

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement
LCB File No. R131-16

1. A clear and concise explanation of the need for the adopted regulation.

Existing law requires the Department of Education to adopt regulations concerning certain matters relating to charter schools and authorizes the Department to adopt regulations as it determines are necessary to carry out the provisions of law relating to charter schools. (NRS 388A.105, 388A.110) This regulation provides clarification on how charter schools can ensure transparent and equitable student recruitment and enrollment practices and remain in compliance with state and federal law. To accomplish this, the regulation authorizes a pupil at a multi-campus school to matriculate to another campus of the multi-campus school; authorizes the sponsor of a multi-campus school to close a campus of the multi-campus school without closing the multi-campus school; authorizes the sponsor of a charter school to require the governing body of the charter school to develop and submit a plan for the recruitment of pupils; establishes provisions relating to enrollment at a charter school; requires a charter school to provide certain notices to pupils and potential pupils; and establishes provisions relating to weighted lotteries for admission to a charter school. The regulation also provides for additional accountability for new and lapsed sponsors, requiring that school districts and NSHE institutions that have not sponsored any new schools within the past three years must reapply to the Department for Authority to sponsor schools. The regulation also clarifies the process by which a sponsor may restart an underperforming school. Additionally, the regulation provides additional clarification on policy or contractual decisions made by a charter school or its sponsor that preclude a school from receiving hold harmless payments. The regulation also provides important guidelines to schools with regard to fiscal accountability and transparency in the use of public funds by establishing various provisions relating to audits of charter schools, clarifying the role of non-profit affiliates of a charter in fundraising and the provision of services to the school.

2. 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 Nevada Department of Education (NDE) held a workshop in the fall of 2015 following the passage of Senate Bill 509. The Department held a regulation hearing on March 28, 2017 to solicit public comment on the proposed regulation. NDE sent the proposed regulation to interested stakeholders and published to the NDE website. NDE held an additional hearing on July 31, 2017 to adopt changes made to the regulation from the March 28, 2017 Regulation hearing and to solicit comments on the proposed amendments from members of the public. Below is a summary of each section of the proposed regulation that was the subject of public comment at either the March 28, 2017 or July 31, 2017 hearings.

General Comments: Odyssey Charter School stated that it was in favor of the proposed regulations in that they seems to uphold the principals of inclusion and transparency, and it hoped that the new regulations would not infringe on charter schools' autonomy.

Sections 2 – 5: In regard to the proposed regulations related to multi-campus schools, current charter school statutes permit a single charter holder to operate multiple campuses. Under the current framework, these campuses are treated as a single school. The proposed regulations would change this framework, so that each campus is treated as an individual school for various reporting purposes.

Representatives of Nevada State High School favor these proposed changes. Nevada Connections Academy, however, states that it believes that the proposed regulations exceed the authorizing statute, NRS 388A.171. However, since R131-16 is a proposed regulation of the Department, and not the SPCSA, Nevada Connections Academy's argument in this regard is wholly misplaced. Furthermore, a review of NRS 388A.171, as well as the other statutory provisions related to the Department's regulatory authority, including NRS 385.080, demonstrates that these proposed regulations are well within the Department's regulatory authority.

Section 7: Section 7 relates to potentially allowing charter schools to request that the charter school's sponsor limit enrollment to pupils residing in the county where the charter school is located. This provision would also apply to charter schools that offer distance education.

It appears as though in early hearings that Nevada State High School believes that the proposed provisions related to multi-campus will address any concerns with Section 7. And similarly at later hearings Nevada Virtual Academy seemed to make clear that it opposes any geographical limitation. In written material submitted in connection with R131-16, however, Nevada Virtual Academy stated that it only opposed subsections 2 and 3 of Section 7, and did not oppose subsection 1. Nevada Virtual Academy's reasoning was that while subsection 1 allowed a charter school to agree to a geographical limitation, subsections 2 and 3 allowed sponsors to unilaterally impose a geographical limitation upon charter schools.

However, subsection 2 is tempered by language requiring that any geographical limitation be implemented only "in the best interest of the pupils." Furthermore, subsection 3 only can be invoked after a sponsor of a charter school determines that a charter school should have its charter revoked or terminated, or its governing body be reconstituted. As a result, subsections 2 and 3 both have mechanisms that temper the ability to impose any geographic limitation upon charter schools. Based on that information, the Department determined that there was sufficient due process afforded to schools subject to such determinations by a sponsor.

