

Assembly Bill No. 214—Committee on Education

CHAPTER.....

AN ACT relating to education; requiring the department of education and the board of trustees of each school district to adopt a plan setting forth procedures concerning the security of certain examinations; requiring the department to establish certain additional procedures and programs relating to the examinations; requiring certain schools to provide for additional administration of the examinations under certain circumstances; prohibiting retaliatory action against an official of a school district or charter school who discloses information regarding irregularities in testing administration or testing security; providing that a teacher or administrator who intentionally fails to observe and carry out the provisions of a plan for test security is subject to disciplinary action; providing a penalty; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 389 of NRS is hereby amended by adding thereto the provisions set forth as sections 1.2 to 6, inclusive, of this act.

Sec. 1.2. As used in sections 1.2 to 5.9, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 1.4, 1.6 and 1.8 of this act have the meanings ascribed to them in those sections.

Sec. 1.4. *“Irregularity in testing administration” means the failure to administer an examination to pupils pursuant to NRS 389.015 or 389.550 in the manner intended by the person or entity that created the examination.*

Sec. 1.6. *“Irregularity in testing security” means an act or omission that tends to corrupt or impair the security of an examination administered to pupils pursuant to NRS 389.015 or 389.550, including, without limitation:*

- 1. The failure to comply with security procedures adopted pursuant to section 2 or 4 of this act;*
- 2. The disclosure of questions or answers to questions on an examination in a manner not otherwise approved by law; and*
- 3. Other breaches in the security or confidentiality of the questions or answers to questions on an examination.*

Sec. 1.8. *“School official” means:*

- 1. A member of a board of trustees of a school district;*
- 2. A member of a governing body of a charter school; or*
- 3. A licensed or unlicensed person employed by the board of trustees of a school district or the governing body of a charter school.*

Sec. 2. *1. The department shall, by regulation or otherwise, adopt and enforce a plan setting forth procedures to ensure the security of examinations that are administered to pupils pursuant to NRS 389.015 and 389.550.*

2. A plan adopted pursuant to subsection 1 must include, without limitation:

(a) Procedures pursuant to which pupils, school officials and other persons may, and are encouraged to, report irregularities in testing administration and testing security.

(b) Procedures necessary to ensure the security of test materials and the consistency of testing administration.

(c) Procedures that specifically set forth the action that must be taken in response to a report of an irregularity in testing administration or testing security and the actions that must be taken during an investigation of such an irregularity. For each action that is required, the procedures must identify:

(1) By category, the employees of the school district, charter school or department, or any combination thereof, who are responsible for taking the action; and

(2) Whether the school district, charter school or department, or any combination thereof, is responsible for ensuring that the action is carried out successfully.

(d) Objective criteria that set forth the conditions under which a school, including, without limitation, a charter school or a school district, or both, is required to file a plan for corrective action in response to an irregularity in testing administration or testing security for the purposes of section 5.3 of this act.

3. A copy of the plan adopted pursuant to this section and the procedures set forth therein must be submitted on or before September 1 of each year to:

(a) The state board; and

(b) The legislative committee on education, created pursuant to NRS 218.5352.

Sec. 3. 1. If the department:

(a) Has reason to believe that a violation of the plan adopted pursuant to section 2 of this act may have occurred;

(b) Has reason to believe that a violation of the plan adopted pursuant to section 4 of this act may have occurred with respect to an examination that is administered pursuant to NRS 389.015 or 389.550; or

(c) Receives a request pursuant to subparagraph (2) of paragraph (b) of subsection 1 of section 5 of this act to investigate a potential violation of the plan adopted pursuant to section 4 of this act with respect to an examination that is administered pursuant to NRS 389.015 or 389.550,

the department shall investigate the matter as it deems appropriate.

2. If the department investigates a matter pursuant to subsection 1, the department may issue a subpoena to compel the attendance or testimony of a witness or the production of any relevant materials, including, without limitation, books, papers, documents, records, photographs, recordings, reports and tangible objects.

3. If a witness refuses to attend, testify or produce materials as required by the subpoena, the department may report to the district court by petition, setting forth that:

(a) Due notice has been given of the time and place of attendance or testimony of the witness or the production of materials;

(b) The witness has been subpoenaed by the department pursuant to this section; and

(c) The witness has failed or refused to attend, testify or produce materials before the department as required by the subpoena, or has refused to answer questions propounded to him, and asking for an order of the court compelling the witness to attend, testify or produce materials before the department.

4. Upon receipt of such a petition, the court shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in its order, the time to be not more than 10 days after the date of the order, and then and there show cause why he has not attended, testified or produced materials before the department. A certified copy of the order must be served upon the witness.

