**NEBRASKA DEPARTMENT**
**OF EDUCATION**

# RULE 51

**REGULATIONS AND STANDARDS FOR SPECIAL EDUCATION PROGRAMS**

**TITLE 92, NEBRASKA ADMINISTRATIVE CODE,**
**CHAPTER 51**

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# TITLE 92 -- NEBRASKA DEPARTMENT OF EDUCATION
# CHAPTER 51 -- REGULATIONS AND STANDARDS FOR SPECIAL EDUCATION PROGRAMS

## 001 Declaration of Responsibility

Neb. Rev. Stat. 79-1127 declares, "The board of education of every school district shall provide or contract for special education programs and transportation for all resident children with disabilities who would benefit from such programs."

## 002 Statutory Authority

This Chapter is adopted pursuant to the statutory authority vested in the Department of Education in Neb. Rev. Stat. 79-1160 which declares, "The State Department of Education shall adopt, promulgate and publish rules and regulations necessary to carry out the Special Education Act" and in Neb. Rev. Stat. 79-318 and 79-319.

003 Definition of Terms

003.01 Adjusted average per pupil cost of the preceding year shall mean the amount computed by dividing the total instructional expenditure, excluding special education expenditures, by the preceding year's average daily membership as reported in the annual finance report. The costs of sectarian instruction shall not be included in determining the adjusted average per pupil cost of the preceding year and the computation shall be subject to audit by appropriate state agencies. (See Section 011.)

003.02 Agency contracting for services coordination shall mean the agency identified by each regional interagency planning team which assumes the responsibility to deliver the entitlement of services coordination in the region through a contract with the Department of Health and Human Services.

003.03 Assessment for infants and toddlers shall mean the on-going procedures used by appropriate qualified personnel throughout the period of a child's eligibility to identify: (1) the child's unique strengths and needs and the services appropriate to meet those needs; and (2) the resources, priorities, and concerns of the family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of the infant or toddler with a disability.

003.04 Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability.
The term does not include a medical device that is surgically implanted, or the replacement of such device.

003.05 Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition or use of an assistive technology device. The term includes the evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment; purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by a child with a disability; selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing or replacing of assistive technology devices; coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs; training or technical assistance for a child with a disability, or if appropriate, that child's family; and training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of the individual with a disability.

003.06 Below age five shall mean those children who have not reached their fifth birthday on or before October 15 of the current school year.

003.07 Categorical program shall mean a special education program setting in which services are provided to children with the same disability.

003.08 Children with disabilities shall mean those children who have been verified by a multidisciplinary evaluation team as per Section 006 as children with autism, behavior disorders, deaf-blindness, developmental delay, hearing impairments, mental handicaps, multiple disabilities, orthopedic impairments, other health impairments, specific learning disabilities, speech-language impairments, traumatic brain injury or visual impairments, who because of these impairments need special education and related services. If, under 92 NAC 51-003.59, it is determined, through an appropriate evaluation under Section 006, that a child has one of the disabilities identified above, but only needs a related service and not special education, the child is not a child with a disability under this Chapter. If the related service required by the child is considered special education rather than a related service, the child would be determined to be a child with a disability. The terms used in this definition are defined as follows:

003.08A Autism shall mean a developmental disability which significantly affects verbal and nonverbal communication and social interaction, generally evident before the age of three, that adversely affects educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not include children with characteristics of the disability category "behavioral disorder." A child who manifests the characteristics of autism after age 3 could be diagnosed as having autism if the criteria in 92 NAC 51-006.04B are satisfied.

003.08B Behavioral disorders shall mean:

003.08B1 A condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects the child's educational performance or, in the case of children below age five, development;

003.08B1a An inability to learn which cannot be explained by intellectual, sensory, or health factors;

003.08B1b An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

003.08B1c Inappropriate types of behavior or feelings under normal circumstances;

003.08B1d A general pervasive mood of unhappiness or depression; or

003.08B1e A tendency to develop physical symptoms or fears associated with personal or school problems.

003.08B2 The term includes children with schizophrenia. The term does not include children with social maladjustments, unless it is determined that they have behavioral disorders. This term parallels the federal definition of seriously emotionally disturbed.

003.08C Deaf-blindness shall mean concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or blindness.

003.08D Developmental Delay shall mean either a significant delay in the function of one or more of the following areas: cognitive development; physical development; communicative development; social or emotional development; or adaptive behavior or skills development or a diagnosed physical or medical condition that has a high probability of resulting in a substantial delay in function in one or more of such areas. Developmental delay must be considered as one possible eligibility category for infants and toddlers birth through age four, and is a discretionary option for school districts to use for children age five through eight. A child remains eligible for services under the category of developmental delay through the school year in which the child reaches age five or if the district uses the discretionary option, through the school year in which the child reaches age nine.

003.08E Hearing impairments shall mean an impairment in hearing which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects development or educational performance. Hearing impairments shall also mean an impairment in hearing, whether permanent or fluctuating, which adversely affects a child's development or educational performance. This term parallels the state and federal definitions of hearing impairments including deafness.

003.08F Mental handicap shall mean significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's development or educational performance.

003.08G Multiple disabilities shall mean concomitant impairments (such as mental handicap-visual impairment, mental handicap-orthopedic impairment, etc., the combination of which causes such severe developmental or educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include children with deaf-blindness.

003.08H Orthopedic impairments shall mean a severe orthopedic impairment which adversely affects a child's development or educational performance. The term includes impairments caused by congenital anomaly, impairments caused by disease, and impairments from other causes.

003.08I Other health impairments shall mean:

003.08I1 Having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia; which adversely affects a child's development or educational performance.

003.08J Specific learning disability shall mean a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor disabilities; of mental handicaps; of behavioral disorders; or of environmental, cultural, or economic disadvantage.

003.08K Speech or language impairments shall mean a communication disorder such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's development or educational performance.

003.08L Traumatic brain injury shall mean an injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects educational performance. The term includes open or closed head injuries resulting in impairments in one or more areas, including cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not include brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

003.08M Visual impairment shall mean a visual impairment which, even with correction, adversely affects a child's development or educational performance. The term includes both partially seeing and blind.

003.09 Consent shall mean that the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; that the parent understands and agrees in writing to the proposed activity; that the consent includes a description of the proposed activity and a list of records (if any) which will be released and to whom they will be released and the parent understands that the granting of consent is voluntary and may be revoked at any time. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

003.10 Controlled substance means a drug or other substance identified under schedules I, II, III, IV or V in Section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c).

003.11 Cooperative shall mean two or more school districts or an Educational Service Unit approved by the Department of Education to jointly perform special education functions, including receipt of special education payments.

003.12 Core Academic Subject has the meaning given the term in Section 602(4) of the Individuals with Disabilities Education Act of 2004. (See Appendix A)

003.13 Day means calendar day unless otherwise indicated as business day, working day, or school day;

003.13A Business day or working day means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day);

003.13B School day means any day, including a partial day, that children are in attendance at school for instructional purposes. The term school day has the same meaning for all children in school, including children with and without disabilities.

003.14 Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

003.15 Early childhood special education (ECSE) programs shall mean special education programs and related services designed to serve children with verified disabilities below age five.

003.16 Early Intervention shall mean services that are designed to meet the developmental needs of each eligible child and the needs of the family related to enhancing the child's development; are selected in collaboration with the parents; are provided under public supervision by qualified personnel; in conformity with an individualized family service plan and at no cost to the family; and meet the standards of the state.

003.17 Education records means those records that are directly related to a student which are maintained by an educational agency or institution or by a party acting for the agency or institution. This term parallels the definition contained in the regulations implementing the Family Educational Rights and Privacy Act.

003.18 Educational sign language interpreter shall mean a person who provides interpreter services for individuals with deafness or hearing impairments for special education evaluations or services pursuant to IEPs and IFSPs; and who is qualified to facilitate communication between people who do not share a common language or mode of communication.

003.19 Evaluation shall mean procedures used to assist in the determination of whether a child has a disability and the nature and extent of the special education and related services that the child needs. Evaluation for infants and toddlers shall mean the procedures used by appropriate qualified personnel to determine a child's initial and continuing eligibility within the 13 categories as defined in Section 006, including determining the status of the child in each of the developmental areas of cognitive development, physical development including vision and hearing, communication development, social or emotional development, or adaptive development.

003.20 Excess cost shall mean the difference between: (1) the total allowable cost of the special education programs excluding residential care, and (2) the number of students (full time equivalency) in the special education program multiplied by the adjusted average per pupil cost of the school district of each child for the preceding year.

003.21 Extended school year services means special education and related services that: are provided to a child with a disability; beyond the normal school year of the school district; in accordance with the child's IEP; at no cost to the parents of the child; and meet the requirements of 92 NAC 51.

003.22 Free appropriate public education or FAPE shall mean special education and related services which are provided at public expense, under public supervision and direction, at no cost to parents and in conformity with an individual education program or individualized family service plan which meets the requirements of Section 007, which meets the standards of the state, including the requirements of this ~~r~~Rule and includes birth to age five, elementary or secondary school education.

003.23 Full time equivalency (FTE) shall mean the amount of time an individual staff member spends in his or her position assignment as it relates to the total time in the work week defined for that position by each district.

003.24 Functional behavioral assessment is the process for gathering information that may be used to maximize the effectiveness and efficiency of behavior support (direct observation must be included). It involves a description of the problem behavior, the identification of antecedents which occasion the behavior and consequences which maintain it, the function the behavior serves (e.g., attention, communication, task avoidance), and the selection of alternative behaviors which will provide the same function.

003.25 Homeless children has the meaning given the term homeless children and youth in Section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a).

003.26 Illegal drug means a controlled substance but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act (21 U.S.C. 812(c)) or under any other provisions of federal law.

003.27 Include means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

003.28 Independent educational evaluation shall mean an evaluation conducted by a qualified professional who is not employed by the school district responsible for the education of the child in question.

003.29 Individual education program (IEP) shall mean a written statement for a child with verified disabilities that is developed, reviewed and revised in a meeting in accordance with Section 007.

003.30 Individualized Family Service Plan (IFSP) shall mean a written plan for providing early intervention services to a child with a disability age birth through age two and the child's family that is developed and implemented in accordance with Section 007.

003.31 Individuals with Disabilities Education Act (IDEA) Early Intervening Services shall mean the development and implementation of coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade 3) who have not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment.

003.32 Infant or toddler with disabilities shall mean a child, two years of age or younger, who need early intervention services because they are experiencing developmental delays in one of the following areas: cognitive development, physical development (including vision and hearing); communication development; social or emotional development; or adaptive development or has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay. Toddlers who reach age three during the school year shall remain eligible throughout that school year.

003.33 Level I special education services shall mean those services provided to students who require an aggregate of not more than three (3) hours of such services per week. Level I special education services may be provided for or contracted for and shall include all administrative, diagnostic, consultative, vocational adjustment counselor services and support services. Administration, diagnostic services, and special education staff consultation with other staff shall not be included in the computation of hours of services provided to a student each week.

003.34 Level I and Level II Combination Special Education Services shall mean those special education programs which serve both Level I and Level II students in a combined program.

003.35 Level II Special Education Services shall mean those special education and related services which are provided for a period of time exceeding an aggregate of three hours per week.

003.36 Level III Special Education Contractual Services shall mean those special education and related services provided in an educational setting not operated by the school district whose rates are approved by the Department of Education. This shall mean special education and related services provided for a period of time exceeding an aggregate of three hours per week.

003.37 Life support equipment shall mean equipment used to maintain or sustain life functions.

003.38 Limited English Proficient has the meaning given the term in Section 602(18) in the Individuals with Disabilities Act of 2004. (See Appendix A)

003.39 Mediation is a voluntary method of dispute resolution which enables people in conflict to reach a mutually agreeable solution to their problem with the assistance of a neutral mediator.

003.40 Multicategorical program shall mean a special education program setting which provides services to any combination of categories of students with disabilities.

003.41 Multidisciplinary evaluation team (MDT) shall mean a group of persons whose responsibility is to evaluate the abilities and needs of a child referred for evaluation and to determine whether or not the child meets the eligibility criteria in Section 006.

003.42 Native language, if used with reference to an individual of limited English proficiency, means the language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except in all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment. For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication). For infants and toddlers, native language when used with reference to persons of limited English proficiency, means the language or mode of communication normally used by the parent of a child.

003.43 Natural environments means settings that are natural or normal for the child's age peers who have no disability.

003.44 Notice shall mean written information provided to the parent of a child with disabilities before the school district proposes or refuses to initiate or change identification, evaluation, or educational placement of a child or the provision of a free appropriate public education.

003.45 Paraeducator shall mean an individual who serves under the supervision of a certificated or licensed staff member as an assistant in the educational process or residential care staff under the supervision of certificated staff and defined in Section 010.

003.46 Parent means a natural, adoptive, or foster parent of a child; a guardian but not the State if the child is a ward of the State; a person acting in the place of a natural or adoptive parent (including a grandparent, stepparent or other relative with whom the child lives, or a person who is legally responsible for the child's welfare); or a surrogate parent who has been appointed in accordance with 92 NAC 51-009.08.

003.47 Personal equipment and supplies shall mean items necessary for daily life activities occurring outside the requirement of the IEP or IFSP which are generally expected to be the responsibility of parents.

003.48 Personally identifiable means that information includes the name of the child, the child's parent or other family member; the address of the child; a personal identifier such as the child's social security number or student number, or a list of personal characteristics or other information which would make it possible to identify the child with reasonable certainty.

003.49 Referral shall mean the submission of a request for an individual evaluation of a child suspected of having a disability.

003.50 Related services shall mean transportation and such corrective, developmental, and other supportive services as required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, parent counseling and training, orientation and mobility services, and school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child. The term does not include a medical device that is surgically implanted, or replacement of such device.

003.51 Residential care shall mean food and lodging and any other related expenses which are not part of the education program, but such care shall not include expenditures for medical or dental services. (See 92 NAC 53.)

003.52 School age programs shall mean special education programs and related services designed to serve children with verified disabilities from age five through the school year in which the student reaches age twenty-one. Children who have reached their fifth birthday prior to October 15 shall be considered school age.

003.53 School district shall mean a public school district or a cooperative, approved as an NDE special education service provider.

003.54 School year for infants and toddlers shall be September 1 through August 31.

003.55 Serious bodily injury shall have the meaning given the term “serious bodily injury” under paragraph (3) of Subsection (h) of Section 1365 of Title 18, United States Code.

003.56 Service agency shall mean the school district, educational service unit, local or regional office of mental retardation or some combination thereof, or such other agency approved by the Department of Education as may provide a special education program including an institution not wholly owned or controlled by the state or a political subdivision.

003.57 Services coordination shall mean a flexible, individualized process of interaction facilitated by a services coordinator to assist a family of an eligible infant or toddler with disabilities within a community to identify and meet the child's and family's needs through coordination of informal and formal supports.

003.58 Service provider shall mean an individual or service agency, excluding a school district or approved cooperative, provisionally approved by the Department of Education.

003.59 Special education shall mean specially designed instruction, at no cost to the parent, to meet the unique needs of a child with a verified disability, including classroom instruction, instruction in physical education, home instruction and instruction in hospitals and institutions. The term includes speech-language pathology, occupational therapy and physical therapy if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.

003.60 Student assistance team (SAT) shall mean a group of persons utilizing problem solving and intervention strategies to assist the teacher(s) in the provision of general education.

003.61 Supplementary aids and services shall mean, aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with Section 008 of this Chapter.

003.62 Support services shall mean preventative services for students not identified or verified as having a disability as per Section 006 but who demonstrate a need for specially designed assistance in order to benefit from the school's general education curriculum and to avoid the need for potentially expensive special education placement and services.

003.63 Surrogate parent shall mean an individual appointed by the school district to act in place of a parent in safeguarding a child's rights in the special education decision making process.

003.64 Teacher meeting IDEA 2004 criteria, for any special education teacher has the meaning given in Section 602(10) of the Individuals with Disabilities Education Act of 2004. (See Appendix A)

003.65 Transition services shall mean a coordinated set of activities for a student with a disability that is designed to be within a results-oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's, movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; is based upon the individual student's needs, taking into account the child's strengths, preferences, and interests; and includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation. Transition services for students with disabilities may be special education, if provided as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education.

003.66 Universal design has the meaning given the term in Section 3 of the Assistive Technology Act of 1998 (29 U.S.C. 3002).

003.67 Ward of any court shall mean any minor child who, by virtue of a court order entered by a court of competent jurisdiction, has been adjudicated to be a ward of the court.

003.68 Ward of the state means a child who, as determined by the State where the child resides, is a foster child, is a ward of the State, or is in the custody of a public child welfare agency. The term does not include a foster child who has a foster parent who meets the definition of a parent in 003.46.

003.69 Weapon shall mean a dangerous weapon as defined in 18 U.S.C. 930(g)(2) to mean a device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2-1/2 inches in length.

004 Responsibility for Special Education Programs

004.01 All providers of special education services shall be under the general supervision of the Department of Education for the purpose of meeting the standards of this Chapter. School districts shall insure that all children with verified disabilities, from birth through the school year in which the student reaches age twenty-one, including children who have been suspended or expelled from school, have available to them a free appropriate public education (FAPE) which includes special education and related services to meet their unique needs. School districts' responsibility to ensure the availability of FAPE includes ensuring the availability of FAPE for resident students in detention facilities, correctional facilities, jails and prisons.

004.02 The school district shall ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child is advancing from grade to grade.

004.02A The determination that a child described in 92 NAC 51-004.02 is eligible under this part, must be made on an individual basis by the multidisciplinary evaluation team.

004.03 Exceptions to the Requirement to Provide a Free Appropriate Public Education

004.03A Students with disabilities who have graduated from high school with a regular high school diploma are not eligible to receive a FAPE.

004.03A1 The exception in 92 NAC 51-004.03A does not apply to students who have graduated but have not been awarded a regular high school diploma.

004.03A2 Graduation from high school with a regular diploma constitutes a change in placement, requiring written prior notice in accordance with 92 NAC 51-009.03.

004.04 Participation in or attendance at programs by children with verified disabilities from date of diagnosis to age five shall be voluntary as specified by the parent.

004.05 Participation in Assessments

004.05A School districts shall include all students with disabilities in all general state and district-wide assessment programs, including assessments described under Section 612(a)(16)(A) of the Individuals with Disabilities Education Act of 2004 (See Appendix A), with appropriate accommodations, modifications and alternate assessments where necessary and as indicated in their respective individualized education programs.

004.05B In the case of a district-wide assessment, the school district shall develop guidelines for the provision of appropriate accommodations and modifications.

004.05C In the case of a district-wide assessment, the school district shall develop and implemented guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments under 92 NAC 51-004.05A with accommodations or modifications as indicated in their respective individualized education programs. The guidelines shall provide for alternate assessments that:

004.05C1 are aligned with the Nebraska Department of Education's challenging academic content standards and challenging student academic achievement standards; and

004.05C2 if the Nebraska Department of Education has adopted alternate academic achievement standards permitted under Section 612(a)(16)(C)(ii)(II) of the Individuals with Disabilities Education Act of 2004 (See Appendix A), measure the achievement of children with disabilities against those standards.

004.05D School districts shall make available to the public, and report to the public with the same frequency and in the same detail as they report on the assessment of nondisabled children, the following:

0004.05D1 The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations in order to participate in these assessments.

004.05D2 The number of children with disabilities participating in alternate assessments described in 92 NAC 51-004.05C1.

004.05D3 The number of children with disabilities participating in alternate assessments described in 92 NAC 51-004.05C2.

004.05D4 The performance results of children with disabilities on regular assessments and on alternate assessments (if the number of children with disabilities participating is sufficient to yield statistically reliable information and reporting that information will not reveal personally identifiable information about an individual student), compared with the achievement of all children, including children with disabilities, on those assessments.

004.05D5 Reports to the public under 92 NAC 51-004.05D must include:

004.05D5a aggregated data that include the performance of children with disabilities together with all other children; and

004.05D5b disaggregated data on the performance of children with disabilities.

004.05E In the case of a district-wide assessment, the school district or approved cooperative shall, to the extent feasible, use universal design principles in developing and administering any assessments under this Section.

004.06 Reporting of Information Regarding Children with Disabilities

004.06A Individual child information shall be reported to NDE on forms or in a manner prescribed by the Special Education Office. Each school district or approved cooperative shall maintain and report the following information for children with verified disabilities receiving services according to an individual education program:

004.06A1 Name (or identifier approved by NDE) and birthdate;

004.06A2 County, district of legal residence and building of attendance;

004.06A3 Program and instructional setting attended;

004.06A4 Type(s) of disability;

004.06A4a Secondary and tertiary disabilities for a verified child if the secondary or tertiary disability is in the category of multiple impairment, deaf-blind, hearing impairment, or visual impairment;

004.06A5 Race/ethnicity, gender, and limited English proficiency;

004.06A6 Type(s) of service received;

004.06A7 Indication of percent of time spent receiving special education service (for inclusive and segregated settings) and in regular education;

004.06A8 Date and reason for exiting special education or early intervention services;

004.06A9 State Ward Status and indication of appointment of surrogate if required;

004.06A10 The incidence and duration of disciplinary actions by race, ethnicity, limited English proficiency status, gender, and disability category, of children with disabilities, including suspensions of one day or more.

004.06A11 The number and percentage of children with disabilities who are removed to alternative educational settings or expelled as compared to children without disabilities who are removed to alternative educational settings or expelled.

004.06A12 Initial verification date and disability for children verified pursuant to 92 NAC 51-006.04;

004.06A13 Whether the student received a regular diploma based on the same standards as general education peers or based on the goals met in the student's IEP.

004.06B This data shall be updated at least annually to reflect change(s) in the above information.

004.06C School districts or approved cooperatives and approved service providers shall confirm their total child count as of December 1 of each year. The December 1 child count confirmation must be postmarked or hand delivered to the NDE on or before December 10 of each year. Failure to meet the requirements of 004.06 will result in implementation of procedures specified in 92 NAC 51-004.14.

004.07 A school district or approved cooperative shall submit a single district plan, participate in a plan submitted by a cooperative approved by the Department of Education, or any combination thereof. The State Board of Education shall approve or disapprove cooperatives for direct receipt of payment based on the following criteria:

004.07A The cooperative must be administered by a school district or an Educational Service Unit;

004.07B The participating school districts have certified that the cooperative is authorized to receive special education payments due the districts;

004.07C The cooperative provides evidence of agreements and procedures which provide for long term operation;

004.07D The cooperative proposes to operate programs which can be expected to increase program and financial efficiency and effectiveness; and

004.07E The cooperative provides evidence that the proportionate financial share as determined by the provisions of Sections 011 and 012 of each participating school district can be determined and documented.

004.08 School District or Approved Cooperative Special Education Policies and Procedures

004.08A The school district or approved cooperative shall develop, adopt and have on file with the Nebraska Department of Education current policies, procedures and forms for special education programs for all resident public and nonpublic school children with disabilities, in accordance with all applicable state and federal requirements. Policies and procedures shall govern identification, evaluation and verification, individual education program, placement (least restrictive environment), confidentiality, procedural safeguards, comprehensive system of personnel development, transportation, and surrogate parents within the school district or approved cooperative. Additionally, policies and procedures shall govern free appropriate public education, child find, transition from Part C of the IDEA to preschool programs, children in nonpublic schools, personnel standards, performance goals and indicators, participation in assessments, reports related to assessments, and suspension and expulsion rates.

004.09 Notice and Opportunity for Hearing Before Withholding Funds

004.09A A school district or an approved cooperative shall be notified by certified mail to the head administrator whenever the Special Education Office intends to recommend to the State Board of Education that funds be withheld from the school district or approved cooperative.

004.09B Within 21 calendar days of the school district's or approved cooperative's receipt of the notice of the Special Education Office's intention to recommend withholding funds to the State Board of Education, the school district or approved cooperative may request in writing a review by the Commissioner or designee. Following the review, the Commissioner or designee shall:

004.09B1 Notify the school district or approved cooperative by certified mail that, based upon the review, (s)he will recommend to the State Board of Education that funds be withheld from the school district or approved cooperative, or

004.09B2 Notify the school district or approved cooperative that funds will not be withheld.

004.09C Within 30 calendar days of receipt of the notice of the Commissioner's intention to withhold funds, the school district or approved cooperative may request in writing a hearing before the State Board of Education. The hearing shall be conducted in accordance with the hearing procedures of 92 NAC 61, including provisions of that Chapter relating to evidence.

004.10 Children with Disabilities who are Wards of the State or Court

004.10A Responsibility for the provision and payment of a free appropriate public education for wards of the state or court is determined pursuant to Neb. Rev. Stat. 79-215.