Section 8: This proposed provision would prohibit a charter school from administering any kind of entrance exam that would be used by the charter school to determine admission. However, charter schools would be allowed under this proposed regulation to administer exams to students after enrollment to determine placement of the student.

Section 8 would also prohibit other potentially discriminatory admission practices, such as pre-admission informational meetings or interviews with parents and students, required fees, and the pre-admission submission of pupil records. Finally, this section would allow a sponsor of a chart school to require the charter school to submit to the sponsor all marketing materials that are used for in connection with potential enrolment.

Nevada Virtual Academy favors the prohibition against pre-application, pre-enrollment, and pre-attendance “orientation requirements.” Nevada Virtual Academy also agrees that prospective students should not be screened prior to enrolment. However, Nevada Virtual Academy believes that orientation sessions should be allowed to be provided to students and their families after enrollment. The Department would note that nothing in the regulation precludes a charter school from providing orientation sessions to parents and families. The proposed regulation merely clarifies that a school cannot employ discriminatory enrollment practices that would deny a student admission or the right to ongoing attendance based on the actions or inactions of a parent or family member.

Subsection 1: Delta Academy purportedly opposes subsection 1(e)(1) as it relates to IEPs, and due to the fact that charter schools such as Delta Academy are not Local Education Agencies (LEA). However, other parties noted that this provision is consistent with best practices, and state and federal mandates, and due to the fact that LEA’s have obligations under both federal and state law to be transparent and equitable. Likewise, Superintendent Canavero noted that charter schools, as with all public schools, are required by state and federal mandates to be accessible to all students.

Subsection 2: Nevada Virtual Academy opposes the provision related to marketing materials (subsection 2), since according to Nevada Virtual Academy such a provision was struck from a proposed bill in the last Legislative Session. The Department determined that the language in the relevant bill was removed by the sponsor of that bill based on the fact that these regulations had already been workshopped and drafted and were scheduled to be heard in the spring.

Subsection 3: This subsection was amended to address any concerns of Nevada State High School, in that an amendment was proposed that would allow testing of a student after the student is admitted to a charter school in order to allow for placement decisions.

Section 9: Section 9 provides that charter schools must notify parents of potential and enrolled students of certain rights and certain performance ratings of the charter school.

Based on comments by representatives of Nevada Virtual Academy, it was suggested that this section could be amended to read “...notify the families...” instead of “...notify the parents of all potential and enrolled pupils.” However, the most recent proposed

amendment simply reads "... notify all potential and enrolled pupils...." This change was made at the request of Nevada Virtual Academy.

Section 11: Section 11 relates to the restart of a charter school after revocation.

Nevada Connections Academy opposes this section, since Nevada Connections Academy claims this section exceeds the SPCSA's authority to propose and adopt regulations. Nevada Connections Academy makes the same argument in regard to Section 11 as it makes in regard to Section 2 and 5 (see above). Again, Nevada Connections Academy's argument in regard to the Department's regulatory authority seems misplaced. The adoption of these regulations by the Department is required pursuant to NRS 388A.300(5), based on SB460 of the 2015 Legislative Session.

Section 16: This proposed provision relates to the Department's interpretation of "deliberately causes a decline in the enrollment of pupils" as that phrase is used in NRS 387.1223 related to reporting requirements, and as it relates to an amendment and renewal of a charter contract.

Nevada Virtual Academy opposes this proposed amendment in its entirety, since it argues that a "school district" (as opposed to the charter school itself) cannot "deliberately" cause the enrolment at a charter school to decline. This argument, however, seems tenuous at best. Nevada Virtual Academy seems to be unnecessarily parsing the language of Section 16. Simply put, Nevada Virtual Academy's argument in this regard is without merit. Additionally, a charter school cannot receive hold harmless funds if it has reduced its enrollment for policy reasons or as a condition of ongoing operation. In response to concerns raised subsequently by Nevada Connections Academy and prospective charter applicants, the Department added additional clarifying language in subsection C.

Section 19: This proposed provision relates to audits of charter schools, and clarifies certain requirements.

Delta Academy opposes subsection 2(a), in that by creating a list of approved auditors the proposed regulation is infringing on the autonomy of charter schools. Specifically, Delta Academy states that the SPCSA should not be the sole provider of the list of approved auditors, and that instead other interested parties should have input on the list of approved auditors. Explore Knowledge Academy echoed this concern.

