

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

LCB File No. R099-17

February 2, 2018

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

AUTHORITY: §§1 and 3-12, NRS 388.133, as amended by section 9 of Senate Bill No. 225, chapter 577, Statutes of Nevada 2017, at page 4155; §2, NRS 388.133, as amended by section 9 of Senate Bill No. 225, chapter 577, Statutes of Nevada 2017, at page 4155, and section 4.3 of Senate Bill No. 225, chapter 577, Statutes of Nevada 2017, at page 4152.

A REGULATION relating to education; clarifying that a private school and its governing body or administrator may elect to comply with the anti-bullying provisions of regulation; prescribing requirements and methods that a public school must use when addressing the rights and needs of persons with diverse gender identities or expressions; revising certain terminology to clarify that the anti-bullying provisions of regulation apply to all public schools, including charter schools; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law authorizes a private school and its governing body and administrator to comply with anti-bullying provisions of statute wholly or in part. (Section 4.3 of Senate Bill No 225, chapter 577, Statutes of Nevada 2017, at page 4152) **Section 2** of this regulation clarifies that a private school and its governing body and administrator may also elect to comply with the anti-bullying provisions of regulation wholly or in part.

Existing law requires the Department of Education to prescribe by regulation a policy for all school districts and public schools to provide a safe and respectful learning environment that is free of bullying and cyber-bullying. This policy is required to include requirements and methods for addressing the rights and needs of persons with diverse gender identities or expressions. (NRS 388.133, as amended by section 9 of Senate Bill No. 225, chapter 577, Statutes of Nevada 2017, at page 4155) **Section 3** of this regulation sets forth such requirements and methods. Specifically, **section 3** requires: (1) a school district or public school to address the rights and needs of persons with diverse gender identities or expressions on an individualized basis; and (2) the governing body of a public school to adopt a policy that contains requirements and methods for addressing certain rights and needs of persons with diverse gender identities or expressions.

Senate Bill No. 225 of the 2017 Legislative Session clarifies that anti-bullying provisions of statute apply to all public schools, including charter schools. Specifically, Senate Bill No. 225 replaces references to: (1) the principal of a school with references to the administrator of a school; and (2) the board of trustees of a school district with references to the governing body of a school. (Chapter 577, Statutes of Nevada 2017, at pages 4152-62) **Sections 4-12** of this regulation make conforming changes to terminology used in existing regulations.

Section 1. Chapter 388 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. *A private school, as defined in NRS 394.103, and the governing body and administrator of the private school are authorized to comply with the provisions of section 3 of this regulation and sections 3 to 10, inclusive, of LCB File No. 111-15, as amended by sections 4 to 11, inclusive, of this regulation, wholly or in part. Any such compliance is wholly voluntary and no liability attaches to any failure to comply on the part of the private school, governing body or administrator.*

Sec. 3. *1. Each school or school district shall address the rights and needs of persons with diverse gender identities or expressions on an individualized basis to foster the safe and healthy development of the gender identity and expression of each pupil. When addressing the rights and needs of a person as they relate to the gender identity or expression of the person, a school or school district shall consider the individual characteristics and unique circumstances of the person.*

2. The governing body of a school or school district shall adopt a policy that includes, without limitation:

- (a) Methods to ensure the protection of the privacy of each person governed by the policy;*
- (b) Methods to prevent discrimination, harassment, bullying and cyber-bullying based on the gender identity or expression of a person;*

(c) Measures to ensure that each person governed by the policy, including, without limitation, each employee, volunteer and pupil, does not use names and pronouns other than the names and pronouns identified by the parent or guardian of a pupil, as recorded through the registration and enrollment process of the school or school district, in reference to or in any verbal or written communication with the pupil;

(d) Methods to support appropriate engagement of the parents or guardians of pupils with diverse gender identities or expressions;

(e) Measures to ensure access to academic courses and services that are appropriate for and supportive of pupils with diverse gender identities or expressions, including, without limitation:

(1) Classroom activities that are relevant and meaningful to and appropriate for pupils with diverse gender identities and expressions and do not discriminate or segregate according to gender identity or expression;

(2) Physical education, assemblies, dances, ceremonies and other school activities that are appropriate for pupils with diverse gender identities and expressions and do not discriminate or segregate according to gender identity or expression; and

(3) Intramural and interscholastic activities, in accordance with the regulations and policies of the Nevada Interscholastic Activities Association;

(f) Measures to ensure access to appropriate and supportive school clubs for pupils with diverse gender identities or expressions and support groups for the families of such pupils;

