

**ADOPTED REGULATION OF THE
DEPARTMENT OF EDUCATION**

LCB File No. R060-02

Effective December 17, 2002

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

AUTHORITY: §§1-11, NRS 386.540.

Section 1. Chapter 386 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 8, inclusive, of this regulation.

Sec. 2. *To comply with subsection 1 of NRS 386.590, the total number of licensed teachers employed by a charter school other than a vocational school to provide instruction must be equal to or more than the product of 70 percent multiplied by the total number of persons employed full time and part time by the charter school to provide instruction.*

Sec. 3. *The department will interpret “parents,” as used in subsection 1 of NRS 386.549, to mean parents and legal guardians of children enrolled in and attending the charter school for which the governing body is formed.*

Sec. 4. *A charter school shall report the data required pursuant to NRS 386.650 to the school district in which the charter school is located not later than the first day of instruction of the second year of operation of the charter school.*

Sec. 5. *If the governing body of a charter school establishes an advisory committee, the advisory committee shall comply with the provisions of chapter 241 of NRS.*

Sec. 6. *Neither the governing body of a charter school nor a charter school may be incorporated.*

Sec. 7. 1. *Except as otherwise provided in subsection 2, a charter school that is sponsored by the board of trustees of a school district may provide instruction only in facilities located within the county in which that school district is located.*

2. *A charter school that:*

(a) Is sponsored by the board of trustees of a school district;

(b) Provides a program of distance education pursuant to NRS 388.820 to 388.874, inclusive; and

(c) Uses facilities other than a pupil's home in which to provide instruction,

FLUSH *may provide instruction only in facilities located within the county in which that school district is located.*

3. *Except as otherwise provided in subsection 4, a charter school that is sponsored by the state board of education may provide instruction only in facilities located in one county.*

4. *A charter school that:*

(a) Is sponsored by the state board of education;

(b) Provides a program of distance education pursuant to NRS 388.820 to 388.874, inclusive; and

(c) Uses facilities other than the pupil's home in which to provide instruction,

FLUSH *may provide instruction only in facilities located in one county.*

Sec. 8. 1. *Except as otherwise provided in subsection 2, the governing body of a charter school may not contract with an educational management organization for the provision of more than 30 percent of the teachers or other personnel who are required to be licensed pursuant to NRS 386.590.*

2. The provisions of subsection 1 do not apply to a contract between the governing body of a charter school and an educational management organization for the provision of teachers or other personnel who:

(a) Hold an endorsement pursuant to NAC 391.223, 391.243, 391.244, 391.277, 391.279, 391.315, 391.340, 391.343, 391.350 to 391.383, inclusive, 391.390 or 391.391; and

(b) Work at the charter school in the field in which they hold the endorsement.

Sec. 9. NAC 386.130 is hereby amended to read as follows:

386.130 1. The department will prescribe forms for the use of a committee to form a charter school in applying to:

(a) The department, pursuant to subsection 2 of NRS 386.520;

(b) The board of trustees of the school district in which the proposed charter school will be located, pursuant to NRS 386.525; and

(c) The state board of education, pursuant to NRS 386.525,

FLUSH to form a charter school.

2. An application to form a charter school *must not propose to form a charter school in more than one county. The department will accept only one application per year from each committee to form a charter school. The state board of education and the board of trustees of a school district shall accept only one application per year from each committee to form a charter school. An application* that is submitted to:

(a) The department, pursuant to subsection 2 of NRS 386.520;

(b) The board of trustees of the school district in which the proposed charter school will be located, pursuant to NRS 386.525; and

(c) The state board of education, pursuant to NRS 386.525,

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must be submitted on forms prescribed pursuant to subsection 1 and must be submitted to the department not later than 5 p.m. on September 1 of the fiscal year immediately preceding the fiscal year in which the proposed charter school will begin operation and to the board of trustees or the state board of education not later than 5 p.m. on January 15 of the fiscal year immediately preceding the fiscal year in which the proposed charter school will begin operation.

3. An application to form a charter school may not be submitted earlier than 2 fiscal years immediately preceding the fiscal year in which the proposed charter school will begin operation.

