

**PROPOSED REGULATION OF THE
DEPARTMENT OF EDUCATION**

LCB File No. R061-08

March 28, 2008

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

AUTHORITY: §§1-3 and 5, NRS 386.525, 386.527 and 386.540; §§4 and 6, NRS 386.540.

A REGULATION relating to charter schools; prescribing the grounds for denial of an application to form a charter school by the State Board of Education; prescribing restrictions on the provisions which may be included in certain contracts entered into by a charter school or a proposed charter school; and providing other matters properly relating thereto.

Section 1. Chapter 386 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. 1. *If the State Board of Education receives an application to form a charter school for sponsorship by the State Board, the State Board shall not approve the application:*

(a) For a written charter pursuant to subsection 5 of NRS 386.527 if the application does not satisfy the requirements of paragraphs (a) and (b) of subsection 1 of NRS 386.525; or

(b) If the financial or administrative operation of the proposed charter school does not meet or exceed the standards, procedures and requirements of the school district in which the proposed charter school will be located.

2. If the State Board of Education receives an application to form a charter school for sponsorship by the State Board, the State Board may deny the application pursuant to this section.

3. The State Board of Education may deny an application if the State Board determines that an insufficiency exists in the curriculum or instruction proposed for the charter school, including, without limitation, the use of a program of distance education approved pursuant to NRS 388.820 to 388.874, inclusive, if the curriculum or instruction:

(a) Does not have the potential to improve the academic performance of pupils enrolled in the proposed charter school;

(b) Is not aligned with the standards of content and performance established pursuant to NRS 389.520 and other educational program requirements of this State;

(c) Is not supported by sound, scientific research which demonstrates the effectiveness of the curriculum or instruction; or

(d) Is not aligned with the written description of the mission and goals for the proposed charter school as included in the application pursuant to NRS 386.520.

4. The State Board of Education may deny an application if the State Board determines that:

(a) A discrepancy exists in the explanation of expenditures or flat fees which will be paid to a contractor or an educational management organization for services, including, without limitation, that the expenditures or flat fees do not reflect the actual cost for those services as those services are otherwise available to a public school or the general public;

(b) A discrepancy exists in the fees which will be paid to a contractor or an educational management organization and the actual cost to adequately support the proposed educational program of the proposed charter school;

(c) An insufficiency exists in an unbalanced budget, a budget that relies unduly on donations or a budget based on an unrealistic enrollment projection;

(d) An insufficiency exists in a budget that does not adequately anticipate the requirements for and expenses of pupils with disabilities who may enroll in a program of special education at the proposed charter school; or

(e) Any other insufficiency exists in the finances of the proposed charter school.

5. The State Board of Education may deny an application if the State Board determines that an insufficiency exists in the past performance of a contractor or educational management organization with whom the committee to form the charter school or the governing body of the proposed charter school intends to contract, including, without limitation, a contractor or educational management organization which:

(a) Has been uncooperative in the performance of past contracts;

(b) Has previously failed to comply with requirements for the operation of a charter school in this State or in any other state; or

(c) Is currently operating a charter school in this State and that charter school fails to meet the requirements of subsection 1 of NRS 386.5515, if applicable.

6. The State Board of Education may deny an application if the State Board determines that an insufficiency exists in the past performance of an educational model which the proposed charter school intends to use or replicate, including, without limitation, the past performance of that model in this State or any other state.

7. The State Board of Education may deny an application if a contract or a proposed contract between the proposed charter school and a contractor or an educational management organization contains a provision which is prohibited by section 3 of this regulation.

8. The State Board of Education may deny an application based upon the location of the proposed charter school, including, without limitation, the proximity of the proposed charter

school to a charter school which is currently operating and which provides the same or similar educational opportunities to pupils enrolled in the grade levels that the proposed charter school will serve.

9. The State Board of Education may deny an application if the State Board determines that an insufficiency exists in any other area of the maintenance or operation of the proposed charter school.

Sec. 3. *A contract or a proposed contract between a charter school or a proposed charter school and a contractor or an educational management organization must not:*

1. Give to the contractor or educational management organization direct control of educational services, financial decisions, the appointment of members of the governing body, or the hiring and dismissal of an administrator or financial officer of the charter school or proposed charter school;

2. Authorize the payment of fees, loans, advances or other monetary charges to the contractor or educational management organization which are greater than 15 percent of the total expected funding received by the charter school or proposed charter school from the State Distributive School Account;

3. Require the charter school or proposed charter school to prepay any fees to the contractor or educational management organization;

4. Require the charter school or proposed charter school to pay the contractor or educational management organization before the payment of other obligations of the charter school or proposed charter school during a period of financial distress;

5. Allow a contractor or an educational management organization to cause a delay in the repayment of a loan or other money advanced by the contractor or educational management

organization to the charter school or proposed charter school, which delay would increase the cost to the charter school or proposed charter school of repaying the loan or advance;

6. Require the charter school or proposed charter school to enroll a minimum number of pupils for the continuation of the contract between the charter school or proposed charter school and the contractor or educational management organization;

7. Require the charter school or proposed charter school to request or borrow money from this State to pay the contractor or educational management organization if the contractor or educational management organization will provide financial management to the charter school;

