

**PROPOSED REGULATION OF THE STATE BOARD OF  
EDUCATION**

**LCB File No. R063-97**

August 29, 1997

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

AUTHORITY: §§ 1-13, NRS 385.080 and 388.405.

**Section 1.** Chapter 388 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 13, inclusive, of this regulation.

**Sec. 2.** *As used in sections 3 to 13, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3, 4 and 5 of this regulation have the meanings ascribed to them in those sections.*

**Sec. 3.** *“Bilingual program of instruction” means a program of instruction for English language learners in which pupils are taught the English language and the content of other courses of study is taught using the pupils’ primary language.*

**Sec. 4.** *“English language learner” means a pupil whose:*

- 1. Primary language is not English;*
- 2. Proficiency in English is below the average proficiency of pupils at the same age or grade level whose primary language is English; and*
- 3. Probability of success in a classroom in which courses of study are taught only in English is impaired because of his limited proficiency in English.*

**Sec. 5.** *“Program of instruction that teaches English as a second language” means a program of instruction for an English language learner which:*

*1. Provides instruction in the English language and other courses of study using teaching techniques for acquiring English; and*

*2. Incorporates the cultural aspects of the pupil’s experiences in his instruction.*

**Sec. 6.** *1. Each school district shall identify the primary language of each pupil who enrolls in a school within the district for the first time.*

*2. A pupil’s primary language shall be deemed to be a language other than English if:*

*(a) The pupil first spoke a language other than English;*

*(b) The primary language spoken in the home of the pupil is not English; or*

*(c) The language most often spoken by the pupil is not English.*

**Sec. 7.** *1. Each school district shall administer to a pupil whose primary language is not English and who is enrolled in:*

*(a) Kindergarten or any grade from grade 1 to 12, inclusive, an oral examination approved by the department to assess the proficiency of the pupil to speak and comprehend English. A pupil must be classified as an English language learner if his score on the examination is below the score for a person who communicates fluently in English, as established by the publisher of the examination.*

*(b) Any grade from grade 2 to 12, inclusive, an examination approved by the department to assess the proficiency of the pupil to read and write English. A pupil must be classified as an English language learner if his score on the examination is below the score for a person who is competent in reading and writing English, as established by the publisher of the examination.*

2. *An assessment administered pursuant to this section must be completed within 60 days after the date on which the pupil enrolls in a school in the district for the first time.*

3. *An assessment of a pupil's proficiency to comprehend, speak, read and write English must be administered by a person who is proficient in English and who has successfully completed training in the administration and scoring of the examination required for the assessment.*

**Sec. 8.** 1. *Except as otherwise provided in this subsection, each school district shall administer to a pupil who is classified as an English language learner pursuant to section 7 of this regulation and who is enrolled in a bilingual program of instruction an examination approved by the department to assess the proficiency of the pupil to comprehend, speak, read and write his primary language. A school district is not required to assess the proficiency of a pupil to read and write his primary language if he is enrolled in kindergarten or the first grade or his primary language is not commonly written.*

2. *An assessment administered pursuant to this section must be completed within 60 days after the date on which the pupil enrolls in a school in the district for the first time.*

3. *An assessment of a pupil's proficiency to comprehend, speak, read and write his primary language must be conducted by a person who is proficient in the primary language of the pupil and who has successfully completed training in the administration and scoring of the examination required for the assessment.*

**Sec. 9.** 1. *A school district shall assess and classify a pupil whose primary language is not English and whose eligibility for special services and programs of instruction for pupils with disabilities is being assessed pursuant to NAC 388.330 to 388.440, inclusive, in the*

*manner required by sections 7 and 8 of this regulation. If the multidisciplinary team that is determining the eligibility of the pupil pursuant to NAC 388.330 to 388.440, inclusive, determines that the procedures for the assessments administered pursuant to sections 7 and 8 of this regulation are inappropriate because of the nature of the pupil's disability, the district shall use alternative procedures for assessing the proficiency of the pupil to comprehend, speak, read and write English and his primary language. The person administering the assessment shall cooperate with the multidisciplinary team to determine the classification of the pupil.*

