

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

LCB File No. R111-24

June 26, 2024

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

AUTHORITY: § 1, NRS 385.080; §§ 2-4, NRS 385.080 and 388.419.

A REGULATION relating to education; revising the criteria for a pupil with a visual impairment to be eligible for special education and related services; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the State Board of Education to prescribe minimum standards for the special education of pupils with disabilities. (NRS 388.419) Existing regulations set forth the medical requirements that a pupil must satisfy for the pupil to be considered to have a severe or moderate visual impairment or to have deaf-blindness, and therefore be eligible for special education and related services. (NAC 388.395, 388.427) Existing regulations define the term “visual impairment” to mean an impairment in vision which, despite correction, adversely affects or will adversely affect the ability of a pupil to benefit from or participate in an educational program without assistance of special education. (NAC 388.141) **Section 1** of this regulation expands that definition to include any impairment in vision which adversely affects the educational performance of a pupil. **Sections 2 and 4** of this regulation authorize a pupil with a visual impairment that does not meet the criteria established in existing regulations to nonetheless be eligible for special education or related services if, because of the visual impairment, the pupil needs special education or related services. **Section 3** of this regulation makes a conforming change to update internal references changed by **section 2**.

Section 1. NAC 388.141 is hereby amended to read as follows:

388.141 “Visual impairment” means an impairment in vision which, ~~[despite]~~ *even with* correction, adversely affects ~~[or will adversely affect]~~ the ~~[ability]~~ *educational performance* of a pupil. ~~[to benefit from or participate in an educational program without the assistance of special education.]~~ *The term includes, without limitation, partial sight or blindness.*

Sec. 2. NAC 388.395 is hereby amended to read as follows:

388.395 1. A pupil with a severe visual impairment is eligible for special education and related services if the eligibility team, comprised of the persons described in subsections ~~4 and 5~~ **5 and 6**, concludes that the pupil has a severe visual impairment and, by reason thereof, needs special education and related services. ~~and that~~ ***A pupil has a severe visual impairment if any one or more of the following criteria are satisfied:***

(a) The visual acuity of the pupil does not exceed 20/200 in the better eye;

(b) The vision of the pupil in the better eye is restricted to a field which subtends an arc of not more than 20 degrees; or

(c) The pupil suffers from a progressive deterioration of the pupil's vision, the probable result of which will be one or both of the conditions described in paragraphs (a) and (b).

2. A pupil with a moderate visual impairment is eligible for special education and related services if the eligibility team ***, comprised of the persons described in subsections 5 and 6,*** concludes that the pupil can use vision as the main channel of learning, that the pupil has a moderate visual impairment and, by reason thereof, needs special education and related services. ~~and that~~ ***A pupil has a moderate visual impairment if any one or more of the following criteria are satisfied:***

(a) The visual acuity of the pupil is 20/70 or less in the better eye with the best possible correction; or

(b) The pupil suffers from a progressive deterioration of the pupil's vision, the probable result of which will be the condition described in paragraph (a).

3. ***A pupil has a visual impairment and is eligible for special education and related services if an eligibility team, comprised of the persons described in subsections 5 and 6,***

concludes that the pupil has a visual impairment not described in subsection 1 or 2 and, by reason thereof, needs special education or related services.

4. A pupil under the age of 6 years is not ineligible, because of the pupil's age, for the special education and related services referred to in this section.

~~4.4~~ 5. The eligibility team may include a teacher or specialist in the field of vision impairment and must consist of a parent of the pupil and not fewer than three persons with expertise in one or more of the following areas:

- (a) Vision.
- (b) Vision impairment.
- (c) The interpretation of an assessment of health or academic achievement.

~~4.5~~ 6. If the requirements of subsection ~~4.4~~ 5 are satisfied, one or more of the following persons may serve on the eligibility team:

- (a) A regular classroom teacher of the pupil or, if none, a person qualified to teach the pupil.
- (b) If not otherwise a member of the team, one or more persons qualified to interpret an assessment of the social or emotional condition of the pupil or of the cognitive abilities of the pupil.

~~4.6~~ 7. The conclusions of the eligibility team concerning the eligibility of the pupil for the special education and related services referred to in this section must be based upon an evaluation of the pupil. The evaluation must include:

- (a) A comprehensive examination of vision of the pupil, performed by an eye specialist; and
- (b) An assessment of the health and academic achievement of the pupil.

~~4.7~~ 8. If the requirements of subsection ~~4.6~~ 7 are satisfied, the evaluation of the pupil may include an assessment of the pupil's cognitive abilities and social and emotional condition.