004.11 Special Requirements

004.11A Each school district shall take steps to insure that its children with verified disabilities have available to them the variety of educational programs and services available to children without disabilities in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

004.11B Each school district or approved cooperative shall comply with any federal health or safety requirements that apply to the facilities that the school district or approved cooperative uses to provide a free appropriate public education for children with verified disabilities.

004.11C Each school district or approved cooperative shall administer or supervise the administration of all educational programs for children with verified disabilities.

004.11D Prohibition on mandatory medication:

004.11D1 The school districts, approved cooperatives and special education and related services providers are prohibited from requiring a child to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. 801 et. seq.) as a condition of attending school, receiving an evaluation under Section 006 of this Chapter, or receiving services under 92 NAC 51.

004.011D2 Nothing in 92 NAC 51-004.11D1 shall be construed to create a prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services.

004.12 Innovative Educational Projects

004.12A School districts and approved cooperatives wishing to conduct innovative educational projects for the purpose of improving instruction or increasing educational opportunities for children with disabilities that would result in deviating from the standards in this Chapter, shall submit a detailed written plan to the Commissioner of Education.

004.12A1 The length of the project must be specified in the plan, not to exceed three years, and must provide for an annual review of the progress of the program.

004.12A2 If the submitted project requires a waiver of any of the provisions of this Chapter which are not required by State statute and Federal law or regulation, the Commissioner shall submit the plan to the State Board of Education with recommendations.

004.12A3 The State Board of Education may approve the requested plan if the plan demonstrates that it promotes quality learning, equity, accountability and that the Commissioner of Education will be informed annually of the progress and the project results.

004.12A4 The State Board of Education shall reject the plan if, in its opinion, the plan would not promote quality learning, equity, accountability or if it does not provide that the Commissioner of Education will be informed annually of the progress of the plan. The State Board of Education shall also reject the plan if, in the State Board of Education's opinion, the plan results in a deviation of standards contained in this chapter which are specifically required by statute or federal law or regulation.

004.12B If Nebraska is selected to participate in the U.S. Department of Education pilot projects for Paperwork Reduction or Multi-Year IEPs, those sections of 92 NAC 51 referenced in the application for participation shall be waived, as approved by the U.S. Department of Education and the pilot projects shall be implemented in accordance with section 614(d)(5) and 609 of The Individuals with Disabilities Education Improvement Act of 2004 (20 U.S.C. 1414 and 1408).

004.13 All school districts or approved cooperatives shall participate in an ongoing review of their special education programs utilizing the Improving Learning for Children with Disabilities process (ILCD).

004.14 All special education programs must comply with the requirements of state and federal law and regulation concerning the education of children with disabilities.

004.14A Failure to comply with the provisions of state and federal statute and administrative rules concerning education of children with disabilities shall result in notification of school districts or approved cooperatives of the specific program deficiencies by the Special Education Office.

004.14B School districts or approved cooperatives shall be afforded 45 days to respond to the initial notification with a report of the resolution of the deficiencies or a plan for resolution.

004.14C School districts or approved cooperatives failing to respond as set forth in 92 NAC 51-004.14B shall be afforded an additional 30 days following contact from the Administrator of the Special Education Office or the designee of the Administrator to correct the deficiencies.

004.14D Deficiencies not corrected according to the timelines set forth in 92 NAC 51-004.14 shall be subject to the procedures outlined in 92 NAC 51-004.09.

004.14E Any school district or approved cooperative not meeting the requirements of this Chapter shall be in violation of the law. No state or federal funds shall be paid to any school district or approved cooperative as long as such violation exists, but no deduction shall be made from any funds required by the Constitution of the State of Nebraska to be paid to such district.

004.15 Access to Instructional Materials

004.15A Not later than June 30, 2007, a school district or approved cooperative that chooses to coordinate with the National Instructional Materials Access Center, when purchasing print instructional materials, shall enter into a written contract with the publisher of the print instructional materials to:

004.15A1 Require the publisher to prepare and, on or before the delivery of the print instructional materials, provide to the National Instructional Materials Access Center, electronic files containing the contents of the print instructional materials using the Instructional Materials Accessibility Standard; or

004.15A2 Purchase instructional materials from a publisher that are produced in or may be rendered in, specialized formats.

004.15B Nothing in this section shall be construed to require a school district or approved cooperative to coordinate with the National Instructional Materials Access Center. If a school district or approved cooperative chooses not to coordinate with the National Instructional Materials Access Center, the school district or approved cooperative shall provide an assurance to the Nebraska Department of Education that the school district or approved cooperative will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

005 Early Childhood Planning Region Teams

005.01 Early Childhood Planning Region Teams for Children Birth to Age Five

005.01A The lead agency, school district, approved cooperative or Educational Service Unit designated to coordinate planning region meetings shall invite representatives from the following groups:

005.01A1 Family members of children with disabilities (a minimum of 20% of the invited team members must be family members);

005.01A2 School districts, approved cooperatives and Educational Service Units;

005.01A2a School district or approved cooperative personnel serving on the Planning Region Team are selected at the discretion of the school district or approved cooperative, but shall include: a school district or approved cooperative administrator or a designated representative;

005.01A3 Nebraska Department of Health and Human Services;

005.01A4 Agency(ies) providing health and medical services in the Planning Region;

005.01A5 Head Start;

005.01A6 Agencies representing traditionally underserved children and families, including low income, inner-city, minority populations and rural areas;

005.01A7 Child care providers;

005.01A8 Representative of the services coordination contracting agency; and

005.01A9 Other relevant agencies or persons serving children with disabilities and their families.

005.01B The Planning Region Team shall:

005.01B1 Establish operational procedures;

005.01B2 Determine a local lead agency to assist in the coordination of the Planning Region Team activities stated in the Nebraska Department of Health and Human Services Early Intervention Regulations; and

005.01B3 Assist each school district or approved cooperative in the ILCD process and ongoing activities for children with verified disabilities from birth to age five through a plan of services prepared on a regional basis and updated annually. Such plans must address gaps and barriers in service delivery, training and technical assistance and resources as identified by services coordinators and planning region team members.

005.02 Each school district or approved cooperative shall demonstrate participation in a plan of services for children with disabilities from birth to age five. Such plans shall be prepared on a regional basis as determined by the Nebraska Department of Education.

005.03 Annual Meetings

005.03A The annual meeting must be conducted prior to July 1 of each year.

005.03B The date and place of the annual meeting shall be disseminated within the region so that all school districts, approved cooperatives, service providers, parents, and nonpublic agencies serving children below age five have access to the information.

005.03C A written report of the annual meeting shall be prepared, which includes a list of gaps and barriers. The written report shall be submitted to the Nebraska Department of Education on a date specified by the Department.

005.03D A Planning Region Team meeting as described in 92 NAC 51-005.01 may serve as the annual meeting provided the requirements of 92 NAC 51-005.02 are met.

005.04 Services Coordination

005.04A Any educational agency providing services coordination for infants and toddlers within a Planning Region shall do so only through a contract or subcontract with the Nebraska Department of Health and Human Services and in accordance with the Department of Health and Human Services Early Intervention Regulations.

006 Identification of Children with Disabilities, Multidisciplinary Teams and Reporting of Diagnostic Data

006.01 Child Find

006.01A All children with disabilities, including children with disabilities who are homeless children or wards of the State and children with disabilities attending nonpublic schools, regardless of the severity of their disabilities, and who are in need of special education and related services, shall be identified, located, and evaluated and a practical method shall be developed and implemented to determine which children with disabilities are currently receiving needed special education and related services. For infants and toddlers, districts shall demonstrate targeted efforts to meet the needs of children from historically underserved populations, particularly minority, low-income, inner-city and rural populations, and children with disabilities who are wards of the state.

006.01A1 The child find requirements apply to highly mobile children with disabilities (such as migrant and homeless children); and to children under the age of 3 who are involved in a substantiated case of child abuse or neglect; who are identified as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure.

006.01A2 A child who is suspected of being a child with a disability under 92 NAC 51-003.08 and in need of special education, even though they are advancing from grade to grade.

006.01B Within 45 calendar days after a public agency which includes the Nebraska Department of Health and Human Services and the Nebraska Department of Education and any other political subdivisions that are responsible for providing early intervention services to children and their families receives a referral concerning an infant or toddler, the school district or approved cooperative shall:

006.01B1 Complete the multidisciplinary evaluation in accordance with Section 006; and

006.01B2 Participate in an IFSP meeting in accordance with Section 007 of this Chapter.

006.01C Student Assistance Team (SAT) or Comparable Problem Solving Team

006.01C1 For a school age student, a general education student assistance team or a comparable problem solving team shall be used prior to referral for multidisciplinary team evaluation.

006.01C2 The SAT or comparable problem solving team shall utilize and document problem solving and intervention strategies to assist the teacher in the provision of general education.

006.01C3 If the student assistance team or comparable problem solving team feels that all viable alternatives have been explored, a referral for multidisciplinary evaluation shall be completed. A referral shall include information from the SAT or comparable problem solving team, meeting the requirements of 92 NAC 51-006.01C and a listing of the members of the SAT or comparable problem solving team.

006.02 Consistent with 92 NAC 51-009.05, 009.06 and 009.07, a parent of a child, the Nebraska Department of Education, another State agency or a local school district or approved cooperative may initiate a request for an initial evaluation to determine if the child is a child with a disability.

006.02A Except for infants and toddlers, the resident school district or approved cooperative shall conduct a full and individual initial evaluation for each child being considered for special education and related services before the initial provision of special education and related services to a child with a disability. The initial evaluation shall determine whether a child is a child with a disability, and the educational needs of the child. For infants and toddlers, early intervention services in accordance with 92 NAC 51-007.13, may begin prior to completion of a full and individual initial evaluation.

006.02A1 In implementing the requirements of 92 NAC 51-006.02A the school district or approved cooperative shall insure that:

006.02A1a The evaluation is conducted in accordance with the procedures described in Section 006 of this Chapter.

006.02A1b The results of the evaluation are used by the child's IEP team in meeting the requirements of Section 007 of this Chapter.

006.02B School districts or approved cooperatives shall insure, at a minimum, that the following requirements are met:

006.02B1 Assessments and other evaluation materials used to assess a child under this Chapter;

006.02B1a Are selected and administered so as not to be discriminatory on a racial or cultural basis; and

006.02B1b Are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally and functionally, unless it is not feasible to, provide or administer;

006.02B1b(i) For infants and toddlers, tests and other evaluation materials and procedures are administered in the native language of the parent or other mode of communication, unless it is clearly not feasible to do so.

006.02B1c Are used for purposes for which the assessments or measures are valid and reliable.

006.02B2 Assessments of children with disabilities who transfer from one school district or approved cooperative to another school district or approved cooperative in the same academic year are coordinated with such children's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

006.02B3 Materials and procedures used to assess a child with limited English proficiency are selected and administered to insure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.

006.02B4 A variety of assessment tools and strategies are used to gather relevant functional, developmental and academic information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining:

006.02B4a Whether the child is a child with a disability under 92 NAC 51-003.08; and

006.02B4b The content of the child's IEP.

006.02B5 Any standardized tests that are given to a child:

006.02B5a Have been validated for the specific purpose for which they are used; and

006.02B5b Are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessments.

006.02B5b(i) If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test, or the method of the test administration) must be included in the evaluation report.

006.02B6 Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

006.02B7 Tests are selected and administered so as best to insure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

006.02B8 No single measure or assessment is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.

006.02B9 The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

006.02B10 In evaluating each child with a disability under Section 006, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

006.02B11 The school district or approved cooperative uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

006.02B12 The school district or approved cooperative uses assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.

006.02C In interpreting evaluation data for the purpose of determining if a child is a child with a disability and the educational needs of the child, each school district or approved cooperative shall:

006.02C1 Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and

006.02C2 Insure that information obtained from all of these sources is documented and carefully considered.

006.02D Evaluation and assessment for infants and toddlers

006.02D1 An evaluation is conducted in accordance with Section 006 of this Chapter to determine eligibility for services including determining the status of the child in each of the developmental domains.

006.02D2 After a child has been verified the district must conduct an assessment of the unique needs of the child in terms of each of the developmental areas to identify services appropriate to meet the needs of the child.

006.03 Multidisciplinary Evaluation Team (MDT) Requirements

006.03A The multidisciplinary evaluation team (including the child's parents) shall be responsible for the analysis, assessment and documentation of educational and developmental abilities and needs of each child referred for the purpose of individual evaluation. Using the documentation collected and the verification criteria found in Section 006 of this Chapter and the definition found in 92 NAC 51-003.08, the MDT shall make all verification decisions. Documented information shall be collected to facilitate the development of a statement of present level of development and educational performance on the IFSP or IEP.

006.03B For students attending nonpublic schools, an administrator of the nonpublic school or a designated representative of the nonpublic school shall be a member of the MDT.

006.03C In making a determination of eligibility, a child shall not be determined to be a child with a disability if the determining factor is lack of appropriate instruction in reading, including in the essential components of reading instruction as defined in Section 614(a)(5)(A) of the Individuals with Disabilities Education Act of 2004 (See Appendix A), lack of instruction in math, or limited English proficiency.

006.03D If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with Section 007 of this Chapter.

006.03E Multidisciplinary Evaluation Team Written Report (for all suspected disabilities except specific learning disabilities)

006.03E1 The team shall prepare a written report of the results of the evaluation.

006.03E2 The report shall include a statement of:

006.03E2a Whether the child qualifies as a child with a disability based on the criteria contained in 92 NAC 51-006.04 and definition contained in 92 NAC 51-003.08 with reference to the specific disability;

006.03E2b The child's educational needs;

006.03E2c The basis for making the determination; and

006.03E2d A listing of the team members.

006.03E3 Each team member shall certify in writing if the report reflects his or her conclusion. If it does not reflect his or her conclusions, the team member shall submit a separate statement presenting his or her conclusion.

006.03E4 A copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent.

006.03F Multidisciplinary Evaluation Team Written Report for a Child with a Suspected Specific Learning Disability

006.03F1 The MDT shall prepare a written report of the results of the evaluation.

006.03F2 The report shall include a statement of:

006.03F2a Whether the child has a specific learning disability based on the criteria contained in 92 NAC 51-006.04K and the definition found in 92 NAC 51-003.08J.

006.03F2b The child's educational needs;

006.03F2c The basis for making the determination;

006.03F2d The relevant behavior noted during the observation of the child;

006.03F2e The relationship of that behavior to the child's academic functioning;

006.03F2f The educationally relevant medical findings, if any;

006.03F2g The determination of the team concerning the effects of environmental, cultural, or economic disadvantage; and

006.03F2h A listing of the team members.

006.03F3 Each team member shall certify in writing if the report reflects his or her conclusion. If the report does not reflect his or her conclusions, the team member shall submit a separate statement presenting his or her conclusion.

006.03F4 A copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent.

006.03G For a school age student who after initial MDT evaluation does not qualify for special education services or for a student with a verified disability who upon reevaluation no longer qualifies for special education services, a problem solving team shall document a plan to assist the teacher(s) in the provision of regular education.

006.04 Eligibility for Special Education

006.04A School districts or approved cooperatives shall provide special education services only to children with verified disabilities.

006.04B Autism

006.04B1 The MDT shall include at least:

006.04B1a A school psychologist or licensed psychologist;

006.04B1b The child's teacher(s) or a teacher qualified to teach a child that age;

006.04B1c A speech-language pathologist;

006.04B1d A school district or approved cooperative administrator or a designated representative; and

006.04B1e The child's parent(s).

006.04B2 In order for a child to be verified as having autism, the evaluation shall include the analysis and documentation of the manifestation of severe developmental and educational problems exhibited in varying degrees of atypical behavior in each of the following areas:

006.04B2a Disturbance of developmental rates and sequence. The child's developmental profile reflects varied developmental age levels for skills. The child exhibits delays, arrests, or regressions in physical, social, sensory processing, or learning skills. Areas of precocious or advanced skill development may also be present, while other skills may develop at normal or extremely depressed rates. The order of skill acquisition frequently does not follow normal developmental patterns.

006.04B2b Disturbance of responses to sensory stimuli. The child exhibits unusual, repetitive or nonmeaningful responses to auditory, visual, olfactory, gustatory, tactile, and/or kinesthetic stimuli. The child's behavior may vary from high levels of activity and responsiveness to low levels.

006.04B2c Disturbance of cognitive processes. The child exhibits abnormalities in the thinking process and in generalization. Delayed intellectual functioning may or may not be present. In addition, one or more of the following occurs:

006.04B2c(1) Difficulties in abstract thinking, awareness, or judgment;

006.04B2c(2) Perseverative thinking; or

006.04B2c(3) Impaired ability to process symbolic information.

006.04B2d Disturbance of communication. The child exhibits a qualitative impairment in verbal and/or nonverbal communication. The impairment includes problems that extend beyond speech and language to many aspects of the communicative process. Speech and/or language are either absent, delayed, or disordered.

006.04B2e Disturbance in relating to people, events and objects. The child displays difficulties in relating to people, events and/or objects. Often the child is unable to establish and maintain reciprocal relationships with people. Their capacity to use objects in an age appropriate or functional manner may be absent, arrested, or delayed. The child responds positively to consistency in environmental events to the point of exhibiting rigidity in routines. The child displays marked distress over changes, insistence on following routines and/or a persistent occupation with or attachment to objects. The child may display a markedly restricted range of interest and/or stereotyped body movements. There may be a lack of interest or an inability to engage in imaginative activities.

006.04C Behavioral Disorder

006.04C1 The MDT shall include at least:

006.04C1a A school psychologist or licensed psychologist;

006.04C1b One of the child's teachers or a teacher qualified to teach a child of that age;

006.04C1c A special educator;

006.04C1d A school district or approved cooperative administrator or a designated representative; and

006.04C1e The child's parent(s).

006.04C2 A child who is verified behaviorally disordered shall demonstrate patterns of situationally inappropriate behavior which deviates substantially from the behavior of his or her age group with frequency, intensity, and duration. The child's inappropriate behavior shall interfere significantly with educational performance.

006.04C3 For a school age student, delinquency, discipline problems, substance abuse or social maladjustment shall not be the exclusive basis for verification.

006.04C4 Evaluation components by the multidisciplinary evaluation team shall include:

006.04C4a Direct observation. There will be measures of actual behavior which include the specific recording, through systematic formal observations, of the child's behavior including the frequency of the behaviors of concern. Careful documented observation of the varied activities and situations should be completed by at least one member of the multidisciplinary team other than the classroom teacher or the early childhood teacher. Documented observations should include:

006.04C4a(1) Identification of behaviors of concern, including identification of age or situationally inappropriate behaviors;

006.04C4a(2) Frequency of behaviors, i.e., the rate at which the behaviors occur within a specific length of time;

006.04C4a(3) Intensity of behaviors, i.e., level or severity of the behaviors;

006.04C4a(4) Duration of the behaviors, i.e., occurrence of behaviors through time;

006.04C4a(5) Comparable data for randomly selected nonidentified peers in comparable situations.

006.04C4b Reported behavior. There will also be measures of reported behavior that might include information gathered through checklists or rating scales and interviews which document the perceptions of school personnel and the parent or guardian regarding the behavioral pattern of the referred child.

006.04C4c Setting Analysis Data. Information should be gathered through observation, anecdotal record review, setting checklists, and interviews describing the setting from which a child was referred. Social functioning data should be gathered from sources such as teacher interviews and sociometric measures to identify how the referred child interacts with his or her peers. For a school age student, prior attempts to modify the student's educational program so as to make behavioral and academic achievement possible in the current placement should be documented.

006.04C4d Social-affective Assessment Data. Information about the social and emotional development of the child, including unique personal attributes, personal feelings, attitudes, perceptions, and thought processes, should be identified through child, parent and teacher interviews and other relevant procedures.

006.04C4e Academic achievement data. For a school age student, there shall also be an assessment of the student's academic achievement to evaluate the student's learning style and educational strengths and weaknesses.

006.04C4f Developmental assessment data for a child birth to age five. The child must demonstrate a deficit of 1.3 standard deviations or greater in at least one of the following areas: (1) intellectual functioning; (2) communication; or (3) at least one component of adaptive behavior.

006.04C5 A psychiatric or psychological evaluation from an outside agency may be used as part of the evaluation data, however, the MDT shall be responsible for the consideration of all available data, including data from an outside agency.

006.04C6 When behavior problems can be attributed solely to another disability, the child's primary disability should not be considered to be behaviorally disordered.

006.04D Deaf-Blindness

006.04D1 The MDT shall be composed of those persons required to verify a hearing impairment (92 NAC 51-006.04F) and a visual impairment (92 NAC 51-006.04N).

006.04D2 The child with deaf-blindness shall meet the verification criteria for both hearing impairments and visual impairments.

006.04E Developmental Delay

006.04E1 The multidisciplinary team shall include at least:

006.04E1a Qualified professionals knowledgeable about the area(s) being evaluated (cognitive, physical, communicative, social/emotional, and adaptive behavior/skills development);

006.04E1b The child's teacher or a teacher qualified to teach a child that age;

006.04E1c A school district or approved cooperative administrator or a designated representative; and

006.04E1d The child's parent(s).

006.04E2 In order for a child birth through age 8 to be verified as having a developmental delay, the evaluation shall include the analysis and documentation of:

006.04E2a A significant delay in the function of one or more of the following areas:

006.04E2a(1) Cognitive development;

006.04E2a(2) Physical development;

006.04E2a(3) Communicative development;

006.04E2a(4) Social/emotional development;

006.04E2a(5) Adaptive behavior/skills development.

006.04E2b A significant delay in one or more of the above areas is determined by:

006.04E2b(1) Standardized Testing:

006.04E2b(1)(i) At least 2.0 standard deviations below the mean in one area of development; or

006.04E2b(1)(ii) At least 1.3 standard deviations below the mean in two areas of development

**OR**

006.04E2b(2) Informed clinical opinion of qualified professionals in consultation with the family:

006.04E2b(2)(i) When the use of standardized instruments is not applicable due to a child's need for adaptation to perform on a standardized instrument, the informed clinical opinion of qualified professionals will substantiate the significant Developmental Delay.

006.04E2b(2)(ii) Informed clinical opinion is defined as an opinion supported by procedures including clinical assessment and observation by qualified professionals to document that a child lags behind other children in reaching expected

developmental milestones for a child that age, and is not expected to achieve those milestones on the same schedule as the majority of other children. The developmental delay cannot be determined solely by standardized measures, or standardized procedures are not available for a given age or developmental area.

006.04E2b(2)(iii) Professionals who are qualified to determine eligibility through informed clinical opinion are those individuals who have current certification, licensure or registration of their specific professions and who have been trained to use methods and procedures for evaluation and assessment of infants, toddlers, and young children, birth through age 8;

**OR**

006.04E2b(3) Identification of a diagnosed condition

006.04E2b(3)(i) Children who are diagnosed as having a physical or medical condition that has a high probability of resulting in Developmental Delay are also eligible for early intervention or special education and related services. Included in this group are children who need early intervention or special education and related services because of a condition that typically results in developmental delay, even though they may not exhibit a developmental delay at the time of diagnosis.

006.04E2c The multidisciplinary team (MDT), which includes the family as participants, shall determine if a child has a significant delay in development using multiple sources of information, which shall include at least the following:

006.04E2c(i) Information provided by the family;

006.0EN2c(ii) Observations of the child;

006.04E2c(iii) Developmental history; and

006.04E2c(iv) Review of records related to the child's current health status and medical history.

006.04E2d Children birth through age two, who may be at risk of substantial developmental delay if early intervention/special education and related services are not provided, but who currently do not meet the eligibility criteria for developmental delay, are not eligible under this category.

006.04F Hearing Impairments

006.04F1 The MDT shall include at least:

006.04F1a The child's teacher or teacher qualified to teach a child that age;

006.04F1b An educator endorsed to teach a child with hearing impairments;

006.04F1c A speech-language pathologist;

006.04F1d A school district or approved cooperative administrator or a designated representative; and

006.04F1e The child's parent(s).

006.04F2 In order for a school age child to be verified as a child with hearing impairments the evaluation shall include the analysis and documentation of:

006.04F2a The adverse effect the impairment has on the development or educational performance of the child.

006.04F2b A written report signed by a licensed or certified audiologist documenting a unilateral or bilateral hearing loss based on a current audiological evaluation;

006.04F2c A documented hearing loss that has been determined or can be expected to produce a delay or interference with the development and maintenance of the following:

006.04F2c(1) Effective verbal communication;

006.04F2c(2) Expressive or receptive language development;

006.04F2c(3) Academic and vocational performance;

006.04F2c(4) Social or emotional competence; or

006.04F2c(5) Adaptive behavior skills.

