

**REVISED PROPOSED REGULATION OF THE
DEPARTMENT OF EDUCATION**

LCB File No. R133-22

December 7, 2022

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

AUTHORITY: §§ 1-9, NRS 387.1225; § 10, NRS 387.1225 and 432B.60847.

A REGULATION relating to education; prescribing the required contents of a request for reimbursement of costs incurred by a hospital or other facility for providing educational services to a child to which the hospital or facility provides residential treatment; requiring such a hospital or other facility to develop a plan for the continued education of the child; providing for the posting of certain information relating to such plans on an Internet website; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law authorizes certain hospitals or other facilities that provide residential treatment to children to request reimbursement from the Department of Education for the cost of providing educational services to a child. Existing law establishes requirements a hospital or other facility must meet to receive such a reimbursement. Existing law also requires the Department to adopt regulations to ensure those requirements are met. (NRS 387.1225) **Sections 3-6** of this regulation define certain relevant terms. **Section 7** of this regulation requires a hospital or other facility submitting a request for reimbursement for the cost of providing educational services to a child do so in the form and manner prescribed by the Department. **Section 7** also requires certain hospitals or other facilities that provide residential treatment to children to include certain information in the request for reimbursement. **Section 7** further requires a hospital or other facility to: (1) notify the school district or charter school in which a child is enrolled of the child’s admission to the educational program; (2) transfer and request the transfer of certain records at various stages of the child’s time in the educational program; (3) meet with the school district or charter school to develop a plan for the child’s reentry to school; and (4) maintain daily attendance records. **Section 7** requires the Department to prescribe areas to be audited to ensure the hospital or other facility complies with applicable federal and state laws and regulations. **Section 7** requires the Department to review and approve or deny a request for reimbursement for the cost of providing educational services to a child and give notice of its decision to the hospital or other facility. Finally, **section 7** provides that a decision of the Department to approve or deny a request for reimbursement is not subject to judicial or administrative review.

Existing law requires a psychiatric hospital to which a child who is in the custody of an agency which provides child welfare services is admitted, in consultation with certain entities

that are providing services to the child, to develop a plan for the continued education of the child while the child is admitted to the psychiatric hospital. (NRS 432B.60847) **Section 8** of this regulation requires other hospitals and facilities that provide residential treatment and request reimbursement from the Department for the cost of providing educational services to a child to develop a similar plan. **Section 7** requires such a hospital or facility to submit a copy of the plan as part of the request for reimbursement. **Section 9** of this regulation: (1) requires the hospital or other facility to develop the plan in consultation with certain persons and representatives of entities providing services to the child; and (2) authorizes the hospital or other facility to consult with certain other persons. **Section 10** of this regulation prescribes the required contents of the plan. **Section 8** provides that the Department will post a list of resources to facilitate the development of such plans on an Internet website maintained by the Department.

Section 1. Chapter 388 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 10, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 6, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Agency which provides child welfare services” has the meaning ascribed to it in NRS 432B.030.*

Sec. 4. *“Fictive kin” has the meaning ascribed to it in NRS 432B.0657.*

Sec. 5. *“Foster home” has the meaning ascribed to it in NRS 424.014.*

Sec. 6. *“Parent” has the meaning ascribed to it in NRS 432B.080.*

Sec. 7. 1. *A hospital or other facility that submits a request for reimbursement for the cost of providing educational services to a child pursuant to NRS 387.1225 must submit the request in the form and manner prescribed by the Department.*

2. A hospital or other facility that provides residential treatment to children and which operates a private school licensed pursuant to chapter 394 of NRS must include in a request for reimbursement:

- (a) Documentation verifying that the child is a patient or resident of the hospital or other facility;*
- (b) Documentation verifying that the child has attended the private school for more than 7 school days;*
- (c) Documentation that the hospital or other facility has complied with the requirements of paragraphs (a) and (b) of subsection 4, as applicable;*
- (d) Written assurance that the hospital or other facility:*
- (1) Is in compliance with applicable provisions of federal and state law, including, without limitation, Part B of the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1411 et seq., and the regulations adopted pursuant thereto, NRS 388.417 to 388.5243, inclusive, and NAC 388.001 to 388.450, inclusive;*
 - (2) Will collect data and use forms in its provision of educational services in the form and manner prescribed by the Department;*
 - (3) Agrees to an audit of the hospital or other facility by the Department pursuant to subsection 5; and*
 - (4) Acknowledges that the school district or charter school in which the child is enrolled before his or her admission to the hospital or other facility is the local educational agency for the purposes of the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq., and NRS 388.417 to 388.5243, inclusive, and any regulations adopted pursuant thereto; and*
- (e) A copy of the plan for the continued education of the child developed pursuant to subsection 1 of NRS 432B.60847 or section 8 of this regulation.*