(g) A requirement that any dress code or uniform policy is not delineated or segregated according to gender identity or expression;

(h) Policies concerning yearbook photographs that allow pupils with diverse gender identities or expressions to choose clothing that aligns with their gender identity or expression and, if applicable, allow for yearbook photographs of high school seniors that are not gender-specific;

(i) Authorization for pupils with diverse gender identities or expressions to select cap and gown combinations for graduation that align with their gender identity or expression;

(j) A requirement that the chosen name of a pupil be read during ceremonies and other events, including, without limitation, graduation ceremonies;

(k) Requirements for the use of appropriate definitions and terminology to describe the requirements, needs and experiences of persons with diverse gender identities or expressions;

(l) Measures to ensure that each school governed by the policy fully complies with the requirements of NRS 651.070; and

(m) A requirement that each member of the governing body and each employee governed by the policy, including, without limitation, each administrator and teacher, must receive annual training concerning the requirements and needs of persons with diverse gender identities or expressions.

3. As used in this section, “classroom activities” means activities that provide education or instruction to pupils.

Sec. 4. Section 3 of LCB File No. R111-15, which was adopted by the State Board of Education and was filed with the Secretary of State on January 27, 2017, is hereby amended to read as follows:

1. A pupil who is a victim of bullying or cyber-bullying in violation of NRS 388.135, *as amended by section 15 of Senate Bill No. 225, chapter 577, Statutes of Nevada 2017, at page*

4159, witnesses a violation of NRS 388.135 , *as amended by section 15 of Senate Bill No. 225, chapter 577, Statutes of Nevada 2017, at page 4159*, or receives information that a violation of NRS 388.135 , *as amended by section 15 of Senate Bill No. 225, chapter 577, Statutes of Nevada 2017, at page 4159*, has occurred may report the violation:

(a) To any employee or volunteer in the ~~public~~ school or school district in which the pupil is enrolled, including, without limitation, a teacher, counselor, coach or administrator;

(b) Through the 24-hour, toll-free statewide hotline or Internet website maintained by the Office for a Safe and Respectful Learning Environment pursuant to NRS 388.1323 ~~+~~, *as amended by section 8 of Senate Bill No. 225, chapter 577, Statutes of Nevada 2017, at page 4155*; or

(c) Through a hotline or Internet website maintained by the school district *or school* in which the pupil is enrolled, if the school district *or school* maintains such a hotline or website.

2. When ensuring the safety and well-being of a reported victim of bullying or cyber-bullying as required by NRS 388.1351, *as amended by section 16 of Senate Bill No. 225, chapter 577, Statutes of Nevada 2017, at page 4159*, the ~~principal~~ administrator or ~~his or her~~ the designee ~~+~~ *of the administrator*:

(a) Shall not take any action that may cause harm to the reported victim, including, without limitation, requiring the reported victim to change classrooms or isolating the reported victim from his or her peers.

(b) Shall, to the extent practicable, talk privately and discreetly about the violation with the reported victim, without bringing undue attention to the reported victim.

Sec. 5. Section 4 of LCB File No. R111-15, which was adopted by the State Board of Education and was filed with the Secretary of State on January 27, 2017, is hereby amended to read as follows:

1. The initial notification provided pursuant to NRS 388.1351 , *as amended by section 16 of Senate Bill No. 225, chapter 577, Statutes of Nevada 2017, at page 4159*, to the parents and guardians of pupils directly involved in a reported violation of NRS 388.135 ~~+~~ , *as amended by section 15 of Senate Bill No. 225, chapter 577, Statutes of Nevada 2017, at page 4159*:

(a) Must include, without limitation, a statement that the ~~principal~~ *administrator* or ~~this or her~~ *the* designee *of the administrator* will be conducting an investigation of the reported violation and that the parent or guardian may discuss with the ~~principal~~ *administrator* or designee any counseling or intervention services that are available to the pupil.

(b) Must not include any personally identifiable information of a pupil other than the pupil to whose parent or guardian the notification is provided.

2. ~~A principal~~ *An administrator* or ~~this or her~~ *the* designee *of an administrator* shall maintain a record of each notification made pursuant to subsection 1, including all good faith efforts to notify a parent or guardian if the contact information for the parent or guardian is not correct.

