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Notice of Intent to Act Upon a Regulation

Notice of Hearing for the Adoption of LCB File R023-25 by the Nevada State Board of Education

The Nevada Department of Education will hold a public hearing at **10:03AM on Wednesday, November 12, 2025**, available to stream online via [YouTube](https://www.youtube.com) or attend at the following locations: Nevada Department of Education Offices, 700 E. Fifth Street, Board Room, Carson City and 2080 E. Flamingo Road, Room 114, Las Vegas, Nevada. The purpose of the hearing is to receive comments from all interested persons regarding the repeal of language in Nevada Administrative Code (NAC) Chapter 388.

The following information is provided pursuant to the requirements of Nevada Revised Statute (NRS) 233B.0603:

- 1. The need and purpose of the proposed regulations and/or amendments:** NRS 388.5267 states that *"the State Board shall prescribe minimum standards for the special education of gifted and talented pupils"*.
- 2. Description of the proposed regulation or the subjects and issues involved:** This regulation revises the standards for determining the eligibility of pupils for special services and programs of instruction for gifted and talented students.
- 3. How to obtain a copy of the proposed regulatory language:** A copy of the language is attached to this notice.
- 4. Estimated economic effect of the regulation on the business which it is to regulate and on the public:** No economic effects anticipated.
- 5. Methods used by the agency in determining the impact on small businesses:** Small businesses are not impacted by this regulation.
- 6. The estimated cost to the agency for enforcement of the proposed regulation:** No costs.
- 7. Description and citation of duplicative or overlapping regulations of other state or local government agencies:** No duplicative or overlapping regulations.
- 8. Whether the regulation is required by federal law:** No.
- 9. Whether the regulation is more stringent than federal regulations regarding the same activity:** No.

10. Whether the proposed regulation establishes a new fee or increase an existing fee: No.

A copy of all materials relating to the proposal may be obtained at the workshop, on the [NDE website](#), or by contacting the Nevada Department of Education via email at NVBoardEd@doe.nv.gov. Persons wishing to comment upon the proposed action of the Department may provide in-person testimony or submit written comment via email at NVBoardEd@doe.nv.gov. Comments may be submitted via email up until the time of the Hearing. If there is no in-person or written testimony submitted, the State Board of Education may proceed immediately to act upon any written submission.

This notice has been sent to all persons on the agencies mailing list for administrative regulations and posted on the Nevada Department of Education's website at <https://doe.nv.gov/>, Nevada's Public Notice site at <https://notice.nv.gov>, the Nevada State Legislature's webpage at <https://leg.state.nv.us>, and physically at the Nevada Department of Education Offices and with Nevada State Library and Archives. Copies of this notice will also be emailed to members of the public upon request.

Notice per NRS 233B.064: Upon adoption of any regulation, the State Board, if requested to do so by an interested person either before adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

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

LCB File No. R023-25

October 6, 2025

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

AUTHORITY: § 1, NRS 385.080, 388.5259 and 388.5267.

A REGULATION relating to education; revising the requirements governing eligibility for special services and programs of instruction for pupils who are gifted and talented; revising requirements relating to the minimum amount of differentiated educational activities in which such pupils must participate; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires a child to undergo an examination to determine the extent to which the child deviates from normal patterns of growth and development before placement in a special program for gifted and talented pupils. (NRS 388.5259) Existing regulations prescribe standards for determining the eligibility of pupils for special services and programs of instruction for gifted and talented pupils. (NAC 388.435) This regulation revises those standards by: (1) eliminating the requirement that certain tests used to demonstrate the intellectual ability or academic aptitude of a pupil in a specific area be individually administered; (2) removing references to certain nationally standardized achievement tests; and (3) eliminating language providing that a pupil who is less than 6 years of age is not ineligible for such services and programs solely because of age.

Existing regulations authorize the use of alternative assessment procedures in determining eligibility for gifted and talented services and programs for certain pupils. (NAC 388.435) This regulation revises the terminology used to refer to the categories of pupils to whom such procedures may apply.

Existing law requires the State Board of Education to prescribe minimum standards for the special education of gifted and talented pupils. (NRS 388.5267) This regulation revises those standards by requiring a pupil who is gifted and talented to participate in not less than 600 minutes of differentiated educational activities each month, rather than 150 minutes each week. (NAC 388.435)

Section 1. NAC 388.435 is hereby amended to read as follows:

388.435 1. Except as otherwise provided in subsection 2, a pupil who is gifted and talented is eligible for special services and programs of instruction if a team, comprised of persons selected by the public agency, concludes that the pupil has:

(a) General intellectual ability or academic aptitude in a specific area that is demonstrated by a score at or above the 98th percentile:

- (1) On a test of cognitive ability ~~{that is individually administered;}~~ ; *or*
- (2) In a major content area on a nationally standardized achievement test ; ~~{that is individually administered in kindergarten through eighth grade;}~~ or
- ~~{(3) In a major content area on a nationally standardized achievement test,~~
~~→ the Preliminary Scholastic Aptitude Test (PSAT), the Scholastic Aptitude Test (SAT) or the American College Test (ACT) that is administered to a group of students for grades 9 through 12, inclusive; or}~~

(b) An area of talent, including, but not limited to, creative thinking, productive thinking, leadership, ability in the visual arts or ability in the performing arts, as determined by the local public agency of the pupil.

2. In determining the eligibility of a pupil for the special services and programs of instruction referred to in this section, the team may use alternative assessment procedures for a pupil ~~{from another culture;}~~ *who is an English learner*, a pupil who is ~~{environmentally or economically deprived}~~ *experiencing environmental or economic disadvantage* or a pupil who has a disability.

3. ~~{A pupil under the age of 6 years is not ineligible, because of the pupil's age, for the special services and programs referred to in this section.~~

~~—4.1~~ The conclusions of the team concerning the eligibility of the pupil for the special services and programs of instruction referred to in this section must be based upon an assessment of the talent, cognitive abilities or academic achievement of the pupil.

~~15.1~~ 4. Unless the pupil's individualized educational program otherwise provides, a pupil who is gifted and talented must participate in not less than ~~150~~ 600 minutes of differentiated educational activities each ~~week~~ month during the school year.