

**PROPOSED REGULATION OF THE  
DEPARTMENT OF EDUCATION**

**LCB File No. R131-16**

**Section 1:** Chapter 386 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive of this regulation.

**Sec. 2** *1. A sponsor may require the governing body of a charter school to develop and submit a plan to its sponsor that includes specific strategies the school will use to recruit and enroll a student population that is comparable to the demographic composition of the student population who attend public schools in the zone of attendance in which the charter school is located.*

**Sec. 3** *1. A charter school, including but not limited to a charter school offering a program of distance education, may request its sponsor limit enrollment in the charter school to pupils residing in the county in which the charter school is located or to the county in which the charter school is located and one or more adjacent counties if it is determined to be in the best interest of the pupils.*

*2. A sponsor may restrict the authority of a charter school to enroll pupils from one or more counties for any charter school which executes a charter contract or amends a charter contract on or after January 1, 2017, if it is determined to be in the best interest of the pupils.*

*3. A sponsor may restrict the authority of a charter school to enroll additional pupils from one or more counties other than the county from which the charter school draws the largest number of pupils for any charter school which it determines, at its sole discretion, is eligible to have its written charter revoked, its charter contract terminated, or its governing body reconstituted.*

**Sec. 4** *1. Charter schools may not administer tests to applicants or potential applicants or base enrollment on results from any test of ability or achievement.*

*2. Charter schools may not use financial incentives to recruit students.*

*3. Requirements for enrollment in a charter school, including but not limited to payment of fees, expectations related to volunteer hours, and attendance at informational meetings and interviews, shall not be designed, intended, or used to discriminate.*

*4. Charter schools may not require potential students and their families to attend interviews or informational meetings as a condition of application or enrollment.*

*5. Except as necessary to comply with the exclusive pupil provisions of NRS 388A.453(9), a charter school may not require that:*

*(a) A pupil submit records from a previous school or request that the pupil provide a copy of an individualized education plan, transcript, report card, or any other item prohibited in guidelines developed by the sponsor until after the pupil has accepted admission to the charter school.*

*(b) A pupil complete an affidavit to home school, an application to participate in the free or reduced priced meals program, or any other document prohibited in guidelines developed by the sponsor as a condition of applying, enrolling, or ongoing attendance in the charter school.*

6. *Charter schools may not require fees as a condition of enrollment, registration, or ongoing attendance. Any fee policy adopted by a charter school must be approved by the sponsor and must contain a provision for the waiver of fees for any student who qualifies for free or reduced price meals, regardless of whether the school participates in the National School Lunch Program.*

7. *A sponsor may require the charter schools it authorizes to submit all marketing materials and application for admission, and any subsequent revisions beyond correcting minor grammatical errors, to the sponsor for approval. All such materials must be offered in any language required by the sponsor based on an analysis of the demographics of other public schools near the charter school.*

**Sec. 5**      1. *Charter schools shall notify all applicants and enrolled students of:*

(a) *The rights of students with diverse learning needs to attend the charter school and to receive accommodations and support services, including students who may have disabilities, require special education, or are English language learners.*

(b) *Its performance rating pursuant to the statewide system of accountability any findings issued by the sponsor related to its performance audit or the performance framework for the charter school, and any performance data identified in guidelines produced by the sponsor, including but not limited to its cohort graduation rate if applicable.*

**Sec. 6**      1. *Every charter school must keep accurate records related to enrollment including, but not limited to, applications for admission, the lottery process, and wait lists.*

2. *A sponsor may require the charter schools it has authorized to submit an annual report in accordance with deadlines established by the sponsor that contain the school's total enrollment for the subsequent academic year, and the projected number of students selected for admission by grade and district of residence, for the subsequent academic year.*

3. *A sponsor may require the charter schools it has authorized to submit a list of students who entered the lottery but were not selected for admission in accordance with deadlines established by the sponsor. The information provided must include, but is not limited to, students' names (first, middle, last), address, telephone number, dates of birth, district of residence, grade level, and, to the extent available, the student's unique identifier.*

**Sec. 7. 1.** *If a sponsor of a charter school revokes the school's written charter or its charter contract, the sponsor may restart the charter school by soliciting charter expansion amendment requests from operating charter schools and soliciting charter applications from committees to form and charter management organizations. Such expansion amendment requests and charter applications may be reviewed and evaluated on an expedited basis outside of the normal application and amendment timelines. The sponsor may award a restart charter contract to one or more applicants.*

2. *The new charter school or charter schools must have the right of first refusal to any assets following the dissolution of the previous charter school, including but not limited to any facility owned by the previous charter school. The new charter school or charter schools may also enter into negotiations to assume a lease or leases of the restarted charter school or they may secure a new facility in close proximity to the previous charter school.*

