

**ADOPTED REGULATION OF THE  
STATE BOARD OF EDUCATION**

**LCB File No. R030-10**

Effective June 30, 2010

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

AUTHORITY: §1, NRS 385.080 and 388.520.

A REGULATION relating to education; revising provisions governing parental consent for the provision of special education and related services to pupils with disabilities; and providing other matters properly relating thereto.

**Section 1.** NAC 388.300 is hereby amended to read as follows:

388.300 1. Except as otherwise provided in this section or NAC 388.440, informed written consent must be obtained from the parents of the pupil before conducting an initial evaluation, before conducting additional assessments in a reevaluation, and before special education and related services are initially provided to a pupil with a disability. The public agency shall make reasonable efforts to obtain such consent. If a parent refuses to provide written consent for the initial evaluation, fails to respond to a request to provide the consent for an initial evaluation or refuses to provide consent for a reevaluation requiring additional assessments, the public agency may, but is not required to, request mediation pursuant to NAC 388.305 or a hearing pursuant to NAC 388.306.

2. If a public agency has made reasonable efforts to obtain informed consent from the parent of a pupil and the public agency does not request mediation or a hearing upon the parent's failure to respond or refusal, the public agency:

(a) Does not violate any obligations for an evaluation or reevaluation.

(b) Is not deemed to have knowledge pursuant to 34 C.F.R. § 300.534 that a pupil is a pupil with a disability.

3. If a pupil is a ward of the State and the pupil is not residing with the pupil's parent, the public agency shall make reasonable efforts to obtain the informed consent from the parent of the pupil for an initial evaluation to determine whether the pupil is a pupil with a disability. The public agency is not required to obtain informed consent from the parent of such a pupil for an initial evaluation to determine whether the pupil is a pupil with a disability if:

(a) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parents of the pupil;

(b) The rights of the parents of the pupil have been terminated in accordance with state law; or

(c) The rights of the parents to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by a person appointed by the judge to represent the pupil.

4. If the parent of a pupil refuses to consent to the initial receipt of special education and related services or the parent fails to respond to a request to provide such consent, the public agency shall not provide special education and related services to the pupil through use of mediation pursuant to NAC 388.305 or a hearing pursuant to NAC 388.306. The public agency shall not be:

(a) Considered to be in violation of the requirement to make available a free appropriate public education to the pupil for the failure to provide such pupil with the special education and related services for which the public agency requests such consent.

(b) Deemed to have knowledge pursuant to 34 C.F.R. § 300.534 that a pupil is a pupil with a disability.

(c) Required to convene a meeting relating to an individualized educational program or develop an individualized educational program for the pupil for the special education and related services for which the public agency requests such consent.

5. *The parent of a pupil with a disability may withdraw consent in writing for the continued provision of special education and related services for the pupil. If the parent withdraws such consent after the initial provision of special education and related services, the public agency shall not:*

*(a) Continue providing special education and related services to the pupil, but the public agency shall provide prior written notice pursuant to this section to the parents of the pupil before discontinuing the special education and related services.*

*(b) Use mediation pursuant to NAC 388.305 or a hearing pursuant to NAC 388.306 to obtain an agreement or ruling that special education or related services continue to be provided to the pupil.*

*(c) Be considered to be in violation of the requirement to make available a free appropriate public education to the pupil for the failure to provide such pupil with further special education and related services.*

*(d) Be required to convene a meeting relating to an individualized educational program or otherwise develop an individualized educational program for the pupil for the further provision of special education and related services.*

6. Parental consent is not required:

(a) Before existing data is reviewed as part of an initial evaluation or reevaluation;

(b) Before a test or other assessment is administered to all pupils unless, before administration of that test or assessment, consent is required of the parents of all pupils; or

(c) If the public agency demonstrates that it has made reasonable efforts to obtain consent for an additional assessment to be conducted as part of a reevaluation and the pupil's parents have failed to respond.

~~{6.}~~ 7. If the parent of a pupil who is homeschooled or who is parentally placed in a private school refuses to provide consent for the initial evaluation or for a reevaluation requiring additional assessments or the parent fails to respond to a request to provide consent, the public agency shall not request mediation pursuant to NAC 388.305 or a hearing pursuant to NAC 388.306 and the public agency is not required to consider the pupil as eligible for services pursuant to NAC 388.219.

~~{7.}~~ 8. Except as otherwise provided in this subsection, a public agency shall notify the parents of a pupil with a disability, other than a gifted and talented pupil, within a reasonable time before any proposed or refused action regarding the:

- (a) Placement of the pupil;
- (b) Identification or evaluation of any special educational needs of the pupil; or
- (c) Provision of a free appropriate public education to the pupil.