006.04F3 In order for a child below age five to be verified as a child with hearing impairments, the evaluation shall include:

006.04F3a A preliminary audiometric screen; and

006.04F3b A written report signed by a licensed or certified audiologist documenting a hearing loss.

006.04F3c The analysis and documentation that the hearing loss has been determined to or can be expected to produce significant delays that would:

006.04F3c(1) Result in standardized test scores falling 1.3 standard deviations below the mean in one or more of the following areas: receptive language, expressive language, speech production or cognition; or

006.04F3c(2) Result in a social/behavioral disability.

006.04G Mental Handicap

006.04G1 The MDT shall include at least:

006.04G1a A school psychologist or licensed psychologist;

006.04G1b At least one of the child's teachers or a teacher qualified to teach a child that age;

006.04G1c A special educator;

006.04G1d A school district or approved cooperative administrator or a designated representative; and

006.04G1e The child's parent(s).

006.04G2 All test scores used in verifying a child with a mental handicap shall assume a mean of 100 and a standard deviation of 15 points.

006.04G3 School age students with a mental handicap shall be verified in one of three categories: mild, moderate, or severe/profound.

006.04G4 In order for a school age student to be verified as a student with a mental handicap: mild, the evaluation shall include the analysis and documentation of:

006.04G4a General intellectual functioning in the range of two (2.0) to three (3.0) standard deviations below the mean (I.Q. of 56 to 70) as determined by individual evaluation using appropriate instruments with commensurate documented adaptive behavior.

**OR**

006.04G4b Significant adaptive behavior and/or academic deficiencies shall occur in 1 (one) or more areas as observed in the school and/or the community and functioning at I.Q. level of 71 to 80. This may include adaptive behaviors such as communication, daily living, motor and social skills; and/or academic areas such as oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, mathematics calculation, and mathematics reasoning. Significant deficiencies are defined as standard scores of at least 2.0 standard deviations below the mean (30 standard score points).

006.04G5 In order for a school age student to be verified as a student with a mental handicap: moderate, the evaluation shall include analysis and documentation of:

006.04G5a General intellectual functioning of three (3.0) to four (4.0) standard deviations below the mean, with commensurate documented adaptive behavior. If there is a discrepancy of more than one (1.0) standard deviation between major composite scores, the examiner may use the higher score as the indicator of the child's intellectual ability.

006.04G6 In order for a school age student to be verified as a student with a mental handicap: severe/profound, the evaluation shall include the analysis and documentation of:

006.04G6a General intellectual functioning of at least four (4.0) standard deviations below the mean, with commensurate documented adaptive behavior. If there is a discrepancy of more than one (1.0) standard deviation between major composite scores, the examiner may use the higher score as the indicator of the child's intellectual ability.

006.04G7 In order for a child below age five to be verified as a child with a mental handicap, the evaluation shall include the analysis and documentation of:

006.04G7a At least a two (2.0) standard deviation deficit in intellectual functioning, with at least a 1.3 standard deviation deficit in adaptive behavior; or

006.04G7b At least a two (2.0) standard deviation deficit in adaptive behavior, with at least a 1.3 standard deviation deficit in intellectual functioning; or

006.04H Multiple Impairments

006.04H1 The MDT shall include at least:

006.04H1a A school psychologist or licensed psychologist;

006.04H1b A special educator;

006.04H1c Those personnel required to verify the other suspected disability;

006.04H1d A school district or approved cooperative administrator or a designated representative; and

006.04H1e The child's parent(s).

006.04H2 In order for a child to be verified as a child with multiple impairments the evaluation shall include the analysis and documentation of:

006.04H2a Verification of a school age student as a student with a mental handicap: moderate, or mental handicap: severe/profound and for a child below age five verification of a mental handicap (as per 92 NAC 51-006.04G); and

006.04H2b Verification of one or more additional disabilities.

006.04H3 The multiplicity of disabilities shall be so severe that a primary disability cannot be determined.

006.04I Orthopedic Impairments

006.04I1 The MDT shall include at least:

006.04I1a The child's teacher(s) or a teacher qualified to teach a child that age;

006.04I1b A special educator;

006.04I1c A physical therapist; or an occupational therapist; or both, when appropriate;

006.04I1d A school district or approved cooperative administrator or a designated representative; and

006.04I1e The child's parent(s).

006.04I2 In order for a child to be verified as a child with orthopedic impairments, the evaluation shall include the analysis and documentation of:

006.04I2a A signed, written report from a physician which describes the severe motor impairment and any medical implications;

006.04I2b The child's level of development or educational performance is adversely affected; and

006.04I2c A muscular or neuromotor impairment, or skeletal deformity that limits the ability to:

006.04I2c(1) Move about;

006.04I2c(2) Maintain postures;

006.04I2c(3) Manipulate materials required for learning; or

006.04I2c(4) Perform activities of daily living.

006.04J Other Health Impairments

006.04J1 The MDT shall include at least:

006.04J1a The child's teacher(s) or a teacher qualified to teach a child that age;

006.04J1b A special educator;

006.04J1c A school district or approved cooperative administrator or a designated representative; and

006.04J1d The child's parent(s).

006.04J2 Chemical or alcohol dependency alone shall not be sufficient basis for verification of other health impairments.

006.04J3 In order for a child to be verified as a child with other health impairments, the evaluation shall include the analysis and documentation of:

006.04J3a A signed, written report from a physician which describes the current health status and gives any medical implications of the impairment;

006.04J3b Limited strength, vitality or alertness, due to a chronic or acute health impairment; and

006.04J3c The child's adversely affected development or educational performance.

006.04K Specific Learning Disabilities

006.04K1 The MDT shall include at least:

006.04K1a For a school age child, the child's regular teacher(s) or a regular classroom teacher qualified to teach a child of that age;

006.04K1b For a child below age 5, a teacher qualified to teach a child below age 5;

006.04K1c A special educator with knowledge in the area of specific learning disabilities;

006.04K1d A school psychologist or licensed psychologist;

006.04K1e A school district or approved cooperative administrator or a designated representative; and

006.04K1f The child's parent(s).

006.04K2 The team may not identify a child as having a specific learning disability if the specific learning disability is primarily the result of:

006.04K2a A visual, hearing or motor impairment;

006.04K2b A mental disability;

006.04K2c A behavioral disorder; or

006.04K2d Environmental, cultural or economic disadvantage.

006.04K3 In determining whether a child has a specific learning disability, the team may use a process that determines if the child responds to scientific, research-based intervention (Response to Intervention process) as a part of the evaluation procedures, or a process that demonstrates a severe discrepancy between intellectual ability and achievement (Severe Discrepancy Process).

006.04K4 All test scores used in verifying a student with suspected specific learning disabilities shall assume a mean of 100 and a standard deviation of 15 points.

006.04K5 In order for a child to be verified as a child with specific learning disabilities under the Severe Discrepancy Process the child must demonstrate a severe discrepancy between achievement and intellectual ability in one or more of the major areas listed in 92 NAC 51-006.04K5c if provided with learning experiences appropriate for the child's age and ability levels. If the team uses a Severe Discrepancy Process, the evaluation shall include the analysis and documentation of:

006.04K5a The observation and documentation of the child's academic functioning, educational environment, and the child's interaction with that environment (basic psychoeducational processes) in the regular classroom, conducted by at least one team member other than the child's classroom teacher;

006.04K5a(i) In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

006.04K5b The results of an individual test of intelligence. The child shall score above the minus one (-1.0) standard deviation point, full scale I.Q. on an individual test of intelligence. If there is a discrepancy of more than one (1.0) standard deviation between major composite scores, the higher score may be used as the indicator of the child's intellectual ability.

006.04K5c The results of the child's assessed ability level. The child's standard score in one or more major area(s) must be at least 1.3 standard deviations below the child's assessed ability level (20 standard score points). In addition, the standard score in the major area which is used to establish the qualifying discrepancy shall fall at or below 90 standard score points regardless of the discrepancy between assessed ability level and the major area. Discrepancies shall be verified in terms of standard score units rather than age or grade equivalents. The major areas are oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, mathematics calculation and mathematics reasoning.

006.04K5d If using the Response the Intervention Process, to team shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.

006.04K6 Particular attention shall be devoted to the technical adequacy of all instruments employed including the reliability of results, validity for the purposes employed, normative samples and applicability to the child being assessed.

006.04L Speech-Language Impairments

006.04L1 The MDT shall include at least:

006.04L1a The child's teacher(s) or a teacher qualified to teach a child that age;

006.04L1b A speech-language pathologist;

006.04L1c A school district or approved cooperative administrator or a designated representative; and

006.04L1d The child's parent(s).

006.04L2 A child verified with speech-language impairments shall demonstrate significant difficulty in one or more of the following areas:

006.04L2a Language (including form, content or function);

006.04L2b Articulation (including speech production);

006.04L2c Voice; and

006.04L2d Fluency.

006.04L3 All test scores used in verifying a child with suspected speech-language impairments shall assume a mean of 100 and a standard deviation of 15 points.

006.04L4 Language (including form, content or function)

006.04L4a In order for a child below age five to be verified as a child with speech-language impairments in the area of language, the evaluation shall include the analysis and documentation of:

006.04L4a(1) The adverse effect the impairment has on the development of the child.

006.04l4a(2) Performance from comprehensive standardized language tests (which may include but not be limited to vocabulary tests) which shall be at least 2.0 standard deviations below the mean for chronological age.

006.04L4b In order for a school age student to be verified as a student with speech-language impairments in the area of language, the evaluation shall include the analysis and documentation of:

006.04L4b(1) The adverse effect the impairment has on the development or educational performance of the student.

006.04L4b(2) General intellectual ability. If sufficient information can be documented to determine that a student has at least average overall ability, a psychological evaluation is not required. If the MDT determines the need, a psychological assessment shall be completed to determine a standard score indicating general intellectual ability. Selection and interpretation of diagnostic tools shall take into consideration the language functioning of the child to be evaluated, so that the estimate of the child's intellectual functioning is minimally biased by the language impairment. A psychological evaluation needs to include a determination of adaptive behavior levels.

006.04L4b(3) The student's expressive and receptive communication skills. These may include the areas of syntax, morphology, semantics, pragmatics, and language formulation and retrieval.

006.04L4b(4) The student's communication which shall consistently score greater than 1.3 standard deviations (20 standard score points) below the student's overall ability level and it shall affect communication in the classroom, at home, or with peers. Prognosis, the student's motivation, dialect and cognitive abilities must all be considered and may affect the student's eligibility. Documentation may be reported by informants such as parents or teachers or in the form of language samples. At least one form of the assessment instruments used must yield a standard score.

006.04L4b(5) Students who require the use of alternative or augmentative modes or devices for communication may be verified as language impaired.

006.04L5 Articulation (including speech production)

006.04L5a In order for a child below age five to be verified as a child with speech-language impairments in the area of articulation, the evaluation shall include the analysis and documentation of:

006.04L5a(1) The adverse effect the impairment has on the development or educational performance of the child.

006.04L5a(2) Defects of the speech articulators which can be expected to produce significantly disordered speech production.

**OR**

006.04L5a(3) Demonstrate at least two of the following three criteria:

006.04L5a(3)(a) the child must demonstrate at least three simple phoneme articulation errors in the pre-vocalic (initial) and post-vocalic (final) positions. The team must document that the errors are not maturational in nature when compared to the Iowa-Nebraska Articulation Norms.
or

006.04L5a(3)(b) A child must demonstrate more than two consistent vowel phoneme errors that are not a function of dialect or maturation (excluding vocalic /r/), which are significantly affecting intelligibility.

or

006.04L5a(3)(c) A child must demonstrate multiple consonant errors resulting in connected speech which is less than 75% intelligible in known context. If intelligibility is determined to be a factor, it must be affected in at least two out of three environments (e.g., home, school, and diagnostic setting). Observations may be reported by informants, such as parents or teachers.

006.04L5b In order for a child of the ages of five and six years to be verified as a child with speech-language impairments in the area of articulation, the evaluation shall include the analysis and documentation of:

006.04L5b(1) The adverse effect the impairment has on the development or educational performance of the child.

006.04L5b(2) At least three simple phoneme articulation errors in the pre-vocalic (initial) and post-vocalic (final) positions. The team must document that the errors are not maturational in nature when compared to the Iowa-Nebraska Articulation Norms.

OR

006.04L5b(3) The child must demonstrate significant oral-motor problems, which are interfering with, or will potentially interfere with, normal articulation development. The oral motor problems must be documented in the multidisciplinary team findings.

OR

006.04L5b(4) The child must demonstrate more than two consistent vowel phoneme errors, not related to dialect (excluding vocalic /r/), which are significantly affecting intelligibility.

OR

006.04L5b(5) The child must demonstrate multiple consonant errors in connected speech which is less than 75% intelligible in known context. If intelligibility is determined to be a factor, it must be affected in at least two out of three environments (e.g., home, school and diagnostic setting). Observations may be reported by informants, such as parents or teachers.

006.04L5c In order to verify a student age seven or older as a student with speech-language impairments in the area of articulation, the evaluation shall include the analysis and documentation of:

006.04L5c(1) The adverse effect the impairment has on the development or educational performance of the student.

006.04L5c(2) Articulation error(s) when compared to the Iowa-Nebraska Articulation Norms, as assessed via picture, sentence or paragraph articulation test, and whose errors occur at least 50% of the time in connected speech.

Stimulability, prognosis, student motivation, effect of condition on the student's communication in the classroom, at home with peers, dialect, and mental age must all be considered.

006.04L6 Voice

006.04L6a In order for a child to be verified as a child with speech-language impairments in the area of voice, the evaluation shall include the analysis and documentation of:

006.04L6a(1) The adverse effect the impairment has on the development or educational performance of the child.

006.04L6a(2) Chronic voice deviance, as assessed by the specific examination of:

006.04L6a(2)(a) Oral peripheral structures;

006.04L6a(2)(b) Intensity (loudness);

006.04L6a(2)(c) Vocal pitch, (range, inflection and appropriateness);

006.04L6a(2)(d) Resonation (nasality and air flow); and

006.04L6a(2)(e) Phonatory quality (breathiness, hoarseness and harshness).

006.04L6a(3) The team must consider and document prognosis, child motivation and the effect of the condition on the child's communication in the educational setting, at home and with peers.

006.04L6b Mild hoarseness, evidenced when history of upper respiratory disease or upper respiratory allergy exists, is not appropriate as a sole basis for verification.

006.04L7 Fluency

006.04L7a In order for a child to be verified as a child with speech-language impairments in the area of fluency, the evaluation shall include the analysis and documentation of:

006.04L7a(1) The adverse effect the impairment has on the development or educational performance of the child.

006.04L7a(2) Observation in multiple environments (educational or diagnostic setting, with peers, at home);

006.04L7a(3) Frequency of dysfluencies by type;

006.04L7a(4) Duration of dysfluencies;

006.04L7a(5) Response to stress;

006.04L7a(6) Struggle and avoidance characteristics; and

006.04L7a(7) Type and level of dysfluencies, repetitions (phrase, whole word, syllable and phoneme), prolongations and blocks (fixations).

006.04L7b Dysfluencies solely attributable to maturational levels are not appropriate for verification. The team must consider and document prognosis, child's motivation, and the effect of the condition on the child's communication in the educational setting, at home, and with peers.

006.04M Traumatic Brain Injury

006.04M1 The MDT shall include at least:

006.04M1a A school psychologist or licensed psychologist;

006.04M1b The child's teacher(s) or a teacher qualified to teach a child of that age;

006.04M1c A special education teacher or appropriate related services provider;

006.04M1d A school district or approved cooperative administrator or a designated representative; and

006.04M1e The child's parent(s).

006.04M2 In order for a child to be verified as having a traumatic brain injury, the evaluation shall include the analysis and documentation of:

006.04M2a A description of an event that has resulted in an acquired insult to the brain (generally provided by medical personnel or other specialist with knowledge of traumatic brain injury);

006.04M2b Evidence of impaired functioning in one or more of the following areas that has been determined to produce an adverse effect on the child's educational or developmental performance:

006.04M2b(1) Cognition (shall include, but not be limited to attention, memory/learning, organization, problem solving, abstract reasoning, communication, judgment, visual perception and auditory perception);

006.04M2b(2) Sensory functioning;

006.04M2b(3) Motor functioning (shall include, but not be limited to motor sequencing, planning and execution);

006.04M2b(4) Behavior (shall include, but not be limited to agitation, irritability, aggression, apathy, lack of insight, impulsivity, poor emotional control, disinhibition, secondary depression and withdrawal, and difficulties with social relationships); and

006.04M2c The severity of the impaired functions which may vary across situations, activities and time. Where appropriate, the team must consider and document these variations.

006.04N Visual Impairments

006.04N1 The MDT shall include at least:

006.04N1a The child's teacher(s) or a teacher qualified to teach a child of that age;

006.04N1b An educator endorsed to teach a child with visual impairments;

006.04N1c A school district or approved cooperative administrator or a designated representative; and

006.04N1d The child's parent(s).

006.04N2 A child with a visual impairment(s) shall be verified in one of three categories: blind, legally blind or partially sighted.

006.04N2a Visual Impairment: Blind

006.04N2a(1) In order to be verified as a child with a visual impairment: blind, the evaluation shall include the analysis and documentation of:

006.04N2a(1)(a) No more than light perception as stated in a signed report by a licensed ophthalmologist or optometrist.

006.04N2a(1)(b) The need for adapted curriculum, method, materials, and equipment for learning; and

006.04N2a(1)(c) The educational significance of the visual impairment including:

006.04N2a(1)(c)(i) Documentation of behaviors which appear to impede the child's overall functioning as observed in appropriate settings by someone other than the child's classroom teacher; and

006.04N2a(1)(c)(ii) Deficiencies in one or more of the following areas: activities of daily living, social interaction, academic achievement, performance in the educational setting, or orientation and mobility.

006.04N2b Visual Impairment: Legally Blind

006.04N2b(1) In order to be verified as a child with a visual impairment: legally blind, the evaluation shall include the analysis and documentation of:

006.04N2b(1)(a) A visual acuity of 20/200 or less in the better eye after correction or a contiguous field restricted to 20 degrees or less as stated in a signed report by a licensed ophthalmologist or optometrist;

006.04N2b(1)(b) The need for adapted curriculum, methods, materials, and equipment, or any combination thereof for learning; and

006.04N2b(1)(c) The educational significance of the visual impairment including:

006.04N2b(1)(c)(i) Documentation of behaviors which appear to impede the child's overall functioning as observed in appropriate settings by someone other than the child's classroom teacher; and

006.04N2b(1)(c)(ii) Deficiencies in one or more of the following areas: activities of daily living, social interaction, academic achievement, performance, or orientation and mobility.

006.04N2c Visual Impairment: Partially Sighted

006.04N2c(1) In order to be verified as a child with a visual impairment: partially sighted, the evaluation shall include the analysis and documentation of:

006.04N2c(1)(a) A signed report by a licensed ophthalmologist or optometrist to certify a structural defect, condition, or disease of the eye which may affect the student's ability to learn visually.

006.04N2c(1)(b) The educational significance of the visual impairment including:

006.04N2c(1)(b)(i) Documentation of behaviors which appear to impede the child's overall functioning as observed in appropriate settings by someone other than the child's classroom teacher.

006.04N2c(1)(b)(ii) Deficiencies in one or more of the following areas: activities of daily living, social interaction, academic achievement, performance in the educational setting, or orientation and mobility.

006.04N2c(1)(c) In addition to 92 NAC 51-006.04N2c(1)(a) and 006.04N2c(1)(b), the child shall meet the requirements of either 92 NAC 51-006.04N2c(1)(d) or 006.04N2c(1)(e), as listed below.

006.04N2c(1)(d) An assessment of the child's functional vision. All assessed behaviors shall be elicited by both light and pattern. Absence of three or more of the visual behaviors shall constitute a detriment in functional vision. The observable visual behaviors shall include but are not limited to: peripheral orientation, fixation, ability to shift gaze, ability to track, and ability to converge.

**OR**

006.04N2c(1)(e) A visual assessment as stated in a signed report by a licensed ophthalmologist or optometrist to certify at least one of the following:

006.04N2c(1)(e)(i) A distant visual acuity of 20/50 or less, in the better eye after correction;

006.04N2c(1)(e)(ii) A near visual acuity equivalent to or less than 8 point type at 40 centimeters, in the better eye after correction;

006.04N2c(1)(e)(iii) A central visual field loss of any degree in both eyes; or

006.04N2c(1)(e)(iv) A peripheral visual field of 60 degrees or less in the better eye.

006.05 Reevaluations

006.05A A school district or approved cooperative shall ensure that a reevaluation of each child with a disability is conducted in accordance with the verification procedures in Section 006 of this Chapter:

006.05A1 if the school district or approved cooperative determines that the educational or related services needs, including improved academic achievement and functional performance, or the child warrant a reevaluation; or

006.05A2 if the child's parents or teacher requests a reevaluation.

006.05B A reevaluation shall occur:

006.05B1 not more than once a year, unless the parent and the school district or approved cooperative agree otherwise; and

006.05B2 at least once every three years, unless the parent and the school district or approved cooperative agree that a reevaluation is unnecessary.

006.06 Review of Existing Evaluation Data

006.06A As part of an initial evaluation (if appropriate) and as part of any reevaluation, the IEP team and other qualified professionals as appropriate, shall:

006.06A1 review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based local or State assessments and classroom-based observations, and observations by teachers and related services providers; and

006.06A2 on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:

006.06A2a whether the child is a child with a disability, as described in 92 NAC 51-003.08, and the educational needs of the child, or, in case of a reevaluation of a child, whether the child continues to have such a disability and such educational needs ;

006.06A2b the present levels of academic achievement and related developmental needs of the child;

006.06A2c whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

006.06A2d whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general education curriculum.

006.06B The school district or approved cooperative shall administer such assessments and other evaluation measures as may be needed to produce the data identified by the IEP team under 92 NAC 51-006.06A2.

006.06C The IEP team and other qualified professionals may conduct its review without a meeting.

006.06D If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs the school district or approved cooperative:

006.06D1 shall notify the child's parents of:

006.06D1a that determination and the reasons for the determination; and

006.06D1b the right of such parents to request an assessment to determine whether the child continues to be a child with a disability and to determine the child's educational needs for the purpose of services under this Chapter.

006.06D2 The school district or approved cooperative shall not be required to conduct such an assessment unless requested to by the child's parents.

006.06E A school district or approved cooperative shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.

006.06E1 The evaluation described in 92 NAC 51-006.06E shall not be required before the termination of a student's eligibility under this Chapter due to graduation from secondary school with a regular high school diploma, or to exceeding the age eligibility for a free appropriate public education under Neb. Rev. Stat. 79-1126. For a child whose eligibility terminates under these circumstances, a school district or approved cooperative shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

006.07 Independent Educational Evaluation

006.07A The parents of a child with a disability have the right to obtain an independent educational evaluation of the child, subject to the provisions of 92 NAC 51-006.07.

006.07B Each school district or approved cooperative shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the school district's or approved cooperative's criteria applicable for independent educational evaluations.

006.07C A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the school district or approved cooperative.

006.07C1 Public expense means that the school district or approved cooperative either pays for the full cost of the evaluation or insures that the evaluation is otherwise provided at no cost to the parent.

006.07D If a parent requests an independent educational evaluation at public expense, the school district or approved cooperative must, without unnecessary delay, either:

006.07D1 Initiate a hearing under 92 NAC 55 to show that its evaluation is appropriate; or

006.07D2 Insure that an independent educational evaluation is provided at public expense, unless the school district or approved cooperative demonstrates at a hearing under 92 NAC 55 that the evaluation obtained by the parent did not meet school district or approved cooperative criteria.

006.07E If the school district or approved cooperative initiates a hearing and the final decision is that the school district's or approved cooperative's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

006.07F If a parent requests an independent educational evaluation, the or approved cooperative may ask for the parent's reason why he or she objects to the public evaluation. However, the explanation by the parent may not be required and the school district or approved cooperative may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

006.07G If the parent obtains an independent educational evaluation at private expense, the results of the evaluation:

006.07G1 Must be considered by the school district or approved cooperative, if it meets school district or approved cooperative criteria, in any decision made with respect to the provision of a free appropriate public education to the child; and

006.07G2 May be presented as evidence at a hearing under 92 NAC 55 regarding that child.