3. *If the restarted charter school or schools will serve the same grade level as the previous charter school, any pupil enrolled at the school before it was restarted must be*

*enrolled in the new charter school before any other eligible pupil is enrolled. In the event that more students from the previous charter school request admission at a grade level than the new grade configuration will accommodate, the charter school will hold a lottery for that grade level.*

**Sec. 8. 1.** *A charter school may develop and use a weighted lottery policy that gives preference to a category or categories of students over others, when the weighting:*

*(a) Is necessary to comply with title VI of the Civil Rights Act of 1964 (“Title VI”), title IX of the Education Amendments of 1972 (“Title IX”), Section 504 of the Rehabilitation Act of 1973 (“Section 504”), the equal protection clause of the Constitution, or applicable State law, to address the specific deficiency and category of students outlined in the desegregation or federal or court order issued to the charter school or its sponsor; or*

*(b) Is in favor of certain subgroups of educationally disadvantaged students, which include students who are economically disadvantaged, students with disabilities, migrant students, limited English proficient students, neglected or delinquent students, and homeless students.*

*2. A weighted lottery policy developed pursuant to subsection b of subsection 1 must identify the weight to be assigned to each set or subset of students and justify the use of such weight(s) to either:*

*(a) Be aligned to the school’s specific vision and mission to meet the needs of an allowable set or subset of students; or*

*(b) Address specific targets to meet or exceed the geographic district’s or geographic area’s percentage of students in a set or subset of educationally disadvantaged students, or in the case of a multidistrict school meet or exceed state averages of such students.*

*3. Weighted lotteries may not be used for the purpose of creating schools exclusively to serve a particular subset of students, and utilizing a weighted lottery does not relieve a school from its existing responsibility to ensure a broad strategy of outreach, recruitment, and retention for all students, including educationally disadvantaged students.*

*4. Adoption and use of a weighted lottery policy which is consistent with state law, regulation, and Federal Charter School Programs guidelines does not constitute discrimination pursuant to NRS 388A.453 or any other law or regulation applicable to charter schools.*

**Sec. 9. NAC 386.225** is hereby amended to read as follows:

1. At least once every 3 years, the Department will conduct a comprehensive review of each sponsor of charter schools that the Department has approved for sponsorship.

2. In conducting a comprehensive review of a sponsor, the Department will:

(a) Review the annual reports submitted to the Department by the sponsor pursuant to NRS 386.610.

(b) Determine whether the sponsor has complied with all applicable statutes and regulations.

(c) Determine whether the sponsor has complied with nationally recognized best practices in carrying out its duties as a sponsor.

3. Based on the comprehensive review described in subsection 2, the Department will determine whether to continue or revoke the authorization of the sponsor to sponsor charter schools.

*4. If a sponsor does not accept and review charter applications for three consecutive years, it must submit an application to sponsor additional charter schools to the Department prior to accepting applications or granting charter contracts to new applicants.*

**Sec. 10. NAC 386.353** is hereby amended to read as follows:

1. The governing body of a charter school shall not limit the enrollment of pupils in the charter school to a specified number of pupils unless:

(a) The written charter or charter contract, as applicable, identifies a limit on the *total* number of pupils the charter school will enroll, *identifies a limit on the total number of pupils the charter school will enroll in a particular grade*, or identifies a ratio of pupils to teachers for the charter school;

(b) The charter school limits the enrollment of pupils to a number that corresponds with the maximum capacity of persons allowed to occupy the facility *or facilities* of the charter school as determined by the building, fire or health authority which inspected the facility; or

(c) The charter school has obtained written permission from the Superintendent of Public Instruction pursuant to subsection 5 to set a limit on the enrollment of pupils.

2. If more pupils who are eligible for enrollment apply for enrollment in a charter school than the number of spaces available, the governing body of the charter school shall establish a waiting list for enrollment in the charter school and place the pupils who were not enrolled in the charter school on the waiting list. The governing body of the charter school shall make available for inspection during the business hours of the charter school a list of the names of pupils on the waiting list.

3. Except as otherwise provided in subsections 5 and 6, if a space for a new pupil becomes available for enrollment, the governing body of the charter school shall *immediately* fill the available space using the lottery system described in its written charter or charter contract, as applicable, to determine to which pupil on the waiting list established pursuant to subsection 2 the governing body will offer the available space for enrollment in the charter school. The governing body of the charter school shall provide notice to the pupil selected pursuant to this subsection of the availability of a space for enrollment in the charter school.

