

**REVISED ADOPTED REGULATION OF THE  
DEPARTMENT OF EDUCATION**

**LCB File No. R061-08**

Effective September 18, 2008

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

AUTHORITY: §§1-3 and 5, NRS 386.525, 386.527 and 386.540; §§4, 6 and 7, NRS 386.540.

A REGULATION relating to charter schools; prescribing the grounds for denial of an application to form a charter school by the State Board of Education; prescribing restrictions on the provisions which may be included in certain contracts entered into by a charter school or a proposed charter school; and providing other matters properly relating thereto.

**Section 1.** Chapter 386 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

**Sec. 2. 1.** *If the State Board of Education receives an application to form a charter school for sponsorship by the State Board, the State Board shall not approve the application:*

*(a) For a written charter pursuant to subsection 5 of NRS 386.527 if the application does not satisfy the requirements of paragraphs (a) and (b) of subsection 1 of NRS 386.525; or*

*(b) If the financial or administrative operation of the proposed charter school does not meet or exceed the minimum standards, procedures and requirements of the State.*

*2. If the State Board of Education receives an application to form a charter school for sponsorship by the State Board, the State Board may deny the application pursuant to this section.*

*3. The State Board of Education may deny an application if the State Board determines that the curriculum or instruction proposed for the charter school, including, without*

*limitation, a program of distance education approved pursuant to NRS 388.820 to 388.874, inclusive, is not:*

*(a) Aligned with the standards of content and performance established pursuant to NRS 389.520;*

*(b) Aligned with the written description of the mission and goals for the proposed charter school as included in the application pursuant to NRS 386.520; or*

*(c) Supported by sound evidence, as provided by the applicant, which demonstrates the effectiveness of the curriculum or instruction.*

*4. The State Board of Education may deny an application if the State Board determines that:*

*(a) Expenditures or flat fees included in the budget of the proposed charter school or in the proposed operating agreement with a contractor or an educational management organization are not consistent with the cost for similar services as those services are otherwise available to a public school;*

*(b) The budget of the proposed charter school is not balanced or relies unduly on grants or donations;*

*(c) The budget of the proposed charter school is based on an unrealistic enrollment projection;*

*(d) The budget of the proposed charter school does not adequately anticipate the requirements for and expenses of pupils with disabilities who may enroll in a program of special education at the proposed charter school; or*

*(e) The budget of the proposed charter school is not aligned with the written description of the mission and goals for the proposed charter school as included in the application pursuant to NRS 386.520.*

*5. The State Board of Education may deny an application if the State Board determines that a contractor or educational management organization with whom the committee to form the charter school or the governing body of the proposed charter school intends to contract has knowingly violated a material term or condition of a contract with a public school in the past.*

*6. The State Board of Education may deny an application if the State Board determines that a contract or a proposed contract between the proposed charter school and a contractor or an educational management organization contains a provision which is prohibited by section 3 of this regulation.*

**Sec. 3.** *A contract or a proposed contract between a charter school or a proposed charter school and a contractor or an educational management organization must not:*

*1. Give to the contractor or educational management organization direct control of educational services, financial decisions, the appointment of members of the governing body, or the hiring and dismissal of an administrator or financial officer of the charter school or proposed charter school;*

*2. Authorize the payment of loans, advances or other monetary charges from the contractor or educational management organization which are greater than 15 percent of the total expected funding received by the charter school or proposed charter school from the State Distributive School Account;*

3. *Require the charter school or proposed charter school to prepay any fees to the contractor or educational management organization;*
4. *Require the charter school or proposed charter school to pay the contractor or educational management organization before the payment of other obligations of the charter school or proposed charter school during a period of financial distress;*
5. *Allow a contractor or educational management organization to cause a delay in the repayment of a loan or other money advanced by the contractor or educational management organization to the charter school or proposed charter school, which delay would increase the cost to the charter school or proposed charter school of repaying the loan or advance;*
6. *Require the charter school or proposed charter school to enroll a minimum number of pupils for the continuation of the contract between the charter school or proposed charter school and the contractor or educational management organization;*
7. *Require the charter school or proposed charter school to request or borrow money from this State to pay the contractor or educational management organization if the contractor or educational management organization will provide financial management to the charter school;*
8. *Contain a provision which restricts the ability of the charter school or proposed charter school to borrow money from a person other than the contractor or educational management organization;*
9. *Provide for the allocation to the charter school or proposed charter school of any indirect cost incurred by the contractor or educational management organization;*