3. A hospital or other facility licensed in the District of Columbia or any state or territory of the United States that provides residential treatment to children and which operates an

educational program accredited by a national organization and approved by the Department must include in its request for reimbursement:

(a) Documentation verifying that:

(1) The child is a patient or resident of the hospital or other facility;

(2) The child is a resident of this State;

(3) The child is admitted to the hospital or other facility on an order from a physician because the necessary treatment required for the child is not available in this State;

(4) The child has attended the accredited educational program for more than 7 school days;

(5) The child is not currently homeschooled or enrolled in a private school and was not homeschooled or enrolled in a private school before being admitted to the hospital or other facility;

(6) The child has been admitted to the hospital or other facility under the order of a physician to receive medically necessary treatment for a medical or mental health condition with which the child has been diagnosed; and

(7) The hospital or other facility has complied with the requirements of paragraphs (a) and (b) of subsection 4, as applicable;

(b) Written assurance that the hospital or other facility:

(1) Is in compliance with applicable provisions of federal and state law, including, without limitation, Part B of the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1411 et seq., and the regulations adopted pursuant thereto, NRS 388.417 to 388.5243, inclusive, and NAC 388.001 to 388.450, inclusive;

(2) Will collect data and use forms in its provision of educational services in the form and manner prescribed by the Department;

(3) Agrees to an audit of the hospital or other facility by the Department pursuant to subsection 5; and

(4) Acknowledges that the school district or charter school in which the child is enrolled before his or her admission at the hospital or other facility is the local educational agency for the purposes of the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq., and NRS 388.417 to 388.5243, inclusive, and any regulations adopted pursuant thereto; and

(c) A copy of the plan for the continued education of the child developed pursuant to subsection 1 of NRS 432B.60847 or section 8 of this regulation.

4. A hospital or other facility that submits a request for reimbursement for the cost of providing educational services to a child pursuant to NRS 387.1225 must:

(a) Notify the school district or charter school in which the child is enrolled upon admitting the child to the educational program;

(b) Request the transfer of the education records of the child which are collected, maintained or used by the school district or charter school in which the child is enrolled to the hospital or other facility upon admitting the child to the hospital or other facility;

(c) Transfer the education records of the child which are collected, maintained or used by the hospital or other facility to the school district or charter school in which the child is enrolled upon admitting the child to the educational program;

(d) Notify in writing the school district or charter school in which the child is enrolled upon the discharge of the child from the hospital or other facility and the educational program;

(e) Transfer the education records of the child which are collected, maintained or used by the hospital or other facility to the school district or charter school in which the child is enrolled upon the discharge of the child from the hospital or other facility and the educational program;

(f) When the child is ready for reentry into a school district or charter school, meet with the school district or charter school to develop a plan for reentry of the child upon the discharge of the child from the hospital or other facility and the educational program; and

(g) Maintain daily attendance records documenting the attendance of the child and receipt of educational services as prescribed by the Department and submit to the Department the attendance records of the child upon the request of the Department.

5. The Department will prescribe the areas to be audited pursuant to an agreement entered into pursuant to subsection 2 or 3, as applicable, to ensure compliance with applicable federal and state law and regulations, including, without limitation, this section and NRS 387.1225.

6. The Department will review and approve or deny a completed request for reimbursement for the cost of providing educational services to a child submitted pursuant to subsection 2 or 3, as applicable, and give notice of its decision to the hospital or other facility.

7. A decision of the Department approving or denying a request for reimbursement for the cost of providing educational services to a child submitted pursuant to subsection 2 or 3, as applicable, is not subject to administrative or judicial review.

Sec. 8. 1. *If a hospital or other facility which provides residential treatment wishes to request reimbursement from the Department pursuant to NRS 387.1225, the hospital or other facility must develop a plan for the continued education of the child while the child remains*

enrolled in the school district or charter school yet is admitted to the facility, regardless of whether the hospital or other facility is subject to the requirements of subsection 1 of NRS 432B.60847.

2. The Department will post on an Internet website maintained by the Department and review at least annually a list of resources to facilitate the development of plans pursuant to subsection 1 of this section and subsection 1 of NRS 432B.60847 for the continued education of children admitted to hospitals and other facilities. The list must reflect current best practices for the continued education of such children.

