PUBLIC COMMENT OF THE WASHOE COUNTY SCHOOL DISTRICT
IN OPPOSITION TO LCB FILE NO. R119-26

The Washoe County School District ("WCSD") respectfully opposes the tuberculosis screening requirements for educational institutions contained in LCB File No. R119-26. WCSD recognizes the importance of preventing the transmission of tuberculosis and supports reasonable, evidence-based public-health measures. However, the proposed regulation raises significant concerns regarding the scope of the State Board of Health's delegated statutory authority, whether the proposed mandate is necessary and appropriately tailored to an identified public-health risk, and the substantial operational and financial burdens it would impose on Nevada school districts.

Statutory Authority and Scope of the Proposed Mandate

WCSD recognizes that the State Board of Health has statutory authority to regulate communicable diseases, including tuberculosis, in educational institutions. The question, however, is not whether the Board has *some* authority in this area, but whether the Legislature delegated authority for the particular categorical screening mandate proposed in R119-26.

That distinction is particularly important following the United States Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). In *Loper Bright*, the Supreme Court overruled *Chevron* deference and held that courts must exercise independent judgment in determining whether an administrative agency has acted within the authority granted to it by statute. Statutory ambiguity does not itself constitute authorization for an agency to expand its regulatory authority. Where discretion has been delegated, courts must independently determine the boundaries of that delegation and ensure the agency acts within them.

R119-26 identifies NRS 439.200 and NRS 441A.120 as its statutory authority. Those statutes provide important authority to regulate communicable diseases, but they do not provide unlimited authority to impose any screening requirement the agency considers beneficial.

Significantly, NRS 441A.120 specifically directs the Board to establish procedures for testing persons or groups who have been exposed to, have, or are suspected of having a communicable disease. The statute further requires methods to ensure that testing and other disease-control measures are carried out in the least restrictive manner or environment appropriate and acceptable under current medical and public-health practices.

R119-26 goes substantially beyond that express framework. It requires school employees, independent contractors, and volunteers with more than eight hours of face-to-face interaction with students to establish that they do not have active tuberculosis before beginning qualifying service and periodically thereafter—regardless of whether they have been exposed to tuberculosis, exhibit symptoms, are suspected of infection, or otherwise present an individualized risk.

Under *Loper Bright*, the breadth or perceived ambiguity of an agency's general regulatory authority cannot substitute for authority actually delegated by the Legislature. WCSD therefore respectfully requests that the Board identify the specific statutory language authorizing mandatory periodic tuberculosis screening of asymptomatic and unexposed individuals based solely upon the amount of their interaction with students.

Least Restrictive Means and the Lack of a Demonstrated Need

NRS 441A.120 expressly requires disease-control measures to be implemented in the least restrictive manner appropriate under current medical and public-health practices. WCSD questions whether a categorical statewide screening mandate satisfies that requirement when less restrictive, risk-based alternatives are available.

WCSD is also unaware of data demonstrating an acute tuberculosis problem in Washoe County that necessitates this new mandate. WCSD recognizes the potential benefits of appropriate screening, but the significant burdens associated with establishing this infrastructure should be supported by evidence demonstrating the public-health problem the regulation is intended to solve.

The Board should identify the Nevada-specific epidemiological evidence supporting mandatory periodic screening of school employees, contractors, and volunteers who have no known exposure, symptoms, or suspected infection.

Similarly, WCSD questions the medical or epidemiological basis for the regulation's eight-hour threshold. The regulation applies to an individual who has more than eight cumulative hours of face-to-face interaction with students during a school year. The Board should identify the public-health evidence supporting that particular threshold and explain why it meaningfully distinguishes individuals presenting an increased tuberculosis risk from those who do not.

Inconsistent Treatment of Schools and Healthcare Settings

The treatment of healthcare facilities within R119-26 further calls into question whether categorical screening in schools is necessary or represents the least restrictive approach.

The same regulation proposes eliminating routine annual tuberculosis testing requirements for certain healthcare facilities and replacing them with an approach under which facilities evaluate their tuberculosis exposure risk and determine testing frequency based upon federal guidelines.