4. Pursuant to NRS 386.520 and 386.525, only a committee to form a charter school may submit an application to form a charter school. The department will not accept an application from a potential contractor or employee of the proposed charter school. Neither the state board of education nor the board of trustees of a school district shall accept an application from a potential contractor or employee of the proposed charter school.

5. An application may be submitted only for the kind of school, as defined in NRS 388.020, that will be operated during the first year of operation. If the applicant intends to expand the kind of school for which the charter school is authorized to operate after the first year of operation, the written charter must be amended pursuant to subsection 3 of NRS 386.527.

6. Except as otherwise provided in this subsection, if an application to form a charter school is approved and the charter school fails to become an operational charter school, the committee that submitted the application may not submit another application for a charter school within the same school district until after the completion of 2 fiscal years immediately succeeding the fiscal year in which the originally proposed charter school would have become an operational charter school. The restriction set forth in this subsection does not apply to an application submitted for

a charter school that is dedicated to providing educational programs and opportunities for pupils who are at risk.

Sec. 10. NAC 386.345 is hereby amended to read as follows:

386.345 1. *A majority of the members of the governing body of a charter school must reside in the county in which the charter school is located.*

2. The membership of the governing body of a charter school shall not include:

(a) An employee of the governing body or charter school, including, without limitation, an administrator or teacher; or

(b) A contractor of the governing body or charter school.

~~2.~~ 3. *If a person serves on the governing body of a charter school as a representative of a nonprofit organization or business, no other member of the governing body may also serve as a representative of that organization or business or otherwise represent the interests of that organization or business.*

4. Not later than 5 business days after the governing body of a charter school is selected, the governing body shall submit to the department:

(a) The name and address of each member;

(b) The résumé of each member;

(c) The state of residence of each member;

(d) If a member serves on the governing body as a teacher, as that term is defined in subsection 4 of NRS 386.549, a photocopy of his license to teach; and

(e) An affidavit of each member indicating that he has not been convicted of a felony or any offense involving moral turpitude.

~~[3.]~~ 5. The governing body of a charter school governs the charter school, maintains overall control of the charter school and is responsible for the operation of the charter school, including, without limitation, critically evaluating the performance of a contractor for the charter school and selecting another contractor if the contractor is not performing his duties or services in a satisfactory manner.

~~[4.]~~ 6. Not later than 30 business days after each public meeting held by the governing body of a charter school pursuant to subsection 3 of NRS 386.549, the governing body shall submit to the department and to the sponsor of the charter school, a copy of the minutes of the meeting.

Sec. 11. NAC 386.410 is hereby amended to read as follows:

386.410 The sponsor of a charter school shall submit to the department an annual report of compliance for the charter school. If the board of trustees of a school district is the sponsor of a charter school, the annual report of compliance must be included in the report that is required pursuant to NRS 386.610. The annual report of compliance must include:

1. A determination whether the charter school and its governing body comply with the terms and conditions of operation set forth in the written charter.
2. A determination whether the membership of the governing body of the charter school complies with NRS 386.549 and NAC 386.345, including, without limitation, whether:
 - (a) The governing body consists of at least three teachers, as defined in subsection 4 of NRS 386.549;
 - (b) A majority of the members of the governing body reside in ~~[this state;]~~ *the county in which the charter school is located;* and
 - (c) Each member of the governing body has filed an affidavit with the department indicating that he has not been convicted of a felony or offense involving moral turpitude.

3. A determination whether the governing body has held at least one regularly scheduled public meeting in the county in which the charter school is located during each calendar quarter and each meeting complied with chapter 241 of NRS.

4. *A determination whether the governing body and the charter school comply with the provisions of NRS 332.155.*

5. Upon examination of the agenda and minutes of each meeting of the governing body and the reports submitted to the governing body during each meeting, a determination whether the governing body is fulfilling its duty to evaluate the performance of each entity with whom the governing body has entered into a contract, including, without limitation, the performance of an educational management organization.

~~5.~~ 6. If the charter school is dedicated to providing educational programs and opportunities for pupils who are at risk, a determination whether the:

(a) Percentage of pupils who are at risk complies with NAC 386.080; and

(b) Educational program and services provided to those pupils is appropriate and carried out in an effective manner.

~~6.~~ 7. A determination whether the charter school has complied with generally accepted standards of accounting and fiscal management.

