

**APPROVED REGULATION OF THE
STATE BOARD OF EDUCATION**

LCB File No. R117-17

Effective May 16, 2018

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

AUTHORITY: §1, NRS 385.080 and section 5 of Senate Bill No. 213, chapter 493, Statutes of Nevada 2017, at page 3145 (NRS 388.4352).

A REGULATION relating to education; prescribing the required content of a procedure for investigating a request to determine whether a provider of special education has violated any law or regulation governing the education of pupils with disabilities in this State; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law authorizes any person or governmental entity to request the Superintendent of Public Instruction to determine whether a provider of special education is in compliance with any law or regulation governing the education of pupils with disabilities in this State. (Section 5 of Senate Bill No. 213, chapter 493, Statutes of Nevada 2017, at page 3145 (NRS 388.4352)) This regulation prescribes the required contents of such a request.

Upon receiving such a request, the Superintendent is required to determine whether there is good cause to conduct an inspection of the provider of special education. (Section 5 of Senate Bill No. 213, chapter 493, Statutes of Nevada 2017, at page 3145(NRS 388.4352)) This regulation prescribes certain criteria that the Superintendent is authorized to consider when making such a determination. This regulation also requires the Department of Education to notify a person or entity that requested the Superintendent to make a determination regarding whether there is good cause to conduct an inspection.

Existing federal law requires the State to conduct a hearing when a parent alleges that his or her child has not received certain due process safeguards that are required by the federal Individuals with Disabilities Education Act and to provide for an opportunity to appeal the decision rendered by the hearing officer. (20 U.S.C. § 1415) Existing regulations additionally authorize any person to file a complaint with the Superintendent alleging that a public agency has violated a provision of the Individuals with Disabilities Education Act or state regulations governing programs for pupils with disabilities and gifted and talented pupils. (NAC 388.318) If the allegations contained in a request to determine whether a provider of special education is in compliance with any law or regulation governing the education of pupils with disabilities in this State are also the subject of a pending due process hearing or appeal or complaint, this regulation

prohibits the Superintendent from taking action concerning that allegation until the final resolution of the due process hearing, appeal or complaint.

Section 1. Chapter 388 of NAC is hereby amended by adding thereto a new section to read as follows:

1. To request the Superintendent of Public Instruction to make a determination regarding whether a provider of special education is in compliance with a law or regulation governing the education of pupils with disabilities pursuant to subsection 1 of section 5 of Senate Bill No. 213, chapter 493, Statutes of Nevada 2017, at page 3145 (NRS 388.4352), a person or governmental entity must submit a written request signed by the person or a representative of the governmental entity, as applicable. Such a request must also include, without limitation:

- (a) A statement that the person or representative believes that the provider of special education has violated a law or regulation governing the education of pupils with disabilities;*
- (b) A citation to the law or regulation that the provider is alleged to have violated; and*
- (c) The facts upon which the statement regarding the alleged violation is based.*

2. When determining pursuant to subsection 2 of section 5 of Senate Bill No. 213, chapter 493, Statutes of Nevada 2017, at page 3145 (NRS 388.4352), whether there is good cause to conduct an inspection of a provider of special education, the Superintendent of Public Instruction may consider:

- (a) Whether the request provides enough information to determine whether the alleged violation occurred; and*
- (b) The date or dates on which the alleged violation occurred.*

3. The Department shall notify a person or governmental entity that submitted a request for a determination by the Superintendent of Public Instruction whether the Superintendent has determined that there is good cause to conduct an inspection of a provider of special

education pursuant to subsection 2 of section 5 of Senate Bill No. 213, chapter 493, Statutes of Nevada 2017, at page 3145 (NRS 388.4352).

4. If the Superintendent of Public Instruction receives a request for a determination described in subsection 1 for which one or more allegations are the subject of a due process hearing pursuant to NRS 388.463 and NAC 388.306, an appeal thereof or a complaint pursuant to NAC 388.318, the Superintendent must not make a determination or cause the Department to conduct an inspection concerning such an allegation until the final resolution of the due process hearing, appeal or complaint.

5. The provisions of this section shall not be construed in any manner that affects the right of a person to file a due process complaint pursuant to NRS 388.463 and NAC 388.306 or a complaint pursuant to NAC 388.318.