At the same time, R119-26 would create a new categorical periodic screening requirement for qualifying school employees, contractors, and volunteers. WCSD respectfully requests that the Board explain the public-health rationale for moving healthcare facilities toward a risk-based model while imposing a new categorical screening mandate in educational settings, particularly where there has been no demonstrated exposure or individualized risk.

If a risk-based model appropriately protects public health in healthcare environments, the Board should consider whether a comparable approach would adequately protect Nevada students and employees while imposing substantially fewer burdens on educational institutions.

Significant Operational and Financial Impact on WCSD

The practical impact of R119-26 on WCSD would be substantial. WCSD employs more than 9,000 full- and part-time employees and maintains approximately 15,000 active volunteers, in addition to numerous independent contractors and governmental, nonprofit, and private community partners. These volunteers and partners provide crucial instructional and operational support to WCSD students and staff.

Although the eight-hour threshold limits the population subject to the regulation, WCSD would nevertheless be required to develop and maintain substantial new administrative infrastructure to determine which employees, contractors, and volunteers cross that threshold; track compliance and four-year screening cycles; obtain required documentation; coordinate medical review and follow-up; protect sensitive health information; and maintain records for the periods required by the regulation.

R119-26 also requires medical involvement in the screening process. A tuberculosis screening test or risk-assessment and symptom questionnaire must be reviewed by an authorized tuberculosis healthcare provider. For a school district of WCSD's size, requiring professional medical review of potentially thousands of screenings creates additional administrative burdens and demands on limited healthcare resources.

The proposed regulation further requires school districts to maintain files containing screening results, questionnaires, and related documentation for qualifying individuals. This creates additional obligations concerning the collection, confidentiality, security, retention, and appropriate handling of sensitive health information.

Impact on Volunteers and Community Partnerships

WCSD is particularly concerned about the regulation's effect on volunteers and community partnerships. The District depends upon thousands of parents, community members, nonprofit organizations, governmental partners, and other volunteers to provide important opportunities and support to students.

Requiring volunteers who exceed an eight-hour annual threshold to participate in a medical screening process and obtain review by a healthcare professional creates an additional barrier to participation. Even if the individual ultimately bears the direct cost of screening, the administrative and practical burden remains and may discourage individuals from volunteering.

The potential loss of volunteers and community partners is not insignificant. Any burden imposed on these individuals should be supported by evidence that the affected population presents a sufficient tuberculosis risk to justify the requirement.

A More Targeted and Less Restrictive Alternative

WCSD respectfully encourages the Board to consider a targeted, risk-based approach rather than the categorical mandate presently proposed.

Screening could instead be triggered by recognized tuberculosis risk factors, known or suspected exposure, symptoms, local epidemiological conditions, occupational circumstances presenting heightened risk, or direction from the applicable health authority. Such an approach would preserve the ability of public-health authorities to respond aggressively where tuberculosis presents an actual risk while avoiding unnecessary screening of thousands of individuals for whom no risk has been identified.

A risk-based model would also appear more consistent with the Legislature's direction in NRS 441A.120 that disease-control measures be implemented in the least restrictive appropriate manner and with R119-26's own movement toward risk-based tuberculosis screening in healthcare settings.

Conclusion

WCSD supports reasonable and evidence-based measures to prevent tuberculosis in Nevada schools. However, before imposing a new statewide screening mandate affecting potentially thousands of school employees, contractors, and volunteers, the State Board of Health should establish that the mandate falls within the authority actually delegated by the Legislature, is supported by Nevada-specific public-health evidence, and satisfies the Legislature's express requirement that disease-control measures be implemented in the least restrictive appropriate manner.

R119-26, as presently drafted, raises substantial questions on each of these points. It also imposes significant administrative, financial, healthcare, records-management, and operational burdens on school districts and risks discouraging the volunteers and community partners upon whom Nevada schools depend.

For these reasons, WCSD respectfully requests that the State Board of Health not adopt the educational-institution tuberculosis screening provisions of R119-26 as presently drafted. WCSD instead encourages the Board to work collaboratively with Nevada school districts and public-health authorities to develop a targeted, risk-based approach that addresses demonstrated tuberculosis risks while protecting students and minimizing unnecessary burdens on Nevada's public schools and communities.