NEBRASKA DEPARTMENT OF EDUCATION

RULE 51

REGULATIONS AND STANDARDS FOR SPECIAL EDUCATION PROGRAMS

TITLE 92, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 51

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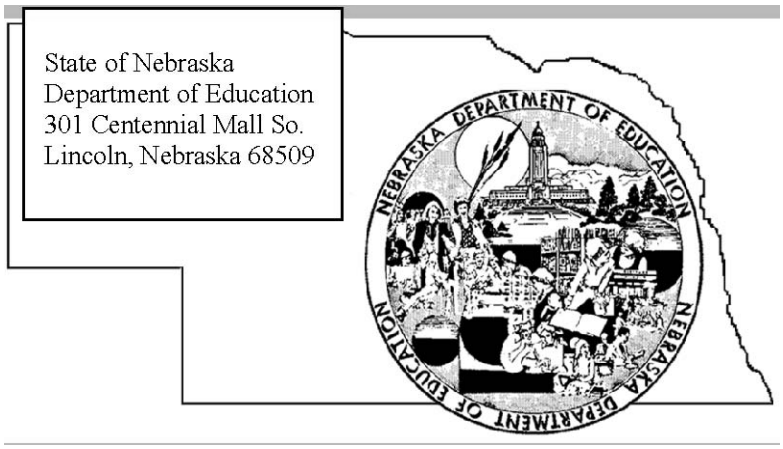

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TITLE 92
CHAPTER 51

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 and 43-2516.

003 Definition of Terms

003.01 ***Adjusted average per pupil cost* (AAPC)** of the preceding year means 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*** means 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*** means 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 children 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 child with a disability.

003.06 ***At no cost*** means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

003.07 ***Below age five*** means those children who have not reached their fifth birthday on or before October 15 of the current school year.

003.08 ***Categorical program*** means a special education program setting in which services are provided to children with the same disability.

003.09 ***Childfind*** means that all children with disabilities residing in the State, including children with disabilities who are homeless children, Indian children residing on a reservation geographically located in Nebraska or are wards of the State and children with disabilities attending nonpublic schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and a practical method is developed and implemented to determine which children are currently receiving needed special education and related services (See Section 006).

003.10 ***Child with a disability*** means a child who has been verified as per Section 006 as a child with autism, a behavior disorder, deaf-blindness, a developmental delay, a hearing impairment including deafness, a mental handicap, multiple impairment, an orthopedic impairment, an other health impairment, a specific learning disability, a speech-language impairment, a traumatic brain injury or a visual impairment including blindness, who because of this impairment needs special education and related services. If, under 92 NAC 51-003.63, 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.

003.11 ***Consent*** means 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 carrying out of the activity for which his or her consent is sought; 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). If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the school district or approved cooperative is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

003.12 ***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)).

003.13 ***Cooperative*** means two or more school districts or an Educational Service Unit (ESU) approved by the Department of Education to jointly perform special education functions, including receipt of special education payments.

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

003.15 ***Day*** means calendar day unless otherwise indicated as business day or school day;

003.15A ***Business day*** means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day) as in 92 NAC 51-015.02C2.

003.15B ***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.

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

003.17 ***Early childhood special education (ECSE) programs*** means special education programs and related services designed to serve children below age five with verified disabilities.

003.18 ***Early Intervening Services*** means 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 are not currently identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment.

003.19 ***Early Intervention*** means 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.

003.20 ***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 (FERPA).

003.21 ***Educational sign language interpreter*** means 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.

003.22 ***Equipment*** means machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment, and all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published, and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices, and books, periodicals, documents, and other related materials.

003.23 ***Equitable services plan*** means a written statement that describes the special education and related services the school district or approved cooperative will provide to a parentally-placed non-resident child with a disability enrolled in a nonpublic school in a district other than the district of residence who has been designated to receive services, including the location of the services and any transportation necessary consistent with Section 015 of this Chapter, and is developed and implemented in accordance with Section 015 of this Chapter.

003.24 ***Evaluation*** means procedures used in accordance with 92 NAC 51-006 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

003.25 ***Excess costs*** means 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.

003.26 ***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 or approved cooperative, in accordance with the child's IEP, at no cost to the parents of the child, and meet the requirements of 92 NAC 51.

003.27 ***Free appropriate public education or FAPE*** means special education and related services that are provided at public expense, under public supervision, and direction, and without charge; meet the standards of the state including the requirements of this Chapter; include an appropriate preschool, elementary school, or secondary school education in Nebraska and are provided in conformity with an individualized education program (IEP) that meets the requirements of 92 NAC 51-007.

003.28 ***Full time equivalency (FTE)*** means 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.

003.29 ***Functional behavioral assessment*** means the process of 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.

003.30 ***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).

003.31 ***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.

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

003.33 ***Independent educational evaluation*** means an evaluation conducted by a qualified examiner who is not employed by the school district or approved cooperative responsible for the education of the child in question.

003.34 ***Individualized education program (IEP)*** means a written statement for a child with a verified disability that is developed, reviewed and revised in a meeting in accordance with Section 007 which specifies the special education and related services necessary to assure the child a free appropriate public education.

003.35 ***Individualized education program team or IEP team*** means a group of individuals described in Section 007 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

003.36 ***Individualized Family Service Plan (IFSP)*** means 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.

003.37 ***Infant or toddler with a disability*** means a child under three years of age who needs early intervention services because he or she is experiencing developmental delays as measured by appropriate diagnostic instruments and procedures in one of the areas of cognitive development, physical development, communication development, social or emotional development, and 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.

003.38 ***Level I Special Education Services*** means 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.

003.39 ***Level I and Level II Combination Special Education Services*** means those special education programs which serve both Level I and Level II students in a combined program.

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

003.41 ***Level III Special Education Contractual Services*** means those special education and related services provided in an educational setting not operated by the school district or approved cooperative 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.

003.42 ***Life support equipment*** means equipment used to maintain or sustain life functions.

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

003.44 ***Multicategorical program*** means a special education program setting which provides services to any combination of categories of students with disabilities.

003.45 ***Multidisciplinary evaluation team (MDT)*** means a group of qualified professionals and the parent 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 definition of a child with a disability.

003.46 ***Native language,*** (when used with respect 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.

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

003.48 ***Notice*** means written information provided to the parent of a child with a disability a reasonable time before the school district or approved cooperative proposes or refuses to initiate or change identification, evaluation, or educational placement of a child or the provision of a free appropriate public education.

003.49 ***Parent*** means a biological or adoptive parent of a child; a foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent; a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or a surrogate parent who has been appointed in accordance with 92 NAC 51-009.10B. The biological or adoptive parent, when attempting to act as the parent and when more than one party is qualified to act as a parent, must be presumed to be the parent unless the biological or adoptive parent does not have legal authority to make educational decisions for the child. However, if a judicial decree or order identifies a specific person or persons to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of this subsection.

003.50 ***Parent training and information center*** means a center assisted under sections 671 or 672 of the Individuals with Disabilities Education Act as amended in 2004.

003.51 ***Personal equipment and supplies*** means 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.

003.52 ***Personally identifiable*** means information that contains 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 that would make it possible to identify the child with reasonable certainty.

003.53 ***Referral*** means the submission of a request by a parent, school personnel or approved agency for an individual evaluation of a child suspected of having a disability.

003.54 ***Related services*** means transportation and such developmental, corrective, and other supportive services as are 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, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training. Related services do not include a medical device that is surgically implanted (including cochlear implants), the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device. This definition does not limit the right of a child with a surgically planted device (e.g., cochlear implant) to receive related services as listed in this definition that are determined by the IEP team to be necessary for the child to receive FAPE or limits the responsibility of a district to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly.

003.55 ***Residential care*** means 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.)

003.56 ***School age programs*** means 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.

003.57 ***School district*** means a public school district or a cooperative, approved as a Nebraska Department of Education special education service provider.

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

003.59 ***Serious bodily injury*** means bodily injury which involves substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

003.60 ***Service agency*** means 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.

003.61 ***Services coordination*** means 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.

