

Zach Conine
State Treasurer



STATE OF NEVADA
OFFICE OF THE STATE TREASURER

NOTICE OF PUBLIC WORKSHOP

The Nevada College Savings Board of Trustees, via the Nevada State Treasurer’s Office (“Office”) is proposing the adoption of regulations pertaining to Nevada Administrative Code Chapter 353B. A public workshop has been set for **Monday, May 9, 2022 at 1pm**.

The purpose of the workshop is to solicit comments from interested persons on the following general topics that may be addressed in the proposed regulations:

- Enrollment in the Nevada College Kick Start Program (“Program”);
- Procedures for the parent or guardian of a pupil to access the account of the pupil created under the Program;
- The time within which the money in the account created pursuant to the Program must be used;
- Distributions from an account created pursuant to the Program; and
- Amendments to existing regulation to comply with previous changes made under state and federal law.

Meeting via videoconference available at the following locations:

State Capitol Building

State Treasurer’s Office, First Floor
101 N. Carson Street
Carson City, NV 89701

Grant Sawyer State Office Building

Treasurer’s Office Conference Room - Suite 5200
555 E. Washington Avenue
Las Vegas, NV 89101

Members of the public are also invited to attend virtually with the following Zoom link below:

<https://us06web.zoom.us/j/81025153993?pwd=b09vZEN0MFVadHhWV1R6ZzNnTG1zZz09>

Note: Public Comment may not be limited based on viewpoint. Public Comment may be limited to areas within the agency’s jurisdiction.

Agenda

1. **Public Comment.** Comments from the public are invited at this time. The Office reserves the right to limit the amount of time that will be allowed for each individual to speak. The Office is precluded from taking action on items raised during Public Comments that are not on the agenda.
2. **Public input on regulations.** Comments from the public are invited concerning amendments to Nevada Administrative Code Chapter 353B through LCB File No. R032-22.
3. **Public Comment.** Comments from the public are invited at this time. The Office reserves the right to limit the amount of time that will be allowed for each individual to speak. The Office is precluded from taking action on items raised during Public Comments that are not on the agenda.
4. **Workshop Adjournment.**

Persons wishing to submit written comments and input to be included on the record may submit materials to Kirsten Van Ry, Chief of Staff, Nevada State Treasurer's Office at the following address:

Nevada State Treasurer's Office
C/O Kirsten Van Ry
555 E. Washington Ave., Suite 5200
Las Vegas, NV 89101
klvanry@nevadatreasurer.gov

Members of the public who require special accommodations or assistance at the workshops are required to notify Kirsten Van Ry, Chief of Staff, in writing to the State Treasurer's Office at klvanry@Nevadatreasurer.gov or by calling (702) 486-2908 at least five (5) working days prior to the date of the public workshop.

Please contact Kirsten Van Ry at 702-486-2908 or via email at klvanry@Nevadatreasurer.gov for copies of materials.

Items may be taken out of order; items may be combined for consideration by the public body; and items may be pulled or removed from the agenda at any time.

Notice of this workshop was posted at the following public locations:

- State Capitol Building, 1st & 2nd Floors, 101 North Carson Street
- Nevada Legislative Building, 401 South Carson Street
- Nevada State Library, 100 Stewart Street
- Blasdel Building, 209 East Musser Street
- Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada
- Notice of this workshop was posted on the following website(s):
https://www.nevadatreasurer.gov/PublicInfo/Public_Notices/ and <https://notice.nv.gov/>.

Per NRS 233B.064(2), upon adoption of any regulations, the agency, if requested to do so by an interested person, either prior to 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.

Impact on Small Business:

Small Business Impact Statement: The State Treasurer’s Office used informed, reasonable judgement in determining that there will not be a negative impact on small business by the proposed regulation, as the proposed regulation relates to provisions governing federally regulated 529 Savings Accounts and a voluntary scholarship program for Nevada kindergarten students, both of which do not regulate or require any action from any level of business.

Notwithstanding, “Small Business” is defined by NRS 233B.0382 as a business conducted for profit which employs fewer than 150 full-time or part-time employees. If your business meets this criterion, it is requested that you review the regulation and provide comments and anticipated impacts (if applicable) the proposed regulation would have on your business.

The comments will be collected and attached to the above stated Small Business Impact Statement.

Please submit comments to:

Nevada State Treasurer’s Office
C/O Kirsten Van Ry
555 E. Washington Ave., Suite 5200
Las Vegas, NV 89101
klvanry@nevadatreasurer.gov



Kirsten Van Ry
Chief of Staff
Nevada State Treasurer’s Office
April 11, 2022

**PROPOSED REGULATION OF THE BOARD OF TRUSTEES OF
THE COLLEGE SAVINGS PLANS OF NEVADA**

LCB File No. R032-22

March 24, 2022

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

AUTHORITY: §§ 1-22, NRS 353B.335.

