before granting such authorization. (NRS 386.580, as amended by section 15.8 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at page 1835) **Section 13** of this regulation requires the governing body of a charter school to allow such a child to participate in a class or an extracurricular activity under the same conditions.

Existing law: (1) provides that an achievement charter school must continue to operate in the same building in which the school operated before being converted to an achievement charter school; (2) requires the governing body of the achievement charter school to pay costs related to maintenance and operation of the building; and (3) requires the board of trustees of the school district in which the school is located to pay all capital expenses. (Section 22 of Assembly Bill No. 448, chapter 539, Statutes of Nevada 2015, at page 3791) **Section 14** of this regulation provides that: (1) any repair or construction that is necessary for the continued operation of an achievement charter school that has a cost exceeding \$15,000 shall be deemed to be a capital expense; and (2) if an achievement charter school is converted to a public school under the governance of the board of trustees of a school district or a standard charter school, any fixtures, improvements or other tangible assets added to the building in which the achievement charter school operates by the governing body must remain with the building after the school is converted.

Existing law provides that each achievement charter school is deemed a local educational agency for the purpose of receiving money available from federal and state categorical grant programs. (Section 22.5 of Assembly Bill No. 448, chapter 539, Statutes of Nevada 2015, at page 3792) **Section 15** of this regulation provides that, if a charter management organization, educational management organization or other person operates more than one achievement charter school, the group of achievement charter schools operated by such an operator may, at the option of the operator, be deemed to be one achievement charter school for the purpose of designation as a local educational agency.

Section 16 of this regulation requires the Executive Director to enter into an Achievement Charter School Performance Compact, which is an agreement that includes statistical goals for an achievement charter school, with the operator of an achievement charter school. **Section 16** also requires the Executive Director to review the performance of an achievement charter school during the fourth year in which the school operates as an achievement charter school. If the Executive Director concludes, as a result of the review, that the achievement charter school has not met the goals set forth in the Achievement Charter School Performance Compact, **section 16** requires the Executive Director to terminate the contract with the operator to operate the achievement charter school.

Existing law authorizes the reconstitution of the governing body of a charter school, the revocation of a written charter or the termination of a charter contract if the sponsor of a charter school determines that: (1) the charter school, its officers or its employees have failed to comply with generally accepted standards of fiscal management or violated the terms of the written

charter, charter contract or a statute or regulation concerning charter schools; (2) the charter school is financially impaired such that it cannot continue to operate; (3) reconstitution, revocation or termination is necessary to protect the health and safety of pupils or school personnel or prevent damage or loss of property of the school district or the community in which the charter school is located; or (4) the charter school has persistently underperformed. (NRS 386.535, as amended by section 27 of Senate Bill No. 509, chapter 516, Statutes of Nevada 2015, at page 3280) **Section 17** of this regulation authorizes the Executive Director to terminate a contract to operate an achievement charter school for these reasons.

Section 18 of this regulation provides for notification of the operator of an achievement charter school whose contract is terminated and the parents of pupils enrolled in such an achievement charter school. **Section 18** also authorizes the operator of an achievement charter school whose contract is terminated to appeal the decision to the Department and provides for the selection of a new operator of such an achievement charter school.

Section 1. Chapter 388B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 18, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 18, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3, 4 and 5 of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Achievement Charter School Performance Compact” means a written agreement between an operator and the Executive Director that clearly defines the expectations and goals for the achievement charter school operated by the operator.*

Sec. 4. *“Executive Director” has the meaning ascribed to it in section 15 of Assembly Bill No. 448, chapter 539, Statutes of Nevada 2015, at page 3788.*

Sec. 5. *“Operator” means a charter management organization, educational management organization or other person who operates an achievement charter school.*

Sec. 6. *1. The Department may determine that pupil achievement and school performance at a public school is unsatisfactory pursuant to paragraph (c) of subsection 1 of section 20 of Assembly Bill No. 448, chapter 539, Statutes of Nevada 2015, at page 3789, and is eligible for conversion to an achievement charter school, if the school:*

(a) Has received, for the most recent school year, an annual rating established as the lowest possible rating indicating underperformance of a public school, as determined by the Department pursuant to the statewide system of accountability for public schools;

(b) Has received, for the most recent school year, an annual rating established as the second lowest possible rating indicating underperformance of a public school and demonstrates a downward trend in pupil achievement and school performance, as determined by the Department pursuant to the statewide system of accountability for public schools;

(c) Was rated in the lowest 10 percent of schools in this State in pupil achievement and school performance for an identified subgroup of pupils for the most recent school year, as determined by the Department pursuant to the statewide system of accountability for public schools;

(d) Regardless of its rating, is located within a school district that has an attendance matriculation pattern that will result in pupils, from kindergarten through grade 12, attending more than one school that has received, for the most recent school year, the lowest possible rating indicating under performance of a public school, as determined by the Department pursuant to the statewide system of accountability for public schools; or

(e) Has been identified by the board of trustees of the school district in which the school is located as underperforming after an initial review and analysis conducted by the board.

