

**PROPOSED REGULATION OF
THE DEPARTMENT OF EDUCATION**

LCB File No. R021-22

June 6, 2022

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

AUTHORITY: §§ 1-7, NRS 388.133.

A REGULATION relating to education; establishing provisions for the restorative discipline of pupils; requiring certain school personnel to take certain actions in enforcing certain provisions; revising certain provisions to include the prohibition on discrimination based on race; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Department of Education, in consultation with the boards of trustees of the school districts and the governing bodies of charter schools, to prescribe by regulation a policy to provide a safe and respectful learning environment that is free of discrimination based on race, bullying and cyber-bullying. (NRS 388.133) Existing regulations establish provisions for reporting, investigating and adjudicating violations of the prohibition on bullying and cyber-bullying. (NAC 388.890-388.920) **Sections 2-6** of this regulation make conforming changes to extend those provisions to include incidents of discrimination based on race. **Section 7** of this regulation makes a conforming change to repeal provisions relating to the Discrimination and Bullying Prevention Account, which was abolished. (Section 39 of Senate Bill No. 439, chapter 238, Statutes of Nevada 2021, at page 1140)

Existing law requires the policy of the Department to provide a safe and respectful learning environment to include requirements and methods for restorative disciplinary practices. (NRS 388.133) Existing law also requires the board of trustees of each school district to establish a plan to provide for the restorative discipline of pupils. (NRS 392.4644) **Section 1** of this regulation requires the governing body of each school, in consultation with the administrator of each school, to provide for the restorative discipline of pupils. **Section 1** sets forth the requirements for the provision of restorative discipline, which include, in general and without limitation: (1) taking an approach that is culturally responsive and trauma-informed; (2) using existing statutory frameworks; (3) appointing a school team to implement a tiered model of prevention and support; (4) using appropriate data; (5) focusing on prevention; (6) identifying pupils who need additional support; (7) addressing disproportionate and disparate impacts in discipline; and (8) identifying areas for the professional development of school personnel. **Section 1** also provides that, when administering the rules of behavior or plan for restorative discipline, as applicable: (1) an administrator shall work to safeguard the rights of pupils; and (2)

a school resource officer or school police officer shall act in accordance with the models of best practice established by a national association for such officers.

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

1. The governing body of each school, in consultation with the administrator of the school, shall provide for the restorative discipline of pupils. The governing body and administrator shall:

(a) Provide for the restorative discipline of pupils in a manner that:

(1) Considers the unique strengths of pupils and their families, the leadership and staff of the school and the community in which the school is located;

(2) Is culturally responsive and trauma-informed;

(3) Serves to eliminate any disparate or discriminatory impacts of disciplining pupils, including, without limitation, impacts based on the actual or perceived race, color, national origin, ancestry, religion, gender identity or expression, sexual orientation, physical or mental disability, sex or any other distinguishing characteristic or background of a pupil;

(4) Supports effective and transparent communication with pupils and the parents or guardians of pupils;

(5) Regularly and intentionally collaborates with pupils; and

(6) Incorporates the philosophy, methods and practices identified in nationally accepted models of best practice for restorative discipline in schools.

(b) Use the statewide framework for providing and coordinating integrated student supports for pupils established pursuant to NRS 388.885.

(c) Appoint a school team to implement a tiered model of prevention and support. The school team must use strategies, practices and supports for prevention that are:

- (1) Based on nationally accepted best practices and, to the extent practicable, empirically valid scientific evidence;*
- (2) Culturally responsive and respectful; and*
- (3) Based on instructional practices that are of the highest quality.*
- (d) Use data in accordance with subsection 3 to support decision making and to monitor the progress of the implementation of the tiered model of prevention and supports pursuant to paragraph (c) at the whole school, groups of pupils and individual pupil levels.*
- (e) Identify preventive measures to support the establishment and maintenance of a positive school climate for pupils, the parents and guardians of pupils and the faculty and staff of the school.*
- (f) Identify a process and indicators for identifying pupils who may need additional support beyond the preventative measures implemented in a school.*
- (g) Develop a template for an individual plan of action to be used for a pupil who is identified pursuant to paragraph (f) as needing additional support. The template must:*
- (1) Include interventions and supports that:*
- (I) Hold the pupil accountable for his or her behavior;*
- (II) Serve to restore or remedy damage or injury related to the behavior of the pupil;*
- (III) Provide relief for any victim of the pupil, as appropriate; and*
- (IV) Support the pupil in changing his or her behavior;*
- (2) Consider previous efforts to prevent or address the behavior through nonpunitive intervention and support provided by the school to the pupil to improve the behavior of the pupil pursuant to NRS 388.885, including, without limitation, interventions and supports that are provided to the school or to groups of pupils;*

(3) Consider any characteristics of the pupil which may be contributing to the behavior of the pupil, including, without limitation:

(I) The pupil's status as homeless, unaccompanied or in foster care;

(II) Current or past trauma;

(III) Whether the pupil has bullied other pupils or has been a victim of bullying; and

(IV) The age and ability of the pupil to understand the consequences of his or her actions;

(4) Use multiple sources of data to identify appropriate supports for the pupil and monitor the effectiveness of such supports; and

(5) To the extent practicable, include input from the parent or guardian of the pupil and, if appropriate, the pupil.