↪ If a parent does not agree to the proposed or refused action of the public agency, the public agency or the parent may request mediation pursuant to NAC 388.305 or may request a hearing *pursuant to NAC 388.306* on the proposed action, or the parent may withhold the consent required by subsection 1, if that subsection applies.

~~{8.}~~ 9. The notice of the public agency's action must be written in language understandable to the general public and in the native language of the parent unless that is clearly not feasible. If

the native language or other method of communication that is used in the home is not written, the public agency shall ensure that the notice is read to the parent in the native language or communicated to the parent by another method of communication and that the parent understands the notice. The public agency shall maintain written evidence of the parent's understanding of the translated notice.

~~9.1~~ **10.** The public agency shall include in the notice:

- (a) A description of the action proposed or refused by the public agency;
- (b) The reasons for the proposal or refusal;
- (c) A description of other options the public agency considered and the reasons why those options were rejected;
- (d) A description of each evaluation procedure, assessment, record or report upon which the action is based;
- (e) A description of the factors which are relevant to the public agency's proposal or refusal;
- (f) A statement that the parents have rights in the matter and, if the notice is not notice of an initial referral for evaluation, the means by which a statement of parental rights can be obtained; and
- (g) Sources for parents to contact to obtain assistance in understanding the provisions of state and federal law relating to special education.

~~10.1~~ **11.** A public agency shall provide the parents of a pupil with a statement of parental rights once a year and:

- (a) When the pupil is initially referred for evaluation or upon parental request for an evaluation;

(b) When the public agency receives the first request in a school year for a hearing pursuant to NAC 388.306 from the parents;

(c) When the public agency receives the first complaint in a school year filed by the parents with the Department pursuant to NAC 388.318; and

(d) Upon request by the parents.

↪ The statement of parental rights must explain fully the procedural safeguards listed in 20 U.S.C. § 1415(d)(2) and 34 C.F.R. § 300.504(c) that are available to the parents. A public agency may place a current copy of the statement of the procedural safeguards on the Internet website of the public agency, if applicable.

~~111~~ **12.** If the public agency makes the notices required pursuant to this section available through electronic means, a parent of a pupil with a disability may elect to receive such notices by electronic mail.

~~12~~ **13.** For purposes of this section, a public agency has made reasonable efforts to obtain the informed consent of the parents if the public agency has used procedures for notification and documentation consistent with subsection 10 of NAC 388.281.

**NEVADA DEPARTMENT OF EDUCATION**  
**NEVADA STATE BOARD OF EDUCATION**  
**NEVADA STATE BOARD FOR CAREER AND TECHNICAL EDUCATION**  
**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED**  
**BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066**  
**LCB File No. R030-10**

**NAC 388.300 - Parental Consent; Notice to Parents of Proposed or Refused Action;  
Statement of Parental Rights**

**INFORMATIONAL STATEMENT**

The following statement is submitted for adopted amendments to Nevada Administrative Code 388.300:

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 19, 2010. There was no public comment.

The Notice of Intent to Act Upon a Regulation for public hearing and adoption of the new regulation amendments to R030-10; NAC 388.300 Parental Consent; Notice to Parents of Proposed or Refused Action; Statement of Parental Rights. A public hearing was conducted on May 14, 2010 to provide the opportunity for comments by affected parties and the public. There was no public comment. The State Board of Education adopted the proposed amendments.

2. The Number of Persons Who:

- a) Attended Each Hearing: First Workshop: 5; First Hearing: 8; Second Hearing: N/A
- b) Testified at Each Hearing: First Workshop: 0; First Hearing: 0; Second Hearing: N/A
- c) Submitted Written Statements: First Workshop: 0; First Hearing: 0; Second Hearing: N/A

A copy of any written comments may be obtained by contacting Karen Johansen, Administrative Assistant, Nevada Department of Education, 775-687-9225, 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 24, 2010; and a public hearing notice of April 9, 2010. At the March 19, 2010 Workshop to Solicit Comments, there was no public comment to the proposed new regulation. At the May 14, 2010 public hearing there was no public comment to the proposed new regulation language.

Summary of Comments:

Workshop comments:

There were no public comments at the workshop.

Public Hearing comments:

There were no public hearing comments.

A copy of the summary and/or minutes of the public hearing may be obtained by contacting Karen Johansen, Administrative Assistant, Nevada Department of Education, 775-687-9225, 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 14, 2010. The reason for adopting the new regulation is due to changes on December 31, 2008 to the federal regulations associated with Individuals with Disabilities Education Act (IDEA) were revised to provide provisions for the revocation of parental consent for special education services.

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 public or the business it regulates.

There is no cost to the Department of education to adopt these regulations. There is no federal law affecting the proposed regulations. There is no duplication or overlap of state or local governmental agencies. The proposed regulations do not establish a new fee nor increase an existing fee of the regulating agency.

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.