003.62 ***Service provider*** means an individual or service agency, excluding a school district or approved cooperative, provisionally approved by the Nebraska Department of Education.

003.63 ***Special education*** means specially designed instruction, at no cost to the parent, to meet the unique needs of a child with a verified disability, including classroom instruction, home instruction, instruction in hospitals and institutions and in other settings and instruction in physical education. The term includes travel training, vocational education, 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.

003.63A ***Physical Education*** means the development of physical and motor fitness; fundamental motor skills and patterns; and skills in aquatics, dance and individual and group games and sports (including intramural and lifetime sports); and includes special physical education, adapted physical education, movement education and motor development.

003.63B ***Vocational Education*** means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

003.64 ***Specially designed instruction*** means adapting as appropriate to the needs of an eligible child under this Chapter the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child’s disability and to ensure access to the general curriculum so that the child can meet the educational standards within the jurisdiction of the public school district or approved cooperative that apply to all children.

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

003.66 ***Supplementary aids and services*** means, aids, services, and other supports that are provided in regular education classes or other education-related settings and in extracurricular and non-academic 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.

003.67 ***Support services*** means 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.

003.68 ***Surrogate parent*** means an individual appointed by the school district or approved cooperative to act in place of a parent in safeguarding a child's rights in the special education decision making process.

003.69 ***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)

003.70 ***Transition services*** means 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 a 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.

003.71 ***Travel training*** means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction to enable them to develop an awareness of the environment in which they live; and learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in the school, in the home, at work, and in the community).

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

003.73 ***Ward of any court*** means 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.

003.74 ***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 003.49.

003.75 ***Weapon*** means 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 Nebraska Department of Education for the purpose of meeting the standards of this Chapter. School districts and approved cooperatives shall ensure 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' and approved cooperatives' 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 or approved cooperative shall ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade and is advancing from grade to grade.

004.02A The determination that a child described in 92 NAC 51-004.02 is eligible under this Chapter 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 Children 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 51-009.05.

004.03A3 As used in this section, the term *regular high school diploma* does not include an alternative degree that is not fully aligned with the state's academic standards such as a certificate or a general educational developmental credential (GED).

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 public school 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 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.

004.05C In the case of a district-wide assessment, the school district shall develop and implement 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 as indicated in their respective individualized education programs. The guidelines shall provide for accommodations and 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:

004.05D1 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.

004.05E 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 electronically via the NDE Portal. Each school district or approved cooperative shall maintain and report the following information for children with verified disabilities receiving services according to an individualized education program or Individualized Family Service Plan.

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 disabilities for a verified child if the secondary 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 Initial verification date and disability for children verified pursuant to 92 NAC 51-006.04;

004.06A11 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 certify that their total child count as of October 1 of each year is accurate and unduplicated. The October 1 child count certification must be postmarked or hand delivered to NDE on or before October 31 of each year.

004.06D School districts or approved cooperatives shall certify that their year-end child count and exiters as of June 30 of each year is unduplicated and accurate. The June 30 confirmation must be postmarked or hand delivered to NDE on or before June 30 of each year.

004.06E School districts and approved cooperatives shall report their incidences, duration, and count of removals, suspensions and expulsions of students receiving special education services by June 30 of each year. The report must be disaggregated by race/ethnicity, gender, LEP status and disability category.

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, individualized 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 or approved cooperative shall take steps to ensure that its children with verified disabilities have available to them the variety of educational programs and services available to children without disabilities in the areas served by the district, including art, music, industrial arts, family consumer science 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 parents to obtain a prescription for substances identified under Schedules I, II, III, IV or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) for the child 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 submit a plan for resolution of the deficiencies.

004.14D Deficiencies must be corrected as soon as possible, and in no case later than one year after the district has been notified of the noncompliance. 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.

004.14F The Nebraska Department of Education will monitor school districts and approved cooperatives on the implementation of IDEA as amended in 2004 as required by 34 CFR 300.600 including the enforcement provision contained in 34 CFR 300.604(a)(1) and (a)(3), (b)(2)(i) and (b)(2)(v) and (c)(2) and annually report on the districts' and cooperatives' performance.

004.15 Access to Instructional Materials

004.15A A school district or approved cooperative that chooses to coordinate with the National Instructional Materials Access Center (NIMAC) 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 (NIMAS); 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 students with blindness or other students with print disabilities at the same time as other students.

005 Early Childhood Services for Children Birth to Age Five

005.01 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 by each planning region and be updated annually.

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 or Early Head Start;

005.01A6 Agencies representing traditionally underserved children and families, including low income, inner-city, homeless children, 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 Annual Meetings

005.02A The annual meeting must be conducted prior to July 1 of each year.

005.02B 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.

005.02C 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.

005.03 Services Coordination

005.03A 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 residing in the state, 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 including migrant 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 The child find requirements also apply to a child who is suspected of being a child with a disability under 92 NAC 51-003.10 and in need of special education, even though the child is 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 General Evaluation Requirements

006.02A The screening of a child by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

006.02B Consistent with the consent requirements in 92 NAC 51-009.08A, a parent of a child, the Nebraska Department of Education, another State agency or a local school district or approved cooperative or nonpublic school may initiate a request for an initial evaluation to determine if the child is a child with a disability.

006.02B1 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.

006.02B1a In implementing the requirements of 92 NAC 51-006.02A the school district or approved cooperative shall ensure that:

06.02B1a(i) The evaluation is conducted in accordance with the procedures described in Section 006 of this Chapter.

006.02B1a(ii) The results of the evaluation are used by the child's IEP team in meeting the requirements of Section 007 of this Chapter.

006.02C Verification criteria and procedures:

006.02C1 School districts and approved cooperatives must ensure assessments and other evaluation materials used to assess a child under this Chapter;

006.02C1a Are selected and administered so as not to be discriminatory on a racial or cultural basis; and

006.02C1b Are provided and administered in the child’s native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally and functionally, unless it is clearly not feasible to so provide or administer;

006.02C1c 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.

006.02C2 Are used for purposes for which the assessments or measures are valid and reliable.

006.02C3 School districts and approved cooperatives must ensure assessments of children with disabilities who transfer from one school or approved cooperative to another school 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.

006.02C4 School districts and approved cooperatives must ensure materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure 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.

006.02C5 School districts and approved cooperatives must ensure 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:

006.02C5a Whether the child is a child with a disability under 92 NAC 51-003.10; and

006.02C5b The content of the child's IEP.

006.02C6 School districts and approved cooperatives must ensure any standardized tests that are given to a child:

006.02C6a Have been validated for the specific purpose for which they are used; and

006.02C6b Are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessments.

006.02C6b(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.

006.02C7 School districts and approved cooperatives must ensure 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.

006.02C8 School districts and approved cooperatives must ensure tests are selected and administered so as best to ensure 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).

006.02C9 School districts and approved cooperatives must ensure 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.

006.02C10 School districts and approved cooperatives must ensure 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.

006.02C11 School districts and approved cooperatives must ensure 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.

006.02C12 The school district or approved cooperative must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

006.02C13 The school district or approved cooperative must use assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.

006.02C14 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:

006.02C14a 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

006.02C14b Ensure that information obtained from all of these sources is documented and carefully considered.

006.02C15 School districts and approved cooperatives must ensure evaluation and assessment for infants and toddlers are:

006.02C15a 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; and

006.02C16 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 definitions found in 92 NAC 51-006.04, 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 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 and definition contained in 92 NAC 51-006.04;

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 at no cost.

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 and definition contained in 92 NAC 51-006.04K.

006.03F2b The child's educational needs;

006.03F2c The basis for making the determination including an assurance that the determination was made in accordance with 92 NAC 51-006.02C14;

006.03F2d The relevant behavior if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;

006.03F2e The educationally relevant medical findings, if any;

006.03F2f Whether the child does not achieve adequately for the child's age or to meet state-approved grade level standards consistent with 92 NAC 51-006.04K3a and the child does not make sufficient progress to meet age or state approved grade level standards consistent with 92 NAC 51-006.04K3b; or whether the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state approved grade level standards or intellectual development consistent with 92 NAC 51-006.04K3b(i);

006.03F2g The determination of the team concerning the effects of a visual, hearing, or motor disability; mental handicap; behavior disorder; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and

006.03F2h If the child has participated in a process that assesses the child's response to scientific, research-based intervention, then the instructional strategies used and the student-centered data collected; and the documentation that the child's parents were notified about:

006.03F2h(1) The school district's or approved cooperative's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;

006.03F2h(2) Strategies for increasing the child's rate of learning; and

006.03F2h(3) The parent's right to request an evaluation.