~~7.~~ 8. A determination whether all money received by the charter school from this state and from the board of trustees of a school district is deposited and maintained in a bank, credit union or other financial institution in this state.

~~8.~~ 9. A determination whether the charter school has adopted a final budget, as required by NRS 386.550 and NAC 386.370.

~~9.]~~ **10.** A determination whether the charter school complies with NRS 386.573 regarding orders for payment of money.

~~10.]~~ **11.** A determination whether the charter school administers achievement and proficiency examinations in accordance with chapter 389 of NRS and chapter 389 of NAC.

~~11.]~~ **12.** A summary of the manner in which the charter school ensures the health and safety of the pupils enrolled in the charter school, including, without limitation, a determination whether the charter school:

- (a) Complies with the requirements for reporting the abuse or neglect of a child;
- (b) Complies with Title V of the Rehabilitation Act of 1973, 29 U.S.C. §§ 791 et seq.;
- (c) Provides adequate health services;
- (d) Maintains records of the immunizations required of pupils in accordance with NRS

392.435;

(e) Complies with NRS 392.450 by providing drills for pupils in the appropriate procedures to be followed in the event of an emergency and by posting escape routes; and

(f) Complies with the requirements for crisis response in public schools in accordance with NRS 392.600 to 392.656, inclusive.

~~12.]~~ **13.** A determination whether each facility that the charter school occupies complies with applicable building codes, codes for the prevention of fire, and codes pertaining to safety, health and sanitation.

~~13.]~~ **14.** A determination whether the charter school complies with NRS 386.585, including, without limitation, whether the charter school:

(a) Provides a copy of the rules of behavior, prescribed punishments and procedures to be followed in imposing punishments to each pupil;

(b) Maintains, for public inspection at the charter school, a copy of the rules of behavior, prescribed punishments and procedures to be followed in imposing punishments; and

(c) Complies with the policies and procedures for the suspension and expulsion of pupils.

~~14.~~ **15.** A description of the attendance policy of the charter school and a determination whether the policy is:

(a) Distributed to each pupil in accordance with NAC 386.350; and

(b) Available for public inspection during the school's regular business hours.

~~15.~~ **16.** If pupils with disabilities are enrolled in the charter school, a determination whether the provision of special educational services and programs to those pupils complies with the requirements set forth in chapters 388 and 395 of NRS and NAC 388.150 to 388.450, inclusive.

~~16.~~ **17.** A determination whether the charter school provides instruction in the core academic subjects set forth in subsection 1 of NRS 389.018, as applicable for the grade levels of pupils who are enrolled in the charter school.

~~17.~~ **18.** A determination whether the charter school provides at least the courses of study that are required of pupils by statute or regulation for promotion to the next grade or graduation from a public high school and requires the pupils who are enrolled in the charter school to take those courses of study.

~~18.~~ **19.** A determination whether the charter school complies with NRS 386.590 regarding the employment of teachers and other educational personnel.

~~19.~~ **20.** A determination whether the status of the employees of the charter school and the rights and benefits provided to those employees comply with NRS 386.595.

~~{20.}~~ 21. A description of the manner in which the charter school maintains personnel records for its employees.

~~{21.}~~ 22. A description of the procedure for the enrollment of pupils in the charter school, including, without limitation, whether the charter school enrolls pupils on the basis of a lottery system if more pupils who are eligible for enrollment apply for enrollment than the number of spaces that are available.

~~{22.}~~ 23. If the charter school provides instruction to pupils enrolled in kindergarten, first grade or second grade, a determination whether the charter school complies with NRS 392.040 regarding the ages for enrollment in those grades.

~~{23.}~~ 24. A determination whether the charter school refrains from charging tuition or fees, except for those fees that are authorized by specific statute or by the written charter of the charter school.

~~{24.}~~ 25. A determination whether the charter school provides written notice to the parents and legal guardians of pupils enrolled in grades 9 to 12, inclusive, whether the charter school is accredited by the Commission on Schools of the Northwest Association of Schools and *of* Colleges ~~{~~

~~—25.}~~ *and Universities.*

26. A determination whether the charter school complies with NRS 386.583 regarding the adoption of rules for academic retention.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R060-02**

The Department of Education adopted regulations assigned LCB File No. R060-02 which pertain to chapter 386 of the Nevada Administrative Code on September 14, 2002.