*10. Authorize the payment of fees to the contractor or educational management organization which are not attributable to the actual services provided by the contractor or educational management organization;*

*11. Allow any money received by the charter school or proposed charter school from this State or from the board of trustees of a school district to be transferred to or deposited in a bank, credit union or other financial institution outside this State, including money controlled by the contractor or educational management organization; or*

*12. Except as otherwise provided in this subsection, provide incentive fees to the contractor or educational management organization. A contract or a proposed contract may provide to the contractor or educational management organization incentive fees that are based on the academic improvement of pupils enrolled in the charter school.*

**Sec. 4.** NAC 386.010 is hereby amended to read as follows:

386.010 As used in NAC 386.010 to 386.445, inclusive, *and sections 2 and 3 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 386.015 to 386.050, inclusive, have the meanings ascribed to them in those sections.

**Sec. 5.** NAC 386.202 is hereby amended to read as follows:

386.202 1. If the Subcommittee on Charter Schools receives an application to form a charter school, the staff of the Department, acting on behalf of the State Board of Education, will verify the contents of the application by:

(a) Performing a physical inspection of the location of the proposed charter school, if applicable;

(b) Consulting with the members of the committee to form the charter school and, where appropriate, the proposed administrators and staff members of the proposed charter school; and

(c) Performing any other investigation necessary or useful in verifying the contents of the application.

2. If the Subcommittee on Charter Schools receives an application pursuant to subsection 4 of NRS 386.525 after the application has been denied twice by the board of trustees of a school district, the application that is submitted to the State Board of Education must be the same application that was denied by the board of trustees except that it may be revised in response to concerns stated by the board of trustees in its second denial of the application if such a revision does not significantly alter the application.

3. Within 20 days after an application is received by the Subcommittee on Charter Schools, the Department will review the application and determine whether the application:

(a) Complies with NRS 386.500 to 386.610, inclusive, and the regulations applicable to charter schools; and

(b) Is complete in accordance with the regulations of the Department.

4. Within 30 days after an application is received by the Subcommittee on Charter Schools, the Department will provide to the applicant its findings pursuant to subsection 3, including the items that are incomplete or noncompliant. The Department may hold a meeting with the applicant or provide the information required by this subsection in another format suitable to the applicant.

5. Within 30 days after an application is received by the Subcommittee on Charter Schools, the Department will provide to the State Board of Education:

(a) The findings of the Department pursuant to subsection 3;

(b) If applicable, the reasons for the first and second denial of the application by the board of trustees of a school district;

(c) A copy of the proposed written agreement if the State Board approves the application pursuant to subsection 5 of NRS 386.527 or a copy of the proposed written agreement if the State Board approves the application pursuant to subsection 7 of NRS 386.527; and

(d) Any other information the Department determines is necessary for the State Board in its review of the application.

6. Other than material required to convert a written charter issued by the State Board of Education pursuant to subsection 7 of NRS 386.527 to a written charter issued pursuant to subsection 5 of NRS 386.527, no additional application material will be accepted from the applicant after the submission referred to in subsections 1 and 2 unless specifically requested by the State Board, the Subcommittee on Charter Schools or the Department to assist in the review of the application.

7. At the meeting described in subsection 5 or 6 of NRS 386.525, as applicable, the Subcommittee on Charter Schools or the State Board of Education, as applicable, shall:

(a) Consider the application *in accordance with section 2 of this regulation* along with any reports generated by the employees of the Department and, if the application was previously denied by the board of trustees of a school district, any reports generated by the employees of that school district pursuant to NAC 386.200; and

(b) Determine whether the application complies with all applicable state and federal statutes and regulations.