5. If it appears to the court that the subpoena was regularly issued by the department, the court shall enter an order that the witness appear before the department at a time and place fixed in the order and testify or produce materials, and that upon failure to obey the order the witness must be dealt with as for contempt of court.

Sec. 4. *1. The board of trustees of each school district shall, for each public school in the district, including, without limitation, charter schools, adopt and enforce a plan setting forth procedures to ensure the security of examinations.*

2. A plan adopted pursuant to subsection 1 must include, without limitation:

(a) Procedures pursuant to which pupils, school officials and other persons may, and are encouraged to, report irregularities in testing administration and testing security.

(b) Procedures necessary to ensure the security of test materials and the consistency of testing administration.

(c) With respect to secondary schools, procedures pursuant to which the school district or charter school, as appropriate, will verify the identity of pupils taking an examination.

(d) Procedures that specifically set forth the action that must be taken in response to a report of an irregularity in testing administration or testing security and the action that must be taken during an investigation of such an irregularity. For each action that is required, the procedures must identify, by category, the employees of the school district or charter school who are responsible for taking the action and for ensuring that the action is carried out successfully.

The procedures adopted pursuant to this subsection must be consistent, to the extent applicable, with the procedures adopted by the department pursuant to section 2 of this act.

3. A copy of each plan adopted pursuant to this section and the procedures set forth therein must be submitted on or before September 1 of each year to:

(a) The state board; and

(b) The legislative committee on education, created pursuant to NRS 218.5352.

4. On or before September 30 of each school year, the board of trustees of each school district and the governing body of each charter school shall provide a written notice regarding the examinations to all teachers and educational personnel employed by the school district or

governing body, all personnel employed by the school district or governing body who are involved in the administration of the examinations, all pupils who are required to take the examinations and all parents and legal guardians of such pupils. The written notice must be prepared in a format that is easily understood and must include, without limitation, a description of the:

(a) Plan adopted pursuant to this section; and

(b) Action that may be taken against personnel and pupils for violations of the plan or for other irregularities in testing administration or testing security.

5. As used in this section:

(a) "Examination" means:

(1) Achievement and proficiency examinations that are administered to pupils pursuant to NRS 389.015 or 389.550; and

(2) Any other examinations which measure the achievement and proficiency of pupils and which are administered to pupils on a district-wide basis.

(b) "Irregularity in testing administration" means the failure to administer an examination in the manner intended by the person or entity that created the examination.

(c) "Irregularity in testing security" means an act or omission that tends to corrupt or impair the security of an examination, including, without limitation:

(1) The failure to comply with security procedures adopted pursuant to section 2 or 4 of this act;

(2) The disclosure of questions or answers to questions on an examination in a manner not otherwise approved by law; and

(3) Other breaches in the security or confidentiality of the questions or answers to questions on an examination.

Sec. 5. 1. *If a school official has reason to believe that a violation of the plan adopted pursuant to section 4 of this act may have occurred, the school official shall immediately report the incident to the board of trustees of the school district. If the board of trustees of a school district has reason to believe that a violation of the plan adopted pursuant to section 4 of this act may have occurred, the board of trustees shall:*

(a) If the violation is with respect to an examination administered pursuant to NRS 389.015 or 389.550, immediately report the incident to the department orally or in writing followed by a comprehensive written report within 14 school days after the incident occurred; and

(b) Cause to be commenced an investigation of the incident. The board of trustees may carry out the requirements of this paragraph by:

(1) Investigating the incident as it deems appropriate, including, without limitation, using the powers of subpoena set forth in this section.

(2) With respect to an examination that is administered pursuant to NRS 389.015 or 389.550, requesting that the department investigate the incident pursuant to section 3 of this act.

The fact that a board of trustees elects initially to carry out its own investigation pursuant to subparagraph (1) of paragraph (b) does not affect the ability of the board of trustees to request, at any time, that the

department investigate the incident as authorized pursuant to subparagraph (2) of paragraph (b).

2. Except as otherwise provided in this subsection, if the board of trustees of a school district proceeds in accordance with subparagraph (1) of paragraph (b) of subsection 1, the board of trustees may issue a subpoena to compel the attendance or testimony of a witness or the production of any relevant materials, including, without limitation, books, papers, documents, records, photographs, recordings, reports and tangible objects. A board of trustees shall not issue a subpoena to compel the attendance or testimony of a witness or the production of materials unless the attendance, testimony or production sought to be compelled is related directly to a violation or an alleged violation of the plan adopted pursuant to section 4 of this act.

3. If a witness refuses to attend, testify or produce materials as required by the subpoena, the board of trustees may report to the district court by petition, setting forth that:

(a) Due notice has been given of the time and place of attendance or testimony of the witness or the production of materials;

(b) The witness has been subpoenaed by the board of trustees pursuant to this section; and

(c) The witness has failed or refused to attend, testify or produce materials before the board of trustees as required by the subpoena, or has refused to answer questions propounded to him, and asking for an order of the court compelling the witness to attend, testify or produce materials before the board of trustees.