(h) Develop goals and a plan of action to address any issues of disproportionality or trends in the discipline of pupils collected and reported pursuant to NRS 385A.840 and 392.462.

(i) Identify areas for the professional development of school administrators and teachers.

2. A school team appointed pursuant to paragraph (c) of subsection 1:

(a) Must include administrators, teachers and specialized instructional support personnel;

(b) May include pupils, parents and guardians of pupils and community stakeholders; and

(c) Must meet on a regular basis to review the effectiveness of the tiered model of prevention and support implemented by the school team, including, without limitation, by examining relevant data used pursuant to paragraph (d) of subsection 1.

3. Data used pursuant to paragraph (d) of subsection 1:

(a) May be sourced from, without limitation:

(1) Annual surveys on school climate;

(2) Information published through the automated system of accountability information established pursuant to NRS 385A.800;

(3) Data collected through a screening or assessment conducted pursuant to subsection 1 of NRS 388.885; and

(4) Any other data that supports the implementation of a tiered model of prevention and support.

(b) Shall, to the extent practicable, be disaggregated and examined by the categories of pupils identified in subsection 2 of NRS 385A.240 to support the identification of disproportional access to prevention and support or relevant pupil outcomes.

4. Professional development identified pursuant to paragraph (i) of subsection 1 may include, without limitation:

(a) Methods, practices and approaches to restorative discipline;

(b) The written rules of behavior and appropriate punishments prescribed pursuant to NRS 392.463 and the plan to provide for the restorative discipline of pupils established pursuant to NRS 392.4644;

(c) The statewide framework for integrated student supports established pursuant to NRS 388.885, including, without limitation, any positive behavioral interventions and supports included in the statewide framework;

(d) Culturally responsive classroom management;

(e) Awareness regarding the impact of implicit bias and methods to mitigate such impact;

(f) Effects of trauma and chronic stress, effective responses to trauma and chronic stress and instructional practices that are trauma-informed;

(g) Child and adolescent development;

- (h) Conflict resolution and de-escalation techniques;*
- (i) Social, emotional and academic development; and*
- (j) Any other training that supports the improvement of school climate, culture and safety and pupil outcomes.*

5. When carrying out the written rules of behavior and appropriate punishments prescribed pursuant to NRS 392.463 and the plan to provide for the restorative discipline of pupils established pursuant to NRS 392.4644:

- (a) An administrator, or his or her designee, acts in loco parentis and shall work to safeguard the rights of pupils; and*
- (b) A school resource officer or school police officer shall act in accordance with nationally accepted models of best practice established by a national association for such officers, including, without limitation, that school resource officers or school police officers do not administer formal discipline decisions of a school or school district.*

Sec. 2. NAC 388.890 is hereby amended to read as follows:

388.890 1. A pupil who is a victim of *discrimination based on race*, bullying or cyber-bullying in violation of NRS 388.135, witnesses a violation of NRS 388.135 or receives information that a violation of NRS 388.135 has occurred may report the violation:

- (a) To any employee or volunteer in the school or school district in which the pupil is enrolled, including, without limitation, a teacher, counselor, coach or administrator;*
- (b) Through the 24-hour, toll-free statewide hotline or Internet website maintained by the Office for a Safe and Respectful Learning Environment pursuant to NRS 388.1323; or*
- (c) Through a hotline or Internet website maintained by the school district or school in which the pupil is enrolled, if the school district or school maintains such a hotline or website.*

2. When ensuring the safety and well-being of a reported victim of *discrimination based on race*, bullying or cyber-bullying as required by NRS 388.1351, the administrator or the designee of the administrator:

(a) Shall not take any action that may cause harm to the reported victim, including, without limitation, requiring the reported victim to change classrooms or isolating the reported victim from his or her peers.

(b) Shall, to the extent practicable, talk privately and discreetly about the violation with the reported victim, without bringing undue attention to the reported victim.

Sec. 3. NAC 388.900 is hereby amended to read as follows:

388.900 1. Each investigation of a report of *discrimination based on race*, bullying or cyber-bullying conducted pursuant to NRS 388.1351 must be conducted thoroughly and impartially in a manner that does not retraumatize or further traumatize the reported victim and must include, without limitation, an interview with:

(a) Each person involved in the reported *discrimination based on race*, bullying or cyber-bullying, including, without limitation, the reported aggressor, the reported victim and any relevant witnesses.

(b) The parent or guardian of the reported aggressor and the reported victim.

↪ To the extent practicable, the identities of the persons interviewed and the content of the interviews must remain confidential.

2. Each administrator or designee of an administrator who conducts an investigation pursuant to this section and NRS 388.1351 shall document the date, time, subject and content of each interview conducted and maintain such documentation in a manner that is consistent with

the policy governing maintenance of disciplinary records for the school district in which the school is located or charter school, as applicable.