Notice date: Workshop: 3/19/02 1st hearing: 4/18/02
2nd hearing: 6/19/02 3rd hearing 8/2/02
Hearing date: Workshop: 4/13/02 1st hearing: 5/18/02
2nd hearing: 7/26/02 3rd hearing 9/14/02
Date of adoption by agency: 9/14/2002
Filing date: 12/17/2002

INFORMATIONAL STATEMENT

1. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

The Notice of Workshop to Solicit Comments on proposed revisions to NAC 386, Charter Schools, was sent to approximately one-hundred fifty individuals and educational organizations. One workshop was conducted by the Nevada State Board of Education on April 3, 2002, to provide the opportunity for comments by affected parties and the public. There were comments from the public.

The Notice of Intent to Act Upon a Regulation for public hearing and Board adoption of proposed revisions to NAC 386, Charter Schools, was sent to approximately one-hundred fifty individuals and educational organizations. Three public hearings were conducted by the Nevada State Board of Education on May 18, 2002, July 26, 2002, and September 14, 2002, to provide the opportunity for comments by affected parties and the public. There were no comments from the public. The Board adopted the proposed language with amendment to Section 8.

2. The number of persons who:

(a) Attended Each Hearing:	Workshop: 13	1st Hearing: 10
	2nd Hearing: 19	3rd Hearing: 23
(b) Testified at Each Hearing:	Workshop: 5	1st Hearing: 2
	2nd Hearing: 9	3rd Hearing: 5
(c) Submitted Written Statements:	Workshop: 1	1st Hearing: 23
	2nd Hearing: 4	3rd Hearing: 3

Written comments submitted as follows: From April 13, 2002, Workshop to Solicit Comments: Memorandum of April 13, 2002, from Al Bellister, Nevada State Education Association with proposed language regarding contracts with for-profit educational management organizations; from the May 18, 2002, first public hearing: twenty-three written comments were received signed by individuals related to the governing board members and the educational management organizations; from the July 26, 2002, second public hearing: letter dated June 26, 2002, from Dave Cook, Carson City; Letter from Sendi Stockle, Gardnerville, dated July 1, 2002; letter from B. Jan Lommel,

Gardnerville, dated July 1, 2002, and, proposed alternative language presented by Al Bellister, Nevada State Education Association, dated July 23, 2002; and, from the September 14, 2002, third public hearing: Letter from Julie Pippenger, Executive Director, Andre Agassi Charitable Foundation; letter dated September 10, 2002, from Judy Kroshus, Nevada Charter School Alliance; and, letter dated September 4, 2002, from Craig Butz, Executive Director, Odyssey Charter Schools.

A copy of written comments can be requested by calling LaDonna Byrd, Assistant to the State Board at 775-687-9225 or in writing to the Department of Education, State Board Office, Suite 100, 700 East Fifth Street, Carson City, NV 89701-5096.

3. A description of how comment was solicited from affected businesses, a summary of the response and an explanation how other interested persons may obtain a copy of the summary.

Comment was solicited through the workshop notice of March 19, 2002. Comments from the public were received: 1) Al Bellister, Research Director, Nevada State Education Association, distributed a handout with his recommendations and was of the opinion that the language adopted by the Board in January runs contrary to the intent of legislation, that a charter school shall no operate for-profit and that all teachers of a charter school are public employees; 2) Craig Kadlub, Director of Public Affairs, Clark County School District, stated that his recommendation was for a requirement that a majority of the governing board members must reside in the county that the charter school exists; 3) Ricci Elkins, President, Nevada Charter School Alliance, Sparks, presented areas for possible regulation language: to include business plans, such as start-up budgets and cash flows, in the application; to require training for charter school operators, founding individuals and governing board members; and, to extend the deadline to allow an eighteen to twenty-four month development period for the start-up of charter schools; 4) Carol Andrew, high Desert Montessori School, Reno, urged the Board to consider broader categories than those listed for the definition of at-risk; 5) Dave Cook, Carson City, spoke in favor of the definitions of at-risk students, but had a serious concern for the majority of the governing board residing in the school district.