2. On or before October 1 of each year, the Department will publish a list of the public schools that are eligible for conversion to an achievement charter school.

Sec. 7. 1. *The Executive Director may enter into a memorandum of understanding with any public school that is eligible for conversion to an achievement charter school pursuant to section 6 of this regulation but which is not selected for conversion. If the school complies*

with the memorandum of understanding, the Executive Director must not include the public school on the list of the public schools that are eligible for conversion to an achievement charter school for the school year immediately following the school year in which the memorandum of understanding expires.

2. A memorandum of understanding entered into pursuant to subsection 1 must:

(a) Prescribe recommendations intended to cause the public school to rapidly improve pupil performance and school achievement;

(b) Prescribe goals for pupil performance and school achievement; and

(c) Provide that, if the public school does not meet the goals prescribed pursuant to paragraph (b), the public school will be eligible for conversion to an achievement charter school for the school year immediately following the school year in which the memorandum of understanding expires.

Sec. 8. *1. Before selecting a public school for conversion to an achievement charter school, the Executive Director must solicit and consider input from parents of pupils enrolled in the public school and other members of the community in which the public school is located as required pursuant to subsection 3 of section 20 of Assembly Bill No. 448, chapter 539, Statutes of Nevada 2015, at page 3789.*

2. Before approving an application to operate an achievement charter school, the Executive Director must solicit the input of parents of the pupils enrolled in the public school as required pursuant to subsection 1 of section 21 of Assembly Bill No. 448, chapter 539, Statutes of Nevada 2015, at page 3790.

3. To comply with the requirement to solicit input from parents and pupils as described in subsections 1 and 2, the Executive Director shall:

- (a) Hold in-person meetings in the community;*
- (b) Solicit input from parents and pupils using strategies and practices for effective parental involvement developed by the Office of Parental Involvement and Family Engagement pursuant to NRS 385.635; and*
- (c) Take any other measures he or she deems appropriate.*

Sec. 9. *1. On or before October 31 of each year, the Executive Director shall submit the list of public schools that the Executive Director has determined to be eligible for conversion to an achievement charter school to the State Board for its approval as required pursuant to subsection 2 of section 20 of Assembly Bill No. 448, chapter 539, Statutes of Nevada 2015, at page 3789.*

2. On or before January 15 of each year, the Executive Director shall select the public schools for conversion to achievement charter schools from the list of public schools approved by the State Board.

3. When the Executive Director notifies a public school that the school has been selected for conversion to an achievement charter school, the Executive Director must also notify the State Board and each charter management organization, educational management organization or other person whose application for approval as an operator has been approved pursuant to section 10 of this regulation.

Sec. 10. *1. A charter management organization, educational management organization or other person may apply to the Executive Director for approval as an operator by completing and submitting an application to the Executive Director on a form prescribed by the Department, which must include, without limitation, the proposed:*

- (a) Mission and goals of the achievement charter school;*

- (b) School model and academic plan for the achievement charter school;*
 - (c) Performance goals for pupils enrolled in the achievement charter school;*
 - (d) Leadership team and governing body of the achievement charter school;*
 - (e) Plan to involve and engage the parents and families of pupils enrolled in the achievement charter school; and*
 - (f) Financial plan and policies of the achievement charter school.*
- 2. Each application submitted pursuant to subsection 1 must:*
- (a) Demonstrate a clear and high quality plan for the achievement charter school that prescribes the intended organizational structure of the achievement charter school and includes measurable goals; and*
 - (b) Provide a clear basis for assessing the ability of the applicant to carry out the plan for the achievement charter school.*
- 3. The Executive Director shall:*
- (a) Accept applications submitted pursuant to subsection 1 on a rolling basis throughout the year;*
 - (b) At least once each year, review the applications submitted pursuant to subsection 1;*
 - (c) At least 60 days before reviewing the applications, provide notice of the date on which the review of the applications will begin to the Department which the Department will post on its Internet website;*
 - (d) Approve applications that meet the requirements of this section which he or she determines are high quality and likely to improve pupil achievement and school performance at the achievement charter school; and*

(e) Notify each charter management organization, educational management organization or other person who submitted an application whether the application is approved or denied.