4. Upon receipt of such a petition, the court shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in its order, the time to be not more than 10 days after the date of the order, and then and there show cause why he has not attended, testified or produced materials before the board of trustees. A certified copy of the order must be served upon the witness.

5. If it appears to the court that the subpoena was regularly issued by the board of trustees, the court shall enter an order that the witness appear before the board of trustees at a time and place fixed in the order and testify or produce materials, and that upon failure to obey the order the witness must be dealt with as for contempt of court.

Sec. 5.1. 1. Except as otherwise provided in subsection 8, if the department determines:

(a) That at least one irregularity in testing administration occurred at a school, including, without limitation, a charter school, during 1 school year on the examinations administered pursuant to NRS 389.015, excluding the high school proficiency examination;

(b) That in the immediately succeeding school year, at least one additional irregularity in testing administration occurred at that school on the examinations administered pursuant to NRS 389.015, excluding the high school proficiency examination; and

(c) Based upon the criteria set forth in subsection 5, that the irregularities described in paragraphs (a) and (b) warrant an additional administration of the examinations,

the department shall notify the school and the school district in which the school is located that the school is required to provide for an additional administration of the examinations to pupils who are enrolled in a grade that is required to take the examinations pursuant to NRS 389.015, excluding the high school proficiency examination, or to the pupils the department determines must take the additional administration pursuant to subsection 6. The additional administration must occur in the same school year in which the irregularity described in paragraph (b) occurred. The school district shall pay for all costs related to the administration of examinations pursuant to this subsection.

2. If the department determines that:

(a) At least one irregularity in testing administration occurred at a school, including, without limitation, a charter school, during 1 school year on the examinations administered pursuant to NRS 389.550;

(b) In the immediately succeeding school year, at least one additional irregularity in testing administration occurred at that school on the examinations administered pursuant to NRS 389.550; and

(c) Based upon the criteria set forth in subsection 5, that the irregularities described in paragraphs (a) and (b) warrant an additional administration of the examinations,

the department shall notify the school and the school district in which the school is located that the school is required to provide for an additional administration of the examinations to pupils who are enrolled in a grade that is required to take the examinations pursuant to NRS 389.550 or to the pupils the department determines must take the additional administration pursuant to subsection 6. The additional administration must occur in the same school year in which the irregularity described in paragraph (b) occurred. The school district shall pay for all costs related to the administration of examinations pursuant to this subsection.

3. If the department determines that:

(a) At least one irregularity in testing administration occurred at a school, including, without limitation, a charter school, during 1 school year on the examinations administered pursuant to NRS 389.015, excluding the high school proficiency examination;

(b) In the immediately succeeding school year, at least one additional irregularity in testing administration occurred at that school on the examinations administered pursuant to NRS 389.550; and

(c) Based upon the criteria set forth in subsection 5, that the irregularities described in paragraphs (a) and (b) warrant an additional administration of the examinations,

the department shall notify the school and the school district in which the school is located that the school is required to provide for an additional administration of the examinations to pupils who are enrolled in a grade that is required to take the examinations pursuant to NRS 389.550 or to the pupils the department determines must take the additional administration pursuant to subsection 6. The additional administration must occur in the same school year in which the irregularity described in paragraph (b) occurred. The school district shall pay for all costs related to the administration of examinations pursuant to this subsection.

4. *Except as otherwise provided in subsection 8, if the department determines that:*

(a) At least one irregularity in testing administration occurred at a school, including, without limitation, a charter school, during 1 school year on the examinations administered pursuant to NRS 389.550;

(b) In the immediately succeeding school year, at least one additional irregularity in testing administration occurred at that school on the examinations administered pursuant to NRS 389.015, excluding the high school proficiency examination; and

(c) Based upon the criteria set forth in subsection 5, that the irregularities described in paragraphs (a) and (b) warrant an additional administration of the examinations,
the department shall notify the school and the school district in which the school is located that the school is required to provide for an additional administration of the examinations to pupils who are enrolled in a grade that is required to take the examinations pursuant to NRS 389.015, excluding the high school proficiency examination, or to the pupils the department determines must take the additional administration pursuant to subsection 6. The additional administration must occur in the same school year in which the irregularity described in paragraph (b) occurred. The school district shall pay for all costs related to the administration of examinations pursuant to this subsection.

5. *In determining whether to require a school to provide for an additional administration of examinations pursuant to this section, the department shall consider:*

(a) The effect of each irregularity in testing administration, including, without limitation, whether the irregularity required the scores of pupils to be invalidated; and

(b) Whether sufficient time remains in the school year to provide for an additional administration of examinations.

