

**PROPOSED REGULATION OF THE
DEPARTMENT OF EDUCATION**

LCB FILE NO. R117-17I

**The following document is the initial draft regulation proposed
by the agency submitted on 10/10/2017**

Constituent Concerns¹ New regulation language NAC 388.xxx

1. *"Provider of special education" defined². As used in this section, "provider of special education" means a school within a school district or charter school that provides education or services to pupils with disabilities or any other entity that is responsible for providing education or services to a pupil with a disability for a school district or charter school.*

2. Any person, *as the term is defined in NRS 0.039*, or governmental entity may request the Superintendent of Public Instruction to determine whether a provider of special education is in compliance with the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq., NRS 388.417 to 388.525, inclusive, and sections 5, 6, 7 of Senate Bill No. 213, chapter____, Statutes of Nevada 2017,³ at page _____ and any regulations adopted pursuant thereto, or any other law or regulation governing the provision of *special education* to pupils with disabilities in this State. *The request must be in writing and signed by the requester and include:*

(a) A statement that the named provider of special education has violated a provision of the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq., NRS 388.417 to 388.525, inclusive, sections 5, 6, 7 of Senate Bill No. 213, chapter____, Statutes of Nevada 2017, at page _____, or any regulations adopted pursuant thereto, or any other law or regulation governing the provision of special education to pupils with disabilities in this State; and

(b) The facts on which the statement is based.

3. Upon receipt of a request pursuant to subsection 2 or upon his or her own initiative, the Superintendent of Public Instruction must determine whether there is good cause to conduct an inspection of the provider of special education. *In the determination of good cause, the Superintendent of Public Instruction may consider:*

(a) The degree of specificity of the request to determine compliance;

(b) The time period of any alleged noncompliance; and

(c) if the request is with regard to alleged noncompliance more than one year prior to the date that the request is received pursuant to subsection 2, whether a longer period is reasonable given the violation is continuing and an inspection will yield sufficient information to determine whether a provider of special education is or was in compliance with a law or regulation governing the provision of special education to pupils with disabilities.

4. *Upon the Superintendent of Public Instruction's receipt of a request to determine whether a provider of special education is in compliance pursuant to subsection 2:*

(a) The Department must notify the requester of the determination whether there is good cause pursuant to subsection 3 to conduct an inspection of the provider of special education; and

(b) If there is good cause to conduct an inspection of the provider of special education, the Department must notify the requester after the conduct of the inspection and final determination whether the provider of special education was determined to be in compliance with the violation of the laws or regulations governing the provision of special education to pupils with disabilities set forth in the request.⁴

¹ I suggest placing these regs in 388.319 which is available and is right after Complaints.

² Italics distinguish the regulatory from the statutory language for ease of review.

³ Replace with NRS section if known at time of promulgation.

5. If the Superintendent of Public Instruction determines there is good cause to conduct an inspection, the Superintendent of Public Instruction must cause such an inspection to be conducted by the Department within 30 days after making the determination. An inspection conducted pursuant to this subsection may be conducted on-site, electronically or by telephone.

6. If, after an inspection conducted pursuant to subsection 5, the Superintendent of Public Instruction determines that a provider of special education is not in compliance with a law or regulation governing the *provision of special education to pupils with disabilities*, the Superintendent of Public Instruction must, not more than 30 days after completion of the inspection:

- (a) Meet with the provider of special education to determine the most efficient and expeditious manner in which to bring the provider of special education into compliance with the law or regulation; and
- (b) Request the board of trustees of the school district or the governing body of the charter school, as applicable, to establish a plan of corrective action pursuant to NRS 385.175 to ensure compliance with the law or regulation.

7. If a provider of special education fails or refuses to comply in a timely manner with a plan of corrective action established pursuant to NRS 385.175 or with an order of a hearing officer issued pursuant to a due process hearing conducted pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq., or, *if an appeal is taken pursuant to NAC 388.315, the order of the state review officer or the order in a State complaint decision pursuant to NAC 388.318*, the Superintendent of Public Instruction must take appropriate measures to ensure compliance with the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq., NRS 388.417 to 388.525, inclusive, and sections 5, 6 and 7 of Senate Bill No. 213, chapter____, Statutes of Nevada 2017, at page _____, any regulations adopted pursuant thereto, or any other law or regulation governing the provision of *special education to pupils with disabilities* in this State.

8. In determining the appropriate measures to take to ensure compliance with the laws and regulations governing the *provision of special education to pupils with disabilities*, the Superintendent of Public Instruction must consider:

- (a) The severity of the failure to comply with the plan of corrective action, or the order of the hearing officer *pursuant to NAC 388.310 or, if an appeal is taken pursuant to NAC 388.315, the order of the state review officer or the order in a State complaint decision pursuant to NAC 388.318*, and the length and number of times that the provider of special education has been out of compliance with the laws and regulations governing the education of pupils with disabilities;
- (b) Whether the provider of special education made a good faith effort to comply with the plan of corrective action or the order of the hearing officer *pursuant to NAC 388.310 or, if an appeal is taken pursuant to NAC 388.315, the order of the state review officer or the order in a State complaint decision pursuant to NAC 388.318*;
- (c) The impact on pupils served by the provider of special education of the failure to comply with the plan of corrective action or the order of the hearing officer *pursuant to NAC 388.310 or, if an appeal is taken pursuant to NAC 388.315, the order of the state review officer or the order in a State complaint decision pursuant to NAC 388.318*; and

(d) Whether the provider of special education has previously failed to comply with such a plan of corrective action or order of a hearing officer *pursuant to NAC 388.310 or, if an appeal is taken pursuant to NAC 388.315, the order of the state review officer or the order in a State complaint decision pursuant to NAC 388.318.*

9. The actions which the Superintendent of Public Instruction may take to ensure compliance pursuant to subsection 7 after considering the factors set forth in subsection 8 include, without limitation, *the enforcement actions in section 6 of Senate Bill No. 213, chapter____, Statutes of Nevada 2017, at page_____.*

10. The Superintendent of Public Instruction may work with any other appropriate governmental entity to carry out the provisions of *subsection 9.*

11. If a request to determine whether a provider of special education is in compliance pursuant to subsection 2 is received that is also the subject of a due process hearing pursuant to NAC 388.306 or 388.308, an appeal of the hearing decision pursuant to NAC 388.315 or a State complaint pursuant to NAC 388.318, or that contains multiple issues of which one or more are part of that hearing, appeal or State complaint, the Department must set aside any part of the request that is being addressed in the hearing, appeal or State complaint action until the conclusion of the applicable action. However, any issue in the request that is not a part of the hearing, appeal or State complaint action must be resolved using the time limit and procedures described in subsections 5 and 6.

12. If an issue raised in a request to determine whether a provider of special education is in compliance under this section has previously been decided in a due process hearing pursuant to NAC 388.306 or 388.308 involving the same parties, or, if an appeal is taken pursuant to NAC 388.315, an appeal involving the same parties; or a State complaint under NAC 388.318 involving the same parties:

- (a) The due process hearing decision pursuant to NAC 388.310 or, if an appeal is taken pursuant to NAC 388.315, the decision of the state review officer; or the State complaint decision pursuant to NAC 388.318, as applicable, is binding on that issue; and*
- (b) The Department must inform the requester to that effect.*

13. Nothing in this section shall be construed to affect the right of a parent to file a request for a due process hearing pursuant to NAC 388.306 or 388.308 or the right of a person to file a State complaint with the Department pursuant to NAC 388.318.