Sec. 9. 1. A plan for the continued education of a child developed pursuant to subsection 1 of NRS 432B.60847 or subsection 1 of section 8 of this regulation by a hospital or other facility that plans to request reimbursement for the cost of providing educational services to the child pursuant to NRS 387.1225:

(a) Must be developed in consultation with:

(1) The person or persons who are primarily responsible for the education of children who are admitted to the hospital or facility;

(2) Representatives from any school district or charter school in which the child is enrolled or that is providing services to the child, including, without limitation:

(I) If the child is a pupil with a disability, as defined in NRS 388.417, the person or persons who are responsible for managing the individualized education program of the child;

(II) A school counselor, school psychologist, school social worker or other specialized instructional support personnel, as defined in NRS 388.890, who is providing noninstructional support to the child; and

(III) A teacher who is providing classroom instruction to the child;

(3) The parent or guardian of the child;

(4) The child, if developmentally appropriate; and

(5) If the child is in the custody of an agency which provides child welfare services:

(I) Representatives of the agency which provides child welfare services, including, without limitation, the person primarily responsible for managing the case of the child; and

(II) The educational decision maker appointed for the child pursuant to NRS

432B.462.

(b) In addition to the persons described in paragraph (a) and to the extent authorized by any applicable policies of the agency which provides child welfare services, may be developed in consultation with:

(1) A person who conducts a foster home in which the child has been placed;

(2) A fictive kin of the child; or

(3) A relative of the child.

2. A hospital or other facility that plans to request reimbursement for the cost of providing educational services to a child pursuant to NRS 387.1225 or has requested such reimbursement shall provide a copy of the plan for the continued education of the child developed pursuant to subsection 1 of NRS 432B.60847 or subsection 1 of section 8 of this regulation to the persons described in paragraph (a) of subsection 1. To the extent authorized by any applicable policies of the agency which provides child welfare services, the hospital or other facility may provide a copy of the plan to any person described in paragraph (b) of subsection 1.

Sec. 10. *A plan for the continued education of a child developed pursuant to subsection 1 of NRS 432B.60847 or subsection 1 of section 8 of this regulation by a hospital or other*

facility that plans to request reimbursement for the cost of providing educational services to the child pursuant to NRS 387.1225 must include, without limitation:

1. The name, telephone number and electronic mail address for:

(a) The members of the staff of the hospital or other facility and the school district or charter school in which the child is enrolled who will serve as the primary points of contact for those entities concerning the plan; and

(b) If the child is in the custody of an agency which provides child welfare services:

(1) The member of the staff of the agency which provides child welfare services who is primarily responsible for managing the case of the child; and

(2) The educational decision maker appointed for the child pursuant to NRS 432B.462.

2. The names of each member of the staff of the hospital or other facility and of the school district or charter school who is responsible for implementing each component of the plan, including, without limitation, providing instruction.

3. Methods, processes and timelines for communication between the persons described in subsection 1, including, without limitation:

(a) The frequency of communication concerning the progress of the child, as determined in accordance with the provisions of the plan, by the hospital or facility to the persons identified as primary points of contact for the school district or charter school in which the child is enrolled and, if the child is in an custody of an agency which provides child welfare services, the member of the staff of the agency which provides child welfare services who is primarily responsible for managing the case of the child. Such communications must occur at least:

(1) Weekly during the first 30 days during which the child is admitted to the hospital or other facility; and

(2) Biweekly thereafter.

(b) Deadlines by which any person described in subsection 1 must provide information relating to the child or plan to any person described in paragraph (a) of subsection 1 who requests it, which must be not later than 3 business days after the request is made.

(c) Provisions to ensure that information relating to the child is safeguarded in accordance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, and 34 C.F.R. Parts 98 and 99.

4. Mechanisms for the transfer of instructional materials to the hospital or other facility from each school district or charter school in which the child was enrolled or that is providing services to the child when he or she was admitted to the hospital or facility, including, without limitation:

(a) Processes and a timeline for the transfer of instructional materials, including, without limitation, the identification of each entity that will assume financial responsibility for the costs associated with the transfer;

(b) The identification of members of the staff of the hospital or facility and the school district or charter school who are responsible for the transfer of instructional materials;

(c) Provisions for the safe storage and maintenance of instructional materials by the hospital or facility, including, without limitation, any electronic devices provided to the hospital or facility by the school district or charter school for purposes related to the education of the child while he or she is admitted;

(d) Provisions for the hospital or facility to replace any instructional materials that are lost or damaged as a result of the actions of the hospital or facility; and

(e) Provisions for the safe storage and transfer of education records by the hospital or facility to the school district or charter school as required by section 7 of this regulation in a manner that complies and the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, and 34 C.F.R. Parts 98 and 99.