6. *If the department determines pursuant to subsection 5 that a school must provide for an additional administration of examinations, the department may consider whether the most recent irregularity in testing administration affected the test scores of a limited number of pupils and require the school to provide an additional administration of examinations pursuant to this section only to those pupils whose test scores were affected by the most recent irregularity.*

7. *The department shall provide as many notices pursuant to this section during 1 school year as are applicable to the irregularities occurring at a school. A school shall provide for additional administrations of examinations pursuant to this section within 1 school year as applicable to the irregularities occurring at the school.*

8. *If a school is required to provide an additional administration of examinations pursuant to subsection 2 of NRS 385.368 for a school year, the school is not required to provide for an additional administration pursuant to subsection 1 or 4 in that school year. The department shall ensure that the information required pursuant to paragraph (b) of subsection 3 of section 5.9 of this act is included in its report for the additional administration provided by such a school pursuant to subsection 2 of NRS 385.368.*

Sec. 5.3. 1. *The department shall notify the principal of a school, including, without limitation, a charter school, or the board of trustees of a school district, as applicable, if the school or the school district is required to file a plan for corrective action based upon the objective criteria adopted by the department pursuant to paragraph (d) of subsection 2 of section 2 of this act. Upon receipt of such notice, the school or the school district, as applicable, shall file a plan for corrective action with the department within the time prescribed by the department. Such a plan must specify the time within which the corrective action will be taken. The school or the school district, as applicable, shall commence corrective action pursuant to the plan immediately after the date on which the plan is filed.*

2. *The department shall establish procedures to document and monitor whether appropriate corrective action is being taken and whether that action is achieving the desired result. Such documentation must be maintained and reported in accordance with section 5.9 of this act.*

3. *The department may require a school or a school district to amend its plan for corrective action if the department determines that such amendment is necessary to ensure the security of test materials and the consistency of testing administration in the school or school district, as applicable.*

Sec. 5.5. 1. *The department shall establish a statewide program for use by schools and school districts in their preparation for the examinations that are administered pursuant to NRS 389.015, excluding the high school proficiency examination. The program must:*

(a) Be designed to ensure the consistency and uniformity of all materials and other information used in the preparation for the examinations; and

(b) Be designed to ensure that the actual examinations administered pursuant to NRS 389.015 are not included within the materials and other information used for preparation.

2. *If a school, including, without limitation, a charter school, or a school district provides preparation for the examinations that are administered pursuant to NRS 389.015, excluding the high school proficiency examination, the school or school district shall comply with the program established pursuant to subsection 1. A school district may use and provide additional materials and information if the materials and information comply with the program established by the department. A school, including, without limitation, a charter school, shall use only those materials and information that have been approved or provided by the department or the school district.*

Sec. 5.7. 1. *The department shall establish a program of education and training regarding the administration and security of the examinations administered pursuant to NRS 389.015 and 389.550. Upon approval of the department, the board of trustees of a school district or the governing body of a charter school may establish an expanded program of education and training that includes additional education and training if the expanded program complies with the program established by the department.*

2. *The board of trustees of each school district and the governing body of each charter school shall ensure that:*

(a) All the teachers and other educational personnel who provide instruction to pupils enrolled in a grade level that is required to be tested pursuant to NRS 389.015 or 389.550, and all other personnel who are involved with the administration of the examinations that are administered pursuant to NRS 389.015 or 389.550, receive, on an annual basis, the program of education and training established by the department or the expanded program, if applicable; and

(b) The training and education is otherwise available for all personnel who are not required to receive the training and education pursuant to paragraph (a).

Sec. 5.9. *1. The department shall establish procedures for the uniform documentation and maintenance by the department of irregularities in testing administration and testing security reported to the department pursuant to section 5 of this act and investigations of such irregularities conducted by the department pursuant to section 3 of this act. The procedures must include, without limitation:*

(a) A method for assigning a unique identification number to each incident of irregularity; and

(b) A method to ensure that the status of an irregularity is readily accessible by the department.

2. In accordance with the procedures established pursuant to subsection 1, the department shall prepare and maintain for each irregularity in testing administration and each irregularity in testing security, a written summary accompanying the report of the irregularity. The written summary must include, without limitation:

(a) An evaluation of whether the procedures prescribed by the department pursuant to paragraph (c) of subsection 2 of section 2 of this act were followed in response to the irregularity;

(b) The corrective action, if any, taken in response to the irregularity pursuant to section 5.3 of this act;

(c) An evaluation of whether the corrective action achieved the desired result; and

(d) The current status and the outcome, if any, of an investigation related to the irregularity.

3. The department shall prepare a written report that includes for each school year:

(a) A summary of each irregularity in testing administration and testing security reported to the department pursuant to section 5 of this act and each investigation conducted pursuant to section 3 of this act.