006.07H If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

006.07I If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school district or approved cooperative uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

006.07J Except for the criteria described in 92 NAC 51-006.07I, a school district or approved cooperative may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

007 Individual Education Program (IEP) and Individualized Family Service Plan (IFSP)

007.01 If a determination is made that a child needs special education and related services, an individualized education program or individualized family service plan must be developed for the child. In order to fulfill the requirements of 92 NAC 51-007.01 for infants and toddlers, school districts or approved cooperative shall meet the requirements of 92 NAC 51-007.13. FAPE is provided to infants and toddlers with a disability in accordance with an IFSP, rather than an IEP. The requirements for contents of the IFSP apply rather than the requirements for the contents of an IEP. All other substantive rights and protections established under special education apply to infants and toddlers with disabilities receiving FAPE in accordance with an IFSP.

007.02 An IEP shall be developed and implemented for each resident public and nonpublic school child who receives special education and related services.

007.02A At the beginning of each school year, each school district or approved cooperative shall have an IEP in effect for each child with a verified disability within its jurisdiction.

007.02A1 In the case of a child with a disability aged 3 through 5 (or a 2-year-old child with a disability who will turn age 3 during the school year), the IEP Team shall consider the individualized family service plan that is developed in accordance with 92 NAC 51-007.13, and the individualized family service plan may serve as the IEP of the child if using that plan as the IEP is agreed to by the school district or approved cooperative and the child's parents.

007.02B Each school district or approved cooperative shall insure that an IEP is in effect before special education and related services are provided to a child with a verified disability under this Chapter and is implemented as soon as possible following the IEP meetings.

007.02C The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and

007.02D Each teacher and provider described in 92 NAC 51-007.02C must be informed of his or her specific responsibilities related to implementing the child's IEP; and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

007.03 IEP Team Participants

007.03A The school district or approved cooperative shall insure and document that each IEP team includes the following participants:

007.03A1 the parents of a child with a disability or documentation of 92 NAC 51-007.06D;

007.03A2 not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);

007.03A2a The regular education teacher of the child, as a member of the IEP team, shall, to the extent appropriate, participate in the development, review and revision of the IEP of the child, including assisting in the determination of appropriate positive behavioral interventions and supports, and other strategies, and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with 92 NAC 51-007.07B4.

007.03A3 not less than one special education teacher, or where appropriate, not less than one special education provider of the child;

007.03A4 a representative of the school district or approved cooperative who:

007.03A4a is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

007.03A4b is knowledgeable about the general education curriculum; and

007.03A4c is knowledgeable about the availability of resources of the school district or approved cooperative;

007.03A4c(i) A school district or approved cooperative may designate another member of the IEP team to also serve as the school district or approved cooperative representative, if the criteria in 92 NAC 51-007.03A4 are satisfied.

007.03A5 an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in 92 NAC 51-007.03A2 through 007.03A6;

007.03A6 at the discretion of the parent or the school district or approved cooperative, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate;

007.03A6a The determination of the knowledge or special expertise of any individual described in 92 NAC 51-007.03A6 shall be made by the party (parents or school district or approved cooperative) who invited the individual to be a member of the IEP.

007.03A7 whenever appropriate, the child with a disability;

007.03A8 for students attending nonpublic schools, a representative of the nonpublic schools. If the representative cannot attend, other methods shall be used to insure participation by the nonpublic school, including individual or conference telephone calls;

007.03A9 for children receiving services from an approved service agency, a representative of the service agency. If the representative is not in attendance, other methods shall be used to insure participation by the approved service agency, including written communication, or individual or conference telephone calls;

007.03A10 for students with disabilities of any age, if the purpose of the meeting is consideration of transition services:

007.03A10a The student;

007.03A10a(i) If the student does not attend, the school district or approved cooperative shall take other steps to insure that the student's preferences and interests are considered.

007.03A10b A representative of any other agency that is likely to be responsible for providing or paying for the transition services included in the student's individualized education program.

007.03A10b(i) If an agency invited to send a representative to the meeting does not do so, the school district or approved cooperative shall take other steps to obtain the participation of the other agency in the planning of any transition services.

007.03A11 For a student verified in the category of hearing impaired, an educator endorsed to teach a child with hearing impairments.

007.03A12 For a student verified in the category of visual impairment, an educator endorsed to teach a child with visual impairments.

007.04 IEP Team Attendance

007.04A A member of the IEP Team shall not be required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the school district or approved cooperative agree that the attendance of such member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

007.04B A member of the IEP Team may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:

007.04B1 the parent and the school district or approved cooperative consent to the excusal; and

007.04B2 the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

007.04C A parent's agreement under 92 NAC 51-007.04A and consent under 92 NAC 51-007.04B1 shall be in writing.

007.05 In the case of a child who was previously served as an infant or toddler under Part C of the Individuals with Disabilities Education Act, an invitation to the initial IEP meeting shall, at the request of the parent, be sent to the Part C service coordinator or other representative of the Part C system to assist with the smooth transition of services.

007.06 Parent Participation

007.06A The school district or approved cooperative shall take steps to insure that one or both of the parents of the child with a disability are present at the IEP conference or are afforded the opportunity to participate, including:

007.06A1 Notifying parents of the IEP conference early enough to insure that they will have an opportunity to attend; and

007.06A2 Scheduling the meeting at a mutually agreed on time and place.

007.06B The notification under 92 NAC 51-007.06A1 must indicate the purpose, time and location of the meeting and who will be in attendance and inform the parents of the provisions of 92 NAC 51-007.03A6 and 007.03A6a.

007.06B1 If the purpose of the meeting is the consideration of transition services for a student (as required by 92 NAC 51-007.07B8) the notification must also:

007.06B1a Indicate that the purpose of the meeting is:

007.06B1a(i) For a student with a disability, beginning not later than the first IEP to be in effect when the student reaches age 16, consideration of the needed transition services required in 92 NAC 51-007.07B8.

007.06B1b Indicate that the school district or approved cooperative will invite the student to the meeting; and

007.06B1c Identify any other agency that will be invited to send a representative.

007.06C If neither parent can attend, the school district or approved cooperative shall use other methods to insure parent participation, including individual or conference telephone calls.

007.06D A meeting may be conducted without a parent in attendance if the school district or approved cooperative is unable to convince the parents they should attend. In this case, the district must have a record of its attempts to arrange a mutually agreed on time and place such as:

007.06D1 Detailed records of telephone calls made or attempted and the results of the calls;

007.06D2 Copies of correspondence sent to the parents and any responses received; and

007.06D3 Detailed records of visits made to the parent's home or place of employment and the results of those visits.

007.06E The school district or approved cooperative shall take whatever action is necessary to insure that the parent understands the proceedings of an IEP conference, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

007.06F The school district or approved cooperative shall provide a copy of the IEP to parents at no cost.

007.06G The school district or approved cooperative shall insure that the parents of a child with a disability are members of any group that makes decisions on the educational placement of their child.

007.06G1 In implementing the requirements of 92 NAC 51-007.06G, the school district or approved cooperative shall use procedures consistent with the procedures described in 92 NAC 51-007.06A, 007.06B, and 009.01A1.

007.06G2 If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the school district or approved cooperative shall use other methods to insure their participation, including individual or conference telephone calls, or video conferencing.

007.06G3 A placement decision may be made by a group without the involvement of the parents, if the school district or approved cooperative is unable to obtain the parents' participation in the decision. In this case, the school district or approved cooperative must have a record of its attempt to insure their involvement, including information that is consistent with the requirements of 92 NAC 51-007.06D.

007.06G4 The school district or approved cooperative shall make reasonable efforts to insure that the parents understand, and are able to participate in, any group discussions relating to the educational placement of their child, including arranging for an interpreter for parents with deafness, or whose native language is other than English.

007.07 IEP Development

007.07A The Individual Education Program (IEP) is a written statement for a child with a verified disability which specifies the special education and related services necessary to assure that child a free, appropriate public education.

007.07A1 Nothing in this section shall be construed to require that additional information be included in a child's IEP beyond what is explicity required in this section, or to require the IEP team to include information under one component of a child's IEP that is already contained in another component of such IEP.

007.07B The IEP shall include:

007.07B1 a statement of the child's present levels of academic achievement and functional performance, including:

007.07B1a how the child's disability affects the child's involvement in and progress in the general curriculum (i.e., the same curriculum as for nondisabled children); or

007.07B1b for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; and

007.07B1c for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

007.07B2 a statement of measurable annual goals, including academic and functional goals, designed to:

007.07B2a Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; (i.e., the same curriculum as for nondisabled children), or for preschool children, as appropriate, to participate in appropriate activities, and

007.07B2b Meet each of the child's other educational needs that result from the child's disability;

007.07B3 a description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

007.07B4 a statement of the special education and related services and supplementary aids and services based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child:

007.07B4a to advance appropriately toward attaining the annual goals;

007.07B4b to be involved in and progress in the general curriculum and to participate in extracurricular and other nonacademic activities; and

007.07B4c to be educated and participate with other children with disabilities and nondisabled children in the activities described in 92 NAC 51-007.07B;

007.07B5 an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in 92 NAC 51-007.07B4;

007.07B6 a statement of any individual appropriate accommodations or modifications that are necessary to measure the academic achievement and functional performance of the child on state and district-wide assessments; and if the IEP team determines that the child shall take an alternate assessment on a particular district-wide assessment of student achievement, a statement of why:

007.07B6a the child cannot participate in the regular assessment ; and

007.07B6b the particular alternate assessment selected is appropriate for the child;

007.07B7 the projected date for the beginning of the services and modifications described in 92 NAC 51-007.05B4 and the anticipated frequency, location, and duration of those services and modifications;

007.07B8 beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter:

007.07B8a appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;

007.07B8b the transition services (including courses of study) needed to assist the child in reaching those goals; and

007.07B8c if a participating agency, other than the school district or approved cooperative fails to provide the transition services described in the IEP, the school district or approved cooperative shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

007.07B9 The plan of transportation and any special conditions necessary for safe transport of the child with a verified disability shall be part of the IEP, when applicable.

007.07C In developing, reviewing or revising each child's IEP:

007.07C1 The IEP team shall consider the strengths of the child and the concerns of the parents for enhancing the education of their child.

007.07C2 The IEP team shall consider the results of the initial evaluation or most recent evaluation of the child, and the academic, developmental, and functional needs of the child.

007.07C3 As appropriate, the IEP team shall consider the results of the child's performance on any general state and district-wide assessment programs.

007.07C4 In the case of a child whose behavior impedes his or her learning or that of others, the IEP team shall consider the use of positive behavioral interventions, and supports and other strategies to address that behavior.

007.07C5 In the case of a child with limited English proficiency, the IEP team shall consider the language needs of the child as these needs relate to the child's IEP.

007.07C6 In the case of a child who is blind or visually impaired, the IEP team shall provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child.

007.07C7 The IEP team shall consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, shall consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode.

007.07C8 The IEP team shall consider whether the child needs assistive technology devices and services.

007.07D If, in considering the special factors described in 92 NAC 51-007.07C, the IEP team determines that a child needs a particular device or service (including an intervention, accommodation, or other program modification) in order for the child to receive a free appropriate public education (FAPE), the IEP team must include a statement to that effect in the child's IEP.

007.07E Services

007.07E1 Each school district or approved cooperative shall insure that the hearing aids worn in school by children who are deaf or have hearing impairments are functioning properly.

007.07E2 Physical education services, specially designed if necessary, must be available to every child with a verified disability receiving a free, appropriate public education.

007.07E2a Each child with a verified disability must be afforded the opportunity to participate in the regular physical education program available to children with disabilities unless:

007.07E2a(i) The child is enrolled full time in a separate facility; or

007.07E2a(ii) The child needs specially designed physical education as prescribed in the child's individualized education program.

007.07E2b If specially designed physical education is prescribed in a child's individualized education program, the school district or approved cooperative responsible for the education of that child shall provide the services directly, or make arrangements for it to be provided through other public or nonpublic programs.

007.07E2c The school district or approved cooperative responsible for the education of a child with a verified disability who is enrolled in a separate facility shall insure that the child receives appropriate physical education services.

007.07E3 Each school district or approved cooperative shall insure assistive technology devices or assistive technology services, or both, as defined in 92 NAC 51-003.04 and 003.05 are made available to any child with a disability if required, as part of the child's:

007.07E3a Special education under 92 NAC 51-003.59;

007.07E3b Related services under 92 NAC 51-003.50; or

007.07E3c Supplementary aids and services under 92 NAC 51-003.61 and 008.01A.

007.07E3d On a case by case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices in order to receive a free appropriate public education.

007.07E4 Extended School Year Services (ESY)

007.07E4a Each school district or approved cooperative shall insure that extended school year services are available as necessary to provide a free appropriate public education consistent with 92 NAC 51-007.07E4b.

007.07E4b Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with Section 007, that the services are necessary for the provision of a free appropriate public education.

007.07E4c In implementing the requirements of this section, a school district or approved cooperative may not: limit extended school year services to particular categories of disability; or unilaterally limit the type, amount, or duration of those services.

007.07E5 The need for related services of an instructional nature shall be documented on the IEP or IFSP present level of performance, goals, and objectives, and shall be based on documented diagnostic evidence. Determination of the need for a related service for a child with a verified disability does not require the additional verification of a secondary disability.

007.08 Programs for Children who Transfer School Districts or Approved Cooperatives

007.08A Transfer within the same state – In the case of a child with a disability who transfers school districts or approved cooperatives within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in Nebraska, the school district or approved cooperative shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the school district or approved cooperative adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.

007.08B Transfer from outside the state – In the case of a child with a disability who transfers school districts or approved cooperatives within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in another State, the school district or approved cooperative shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the school district or approved cooperative conducts an evaluation, if determined to be necessary by such school district or approved cooperative and develops a new IEP, if appropriate, that is consistent with Federal and State law.

007.08C Transmittal of records – To facilitate the transition for a child who transfers schools:

007.08C1 the new school in which the child enrolls shall take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school in which the child was enrolled, pursuant to Section 99.31(a)(2) of Title 34, Code of Federal Regulations; and

007.08C2 the previous school in which the child was enrolled shall take reasonable steps to promptly respond to such request from the new school.

007.08C3 Neb. Rev. Stat. 79-2,105 requires that a copy of a public or private school's files or records concerning a student shall be provided at no charge, upon request, to any public or private school to which the student transfers.

007.09 IEP Meeting

007.09A The school district or approved cooperative is responsible for initiating and conducting meetings for the purpose of developing, reviewing and revising an IEP for a child with a verified disability.

007.09A1 Before a school district or approved cooperative places a child with a disability in, or refers a child to, a nonpublic school or facility, the school district or approved cooperative shall initiate and conduct a meeting to develop an IEP for the child in accordance with Section 007.

007.09A2 After a child with a disability enters a nonpublic school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the nonpublic school or facility at the discretion of the school district or approved cooperative.

007.09A3 If the nonpublic school or facility initiates and conducts these meetings, the school district or approved cooperative shall insure that the parents and nonpublic representative:

007.09A3a Are involved in any decision about the child's IEP; and

007.09A3b Agree to any proposed changes in the IEP before those changes are implemented.

007.09B An IEP meeting must be held within thirty (30) calendar days of the initial verification of the child's disability.

007.09C After the initial IEP meeting, IEPs must be in effect at the beginning of each school year.

007.09D The IEP team shall review the child's IEP periodically, but not less frequently than annually, to determine whether the annual goals for the child are being achieved.

007.09E In making changes to a child's IEP after the annual IEP meeting for a school year, the parent of a child with a disability and the school district or approved cooperative may agree not to convene an IEP meeting for the purposes of making such changes, and instead may develop a written document to amend or modify the child's current IEP.

007.09F To the extent possible, the school district or approved cooperative shall encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

007.09G When conducting IEP team meetings and placement meetings and carrying out administrative matters (such as scheduling, exchange of witness lists, and status conferences), the parent of a child with a disability and a school district or approved cooperative may agree to use alternative means of meeting participation, such as video conferences and conference calls.

007.10 The IEP team shall revise the IEP as appropriate to address:

007.10A any lack of expected progress toward the annual goals described in 92 NAC 51-007.07 and in the general education curriculum, where appropriate

007.10B the results of any reevaluation conducted under 92 NAC 51-006.05A;

007.10C the information about the child provided to, or by, the parents, as described in 92 NAC 51-006.06A1;

007.10D the child's anticipated needs; or

007.10E other matters.

007.11 IEP Accountability

007.11A School districts or approved cooperatives must provide special education and related services to a child with a disability in accordance with the child's IEP and make a good faith effort to assist the child to achieve the goals and objectives or benchmarks listed in the IEP.

007.11B This Chapter does not require that any school district or approved cooperative, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and benchmarks or objectives. However, this Chapter does not prohibit a school district or approved cooperative from establishing its own accountability systems regarding teacher, school or school district or approved cooperative performance.

007.11C Nothing in 92 NAC 51-007.11 limits a parent's right to ask for revisions of the child's IEP or to invoke due process procedures if the parent feels that the efforts required in 92 NAC 51-007.11A are not being made.

007.12 Students with Disabilities in Adult Prisons

007.12A The following requirements shall not apply to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

007.12A1 the requirements of 92 NAC 51-007.07B6 relating to participation of students with disabilities in general assessments; and

007.12A2 the requirements of 92 NAC 51-007.07B8 relating to transition and planning and transition services do not apply with respect to such students who will reach age 21 before they will be eligible to be released from prison, based on consideration of their sentence and eligibility of early release.

007.12B Subject to 92 NAC 51-007.12B1, the IEP team of a student with a disability, who is convicted as an adult under State law and incarcerated in an adult prison, may modify the student's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

007.12B1 The requirements of 92 NAC 51-003.29 and 007.07 relating to IEPs, and 92 NAC 51- 008.01A relating to LRE, do not apply with respect to the modifications described in 92 NAC 51-007.12B.

007.13 Responsibility for Development of IFSP

007.13A In collaboration with the agency contracting for services coordination, an IFSP shall be developed and implemented for each infant or toddler who is determined to be eligible for early intervention services in accordance with Section 006. The plan must be developed in accordance with Section 007 and based on the multidisciplinary evaluation described in 92 NAC 51-006.04 and any other relevant information. The services coordinator, with the family, is responsible for arranging the team meeting, developing the IFSP team and facilitating the development of the IFSP consistent with Department of Health and Human Services' Early Intervention regulations.

007.13A1 In the event the family declines services coordination, the school district or approved cooperative, with the family, is responsible for the development of the IFSP consistent with the Department of Health and Human Services' Early Intervention regulations and 92 NAC 51-007.13.

007.13A2 If there is a dispute as to who has responsibility for developing or implementing an IFSP, the Departments of Education and Health and Human Services shall resolve the dispute or assign responsibility.

007.13B If a determination is made that an infant or toddler needs early intervention services, an Individualized Family Service Plan (IFSP) shall be developed for the child and the family. The IFSP shall be in writing and shall include:

007.13B1 A statement of the infant or toddlers present levels of physical development (including vision, hearing, and health status), cognitive development, communication development, social or emotional development, and adaptive development which is based on professionally acceptable objective criteria;

007.13B2 With the concurrence of the family, include a statement of the family's resources, priorities, and concerns relating to enhancing the development of the infant or toddler with a disability;

007.13B3 A statement of the measurable results or outcomes expected to be achieved for the infant or toddler and the family, including pre-literacy and language skills, as developmentally appropriate for the child, and the criteria, procedures and timelines used to determine the degree to which progress toward achieving the results or outcomes is being made and whether modifications or revisions of the results or outcomes or services are necessary.

007.13B3a The degree to which progress toward achieving the outcomes is being made; and

007.13B3b Whether modifications or revisions of the outcomes or services are necessary.

007.13B4 A statement of the specific early intervention services based on peer-reviewed research, to the extent practicable, necessary to meet the unique needs of the child and the family including:

007.13B4a The frequency, intensity, and method of delivering the services;

007.13B4a(i) frequency and intensity mean the number of days or sessions that a service will be provided, the length of time the service is provided during each session, and whether the service is provided on an individual or group basis; and

007.13B4a(ii) method means how a service is provided.

007.13B4b The natural environments in which early intervention services will be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment;

007.13B4c The location of the services;

007.13B4c(i) location means the actual place or places where a service will be provided.

007.13B4d The payment arrangements, if any.

007.13B5 To the extent appropriate, medical and other services the child needs, but that are not required by this Chapter, and the funding sources to be used in paying for those services or the steps that will be taken to secure those services through public or private sources.

007.13B5a This requirement does not apply to routine medical services (e.g., immunizations and "well-baby" care), unless a child needs those services and the services are not otherwise available or being provided.

007.13B6 The projected date(s) for initiation of the service(s) which must begin as soon as possible after the IFSP meeting.

007.13B7 The anticipated duration of those services.

007.13B8 The name of the service coordinator from the profession most immediately relevant to the child's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this part), who will be responsible for the implementation of the IFSP and coordination with other agencies and persons, including transition services.

007.13B8a The agency contracting for services coordination may assign the same service coordinator who was appointed at the time that the child was initially referred for evaluation to be responsible for implementing a child's and family's IFSP, or appoint a new service coordinator.

007.13B9 The steps to be taken to support the transition of the child to preschool services to the extent that those services are considered appropriate, or other services that may be available, if appropriate.

007.13B9a The steps include:

007.13B9a(i) discussions with, and training of, parents regarding future placements and other matters related to the child's transition;

007.13B9a(ii) procedures to prepare the child for changes in the service delivery, including steps to help the child adjust to, and function in, a new setting; and

007.13B9a(iii) with parental consent, the transmission of information about the child to ensure continuity of services, including evaluation and copies of IFSPs that have been developed and implemented.

007.13B10 A statement of the necessary assistive technology devices and services needed by the infant or toddler.

007.14 IFSP Initial and Annual Conferences

007.14A For an infant or toddler who has been evaluated for the first time and determined to be eligible, a meeting to develop the initial IFSP must be conducted within 45 calendar days of the referral.

007.14B A meeting must be conducted on at least an annual basis to evaluate the IFSP for a child and the child's family, and, as appropriate, to revise its provisions. The results of any current evaluations and other information available from the ongoing assessment of the child and family, must be used in determining what services are needed and will be provided. Parents shall receive a copy of the IFSP within seven calendar days of the IFSP meeting.

007.14C IFSP meetings must be conducted:

007.14C1 In settings and at times that are convenient to families; and

007.14C2 In the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so.

007.14D Meeting arrangements must be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend.

007.14E The contents of the IFSP must be fully explained to the parents and informed written consent from the parents must be obtained prior to the provision of early intervention services described in the plan.

007.14E1 If the parents do not provide consent with respect to a particular early intervention service or withdraw consent after first providing it, that service may not be provided.

007.14E2 The early intervention services to which parental consent is obtained must be provided.

007.15 IFSP Periodic Reviews

007.15A A review of the IFSP for a child and the child's family must be conducted every six months, or more frequently if conditions warrant, or if the family requests such a review. The purpose of the periodic review is to determine:

007.15A1 The degree to which progress toward achieving the outcomes is being made; and

007.15A2 Whether modifications or revision of the outcomes or services is necessary.

007.15B The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants.

007.15C The periodic review of the IFSP must provide for the participation of the persons required by 92 NAC 51-007.16A1, 007.16A2, 007.16A3 and 007.16A4. If conditions warrant, provisions must be made for the participation of other representatives identified in 92 NAC 51-007.16A5, 007.16A6 and 007.16A7.

007.16 IFSP Team Participants

007.16A The school district or approved cooperative shall document that each IFSP conference includes at least the following participants:

007.16A1 The parent or parents of the child;

007.16A2 Other family members, as requested by the parent, if feasible to do so;

007.16A3 An advocate or person outside of the family, if the parent requests that the person participate;

007.16A4 The service coordinator who has been working with the family since the initial referral of the child for evaluation, or who has been designated to be responsible for implementation of the IFSP;

007.16A5 A representative of the school district or approved cooperative who has the authority to commit district resources;

007.16A6 As appropriate, persons who will be providing services to the child; and

007.16A7 A person or persons directly involved in conducting the evaluations.

007.16A7a If this person or persons is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including:

007.16A7a(i) participating in a telephone conference call;

007.16A7a(ii) having a knowledgeable authorized representative attend the meeting; or

007.16A7a(iii) making pertinent records available at the meeting.

007.17 Early Intervention Transition

007.17A The agency contracting for services coordination is responsible for convening, with the approval of the child's family, a conference including the family, school district or approved cooperative and other agencies as needed at least 90 days (and at the discretion of all such parties, up to nine months) before the child's third birthday or at least 90 days before completion of the early intervention program. The purpose of the meeting is to:

007.17A1 Insure a smooth and effective transition to preschool programs assisted under Part B of the IDEA to the extent those services are appropriate, or other services that may be available, if appropriate;

007.17A2 Review the child's program options for the period from the child's third birthday through the remainder of the school year;

007.17A3 Describe how the family will be included in the transition plans; and

007.17A4 Establish a transition plan.