A REGULATION relating to education; establishing provisions governing the Nevada College Kick Start Program; revising certain provisions relating to the Nevada College Savings Program; eliminating the provisions governing the education savings accounts program; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Under existing law, the Board of Trustees of the College Savings Plans of Nevada is required to establish the Nevada College Kick Start Program to create college savings accounts for pupils who are enrolled in kindergarten in public schools in Nevada and are residents of Nevada. Existing law requires the Board to determine the appropriate accounting method for the money in such an account, which must be in accordance with generally accepted accounting principles. (NRS 353B.335) **Sections 1-13** of this regulation establish the Program in regulation. **Sections 14 and 15** of this regulation make conforming changes as a result of this establishment.

Section 8 of this regulation provides, with one exception, that the Board will automatically enroll a pupil enrolled in kindergarten at a public school in this State in the Program. **Section 8** requires the parent or guardian of an eligible pupil who requests that the public school in which the pupil is enrolled treat the directory information of the pupil as confidential to complete an opt-in form before the Board will enroll the pupil in the Program.

Section 9 of this regulation provides that the Board will create a college savings account for each pupil enrolled in the Program and, to the extent that money is available, credit at least \$50 to each account. **Section 9** also provides that the Board will: (1) review the adequacy of the amount credited to such accounts biennially; (2) direct the investment of the money in such accounts; and (3) review and recommend incentives for additional credits to such accounts. **Section 9** prohibits the transfer or sale of such accounts.

Section 10 of this regulation prescribes the duties of the Office of the State Treasurer concerning the availability of records concerning each account and the notification to each beneficiary and his or her parent or guardian of the creation of an account.

Section 11 of this regulation prescribes the procedure by which a parent or guardian of a pupil enrolled in the Program may obtain access to the pupil’s account. **Section 12** of this regulation: (1) prescribes procedures for the parent or guardian of a pupil to voluntarily close an account; and (2) requires the Office of the State Treasurer to close an account under certain

circumstances. **Section 13** of this regulation prescribes the procedure by which a designated beneficiary may request a distribution from an account upon receipt of a high school diploma, or its equivalent.

Existing law requires the Board to adopt regulations to establish and carry out the Nevada College Savings Program, which must comply with the requirements of a qualified state tuition program pursuant to 26 U.S.C. § 529. Existing law requires that the regulations be consistent with the provisions of the Internal Revenue Code set forth in Title 26 of the United States Code, and the regulations adopted pursuant thereto, to ensure that the Nevada College Savings Program meets all criteria for federal tax-deferred or tax-exempt benefits, or both. (NRS 353B.310; NAC 353B.550-353B.725). **Sections 16-21** of this regulation make various changes to ensure compliance with federal law.

Senate Bill No. 302 (S.B. 302) of the 78th Session of the Nevada Legislature established the education savings accounts program, pursuant to which grants of money were required to be made to certain parents on behalf of their children to defray the cost of instruction outside the public school system. (Chapter 332, Statutes of Nevada 2015, at page 1824; NRS 353B.700-353B.930) Following a legal challenge of S.B. 302, the Nevada Supreme Court held in *Schwartz v. Lopez*, 132 Nev. 732 (2016), that the legislation was valid under Section 2 of Article 11 of the Nevada Constitution, which requires a uniform system of common schools, and under Section 10 of Article 11 of the Nevada Constitution, which prohibits the use of public money for a sectarian purpose. However, the Nevada Supreme Court found that the Legislature did not make an appropriation for the support of the education savings accounts program and held that the use of any money appropriated for K-12 public education for the education savings accounts program would violate Sections 2 and 6 of Article 11 of the Nevada Constitution. The Court enjoined enforcement of section 16 of S.B. 302, which amended NRS 387.124 to require that all money deposited in education savings accounts be subtracted from each school district's quarterly apportionments from the State Distributive School Account. Because the Court enjoined this provision of law and the Legislature has not made an appropriation for the support of the education savings accounts program, the education savings accounts program did not become operational and, in 2019, Senate Bill No. 551 of the 80th Session of the Nevada Legislature eliminated the statutory authority for the education savings accounts program. (Chapter 537, Statutes of Nevada 2019, at page 3294) **Section 22** of this regulation eliminates the regulations governing the education savings accounts program.