006.03F2i A listing of the team members.

006.03F3 Each team member shall certify in writing whether 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 at no cost.

006.03G For a school age child who after initial MDT evaluation does not qualify for special education services or for a child 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 To qualify for special education services in the category of Autism, the child must have a developmental disability which:

006.04B1a significantly affects verbal and nonverbal communication and social interaction;

006.04B1b Is generally evident before age three; and

006.04B1c That adversely affects the child's educational performance.

006.04B1d Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routine, and unusual responses to sensory experiences.

006.04B2 Autism does not apply if a child's educational performance is adversely affected primarily because the child has a behavioral disorder as defined in 92 NAC 51-006.04C.

006.04B3 A child who manifests the characteristics of autism after age 3 could be verified as having autism if the other criteria in 92 NAC 51-006.04B1 are met.

006.04C Behavioral Disorder (referred to in the 2004 Amendments to the IDEA as "Emotional Disturbance")

006.04C1 In order to qualify for special education services in the category of behavioral disorder, the child must have a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects the child's educational performance or, in the case of children below age five, development:

006.04C1a An inability to learn that cannot be explained by intellectual, sensory, or health factors;

006.04C1b An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

006.04C1c Inappropriate types of behavior or feelings under normal circumstances;

006.04C1d A general pervasive mood of unhappiness or depression; or

006.04C1e A tendency to develop physical symptoms or fears associated with personal or school problems.

006.04C2 The term includes schizophrenia. The term does not apply to children with social maladjustments, unless it is determined that they have behavioral disorders. This classification parallels the federal definition of emotional disturbance in the regulations implementing IDEA 2004.

006.04D Deaf-Blindness

006.04D1 To qualify for special education services in the category of Deaf-Blindness, the child must have concomitant hearing and visual impairments, the combination of which causes:

006.04D1a Severe communication needs; and

006.04D1b Other developmental and educational needs.

006.04D1c The severity of these needs is such that they cannot be accommodated in special education programs solely for children with deafness or blindness.

006.04E Developmental Delay

006.04E1 To qualify for special education services in the category of developmental delay, the child shall have a significant delay as measured by appropriate diagnostic instruments and procedures in one or more of the following areas and, by reason thereof needs special education and related services:

006.04E1a Cognitive development,

006.04E1b Physical development,

006.04E1c Communication development,

006.04E1d Social or emotional development,

006.04E1e Adaptive behavior or skills development, or

006.04E1f 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.

006.04E2 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 and approved cooperatives to use for children age five through eight.

006.04E3 A child remains eligible for services under the category of developmental delay:

006.04E3a Through the school year in which the child reaches age five; or

006.04E3b Through the school year in which the child reaches age nine, if the district uses the discretionary option in 92 NAC 51-006.04E2.

006.04F Hearing Impairment

006.04F1 To qualify for special education services in the category of Hearing Impairment, a child must have an impairment in hearing which:

006.04F1a Is so severe that the child is impaired in processing linguistic information through hearing with or without amplification, or

006.04F1b Is permanent or fluctuating, and

006.04F1c Adversely affects the child's development or educational performance.

006.04F2 This term combines the state definition of "deaf" contained in Neb. Rev. Stat. 79-1118.01(4), the state definition of "hard of hearing" in 79-1118.01(7), the federal definition of "deafness" in 34 CFR 300.8(c)(3), and the federal definition of "hearing impairment" in 34 CFR 300.8(c)(5).

006.04G Mental Handicap

006.04G1 To qualify for special education services in the category of Mental Handicap, the child must demonstrate:

006.04G1a Significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational, or in the case of a child below age five, a child's developmental performance,

006.04G1b This term parallels the federal definition of mental retardation in the regulations implementing IDEA 2004.

006.04H Multiple Impairments

006.04H1 To qualify for special education services in the category of Multiple Impairments, the child must have concomitant impairments (such as mental handicap-visual impairment, mental handicap-orthopedic impairment), the combination of which causes such severe educational, or in the case of a child below age five, a child's developmental needs that they cannot be accommodated in special education programs solely for one of the impairments.

006.04H2 This classification does not include children with deaf-blindness.

006.04I Orthopedic Impairment

006.04I1 To qualify for services in the category of Orthopedic Impairment, the child must have a severe orthopedic impairment that adversely affects the child's educational, or in the case of a child below age five, a child's developmental performance.

006.04I2 The category includes children with impairments caused by:

006.04I2a congenital anomaly,

006.04I2b impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and

006.04I2c impairments from other causes (e.g., cerebral palsy, amputations and fractures or burns that cause contractures).

006.04J Other Health Impairment

006.04J1 To qualify for special education services in the category of Other Health Impairment, the child must have:

006.04J1a 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 which adversely affects the child's educational, or in the case of a child below age five, a child's developmental performance such as:

006.04J1a(1) asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophelia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome.

006.04K Specific Learning Disability

006.04K1 To qualify for special education services in the category of specific learning disability the child must have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations. The category includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The category does not include children who have learning problems that are primarily the result of visual, hearing, or motor disabilities; of mental handicaps; of behavioral disorders; or of environmental, cultural, or economic disadvantage.

006.04K2 The MDT of a child suspected of having a specific learning disability shall include at least:

006.04K2a The child's parents;

006.04K2b For a school age child, the child's regular teacher(s) or if a child does not have a regular teacher, a regular classroom teacher qualified to teach a child of that age;

006.04K2c For a child below age 5, a teacher qualified to teach a child below age 5;

006.04K2d Special educator with knowledge in the area of specific learning disabilities;

006.04K2e At least one person qualified to conduct initial individual diagnostic examinations of children, such as a school psychologist, speech language pathologist, or remedial reading teacher; and

006.04K2f A school district administrator or a designated representative.

006.04K3 The MDT may determine that a child has a specific learning disability if:

006.04K3a The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards: oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, mathematics problem solving.

006.04K3b The child does not make sufficient progress to meet age or State approved grade-level standards in one or more of the areas identified in 92 NAC 51-006.04K3a when using a process based on the child's response to scientific, research-based intervention; or

006.04K3b(i) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the team to be relevant to the identification of a specific learning disability, using appropriate assessments consistent with 92 NAC 51-006.02.

006.04K4 The team determines that its findings under 92 NAC 51-006.04K3a and 006.04K3b are not primarily the result of:

006.04K4a A visual, hearing, or motor disability;

006.04K4b Mental handicap;

006.04K4c Behavioral disorder;

006.04K4d Cultural factors,

006.04K4e Environmental or economic disadvantage; or

006.04K4f Limited English proficiency.

006.04K5 To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in 92 NAC 51-006.02:

006.04K5a Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

006.04K5b Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

006.04K6 The school district or approved cooperative must promptly request parental consent to evaluate the child to determine if the child needs special education and related services and must adhere to the timeframes described in 92 NAC 51-009.04A1, unless extended by mutual written agreement of the child's parents and a team of qualified professionals, as described in 92 NAC 51-006.04K2.

006.04K6a If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction as described in 92 NAC 51-006.04K5a and b; and

006.04K6b Whenever a child is referred for an evaluation.

006.04K7 The school district or approved cooperative must ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty.

006.04K8 The MDT, in determining whether a child has a specific learning disability, must decide to:

006.04K8a Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or

006.04K8b Have at least one member of the MDT described in 92 NAC 51-006.04K2 conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with 92 NAC 51-009.08 is obtained.

006.04K8c In the case of a child of less than school age or out of school, an MDT member must observe the child in an environment appropriate for a child of that age.