Comment was solicited through three public hearing notices of April 18, 2002, June 19, 2002, and, August 2, 2002. At the first public hearing held May 18, 2002, comments from the public were: 1) Ricci Elkins, President, Nevada Charter School Alliance, Sparks, addressed concerns regarding Section 8, 11 through 14, advising that these areas jeopardize the financial liability of existing charter schools, as well as the development of new charter schools; and, 2) Charles Lincoln, Sierra Tahoe Academy Charter School, Douglas County, spoke regarding Sections 11 through 14, advising that the governing board of their charter school has been looking at contracting with an EMO to provide administrators and teachers for financial reasons and availability of personnel. At the second public hearing held July 26, 2002, comments from the public were: 1) Craig Butz, Executive Director, Odyssey Schools, Las Vegas, stated an interest in maintaining the ability to contract fully with an educational management organization as is currently in state regulations; 2) Dave Cook, former State Board of Education Member, Carson City, expressed concern for Section 10, regarding the majority of the governing board residing in the county where the school is located; 3) Al Bellister, Research Director, Nevada State Education Association, presented alternative language in Section 8 for the contracting of educational management organizations (as part of written comments received); 4) Charles Lincoln, Sierra Tahoe Academy, Douglas County, spoke

about concerns for the changes in Section 8 as it is felt the change will not allow charter schools to contract with educational management organizations for educational services; 5) Judy Kroshus, Center for Charter School Development, Sparks, expressed concern for limiting distance education in the proposed language to one school district in Section 7; 6) Ricci Elkins, President, Nevada Charter School Alliance and Center for Charter School Development, Sparks, asked the Board to consider allowing charter schools to contract with EMO's for the administrator position; 7) Dotty Merrill, Senior Director, Public Policy, Accountability and Assessment, Washoe County School District, commended the Department staff for working with the school district on the language for SMART data reporting in Section 4, and encouraged approval of this section; 8) Vee Wilson, Administrator, Odyssey Charter School, spoke against Section 10 by advising that the hiring of employees by a charter school is a difficult task, in part due to budgetary constraints; and, 9) Wayne Tanaka, Agassi Academy, Las Vegas, spoke to the Board members about administrators being hired through an EMO which would be precluded if the proposed Section 8 were approved. At the third public hearing held September 14, 2002, the following comments were received: 1) Vee Wilson, Administrator, Odyssey Charter School, disagreed with any changes to the current language in regulation regarding educational management organizations; 2) Larry Moses, Odyssey Charter School, agreed with the changes in the proposed regulation, with the exception of Section 8, regarding educational management organizations; 3) Al Bellister, Research Director, Nevada State Education Association, spoke in concurrence with the proposed compromising language to Section 8, as presented by the Department; 4) Charles Lincoln, Sierra Tahoe Academy, Douglas County, felt that no changes were needed to the regulations at this time; and, 5) Judy Kroshus, Center for Charter School Development, Sparks, had a question regarding Section 7.3, regarding a possible impact a proposed charter school to provide distance education programs in at least three different counties.

A copy of the summary and/or minutes of the public hearing may be obtained by calling LaDonna Byrd, Board Secretary, at the Department of Education (775) 687-9225, or by writing to the Department of Education at 700 East Fifth Street, Carson City, Nevada 89701-5096.

4. If the regulation was adopted with or without change to any part of the proposed regulation, a summary of the reasons for adopting.

The permanent regulation language was adopted by the Nevada State Board of Education at the public hearing held January 26, 2002, with revision to replace current Section 8 as follows: "1. The governing body of a charter school may enter into a contract with an educational management organization or any other entity under the terms of which the contractor agrees to employ or otherwise provide a person who: a. Holds an endorsement described in NAC 391.222, 391.243, 391.244, 394.1277, 391.279, 391.315, 391.340, 391.343, 391.350 to 391.383, inclusive, 391.390 or 391.391; and, b. is working in the area of his specialty at the school. 2. An educational management organization may provide no more than 30% of the personnel who must be licensed. The 30% calculation does not include the personnel cited in subsection 1, above."

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:

There is no economic effect on the business which is regulated. There is no estimated economic effect on the public, either adversely or beneficially, nor immediate or long term.

6. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the agency for enforcement of this regulation.

7. A description of any regulations of other state or government agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

No other state or government agency regulations will be overlapped or duplicated by the above noted regulations. There is no duplication or overlap of federal regulations.

8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

There are none.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The regulation does not provide or involve a new fee