Section 1. Chapter 353B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 13, inclusive, of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 353B.005 and sections 3, 4 and 5 of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Designated beneficiary” has the meaning ascribed to it in 26 U.S.C. § 529.*

Sec. 4. *“Eligible educational institution” means a school described in paragraph (g) of subsection 3 of NRS 353B.100.*

Sec. 5. *“Qualified higher education expenses” has the meaning ascribed to it in 26 U.S.C. § 529.*

Sec. 6. *For the purposes of paragraph (g) of subsection 3 of NRS 353B.100, the Board will construe the term “accredited” to mean that a school has been accredited as a postsecondary educational institution by an accrediting body recognized by the United States Department of Education and is eligible to participate in a program for student financial assistance offered by the United States Department of Education.*

Sec. 7. *As used in sections 7 to 13, inclusive, of this regulation, unless the context otherwise requires, “Program” means the Nevada College Kick Start Program created by NRS 353B.335.*

Sec. 8. 1. *Except as otherwise provided in subsection 2, the Board will automatically enroll a pupil who is enrolled in kindergarten at a public school in this State in the Program:*

(a) On the first date on which a school district is required to report the average daily enrollment of pupils pursuant to NRS 387.1223 of the school year in which the pupil is enrolled in kindergarten; or

(b) For a pupil who completes kindergarten at a public school in this State and who was not enrolled in kindergarten on the date prescribed in paragraph (a), on the last day of the school year in which the pupil completes kindergarten.

2. *If the parent or guardian of a pupil who is eligible for enrollment in the Program requests that the public school in which the pupil is enrolled treat the directory information of*

the pupil as confidential, the parent or guardian must complete the opt-in form prescribed by the Office of the State Treasurer before the Board will enroll the pupil in the Program.

3. For the purposes of this section, “directory information” has the meaning ascribed to it in 20 U.S.C. § 1232g(a)(5)(A).

Sec. 9. 1. The Board will:

(a) Create an account for each pupil enrolled in the Program pursuant to section 8 of this regulation.

(b) To the extent that money is available, credit at least \$50 to each college savings account created pursuant to paragraph (a).

(c) Review the adequacy of the amount credited pursuant to paragraph (a) in each even-numbered year. In conducting such a review, the Board will consider, without limitation, the cost of attending an eligible educational institution, changes in the cost of living, inflation and the amount of money in the Endowment Account established pursuant to NRS 353B.350.

(d) Direct the investment of money in each account created pursuant to paragraph (a). In making decisions regarding the investment of money in each account, the Board will assume that money in the account must be available for distribution upon the receipt of a high school diploma, or its equivalent, by a designated beneficiary.

(e) Review and recommend incentives for additional credits to accounts created pursuant to this section.

2. An account created pursuant to this section may not be transferred or sold.

Sec. 10. The Office of the State Treasurer shall:

1. Make information regarding each account, including, without limitation, any reports regarding the account and the balance of the account, available for access by the designated

beneficiary of the account and his or her parent or guardian on an Internet website maintained by the Office.

2. Within 90 days after the date on which an account is created pursuant to section 9 of this regulation, send by regular mail or electronic mail to the designated beneficiary of the account and his or her parent or guardian:

(a) Written notice of the name of the designated beneficiary;

(b) Written notice of the Program identification number assigned to the designated beneficiary; and

(c) Directions regarding how to access the account in the manner prescribed in section 11 of this regulation.

Sec. 11. *To access the account of a pupil created pursuant to section 9 of this regulation, the parent or guardian of the pupil must apply for such access on a form prescribed by the Office of the State Treasurer. The application must include, without limitation:*

1. The Program identification number assigned to the designated beneficiary on whose behalf the parent or guardian is accessing the account;

2. The date of birth of the designated beneficiary on whose behalf the parent or guardian is accessing the account;

3. The zip code in which the designated beneficiary resided on the date on which the account was established; and

4. The electronic mail address of the parent or guardian of the designated beneficiary.

Sec. 12. *1. The parent or guardian of a pupil who wishes to voluntarily close an account created pursuant to section 9 of this regulation must complete and submit to the Office of the State Treasurer the opt-out form prescribed by the Office of the State Treasurer.*

2. The Office of the State Treasurer shall close an account created pursuant to section 9 of this regulation:

(a) Upon receipt of an opt-out form submitted pursuant to subsection 1.

(b) If any portion of the money credited to the account has not been distributed by August 1 of the year that is 6 years after the year in which the designated beneficiary was regularly scheduled to graduate from high school.

Sec. 13. *1. Upon receipt of a high school diploma, or its equivalent, a designated beneficiary who is enrolled at an eligible educational institution may request a distribution from the account created pursuant to section 9 of this regulation by submitting such a request on a form prescribed by the Office of the State Treasurer.*

2. The Office of the State Treasurer shall grant a request for a distribution for a qualified higher education expense that is submitted pursuant to subsection 1 on or before the date prescribed in paragraph (b) of subsection 2 of section 12 of this regulation.