006.04L Speech-Language Impairment

006.04L1 To qualify for special education services in the category of Speech-Language Impairment, the child must have:

006.04L1a a communication disorder such as:

006.04L1a(1) stuttering;

006.04L1a(2) impaired articulation;

006.04L1a(3) language impairment; or

006.04L1a(4) a voice impairment.

006.04L2 This disorder must adversely affect the child's educational, or in the case of a child below age five, a child's developmental performance.

006.04M Traumatic Brain Injury

006.04M1 To qualify for special education services in the category of Traumatic Brain Injury, the child must have:

006.04M1a an acquired injury to the brain caused by external physical force resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects the child's educational performance, or in the case of a child below age five, a child's developmental performance.

006.04M1b The category includes open or closed head injuries resulting in impairments in one or more areas such as:

006.04M1b(1) cognition;

006.04M1b(2) language;

006.04M1b(3) memory;

006.04M1b(4) attention;

006.04M1b(5) reasoning;

006.04M1b(6) abstract thinking;

006.04M1b(7) judgment;

006.04M1b(8) problem solving;

006.04M1b(9) sensory, perceptual and motor abilities;

006.04M1b(10) psychosocial behavior;

006.04M1b(11) physical functions;

006.04M1b(12) information processing; and

006.04M1b(13) speech.

006.04M2 The category does not include brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

006.04N Visual Impairment including Blindness

006.04N1 To qualify for special education services in the category of Visual Impairment, including blindness, the child must have;

006.04N1a an impairment in vision that, even with correction, adversely affects the child's educational, or in the case of a child below age five, a child's developmental performance;

006.04N2 This category includes children who have partial sight or blindness.

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, of the child warrant, a reevaluation; or

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

006.05B A reevaluation conducted under subsection 006.05 of this Chapter:

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

006.05B2 must occur 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 51-003.10, 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 the 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.

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 is not 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 A parent of a child with a disability has the right to obtain an independent educational evaluation of the child at public expense if the parent disagrees with the evaluation obtained by the school district or approved cooperative, 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 is entitled to only one independent educational evaluation at public expense each time the school district or approved cooperative conducts an evaluation with which the parent disagrees.

006.07C1 Public expense means that the school district or approved cooperative either pays for the full cost of the evaluation or ensures 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 Ensure 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 school district or approved cooperative may ask for the parent's reason why he or she objects to the public evaluation. However, the school district or approved agency may not require the parent to provide an explanation and 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 public expense or shares with the school district or approved cooperative an evaluation obtained 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 by any party 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 Individualized Education Program (IEP) and Individualized Family Service Plan (IFSP)

007.01 An IEP shall be developed, reviewed, revised, and implemented for each child who receives special education and related services. In order to fulfill the requirements of 92 NAC 51-007.01 for infants and toddlers, school districts or approved cooperatives 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 laws apply to infants and toddlers with disabilities receiving FAPE in accordance with an IFSP.

007.02 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.

007.02A 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 age three through five, the IEP team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in 92 NAC 51-007.12B4b (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with an IFSP who are at least three years of age), and that is developed in accordance with the IEP procedures. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is agreed to by the school district or approved cooperative and the child's parents.

007.02A2 In implementing the requirements of this section, the school district or approved cooperative must provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP and if the parents choose an IFSP, obtain written informed consent from the parents.

007.02B Each school district or approved cooperative shall ensure 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 ensure and document that each IEP team includes the following:

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 51-007.07A5.

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 a child attending a nonpublic school, a representative of the nonpublic school the child attends. If the representative cannot attend, other methods shall be used to ensure 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 ensure participation by the approved service agency, including written communication, or individual or conference telephone calls;

007.03A10 If the purpose of the meeting is to consider postsecondary goals for the child and the transition services needed to assist the child in reaching those goals:

007.03A10a The school district or approved cooperative must invite the child;

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

007.03A10b To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, the school district or approved cooperative must invite a representative of any participating agency that is likely to be responsible for providing or paying for the transition services.

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

007.03A12 For a child 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 described in 92 NAC 51-007.03A2 through 007.03A5 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, in writing, 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 in 92 NAC 51-007.04A 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, in writing, 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.

007.05 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 services coordinator or other representatives 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 ensure 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 ensure 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, 007.03A6a and 007.05.

007.06B1 For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must:

007.06B1a Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child in accordance with 92 NAC 51-007.07A9; and

007.06B1b Indicate that the school district or approved cooperative will invite the child 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 IEP meeting, the school district or approved cooperative shall use other methods to ensure parent participation, including individual or conference telephone calls consistent with 92 NAC 51-007.09H (related to alternate means of meeting participation).

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 keep 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 ensure 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.

007.07 IEP Development

007.07A The IEP shall include:

007.07A1 A statement of the child's present levels of academic achievement and functional performance, including:

007.07A1a How the child's disability affects the child's involvement in and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or

007.07A1b For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities.

007.07A2 A statement of measurable annual goals, including academic and functional goals, designed to:

007.07A2a 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; or for preschool children, as appropriate, to participate in appropriate activities, and

007.07A2b Meet each of the child's other educational needs that result from the child's disability;

007.07A3 For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

007.07A4 A description of how the child’s progress toward meeting the annual goals described in 92 NAC 51-007.07A2 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;

007.07A5 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 to enable the child:

007.07A5a To advance appropriately toward attaining the annual goals;

007.07A5b To be involved in and progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and

007.07A5c To be educated and participate with other children with disabilities and nondisabled children in the activities described in 92 NAC 51-007.07A5;

007.07A6 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 51-007.07A5;

007.07A7 A statement of any individual appropriate accommodations 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 must take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why:

007.07A7a The child cannot participate in the regular assessment ; and

007.07A7b The particular alternate assessment selected is appropriate for the child; and

007.07A8 The projected date for the beginning of the services and modifications described in 92 NAC 51-007.07A5 and the anticipated frequency, location, and duration of those services and modifications;

007.07A9 Beginning not later than the first IEP to be in effect when the child turns 16, or younger if deemed appropriate by the IEP team, and updated annually thereafter:

007.07A9a Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

007.07A9b The transition services (including courses of study) needed to assist the child in reaching those goals; and

007.07A9c 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.

007.07A9c(i) Nothing in this Chapter relieves any participating agency, including the State Division of Vocational Rehabilitation, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility of that agency.

007.07A10 Nothing in this section shall be construed to require that additional information be included in a child's IEP beyond what is explicitly required in subsection 007.07A, 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 In developing, reviewing or revising each child's IEP:

007.07B1 The IEP team shall consider the strengths of the child and the concerns of the parents for enhancing the education of their child.

007.07B2 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.

007.07B3 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.

007.07B4 In the case of a child with limited English proficiency, the IEP team shall consider the language needs of the child as those needs relate to the child's IEP.

007.07B5 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.

007.07B6 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.

007.07B7 The IEP team shall consider whether the child needs assistive technology devices and services.

007.07C Services

007.07C1 Routine checking of hearing aids and external components of surgically implanted medical devices.

007.07C1a Each school district and approved cooperative must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

007.07C1b Subject to 92 NAC 51-007.07C1b(i) each school district and approved cooperative must ensure that the external components of surgically implanted medical devices are functioning properly.

007.07C1b(i) For a child with a surgically implanted medical device who is receiving special education and related services under this chapter, a school district and approved cooperative is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).

007.07C2 Physical education services, specially designed if necessary, must be made available to every child with a verified disability receiving a free, appropriate public education, unless the school district or approved cooperative enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.

007.07C2a Each child with a verified disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless:

007.07C2a(i) The child is enrolled full time in a separate facility; or

007.07C2a(ii) The child needs specially designed physical education as prescribed in the child’s individualized education program.

007.07C2b 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.

007.07C2c 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 ensure that the child receives appropriate physical education services.

007.07C3 Each school district or approved cooperative shall ensure 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:

007.07C3a Special education under 92 NAC 51-003.66;

007.07C3b Related services under 92 NAC 51-003.54; or

007.07C3c Supplementary aids and services under 92 NAC 51-003.66 and 008.01A.

007.07C3d 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.