4. Except as otherwise provided in subsection 5, a charter school must enroll the pupil notified by the governing body of the charter school pursuant to subsection 3 if that pupil seeks enrollment in the charter school. If the pupil notified by the governing body of the charter school does not wish to enroll in the charter school, the governing body shall, using the lottery system to select another pupil on the waiting list, provide notice of the available space for enrollment to another pupil until the available space is filled.

5. Not later than the first day of the school year, a charter school may submit an application, on a form prescribed by the Superintendent of Public Instruction, to the Superintendent of Public Instruction for:

(a) Written permission to limit the enrollment of pupils in the charter school pursuant to subsection 1; or

(b) A waiver from the requirement to enroll a pupil from the waiting list pursuant to subsection 4.

6. The Superintendent of Public Instruction may approve an application submitted pursuant to subsection 5 if the governing body of the charter school:

(a) Has entered into an agreement with a provider of software for a program of education used in the charter school; and

(b) Submits documentation which demonstrates that the enrollment of additional pupils in the charter school will be an undue financial burden on the charter school.

7. If the Superintendent of Public Instruction denies an application submitted pursuant to subsection 5, the governing body of the charter school may appeal the decision to the State Board.

8. A charter school that limits the enrollment of pupils pursuant to:

(a) Paragraph (a) of subsection 1 must submit a request to the sponsor of the charter school to amend the written charter or charter contract, as applicable, before enrolling pupils in excess of the approved limit.

(b) Paragraph (b) of subsection 1 must obtain permission from the appropriate building, fire or health authority before enrolling pupils in excess of the maximum capacity allowed to occupy the facility.

**Sec. 11.** Chapter 387 of NAC is hereby amended by adding thereto the provisions set forth as section 12 of this regulation.

**Sec. 12.** *1. The Department, in consultation with sponsors of charter schools, shall issue a Nevada Charter School Audit Guide detailing the requirements for the annual independent audit based on best practices of sponsor entities nationally, including but not limited to treating any foundation or other non-profit corporation exclusively formed to benefit the charter school as a component unit for the purposes of the independent audit.*

*2. A committee to form may create a non-profit entity to raise funds on behalf of the proposed charter school. This non-profit affiliate may be structured in one of two ways:*

*(a) As a non-profit 501c3 organization formed exclusively to benefit the school where the membership of the organization's officers and directors are the same as the members of the committee to form. The bylaws of the non-profit organization and the proposed charter schools must explicitly require that upon charter approval, the membership overlap will continue for the duration of the charter contract and any change to the bylaws of either the non-profit or the school will be considered a material change to the charter contract. To comply with open meeting law, all board and committee meetings of the non-profit must be held simultaneously with those of the governing body of that charter school. The books and records of the non-profit will be available for public inspection at all times on the same basis as the books and records of the charter school. No officer or employee of the charter school may accept compensation from the non-profit. The non-profit shall not provide staff or services to the school for compensation. Within three years of charter approval, the school must obtain separate 501c3 status, the non-profit must be dissolved, and all assets of the non-profit must be transferred to the charter school.*

*(b) As a non-profit 501c3 organization formed exclusively to benefit the school where none of the organization's officers and directors are the same as the members of the committee to form or the future governing body. The bylaws of the non-profit organization and the proposed charter school must explicitly require that no member of the non-profit organization will serve as a member of the committee to form or the future governing board for the duration of the charter contract. No officer or employee of the charter school may serve on the board of the non-profit or accept compensation from the non-profit. The non-profit may provide staff or services to the school for compensation, provided that it enters into a management agreement as an educational management organization. In the event that the*

*non-profit is dissolved or the affiliation agreement ends, all assets of the non-profit must be transferred to the charter school.*

**Sec. 13. NAC 387.775** is hereby amended to read as follows:

1. The governing body of a charter school or university school for profoundly gifted pupils shall cause the charter school or university school for profoundly gifted pupils to be audited on an annual basis.

2. All audits must be performed by *a certified public accountant or accounting firm who shall be selected from an approved list developed by a committee of 2 representatives each from the Department of Education, the State Public Charter School Authority, and the Governor's Office of Finance, in accordance with Government auditing standards for financial audits issued by the Comptroller General of the United States.*

~~†(a) A public accountant certified or registered; or  
—(b) A partnership or professional corporation registered,  
Ê pursuant to the provisions of chapter 628 of NRS.†~~

3. *The engagement letter between the auditor and the governing body must be approved by the governing body not more than one month after the close of the fiscal year for which the audit is conducted.*

~~†3†~~4. Each annual audit must:

(a) Cover the business of the charter school or university school for profoundly gifted pupils during the full fiscal year;

(b) Be a financial audit conducted in accordance with generally accepted auditing standards in the United States; and

(c) Include:

(1) An analysis of and findings on compliance with applicable statutes and regulations;

(2) A management letter outlining any recommendations for improvement;

(3) An expression of opinion on the financial statements;

(4) If the annual audit relates to a charter school, an analysis of and findings on compliance with the performance indicators for ~~†finances†~~ *organization* set forth in the performance framework of the charter school; and

(5) Any other comments deemed pertinent by the auditor.