007.17B In the case of a child who has reached his or her third birthday, an IFSP that contains the material described in 92 NAC 51-007.13 and that is developed in accordance with 92 NAC 51-007.02, 007.03, 007.06, 007.07C, 007.09, 007.10 and 007.11 may serve as the IEP of the child if using that plan is agreed to by the school district or approved cooperative and the child's parents.

007.17B1 In implementing the requirements of 92 NAC 51-007.17B the school district or approved cooperative shall;

007.17B1a provide the child's parents a detailed explanation of the differences between an IFSP and an IEP; and

007.17B1b if the parents choose an IFSP, obtain written informed consent from the parents.

007.18 Provision of Early Intervention Services Before the Evaluation and Assessment Is Complete

007.18A Early intervention services for the purpose of completion of the evaluation and assessment for a child and the child's family may commence before the completion of the evaluation if the following conditions are met:

007.18A1 Parental consent is obtained.

007.18A2 An interim IFSP is developed that includes:

007.18A2a the name of the service coordinator who will be responsible for implementation of the interim IFSP and coordination with other agencies and persons; and

007.18A2b the early intervention services that have been determined to be needed immediately by the child and the child's family.

007.18A3 The evaluation and assessment are completed within the 45 day time period.

007.19 Year Round Continuous Services

007.19A Early Intervention Services may not be interrupted or modified or otherwise changed for reasons unrelated to the child's needs such as service provider availability or scheduling.

008 Placement of Children With Disabilities

008.01 Least Restrictive Environment (LRE) Requirements

008.01A The school district shall establish policies and procedures to assure that, to the maximum extent appropriate, children with disabilities including children in public or nonpublic schools and approved service agencies are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

008.01B Before any action is taken with respect to the initial placement of a child with disabilities, the school district or approved cooperative shall be responsible for the provision of a comprehensive individual multidisciplinary evaluation of the child's development and educational needs. For infants and toddlers, early intervention services may begin prior to completion of a full and individual initial evaluation in accordance with 92 NAC 51-007.18.

008.01C In interpreting the information on the child's individual education plan (IEP) or IFSP to make placement decisions, each school district shall:

008.01C1 Draw upon the information from the child's present level of development or educational performance, physical condition, social or cultural background and adaptive behavior;

008.01C2 Insure that information obtained from all of these sources is documented and carefully considered;

008.01C3 Insure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

008.01C4 Insure that the placement decision is made in conformity with the least restrictive environment requirements in 92 NAC 51- 008.01 and based on the child's unique needs and not on the child's disability.

008.01D Each school district or approved cooperative shall assure an array of special education placement options are available. Those options shall include: instruction in regular classes; supplemental services such as resource room; itinerant instruction or consultative services to be provided in conjunction with regular class placement; special classes; special schools; home instruction and instruction in hospitals and institutions.

008.01E The school district shall insure that the educational placement of a child with a verified disability:

008.01E1 Is determined at least annually;

008.01E2 Is based on his or her individual education program (IEP); and

008.01E3 Is as close as possible to the child's home.

008.01F The various array of placement options included under 92 NAC 51-008.01D must be available to the extent necessary to implement the individual education program for each child with a verified disability;

008.01G Unless a child's IEP or IFSP requires some other arrangement, the child must be educated in the school which he or she would attend if not disabled.

008.01H In selecting the least restrictive environment, consideration must be given to any potential harmful effect on the child or on the quality of services which he or she needs.

008.01H1 A child with a disability must not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

008.01I The school district shall take steps to provide nonacademic and extracurricular services and activities including meals and recess periods, in the manner necessary to afford each school age student with a verified disability an equal opportunity for participation in those services and activities with students who are not disabled to the maximum extent appropriate to meet the needs of each child.

008.01I1 Nonacademic and extra-curricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district or approved cooperative, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the school district or approved cooperative and assistance in making outside employment available.

008.02 Placement Requirements

008.02A School districts may place a child with verified disabilities in special education programs provided;

008.02A1 Written consent to initially place the child in the proposed program is obtained from the parent; or

008.02A2 An order to place the child in the proposed program is obtained from a Department of Education appointed hearing officer or court of competent jurisdiction.

008.03 Natural Environments

008.03A To the maximum extent appropriate to the needs of the child, early intervention services must be provided in natural environments including home and community settings in which children without disabilities participate.

008.03B The provision of early intervention services for any infant or toddler may occur in a setting other than a natural environment only if early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment.

009 Procedural Safeguards

009.01 Meeting Notification and Accessibility and Confidentiality of Records

009.01A School districts shall provide notification consistent with 92 NAC 51-007.06 to insure that parents of children with disabilities have the opportunity to participate in meetings for the purposes of identification, evaluation, educational placement and FAPE.

009.01A1 A meeting does not include informal or unscheduled conversations involving school district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that school district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

009.01B All school districts, approved cooperatives, and provisionally approved service providers with whom the school district shares personally identifiable data shall be bound by the accessibility and confidentiality requirements of this section.

009.01C The parents of a child with a disability or the child with a disability, if the child has attained eighteen years of age, (type and severity of the child's disability shall be taken into consideration) shall be afforded an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child or the provision of early intervention services to infants and toddlers.

009.01D Access Rights

009.01D1 Each participating agency shall permit parents to inspect and review any education records relating to their children which are collected, maintained or used by the participating agency. The participating agency shall comply with such a request without unnecessary delay and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, or placement of the child, and in no case more than 45 days after the request has been made.

009.01D1a As used in 92 NAC 51-009.01, participating agency means any agency or institution that collects, maintains or uses personally identifiable information or, from which, information is obtained under this Chapter.

009.01D2 The right to inspect and review education records includes:

009.01D2a The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records; and

009.01D2b The right to request that the participating agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

009.01D2c The right to have a representative of the parent inspect and review the records.

009.01D3 A service agency may presume that the parent has authority to inspect and review records relating to his or her child unless the service agency has been advised that the parent does not have the authority under applicable Nebraska law governing such matters as guardianship, separation and divorce.

009.01E Record of Access

009.01E1 Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used (except access by parents and authorized employees of the participating service agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

009.01F Records On More Than One Child

009.01F1 If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

009.01G List of Types and Locations of Information

009.01G1 Each participating agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the participating agency.

009.01H Fees

009.01H1 A participating agency may charge a fee for copies of records which are made for parents if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

009.01H2 A participating agency may not charge a fee to search for or to retrieve information.

009.01I Amendment of Records at Parent's Request

009.01I1 A parent who believes that information in education records collected, maintained, or used is inaccurate, or misleading, or violates the privacy or other rights of the child, may request the participating agency which maintains the information to amend the information.

009.01I2 The participating agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

009.01I3 If the participating agency decides to refuse to amend the information in accordance with the request, it shall inform the parents of the refusal, and advise the parent of the right to a local administrative review to be conducted in accordance with 34 CFR 99.22.

009.01J Opportunity for a Local Administrative Review

009.01J1 The participating agency shall, on request, provide an opportunity for a local administrative review to challenge information in education records to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

009.01K Result of Local Administrative Review

009.01K1 If, as a result of the local administrative review, the participating agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

009.01K2 If, as a result of the local administrative review, the participating agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, the participating agency shall inform the parent of the right to place in the records the participating agency maintains on the child, a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the participating agency.

009.01K3 Any explanation placed in the records of the child must:

009.01K3a Be maintained by the participating agency as part of the records of the child as long as the record or contested portion is maintained by the participating agency; and

009.01K3b If the records of the child or the contested portion is disclosed by the participating agency to any party, the explanation must also be disclosed to the party.

009.01L Consent for Release of Records

009.01L1 Parental consent must be obtained before personally identifiable information is disclosed to anyone other than officials of the service agency collecting or using the information unless specifically not required in the Family Education Rights and Privacy Act and its implementing regulations, 34 CFR Part 99.

009.01M Safeguards

009.01M1 Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

009.01M2 One official at each participating agency shall assume responsibility for insuring the confidentiality of any personally identifiable information.

009.01M3 All persons collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures.

009.01M4 Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the participating agency who may have access to personally identifiable information.

009.01N Records Regarding Migratory Children with Disabilities

009.01N1 The school district or approved cooperative shall cooperate in the Federal Secretary of Education's efforts under Section 613(a)(9) of the Individuals with Disabilities Education Act of 2004 (See Appendix A) to ensure the linkage of records pertaining to migratory children with a disability for the purpose of electronically exchanging among the States, health and education information regarding such children.

009.01O Retention and Destruction of Information and Records

009.01O1 The participating agency shall retain special education records for five (5) years after the completion of the activities for which special education funds were used.

009.01O2 The participating agency shall inform parents when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to the child.

009.01O3 The information which is no longer necessary to provide educational services to the child, must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

009.02 Procedural Timelines

009.02A For all students except for infants and toddlers, each of the procedural steps necessary to provide a free appropriate public education shall be carried out within the specified time periods.

009.02A1 Referral, notice to parents (See 92 NAC 51-009.03), and parental consent, shall be completed within a reasonable period of time. The initial multidisciplinary team evaluation shall be completed within 60 days of receiving parental consent for the evaluation.

009.02A1a The 60-day timeline shall not apply to a school district or approved cooperative if:

009.01A1a(i) a child enrolls in a school served by the school district or approved cooperative after the relevant timeline in 92 NAC 51-009.02A1 has begun and prior to a determination by the child's previous school district or approved cooperative as to whether the child is a child with a disability, but only if the subsequent school district or approved cooperative is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent school district or approved cooperative agree to a specific time when the evaluation will be completed; or

009.01A1a(ii) the parent of a child repeatedly fails or refuses to produce the child for the evaluation.

009.02A2 Upon completion of a multidisciplinary team verification decision, school districts or approved cooperative shall provide a reasonable notification and conduct an individual education program conference within 30 calendar days. Parental consent for initial placement shall be requested within five school days of the IEP conference.

009.02A3 Special education placement shall be completed within five (5) school days of receipt of parental consent.

009.02B For infants and toddlers each of the procedural steps necessary to provide early intervention services shall be carried out within the specific time periods.

009.02B1 A referral must be made by the school district to the agency responsible for providing services coordination in the Planning Region within two working days of the district becoming aware of an infant or toddler who may be eligible for services.

009.02B2 Notice to parents (See 92 NAC 51-009.03) and parental consent shall be completed within a reasonable period of time.

009.02B3 A multidisciplinary team evaluation must be completed within 45 calendar days from the date of referral. In the event of exceptional circumstances of the family that make it impossible to complete the evaluation within the 45 days, the school district will document those circumstances, inform the parent of the time estimated by the district to complete the evaluation, and develop and implement an interim IFSP as necessary.

009.02B4 Upon completion of a multidisciplinary team verification decision, and within 45 days of the referral, school districts shall participate in an individual family service plan conference.

009.02B5 Special education placement shall be completed within five school days of receipt of parental consent.

009.03 Prior Written Notice

009.03A School districts or approved cooperatives shall provide a copy of the procedures specified in this Chapter for complaints and 92 NAC 55 for hearings to the parent of each child who is evaluated by the multidisciplinary evaluation team for possible initial verification.

009.03B Prior written notice shall be given to the parents of a child with a disability a reasonable time before a school district:

009.03B1 Proposes to initiate or change the identification, evaluation, or educational placement of a child or the provision of a free appropriate public education; or

009.03B1a If the notice described in 92 NAC 51-009.03B relates to an action proposed by the school district that also requires parental consent under 92 NAC 51-009.05, the school district may give notice at the same time it requests parent consent.

009.03B2 Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

009.03C Such prior written notice shall include:

009.03C1 A description of the action proposed or refused by the school district;

009.03C2 An explanation of why the district proposes or refuses to take the action;

009.03C3 A description of any options the district considered and the reasons why those options were rejected;

009.03C4 A description of each evaluation procedure, assessment, record, or report the school district uses as a basis for the proposal or refusal;

009.03C5 A description of any other factors which are relevant to the school district's proposal or refusal;

009.03C6 A statement that the parents of a child with a disability have protection under the procedural safeguards of this Chapter and, if this notice is not an initial referral for evaluation, the means by which a copy or description of the procedural safeguards can be obtained; and

009.03C7 Sources for parents to contact to obtain assistance in understanding the provisions of this part.

009.03D The notice must be written in language understandable to the general public, and provided in the native language of the parents or other mode of communication used by the parents unless it is clearly not feasible to do so.

009.03E If the native language or other mode of communication of the parents is not a written language, the school district shall take steps to insure:

009.03E1 That the notice is translated orally or by other means to the parents in his or her native language or other mode of communication;

009.03E2 That the parents understand the content of the notice; and

009.03E3 That there is written evidence that the requirements of this section have been met.

009.04 Procedural Safeguards Notice

009.04A A copy of the procedural safeguards available to the parents of a child with a disability shall be given by the school district or approved cooperative to the parents only once per year, except that a copy shall also be given to the parents:

009.04A1 Upon initial referral or parental request for evaluation;

009.04A2 Upon request by a parent; and

009.04A3 Upon receipt by the school district of the first occurrence of the filing of a petition in a special education due process case under 92 NAC 55.

009.04B The procedural safeguards notice shall include a full explanation of all of the procedural safeguards, relating to:

009.04B1 independent educational evaluation;

009.04B2 prior written notice;

009.04B3 parental consent;

009.04B4 access to educational records;

009.04B5 opportunity to file due process hearings;

009.04B6 the child's placement during pendency of due process proceedings;

009.04B7 procedures for students subject to placement in an interim alternative educational setting;

009.04B8 requirements for unilateral placement by parents of children in nonpublic schools at public expense;

009.04B9 mediation;

009.04B10 due process hearings, including requirements for disclosure of evaluation results and recommendations;

009.04B11 civil actions, including the time period in which to file such actions;

009.04B12 attorney's fees; and

009.04B13 the State complaint procedures including a description of how to file a complaint under 92 NAC 51-009.09 and the timelines under those procedures.

009.04C The notice of the procedural safeguards provided to the parent must be written in language understandable to the general public and provided in the native language of the parent as required by 92 NAC 51-009.03D and 009.03E.

009.04D The school district may place a current copy of the procedural safeguards notice on its Internet website if such website exists.

009.05 Informed Parental Consent

009.05A Informed parental consent must be obtained by a school district before:

009.05A1 Conducting an initial multidisciplinary evaluation;

009.05A2 Conducting a reevaluation; and

009.05A3 Initial placement of a child with disabilities in a program providing special education and related services or early intervention services to infants and toddlers.

009.05B Parental consent for evaluation shall not be construed as consent for initial placement described in 92 NAC 51-009.05A3.

009.05C Parental consent is not required before:

009.05C1 Reviewing existing data as part of an evaluation or reevaluation; or

009.05C2 Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

009.05D Informed parental consent need not be obtained for reevaluation if the school district can demonstrate that it has taken reasonable measures to obtain that consent, and the child's parent has failed to respond.

009.05D1 To meet the reasonable measures requirement in 92 NAC 51-009.05E, the school district must use procedures consistent with those in 92 NAC 51-007.06D.

009.05E A school district may not use a parent's refusal to consent to one service or activity under 92 NAC 51-009.05 to deny the parent or child any other service, benefit, or activity of the school district, except as required by this Chapter.

009.06 Parental Refusal to Consent

009.06A If the parent does not provide consent for an initial evaluation or the parent fails to respond to a request to provide the consent, the school district or approved cooperative may pursue the initial evaluation of the child by utilizing the procedures described in Section 009.

009.06A1 If the parent refuses to consent to services, the local school district or approved cooperative shall not provide special education and related services to the child by utilizing the procedures described in Section 009.

009.06A2 If the parent refuses to consent to the receipt of special education and related services, or the parent fails to respond to a request to provide such consent:

009.06A2a the school district or approved cooperative shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide such child with the special education and related services for which the school district or approved cooperative requests such consent; and

009.06A2b the school district or approved cooperative shall not be required to convene an IEP meeting or develop an IEP under this section for the child for the special education and related services for which the school district or approved cooperative requests such consent.

009.06B For infants and toddlers, if consent is not given, the school district or approved cooperative shall make reasonable efforts to ensure that the parents:

009.06B1 are fully aware of the nature of the evaluation or the services that will be available; and

009.06B2 understand that the child will not be able to receive the evaluation or services unless consent is given.

009.06C The parents of an infant or toddler may determine that they, their child, or other family members will accept or decline any early intervention service, and may decline such a service after first accepting it, without jeopardizing other early intervention services.

009.06D If the hearing officer or any court hearing an appeal therefrom, upholds the school district or approved cooperative and if the time for further appeal has expired, the school district or approved cooperative may evaluate or initially place a child with a disability in a special education program and related services without parental consent and the school district may refuse to provide or pay for any further inappropriate educational program.

009.07 Consent for Wards of the State

009.07A If the child is a ward of the State and is not residing with the child's parent, the school district shall make reasonable efforts to obtain the informed consent from the parent (as defined in Section 003) of the child for an initial evaluation to determine whether the child is a child with a disability.

009.07B The school district shall not be required to obtain informed consent from the parent of a child for an initial evaluation to determine whether the child is a child with a disability if:

009.07B1 despite reasonable efforts to do so, the school district cannot discover the whereabouts of the parent of the child;

009.07B2 the rights of the parents of the child have been terminated in accordance with State law; or

009.07B3 the rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

009.08 Appointment of Surrogates

009.08A Each school district shall insure that the rights of a child with a disability are protected if:

009.08A1 No parent can be identified;

009.08A2 The school district, after reasonable efforts, cannot discover the whereabouts of the parents; or

009.08A3 The child is an unaccompanied homeless youth; or

009.08A4 The child is a ward of the state or court.

009.08A4a If a child who is a ward of the State, such surrogate may alternatively be appointed by the judge overseeing the child's care provided that the surrogate meets the requirements of this paragraph.

009.08B The duty of the school district under 92 NAC 51-009.08A includes the assignment of an individual to act as a surrogate for the parents. This must include a method;

009.08B1 for determining whether a child needs a surrogate parent and,

009.08B2 for assigning a surrogate parent to the child.

009.08C The school district may select a surrogate parent in any way permitted under State law and the district or approved cooperative shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 calendar days after there is a determination that the child needs a surrogate.

009.08D In order to qualify, a surrogate must be a person who:

009.08D1 Has no interest that conflicts with the interest of the child he or she represents;

009.08D2 has knowledge and skills that insure adequate representation of the child; and

009.08D3 Is not an employee of any public agency which is involved in the education or care of the child. A person who otherwise qualifies to be a surrogate parent is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

009.08D3a For infants and toddlers, a person assigned as a surrogate parent may not be an employee of any State agency; or a person, or an employee of a person, providing early intervention services to the child or to a family member of the child. A person who otherwise qualifies to be a surrogate parent under this Subsection is not an employee solely because he or she is paid by a public agency to serve as a surrogate parent.

009.08E The surrogate may represent the child in all matters relating to:

009.08E1 The identification, evaluation, and educational placement of a child; and

009.08E2 The provision of a free appropriate public education to the child.

009.08E3 For infants and toddlers, a surrogate parent may represent a child in all matters related to:

009.08E3a The evaluation and assessment of the child;

009.08E3b Development and implementation of the child's IFSP including annual evaluations and periodic review;

009.08E3c The ongoing provision of early intervention services to the child; and

009.08E3d Any other rights established under this Chapter.

009.08F The services of the surrogate parent shall be terminated when:

009.08F1 The child is no longer eligible for a surrogate parent under 92 NAC 51-009.08A;

009.08F2 A conflict of interest develops between the interest of the child and the interest of the surrogate parent; or

009.08F3 The surrogate parent fails to fulfill his or her duties as a surrogate parent.

009.08G Issues arising from the selection, appointment, or removal of a surrogate parent shall be resolved through hearings established under 92 NAC 55.

009.08H The surrogate parent and the school district or approved cooperative which appointed the surrogate parent shall not be liable in civil actions for damages for acts of the surrogate parent unless such acts constitute willful and wanton misconduct.

009.09 Complaint Procedures

009.09A An organization or individual may file a complaint regarding alleged violation of requirements set forth in Special Education Rules. The complaint shall be submitted to the Department of Education, Special Education Office, in writing. The written, signed complaint must contain a statement that a school district has violated a requirement of this Chapter and the facts on which the statement is based. If the complaint can be determined to be related to a violation of Special Education Rule(s), the following procedures will be carried out:

009.09A1 Within fourteen (14) calendar days of receipt of the written, signed complaint, an assigned Special Education Office official shall notify in writing each complainant and the service agency against which the violation has been alleged, that the complaint has been received. This written notification shall include a copy of the complaint and the substance of the alleged violation. The service agency shall have fourteen (14) calendar days to submit a written response.

009.09A2 Special Education Office officials will investigate each complaint received from an individual or organization (including an individual or organization from another state) to determine whether there has been a failure to comply with these rules and may require further written or oral submission of information by all parties and may conduct an independent on-site investigation if necessary. The complainant will have the opportunity to submit additional information either orally or in writing, about the allegation.

009.09A3 Within sixty (60) calendar days of receipt of a signed written complaint, the Department of Education Special Education Office will review all relevant information and provide written notification of findings of facts and conclusions and the basis for such findings to all parties involved.

009.09A4 If, as a result of extenuating circumstances, the Department of Education Special Education Office is not able to complete the investigation within the sixty (60) calendar days, an extension period of forty-five (45) calendar days will be implemented. The Department of Education Special Education Office will notify the person filing the complaint and the service agency of the 45 days extension.

009.09A5 If it is determined there has been a failure to comply, there will be included in the notification of findings the specific steps which must be taken by the service agency to bring the service agency into compliance, including technical assistance, negotiations and corrective actions. The notification shall also set forth a reasonable period of time to voluntarily comply.

009.09A6 If the service agency does not demonstrate compliance within the period of time set forth in the notice of findings, the matter will be subject to the procedures outlined in 92 NAC 51-004.09.

009.09A7 If a written complaint is received that is also the subject of a due process hearing under 92 NAC 55, or contains multiple issues of which one or more are part of that hearing, the Special Education Office officials shall set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in 92 NAC 51-009.09.

009.09A8 If an issue is raised in a complaint filed under this 92 NAC 51-009.09 that has previously been decided in a due process hearing involving the same parties:

009.09A8(a) The hearing decision is binding; and

009.09A8(b) The Nebraska Department of Education must inform the complainant to that effect.

009.09A9 A complaint alleging a school district's failure to implement a due process decision must be resolved by the Nebraska Department of Education.

009.09A10 The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received.

009.10 Mediation

009.10A School districts shall implement the procedures established in Section 009 to allow parties to resolve disputes involving any matter described in 92 NAC 51-009.03B1 and 009.03B2 including matters arising prior to the filing of a due process hearing petition through a mediation process which, at a minimum, shall be available whenever a hearing is requested under 92 NAC 55.

009.10A1 The procedures for seeking mediation initiated by either the parent(s) or school district include:

009.10A1a contacting the Nebraska Office of Dispute Resolution who will

009.10A1b arrange a meeting, invite both parties and conduct the mediation in an attempt to resolve the dispute.

009.10B The procedures shall insure that the mediation process:

009.10B1 is voluntary on the part of the parties;

009.10B2 is not used to deny or delay a parent's right to a due process hearing under 92 NAC 55, or to deny any other rights afforded under this Chapter; and

009.10B3 is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

009.10C The school district may implement the procedures in Section 009 to offer parents and schools that choose not to use the mediation process an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with:

009.10C1 a parent training and information center or community parent resource center in this State established under Section 671 or 672 of the IDEA, or

009.10C2 an appropriate alternative dispute resolution entity to encourage the use, and explain the benefits of the mediation process to the parents.

009.10D The Nebraska Department of Education shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services for use by school districts and parents.

009.10D1 If a mediator is not selected on a random basis (e.g., a rotation basis from the list described in 92 NAC 51-009.10D), both parties must be involved in selecting the mediator and agree with the selection of the individual who will mediate.

009.10E The Nebraska Department of Education shall bear the cost of the mediation process, including the costs of meetings described in 92 NAC 51-009.10C.

009.10F Each session in a mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

009.10G In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that:

009.10G1 states that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;

009.10G2 is signed by both the parent and a representative of the agency who has the authority to bind such agency; and

009.10G3 is enforceable in any State court of competent jurisdiction or in a district court of the United States.

009.09H Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings.

009.10I An individual who serves as a mediator under 92 NAC 51-009.10:

009.10I1 May not be an employee of:

009.10I1a Any school district or approved cooperative or state agency; or

009.10I1b An agency that is providing direct services to a child who is the subject of the mediation process; and

009.10I1c Must not have a personal or professional conflict of interest.