007.07C4 The school district or approved cooperative shall take steps including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team to provide nonacademic and extracurricular services and activities in the manner necessary to afford each school age child with a verified disability an equal opportunity for participation in those services and activities.

007.07C4a 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.

007.07C5 Extended School Year Services (ESYS)

007.07C5a Each school district or approved cooperative shall ensure that extended school year services are available as necessary to provide a free appropriate public education consistent with 92 NAC 51-007.07C5b.

007.07C5b Extended School Year (ESY) 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.

007.07C5c 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.

007.07C6 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 – If a child with a disability (who had an IEP that was in effect in a previous school district or approved cooperative in Nebraska) transfers to a new school district or approved cooperative in Nebraska, and enrolls in a new school within the same school year, the new school district or approved cooperative (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous school district or approved cooperative), until the new school district or approved cooperative either:

007.08A1 Adopts the child's IEP from the previous school district or approved cooperative; or

007.08A2 Develops, adopts, and implements a new IEP that meets the applicable requirements of 92 NAC 51-007.

007.08B Transfer from outside the state – If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a school district or approved cooperative in Nebraska, and enrolls in a new school within the same school year, the new school district or approved cooperative (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous school district or approved cooperative), until the new school district or approved cooperative:

007.08B1 Conducts an evaluation pursuant to Section 006 of this Chapter (determined to be necessary by the new school district or approved cooperative); and

007.08B2 Develops, adopts, and implements a new IEP, if appropriate that meets the requirements of 92 NAC 51-007.

007.08C Transmittal of records

007.08C1 To facilitate the transition for a child who transfers schools 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.

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 A meeting to develop an IEP for a child must be held within thirty (30) calendar days of a determination that the child needs special education and related services.

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

007.09C 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.

007.09D The school district or approved cooperative shall provide a copy of the IEP to parents at no cost.

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 those changes, and instead may develop a written document to amend or modify the child's current IEP.

007.09E1 If changes are made to the child's IEP in accordance with 92 NAC 51-007.09E, the school district or approved cooperative must ensure that the child's IEP Team is informed of those changes.

007.09F Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or as provided in 92 NAC 92-007.09E of this section, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

007.09G 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.

007.09H 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, if 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 Children with Disabilities in Adult Prisons

007.11A The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

007.11A1 The requirements of 92 NAC 51-007.07A7 (relating to participation of children with disabilities in general assessments); and

007.11A2 The requirements of 92 NAC 51-007.07A9 (relating to transition and planning and transition services) do not apply with respect to such children 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.

007.11B Subject to 92 NAC 51-007.11B1, the IEP team of a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the child's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

007.11B1 The requirements of 92 NAC 51-003.34 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 51-007.11B.

007.12 Responsibility for Development of an Individualized Family Service Plan (IFSP)

007.12A 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.

007.12A1 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.

007.12A2 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.

007.12B 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:

007.12B1 A statement of the infant or toddler's 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;

007.12B2 With the concurrence of the family, a statement of the family's resources, priorities, and concerns relating to enhancing the development of the infant or toddler with a disability;

007.12B3 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:

007.12B3a The degree to which progress toward achieving the outcomes is being made; and

007.12B3b Whether modifications or revisions of the outcomes or services are necessary.

007.12B4 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:

007.12B4a The frequency, intensity, and method of delivering the services;

007.12B4a(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

007.12B4a(ii) Method means how a service is provided.

007.12B4b 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;

007.12B4c The location of the services; and

007.12B4c(i) Location means the actual place or places where a service will be provided.

007.12B4d The payment arrangements, if any.

007.12B5 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.

007.12B5a 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.

007.12B6 The projected date(s) for initiation of the service(s) which must begin as soon as possible after the IFSP meeting.

007.12B7 The anticipated duration of those services.

007.12B8 The name of the services 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.

007.12B8a The agency contracting for services coordination may assign the same services 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 services coordinator.

007.12B9 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.

007.12B9a The steps include:

007.12B9a(i) Discussions with, and training of, parents regarding future placements and other matters related to the child's transition;

007.12B9a(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

007.12B9a(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.

007.12B10 A statement of the necessary assistive technology devices and services needed by the infant or toddler.

007.13 IFSP Initial and Annual Conferences

007.13A 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.

007.13B 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.

007.13C IFSP meetings must be conducted:

007.13C1 In settings and at times that are convenient to families; and

007.13C2 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.

007.13D 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.

007.13E 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.

007.13E1 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.

007.13E2 The early intervention services to which parental consent is obtained must be provided.

007.14 IFSP Periodic Reviews

007.14A 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:

007.14A1 The degree to which progress toward achieving the outcomes is being made; and

007.14A2 Whether modifications or revision of the outcomes or services is necessary.

007.14B The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants.

007.14C The periodic review of the IFSP must provide for the participation of the persons required by 92 NAC 51-007.15A1, 007.15A2, 007.15A3 and 007.15A4. If conditions warrant, provisions must be made for the participation of other representatives identified in 92 NAC 51-007.15.

007.15 IFSP Team Participants

007.15A The school district or approved cooperative shall document that each IFSP conference includes at least the following participants:

007.15A1 The parent or parents of the child;

007.15A2 Other family members, as requested by the parent, if feasible to do so;

007.15A3 An advocate or person outside of the family, if the parent requests that the person participate;

007.15A4 The services 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;

007.15A5 A representative of the school district or approved cooperative who has the authority to commit district resources;

007.15A6 As appropriate, persons who will be providing services to the child; and

007.15A7 A person or persons directly involved in conducting the evaluations.

007.15A7a If this person or persons is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including:

007.15A7a(i) Participating in a telephone conference call;

007.15A7a(ii) Having a knowledgeable authorized representative attend the meeting; or

007.15A7a(iii) Making pertinent records available at the meeting.

007.16 Early Intervention Transition

007.16A 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:

007.16A1 Ensure 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;

007.16A2 Review the child's program options for the period from the child's third birthday through the remainder of the school year;

007.16A3 Describe how the family will be included in the transition plans; and

007.16A4 Establish a transition plan including steps to be taken to support the transition of the toddler with a disability to preschool or other appropriate services.

007.16B 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, 007.07B, 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.

007.16B1 In implementing the requirements of 92 NAC 51-007.16B the school district or approved cooperative shall;

007.16B1a Provide the child’s parents a detailed explanation of the differences between an IFSP and an IEP; and

007.16B1b If the parents choose an IFSP, obtain written informed consent from the parents.

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

007.17A 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:

007.17A1 Parental consent is obtained;

007.17A2 An interim IFSP is developed that includes:

007.17A2a The name of the services coordinator who will be responsible for implementation of the interim IFSP and coordination with other agencies and persons; and

007.17A2b The early intervention services that have been determined to be needed immediately by the child and the child's family.

007.17A3 The evaluation and assessment are completed within the 45 day time period.

007.18 Year Round Continuous Services

007.18A 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 or approved cooperative 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 51-007.17.

008.01C In determining the educational placement of a child with a disability, including a preschool child with a disability, school districts and approved cooperatives must ensure that:

008.01C1 The placement decision is made by a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

008.01C2 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 must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

008.01D1 The continuum must:

008.01D1a Include instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions; and

008.01D1b Make provision for supplementary services (such as resource or itinerant instruction) to be provided in conjunction with regular class placement.

008.01E The school district or approved cooperative shall ensure 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 individualized 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 individualized 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.

008.01I 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.

008.02 Natural Environments

008.02A 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.

008.02B 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 Parent Participation in Meetings

009.01A The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child.

009.01B Each school district or approved cooperative must provide notice consistent with 92 NAC 51-007.06A1 and 007.06B to ensure that parents of children with disabilities have the opportunity to participate in meetings described in 92 NAC 51-009.01A.

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

009.02 Parent Involvement in Placement Decisions

009.02A The school district or approved cooperative shall ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of their child.

009.02B In implementing the requirements of 92 NAC 51-009.02A, the school district or approved cooperative shall use procedures consistent with the procedures described in 92 NAC 51-007.06A, 007.06B, and 009.01A.