(b) A summary for each school that was required to provide additional administration of examinations pursuant to section 5.1 of this act. The summary must include, without limitation:

(1) The identity of the school;

(2) The type of additional examinations that were administered pursuant to section 5.1 of this act;

(3) The date on which those examinations were administered;

(4) A comparison of the results of pupils on the:

(I) Examinations in which an additional irregularity occurred in the second school year described in section 5.1 of this act; and

(II) Additional examinations administered pursuant to section 5.1 of this act.

(c) Each written summary prepared by the department pursuant to subsection 2.

(d) The current status of each irregularity that was reported for a preceding school year which had not been resolved at the time that the preceding report was filed.

(e) The current status and the outcome, if any, of an investigation conducted by the department pursuant to section 3 of this act.

(f) An analysis of the irregularities and recommendations, if any, to improve the security of the examinations and the consistency of testing administration.

4. On or before September 1 of each year, the department shall submit the report prepared pursuant to subsection 3 for the immediately preceding school year to the legislative committee on education created pursuant to NRS 218.5352 and the state board.

Sec. 6. *If the department enters into a contract with a person or entity to score the results of an examination that is administered to pupils pursuant to NRS 389.015 or 389.550 and the contract sets forth penalties or sanctions in the event that the person or entity fails to deliver the scored results to a school district or charter school on a timely basis, the department shall ensure that any such penalties or sanctions are fully enforced.*

Sec. 7. NRS 389.015 is hereby amended to read as follows:

389.015 1. The board of trustees of each school district shall administer examinations in all public schools of the school district. The governing body of a charter school shall administer the same examinations in the charter school. The examinations administered by the board of trustees and governing body must determine the achievement and proficiency of pupils in:

- (a) Reading;
- (b) Writing;
- (c) Mathematics; and
- (d) Science.

2. The examinations required by subsection 1 must be:

(a) Administered before the completion of grades 4, 8, 10 and 11.
(b) Administered in each school district and each charter school at the same time. The time for the administration of the examinations must be prescribed by the state board.

(c) Administered in each school in accordance with uniform procedures adopted by the state board. The department shall monitor the compliance of school districts and individual schools with the uniform procedures.

(d) Administered in each school in accordance with the plan adopted pursuant to section 2 of this act by the department and with the plan adopted pursuant to section 4 of this act by the board of trustees of the school district in which the examinations are administered. The department shall monitor the compliance of school districts and individual schools with:

*(1) The plan adopted by the department; and
(2) The plan adopted by the board of trustees of the applicable school district, to the extent that the plan adopted by the board of trustees of the school district is consistent with the plan adopted by the department.*

(e) Scored by the department or a single private entity that has contracted with the state board to score the examinations. If a private entity scores the examinations, it shall report the results of the examinations in the form and by the date required by the department.

3. Not more than 14 working days after the results of the examinations are reported to the department by a private entity that scored the examinations or the department completes the scoring of the examinations, the superintendent of public instruction shall certify that the results of the examinations have been transmitted to each school district and each charter school. Not more than 10 working days after a school district receives the results of the examinations, the superintendent of schools of each school district shall certify that the results of the examinations have been transmitted to each school within the school district. Except as otherwise provided in this subsection, not more than 15 working days after each school receives the results of the examinations, the principal of each school and the governing body of each charter school shall certify that the results for each pupil have been provided to the parent or legal guardian of the pupil:

(a) During a conference between the teacher of the pupil or administrator of the school and the parent or legal guardian of the pupil; or

(b) By mailing the results of the examinations to the last known address of the parent or legal guardian of the pupil.

If a pupil fails the high school proficiency examination, the school shall notify the pupil and the parents or legal guardian of the pupil as soon as practicable but not later than 15 working days after the school receives the results of the examination.

4. Different standards of proficiency may be adopted for pupils with diagnosed learning disabilities. If a pupil with a disability is unable to take an examination created by a private entity under regular testing conditions or with modifications and accommodations that are approved by the private entity, the pupil may take the examination with modifications and accommodations that are approved by the state board pursuant to subsection 8. If a pupil with a disability is unable to take an examination created by the department under regular testing conditions or with modifications and accommodations that are approved by the department, the pupil may take the examination with modifications and accommodations that are approved by the state board pursuant to subsection 8. The results of an examination that is taken under conditions that are not approved by a private entity or the department, as applicable, must not be reported pursuant to subsection 2 of NRS 389.017. If different standards of proficiency are adopted or other modifications or accommodations are made in the administration of the examinations for a pupil who is enrolled in a program of special education pursuant to NRS 388.440 to 388.520, inclusive, other than a gifted and talented pupil, the different standards adopted or other modifications or accommodations

must be set forth in the pupil's program of special education developed in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq., and the standards prescribed by the state board. During the administration of the high school proficiency examination, a pupil with a disability may be given additional time to complete the examination if the additional time is a modification or accommodation that is approved in the pupil's program of special education developed in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq.