5. The average number of instructional hours per week that the hospital or other facility must provide to the child while he or she is admitted, which must align with best practices for home hospital services, and mechanisms for modifying the number of instructional hours in a week based on the mental health, needs and functioning of the child.

6. Provisions concerning the ability of the child to demonstrate satisfactory completion of required courses, including, without limitation:

(a) The manner in which the hospital or other facility will monitor and record the attendance of the child in accordance with section 7 of this regulation, which must be expressed in terms of the number of instructional hours provided to the child in a week pursuant to subsection 5;

(b) For a child who is in grade 11 or 12, any modifications made pursuant to NRS 389.330 to a course or study necessary to assist the child in satisfying the requirements for graduation, including, without limitation, any such modifications made through mutual agreement by the child and his or her parent or guardian;

(c) Provisions regarding the use of nonacademic programming and activities provided by the hospital or facility as part of the treatment of the child for elective credit toward the

number of credits required for promotion or graduation, including, without limitation, physical education credit;

(d) Any arrangements for the sharing of responsibilities for instruction of the child between the school district or charter school and the hospital or facility, which may include, without limitation, part-time or full-time virtual instruction provided by the school district, charter school or another online school that has been approved by the Department; and

(e) If the child is in foster care, any means by which the child may receive full or partial credit pursuant to NRS 389.320 or a plan developed for the child pursuant to NRS 388A.489.

7. A description of the educational services and instruction that will be provided to the child while the child is admitted to the hospital or other facility, including, without limitation:

(a) Academic instruction that assists the child in maintaining his or her current educational functioning and skills and ensuring that the child does not fall behind his or her peers with regard to educational functioning and skills;

(b) Instructional content that aligns with the standards of content and performance for courses of study in public schools by the Council to Establish Academic Standards for Public Schools and the State Board of Education pursuant to NRS 389.520;

(c) The method by which instruction will be provided, which may include, without limitation, in-person individual instruction, in-person small group or classroom instruction or a combination thereof;

(d) The identification of current or previous challenges experienced by the child in accessing instruction and instructional content, including, without limitation, any behaviors in which the child has engaged to avoid instruction;

(e) A description of strategies and methods that have been effective in supporting the child to successfully access instruction and instructional content and successfully complete assignments;

(f) If the child is an English learner:

(1) A description of the manner in which the rights established by NRS 388.406 will be guaranteed;

(2) Provisions to ensure that any applicable policy developed pursuant to NRS 388.407 or corrective action plan adopted pursuant to NRS 388.408 will be followed; and

(3) Any other provisions necessary to meet the unique needs of the child as an English learner; and

(g) Mechanisms and processes for responding to an unexpected delay in the transfer of instructional materials to the hospital or facility, including, without limitation, provisions to notify the school district or charter school in accordance with the methods, processes and timelines for communication established pursuant to subsection 3.

8. Processes for monitoring, recording and reporting the academic progress of the child concerning the educational services and instruction provided pursuant to subsection 7, including, without limitation:

(a) The frequency and method by which the hospital or other facility will report on the progress of the child to the primary points of contact for the school district or charter school in which the child is enrolled that were identified pursuant to paragraph (a) of subsection 1 and the persons identified pursuant to paragraph (b) of subsection 1;

(b) Mechanisms and processes to identify the circumstances under which the plan will be reviewed and revised, as necessary, if the child is not making satisfactory academic progress or is losing his or her academic functioning and skills; and

(c) If deemed necessary by the hospital or facility and authorized by the policies of the agency which provides child welfare services, if applicable, provisions for regular meetings with the parent or guardian of the child, the person who maintains the foster home in which the child resides, the fictive kin of the child or the relative of the child, as applicable, to monitor the academic progress of the child.

9. Provisions and timelines for the transfer to and review of the plan to any hospital or other facility to which the child may be transferred before the child is discharged.

10. Procedures to be followed in anticipation of the discharge of the child, which must include, without limitation, a requirement that the hospital or other facility provide written notice as required by section 7 of this regulation at least 10 days before the discharge to any school or other educational setting where the child will receive instruction after discharge.