3. A distribution pursuant to this section must be made directly to the eligible educational institution in which the designated beneficiary is enrolled.

Sec. 14. NAC 353B.005 is hereby amended to read as follows:

353B.005 ~~[As used in this chapter, unless the context otherwise requires,]~~ “Board” has the meaning ascribed to it in NRS 353B.002.

Sec. 15. NAC 353B.550 is hereby amended to read as follows:

353B.550 As used in NAC 353B.550 to 353B.725, inclusive, unless the context otherwise requires, the words and terms defined in NAC 353B.555 to ~~[353B.595,]~~ **353B.590**, inclusive, have the meanings ascribed to them in those sections.

Sec. 16. NAC 353B.615 is hereby amended to read as follows:

353B.615 1. To open an account, an applicant must submit to the Plan Investment Manager a completed application and:

- (a) An initial contribution; or
- (b) A designation of an alternative method of funding approved by the Plan Investment

Manager.

2. ~~{The acceptance by the Plan Investment Manager for processing of an application and an initial contribution or the designation of an alternate method of funding does not constitute the agreement of the Plan Investment Manager to open an account.~~

~~—3.}~~ An applicant must select an investment option in which all contributions to the account will be invested. After an account has been opened, the account owner may not change the investment option for the account, except as permitted by 26 U.S.C. § 529 and any regulations, rulings, announcements or other guidance issued pursuant thereto.

~~{4.}~~ 3. Under the age-based investment option, reassignment of accounts to different “Years-to-College” portfolios will, with regard to those accounts in which the age of the designated beneficiary makes such reassignment appropriate, occur in accordance with the investment policies of the Program.

Sec. 17. NAC 353B.655 is hereby amended to read as follows:

353B.655 1. A contribution to an account established for a designated beneficiary will not be accepted to the extent the contribution would cause the total account balance of all accounts *established as part of the Program* for the *same* designated beneficiary to exceed the amount necessary to provide for the qualified higher education expenses of the designated beneficiary.

2. The Board will establish the maximum aggregate balance for the accounts of a designated beneficiary and will, from time to time, revise the maximum aggregate balance as it determines necessary.

3. If any contribution would cause the total account balance of all accounts *established as a part of the Program* for ~~the same~~ designated beneficiary to exceed the maximum aggregate balance for the accounts of a designated beneficiary established by the Board, the excess money will be rejected and returned to the contributors in order of receipt. The balance in all accounts for that designated beneficiary under the Nevada Higher Education Prepaid Tuition Program will be included in calculating whether the maximum aggregate balance has been exceeded.

Sec. 18. NAC 353B.665 is hereby amended to read as follows:

353B.665 1. An account owner may request a distribution of money from the account by submitting to the Plan Investment Manager not less than 3 business days before the date of the requested distribution a completed distribution request form and such other information as required by the Board or a Plan Investment Manager. The Plan Investment Manager will begin processing properly completed distribution request forms upon receipt. A designated beneficiary may not withdraw money from an account.

2. ~~[A distribution from an account will be classified as a:~~
- ~~—(a) Nonqualified withdrawal;~~
 - ~~—(b) Qualified withdrawal;~~
 - ~~—(c) Qualified withdrawal because of the death or disability of, or a scholarship awarded to, a beneficiary; or~~
 - ~~—(d) Rollover distribution.~~

~~—3.]~~ A distribution may only be arranged by the account owner and only in accordance with NAC 353B.665 to 353B.695, inclusive.

Sec. 19. NAC 353B.680 is hereby amended to read as follows:

353B.680 A refund *received from an institution of higher education* of all or part of a ~~[qualified]~~ distribution that is used to pay for qualified higher education expenses of a designated beneficiary must be ~~[paid by the higher education institution]~~ *remitted* to the Plan Investment Manager for credit to the appropriate accounts for that designated beneficiary ~~[.]~~ *within 60 days after the date on which the refund is received by the Plan Investment Manager. A credit to an account made pursuant to this section must not exceed the amount of the refund received from an institution of higher education.*

Sec. 20. NAC 353B.690 is hereby amended to read as follows:

353B.690 1. Except as otherwise provided in subsection 2, if a qualified tuition program of another state *or a qualified ABLÉ program of another state* allows rollover contributions, an account owner may authorize a direct rollover distribution from an account in the Program to an account in the qualified tuition program of the other state *or a qualified ABLÉ program of another state* for the same designated beneficiary or for a different designated beneficiary who is a member of the family of the designated beneficiary of the account in the Program out of which the rollover distribution is being made.