009.10I2 A person who otherwise qualifies as a mediator is not an employee of a school district or State agency solely because he or she is paid by the agency to serve as a mediator.

009.10J A school district may not deny or delay a parent's right to a due process hearing under 92 NAC 55 if the parent fails to participate in the meeting described in 92 NAC 51-009.10C.

009.11 Whenever a due process complaint has been received under 92 NAC 55 or Section 016 of this Chapter, the parents or the school district or approved cooperative shall have an opportunity for an impartial due process hearing.

009.11A Prior to the opportunity for an impartial due process hearing, the school district or approved cooperative shall convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge about the facts identified in the complaint.

009.11A1 The meeting must occur within 15 days of receiving notice of the parents' complaint;

009.11A2 The meeting shall include a representative of the school district or approved cooperative who has decision-making authority;

009.11A3 The meeting may not include an attorney of the school district or approved cooperative unless the parent is accompanied by an attorney;

009.11A4 At the meeting the parents of the child shall discuss their complaint, and the facts that form the basis of the complaint, and the school district or approved cooperative is provided the opportunity to resolve the complaint, unless the parents and the school district or approved cooperative agree in writing to waive such meeting, or agree to use the mediation process described in 92 NAC 51-009.10.

009.11B If the school district or approved cooperative has not resolved the complaint to the satisfaction of the parents within 30 days of the receipt of the complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing under 92 NAC 55 shall commence.

009.11C In the case that a resolution is reached to resolve the complaint at a meeting described in 92 NAC 51-009.11A, the parties shall execute a legally binding agreement that:

009.11C1 is signed by both the parent and a representative of the school district or approved cooperative who has the authority to bind such agency; and

009.11C2 is enforceable in any State court of competent jurisdiction or in a district court of the United States.

009.11D If the parties execute an agreement pursuant to 92 NAC 51-009.11C, a party may void such agreement within three business days of the agreement's execution.

009.12 A parent of a child with a disability may elect to receive notices required under this section by an electronic mail (e-mail) communication, if the school district or approved cooperative makes such option available.

009.13 Special Education Due Process Hearings

009.13A A parent or a school district may initiate a hearing on any of the matters described in 92 NAC 51-009.03B relating to the identification, evaluation or educational placement of the child with a disability, or the provision of FAPE to the child by filing a petition pursuant to 92 NAC 55.

009.13B When a hearing is initiated under 92 NAC 55, the school district shall inform the parents of the availability of mediation described in 92 NAC 51-009.10.

009.13C The school district shall inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or if the parent or the school district initiates a hearing under 92 NAC 55.

009.13D Any party to a due process hearing has the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities.

010 Qualifications of Special Education Personnel for Program Approval and Reimbursement

010.01 School districts and approved cooperatives shall ensure that all personnel necessary to carry out this Chapter are appropriately and adequately prepared and trained including that those personnel have the content knowledge and skills to serve children with disabilities, subject to the requirements of Section 2122 of the Elementary and Secondary Education Act of 1965.

010.01A Instructional personnel shall hold valid Nebraska Department of Education certification, be endorsed in the assigned area. Instructional personnel may serve children with visual impairments and children with hearing impairments in a multicategorical program if the instructional personnel have attended training approved by the Department of Education or have received consultation from an individual endorsed in the area of visual hearing impairments. This section does not apply to individuals providing inservice.

010.01B Each person employed as a special education teacher who teaches elementary school, middle school, or secondary school shall be a teacher meeting IDEA 2004 criteria as defined in 003.64.

010.01C School districts or approved cooperatives shall take measurable steps to recruit, hire, train and retain teachers meeting IDEA 2004 criteria to provide special education and related services.

010.01D Approvable endorsements for program approval and reimbursement shall include:

| | **Categorical Assignment** | **NDE Approvable Endorsement** |
|---|---|---|
| 010.01D1 | Adaptive Physical Education | Adaptive Physical Education |
| 010.01D2 | Autism | Severely/Multihandicapped, Mildly/Moderately Handicapped, Educable Mentally Handicapped, Behaviorally Impaired, Behaviorally Disordered, Emotionally Disturbed, Speech Pathology, Learning Disabled, Special Education Resource Teacher |
| 010.01D3 | Behavior Disorders | Behaviorally Impaired, Emotionally Disturbed, Behaviorally Disordered, Mildly/Moderately Handicapped, Special Education Resource Teacher |
| 010.01D4 | Deaf-Blind | Acoustically Handicapped, Visually Handicapped, Severely/Multihandicapped |
| 010.01D5 | Diagnostic Programs | School Psychologist, Psychological Assistant, Audiologist, Speech Pathologist, or any special education endorsement |

| | Categorical Assignment | NDE Approvable Endorsement |
|---|---|---|
| 010.01D6 | Early Childhood Special Education in Home and Centerbased Programs | Early Childhood plus any special Education, Early Childhood Education Unified, Early Childhood Special Education, or Preschool Disabilities |
| 010.01D7 | Hearing Impairments | Acoustically Handicapped, Hearing Impaired |
| 010.01D8 | Home (School Age) and Hospital (Birth to 21) Services | Any teaching endorsement |
| 010.01D9 | Home-School Liaison | Any Special Education Endorsement, Guidance and Counseling Endorsement |
| 010.01D10 | Mental Handicap: Mild | Educable Mentally Handicapped, Mildly/Moderately Handicapped, Special Education Resource Teacher |
| 010.01D11 | Mental Handicap: Moderate | Mentally Retarded, Trainable Mentally Retarded, Severely/Multihandicapped, Educable Mentally Handicapped, Mildly/Moderately Handicapped, Special Education Resource Teacher |
| 010.01D12 | Mental Handicap: Severe/Profound | Mentally Retarded, Trainable Mentally Retarded, Severely/Multihandicapped, |
| 010.01D13 | Multicategorical Programs | Instructional personnel serving students in a multicategorical program shall be considered to be endorsed in the assigned area if an endorsement is held in at least one of the disability categories served |
| 010.01D14 | Multiple Disabilities | Severely/Multihandicapped |
| 010.01D15 | Orthopedic Impairments | Orthopedically Handicapped, Mildly/Moderately Handicapped, Severely/Multihandicapped |
| 010.01D16 | Other Health Impairments | Any teaching endorsement |
| 010.01D17 | Program Supervision | Administrative or Supervisory certificate and at least one special education endorsement or any special education administrative or supervisory certificate |

| | Categorical Assignment | NDE Approvable Endorsement |
|---|---|---|
| 010.01D18 | Specific Learning Disabilities | Specific Learning Disabled, Mildly/Moderately Handicapped, Special Education Resource Teacher |
| 010.01D19 | Speech-Language Impairments | Speech Pathology |
| 010.01D20 | Substitute Teacher | Any teaching certificate |
| 010.01D21 | Traumatic Brain Injury | Severely/Multihandicapped, Mildly/Moderately Handicapped, Educable Mentally Handicapped, Behaviorally Impaired, Behaviorally Disordered, Emotionally Disturbed, Speech Pathology, Learning Disabled, Special Education Resource Teacher, Orthopedically Handicapped |
| 010.01D22 | Visual Impairment | Visually Handicapped |
| 010.01D23 | Work study program or transition program | Any special education endorsement, guidance and counseling, vocational special needs or diversified occupations endorsement, special services certificate for school rehabilitation counselor and school transition specialist |

010.02 For purposes of 92 NAC 51-010.01D5, 010.01D17 and 010.01D23 "special education endorsement" shall include any approvable endorsement under 92 NAC 51-010.01D except 010.01D8, 010.01D20 and excluding the specific endorsements of psychological assistant, guidance and counseling, audiologist, vocational special needs, diversified occupations and special services certificate for school rehabilitation counselor and school transition specialist.

010.03 Related Services Personnel and Paraprofessionals

010.03A Related services personnel and paraprofessionals shall hold any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services.

010.03B Related services personnel who deliver services in their discipline or profession shall not have had certification or licensure requirements waived on an emergency, temporary, or provisional basis.

010.03C Paraprofessionals shall be appropriately trained and supervised by qualified special education personnel to be used to assist in the provision of special education and related services under this Chapter.

010.03D A paraprofessional shall not teach, as defined in Neb. Rev. Stat. 79-101.12.

010.04 Personnel providing special education services who do not hold Department of Education certification and endorsement, shall be licensed by the appropriate State of Nebraska Board of Examiners.

010.05 Personnel employed by approved service agencies shall be certified by the Department of Education or shall hold the credential or training required by the licensing standard under which the service providers operate.

010.06 Educational Interpreters

010.06A In order to be a qualified educational sign language interpreter for the purposes of 92 NAC 51-010.06, an individual must attain and maintain one or more of the following competency levels as measured by the following assessments:

010.06A1 Educational Interpreter Performance Assessment (EIPA), Competency level 3.5

010.06A2 Registry of Interpreters of the Deaf Certification (RID)

010.06A3 National Association of the Deaf (NAD) Competency level 4.0

010.06A4 American Consortium of Certified Interpreters (ACCI) exam Competency level 4.0

010.06A5 Quality Assurance Screening Test (QAST) Competency level 4.0

010.06B Subject to the exceptions in 92 NAC 51-010.06C, 010.06D and 010.06F, school districts and approved cooperatives shall ensure that all sign language interpreters employed by such districts or approved cooperatives to provide special education services are qualified educational sign language interpreters who meet the competency requirements in 92 NAC 51-010.06A.

010.06C If the school district or approved cooperative is unable to find a qualified educational sign language interpreter who meets the requirements of 92 NAC 51-010.06A, the district or approved cooperative may employ for up to two school years an interpreter who demonstrates a minimum competency level of 3.0 on either the EIPA, NAD or QAST assessments. The district or approved cooperative must require that the interpreter agree to participate in a professional development plan designed to improve his or her skills and enable him or her to become a qualified educational sign language interpreter within two school years. The plan shall be approved by the district or approved cooperative and shall be in conjunction with a training program. The district or approved cooperative must require that the interpreter attain one or more of the competency levels in 92 NAC 51-010.06A within two school years of employment.

010.06D If a school district or approved cooperative is unable to find an interpreter who demonstrates a minimum competency level of 3.0 on either the EIPA, NAD or QAST screening instruments and the district or approved cooperative meets the requirements of this Subsection, the district or approved cooperative may employ for up to one school year an interpreter who demonstrates the minimum competency level of 2.5 on the EIPA. The district or approved cooperative must request and receive from the Commissioner or his or her designee a waiver of the requirement for an educational sign language interpreter in 92 NAC 51-010.06A. The request for a wavier shall contain documentation of efforts to find a qualified educational sign language interpreter or an interpreter who demonstrates the minimum competency of 3.0. Following receipt of the request and documentation, the Commissioner

or his or her designee shall waive the requirements of 92 NAC 51-010.06A. Upon receipt of the waiver, the district or approved cooperative may employ for up to one school year an interpreter who demonstrates a minimum competency level of 2.5 on the EIPA. The district or approved cooperative must require that the interpreter reach at least level 3.0 on the EIPA, NAD or QAST within the school year.

010.06E If an interpreter does not achieve the required competency levels within the time periods as specified in 92 NAC 51-010.06C or 010.06D, the district or approved cooperative must reopen the position and seek a qualified educational sign language interpreter.

010.06F A school district or approved cooperative may re-employ an interpreter previously employed pursuant to the provisions of 92 NAC 51-010.06C or 010.06D for additional one year periods only if the district or approved cooperative requests and receives from the Commissioner or his or her designee a waiver of the employment-period in those Subsections. The request for a waiver of employment-period limits shall contain documentation of efforts to find a qualified educational sign language interpreter and an assurance that the previously employed interpreter is the best applicant for the position. Following receipt of the request for waiver, documentation and assurance, the Commissioner or his or her designee shall grant the waiver. Upon receipt of the waiver, the district or approved cooperative may re-employ the interpreter for an additional one year period subject to the applicable requirements for gaining competency in 92 NAC 51-010.06C or 010.06D.

010.06G School districts and approved cooperatives shall require that all sign language interpreters employed by the districts or approved cooperatives to deliver special education services submit evidence to the district or approved cooperative of having obtained 75 clock hours of instruction in sign language interpretation within the previous five years and evidence of three years of successful working experience as a sign language interpreter within the previous five years with one year of working experience occurring within the previous two years. Successful working experience is documented by evidence provided by previous employer(s).

010.06H If a sign language interpreter cannot provide the evidence required in 92 NAC 51-010.06G of the continuing education and work experience, the school district or approved cooperative shall require that the sign language interpreter be retested and achieve the applicable competency level specified in 92 NAC 51-010.06A, 010.06C or 010.06D.

010.07 Notwithstanding any other individual right of action that a parent or student may maintain under this section or part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a school district or approved cooperative employee to meet IDEA 2004 criteria or to prevent a parent from filing a complaint about staff qualification pursuant to Section 009 of this Rule.

011 School District Budget Development and Reimbursement Process for School Age Programs

011.01 General Information

011.01A The special education assurances and flexible funding application of a school district and approved cooperative shall be submitted to the Special Education Office. Any amendment to the assurances and flexible funding application shall be subject to the same review as the initial assurances and flexible funding application.

011.01A1 The fiscal year for school age special education programs shall be September 1 to August 31.

011.01B The allowable and reimbursable costs for special education services are restricted to the following items, which shall be documented and are subject to audit;

011.01B1 Salaries of special education staff as per 92 NAC 51-010.01D;

011.01B2 School district or approved cooperative share of fringe benefits for the special education staff:

011.01B2a Fringe benefits shall be limited to social security, retirement programs, workers' compensation, health, life, long term disability and unemployment insurance.

011.01B3 Inservice costs directly related to the special education programs provided that:

011.01B3a allowable inservice expenditures are costs directly related to special education programs. Allowable activities must be designed to contribute to the professional growth and competence of staff serving students with a disability and their parents through workshops, demonstrations, and school visits. Tuition and expenses of attending special education courses for college credit are not allowed.

011.01B3b allowable costs include: presenter fees and expenses; mileage; board and room of staff to attend inservice programs; costs of substitutes for staff attending inservice programs; cost of inservice programs which directly assist special and regular educators in providing appropriate programs for students with a verified disability in their classrooms; and costs of special education workshop attendance.

011.01B3c Costs of attending meetings conducted by organizations where only organizational business is conducted is not an allowable reimbursable expense.

011.01B4 Travel costs incurred by the school district or approved cooperative in delivering the special education programs including costs for:

011.01B4a Students attending nonpublic schools who are required to leave the nonpublic school to receive special education and related services; and

011.01B4b Students who are assigned to more than one attendance center to receive special education.

011.01B5 travel costs incurred by parents to attend educational planning meetings held outside the resident district which are necessary to provide a free appropriate public education or to visit their child who is assigned to a residential program outside the district as agreed upon through the IEP process.

011.01B6 costs of transporting students with a disability which are authorized under Neb. Rev. Stat. 79-1129 and Section 014 are budgeted and claimed separately;

011.01B7 instructional equipment, supplies and publications necessary to aid the student in accomplishing the goals and objectives of the individual education program (IEP) are allowable reimbursable costs under this Chapter. The equipment, supplies and publications shall be used by the student in association with the implementation of the student's IEP or evaluation. This shall also include equipment, supplies and publications used by staff when instructing a student with a verified disability; when evaluating a student who is suspected of having a disability; or when reevaluating a student with a verified disability. Allowable and reimbursable costs shall include printing, publication and postage costs that are necessary to carry out the provisions of this Chapter. This shall not include equipment, supplies and publications used by staff for administrative purposes. This shall not include personal equipment and supplies or life support equipment. When equipment is used for purposes other than for special education, the school district or approved cooperative shall only claim the applicable prorated portion for special education payment.

011.01B8 those contracted special education services in which students with a disability are served by a service agency whose special education programs and rates have been approved by the Department of Education; and

011.01B9 costs of acquisition (purchase, lease, lease-purchase), renovation and operation of a mobile unit(s) (i.e., trailers, mobile homes, vans, or any combination thereof) used, or to be used, as mobile learning centers for delivery of special education services to any eligible students with a disability. Reimbursement shall be subject to approval by the State Department of Education and shall be based on allowable depreciation and reimbursement as per Section 014. Acquisition shall be restricted to situations in which the local school district has determined that delivery of services at the school which the student with a disability is attending for his/her regular education program, whether such school is public or nonpublic, is infeasible, inadvisable, inappropriate or otherwise unavailable or prohibited.

011.01B9a The maximum number of mobile units a school district or approved cooperative may purchase shall be based on the total enrollment of both public and nonpublic schools as per the following schedule:

011.01B9a(1) 1 to 10,000 total enrollment for the maximum purchase of one (1) mobile unit;

011.01B9a(2) 10,001 to 20,000 total enrollment for the maximum purchase of two (2) mobile units;

011.01B9a(3) 20,001 to 30,000 total enrollment for the maximum purchase of three (3) mobile units;

011.01B9a(4) 30,001 to 40,000 total enrollment for the maximum purchase of four (4) mobile units;

011.01B9a(5) 40,001 to 50,000 total enrollment for the maximum purchase of five (5) mobile units; and

011.01B9a(6) all districts with an enrollment exceeding 50,001 for the maximum purchase of six (6) mobile units.

011.01B10 Costs for support services, as defined in Neb. Rev. Stat. 79-1125.01 and 92 NAC 51-003.62, identified in 92 NAC 51-011.05 as the Flexible Funding Option.

011.01C The adjusted average per pupil cost of the preceding year or a portion of that cost shall be calculated according to the following criteria:

011.01C1 for Level I special education services the school district is considered to have expended its adjusted average per pupil cost for each student with a disability who participates in a special education support service(s) for an aggregate of not more than three hours per week~~.~~;

011.01C2 for Level II special education classroom services in which a student with a disability participates more than an aggregate of three hours per week, the school district shall pay that portion of the adjusted average per pupil cost for that portion of the instructional time devoted to the special education activity;

011.01C3 for Level III special education contractual services the school district shall pay an amount equal to the average per pupil cost (program per pupil cost) of the service agency of the preceding year to the agency providing the educational program for each student with a disability. In deriving allowable excess cost, the district shall deduct its adjusted average per pupil cost from the cost of the program contracted from the service agency;

011.01C4 when a school district or approved cooperative provides or contracts for a summer school special education program for a student with a verified disability, the cost of such program will be considered for allowable excess cost reimbursement if the student's needs for such program can be verified by review of the IEP.

011.01D Student Special Education Full Time Equivalency (FTE) shall be determined by calculating the percent of aggregate time a student spends in special education and related services out of the school year. In calculating student special education full-time equivalency, time spent in transportation, diagnostic services, vocational adjustment counselor services and extended school day and extended school year services are excluded from the aggregate time.

011.01D1 The aggregate amount of a student's special education FTE includes:

011.01D1a the amount of time the student spends in a separate setting other than the regular classroom; and

011.01D1b the amount of time the student spends in the regular classroom receiving instruction from special education staff and engaged in a curriculum different from the curriculum for children who do not have disabilities.

011.01D2 The aggregate amount of special education FTE does not include:

011.01D2a the amount of time students with disabilities are in the regular classroom setting engaged in the same curriculum as students who do not have disabilities; and

011.01D2b the amount of time students with disabilities are in the regular classroom or setting receiving instruction or assistance from special education staff and engaged in the same curriculum as the students who do not have disabilities.

011.02 General Limitation in Budget Development

011.02A Only students with verified disabilities shall receive special education services. This shall include the initial evaluation of a student with a suspected disability, regardless of the outcome of the verification decision. (See Section 006.) Budget development may also include those students receiving support services as defined in 92 NAC 51-003.62.

011.02B Age limits

011.02B1 School age budgets shall be limited to those students with disabilities from age five through the school year in which the student reaches age twenty-one and those students receiving support services as defined in 92 NAC 51-003.62.

011.02B2 A child is age five if that child has reached the age of five years or will reach such an age on or before October 15 of the current school year.

011.02B3 A school district or approved cooperative is eligible for reimbursement for a student's special education program until the end of the school year in which the student's twenty-first birthday occurs.

011.02C Administration and Supervision

011.02C1 Supervision of special education programs is allowable as a Level I expenditure for up to an amount not to exceed 8% of the school district's or approved cooperative's allowable school age program costs, minus the cost of program supervision.

011.02C2 The cost of a superintendent or principal, hired for the purpose of supervising general education, shall not be included in allowable excess cost for special education.

011.02D Related services for a student with a verified disability are reimbursable if the services are listed in the IEP and are necessary for the achievement of educational goals as stated in the IEP.

011.02E Any program that provides residential care shall show the costs of such care separately from the costs of the education program. (See 92 NAC 53.)

011.03 Budget Development for Levels I, II, III

011.03A Level I Special Education Services

011.03A1 The expenditures for Level I (not more than an aggregate of three hours per child per week) special education service programs shall be considered for allowable excess cost reimbursement under the following conditions:

011.03A1a the programs are owned and operated by the school district or approved cooperative and the expenditures are within the allowable categories as stated in Section 011; and

011.03A1b the reimbursement to a school district or approved cooperative contracting for Level I services shall be limited to the rates approved by Commissioner or designee.

011.03B Level II Special Education Services

011.03B1 The expenditures for Level II (more than an aggregate of three hours per child per week) special education services shall be considered for allowable excess cost reimbursement under the following conditions:

011.03B1a the school district or approved cooperative has documented and contributed the portion (total or prorated amount for a full day program) of the adjusted average per pupil cost into the program; and

011.03B1b the expenditures are within the allowable categories as stated in Section 011.

011.03C Level III Special Education Contractual Services

011.03C1 The school district or approved cooperative may contract for any or all special education programs with approved service agencies.

011.03C1a Those school districts or approved cooperatives contracting for services shall have the service agency specify the cost for each service being provided by the service agency. Reimbursement to such school districts or approved cooperatives shall be limited to the NDE approved rates and the amount of time such services were provided to students with verified disabilities.

011.04 Final Financial Reports

011.04A General Procedures

011.04A1 Excess cost shall mean the difference between (1) the total allowable cost of the special education programs excluding residential care, and (2) the number of students (full time equivalency) in the special education program multiplied by the adjusted average per pupil cost of the resident school district of each student for the preceding year.

011.04A2 Each school district shall determine an adjusted average per pupil cost.

011.04A2a The adjusted average per pupil cost is to be determined by subtracting those eligible special education expenditures which were included as costs from the total instructional expenditures shown on the Total Instruction line of the district's Annual Financial Report for the previous school year. Divide the result by the total ADM (Average Daily Membership) as reported in the Annual Financial Report for the same year.

011.04B Payments

011.04B1 Payments shall be made by the State Department of Education to the school district of residence, cooperative of school districts, or educational service unit each year in a minimum of seven payments between the fifth and twentieth day of each month beginning in December. Additional payments may be made based upon additional valid claims submitted. Such payments will be based upon the final financial reports submitted on forms or in a manner prescribed by the Special Education Office which shall include the following:

011.04B1a allowable expenditures for the preceding school fiscal year including any costs for the Flexible Funding Option.

011.04B1b a list of all special education staff and their FTE;

011.04B1c tuition received from contracts and other sources;

011.04B1d certification of authorized officer of the school board or authorized official of an approved cooperative that the reported expenditures have been paid;

011.04B1e a copy of the billings from the service agencies for contracted programs; and

011.04B1f student Special Education Full Time Equivalency as defined by 92 NAC 51-011.01D for Level II and Level III students.

011.04B2 Such final financial reports shall be submitted to the Department of Education on or before October 31 of each year for the preceding school fiscal year.

011.04B3 A school district or approved cooperative reimbursed for ineligible expenditures, shall be required to return to the Department of Education the amount determined to be ineligible or the amount shall be deducted from subsequent special education payments.

011.04B4 The Department of Education shall withhold any reimbursement provided under Neb. Rev. Stat. 79-1142, to school districts or approved cooperatives which, after final determination by the Department of Education, received funds in excess of the determined allocation for the previous year. Payments which are withheld shall be no greater than the amount of overpayment. The Department of Education shall maintain an accurate account and a record of the reasons for such overpayments and the manner in which adjustments were made.

011.04B5 Supplementary amendments to any school age final financial report previously approved by the Special Education Office may be submitted to the Special Education Office for review and approval within three years of the original due date. Approved amendments may be submitted by the Department of Education to the Legislature for consideration of a supplemental appropriation.

011.04C Determination and Scheduling of Payments

011.04C1 For special education and support services provided, the State Department of Education shall reimburse each school district in the following school fiscal year a pro rata amount determined by the State Board of Education from appropriations for special education approved by the Legislature and based on allowable excess costs for all special education programs and support services. Cooperatives of school districts or educational service units shall also be eligible for reimbursement for cooperative programs pursuant to this subsection if such cooperatives or educational service units have complied with the reporting and approval requirements of Neb. Rev. Stat. 79-1155 for cooperative programs which were offered the preceding year.