8. After the Subcommittee on Charter Schools holds a meeting pursuant to subsection 5 of NRS 386.525, the Subcommittee shall immediately transmit to the State Board of Education a recommendation for approval or denial of the application by the State Board. The Subcommittee shall not delay in the transmission of its recommendation.

9. The State Board of Education shall ~~[not approve]~~ *comply with the provisions of sections 2 and 3 of this regulation to determine whether to deny* an application for a written charter .  
~~[pursuant to subsection 5 of NRS 386.527 if the application does not satisfy the requirements of paragraphs (a) and (b) of subsection 1 of NRS 386.525.]~~

10. A written charter may be granted pursuant to subsection 7 of NRS 386.527 if the applicant is not prepared to commence operation. If such a charter is granted, the provisions of NAC 386.240 apply.

~~[10.]~~ 11. If the State Board of Education denies an application, it shall forward a copy of the written notice of the denial, including, without limitation, the reasons for the denial, to the Department within 5 days after the decision to deny the application is made.

~~[11.]~~ 12. If the State Board of Education approves an application, the:

(a) Written charter must include the application, as approved, and a written agreement signed by the President of the State Board and charter school.

(b) Written notice provided to the Department pursuant to NRS 386.527 indicating approval of the application must include the written charter.

**Sec. 6.** 1. A charter school that is sponsored by the State Board of Education which is in operation on September 18, 2008, may continue to operate pursuant to its current written charter until the expiration of that written charter even if the charter school does not satisfy the requirements of sections 2 and 3 of this regulation.

2. An application to form a charter school for sponsorship by the State Board of Education or to renew a written charter that is sponsored by the State Board which is submitted after September 18, 2008, must comply with the provisions of sections 2 and 3 of this regulation.



**Sec. 7.** 1. A charter school that is sponsored by a school district or a college or university within the Nevada System of Higher Education which is in operation on September 18, 2008, may continue to operate pursuant to its current written charter until the expiration of that written charter even if the charter school does not satisfy the requirements of section 3 of this regulation.

2. An application to form a charter school for sponsorship by a school district or a college or university within the Nevada System of Higher Education or to renew a written charter that is sponsored by a school district or a college or university which is submitted after September 18, 2008, must comply with the provisions of section 3 of this regulation.

**NOTICE OF ADOPTION OF PROPOSED REGULATION**  
**LCB File No. R061-08**

The Department of Education adopted regulations assigned LCB File No. R061-08 which pertain to chapter 386 of the Nevada Administrative Code.

**INFORMATIONAL STATEMENT**

1. A description of how public comment was solicited, a summary of public response, and explanation how other interested persons may obtain a copy of the summary.

Notice of Workshop to Solicit Comments on Proposed Regulations was sent to approximately 200 individuals and educational organizations. A workshop was held on March 7, 2008 and was listed as R169-07 and following the workshop the two proposals were split into R169-07 and R061-08. There was public comment.

The Notice of Intent to Act Upon a Regulation for public hearing and adoption of the amendments to New Section to Chapter 386 - Proposed criteria for the State Board of Education, as sponsors of charter schools, specific criteria to be used to more objectively judge the potential effectiveness of new charter school models. The public hearing was conducted on May 2, 2008 to provide the opportunity for comments by affected parties and the public. There was public comment. The State Board of Education adopted the proposed amendments to the regulations with additional amendments.

2. The Number of Persons Who:

a) Attended Each Hearing: First Workshop: 31; First Hearing: 16; Second Hearing: N/A

b) Testified at Each Hearing: First Workshop: 5; First Hearing: 1; Second Hearing: N/A

c) Submitted Written Statement: First Workshop: 0; First Hearing: 0; Second Hearing: N/A

A copy of any written comments may be obtained by contacting Doris Arnold, Executive Assistant, Nevada Department of Education, 775-687-9217, or by writing to the Nevada Department of Education, 700 East Fifth Street, Carson City, Nevada 89701-5096.

3. A description of how comments were solicited from affected businesses, a summary of the response and an explanation how other interested parties may obtain a copy of the summary.