2. A rollover distribution pursuant to subsection 1 for the same designated beneficiary will be permitted only once in any 12-month period or as otherwise permitted by 26 U.S.C. § 529 and any regulations, rulings, announcements or other guidance issued pursuant thereto.

3. An account owner may authorize a direct rollover distribution from an account in the Program to another account in the Program so long as the designated beneficiary of the other

account is a member of the family of the designated beneficiary of the account out of which the rollover distribution is being made. If the rollover distribution that is deposited in an account causes the total account balance of all accounts for a designated beneficiary to exceed the maximum aggregate balance for the accounts of a designated beneficiary established by the Board pursuant to NAC 353B.655, the excess money will be rejected and returned.

4. When authorizing a rollover distribution, the account owner must complete the forms and make such disclosures of financial information as required by the Plan Investment Manager and the Board.

5. As used in this section, “qualified ABLE program” has the meaning ascribed to it in NRS 427A.885.

Sec. 21. NAC 353B.695 is hereby amended to read as follows:

353B.695 1. An account may be terminated if the account has a balance of less than \$1,000 and no contributions or withdrawals have been made within the preceding 2 calendar years. Before the termination of an account, the account owner will be given such notice as the Board determines adequate and will be given an opportunity to prevent the termination of the account by making an additional contribution or a **{qualified}** withdrawal within the period specified by the Plan Investment Manager. Upon the involuntary termination of an account, the account balance will be paid to the account owner as a **{nonqualified}** distribution.

2. An account owner may request a **{qualified}** distribution of the remaining balance of an account upon termination. Such a request will be honored following receipt by the Plan Investment Manager of all information requested by the Plan Investment Manager.

Sec. 22. NAC 353B.050, 353B.595, 353B.670, 353B.675, 353B.750, 353B.755, 353B.760, 353B.765, 353B.770, 353B.775, 353B.780, 353B.785, 353B.790, 353B.795, 353B.800, 353B.805, 353B.810, 353B.815, 353B.820, 353B.825 and 353B.830 are hereby repealed.

TEXT OF REPEALED SECTIONS

353B.050 “Eligible educational institution” defined. (NRS 353B.090, 353B.100)

“Eligible educational institution” means a school described in paragraph (g) of subsection 3 of NRS 353B.100. For the purposes of that paragraph, the Board will construe the term “accredited” to mean that a school has been accredited as a postsecondary educational institution by an accrediting body recognized by the United States Department of Education and is eligible to participate in a program for student financial assistance offered by the United States Department of Education.

353B.595 “Qualified higher education expenses” defined. (NRS 353B.310) “Qualified higher education expenses” has the meaning ascribed to it in 26 U.S.C. § 529.

353B.670 Distributions: Required notification. (NRS 353B.310) When a Plan Investment Manager makes a distribution of money from an account pursuant to NAC 353B.665 to 353B.695, inclusive, the Plan Investment Manager shall notify the account owner:

1. Of the portion of the distribution that is attributable to investment gains in the account;
2. That a distribution from an account for any reason other than a qualified withdrawal, a qualified withdrawal because of the death or disability of, or a scholarship awarded to, a

beneficiary, or a rollover distribution may be subject to federal tax on the portion of the distribution attributable to investment gains in the account; and

3. That it is the responsibility of the account owner to determine his or her liability for federal tax, if any, on the distribution.

353B.675 Qualified withdrawals. (NRS 353B.310)

1. A qualified withdrawal is a withdrawal of money from an account to pay for the qualified higher education expenses of the designated beneficiary, or because of death, disability or scholarship, as permitted by 26 U.S.C. § 529 or any regulations, rulings, announcements or other guidance issued pursuant thereto. An account owner may request a qualified withdrawal by submitting to the Plan Investment Manager a completed distribution request form.

2. When requesting a qualified withdrawal, the account owner, and the designated beneficiary if required by the Plan Investment Manager, must sign the distribution request form and provide such additional information as may be requested by the Plan Investment Manager.

353B.750 Short title. (NRS 353B.820) The provisions of NAC 353B.750 to 353B.830, inclusive, may be cited as the Education Savings Account Regulations.

353B.755 Purposes. (NRS 353B.820)

1. The purposes of NAC 353B.750 to 353B.830, inclusive, are to:

(a) Award grants of money made available pursuant to NRS 353B.860 on behalf of children who qualify for such grants so that the parents of such children have choices concerning the education of the children; and

(b) Make the grants of money described in paragraph (a) available to be awarded on behalf of the largest number of children allowable under NRS 353B.700 to 353B.930, inclusive.