009.02C 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 ensure their participation, including individual or conference telephone calls, or video conferencing.

009.02D A placement decision may be made by a team 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 ensure their involvement including information that is consistent with the requirements of 92 NAC 007.06D.

009.03 Opportunity to Examine Records

009.03A The parents of a child with a disability must be afforded, in accordance with the procedures of 92 NAC 51-009.03, 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 FAPE to the child.

009.03B 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 pursuant to 92 NAC 55 or resolution session and in no case more than 45 days after the request has been made.

009.03B1 As used in 92 NAC 51-009.03B, participating agency means any agency or institution that collects, maintains or uses personally identifiable information or from which information is obtained under this Chapter.

009.03B2 The right to inspect and review education records includes:

009.03B2a The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records; and

009.03B2b 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

009.03B2c The right to have a representative of the parent inspect and review the records.

009.03B3 A participating 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.

009.03C Record of Access

009.03C1 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.

009.03D Records On More Than One Child

009.03D1 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.

009.03E List of Types and Locations of Information

009.03E1 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.

009.03F Fees

009.03F1 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.

009.03F2 A participating agency may not charge a fee to search for or to retrieve information.

009.03G Amendment of Records at Parent's Request

009.03G1 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.

009.03G2 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.

009.03G3 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.

009.03H Opportunity for a Local Administrative Review

009.03H1 The participating agency shall, on request, provide an opportunity for a local administrative review to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

009.03I Result of Local Administrative Review

009.03I1 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.

009.03I2 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.

009.03I3 Any explanation placed in the records of the child must:

009.03I3a 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

009.03I3b 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.

009.03J Consent for Release of Records

009.03J1 Parental consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies in accordance with 92 NAC 51-009.03H1 unless the information is contained in education records and the disclosure is authorized without parental consent under 34 CFR Part 99.

009.03J2 Except as provided in 92 NAC 51-009.03J3 and 009.03J4, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this chapter.

009.03J3 Parental consent, or the consent of an eligible child who has reached the age of majority, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with 92 NAC 51-007.03A10b.

009.03J4 If a child is enrolled, or is going to enroll in a nonpublic school that is not located in the school district of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the school district where the nonpublic school is located and officials in the school district of the parent's residence.

009.03K Safeguards

009.03K1 Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

009.03K2 One official at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

009.03K3 All persons collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures.

009.03K4 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.

009.03L Records Regarding Migratory Children with Disabilities

009.03L1 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.

009.03M Retention and Destruction of Information and Records

009.03M1 The school district or approved cooperative shall retain special education records for five (5) years after the completion of the activities for which special education funds were used.

009.03M2 The school district or approved cooperative shall inform parents when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to the child.

009.03M3 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.

009.04 Procedural Timelines

009.04A For all children 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.

009.04A1 Referral, notice to parents (See 92 NAC 51-009.05), and parental consent, shall be completed within a reasonable period of time. The initial multidisciplinary team evaluation shall be completed within 45 school days of receiving parental consent for the evaluation.

009.04A1a The 45 school day timeline shall not apply to a school district or approved cooperative if:

009.04A1a(i) A child enrolls in a school served by the school district or approved cooperative after the relevant timeline in 92 NAC 51-009.04A1 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

009.04A1a(ii) The parent of a child repeatedly fails or refuses to produce the child for the evaluation.

009.04A2 Upon completion of a multidisciplinary team verification decision, school districts or approved cooperatives shall provide a reasonable notification and conduct an individualized education program conference within 30 calendar days.

009.04A3 As soon as possible following development of the IEP, special education and related services must be made available to the child in accordance with the child's IEP.

009.04B For infants and toddlers each of the procedural steps necessary to provide early intervention services shall be carried out within the specific time periods.

009.04B1 A referral must be made by the school district or approved cooperative 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.

009.04B2 Notice to parents (See 92 NAC 51-009.05) and parental consent shall be completed within a reasonable period of time.

009.04B3 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 or approved cooperative 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.

009.04B4 Upon completion of a multidisciplinary team verification decision, and within 45 days of the referral, school districts and approved cooperatives shall participate in an individualized family service plan (IFSP) conference.

009.04B5 Special education placement shall be completed within five school days of receipt of parental consent.

009.05 Prior Written Notice

009.05A Prior written notice shall be given to the parents of a child with a disability a reasonable time before a school district or approved cooperative:

009.05A1 Proposes to initiate or change the identification, evaluation, or educational placement of a child or the provision of a free appropriate public education; or

009.05A2 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.

009.05B Such prior written notice shall include:

009.05B1 A description of the action proposed or refused by the school district or approved cooperative;

009.05B2 An explanation of why the district or approved cooperative proposes or refuses to take the action;

009.05B3 A description of other options the IEP Team considered and the reasons why those options were rejected;

009.05B4 A description of each evaluation procedure, assessment, record, or report the school district or approved cooperative uses as a basis for the proposal or refusal;

009.05B5 A description of any other factors which are relevant to the school district's or approved cooperative's proposal or refusal;

009.05B6 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

009.05B7 Sources for parents to contact to obtain assistance in understanding the provisions of this part.

009.05C 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.

009.05D If the native language or other mode of communication of the parents is not a written language, the school district or approved cooperative shall take steps to ensure:

009.05D1 That the notice is translated orally or by other means to the parents in his or her native language or other mode of communication;

009.05D2 That the parents understand the content of the notice; and

009.05D3 That there is written evidence that the requirements of this section have been met.

009.06 Procedural Safeguards Notice

009.06A 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 one time a school year, except that a copy shall also be given to the parents:

009.06A1 Upon initial referral or parental request for evaluation;

009.06A2 Upon request by a parent;

009.06A3 Upon receipt by the school district or approved cooperative of the first occurrence of the filing of a complaint under 92 NAC 51-009.11 and the first occurrence of filing a special education due process case under 92 NAC 55; and

009.06A4 In accordance with the discipline procedures in 92 NAC 51-016.

009.06B The procedural safeguards notice shall include a full explanation of all of the procedural safeguards relating to:

009.06B1 Independent educational evaluation;

009.06B2 Prior written notice;

009.06B3 Parental consent;

009.06B4 Access to educational records;

009.06B5 Opportunity to present and resolve disputes through the due process hearings and the state complaint procedures including;

009.06B5a The time period in which to file a state complaint or petition for a due process hearing;

009.06B5b The opportunity for the school district or approved cooperative to resolve the dispute; and

009.06B5c The difference between the due process system and the state complaint procedures; including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures.

009.06B6 The child's placement during pendency of due process proceedings;

009.06B7 Procedures for students subject to placement in an interim alternative educational setting;

009.06B8 Requirements for unilateral placement by parents of children in nonpublic schools at public expense;

009.06B9 The availability of mediation;

009.06B10 Due process hearings, including requirements for disclosure of evaluation results and recommendations;

009.06B11 Civil actions, including the time period in which to file such actions; and

009.06B12 Attorney's fees.

009.06C 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 51-009.05C and 009.05D.

009.06D The school district or approved cooperative may place a current copy of the procedural safeguards notice on its Internet website if such website exists.

009.07 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.

009.08 Parental Consent

009.08A Parental Consent for Initial Evaluations

009.08A1 The school district or approved cooperative proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under 92 NAC 51-003.10 must obtain informed consent, consistent with 92 NAC 51-003.11, from the parent of the child before conducting the evaluation.

009.08A2 Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.

009.08A3 The school district or approved cooperative must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.

009.08A4 For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the school district or approved cooperative is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if:

009.08A4a Despite reasonable efforts to do so, the school district or approved cooperative cannot discover the whereabouts of the parent of the child;

009.08A4b The rights of the parents of the child have been terminated in accordance with the State law; or

009.08A4c 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.

009.08A5 If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under 92 NAC 51-009.08A1 or the parent fails to respond to a request to provide consent, the school district or approved cooperative may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in 92 NAC 51-009 (including the mediation procedures or the due process procedures), if appropriate.

009.08A5a The school district or approved cooperative does not violate its obligation under 92 NAC 51-006 to locate and identify the child as a child with a disability if it declines to pursue the evaluation.