4. The Executive Director may obtain assistance from independent reviewers to review applications pursuant to subsection 3.

5. Any application submitted pursuant to subsection 1 during a period in which the Executive Director is reviewing applications pursuant to subsection 3 will be reviewed during the next review period.

6. Any decision of the Executive Director to approve or deny an application submitted pursuant to subsection 1 is final and may not be appealed.

Sec. 11. *1. After the Executive Director provides notice identifying the public schools that have been selected for conversion to an achievement charter school pursuant to section 9 of this regulation, a charter management organization, educational management organization or other person whose application for approval as an operator has been approved pursuant to section 10 of this regulation, including, without limitation, an operator that currently operates an achievement charter school, may apply to operate one or more of the public schools selected for conversion by completing and submitting to the Department an application on a form prescribed by the Department. A charter management organization, educational management organization or other person may submit one application to operate more than one achievement charter school.*

2. After considering the input from the parents of pupils enrolled in a public school selected for conversion to an achievement charter school received pursuant to subsection 1 of section 21 of Assembly Bill No. 448, chapter 539, Statutes of Nevada 2015, at page 3790, the Executive Director shall select a charter management organization, educational management

organization or other person to operate the achievement charter school based on the ability of the charter management organization, educational management organization or other person to meet the identified educational needs of the pupils enrolled in, and to improve pupil achievement and school performance at, the achievement charter school.

3. If an operator wishes to expand an achievement charter school, including, without limitation, by opening another location of the achievement charter school, the operator may request the Executive Director to amend the contract to operate the achievement charter school entered into pursuant to paragraph (d) of subsection 1 of section 21 of Assembly Bill No. 448, chapter 539, Statutes of Nevada 2015, at page 3790. The Executive Director may grant such a request if the Executive Director determines that the expansion is in the best interests of the pupils in this State.

4. Any decision of the Executive Director to approve or deny an application or a request to amend a contract to operate an achievement charter school pursuant to this section is final and may not be appealed.

Sec. 12. *1. An application to enroll in an achievement charter school may be submitted annually to the governing body of the achievement charter school by the parent or legal guardian of any child who resides in this State.*

2. If, after enrolling the pupils who were enrolled in a public school before it was converted to an achievement charter school as required by section 22 of Assembly Bill No. 448, chapter 539, Statutes of Nevada 2015, at page 3791, the achievement charter school has the capacity to enroll additional pupils and the board of trustees of the school district in which the achievement charter school is located has established zones of attendance pursuant to NRS 388.040, a pupil who resides within the zone of attendance established for the school

before the school was converted to an achievement charter school must be enrolled in the achievement charter school before a pupil who does not reside within that zone of attendance.

3. If, after enrolling pupils that it is required to enroll pursuant to subsection 2 and section 22 of Assembly Bill No. 448, chapter 539, Statutes of Nevada 2015, at page 3791, the achievement charter school has the capacity to enroll additional pupils, the achievement charter school must enroll pupils in the same order of priority prescribed for a charter school pursuant to subsections 1 and 2 of NRS 386.580, as amended by section 1 of Senate Bill No. 200, chapter 56, Statutes of Nevada 2015, at page 242, section 3.5 of Senate Bill No. 208, chapter 238, Statutes of Nevada 2015, at page 1127, section 1 of Senate Bill No. 390, chapter 258, Statutes of Nevada 2015, at page 1254, and section 44 of Senate Bill No. 509, chapter 516, Statutes of Nevada 2015, at page 3299.

Sec. 13. Upon the request of a parent or legal guardian of a child who is enrolled in a public school of a school district or a private school, or a parent or legal guardian of a homeschooled child or opt-in child, the governing body of an achievement charter school must authorize the child to participate in a class or extracurricular activity at the achievement charter school to the same extent that a charter school would be required to allow such a child to participate pursuant to subsections 5, 6 and 7 of NRS 386.580, as amended by section 15.8 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at page 1835.

Sec. 14. 1. Any repair to a building or construction that is necessary for the continued operation of an achievement charter school in the same building in which the school operated before being converted to an achievement charter school that has a cost of more than \$15,000 shall be deemed to be a capital expense and must be paid by the board of trustees of the school

district in which the achievement charter school is located, as required pursuant to section 22 of Assembly Bill No. 448, chapter 539, Statutes of Nevada 2015, at page 3791.