2. For the accomplishment of these purposes, the provisions of NAC 353B.750 to 353B.830, inclusive, must be broadly and liberally construed.

353B.760 Definitions. (NRS 353B.820) As used in NAC 353B.750 to 353B.830, inclusive, unless the context otherwise requires, the words and terms defined in NAC 353B.765 and 353B.770 have the meanings ascribed to them in those sections.

353B.765 “Agreement” defined. (NRS 353B.820, 353B.850) “Agreement” means a written agreement between a parent and the State Treasurer to establish an education savings account entered into pursuant to NRS 353B.850.

353B.770 “School day” defined. (NRS 353B.820, 353B.850) “School day” means any day, including a partial day, during which a school offers instruction to pupils at the school.

353B.775 “Break in the school year” construed. (NRS 353B.820, 353B.850) For the purpose of carrying out the provisions of NRS 353B.850, the State Treasurer will construe the term “break in the school year” to mean 15 or more consecutive days that are not school days.

353B.780 “Tuition” construed. (NRS 353B.820, 353B.870) For the purpose of carrying out the provisions of NRS 353B.700 to 353B.930, inclusive, the State Treasurer will construe the term “tuition” to include only the cost of enrolling a child in a school or program of distance education that is a participating entity, except that the term does not include:

1. An application fee, entrance fee, parking fee, technology fee, athletic fee, studio fee, laboratory fee or any fee or surcharge imposed in connection with a specific course, whether or not the fee or surcharge is imposed on all children enrolled in the participating entity or the course; or

2. A charge imposed for books, supplies or room and board, whether or not the charge is imposed on all children enrolled in the participating entity.

353B.785 Application to establish account; open enrollment period; notification of approval or denial; requirements; request for waiver; exemptions. (NRS 353B.820, 353B.850)

1. A parent who wishes to establish an education savings account on behalf of his or her child must submit an application to the State Treasurer on a form made available by the State Treasurer during the open enrollment period established pursuant to subsection 2.

2. At least one time each year, the State Treasurer will establish an open enrollment period during which the State Treasurer will accept applications to establish an education savings account. The State Treasurer will announce the dates of the open enrollment period during the fourth quarter of the calendar year immediately preceding the school year for which the open enrollment period applies.

3. The State Treasurer will review each application submitted pursuant to subsection 1 and, not later than 30 days after the date on which the application is received, notify the applicant by certified mail or electronic communication whether the application has been approved or denied. If the application is denied, the notification must include, without limitation, the reason for the denial.

4. Except as otherwise provided in subsections 5 and 7, the State Treasurer will approve an application submitted on behalf of a child required by NRS 392.040 to attend public school if the applicant submits proof that the child was enrolled in a public school and in one or more qualifying courses at the public school for the 100 school days immediately preceding the date on which the application is received, including, without limitation, any school day that the child was not required to attend a qualifying course. The State Treasurer will not approve an

application submitted on behalf of a child who has participated only in after-school extracurricular activities at a public school.

5. Except as otherwise provided in subsections 6 and 7, the State Treasurer will not approve an application submitted on behalf of a child if, during the 100 school days immediately preceding the date on which the application is received, the child was absent from the public school in which the child was enrolled for more than 15 consecutive school days, including, without limitation, any school day that the child was not required to attend a qualifying course.

6. An applicant may apply in writing to the State Treasurer for a waiver of the provisions of subsection 5. Upon a showing that an absence of more than 15 consecutive school days was caused by extraordinary circumstances, which may include, without limitation, the death of a family member of the child or a serious medical condition, the State Treasurer may grant the waiver.

7. The State Treasurer will not require a child for whom an application is submitted to have been enrolled at a public school for 100 school days immediately preceding the date on which the application is received if:

(a) The child will be at least 5 years of age and less than 7 years of age on or before September 30 of the school year for which the application is submitted; or

(b) The parent of the child is a member of the Armed Forces of the United States who is on active duty and stationed at a military installation in this State.

8. As used in this section, “qualifying course” means a course that is offered to pupils who are enrolled in the public school for which the pupils may receive credit toward promotion to the next grade or graduation from high school, including, without limitation, a course that is offered as an elective.

353B.790 Agreement with State Treasurer; deposit of money into and payments from account; annual list provided to Department; inclusion of certain examinations on list.

(NRS 353B.820, 353B.850, 353B.860, 353B.910)

1. If the State Treasurer approves an application submitted pursuant to NAC 353B.785, the State Treasurer will enter into an agreement with the parent who submitted the application. After a parent enters into an agreement with the State Treasurer, the parent may open an education savings account at a financial management firm with which the State Treasurer has entered into a contract pursuant to NAC 353B.820.