8. Contain a provision which restricts the ability of the charter school or proposed charter school to borrow money from a person other than the contractor or educational management organization;

9. Provide for the allocation to the charter school or proposed charter school of any indirect cost incurred by the contractor or educational management organization;

10. Authorize the payment of fees to the contractor or educational management organization which are not attributable to the actual services provided by the contractor or educational management organization;

11. Allow any money received by the charter school or proposed charter school from this State or from the board of trustees of a school district to be transferred to or deposited in a bank, credit union or other financial institution outside this State, including money controlled by the contractor or educational management organization; or

12. Provide incentive fees to the contractor or the educational management organization.

Sec. 4. NAC 386.010 is hereby amended to read as follows:

386.010 As used in NAC 386.010 to 386.445, inclusive, *and sections 2 and 3 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 386.015 to 386.050, inclusive, have the meanings ascribed to them in those sections.

Sec. 5. NAC 386.202 is hereby amended to read as follows:

386.202 1. If the Subcommittee on Charter Schools receives an application to form a charter school, the staff of the Department, acting on behalf of the State Board of Education, will verify the contents of the application by:

- (a) Performing a physical inspection of the location of the proposed charter school, if applicable;
- (b) Consulting with the members of the committee to form the charter school and, where appropriate, the proposed administrators and staff members of the proposed charter school; and
- (c) Performing any other investigation necessary or useful in verifying the contents of the application.

2. If the Subcommittee on Charter Schools receives an application pursuant to subsection 4 of NRS 386.525 after the application has been denied twice by the board of trustees of a school district, the application that is submitted to the State Board of Education must be the same application that was denied by the board of trustees except that it may be revised in response to concerns stated by the board of trustees in its second denial of the application if such a revision does not significantly alter the application.

3. Within 20 days after an application is received by the Subcommittee on Charter Schools, the Department will review the application and determine whether the application:

- (a) Complies with NRS 386.500 to 386.610, inclusive, and the regulations applicable to charter schools; and

(b) Is complete in accordance with the regulations of the Department.

4. Within 30 days after an application is received by the Subcommittee on Charter Schools, the Department will provide to the applicant its findings pursuant to subsection 3, including the items that are incomplete or noncompliant. The Department may hold a meeting with the applicant or provide the information required by this subsection in another format suitable to the applicant.

5. Within 30 days after an application is received by the Subcommittee on Charter Schools, the Department will provide to the State Board of Education:

(a) The findings of the Department pursuant to subsection 3;

(b) If applicable, the reasons for the first and second denial of the application by the board of trustees of a school district;

(c) A copy of the proposed written agreement if the State Board approves the application pursuant to subsection 5 of NRS 386.527 or a copy of the proposed written agreement if the State Board approves the application pursuant to subsection 7 of NRS 386.527; and

(d) Any other information the Department determines is necessary for the State Board in its review of the application.

6. Other than material required to convert a written charter issued by the State Board of Education pursuant to subsection 7 of NRS 386.527 to a written charter issued pursuant to subsection 5 of NRS 386.527, no additional application material will be accepted from the applicant after the submission referred to in subsections 1 and 2 unless specifically requested by the State Board, the Subcommittee on Charter Schools or the Department to assist in the review of the application.

7. At the meeting described in subsection 5 or 6 of NRS 386.525, as applicable, the Subcommittee on Charter Schools or the State Board of Education, as applicable, shall:

(a) Consider the application *in accordance with section 2 of this regulation* along with any reports generated by the employees of the Department and, if the application was previously denied by the board of trustees of a school district, any reports generated by the employees of that school district pursuant to NAC 386.200; and

(b) Determine whether the application complies with all applicable state and federal statutes and regulations.

8. After the Subcommittee on Charter Schools holds a meeting pursuant to subsection 5 of NRS 386.525, the Subcommittee shall immediately transmit to the State Board of Education a recommendation for approval or denial of the application by the State Board. The Subcommittee shall not delay in the transmission of its recommendation.

9. The State Board of Education shall ~~[not approve]~~ *comply with the provisions of sections 2 and 3 of this regulation to determine whether to deny* an application for a written charter .
~~[pursuant to subsection 5 of NRS 386.527 if the application does not satisfy the requirements of paragraphs (a) and (b) of subsection 1 of NRS 386.525.]~~

10. A written charter may be granted pursuant to subsection 7 of NRS 386.527 if the applicant is not prepared to commence operation. If such a charter is granted, the provisions of NAC 386.240 apply.

~~[10.]~~ *11.* If the State Board of Education denies an application, it shall forward a copy of the written notice of the denial, including, without limitation, the reasons for the denial, to the Department within 5 days after the decision to deny the application is made.

~~[11.]~~ *12.* If the State Board of Education approves an application, the:

(a) Written charter must include the application, as approved, and a written agreement signed by the President of the State Board and charter school.

(b) Written notice provided to the Department pursuant to NRS 386.527 indicating approval of the application must include the written charter.

Sec. 6. 1. A charter school which is in operation on the effective date of this regulation may continue to operate pursuant to its current written charter until the expiration of that written charter even if the charter school does not satisfy the requirements of sections 2 and 3 of this regulation.

2. An application to form a charter school or to renew a written charter submitted after the effective date of this regulation must comply with the provisions of sections 2 and 3 of this regulation.