011.04C2 The amount appropriated by the Legislature for special education programs including support services (Flexible Funding Option) shall be the basis for reimbursement. Payments authorized by Neb. Rev. Stat. 79-1142 shall be made only to a school district or approved cooperative.

011.04C3 Whenever there are due dates specified in this Chapter for submission of required documents, the appropriate items shall be submitted to the Department of Education, Special Education Office on-those dates.

011.04C4 All reports required by this Chapter for submission by school districts and approved cooperatives shall be made in accordance with 92 NAC 51-011.04C3. Failure to do so will result in the implementation of the procedures specified in 92 NAC 51-004.14.

011.05 Flexible Funding projects are optional for school districts or approved cooperatives and are intended for students not identified or verified for special education services but who demonstrate a need in the general curriculum. A school district or approved cooperative choosing to exercise the Flexible Funding Option must submit an application containing a narrative and proposed budget. Proposals shall be submitted to the Nebraska Department of Education, Special Education Office.

011.05A As part of the Flexible Funding Option Application, the narrative shall describe the support services designed for the targeted student subgroup who would benefit from preventative support services within the context of the general curriculum. The narrative must include:

011.05A1 an estimate of the annual number of students to be served;

011.05A2 the process(es) used in identifying the intended target student subgroup;

011.05A3 methodology to be used including but not limited to:

011.05A3a the strategies and interventions to be applied;

011.05A3b the staff development activities to be funded for carrying out activities described in the proposal;

011.05A3c the intended student outcomes resulting from implementation;

011.05A3d how the proposed services are different from services currently available to the targeted student subgroup;

011.05A3e the proposed annual measurements that will be used to document changes in student performance; and

011.05A3f if the proposal is linked to school district or building level school improvement activities, information describing the relationship to the School Improvement Action Plan; and

011.05A4 the name of the person(s) responsible for proposal implementation as well as a mailing address, e-mail, fax and phone number.

011.05B Flexible Funding Option Reimbursement

011.05B1 Reimbursement for support services as defined in 92 NAC 51-003.63 shall be limited to a percentage established by the State Board of Education not to exceed ten percent of the school district's or approved cooperative's total allowable reimbursable cost for all special education programs and support services.

011.05B2 Costs shall be limited to allowable costs as defined in Section 011 and the cost of salary and fringe benefits of general education staff providing support services.

011.05B3 Payments will be based upon the costs reported in the Final Financial Report and contingent upon completion and approval of a final report containing actual project costs and a report of student progress including the requirements of 92 NAC 51-012.07A2. Payments will be made at the same percentage rate as for all special education reimbursement.

011.05C The fiscal year for the Flex Funding Option shall be September 1 to August 31.

011.06 Ward of the State or Court With a Disability

011.06A When a ward of the state or court has been placed in a school district other than the district in which he or she resided at the time he or she became a ward and such ward does not reside in a foster family home licensed or approved by the Department of Health and Human Services or a foster home maintained or used by the Department of Correctional Services pursuant to Neb. Rev. Stat. 83-108.04 or has been placed in any institution which maintains a special education program which has been approved by the State Department of Education and such institution is not owned or operated by the district in which the student resided at the time the student became a ward, the cost of his or her education and the required transportation costs associated with the child's education shall be paid by the Nebraska Department of Health and Human Services under rules and regulations prescribed by the Department of Health and Human Services and the student remains a resident of the district in which the student resided at the time he or she became a ward. Any student who is a ward of the state or court who resides in a foster family home licensed or approved by the Department of Health and Human Services or a foster home maintained or used by the Department of Correctional Services pursuant to Neb. Rev. Stat. 83-108.04 is a resident of the district in which the foster family home or foster family is located and shall be claimed in the final financial report of the school district or approved cooperative in which the foster family home or foster home is located.

012 School District Application and Payment Process for IDEA Flow-Through Allocations

012.01 General Information

012.01A Except for purposes specified in 92 NAC 51-012.07A, IDEA allocations are to be used by school districts in accordance with state requirements necessary to provide a free appropriate public education to children with disabilities.

012.01B The special education Assurances and Application of a school district and approved cooperative shall be submitted to the Special Education Office. Any amendments in the Assurances and Application shall be subject to the same review as the initial Assurances and Application.

012.01C Maintenance of Effort

012.01C1 A school district may not use IDEA flow-through funds to reduce the level of expenditures below the preceding year's special education expenditures.

012.01C2 A school district may use up to 50% of the amount received under IDEA that exceeds the amount received under IDEA the previous year to assist with meeting maintenance of effort.

012.01C3 Exceptions for a school district not meeting IDEA maintenance of efforts requirements as per federal regulations are:

012.01C3a the school district has reduced special education personnel costs because staff has been replaced with qualified staff earning lower salaries;

012.01C3b the school district has a decrease in enrollment of children with disabilities;

012.01C3c the school district is no longer responsible for a high cost needs child(ren) with a disability; and

012.01C3d the school district has terminated a long-term special education purchase(s).

012.01D Notice and Opportunity for a Hearing Before Disapproval of an Application for IDEA Flow-through Allocations

012.01D1 The Nebraska Department of Education will provide an opportunity for a hearing prior to disapproving an application for special education funds for failure of the application to meet the requirements of the Individuals with Disabilities Education Act and its implementing regulations.

012.01D2 The school district or approved cooperative shall request a hearing in writing within 30 calendar days of receipt of the notice provided indicating that the Special Education Office intends to recommend disapproval of the school district's or approved cooperative's application. Within 30 days after it receives a request, the Nebraska Department of Education shall hold a hearing on the record and shall review its decision.

012.01D3 Not later than 10 days after the hearing, the Nebraska Department of Education shall issue a written ruling, including the findings of fact and reasons for the ruling.

012.01D4 If the Nebraska Department of Education finds the proposed disapproval of the school district's or approved cooperative's application was contrary to the Individuals with Disabilities Education Act and its implementing regulations or the Nebraska Special Education Act and its implementing regulations, the Department shall approve the application.

012.01D5 If the Nebraska Department of Education disapproves the school district's or approved cooperative's application, the school district or approved cooperative may appeal to the U.S. Secretary of Education. The school district or approved cooperative shall file a notice for appeal within 20 days after the school district or approved cooperative has been notified by the Nebraska Department of Education of the results of the hearing. If supported by substantial evidence, the findings of the Nebraska Department of Education shall be final.

012.01D6 The Nebraska Department of Education will make available at reasonable times and places all records of the Department pertaining to any review or appeal the school district or approved cooperative is conducting under 34 CFR 76.401 including records of other school districts or approved cooperatives.

012.02 IDEA Base Flow-through Allocation

012.02A First priority for use of the school district IDEA base flow-through allocation is early childhood special education (Below Age Five programs and transportation).

012.02A1 IDEA base flow-through allocation can be considered in calculating the maximum amount of funds available under 92 NAC 51-012.07A.

012.02B The IDEA base flow-through allocation is distributed to school districts based on the federally determined special education child count.

012.02C The fiscal year for early childhood special education programs shall be September 1 to August 31.

012.03 The following additional reports shall be submitted to the Department of Education for early childhood special education (Below Age Five):

012.03A Final Financial Reports

012.03A1 The Department of Education shall make payments to school districts in seven approximately equal monthly payments beginning in December of each year. If applicable, a supplemental final grant payment will be made to qualifying school districts based on the Below Age Five final financial reports submitted to the Department of Education which shall include the following:

012.03A1a allowable expenditures for the appropriate school fiscal year;

012.03A1b a list of all special education staff and their FTE;

012.03A1c tuition received from contracts and other sources;

012.03A1d certification of authorized officer of the school board or authorized official of an approved cooperative that the reported expenditures have been paid; and

012.03A1e a copy of the billings from the service agencies for contracted programs.

012.03A2 Final financial reports shall be submitted to the Department of Education on or before October 1 of each year for the preceding fiscal year.

012.03A3 A school district or approved cooperative paid for ineligible expenditures shall be required to return to the Department of Education the amount determined to be ineligible or the amount shall be deducted from subsequent special education payments.

012.03A4 The Department of Education shall withhold any payments provided under Neb. Rev. Stat. 79-1132 to school districts or approved cooperatives which, after final determination, received funds in excess of the appropriate allocation for the previous year(s). Payments which are withheld shall be no greater than the amount of overpayment. The Department of Education shall maintain an accurate account and a record of the reasons for such overpayments and the manner in which adjustments were made.

012.03A5 Allowable costs incurred for children with disabilities below age five shall be considered as total excess cost. The State Department of Education shall provide grants for the costs of the special education programs approved by the State Department of Education to the school district of residence for children with disabilities who are less than five years of age. The grants shall be one hundred percent of the costs of such programs and shall continue to be one hundred percent as long as the funding for such grants comes from federal funds. If federal funding pursuant to the Individuals with Disabilities Education Act, Part B and section 619 base flow-through allocation funds are inadequate at any time to pay one hundred percent of the allowable costs of such programs and transportation, the amount of the grant payments provided by the department shall be a pro rata amount as determined by the State Board of Education from appropriations for special education approved by the Legislature and based on such allowable costs for all special education programs and transportation to children with disabilities who are less than five years of age.

012.03A5a An educational service unit, cooperative, or regional planning entity recognized by the State Board of Education pursuant to Neb. Rev. Stat. 79-1135 may receive grant funding if a school district authorizes through a signed certification the release of all or a portion of the school district IDEA allocation to said entity.

012.03A6 The Department of Education may make a supplemental payment to a school district not able to achieve the Department's annually established Below Age Five funding threshold through a combination of IDEA base and enrollment and poverty flow-through allocations. Contingent upon available federal funds, this annual threshold will be at least the same percentage of funding as is available through state general funds for school age services for that year.

012.04 Allowable Costs

012.04A The allowable costs for early childhood special education (Below Age Five) services are restricted to the following items, which shall be documented and are subject to audit:

012.04A1 salaries of special education staff as per 92 NAC 51-010.01D;

012.04A2 school district or approved cooperative share of fringe benefits for the special education staff;

012.04A2a Fringe benefits shall be limited to social security, retirement programs, workers' compensation, health, life, long term disability and unemployment insurance.

012.04A3 inservice costs directly related to the special education programs, provided that;

012.04A3a Allowable inservice expenditures are costs directly related to special education programs. Allowable activities must be designed to contribute to the professional growth and competence of staff serving children with disabilities and their parents through workshops, demonstrations, and school visits. Tuition and expenses of attending special education courses for college credit are not allowed.

012.04A3b Allowable costs include: presenter fees and expenses, mileage, board and room of staff to attend inservice programs, costs of substitutes for staff attending inservice programs, costs of inservice programs which directly assist regular educators in providing appropriate programs for children with verified disabilities in their classrooms, and costs of special education workshop attendance.

012.04A3c Costs of attending meetings conducted by organizations where only organizational business is conducted is not an allowable expense.

012.04A4 travel costs incurred by the school district or approved cooperative in delivering the special education programs including costs for:

012.04A4a To students attending nonpublic schools who are required to leave the nonpublic school to receive special education and related services.

012.04A4b To students who are assigned to more than one attendance center to receive special education.

012.04A5 travel costs incurred by parents to attend educational planning meetings held outside the resident district which are necessary to provide a free appropriate public education or to visit their child who is assigned to a residential program outside the district as agreed upon through the IEP process;

012.04A6 costs of transporting children with disabilities which are authorized under Neb. Rev. Stat. 79-1129 and Section 014 are budgeted and claimed separately;

012.04A7 instructional equipment, supplies and publications necessary to aid the child in accomplishing the goals and objectives of the individual education program (IEP) or IFSP are allowable under this Chapter. The equipment, supplies and publications shall be used by the child in association with the implementation of the child's IEP, IFSP or evaluation. This shall also include equipment, supplies and publications used by staff when instructing children with verified disabilities; when evaluating children who are suspected of having disabilities; or when reevaluating children with verified disabilities.

This shall not include equipment, supplies and publications used by staff for administrative purposes. Allowable and reimbursable costs shall include printing, publication and postage costs that are necessary to carry out the provisions of this Chapter. This shall not include personal equipment and supplies or life support equipment and supplies. When equipment is used for purposes other than for special education, the school district or approved cooperative shall only claim the applicable prorated portion for special education payment;

012.04A8 those contracted special education services in which children with disabilities are served by a service provider whose special education programs and rates have been approved by the Commissioner of Education or designee;

012.04A9 facility costs; limited to plant operations, maintenance, repairs, and lease costs. A total facility square footage cost may also be claimed for facilities owned by the school district that are being utilized for ECSE programs. When determining square footage costs, expenditures for facility improvements must be excluded; and

012.04A10 utilities; and

012.04A11 cost for support services as defined in Neb. Rev. Stat. 79-1125.01 and 92 NAC 51-003.62 and identified in 92 NAC 51-011.05 as the Flexible Funding Option.

012.05 Program Cost Limitations

012.05A Supervision of early childhood special education programs is allowable as an expenditure for up to an amount not to exceed 8% of the school district's or approved cooperative's allowable early childhood special education program costs, minus the cost of program supervision.

012.05B The cost of a superintendent or a principal, hired for the purpose of supervising general education, shall not be included in costs for below age five special education programs.

012.05C Any IDEA base allocation funds remaining after meeting Below Age Five obligations or at the option of the school district, Early Intervening services pursuant to 92 NAC 51-012.07A, may be used by the school district for other costs associated with serving children with disabilities, ages 5 to 21.

012.06 IDEA Enrollment and Poverty Flow-through Allocation

012.06A As per federal regulations, the enrollment and poverty flow-through allocation is distributed to school districts as follows:

012.06A1 85% on the basis of the number of children enrolled in public and nonpublic elementary schools and secondary schools within the jurisdiction of the district; and

012.06A2 15% in accordance with the number of children living in poverty within the jurisdiction of the district as determined by the Department of Education.

012.06B A combination of IDEA base and IDEA Enrollment and Poverty allocations will be used by school districts to achieve the annual threshold as specified in 92 NAC 51-012.03A7.

012.06C Funds may be used to supplement school age and below age five special education costs not covered by state or federal payments to increase the percentage of excess costs being paid or to expand special education services.

012.06C1 School districts electing to use funds for additional excess costs will receive an initial payment of approximately one-half of the allocation, following approval by the Department of Education of the school district application, with subsequent approximately equal payments of the balance on a schedule established by the Department.

012.06C2 School districts electing to use funds for expanding special education services will receive funding, following approval by the Department of Education of the school district application, based on forms and documentation required by and submitted to the Department.

012.06C3 Funds shall be used only to pay the excess cost of providing special education and related services to children with disabilities except for purposes specified in 92 NAC 51-012.07A, and shall be used to supplement State, local and other federal funds and not to supplant such funds.

012.06C4 When expenditures are for resources benefiting all children, costs attributed to IDEA shall be on a prorata basis.

012.06C5 IDEA Enrollment and Poverty flow-through allocation can be considered in calculating the maximum amount of funds available under 92 NAC 51-012.07A.

012.06D An educational service unit, cooperative, or regional planning entity recognized by the State Board of Education pursuant to Neb. Rev. Stat. 79-1135 may receive grant funding if a school district authorizes through a signed certification the release of all or a portion of the school district IDEA allocation to said entity.

012.07 Special Considerations

012.07A Provision of IDEA Early Intervening Services are voluntary for school districts and approved cooperatives receiving an IDEA allocation. Such services are limited to 15% of the school district yearly IDEA allocations and are to be designed for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade 3) who have not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment.

012.07A1 When implementing IDEA Early Intervening Services, a school district or approved cooperative may carry out activities that include:

012.07A1a professional development (which may be provided by entities other than a school district or approved cooperative) for teachers and other school staff to enable such personnel to deliver scientifically based academic instruction and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

012.07A1b providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

012.07A2 Each school district or approved cooperative that develops and maintains coordinated, early intervening services shall annually report the following information to the Department of Education:

012.07A2a the number of students served; and

012.07B2b the number of students served who subsequently receive special education and related services during the preceding two year period.

012.07A3 Payment for Early Intervening Services shall be contingent upon meeting the reporting requirements of 92 NAC 51-012.07A2.

012.07A3a Payments for Early Intervening Services will be made according to 92 NAC 51-012.06C2.

012.07A4 Nothing in this subsection shall be construed to limit or create a right to a free appropriate public education under Rule 51.

012.07B When a ward of the state or court has been placed in a school district other than the district in which he or she resided at the time he or she became a ward and such ward does not reside in a foster family home licensed or approved by the Department of Health and Human Services or a foster home maintained or used by the Department of Correctional Services pursuant to Neb. Rev. Stat. 83-108.04 or has been placed in any institution which maintains a special education program which has been approved by the State Department of Education and such institution is not owned or operated by the district in which the student resided at the time the student became a ward, the cost of his or her education and the required transportation costs associated with the child's education shall be paid by the Nebraska Department of Health and Human Services under rules and regulations prescribed by the Department of Health and Human Services and the student remains a resident of the district in which the student resided at the time he or she became a ward. Any student who is a ward of the state or court who resides in a foster family home licensed or approved by the Department of Health and Human Services or a foster home maintained or used by the Department of Correctional Services pursuant to Neb. Rev. Stat. 83-108.04 is a resident of the district in which the foster family home or foster family is located and shall claimed in the final financial report of the school district or approved cooperative in which the foster family home or foster home is located.

When a ward of the state or court has been placed in a school district other than the district in which he or she resided at the time he or she became a ward and such ward does not reside in a foster family home licensed or approved by the Department of Health and Human Services or a foster home maintained or used by the Department of Correctional Services pursuant to Neb. Rev. Stat. 83-108.04 or has been placed in any institution which maintains a special education program which has been approved by the State Department of Education and such institution is not owned or operated by the district in which the student resided at the time the student became a ward, the cost of his or her education and the required transportation costs associated with the child's education shall be paid by the Nebraska Department of Health and Human Services under rules and regulations prescribed by the Department of Health and Human Services and the student remains a resident of the district in which the student resided at the time he or she became a ward. Any student who is a ward of the state or court who resides in a foster family home licensed or approved by the Department of Health and Human Services or a foster home maintained or used by the

Department of Correctional Services pursuant to Neb. Rev. Stat. 83-108.04 is a resident of the district in which the foster family home or foster family is located and shall claimed in the final financial report of the school district or approved cooperative in which the foster family home or foster home is located.

012.07C Related services for children with verified disabilities are allowable if the services are listed in the IEP or IFSP and are necessary for the achievement of educational or developmental goals as stated in the IEP or IFSP.

012.07D Payments to a school district or approved cooperative contracting for early childhood special education (Below Age Five) services shall be limited to rates approved by the Commissioner of Education or designee.

012.07E Late submission of required forms will be subject to the procedures specified in 92 NAC 51-004.14.

013 Contracted Programs

013.01 Special education programs and support services may be provided by contracting with another school district, approved cooperative, or with a Department of Education provisionally approved service provider. Responsibility for compliance with state and federal regulations for programs for children with disabilities remains with the school district.

013.02 The school district of residence shall be responsible for the development and maintenance of the IEP, and the participation in all IEP meetings and shall assure that IEP meetings are arranged with the contracted program and the parents. Such arrangements may include meetings with the contracted program, the school district, and the parent. Meetings may occur within the district, at the contracted program site or another site if more appropriate. For infants and toddlers the school district of residence shall be responsible for meeting the requirements of 92 NAC 51-007.13 through 92 NAC 51-007.19.

013.02A The parent, the school district and a contracted program representative shall be involved in any decision about the IEP or IFSP.

013.02B The expenditures for special education contractual services shall be considered for payment of allowable costs under the following conditions:

013.02B1 the services claimed by the school district or approved cooperative were provided by contracted programs whose service(s) and rate(s) were provisionally approved by the Department of Education; and

013.02B2 the school district or approved cooperative has completed the plan and budget forms.

013.02C The school district or approved cooperative will be allowed a forty-five (45) calendar day grace period when entering into contracts with programs not provisionally approved by the Department of Education. Within this forty-five day grace period a school district or approved cooperative is responsible for notifying the program of the application and approval requirements of the Department of Education.

013.02C1 If the contracted program, other than a school district or approved cooperative fails to submit an application within the forty-five (45) calendar day grace period, the school district or approved cooperative is required to seek and obtain placement for the child in a provisionally approved program within fourteen (14) calendar days following the expiration of the grace period. If the agency's application for approval is denied by the Department of Education, the school district or approved cooperative is required to seek and obtain placement for the child in a provisionally approved program within fourteen (14) calendar days following notification of the denial.

013.02C2 The cost of services provided by a contracted program which is not granted provisional approval by the Department of Education will not be reimbursed.

013.02D The school district or approved cooperative and the provisionally approved contracted program shall enter into a contract which shall include but need not be limited to:

013.02D1 a description of the services to be provided;

013.02D2 names of children to be served;

013.02D3 a cost schedule for the services; and

013.02D4 Department of Education service code and agency code for the service(s) provided.

013.02E The school district or approved cooperative shall have on file a signed copy of the contract.

013.02F The school district or approved cooperative shall monitor the progress of those children for whom they have contracted. For each child contracted for services, the school district shall maintain within the school district all applicable records as follows: a record of all referral information, notice to parents, parent notice and consent for initial evaluation, multidisciplinary evaluation team report, notification of IEP or IFSP meeting, the individual education program, parent notice and consent for initial placement, notice of change of placement or program termination, notice of student reevaluation, and other supportive data. School districts may elect to enter into agreements with provisionally approved contracted programs for the proper maintenance and protection of personally identifiable data on children with disabilities.

013.02G The school district shall be liable for the payment of the educational costs for the placement of a child in a program not operated by the school district only when:

013.02G1 the school district initiated the placement; or

013.02G2 the school district has agreed to the placement; or

013.02G3 the school district is party to a decision under 92 NAC 55 which requires such placement and which has not been appealed by the school district; or

013.02G4 the school district has been a party to litigation resulting in a court order requiring the placement.

013.03 Department of Education Provisionally Approved Service Provider Responsibility

013.03A With the exception of inservice providers and consultants who provide special education training for parents and staff which directly assist in providing appropriate programs for students with verified disabilities, all service providers contracting with a school district or approved cooperative shall seek approval and obtain a provisionally approved rate, service code and agency code for such services.

013.03B Service providers who request reimbursable rates exceeding NDE established rates shall submit, on forms provided by the Department of Education, the following:

013.03B1 personnel and their qualifications;

013.03B2 a cost schedule for services (for allowable costs, see Sections 011 and 012);

013.03B3 a written description of services;

013.03B4 separation of sectarian educational costs and non-sectarian educational costs, if applicable;

013.03B5 separation of the cost of residential care costs from the cost of the educational program, if applicable;

013.03B6 documentation of conformance with building codes and safety requirements, if applicable; and

013.03B7 for Educational Service Units, a final report of expenditures which is due within 45 days after the service providers fiscal year end.

013.03C Service providers who request reimbursable rates at or below NDE established rates shall submit, on forms provided by the Department of Education, the following:

013.03C1 personnel and their qualifications;

013.03C2 a cost schedule for services;

013.03C3 a written description of services; and

013.03C4 documentation of conformance with building codes and safety requirements, if applicable.

013.03D Service providers must have on file a copy of the child's current IEP or IFSP.

013.03E If the possibility of contracting with a school district or approved cooperative exists, service providers shall inform the school district or approved cooperative of the child's entry into the facility within five (5) calendar days of arrival.

013.03F Service providers shall provide reasonable notice to the school district or approved cooperative prior to termination of services by the provider.

013.03G Service providers shall not be considered provisionally approved until the Commissioner of Education or designee grants such approval.

013.03H Service providers shall be considered for provisional approval annually.

013.03I When residential care is required for a child to attend an education program, the education program must be approved by the Commissioner of Education or designee prior to approval for residential care.

014 Special Education Transportation

014.01 The board of education shall furnish one of the following types of services to children with disabilities who are residents of the school district:

014.01A provide transportation for any child with a disability who is forced to leave the school district temporarily because of lack of educational services; and

014.01B provide transportation within the school district for any child with a disability who is enrolled in a special education program of the district when either:

014.01B1 The child is required to attend a facility other than what would be the normal school of attendance of the child to receive appropriate special education services; or

014.01B2 The nature of the child's disability is such that special education transportation is required.

014.01C The board of education shall provide transportation for all children with disabilities birth to age five including children birth to age five who are wards of the court.

014.01D Transportation for Children Attending a Non-Public School

014.01D1 If necessary for the child to benefit from or participate in the services provided under this Chapter, a nonpublic school child with a disability must be provided transportation:

014.01D1a from the child's school or the child's home to a site other than the nonpublic school; and

014.01D1b from the service site to the nonpublic school, or to the child's home, depending on the timing of the services.