009.08B Consent for Services

009.08B1 A school district or approved cooperative that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.

009.08B2 The school district or approved cooperative must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

009.08B3 If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services the school district or approved cooperative:

009.08B3a May not use the procedures in 92 NAC 51-009 (including the mediation procedures or the due process procedures) in order to obtain agreement or a ruling that the services may be provided to the child.

009.08B3b Will not be considered to be in violation of the requirement to make a Free Appropriate Public Education (FAPE) available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and

009.08B3c Is not required to convene an IEP Team meeting or develop an IEP under 92 NAC 51-007 for the child.

009.08B4 If at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the school district or approved cooperative:

009.08B4a May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with 92 NAC 51-009.05 before ceasing the provision of special education and related services.

009.08B4b May not use the procedures in 92 NAC 51-009 (including the mediation procedures and due process procedures) in order to obtain agreement or a ruling that the services may be provided to the child.

009.08B4c Will not be considered to be in violation of the requirement to make a Free Appropriate Public Education (FAPE) available to the child because of the failure to provide the child with further special education and related services; and

009.08B4d Is not required to convene an IEP Team meeting or develop an IEP under 92 NAC 51-007 for the child for further provision of special education and related services.

009.08C Consent for Reevaluations

009.08C1 Subject to 92 NAC 51-009.08C2, each school district or approved cooperative must obtain informed parental consent, in accordance with 92 NAC 51-009.08A1, prior to conducting any reevaluation of a child with a disability.

009.08C1a If the parent refuses to consent to the reevaluation, the school district or approved cooperative may, but is not required to, pursue the reevaluation by using the consent override procedures described in 92 NAC 51-009.08A5. The school district or approved cooperative does not violate its obligation to locate and identify the child as a child with a disability if it declines to pursue the evaluation or reevaluation.

009.08C2 The informed parental consent described in 92 NAC 51-009.08C1 need not be obtained if the school district or approved cooperative can demonstrate that:

009.08C2a It made reasonable efforts to obtain such consent; and

009.08C2b The child's parent has failed to respond.

009.08D Other Consent Requirements

009.08D1 Parental consent is not required before:

009.08D1a Reviewing existing data as part of an evaluation or a reevaluation; or

009.08D1b 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.

009.08D2 A school district or approved cooperative may not use a parent's refusal to consent to one service or activity under 92 NAC 51-009.08A, 92 NAC 51-009.08B or 92 NAC 51-009.08C to deny the parent or child any other service, benefit, or activity of the school district or approved cooperative, except as required by this Rule.

009.08D3 If a parent of a child who is home schooled or placed in a nonpublic school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the school district or approved cooperative may not use the consent override procedures (described in 92 NAC 51-009.08A5 and 009.08C1); and

009.08D3a The school district or approved cooperative is not required to consider the child as eligible for services under 92 NAC 51-015.

009.08D4 To meet the reasonable efforts requirement in 92 NAC 51-009.08A3, 009.08A4a, 009.08B2, and 009.08C2a, the school district or approved cooperative must document its attempts to obtain parental consent using the procedures in 92 NAC 51-007.06.

009.08D5 For infants and toddlers, if consent is not given, the school district or approved cooperative shall make reasonable efforts to ensure that the parents:

009.08D5a Are fully aware of the nature of the evaluation or the services that will be available; and

009.08D5b Understand that the child will not be able to receive the evaluation or services unless consent is given.

009.09 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.

009.10 Appointment of Surrogates

009.10A Each school district or approved cooperative shall ensure that the rights of a child with a disability are protected if:

009.10A1 No parent can be identified;

009.10A2 The school district or approved cooperative, after reasonable efforts, cannot locate a parent;

009.10A3 The child is an unaccompanied homeless youth; or

009.10A4 The child is a ward of the State or court.

009.10A4a In the case of 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 in 92 NAC 51-009.10D3.

009.10B The duty of the school district or approved cooperative under 92 NAC 51-009.10A includes the assignment of an individual to act as a surrogate for the parents. This must include a method;

009.10B1 For determining whether a child needs a surrogate parent and,

009.10B2 For assigning a surrogate parent to the child.

009.10C The school district or approved cooperative 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.

009.10D In order to qualify, a surrogate must be a person who:

009.10D1 Has no personal or professional interest that conflicts with the interest of the child he or she represents;

009.10D2 Has knowledge and skills that ensure adequate representation of the child; and

009.10D3 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.

009.10D3a 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.

009.10D3b In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to 92 NAC 51-009.10D3, until a surrogate parent can be appointed that meets all the requirements of 92 NAC 51-009.10D.

009.10E The surrogate may represent the child in all matters relating to:

009.10E1 The identification, evaluation, and educational placement of a child; and

009.10E2 The provision of a free appropriate public education to the child.

009.10E3 For infants and toddlers, a surrogate parent may represent a child in all matters related to:

009.10E3a The evaluation and assessment of the child;

009.10E3b Development and implementation of the child's IFSP including annual evaluations and periodic review;

009.10E3c The ongoing provision of early intervention services to the child; and

009.10E3d Any other rights established under this Chapter.

009.10F The services of the surrogate parent shall be terminated when:

009.10F1 The child is no longer eligible for a surrogate parent under 92 NAC 51-009.08A;

009.10F2 A conflict of interest develops between the interest of the child and the interest of the surrogate parent; or

009.10F3 The surrogate parent fails to fulfill his or her duties as a surrogate parent.

009.10G Issues arising from the selection, appointment, or removal of a surrogate parent shall be resolved through hearings established under 92 NAC 55.

009.10H 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.

009.11 State Complaint Procedures

009.11A An organization or individual may file a signed written complaint under the procedures described in 92 NAC 51-009.11B.

009.11B The complaint must include:

009.11B1 A statement that the school district or approved cooperative has violated a requirement of 92 NAC 51;

009.11B2 The facts on which the statement is based;

009.11B3 The signature and contact information for the complainant; and

009.11B4 If alleging violations with respect to a specific child –

009.11B4a The name and address of the residence of the child;

009.11B4b The name of the school the child is attending;

009.11B4c In the case of a homeless child or youth within the meaning of section 725(2C) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2), available contact information for the child, and the name of the school the child is attending;

009.11B4d A description of the nature of the problem of the child, including facts relating to the problem; and

009.11B4e A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

009.11B5 The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with 92 NAC 51-009.11.

009.11B6 The party filing the complaint must forward a copy of the complaint to the school district or approved cooperative serving the child at the same time the party files the complaint with Nebraska Department of Education, Special Populations Office.

009.11C If a complaint meeting the requirements of 92 NAC 51-009.11B is received, the following procedures will be carried out:

009.11C1 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 school district or approved cooperative 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 school district or approved cooperative shall have fourteen (14) calendar days to submit a written response.

009.11C2 Special Education Office officials will provide the school district or approved cooperative with the opportunity to respond to the complaint, including, at a minimum:

009.11C2a At the discretion of the school district or approved cooperative, a proposal to resolve the complaint; and

009.11C2b An opportunity for a parent who has filed a complaint and the school district or approved cooperative to voluntarily engage in mediation consistent with 92 NAC 51-009.12.

009.11C3 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.

009.11C4 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.

009.11C5 An extension of the time limit in 92 NAC 51-009.11C4 will be permitted only if:

009.11C5a Exceptional circumstances exist with respect to a particular complaint; or

009.11C5b The parent and the school district or approved cooperative involved agree to extend the time to engage in mediation or to engage in other alternative means of dispute resolution.

009.11C6 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 school district or approved cooperative to bring the school district or approved cooperative into compliance, including technical assistance, negotiations and corrective actions necessary to achieve compliance. The notification shall also set forth a reasonable period of time to voluntarily comply.

009.11C7 If the school district or approved cooperative 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.

009.11C8 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 state complaint that is being addressed in the due process hearing, until the conclusion of the hearing. However, any issue in the state complaint that is not a part of the due process action must be resolved using the time limit and procedures described in 92 NAC 51-009.11.