*2. A school district shall assess and classify a pupil whose primary language is not English and who is receiving special services and programs of instruction for pupils with disabilities in the manner required by sections 7 and 8 of this regulation. If the committee that develops the individualized educational program for the pupil pursuant to NAC 388.281 determines that the procedures for the assessments are inappropriate because of the nature of the pupil's disability, the district shall use alternative procedures for assessing the proficiency of the pupil to comprehend, speak, read and write English and his primary language. The person administering the assessment shall cooperate with the committee to determine the classification of the pupil.*

**Sec. 10.** *1. A school district shall make available to each pupil classified as an English language learner pursuant to section 7 of this regulation a bilingual program of instruction or a program of instruction that teaches English as a second language.*

*2. The school district shall notify the parents or legal guardian of such a pupil of the eligibility of the pupil to participate in such a program of instruction. The notification must be*

*given in the primary language of the parents or legal guardian of the pupil. The pupil may not participate in such a program of instruction without the consent of his parents or legal guardian.*

*3. A bilingual program of instruction or a program of instruction that teaches English as a second language must:*

*(a) Be based on a sound educational theory for acquiring English;*

*(b) Use procedures and allocate resources that are reasonably calculated to carry out that educational theory in an effective manner; and*

*(c) Produce results which indicate that the pupils in the program are acquiring English.*

**Sec. 11.** *1. Except as otherwise provided in subsection 3, a school district may, at any time, but shall, at least every 2 years, reassess a pupil who is classified as an English language learner pursuant to section 7 of this regulation to determine whether the pupil's proficiency in English is fluent and he is able to succeed in courses of study that are taught only in English.*

*2. A pupil may be reclassified pursuant to this section only if:*

*(a) The pupil's academic performance and his proficiency to comprehend, speak, read and write English is assessed by his teacher and the teacher documents his rationale for recommending the pupil for courses of study which are taught only in English without further instruction in the English language;*

*(b) The parents or legal guardian of the pupil is:*

*(1) Notified, in the primary language of the parents or legal guardian, that the pupil is being considered for reclassification;*

*(2) Given an opportunity to review the data relating to the performance of the pupil; and*

*(3) Allowed to participate in the determination of whether the pupil should be reclassified; and*

*(c) The school district administers to the pupil an examination selected by the district from a list of examinations approved by the department to assess the pupil's proficiency to comprehend, speak, read and write English and the pupil obtains a score on the examination that is equal to or greater than a score for a person who is fluent in speaking, reading and writing English, as established by the publisher of the examination.*

*3. A school district is not required to administer to a pupil who is exempt from the provisions of NAC 389.063 an examination to assess the pupil's proficiency to read and write English. Such a pupil may not be reclassified pursuant to this section.*

*4. A reassessment of a pupil's proficiency to comprehend, speak, read and write English must be administered by a person who is proficient in the language in which the examination is given and who has successfully completed training in the administration and scoring of the examination required for the reassessment.*

**Sec. 12.** *1. A school district shall reassess a pupil who is classified as an English language learner pursuant to section 7 of this regulation and who is receiving special services and programs of instruction for pupils with disabilities in the manner required by section 11 of this regulation. The reassessment must be conducted in conjunction with a review of the individualized educational program of the pupil conducted pursuant to NAC 388.281.*

*2. If the committee that develops the individualized educational program for the pupil pursuant to NAC 388.281 determines that the procedures for the reassessment are inappropriate because of the nature of the pupil's disability, the district shall use alternative*

*procedures for reassessing the proficiency of the pupil to comprehend, speak, read and write English.*

*3. The person administering the reassessment shall cooperate with the committee to determine whether the pupil will be reclassified.*

**Sec. 13.** *A school district may apply, in writing, to the department for a waiver from the provisions of sections 7 to 12, inclusive, of this regulation. Upon a showing of good cause and circumstances that are unique to the district, the department may grant a waiver from any of those provisions.*