5. If a pupil fails to demonstrate at least adequate achievement on the examination administered before the completion of grade 4, 8 or 10, he may be promoted to the next higher grade, but the results of his examination must be evaluated to determine what remedial study is appropriate. If such a pupil is enrolled at a school that has been designated as demonstrating need for improvement pursuant to NRS 385.367, the pupil must, in accordance with the requirements set forth in this subsection, complete remedial study that is determined to be appropriate for the pupil.

6. If a pupil fails to pass the proficiency examination administered before the completion of grade 11, he must not be graduated until he is able, through remedial study, to pass the proficiency examination, but he may be given a certificate of attendance, in place of a diploma, if he has reached the age of 17 years.

7. The state board shall prescribe standard examinations of achievement and proficiency to be administered pursuant to subsection 1. The examinations on reading, mathematics and science prescribed for grades 4, 8 and 10 must be selected from examinations created by private entities and administered to a national reference group, and must allow for a comparison of the achievement and proficiency of pupils in grades 4, 8 and 10 in this state to that of a national reference group of pupils in grades 4, 8 and 10. The questions contained in the examinations and the approved answers used for grading them are confidential, and disclosure is unlawful except:

(a) To the extent necessary for administering and evaluating the examinations.

(b) That a disclosure may be made to a:

(1) State officer who is a member of the executive or legislative branch to the extent that it is necessary for the performance of his duties;

(2) Superintendent of schools of a school district to the extent that it is necessary for the performance of his duties;

(3) Director of curriculum of a school district to the extent that it is necessary for the performance of his duties; and

(4) Director of testing of a school district to the extent that it is necessary for the performance of his duties.

(c) That specific questions and answers may be disclosed if the superintendent of public instruction determines that the content of the questions and answers is not being used in a current examination and making the content available to the public poses no threat to the security of the current examination process.

8. The state board shall prescribe, in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq., the modifications and accommodations that may be used in the administration

of an examination to a pupil with a disability who is unable to take the examination under regular testing conditions or with modifications and accommodations that are approved by the private entity that created the examination or, if the department created the examination, by the department. These regulations may include, without limitation, authorizing a pupil to complete an examination with additional time.

Sec. 8. NRS 389.550 is hereby amended to read as follows:

389.550 1. The state board shall, in consultation with the council, prescribe examinations that measure the achievement and proficiency of pupils in selected grades in the standards of content established by the council that are in addition to the examinations administered pursuant to NRS 389.015. The state board shall, based upon the recommendations of the council, select the grade levels of pupils that are required to take the examinations and the standards that the examinations must measure.

2. The board of trustees of each school district and the governing body of each charter school shall administer the examinations prescribed by the state board. The examinations must be:

(a) Administered to pupils in each school district and each charter school at the same time, as prescribed by the state board.

(b) Administered in each school in accordance with uniform procedures adopted by the state board. The department shall monitor the school districts and individual schools to ensure compliance with the uniform procedures.

(c) Administered in each school in accordance with the plan adopted pursuant to section 2 of this act by the department and with the plan adopted pursuant to section 4 of this act by the board of trustees of the school district in which the examinations are administered. The department shall monitor the compliance of school districts and individual schools with:

(1) The plan adopted by the department; and

(2) The plan adopted by the board of trustees of the applicable school district, to the extent that the plan adopted by the board of trustees of the school district is consistent with the plan adopted by the department.

Sec. 9. Chapter 391 of NRS is hereby amended by adding thereto the provisions set forth as sections 10 to 22, inclusive, of this act.

Sec. 10. *As used in sections 10 to 22, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 11 to 15, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 11. *“Examination” means:*

1. Achievement and proficiency examinations that are administered to pupils pursuant to NRS 389.015 or 389.550; and

2. Any other examinations which measure the achievement and proficiency of pupils and which are administered to pupils on a district-wide basis.

Sec. 12. *“Irregularity in testing administration” means the failure to administer an examination in the manner intended by the person or entity that created the examination.*

Sec. 13. *“Irregularity in testing security” means an act or omission that tends to corrupt or impair the security of an examination, including, without limitation:*

- 1. The failure to comply with security procedures adopted pursuant to section 2 or 4 of this act;*
- 2. The disclosure of questions or answers to questions on an examination in a manner not otherwise approved by law; and*
- 3. Other breaches in the security or confidentiality of the questions or answers to questions on an examination.*

Sec. 14. *“Reprisal or retaliatory action” includes, without limitation:*

- 1. Frequent or undesirable changes in the location of an office;*
- 2. Frequent or undesirable transfers or reassignments;*
- 3. The issuance of letters of reprimand, letters of admonition or evaluations of poor performance;*
- 4. A demotion;*
- 5. A reduction in pay;*
- 6. The denial of a promotion;*
- 7. A suspension;*
- 8. A dismissal;*
- 9. A transfer; or*
- 10. Frequent changes in working hours or workdays,*
if such action is taken, in whole or in part, because the school official disclosed information concerning irregularities in testing administration or testing security.