2. The State Treasurer will:

(a) Deposit money into each education savings account in equal quarterly installments on the dates on which the Superintendent of Public Instruction apportions the State Distributive School Account in the State General Fund pursuant to NRS 387.124.

(b) Provide each parent who establishes an education savings account on behalf of his or her child with a memorandum outlining the procedures to follow in making payments from the account.

(c) Annually provide the Department with a list of children on behalf of whom education savings accounts have been established on the date prescribed by the Department.

3. An examination administered to satisfy the requirements of NRS 353B.910 must be included on the list of examinations prescribed by the Department for that purpose.

353B.795 Committee to Review Payments: Creation; members; duties. (NRS 353B.820, 353B.870)

1. There is hereby created the Committee to Review Payments consisting of seven members as follows:

- (a) The State Treasurer or his or her designee;
 - (b) Two voting members appointed by the State Treasurer who are parents of children on behalf of whom an education savings account has been established and who reside in Clark County;
 - (c) One voting member appointed by the State Treasurer who is the parent of a child on behalf of whom an education savings account has been established and who resides in Washoe County;
 - (d) One voting member appointed by the State Treasurer who is the parent of a child on behalf of whom an education savings account has been established and who resides in a county other than Clark County or Washoe County; and
 - (e) Two nonvoting advisory members appointed by the State Treasurer who are educators or administrators at a participating entity, other than the parent of a child.
2. The members of the Committee serve at the pleasure of the State Treasurer. A member of the Committee serves for a term of 1 year and may be reappointed.
 3. The State Treasurer or his or her designee will serve as the Chair of the Committee and will vote only in the case of a tie.
 4. The State Treasurer may request the Committee to determine whether an expenditure of money from an education savings account is authorized pursuant to NRS 353B.870.
 5. The Committee shall:
 - (a) Meet at the call of the Chair upon the receipt of a request to determine whether an expenditure of money from an education savings account submitted to the Committee by the State Treasurer pursuant to subsection 4 is authorized pursuant to NRS 353B.870.
 - (b) Comply with the provisions of chapter 241 of NRS.

6. As used in this section, “administrator” means the person who directs or manages the affairs of a private school, as defined in NRS 394.103.

353B.800 Termination of agreement by parent. (NRS 353B.820, 353B.850)

1. The parent of a child on behalf of whom an education savings account has been established may terminate an agreement with the State Treasurer at any time by providing written notice by certified mail to the State Treasurer.

2. If an agreement is terminated pursuant to subsection 1, the child on behalf of whom the education savings account was established may enroll in a public school on the first day after the expiration of the quarter for which the last deposit was made into the education savings account of the child.

353B.805 State Treasurer to freeze account if child no longer resides in State; proof required to remove freeze; termination of agreement and dissolution of account. (NRS 353B.820, 353B.850) If the State Treasurer reasonably believes that a child on behalf of whom an education savings account has been established no longer resides in this State, the State Treasurer will freeze the education savings account and send a written notice by certified mail to the parent of the child requesting the parent to submit proof that the child resides in this State. If the parent:

1. Provides satisfactory proof by not later than 15 business days after the date on which the notice is received, the State Treasurer will remove the freeze on the education savings account.

2. Fails to provide satisfactory proof by not later than 15 days after the date of the notice, the State Treasurer will terminate the agreement pursuant to which the education savings account was established and dissolve the education savings account.

353B.810 Audits of accounts; freeze of accounts found to have irregularities; notice of freeze; petition for reconsideration; determination. (NRS 353B.820, 353B.880)

1. Each calendar year, the State Treasurer will randomly select not fewer than 10 percent of the education savings accounts in existence on January 1 of that year to be audited.

2. The State Treasurer will cause an audit to be conducted of each education savings account then in existence if 5 percent or more of the audits conducted pursuant to subsection 1 indicate any of the following irregularities:

(a) Failure to comply with an agreement pursuant to which an education savings account was established, NRS 353B.700 to 353B.930, inclusive, or NAC 353B.750 to 353B.830, inclusive; or

(b) A substantial misuse of money in an education savings account.

3. If the State Treasurer determines, based on an audit conducted pursuant to subsection 1 or 2, or for any other reason, that an irregularity described in subsection 2 has occurred, the State Treasurer will:

(a) Freeze the education savings account; and

(b) Send to the parent of the child on behalf of whom the education savings account was established by certified mail written notice of the reason that the account is frozen and the manner in which to petition for reconsideration as set forth in subsections 4 and 5.