However, a close reading of subsection 2(a) clearly demonstrates that the governing board of a charter school may choose either a certified public accountant or an accounting firm from a list approved by a committee consisting of members (1) chosen by the Superintendent of Public Education, (2) the SPCSA, and (3) the Director of the Office of Finance. As is evident, the SPCSA does not have unilateral control over the audit committee. Instead, Section 19 contemplates that a well-qualified group of stakeholders will have equal say in the members of the audit committee. Additionally, the Department

proposes adding language to this proposed regulation to allow the Superintendent of Public Education to appoint additional qualified members to the audit panel after consultation with active sponsors of charter schools. This provision provides for other sponsors to have input into the process without requiring them to incur additional costs.

3. The number of persons who:

a) Attended each hearing:

a. March 28, 2017

- i. Carson City – 5
- ii. Las Vegas – 11

b. July 31, 2017

- i. Carson City - 19
- ii. Las Vegas - 30

b) Testified at each hearing:

a. March 28, 2017

- i. Carson City – 1
- ii. Las Vegas – 1

b. July 31, 2017

- i. Carson City – 1
- ii. Las Vegas - 4

c) Submitted written comments: See attached

4. For each person identified in paragraphs (b) and (c) of number 3 above, the following information if provided to the agency conducting the hearing:

March 28, 2017

a) Name;

- a. Wendi Hawk
- b. Yolanda Hamilton

b) Telephone number;

- a. Hawk - 702-953-2600
- b. Hamilton - 702-407-1825

c) Business address;

- a. Hawk - 233 North Stephanie Street, Henderson, NV 89704
- b. Hamilton – 4801 South Sandhill Rd, Las Vegas, NV 89121

d) Business telephone number;

- a. Hawk - 702-953-2600
- b. Hamilton – 702-407-1825

e) Electronic mail address;

- a. whawk@earlycollegenv.com
- b. yhamilton@nvacademy.org

f) Name of entity or organization represented.

- a. Hawk - Nevada State High School
- b. Hamilton – Nevada Virtual Academy

July 31, 2017

a) Name

- a. Abbe Mattson
- b. Kyle Konold
- c. Ben Gerhardt
- d. Tim Lorenz
- e. Erica Nannini

b) Telephone Number

- a. Matson – 702-870-5032
- b. Konold – 702-396-2252
- c. Gerhardt – 702-407-1825
- d. Lorenz – 702-257-0578
- e. Nannini – 775-473-4514

c) Business Address

- a. Mattson – 5871 Mountain Vista, Henderson
- b. Konold - 818 W Brooks Ave, North Las Vegas, NV 89030
- c. Gerhardt - 4801 S Sandhill Rd, Las Vegas, NV 89121
- d. Lorenz – 2251 S Jones Blvd, Las Vegas, NV 89146
- e. Nannini - 50 W Liberty St #950, Reno, NV 89501

d) Business Telephone

- a. SEE B

e) Electronic Mail Address

- a. Mattson – amattson@ekacademy.org
- b. Konold – Kyle.Konold@deltaacademylv.com
- c. Gerhardt – bgerhardt@nvacademy.org
- d. Lorenz – tlorenz@odysseyk12.org
- e. Nannini – Erica.nannini@dgsllaw.com

f) Name of entity or organization represented.

- a. Mattson – Explore Knowledge Academy
- b. Konold – Delta Academy
- c. Gerhardt – Nevada Virtual Academy
- d. Lorenz – Odyssey Charter School
- e. Nannini – Nevada Connections Academy

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

NDE posted the proposed regulation, notice of intent to act and small business impact statement on its website. It called for interested parties including small businesses for explanation of how the proposed regulations may impact their business.

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

R131-16 was modified at the March 28, 2017 regulation hearing and then heard, modified, and adopted following the July 31, 2017 meeting

7. The estimated economic effect of the regulation on the business which it is to regulate

and on the public. These must be stated separately, and in each case must include:

(1) Both adverse and beneficial effects;

NONE

(2) Both immediate and long-term effects.

NONE

8. The estimated cost to the agency for enforcement of the proposed regulation:

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

9. A description of any regulations of other State or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There is no duplication or overlap of regulations of state or local government agencies

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

The proposed regulation does not include provisions that are more stringent than a federal regulation that regulates the same activity.

11. 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 proposed regulation does not establish a new fee or increases an existing fee of the Department of Education.