Ê The form of the financial statements must be prescribed by the Department, and the chart of accounts must be, as nearly as possible, the same as that used in the preparation and publication of the annual budget.

~~†4†~~5. The annual audit of the charter school or university school for profoundly gifted pupils must be concluded and the report submitted to the governing body not later than 4 months after the close of the fiscal year for which the audit is conducted.

~~†5†~~6. The opinion and findings of the auditor contained in the report of the audit must be presented at a meeting of the governing body held not more than 30 days after the report is submitted to it.

~~†6†~~7. Immediately thereafter, the entire report, together with the management letter required by generally accepted auditing standards in the United States, must be filed as a public record with:

(a) The Department;

(b) The Legislative Counsel Bureau; and

(c) If the school is a charter school, the sponsor of the charter school.

**78.** After the report of the audit is filed by the charter school or university school for profoundly gifted pupils, the report of the audit, including, without limitation, the opinion and findings of the auditor contained in the report of the audit, may be disseminated by or on behalf of the charter school or university school for profoundly gifted pupils for which the report was prepared by inclusion, without limitation, in or on:

(a) A filing made pursuant to the laws or regulations of this State;

(b) A filing made pursuant to a rule or regulation of the Securities and Exchange Commission of the United States; or

(c) A website maintained by a charter school or university school for profoundly gifted pupils on the Internet or its successor,

Ê without the consent of the auditor who prepared the report of the audit. A provision of a contract entered into between an auditor and a charter school or university school for profoundly gifted pupils that is contrary to the provisions of this subsection is against the public policy of this State and is void and unenforceable.

~~79.~~ **79.** If an auditor finds evidence of fraud or dishonesty in the financial statements of a charter school or university school for profoundly gifted pupils, the auditor shall report such evidence to the appropriate level of management in the charter school or university school for profoundly gifted pupils, or to the governing body or sponsor of the charter school or university school for profoundly gifted pupils if the evidence of fraud or dishonesty involved the highest levels of management or the governing body.

~~710.~~ **710.** The governing body shall act upon the recommendations of the report of the audit within 3 months after receipt of the report, unless prompter action is required concerning violations of law or regulation, by setting forth in its minutes its intention to adopt the recommendations, to adopt them with modifications or to reject them for reasons shown in the minutes.

**Sec. 14. NAC 387.780** is hereby amended to read as follows:

1. The Department shall review the annual audit of each charter school and each university school for profoundly gifted pupils to determine whether it complies with the applicable statutes and regulations governing charter schools and university schools for profoundly gifted pupils. Any independent auditor's report, whether upon financial position and results of operations or upon internal financial controls, which the Department believes may not comply with those regulations must be referred by the Department to the Nevada State Board of Accountancy for investigation and such action in respect to the issuing accountant as the Board may find appropriate in the circumstances.

2. In its review of the annual audits submitted, the Department shall identify all violations of statute and regulation reported therein. Within 60 days after the delivery of the annual audit to the charter school or university school for profoundly gifted pupils, the governing body shall advise the Department *and its sponsor* what action has been taken to prevent recurrence of each violation of law or regulation or to correct each continuing violation. The Department shall evaluate the plan of correction proposed by the charter school or university school for profoundly gifted pupils and, if the plan is satisfactory, shall so advise the governing body *and the sponsor*. If the plan is not satisfactory, the Department shall advise the governing body that it deems the plan inadequate and propose an alternative plan. Within 30 days thereafter, the governing body shall report its assent to the Department's plan or request a hearing before the State Board. The

hearing must be held at the next meeting of the State Board, but must not be held more than 90 days after such a request is received. The determination of the State Board is final.

3. If the governing body fails to submit a proposed plan of correction pursuant to subsection 2, or if the Superintendent of Public Instruction determines that the plan established is not being complied with, the Superintendent must, through the Office of the Attorney General, seek a writ from a court of competent jurisdiction to compel compliance *and notify the sponsor. The sponsor may invoke the provisions of NRS 386.535.*

*4. If the sponsor determines, at its discretion, that a violation of statute or regulation that is reported in a charter school's audit merits revocation of the written charter or termination of the charter contract, the sponsor shall invoke the provisions of NRS 388A.330.*