Comments were solicited through the workshop notice of February 1, 2008; and the public hearing notice of March 28, 2008. At the March 7, 2008 Workshop to Solicit Comments, there was public comment to the proposed amendments to the regulation language. At the May 2, 2008 public hearing there was public comment to the proposed amendments to the regulation language.

Summary of Comments:  
Workshop/Public Hearing Comments:

Workshop comments:

- (a) Terry Care, Attorney for Virtual Academy, stated that his comments regarded section 3, item 6(b) and that the regulation stemmed from the passage of AB 334, but deals with language amended by the Legislature in 2005. Senator Care expressed concerns on how the Board would determine insufficiencies to deny an application or how a contractor was considered “problematic”. Senator Care stated that his concerns with the regulations were elusive and would provide the Board the latitude to deny an application just because enough Board members felt like it.
- (b) Dr. Mike Robinson, Associate Professor, University of Nevada-Las Vegas and Insight Charter School, requested that they believe their application, which was pulled from the agenda, was a complete and compliant document and could have been approved at an earlier meeting. This is a charter school that wanted to help at-risk students and reviewed the Governing Board members of this charter school.
- (c) Dr. John Hawk, Executive Director for Nevada State High School, brought to the Board’s attention a grave concern that an error in State Proficiency Exams was made which was failing a student that actually should have passed and that the same could be said of schools in the State of Nevada. He asked the Board to take into consideration that recruiting students was of vital importance to charter schools. Dr. Hawk requested, for a third time, that charter schools be allowed to participate in workshop items. Dr. Hawk commended the State Board’s efforts.
- (d) Laura Granier, Attorney for Lionel, Sawyer, and Collins and on behalf of Nevada Connections Academy, concurred with Senator Care’s comments. Ms. Granier stated that they also hoped Nevada would be a part of the general movement by states and to have a charter application process that facilitates objective, evidence-based decision making.
- (e) Ricci Rodriguez-Elkins, Executive Director of CFCSD, stated that she was pleased to see the Department and the Board taking steps to identify specific criteria. Overall, it would assist schools and the State Board for accepting and approving new applications in the future. One concern that had not been addressed was Section 7, Item 2, Subsection 6(b) in the additional items criteria handout from the Department regarding the location of a charter school being limited to the type of schools based on the type of curriculum on instructional method of another school in the same geographical area because it would diminish the choices to families.

Public Hearing comments:

- (a) Steve Knight, Silver State High School, expressed support for this regulation and stated that if charters are successful in the future this is sound reasoning.

A copy of the summary and/or minutes of the public hearing may be obtained by contacting Doris Arnold, Executive Assistant, Nevada Department of Education, 775-

687-9217, or by writing to the Nevada Department of Education at 700 East Fifth Street, Carson City, Nevada 89701-5096.

4. If the regulation was adopted with or without change to any part of the proposed regulation, a summary of the reasons for adopting.

The Nevada State Board of Education adopted the proposed new regulation language at the public hearing held May 2, 2008. The reason for adopting the regulation is that the proposed criteria will provide the State Board of Education, as sponsors of charter schools, with specific criteria which may be used to more objectively judge the potential effectiveness of new charter school models. Applications which lack successful characteristics may be denied a charter. Applicants who experience denial may use the criteria to improve and revise future charter school applications.

5. The estimated economic effect of the adopted regulation on the business that it is to regulate and on the public. These must be stated separately and each case must include:

There is no economic effect on the Department of Education. Applicants may submit a charter proposal directly to the State Board for sponsorship. The proposed criteria will allow the State Board to more objectively judge the efficacy of charter school applications. There is no economic effect on the public or the business it regulates.

6. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the agency for enforcement of this regulation.

7. A description of any regulations of other state or governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

No other state or governmental agency regulations will be overlapped or duplicated by the above noted regulation. There is no duplication or overlap of federal regulations.

8. If the regulation includes provisions which are more stringent than a federal regulation, which regulates the same activity, a summary of such provisions.

There are none.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

This regulation does not provide for a new fee or increase an existing fee.