4. A parent who receives notice that the State Treasurer has placed a freeze on an education savings account pursuant to subsection 3 may submit a petition for reconsideration by providing to the State Treasurer, not later than 5 business days after receiving the notice, a written explanation of the reasons that the parent believes the determination of the State Treasurer was incorrect. If the State Treasurer does not receive such a petition within that time, the State

Treasurer will dissolve the education savings account and terminate the agreement pursuant to which the account was established.

5. Upon receipt of a petition pursuant to subsection 4, the State Treasurer will review the written explanation included in the petition and determine whether an irregularity described in subsection 2 occurred. Not later than 5 business days after receiving the petition, the State Treasurer will notify the parent of the determination. If the State Treasurer determines that:

(a) An irregularity occurred, the State Treasurer will dissolve the education savings account and terminate the agreement pursuant to which the education savings account was established.

(b) No irregularity occurred, the State Treasurer will remove the freeze on the education savings account.

353B.815 Quarterly list of terminated accounts; reversion of remaining money to State General Fund. (NRS 353B.820, 353B.850, 353B.860)

1. Each calendar quarter, the State Treasurer will provide to the Department a list of each child for whom an agreement pursuant to which an education savings account was established has been terminated for any reason.

2. If any money remains in an education savings account after the agreement pursuant to which the account was established is terminated or expires, the money in the account reverts and must be transferred to the State General Fund by the State Treasurer by not later than 10 days after the date of the termination or expiration.

353B.820 Contract with financial management firm: Criteria; provision allowing termination; maintenance and management of accounts. (NRS 353B.820, 353B.880)

1. The State Treasurer will enter into a contract to manage education savings accounts with one or more financial management firms. Any such firm must:

(a) Be authorized to accept deposits under the laws of this State or the United States; and

(b) Insure the accounts that it maintains with the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or a private insurer approved pursuant to NRS 678.755.

2. A contract entered into pursuant to subsection 1 must include a provision allowing the State Treasurer to terminate the contract if:

(a) The financial management firm fails to comply with applicable law or the provisions of the contract; or

(b) The State Treasurer determines that the financial management firm is not performing adequately.

3. A financial management firm with whom the State Treasurer enters into a contract pursuant to subsection 1 shall maintain and manage education savings accounts in compliance with generally accepted accounting principles.

353B.825 Application to become participating entity; proof of eligibility; notice of determination; investigation under certain circumstances. (NRS 353B.820, 353B.900)

1. To become a participating entity, an entity must submit an application to the State Treasurer on a form made available by the State Treasurer.

2. Each applicant, other than the parent of a child, must submit proof that the applicant is eligible to become a participating entity pursuant to NRS 353B.900. If an applicant is a tutor or tutoring facility, such proof must include, without limitation, proof that the applicant is accredited by a state, regional or national accrediting agency.

3. If the State Treasurer:

(a) Approves an application submitted pursuant to this section, the State Treasurer will provide notice to the applicant through written or electronic communication to the person designated on the application.

(b) Does not approve an application submitted pursuant to this section, the State Treasurer will provide notice to the applicant by certified mail to the person designated on the application.

4. If the State Treasurer determines, based on the results of the examinations administered pursuant to NRS 353B.910, or for any other reason, that a participating entity that accepts payments from the educational savings account of a child may have failed to provide an educational service required by law to the child, the State Treasurer will conduct an investigation. If, after conducting an investigation, the State Treasurer determines that the participating entity has failed to provide an educational service required by law to the child, the State Treasurer may, after providing notice and the opportunity for a hearing, refuse to allow the entity to continue as a participating entity.

353B.830 Additional requirements of certain participating entities. (NRS 353B.820, 353B.900)

1. If the State Treasurer reasonably expects that a participating entity will receive, from payments made from education savings accounts, an amount that exceeds \$50,000 for a school year, the State Treasurer will:

(a) Determine the amount reasonably expected to be paid to such a participating entity from education savings accounts during the school year; and

(b) Provide notice to the participating entity of the amount determined pursuant to paragraph (a) and the requirements set forth in subsection 2.

2. A participating entity that receives a notice pursuant to subsection 1 shall, not more than 10 business days after the next deposit of money into education savings accounts pursuant to NAC 353B.790:

(a) Post a surety bond in an amount equal to the amount determined by the State Treasurer pursuant to subsection 1; or

(b) Provide to the State Treasurer documentation of a financial audit demonstrating that the participating entity has unencumbered assets sufficient to pay the State Treasurer an amount equal to the amount determined by the State Treasurer pursuant to subsection 1.

3. For the purposes of this section and NRS 353B.900, a participating entity will be deemed by the State Treasurer to be reasonably expected to receive more than \$50,000 in a school year from education savings accounts if, at the beginning of the school year, 10 or more agreements authorize the participating entity to receive money from an education savings account.