

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

LCB File No. R030-10

March 10, 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 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.

~~{11}~~ **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.