3. Each administrator or designee of an administrator who conducts an investigation must complete the investigation within the time prescribed by NRS 388.1351.

Sec. 4. NAC 388.905 is hereby amended to read as follows:

388.905 1. If an administrator or the designee of an administrator determines that a violation of NRS 388.135 has occurred, the written report of the findings and conclusions of the investigation completed pursuant to NRS 388.1351 and NAC 388.900 must include recommendations for the imposition of restorative disciplinary actions or other measures to be imposed as a result of the violation that the administrator or designee determines will assist the reported aggressor to see the harm that his or her actions have caused, to repair that harm and to not engage in *discrimination based on race*, bullying or cyber-bullying in the future. Such other measures may include, without limitation, the development of a plan to support the physical and emotional well-being of the reported aggressor that is aligned with the training provided by the Office for a Safe and Respectful Learning Environment.

2. The administrator or designee of the administrator shall develop and carry out a plan to support the physical and emotional well-being of the reported victim and the reported aggressor which is designed to ensure that the reported victim and the reported aggressor are not further harmed by the *discrimination based on race*, bullying or cyber-bullying, including, without limitation, by allowing the reported victim to make up any test or homework assignment that he or she missed or failed to submit as a result of the *discrimination based on race*, bullying or cyber-bullying.

3. The administrator or the designee of the administrator shall meet with each reported victim of *discrimination based on race*, bullying or cyber-bullying as required by subsection 8 of NRS 388.1351 and with each reported aggressor, regardless of the outcome of the investigation, to ensure that the *discrimination based on race*, bullying or cyber-bullying is not continuing. Each meeting must be conducted in a private and discreet manner that does not draw unnecessary attention to the reported victim.

Sec. 5. NAC 388.910 is hereby amended to read as follows:

388.910 1. Subject to the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, and any regulations adopted pursuant thereto, an administrator or designee of an administrator who completes a written report of the findings and conclusions of an investigation of reported *discrimination based on race*, bullying or cyber-bullying pursuant to NRS 388.1351 and NAC 388.900 shall, within 24 hours after completing the report:

(a) Provide to the parent or guardian of the reported aggressor a copy of the written report that does not contain the personally identifiable information of any other pupil;

(b) Notify the parent or guardian of any other pupil directly involved in the incident of the outcome of the investigation and make available upon request to any such parent or guardian a copy of the report that does not contain the personally identifiable information of any pupil other than the pupil to whose parent or guardian the report is provided; and

(c) Notify the parent or guardian of each pupil directly involved in the incident that the parent or guardian may:

(1) Submit to the administrator or designee a complaint or concern regarding the conduct or outcome of the investigation;

(2) Request a meeting with the administrator or designee to discuss the outcome of the investigation;

(3) Appeal the outcome of the investigation in the manner prescribed pursuant to subsection 2; and

(4) Appeal a disciplinary decision of the administrator or designee made against the pupil as a result of the incident.

2. The governing body of each school shall adopt a policy that prescribes procedures by which the parent or guardian of any pupil directly involved in a reported violation of NRS 388.135 may appeal the outcome of the investigation conducted pursuant to NRS 388.1351 and NAC 388.900 and any disciplinary decision made against the pupil.

Sec. 6. NAC 388.920 is hereby amended to read as follows:

388.920 1. The annual report of accountability prepared pursuant to NRS 385A.070 must not include the personally identifiable information of any pupil involved in a reported violation of NRS 388.135 or any other incident of *discrimination based on race*, bullying or cyber-bullying.

2. A teacher, administrator, coach, other staff member or member of the governing body of a school shall not interfere with the reporting of statistics concerning violations of NRS 388.135.

Sec. 7. NAC 388.925 is hereby repealed.

TEXT OF REPEALED SECTION

388.925 Quarterly determination of amount of money in Bullying Prevention Account; required notification to school districts when grants from Account available; eligibility for grant; evaluation and approval of grants.

1. At least one time each calendar quarter, the Director of the Office for a Safe and Respectful Learning Environment shall determine the amount of money available in the Bullying Prevention Account created by NRS 388.1325. If the amount available in the Account is greater than \$1,000, the Director must provide notice to each school district that the school district may apply for a grant from the Account. Such notice must set forth the required information to be included in the application, including, without limitation, the requirements set forth in subsection 2.

2. To be eligible to receive a grant, a school district that applies for a grant must include in the application the manner in which the applicant will measure the effectiveness of the programs for which the money will be used.

3. If the amount of money a school district seeks through an application is less than \$10,000, the Director must evaluate each application submitted pursuant to subsection 1 and determine which applications to approve.

4. If the amount of money a school district seeks through an application is \$10,000 or more, the Director must:

- (a) Evaluate each application submitted pursuant to subsection 1; and
- (b) Submit a recommendation regarding whether to approve each application to the State Board of Education.

5. As soon as practicable after the Director submits his or her recommendations pursuant to subsection 4, the State Board of Education shall:

- (a) Consider each application and determine which applications to approve; and
- (b) Inform the Director of each school district for which a grant is approved.