Sec. 6. Section 5 of LCB File No. R111-15, which was adopted by the State Board of Education and was filed with the Secretary of State on January 27, 2017, is hereby amended to read as follows:

1. Each investigation of a report of bullying or cyber-bullying conducted pursuant to NRS 388.1351 , *as amended by section 16 of Senate Bill No. 225, chapter 577, Statutes of Nevada 2017, at page 4159*, must be conducted thoroughly and impartially in a manner that does not

retraumatize or further traumatize the reported victim and must include, without limitation, an interview with:

(a) Each person involved in the reported bullying or cyber-bullying, including, without limitation, the reported aggressor, the reported victim and any relevant witnesses.

(b) The parent or guardian of the reported aggressor and the reported victim.

↳ To the extent practicable, the identities of the persons interviewed and the content of the interviews must remain confidential.

2. Each ~~{principal}~~ *administrator* or ~~{his or her}~~ designee *of an administrator* who conducts an investigation pursuant to this section and NRS 388.1351 , *as amended by section 16 of Senate Bill No. 225, chapter 577, Statutes of Nevada 2017, at page 4159*, shall document the date, time, subject and content of each interview conducted and maintain such documentation in a manner that is consistent with the policy governing maintenance of disciplinary records for the school district in which the school is located~~{}~~ *or charter school, as applicable*.

3. Each ~~{principal}~~ *administrator* or ~~{his or her}~~ designee *of an administrator* who conducts an investigation must complete the investigation within the time prescribed by NRS 388.1351 ~~{}~~ , *as amended by section 16 of Senate Bill No. 225, chapter 577, Statutes of Nevada 2017, at page 4159*.

Sec. 7. Section 6 of LCB File No. R111-15, which was adopted by the State Board of Education and was filed with the Secretary of State on January 27, 2017, is hereby amended to read as follows:

1. If ~~{a principal}~~ *an administrator* or ~~{his or her}~~ *the* designee *of an administrator* determines that a violation of NRS 388.135 , *as amended by section 15 of Senate Bill No. 225, chapter 577, Statutes of Nevada 2017, at page 4159*, has occurred, the written report of the

findings and conclusions of the investigation completed pursuant to NRS 388.1351 , *as amended by section 16 of Senate Bill No. 225, chapter 577, Statutes of Nevada 2017, at page 4159*, and section 5 of ~~{this regulation}~~ *LCB File No. 111-15, as amended by section 6 of this regulation*, must include recommendations for the imposition of restorative disciplinary actions or other measures to be imposed as a result of the violation that the ~~{principal}~~ *administrator* or designee determines will assist the reported aggressor to see the harm that his or her actions have caused, to repair that harm and to not engage in bullying or cyber-bullying in the future. Such other measures may include, without limitation, the development of a plan to support the physical and emotional well-being of the reported aggressor that is aligned with the training provided by the Office for a Safe and Respectful Learning Environment.

2. The ~~{principal}~~ *administrator* or ~~{his or}~~ designee *of the administrator* shall develop and carry out a plan to support the physical and emotional well-being of the reported victim and the reported aggressor which is designed to ensure that the reported victim and the reported aggressor are not further harmed by the bullying or cyber-bullying, including, without limitation, by allowing the reported victim to make up any test or homework assignment that he or she missed or failed to submit as a result of the bullying or cyber-bullying.

3. The ~~{principal}~~ *administrator* or ~~{his or her}~~ *the* designee *of the administrator* shall meet with each reported victim of bullying or cyber-bullying as required by subsection ~~{6}~~ 7 of NRS 388.1351 , *as amended by section 16 of Senate Bill No. 225, chapter 577, Statutes of Nevada 2017, at page 4159*, and with each reported aggressor, regardless of the outcome of the investigation, to ensure that the bullying or cyber-bullying is not continuing. Each meeting must be conducted in a private and discreet manner that does not draw unnecessary attention to the reported victim.

Sec. 8. Section 7 of LCB File No. R111-15, which was adopted by the State Board of Education and was filed with the Secretary of State on January 27, 2017, is hereby amended to read as follows:

1. Subject to the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, and any regulations adopted pursuant thereto, ~~{a principal}~~ *an administrator* or ~~{his or her}~~ designee *of an administrator* who completes a written report of the findings and conclusions of an investigation of reported bullying or cyber-bullying pursuant to NRS 388.1351 , *as amended by section 16 of Senate Bill No. 225, chapter 577, Statutes of Nevada 2017, at page 4159*, and section 5 of ~~{this regulation}~~ *LCB File No. 111-15, as amended by section 6 of this regulation*, shall, within 24 hours after completing the report:

(a) Provide to the parent or guardian of the reported aggressor a copy of the written report that does not contain the personally identifiable information of any other pupil;

(b) Notify the parent or guardian of any other pupil directly involved in the incident of the outcome of the investigation and make available upon request to any such parent or guardian a copy of the report that does not contain the personally identifiable information of any pupil other than the pupil to whose parent or guardian the report is provided; and

(c) Notify the parent or guardian of each pupil directly involved in the incident that the parent or guardian may:

(1) Submit to the ~~{principal}~~ *administrator* or designee a complaint or concern regarding the conduct or outcome of the investigation;

(2) Request a meeting with the ~~{principal}~~ *administrator* or designee to discuss the outcome of the investigation;

(3) Appeal the outcome of the investigation in the manner prescribed pursuant to subsection 2; and

(4) Appeal a disciplinary decision of the ~~{principal}~~ *administrator* or designee made against the pupil as a result of the incident.

2. The ~~{board of trustees}~~ *governing body* of each school ~~{district}~~ shall adopt a policy that prescribes procedures by which the parent or guardian of any pupil directly involved in a reported violation of NRS 388.135 , *as amended by section 15 of Senate Bill No. 225, chapter 577, Statutes of Nevada 2017, at page 4159*, may appeal the outcome of the investigation conducted pursuant to NRS 388.1351 , *as amended by section 16 of Senate Bill No. 225, chapter 577, Statutes of Nevada 2017, at page 4159*, and section 5 of ~~{this regulation,}~~ *LCB File No. 111-15, as amended by section 6 of this regulation*, and any disciplinary decision made against the pupil.

Sec. 9. Section 8 of LCB File No. R111-15, which was adopted by the State Board of Education and was filed with the Secretary of State on January 27, 2017, is hereby amended to read as follows:

1. Not later than 30 days after receiving notification of the final resolution of an appeal made pursuant to the policy adopted pursuant to section 7 of ~~{this regulation,}~~ *LCB File No. 111-15, as amended by section 8 of this regulation*, the parent or guardian of a pupil directly involved in the reported violation of NRS 388.135 , *as amended by section 15 of Senate Bill No. 225, chapter 577, Statutes of Nevada 2017, at page 4159*, may submit a complaint to the Department concerning the outcome of the appeal or a violation of any provision of NRS 388.121 to 388.1395, inclusive, *section 3 of this regulation* or sections ~~{2}~~ 3 to 10, inclusive, of ~~{this regulation}~~ *LCB File No. 111-15, as amended by sections 4 to 11, inclusive, of this*

regulation, or criminal conduct by a teacher, administrator, ~~{principal,}~~ coach, other staff member or member of the ~~{board of trustees}~~ *governing body* of a school . ~~{district,}~~ Each complaint must be in writing and must include, without limitation:

(a) Contact information for the parent or guardian;

(b) A copy of the written report of the findings and conclusions of the investigation conducted pursuant to NRS 388.1351 , *as amended by section 16 of Senate Bill No. 225, chapter 577, Statutes of Nevada 2017, at page 4159*, and section 5 of ~~{this regulation,}~~ *LCB File No. 111-15, as amended by section 6 of this regulation;*

(c) Any written record of the appeal prepared by or at the direction of the *school or* school district ~~{or school}~~ regarding the violation or, if there is not a written record, a narrative summation provided by the parent or guardian, including any contact information that will assist the Department in verifying the accuracy of the narrative summation;

(d) If the complaint concerns the outcome of an appeal, the outcome that the parent or guardian would have preferred;

(e) If the complaint alleges that a teacher, administrator, ~~{principal,}~~ coach, other staff member or member of the ~~{board of trustees}~~ *governing body* of a school ~~{district}~~ has violated any provision of NRS 388.121 to 388.1395, inclusive, *section 3 of this regulation* or sections ~~{2}~~ *3* to 10, inclusive, of ~~{this regulation,}~~ *LCB File No. 111-15, as amended by sections 4 to 11, inclusive, of this regulation*, the specific provision that was allegedly violated and a description of the alleged violation;

(f) If the complaint alleges that a teacher, administrator, ~~{principal,}~~ coach, other staff member or member of the ~~{board of trustees}~~ *governing body* of a school ~~{district}~~ has engaged in criminal conduct, a description of the alleged crime; and

(g) Any other information that the parent or guardian determines would be useful to the Department when resolving the complaint.

2. The Department shall not provide legal advice, including, without limitation, advice concerning whether a statute or regulation has been violated or whether a crime has been committed.