2. If an achievement charter school is converted to a public school under the governance of the board of trustees of a school district or a charter school subject to the provisions of NRS 386.490 to 386.649, inclusive, any fixtures, improvements or other tangible assets added by the governing body of the achievement charter school to the building used by the achievement charter school must remain with the building after the school ceases to operate as an achievement charter school.

Sec. 15. If an operator operates more than one achievement charter school, the group of achievement charter schools operated by the operator may, at the option of the operator, be deemed to be one local educational agency as described in section 22.5 of Assembly Bill No. 448, chapter 539, Statutes of Nevada 2015, at page 3792.

Sec. 16. 1. When the Executive Director enters into a contract with an operator pursuant to paragraph (d) of subsection 1 of section 21 of Assembly Bill No. 448, chapter 539, Statutes of Nevada 2015, at page 3790, to operate an achievement charter school, the Executive Director shall also enter into an Achievement Charter School Performance Compact with the operator. The Achievement Charter School Performance Compact must include, without limitation, clear quantifiable goals concerning:

(a) Improving attendance and reducing truancy and transiency of pupils enrolled in the achievement charter school;

(b) Improving the performance of pupils enrolled in the achievement charter school on examinations that measure the achievement and proficiency of pupils; and

(c) If the achievement charter school is a high school, improving the rate of graduation from the achievement charter school and reducing the rate at which pupils drop out of the achievement charter school.

2. The Executive Director shall review the academic, financial and organizational performance of an achievement charter school during the fourth school year of operation as an achievement charter school. This review must include, without limitation, a determination of whether the achievement charter school has met the expectations and goals set forth in the Achievement Charter School Performance Compact.

3. If, as a result of the review conducted pursuant to subsection 2, the Executive Director concludes that the achievement charter school:

(a) Has met the goals set forth in the Achievement Charter School Performance Compact, the operator must continue to operate the achievement charter school until the expiration of the contract to operate the achievement charter school.

(b) Has not met the goals set forth in the Achievement Charter School Performance Compact, the Executive Director may, after the end of the school year, terminate the contract to operate the achievement charter school and enter into a contract with a different operator to operate the achievement charter school.

Sec. 17. *1. On or before July 15 of each year, the Executive Director shall conduct a performance review of each achievement charter school.*

2. In addition to the circumstances under which a contract to operate a charter school may be terminated pursuant to section 16 of this regulation, the Executive Director may terminate a contract to operate an achievement charter school before the expiration of the contract if the Executive Director determines that:

(a) The achievement charter school, its officers or its employees:

(1) Committed a material breach of the terms and conditions of the contract;

(2) Failed to comply with generally accepted standards of fiscal management;

(3) Failed to comply with any statute or regulation applicable to achievement charter schools; or

(4) Has persistently underperformed, as measured by the performance standards and goals set forth in the Achievement Charter School Performance Compact;

(b) The achievement charter school has filed a voluntary petition of bankruptcy, is adjudicated bankrupt or insolvent or is otherwise financially impaired such that the achievement charter school cannot continue to operate;

(c) There is reasonable cause to believe that termination of the contract is necessary to protect the health and safety of the pupils enrolled in the achievement charter school or persons who are employed by the achievement charter school from jeopardy or to prevent damage to or loss of the property of the school district or the community in which the achievement charter school is located; or

(d) The operator of the achievement charter school or an employee thereof, the governing body of the achievement charter school or an employee of the achievement charter school has at any time made a material misrepresentation or omission concerning any information disclosed to the Executive Director, the Achievement School District or any representative or employee thereof.

Sec. 18. 1. *If the Executive Director determines that a contract to operate an achievement charter school should be terminated pursuant to section 16 or 17 of this regulation, the Executive Director shall, on or before March 31 following the date of the*

decision, notify the operator of the achievement charter school of the decision to terminate the contract.

2. Not later than 30 days after receiving notice pursuant to subsection 1, the operator of the achievement charter school may appeal the decision of the Executive Director to the Department.

3. An operator whose contract to operate an achievement charter school is terminated pursuant to section 16 or 17 of this regulation shall, on or before May 31 following receipt of the notice pursuant to subsection 1, notify the parents of each pupil enrolled in the achievement charter school of the termination of the contract.

4. If a contract to operate an achievement charter school is terminated pursuant to section 16 or 17 of this regulation, the Executive Director must select a new operator in accordance with the procedure prescribed in section 11 of this regulation.