Sec. 3. NAC 388.425 is hereby amended to read as follows:

388.425 1. A pupil with multiple impairments is eligible for special education and related services if the pupil meets the requirements for eligibility set forth in NAC 388.410 for pupils with intellectual disabilities and the eligibility team, comprised of the persons described in subsection 2, concludes that the pupil meets the requirements for eligibility for any additional disabling condition, other than a specific learning disability, developmental delay, deaf-blindness or a speech and language impairment, set forth in NAC 388.330 to 388.440, inclusive.

2. The eligibility team must consist of:

(a) The persons described in subsection 5 of NAC 388.410; and

(b) To the extent their presence on the team is not provided for by paragraph (a), the persons included on the team pursuant to:

(1) Subsection 2 of NAC 388.387;

(2) Subsections 5 and 6 of NAC 388.390;

(3) Subsections ~~4~~ 5 and ~~5~~ 6 of NAC 388.395;

(4) Subsection 3 of NAC 388.400;

(5) Subsection 3 of NAC 388.402;

(6) Subsection 2 of NAC 388.407; or

(7) Subsection 4 of NAC 388.415,

↪ whichever applies.

3. The conclusions of the eligibility team concerning the eligibility of the pupil for the special education and related services referred to in this section must be based upon an evaluation of the pupil. The evaluation must include an assessment of:

(a) The information described in subsection 7 of NAC 388.410; and

(b) To the extent its assessment is not provided for by paragraph (a), the information included in the assessment pursuant to:

- (1) Subsection 3 of NAC 388.387;
- (2) Subsections 7 and 8 of NAC 388.390;
- (3) Subsections ~~6~~ 7 and ~~7~~ 8 of NAC 388.395;
- (4) Subsections 4 and 5 of NAC 388.400;
- (5) Subsections 4 and 5 of NAC 388.402;
- (6) Subsections 3 and 4 of NAC 388.407; or
- (7) Subsection 5 of NAC 388.415,

↳ whichever applies.

Sec. 4. NAC 388.427 is hereby amended to read as follows:

388.427 1. A pupil with deaf-blindness is eligible for special education and related services if the eligibility team, comprised of the persons described in subsections 4 and 5, concludes that:

(a) The pupil has a hearing impairment which satisfies any one or more of the following criteria:

(1) The pupil has an average hearing threshold level, at 500, 1,000 and 2,000 Hz, of 26 decibels or more; or

(2) The pupil suffers from a progressive deterioration of the pupil's hearing, the probable result of which will be the condition described in subparagraph (1);

(b) The pupil has a visual impairment which satisfies ~~one or more of~~ the ~~following~~ criteria
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~~— (1) The visual acuity of the pupil does not exceed 20/70 in the better eye with the best possible correction;~~

~~— (2) The vision of the pupil in the better eye is restricted to a field which subtends an arc of not more than 20 degrees; or~~

~~— (3) The pupil suffers from a progressive deterioration of the pupil's vision, the probable result of which will be one or more of the conditions described in subparagraphs (1) and (2);~~ *set forth in NAC 388.395;* and

(c) By reason thereof, the pupil needs special education and related services.

2. A pupil under the age of 6 years is not ineligible, because of the pupil's age, for the special education and related services referred to in this section.

3. A pupil with deaf-blindness may have other disabling conditions in addition to deaf-blindness.

4. The eligibility team must consist of:

(a) A teacher of special education or a regular classroom teacher of the pupil or, if none, a person qualified to teach the pupil;

(b) A speech and language specialist;

(c) A person qualified to interpret an assessment of the health of the pupil;

(d) A parent of the pupil; and

(e) If not otherwise a member of the team, one or more persons qualified to interpret the comprehensive audiological and vision examinations required by subsection 6.

5. If the requirements of subsection 4 are satisfied, the eligibility team may include one or more persons qualified to interpret an assessment of the social or emotional condition of the pupil or of the cognitive abilities of the pupil.

6. The conclusions of the eligibility team concerning the eligibility of the pupil for the special education and related services referred to in this section must be based upon an evaluation of the pupil. The evaluation must include:

- (a) A comprehensive audiological examination, including pure tone and speech discrimination tests, performed by an audiologist;
- (b) An assessment of the:
 - (1) Health of the pupil;
 - (2) Academic achievement of the pupil; and
 - (3) Speech and language of the pupil; and
- (c) A comprehensive examination of vision of the pupil, performed by an eye specialist.

7. If the requirements of subsection 6 are satisfied, the evaluation of the pupil may include an assessment of the pupil's cognitive abilities and social and emotional condition.