Sec. 15. *“School official” means:*

- 1. A member of a board of trustees of a school district;*
- 2. A member of a governing body of a charter school; or*
- 3. A licensed or unlicensed person employed by the board of trustees of a school district or the governing body of a charter school.*

Sec. 16. *It is hereby declared to be the policy of this state that a school official is encouraged to disclose, to the extent not expressly prohibited by law, irregularities in testing administration and testing security, and it is the intent of the legislature to protect the rights of a school official who makes such a disclosure.*

Sec. 17. *1. A school official shall not directly or indirectly use or attempt to use his official authority or influence to intimidate, threaten, coerce, command, influence or attempt to intimidate, threaten, coerce, command or influence another school official in an effort to interfere with or prevent the disclosure of information concerning irregularities in testing administration or testing security.*

2. As used in this section, “official authority or influence” includes taking, directing others to take, recommending, processing or approving any personnel action such as an appointment, promotion, transfer, assignment, reassignment, reinstatement, restoration, reemployment, evaluation or other disciplinary action.

Sec. 18. *1. If any reprisal or retaliatory action is taken against a school official who discloses information concerning irregularities in testing administration or testing security within 2 years after the information is disclosed, the school official may file a written appeal with the state board for a hearing on the matter and determination of whether*

the action taken was a reprisal or retaliatory action. The written appeal must be accompanied by a statement that sets forth with particularity:

(a) The facts and circumstances pursuant to which the disclosure of information concerning irregularities in testing administration or testing security was made; and

(b) The reprisal or retaliatory action that is alleged to have been taken against the school official.

The hearing must be conducted in accordance with the rules of procedure adopted by the state board pursuant to subsection 4.

2. If the state board determines that the action taken was a reprisal or retaliatory action, it may issue an order directing the proper person to desist and refrain from engaging in such action.

3. The state board may not rule against the school official based on the identity of the person or persons to whom the information concerning irregularities in testing administration or testing security was disclosed.

4. The state board shall adopt rules of procedure for conducting a hearing pursuant to this section.

Sec. 19. *1. During any stage of an investigation or hearing concerning allegations of reprisal or retaliatory action, the state board may issue a subpoena to compel the attendance or testimony of a witness or the production of any relevant materials, including, but not limited to, books, papers, documents, records, photographs, recordings, reports and tangible objects.*

2. If a witness refuses to attend, testify or produce materials as required by the subpoena, the state board may report to the district court by petition, setting forth that:

(a) Due notice has been given of the time and place of attendance or testimony of the witness or the production of materials;

(b) The witness has been subpoenaed by the state board pursuant to this section; and

(c) The witness has failed or refused to attend, testify or produce materials as required by the subpoena before the state board, or has refused to answer questions propounded to him, and asking for an order of the court compelling the witness to attend, testify or produce materials before the state board.

3. Upon receipt of such a petition, the court shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in its order, the time to be not more than 10 days after the date of the order, and then and there show cause why he has not attended, testified or produced materials before the state board. A certified copy of the order must be served upon the witness.

4. If it appears to the court that the subpoena was regularly issued by the state board, the court shall enter an order that the witness appear before the state board at a time and place fixed in the order and testify or produce materials, and that upon failure to obey the order the witness must be dealt with as for contempt of court.

Sec. 20. *1. No school official may use the provisions of sections 10 to 22, inclusive, of this act to harass another school official.*

2. A person who willfully discloses untruthful information concerning irregularities in testing administration or testing security:

- (a) Is guilty of a misdemeanor; and*
- (b) Is subject to appropriate disciplinary action.*

Sec. 21. *Each year, the department shall provide to the board of trustees of each school district and to the governing body of each charter school a written summary of sections 10 to 22, inclusive, of this act. Upon receipt of the written summary, the board of trustees or governing body, as appropriate, shall provide a copy of the written summary to all other school officials within the school district or charter school.*

Sec. 22. *Except as otherwise provided in section 20 of this act, the provisions of sections 10 to 22, inclusive, of this act are intended to be directory and preventive rather than punitive. The provisions of sections 10 to 22, inclusive, of this act do not abrogate or decrease the effect of any of the provisions of NRS that define crimes or prescribe punishments with respect to the conduct of school officials.*

Sec. 23. NRS 391.312 is hereby amended to read as follows:

391.312 1. A teacher may be suspended, dismissed or not reemployed and an administrator may be demoted, suspended, dismissed or not reemployed for the following reasons:

- (a) Inefficiency;
- (b) Immorality;
- (c) Unprofessional conduct;
- (d) Insubordination;
- (e) Neglect of duty;
- (f) Physical or mental incapacity;
- (g) A justifiable decrease in the number of positions due to decreased enrollment or district reorganization;
- (h) Conviction of a felony or of a crime involving moral turpitude;
- (i) Inadequate performance;
- (j) Evident unfitness for service;
- (k) Failure to comply with such reasonable requirements as a board may prescribe;
- (l) Failure to show normal improvement and evidence of professional training and growth;
- (m) Advocating overthrow of the Government of the United States or of the State of Nevada by force, violence or other unlawful means, or the advocating or teaching of communism with the intent to indoctrinate pupils to subscribe to communistic philosophy;
- (n) Any cause which constitutes grounds for the revocation of a teacher's license;
- (o) Willful neglect or failure to observe and carry out the requirements of this Title;
- (p) Dishonesty;
- (q) Breaches in the security or confidentiality of the questions and answers of the achievement and proficiency examinations that are administered pursuant to NRS 389.015; ~~to~~
- (r) Intentional failure to observe and carry out the requirements of a plan to ensure the security of examinations adopted pursuant to section 2 or 4 of this act; or*
- (s) An intentional violation of NRS 388.5265 or 388.527.*

2. In determining whether the professional performance of a licensed employee is inadequate, consideration must be given to the regular and special evaluation reports prepared in accordance with the policy of the employing school district and to any written standards of performance which may have been adopted by the board.

Sec. 24. NRS 391.330 is hereby amended to read as follows:

391.330 The state board may suspend or revoke the license of any teacher, administrator or other licensed employee, after notice and an opportunity for hearing have been provided pursuant to NRS 391.322 and 391.323, for:

1. Immoral or unprofessional conduct.
2. Evident unfitness for service.
3. Physical or mental incapacity which renders the teacher, administrator or other licensed employee unfit for service.
4. Conviction of a felony or crime involving moral turpitude.
5. Conviction of a sex offense under NRS 200.366, 200.368, 201.190, 201.220, 201.230 or 207.260 in which a pupil enrolled in a school of a county school district was the victim.
6. Knowingly advocating the overthrow of the Federal Government or of the State of Nevada by force, violence or unlawful means.
7. Persistent defiance of or refusal to obey the regulations of the state board, the commission or the superintendent of public instruction, defining and governing the duties of teachers, administrators and other licensed employees.
8. Breaches in the security or confidentiality of the questions and answers of the achievement and proficiency examinations that are administered pursuant to NRS 389.015.
9. *Intentional failure to observe and carry out the requirements of a plan to ensure the security of examinations adopted pursuant to section 2 or 4 of this act.*
10. An intentional violation of NRS 388.5265 or 388.527.

Sec. 25. 1. The department shall adopt a plan in accordance with the provisions of section 2 of this act on or before August 15, 2001.

2. The board of trustees of each school district in this state shall adopt a plan in accordance with the provisions of section 4 of this act on or before September 15, 2001.

3. Upon the adoption of each initial plan, the plan must be submitted as soon as practicable to the state board of education and the legislative committee on education.

Sec. 25.3. 1. On or before October 1, 2001, the department of education shall establish procedures for the uniform documentation and maintenance of irregularities in testing administration and testing security pursuant to section 5.9 of this act for use commencing with the 2001-2002 school year.

2. The report required pursuant to subsection 4 of section 5.9 of this act must first be submitted on or before September 1, 2002.

Sec. 25.7. On or before July 1, 2002, the department of education shall establish:

1. A statewide program for the preparation of examinations pursuant to section 5.5 of this act for use commencing with the 2002-2003 school year.

2. A program of education and training regarding the administration and security of examinations pursuant to section 5.7 of this act for use commencing with the 2002-2003 school year.

Sec. 26. 1. The provisions of section 20 of this act do not apply to offenses committed before July 1, 2001.

2. The amendatory provisions of sections 23 and 24 of this act do not apply to acts committed before July 1, 2001.

Sec. 27. 1. This section and section 25 of this act become effective upon passage and approval.

2. Sections 2 and 4 of this act become effective upon passage and approval for the purpose of adopting a plan and on July 1, 2001, for all other purposes.

3. Sections 1 to 1.8, inclusive, 3, 5, 5.1, 5.3, 5.9 to 24, inclusive, 25.3, 25.7 and 26 of this act become effective on July 1, 2001.

4. Sections 5.5 and 5.7 of this act become effective on July 1, 2001, for the purpose of establishing programs in accordance with those sections and on July 1, 2002, for all other purposes.