014.01D2 School districts are not required to provide transportation from the child's home to the nonpublic school.

014.02 Responsibility for Transportation

014.02A The board of education shall be responsible to provide for the transportation expenses of children with disabilities who are residents of the school district under Neb. Rev. Stat. 79-1129 by:

014.02A1 paying a parent for transporting his or her child for actual miles traveled and claimed; or

014.02A2 operating vehicles for the purpose of transporting children with disabilities; or

014.02A3 contracting for transportation services for children with disabilities; or

014.02A4 purchasing services from a common carrier; or

014.02A5 arranging for such other transportation as is proper and necessary to transport children with disabilities.

014.02B The board of education shall select an efficient and effective means of transportation for the child with a disability at a reasonable cost.

014.02C The board of education shall not provide for the transportation expenses of children with a disability who are residents of the school districts under Neb. Rev. Stat. 79-1129 if such children are able to use regular transportation services provided by the district unless:

014.02C1 alteration of the routes of such regular transportation is required to transport children with a disability; or

014.02C2 alteration is required of the equipment or vehicles used in such regular transportation in order to accommodate children with a disability.

014.02D The board of education shall provide for expenses equal to the statutory amount for each mile or fraction thereof traveled between the place of residence and the program of attendance when a parent transports his or her child(ren) with a disability. (Refer to Neb. Rev. Stat. 79-1129 and 81-1176.)

014.02E Except when a parent is transporting only his or her child, the board of education shall require that the driver and vehicle meet the standards required by 92 NAC 91, 92, 93, and 94.

014.02F For students with disabilities participating in the Option Enrollment Program under Neb. Rev. Stat. 79-232 to 79-246, the transportation services included on the student's IEP shall be provided by the district from which the student optioned. The Department shall reimburse the district from which the student optioned for the cost of transportation in accordance with Section 014.

014.03 Allowable Expenses

014.03A The school district or approved cooperative shall provide for the transportation expenses of children with a disability transported by the parents of such children, upon receipt of claims submitted to the board of education by such parents. Such claims shall be documented and subject to audit. The claims shall:

014.03A1 state the names of the children transported, the dates they were transported, the mileage incurred in such transportation; and

014.03A2 contain a statement that the claim is a true and correct report of mileage; and

014.03A3 include the signature of the parent.

014.03B The school district or approved cooperative shall not be relieved of the obligation to provide transportation for an eligible child with a disability because of the inability or unwillingness of the child's parents to provide transportation. No eligible child with a disability may be denied or have limitations placed on the child's receipt of special education services required by an IEP or IFSP as a result of the inability or unwillingness of parents to provide transportation.

014.03C The school district or approved cooperative shall provide for the expenses or the equivalent costs for transportation from the child's legal residence (the residence of the parent(s)) or Department of Education approved residential placement, to the child's program.

014.03D A school district or approved cooperative may apply to the Department of Health and Human Services for reimbursement of transportation costs for the school age student who was made a ward of the state or court prior to his or her arrival in that school district.

014.03E When the school district or approved cooperative provides for transportation expenses under Neb. Rev. Stat. 79-1129 for children with a disability who are residents of the school district by utilizing vehicles operated by the school district, it shall include those transportation expenses below which are directly related to the vehicles used to transport special education children:

014.03E1 salaries and fixed charges of drivers and necessary aides;

014.03E2 vehicle operational supplies;

014.03E3 vehicle repairs and maintenance;

014.03E4 vehicle lease costs;

014.03E5 vehicle insurance related to the transportation of children with a disability;

014.03E6 documented administrative expenses of those engaged or employed for the purpose of supervising the transportation of children with a disability, their assistants, and clerical personnel but not including expenses for those engaged in general school or special education administration;

014.03E7 such depreciation as is allowed in 92 NAC 51-014.04 of these rules;

014.03E8 those expenses attributable to an alteration of routes;

014.03E9 those expenses attributable to alterations in equipment of vehicles, which must be depreciated; and

014.03E10 facility expenses relating to the maintenance of vehicles used for transporting children with a disability. Transportation facility expense for purposes other than maintenance are not allowable reimbursable items. Maintenance includes such activities as repair, cleaning, greasing, fueling and inspecting vehicles for safety. If a facility is used for purposes other than maintenance of vehicles used to transport children with a disability, expenses must be listed separately so that only those costs attributed to the maintenance of special education vehicles are included.

014.03F If income is derived from a transportation service provided under Neb. Rev. Stat. 79-1129 such income shall be used to offset expenses listed above to the extent of such income.

014.03G The Department of Education shall allow a per mile cost for operating vehicles by using the categories of allowable expenses in 92 NAC 51-014.03 divided by the actual mileage the vehicle was driven for each fiscal year or the mileage rate provided in Neb. Rev. Stat. 81-1176. This procedure may be used in lieu of 92 NAC 51-014.03E.

014.03H The costs used must be adequately documented by the school district for review by the Department of Education.

014.03I Detailed mileage logs must be maintained by the school district and be available for review by the Department of Education.

014.03J Undocumented expenses or mileage will not be allowed.

014.04 Depreciation

014.04A The school district or approved cooperative shall claim as a depreciation deduction a reasonable allowance for depreciation of:

014.04A1 vehicles owned by the district, or portion of vehicles, or other capital assets owned by the district used in the transportation of children with a disability under Neb. Rev. Stat. 79-1129; and

014.04A2 other capital expenditures required in the alteration of vehicles used in the transportation of children with a disability under Neb. Rev. Stat. 79-1129.

014.04B An allowance for depreciation shall be based on a reasonable useful life span of an item at the time of acquisition or for previous district owed vehicles, the fair market value of the item when placed into special education service so that the amount set aside each year for depreciation plus the estimated salvage value, will, at the end of the useful life of the item, equal the cost of the item.

014.04B1 It shall be presumed that the reasonable period of depreciation for a new conventional school bus is seven years and that of a new small vehicle is three years.

014.04B2 If any school district or approved cooperative determines that the periods of depreciation set forth above are not reasonable because of the type of vehicles in use, the school district may request alternate periods of depreciation for such vehicles, along with supporting reasoning in an application to the Department of Education.

014.04B3 Capital expenditures in excess of two thousand dollars ($2000) require a depreciation schedule approved by NDE.

014.04B4 The allowance for depreciation must be claimed in the fiscal year in which the vehicle was used.

014.04B5 When equipment is used for purposes other than for special education transportation, the school district or approved cooperative shall only claim the applicable prorated portion for special education payment.

014.04C When a depreciable item is disposed of or used for a purpose other than the transportation of children with a disability under Neb. Rev. Stat. 79-1129, the fair market value of such item shall be considered its actual salvage value.

014.04C1 Any actual salvage in excess of estimated salvage value shall be set off against any payments due to the board under Neb. Rev. Stat. 79-1129 and 79-1144.

014.04C2 When the actual salvage value is less than the estimated salvage value, then an expense for such difference shall be allowable under 92 NAC 51-014.04B of these rules.

014.04C3 When vehicles are not disposed of in a cash sale, recognized retail book values, such as the Used Car Guide of the National Automobile Dealers Association shall be evidence of fair market value unless a board of education demonstrates that it is not appropriate to use such recognized book values on a particular vehicle because of the condition or type of the vehicle in question.

014.04C4 A depreciation schedule shall be maintained by the district or approved cooperative as long as they own the vehicle.

014.05 Other Conditions

014.05A The fiscal year for school age and early childhood special education (Below Age Five) transportation shall be from September 1 to August 31.

014.05B Based on claim forms submitted reflecting the allowable costs of transporting children with disabilities, the Department of Education will reimburse each school district or approved cooperative a pro rata amount determined by the State Board of Education from appropriations for special education approved by the Legislature. For early childhood special education (Below Age Five) transportation, refer to 92 NAC 51-014.05H. Transportation claim forms shall be submitted on or before September 30 of each year according to the provisions of 92 NAC 51-011.04C3 and 011.04C4.

014.05C Reimbursement to a school district or approved cooperative whose Special Education Transportation Final Claim Form is submitted to the Department of Education after the due date shall be subject to the procedures specified in 92 NAC 51-004.14.

014.05D All transportation claims shall be documented and are subject to audit.

014.05E For payment for costs associated with the transportation of children below the age of five with a disability who are wards of the court, refer to 92 NAC 51-014.05H.

014.05F Supplementary amendments to any Special Education School Age Transportation Final Claim Form previously approved by the Department of Education may be submitted to the Department of Education for review and approval within three years of the original due date. Approved amendments may be submitted by the Department of Education to the Legislature for consideration of a supplemental appropriation.

014.05G Payments authorized by Neb. Rev. Stat. 79-1144 shall be made only to a school district or approved cooperative.

014.05H IDEA Base flow-through allocation (92 NAC 51-012.02) and the IDEA Enrollment and Poverty Allocation (92 NAC 51-012.06) are to be used to fund costs for transporting children with disabilities below the age of five.

014.05I Expenditure of IDEA Allocations shall be in accordance with 92 NAC 51-012.06C3, 012.06C4 and 012.06C5.

015 Children with Disabilities Attending Nonpublic Schools

015.01 Children Placed In or Referred To a Nonpublic School or Facility by the School District As a Means of Providing Special Education and Related Services

015.01A School districts shall insure that a child with a disability who is placed in or referred to a nonpublic school or facility by a school district:

015.01A1 is provided special education and related services in conformance with an IEP that meets the requirements of Section 007 at no cost to the parents;

015.01A2 is provided an education that meets the standards including the requirements of this Chapter, that apply to education provided by the school district; and

015.01A3 has all of the rights of a child with a disability who is served by a school district.

015.01B School districts shall disseminate copies of applicable standards to each nonpublic school and facility to which the school district has referred or placed a child with a disability.

015.02 Children Placed In a Nonpublic School by Parents As a Means of Obtaining Special Education and Related Services; FAPE is At Issue

015.02A This Chapter does not require a school district to pay for the cost of education, including special education and related services, of a child with a disability at a nonpublic school or facility if that school district made FAPE available to the child and the parents elected to place the child in a nonpublic school or facility as a means of obtaining special education and related services. However, the school district shall include that child in the population whose needs are addressed consistent with 92 NAC 51-015.03.

015.02B Disagreements between a parent and a school district regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures of 92 NAC 55.

015.02B1 If the parents of a child with a disability, who previously received special education and related services under the authority of the school district, enroll the child in a nonpublic preschool, elementary or secondary school without the consent or referral by the school district, a court or a hearing officer may require the school district to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the school district had not made a free appropriate public education available to the child in a timely manner prior to that enrollment and that the private placement is appropriate.

015.02B1a A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the school district.

015.02C The cost of reimbursement described in 92 NAC 51-015.02B1 may be reduced or denied if:

015.02C1 at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the school district to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a nonpublic school at public expense; or

015.02C2 at least 10 business days (including any holidays that occur on a business day), prior to the removal of the child from the public school, the parents did not give written notice to the school district of the information described in 92 NAC 51-015.02C1; or

015.02C3 prior to the parents removal of the child from the public school, the school district informed the parents, through the notice requirements described in 92 NAC 51-009.03, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or

015.02C4 upon a judicial finding of unreasonableness with respect to actions taken by the parents.

015.02D Notwithstanding the notice requirements of 92 NAC 51-015.02C1 and 015.02C2 the cost of reimbursement shall not be reduced or denied for failure to provide the notice if: the parent is illiterate and cannot write in English; compliance with 92 NAC 51-015.02C1 and 015.02C2 would likely result in physical or serious emotional harm to the child; the school prevented the parent from providing such notice, or the parents had not received prior written notice, of the parents' responsibility to provide such notice to the school districts as required by 92 NAC 51-009.03.

015.03 Children Enrolled In a Nonpublic School by Parents If FAPE Is Not At Issue

015.03A As used in 92 NAC 51-015.03, nonpublic school children with disabilities means children with disabilities enrolled by their parents in nonpublic school or facilities other than children with disabilities covered under 92 NAC 51-015.01.

015.03B The school district shall locate, identify, evaluate and provide special education and related services for all children with disabilities attending nonpublic schools, including children residing in the jurisdiction of the school district who attend religiously affiliated schools, in accordance with 92 NAC 51-006.01A, 004.01, and 004.08. The activities undertaken to carry out this responsibility for children with disabilities attending nonpublic schools must be comparable to activities undertaken for children with disabilities in public schools.

015.03C The school district shall consult with appropriate representatives of nonpublic school children with disabilities on how to carry out the activities described in 92 NAC 51-015.03B.

015.04 Services provided to nonpublic school children with disabilities may be provided on-site at a child's nonpublic school, including a religious school, to the extent consistent with law.

015.05 Transportation

015.05A If necessary for the child to benefit from or participate in the services provided under this Chapter, a nonpublic school child with a disability must be provided transportation:

015.05A1 from the child's school or the child's home to a site other than the nonpublic school; and

015.05A2 from the service site to the nonpublic school, or to the child's home, depending on the timing of the services.

015.05B School districts are not required to provide transportation from the child's home to the nonpublic school.

015.06 A school district may lease a classroom in a nonpublic school building. If properly drafted, the lease transforms the classroom into a public school classroom during the times covered by the lease. The board of education of a public school district may offer the special education programs enumerated in Neb. Rev. Stat. 79-1127 in a leased classroom in a nonpublic school building. It does not, however, have an unqualified legal duty to do so.

015.07 A school district may not use special education funds for classes that are organized separately on the basis of school enrollment or religion of the children if:

015.07A the classes are at the same site; and

015.07B the classes include children enrolled in public schools and children enrolled in nonpublic schools.

015.08 A school district may not use special education funds to finance the existing level of instruction in a nonpublic school or to otherwise benefit the nonpublic school.

015.08A A school district shall use the special education funds to meet the specific needs of children enrolled in nonpublic schools, rather than:

015.08A1 the needs of a nonpublic school; or

015.08A2 the general needs of the children enrolled in a nonpublic school.

015.09 A school district may use special education funds to make public personnel available in other than public facilities:

015.09A to the extent necessary to provide services designed for students enrolled in a nonpublic school;

015.09B if those benefits are not normally provided by the nonpublic school.

015.10 A school district may use special education funds to pay for the services of an employee of the nonpublic school if:

015.10A the employee performs the services outside of his or her regular hours of duty; and

015.10B the employee performs the services under public supervision and control.

015.11 A school district may place equipment and supplies in a nonpublic school for the period of time needed for the provision of special education and related services.

015.11A The school district shall insure that the equipment or supplies placed in a nonpublic school:

015.11A1 are used only for the purpose of providing special education and related services; and

015.11A2 can be removed from the nonpublic school without remodeling the nonpublic school facilities.

015.11B The school district shall remove equipment or supplies from a nonpublic school if:

015.11B1 the equipment or supplies are no longer needed for the purpose of providing special education and related services; or

015.11B2 removal is necessary to avoid use of the equipment or supplies for other than special education purposes.

015.11C A school district shall insure that special education funds are not used for repairs, minor remodeling or the construction of nonpublic school facilities.

015.11D A school district must keep title to and exercise continuing administrative control of all property, equipment, and supplies that the school district acquires with special education funds for the benefit of nonpublic school children with disabilities.

016 Disciplinary Removal of Students with Disabilities

016.01 Change of placement for disciplinary removals

016.01A For the purpose of removals of a child with a disability from the child's current educational placement under Section 016, a change of placement occurs if:

016.01A1 the removal is for more than 10 consecutive school days; or

016.01A2 the child is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another.

016.02 Authority of School Personnel

016.02A School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order the change in placement for a child with a disability who violates a code of student conduct.

016.02B School personnel under this Subsection may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).

016.02C If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to 92 NAC 51-016.02E, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities, except as provided in 004.01, although it may be provided in an interim alternative educational setting.

016.02D A child with a disability who is removed from the child's current placement under 92 NAC 51-016.02G (irrespective of whether the behavior is determined to be a manifestation of the child's disability) or 92 NAC 51-016.02C shall:

016.02D1 continue to receive educational services, as provided in 92 NAC 51-004.01, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to receive those services and modifications, including those described in the child's current IEP, that will enable the child to progress toward meeting the goals set out in the child's IEP; and

016.02D2 receive, as appropriate, a functional behavior assessment, behavior intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

016.02E Manifestation Determination

016.02E1 Except as provided in 92 NAC 51-016.02B, within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the school district or approved cooperative, the parent, and relevant members of the IEP Team (as determined by the parent and the school district or approved cooperative) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

016.02E1a if the conduct in question was caused by or had a direct and substantial relationship to, the child's disability; or

016.02E1b if the conduct in question was the direct result of the school district's or approved cooperative's failure to implement the IEP.

016.02E2 If the school district or approved cooperative, the parent, and relevant members of the IEP Team determine that either 92 NAC 51-016.02E1a or 016.02E1b is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

016.02F If the school district or approved cooperative, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall:

016.02F1 conduct a functional behavioral assessment, and implement a behavioral intervention plan for the child provided that the school district or approved cooperative had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement described in 92 NAC 51-016.02C or 016.02G;

016.02F2 in the situation whether a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and

016.02F3 except as provided in 92 NAC 51-016.02G, return the child to the placement from which the child was removed, unless the parent and the school district or approved cooperative agree to a change of placement as part of the modification of the behavioral intervention plan.

016.02G School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child:

016.02G1 carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or school district or approved cooperative;

016.02G2 knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a State or school district or approved cooperative; or

016.02G3 has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or school district or approved cooperative.

016.02H Not later than the date on which the decision to take disciplinary action is made, the school district or approved cooperative shall notify the parents of that decision, and of all procedural safeguards under Section 009.

016.03 The interim alternative educational setting in 92 NAC 51-016.02C and 016.02G shall be determined by the IEP Team.

016.04 Appeals Regarding Placement in an Alternative Education Setting

016.04A The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a school district or approved cooperative that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing by filing a petition pursuant to 92 NAC 55.

016.04B A hearing officer shall hear and make a determination regarding an appeal pursuant to 92 NAC 55 requested under 92 NAC 51-016.04A.

016.04C In making the determination, the hearing officer may order a change in placement of a child with a disability. In such situations, the hearing officer may:

016.04C1 return a child with a disability to the placement from which the child was removed; or

016.04C2 order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

016.05 When an appeal under 92 NAC 51-016.04 has been requested by either the parent or the school district or approved cooperative:

016.05A the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in 92 NAC 51-016.02C, whichever occurs first, unless the parent and the school district or approved cooperative agree otherwise; and

016.05B an expedited hearing shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

016.06 Protections for Children Not Yet Eligible for Special Education and Related Services

016.06A A child who has not been determined to be eligible for special education and related services, and who has engaged in behavior that violates a code of student conduct of the school district or approved cooperative, may assert any of the protections provided for in this part if the school district or approved cooperative had knowledge (as determined in accordance with this Section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

016.06B A school district or approved cooperative shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred:

016.06B1 the parent of the child has expressed concern in writing to supervisory or administrative personnel of the school district or approved cooperative, or a teacher of the child, that the child is in need of special education and related services;

016.06B2 the parent of the child has requested an evaluation of the child pursuant to 92 NAC 51-006.02A; or

016.06B3 the teacher of the child, or other personnel of the school district or approved cooperative has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of the school district or approved cooperative or to other supervisory personnel of the school district or approved cooperative.

016.06C A school district or approved cooperative shall not be deemed to have the knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child pursuant to Section 006 or has refused services under this part or the child has been evaluated and it was determined that the child was not a child with a disability under Section 006.

016.06D Conditions that Apply if No Basis of Knowledge

016.06D1 If a school district or approved cooperative does not have knowledge that a child is a child with a disability (in accordance with 92 NAC 51-016.06B or 016.06C) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with 92 NAC 51-016.06D2.

016.06D2 If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under 92 NAC 51-016.02, the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the school district or approved cooperative and information provided by the parents, the school district or approved cooperative shall provide special education and related services in accordance with this section, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

016.07 Referral to and Action by law Enforcement and Judicial Authorities

016.07A Nothing in this part shall be construed to prohibit school districts or approved cooperatives from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

016.07B A school district or approved cooperative reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the school district or approved cooperative reports the crime.

**Appendix A**

Excerpts From the Individuals with Disabilities Education Act 2004 (IDEA 2004)

602(4) CORE ACADEMIC SUBJECTS. – The term 'core academic subjects' has the meaning given the term in Section 9101 of the Elementary and Secondary Education Act of 1965.

*(Note: Section 9101 of the Elementary and Secondary Education Act of 1965 defines "core academic subjects" as follows:*

*Core Academic Subjects means English, reading or language arts, mathematics, science, foreign language, civics and government, economics, arts, history and geography.)*

602(10) HIGHLY QUALIFIED. –

(A) In GENERAL – For any special education teacher, has the meaning given the term "high qualified" in Section 9101 of the Elementary and Secondary Education Act of 1965, except that such term also

(i) includes the requirements described in Subparagraph (B); and

(ii) includes the option for teachers to meet the requirements of Section 9101 of such Act by meeting the requirements of Subparagraph (C) and (D).

(B) REQUIREMENTS FOR SPECIAL EDUCATION TEACHERS –
When used with respect to any public elementary school or secondary school special education teacher teaching in the State, such term means that –

(i) the teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher; except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State's public charter school law;

(ii) the teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) the teacher holds at least a bachelor's degree.

(C) SPECIAL EDUCATION TEACHERS TEACHING TO ALTERNATE ACHIEVEMENT STANDARDS. – When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under the regulations promulgated under Section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, such term means the teacher, whether new or not new to the profession, may either—

(iii) meet the applicable requirements of Section 9101 of such Act for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

(iv) meet the requirements of Subparagraph (B) or (C) of Section 9101(23) of such Act as applied to an elementary school teacher, or, in the case of instruction above the elementary level, has subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards.

(D) SPECIAL EDUCATION TEACHERS TEACHING MULUTIPLE SUBJECTS – When used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, such term means that the teacher may either –

(i) meet the applicable requirements of Section 9101 of the Elementary and Secondary Education Act of 1965 for any elementary, middle, or secondary school teacher who is new or not new to the profession;

(ii) in the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under Section 9101(23)(c)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects; or

(iii) in the case of a new special education teacher who teaches multiple subjects and who is highly qualified in multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under Section 9101(23)(c)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects, not later than two years after the date of employment.

(E) RULE OF CONSTRUCTION – Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this section or part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a school district or approved cooperative employee to be highly qualified.

(F) DEFINITION FOR PURPOSES OF THE ESEA – A teacher who is highly qualified under this paragraph shall be considered highly qualified for purposes of the Elementary and Secondary Education Act of 1965.

602(18) LIMITED ENGLISH PROFICIENT. – The term 'limited English proficient' has the meaning given the term in Section 9101 of the Elementary and Secondary Education Act of 1965.

*(Note: Section 9101 of the Elementary and Secondary Education Act of 1965 defines "Limited English Proficient" as follows:*

*The term "limited English proficient", when used with respect to an individual, means an individual –*

*(A) who is aged 3 through 21;*

*(B) who is enrolled or preparing to enroll in an elementary school or secondary school;*

*(C) (i) who was not born in the United States or whose native language is a language other than English*
*(ii)(I) who is a Native American or Alaska Native, or a native resident of the outlying areas; and*
*(II) who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or*
*(iii) who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and*

*(D) Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual –*

*(i) the ability to meet the State's proficient level of achievement on State assessments described in Section 1111(b)(3);*

*(ii) the ability to successfully achieve in classrooms where the language of instruction is English; or*

*(iii) the opportunity to participate fully in society.)*

612(a)(16) PARTICIPATION IN ASSESSMENTS. –

(A) In General. – All children with disabilities are included in all general State and districtwide assessment programs, including assessments described under Section 1111 of the Elementary and Secondary Education Act of 1965 with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs.

612(a)(16)(C)(ii)(II) If the State has adopted alternate academic achievement standards permitted under the regulations promulgated to carry out Section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, measure the achievement of children with disabilities against those standards.

613(a)(9) RECORDS REGARDING MIGRATORY CHILDREN WITH DISABILITIES. – The local education agency shall cooperate in the Secretary's efforts under Section 1308 of the Elementary and Secondary Education Act of 1965 to ensure the linkage of records pertaining to migratory children with a disability for the purpose of electronically exchanging, among the States, health and educational information regarding such children.

614(a)(5)(A) SPECIAL RULE FOR ELIGIBILITY DETERMINATION. – In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is –

(A) lack of appropriate instruction in reading, including in the essential components of reading instruction (as defined in Section 1208(3) of the Elementary and Secondary Education Act of 1965;