3. After a complaint is submitted pursuant to this section, the Department may request any additional information necessary to conduct an investigation. The Department shall make any such request for additional information within 5 working days after receipt of the initial complaint. The Department shall notify a parent or guardian who submits a complaint when the Department determines that the complaint is complete and requires no additional information for the purposes of making a preliminary determination pursuant to subsection 4.

4. After receiving a complaint that is complete, the Department shall determine whether it will conduct further investigation into the complaint and issue to the parent or guardian of each pupil directly involved in the incident described in the complaint, any other person involved in that incident and the superintendent of the school district *or governing body of the charter school, as applicable*, a preliminary report containing that determination. The Department shall issue the preliminary report not later than 10 working days after receipt of the completed complaint pursuant to subsection 3.

5. If the Department conducts further investigation after issuing a preliminary report pursuant to subsection 4, the Department shall issue to the parent or guardian of each pupil directly involved in the incident, any other person involved in that incident and the superintendent of the school district *or governing body of the charter school, as applicable*, a final report concerning the findings and conclusions of the investigation. The Department shall

issue the final report not later than 45 working days after the preliminary report is issued unless the Department notifies the parent or guardian of each pupil directly involved in the incident, any other person involved in the incident and the superintendent of the school district *or governing body of the charter school, as applicable*, that the Department needs more time to conduct the investigation.

6. As a result of a complaint submitted pursuant to this section, the Department may request that a school district *or charter school, as applicable*, prepare a plan of corrective action, including any recommendations made by the Department.

7. An employee who is subject to disciplinary action pursuant to NRS 388.1354 , *as amended by section 18 of Senate Bill No. 225, chapter 577, Statutes of Nevada 2017, at page 4161*, may not appeal that disciplinary action to the Department pursuant to this section.

Sec. 10. Section 9 of LCB File No. R111-15, which was adopted by the State Board of Education and was filed with the Secretary of State on January 27, 2017, is hereby amended to read as follows:

The ~~{board of trustees}~~ *governing body* of each school ~~{district}~~ shall:

1. Develop and carry out a plan to ensure that members of the ~~{board of trustees of the school district,}~~ *governing body*, administrators, ~~{principals,}~~ teachers and all other personnel employed by the school district *or school, as applicable*, receive the training in accordance with the policy prescribed by the Department pursuant to paragraph ~~{(b)}~~ *(c)* of subsection 2 of NRS 388.133, *as amended by section 9 of Senate Bill No. 225, chapter 577, Statutes of Nevada 2017, at page 4155*, including, without limitation, the training materials developed by the Department.

2. Provide a copy of *section 3 of this regulation and* sections ~~2~~ 3 to 10, inclusive, of ~~this regulation~~ *LCB File No. 111-15, as amended by sections 4 to 11, inclusive, of this regulation,* and any policies adopted pursuant thereto to the parent or guardian of each pupil who is enrolled in a school within the school district *or charter school, as applicable,* and each teacher, administrator and other staff member of the school district *or school, as applicable,* at least once each school year.

3. Make the information described in subsection 1 available upon request to any person, including, without limitation, a community organization that has a cooperative agreement with a school within the school district ~~H~~ *or charter school, as applicable.*

Sec. 11. Section 10 of LCB File No. R111-15, which was adopted by the State Board of Education and was filed with the Secretary of State on January 27, 2017, is hereby amended to read as follows:

1. The annual report of accountability prepared pursuant to NRS 385A.070 must not include the personally identifiable information of any pupil involved in a reported violation of NRS 388.135 *, as amended by section 15 of Senate Bill No. 225, chapter 577, Statutes of Nevada 2017, at page 4159,* or any other incident of bullying or cyber-bullying.

2. A teacher, administrator, ~~principal,~~ coach, other staff member or member of the ~~board of trustees~~ *governing body* of a school ~~district~~ shall not interfere with the reporting of statistics concerning violations of NRS 388.135 ~~H~~ *, as amended by section 15 of Senate Bill No. 225, chapter 577, Statutes of Nevada 2017, at page 4159.*

Sec. 12. Section 2 of LCB File No. R111-15, which was adopted by the State Board of Education and was filed with the Secretary of State on January 27, 2017, is hereby repealed.

TEXT OF REPEALED SECTION

Section 2 of LCB File No. R111-15:

Sec. 2. As used in sections 2 to 10, inclusive, of this regulation, “principal” means the lead administrator of a public school, including, without limitation, such an administrator who is referred to by another title.