009.11C9 If an issue is raised in a complaint filed under 92 NAC 51-009.11 that has previously been decided in a due process hearing involving the same parties:

009.11C9(a) The hearing decision is binding; and

009.11C9(b) The Nebraska Department of Education must inform the complainant to that effect.

009.11C10 A complaint alleging a school district's or approved cooperative's failure to implement a due process decision must be resolved by the Nebraska Department of Education.

009.12 Mediation

009.12A School districts or approved cooperatives shall implement the procedures established in Section 009 to allow parties to resolve disputes involving any matter described in 92 NAC 51-009.05A1 and 009.05A2 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.

009.12A1 The procedures for seeking mediation initiated by either the parent(s) or school district or approved cooperative include:

009.12A1a Contacting the Nebraska Office of Dispute Resolution who will

009.12A1b Arrange a meeting, invite both parties and conduct the mediation in an attempt to resolve the dispute.

009.12B The procedures shall ensure that the mediation process:

009.12B1 Is voluntary on the part of the parties;

009.12B2 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

009.12B3 Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

009.12C The school district or approved cooperative may implement the procedures in Section 009 to offer parents and schools or approved cooperatives 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:

009.12C1 A parent training and information center or community parent resource center in this State established under Section 671 or 672 of the IDEA, or

009.12C2 An appropriate alternative dispute resolution entity to encourage the use, and explain the benefits of the mediation process to the parents.

009.12D 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, approved cooperatives, and parents.

009.12E The Nebraska Department of Education shall bear the cost of the mediation process, including the costs of meetings described in 92 NAC 51-009.12C.

009.12F 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.

009.12G 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:

009.12G1 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;

009.12G2 Is signed by both the parent and a representative of the agency who has the authority to bind such agency; and

009.12G3 Is enforceable in any State court of competent jurisdiction or in a district court of the United States.

009.12H 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 of any federal court or state court of a state receiving assistance under Part B of the IDEA as amended in 2004.

009.12I An individual who serves as a mediator under this Chapter:

009.12I1 May not be an employee of:

009.12I1a The Nebraska Department of Education or of the school district or approved cooperative that is involved in the education or care of the child; or

009.12I1b An agency that is providing direct services to a child who is the subject of the mediation process; and

009.12I1c Must not have a personal or professional interest that conflicts with the person's objectivity.

009.12I2 A person who otherwise qualifies as a mediator is not an employee of a school district or approved cooperative or the Nebraska Department of Education solely because he or she is paid by the agency to serve as a mediator.

009.13 Resolution Process

009.13A Resolution Meeting

009.13A1 Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under 92 NAC 55, the school district or approved cooperative must convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that:

009.13A1a Includes a representative of the school district or approved cooperative who has decision-making authority on behalf of that school district or approved cooperative; and

009.13A1b May not include an attorney to the school district or approved cooperative unless the parent is accompanied by an attorney.

009.13A2 The purpose of the meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the school district or approved cooperative has the opportunity to resolve the dispute that is the basis for the due process complaint.

009.13A3 The meeting described in 92 NAC 51-009.13A1 and 009.13A2 need not be held if:

009.13A3a The parent and the school district or approved cooperative agree in writing to waive the meeting; or

009.13A3b The parent and the school district or approved cooperative agree to use the mediation process described in 92 NAC 51-009.12.

009.13A4 The parent and the school district or approved cooperative determine the relevant members of the IEP Team to attend the meetings.

009.13B Resolution Period

009.13B1 If the school district or approved cooperative has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.

009.13B2 Except as provided in this section, the timeline for issuing a final decision begins at the expiration of this 30-day period.

009.13B3 Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding 92 NAC 51-009.13B1 and 009.13B2, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

009.13B4 If the school district or approved cooperative is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in 92 NAC 51-007.06D), the school district or approved cooperative may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.

009.13B5 If the school district or approved cooperative fails to hold the resolution meeting specified in 92 NAC 51-009.13A within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

009.13C Adjustments to the 30-day Resolution Period

009.13C1 The 45-day timeline for the due process hearing starts the day after one of the following events:

009.13C1a Both parties agree in writing to waive the resolution meeting;

009.13C1b After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible.

009.13C1c If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or the school district or approved cooperative withdraws from the mediation process.

009.13D Written Settlement Agreement

009.13D1 If a resolution to the dispute is reached at the meeting described in 92 NAC 51-009.13A1 and 009.13A2, the parties must execute a legally binding agreement that is:

009.13D1a Signed by both the parent and a representative of the school district or approved cooperative who has the authority to bind the school district or approved cooperative; and

009.13D1b Enforceable in any State court of competent jurisdiction or in a district court of the United States.

009.13E Agreement Review Period

009.13E1 If the parties execute an agreement pursuant to 92 NAC 51-009.13D, a party may void the agreement within 3 business days of the agreement's execution.

009.14 Special Education Due Process Hearings

009.14A 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 consistent with the procedures in 92 NAC 55 and Section 009.13 of this Chapter.

009.14B A parent or a school district or approved cooperative may initiate a hearing on any of the matters described in 92 NAC 51-009.05A 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.

009.14C When a hearing is initiated under 92 NAC 55, the school district or approved cooperative shall inform the parents of the availability of mediation described in 92 NAC 51-009.12.

009.14D The school district or approved cooperative 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 or approved cooperative initiates a hearing under 92 NAC 55.

009.14E 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 92 NAC 51-003.69.

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.

010.01C1 School districts and approved cooperatives shall make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted under Part B of the IDEA.

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	Severe/Multiple Disabilities, Educable Mentally Handicapped, Mild/Moderate Disabilities, Behaviorally Disordered, Speech-Language Pathologist Learning Disabilities, Special Education Resource Teacher
010.01D3	Behaviorally Disordered	Behaviorally Disordered, Mild/Moderate Disabilities, Special Education Resource Teacher
010.01D4	Deaf-Blindness	Visual Impairment, Severe/Multiple Disabilities
010.01D5	Diagnostic Services	School Psychologist, Educational Audiologist, Speech-Language 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	Deaf or Hard of Hearing
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	Educable Mentally Handicapped, Mild/Moderate Disabilities, Special Education Resource Teacher, Mentally Retarded
010.01D11	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
010.01D12	Multiple Disabilities	Severe/Multiple Disabilities
010.01D13	Orthopedic Impairments	Mild/Moderate Disabilities, Severe/Multiple Disabilities
010.01D14	Program Supervision	Administrative or Supervisory certificate and at least one Special Education endorsement or any Special Education Administrative or Supervisory certificate
010.01D15	Learning Disabilities	Learning Disabilities, Mild/Moderate Disabilities, Special Education Resource Teacher
010.01D16	Speech-Language Impairments	Speech-Language Pathologist
010.01D17	Substitute Teacher	Any Teaching certificate
010.01D18	Traumatic Brain Injury	Severe/Multiple Disabilities, Mild/Moderate Disabilities, Behaviorally Disordered, Speech-Language Pathologist, Learning Disabilities, Special Education Resource Teacher

	Categorical Assignment	NDE Approvable Endorsement
010.01D19	Visual Impairment	Visual Impairment
010.01D20	Work Study Program or Transition Program	Any Special Education endorsement, Guidance and Counseling, Vocational Special Needs or Cooperative Education Diversified Occupations endorsement, Special Services certificate for School Transition Specialist

010.02 For purposes of 92 NAC 51-010.01D5, 010.01D14 and 010.01D20 "special education endorsement" shall include any approvable endorsement under 92 NAC 51-010.01D except 010.01D8, 010.01D17 and excluding the specific endorsements of guidance and counseling, educational audiologist, vocational special needs, cooperative education diversified occupations and special services certificate for 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 or above

010.06A2 Registry of Interpreters of the Deaf Certification (RID)

010.06A3 National Association of the Deaf (NAD) Competency level 4.0 or above

010.06A4 National Interpreter Certification (NIC)

010.06A5 American Consortium of Certified Interpreters (ACCI) exam Competency level 4.0

010.06A6 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 school district or approved cooperative may employ for up to one year an interpreter who has received a “Skills at or above the required level” or a “Hire with Caution” on the EIPA pre-hire screening.

010.06D If a 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 school district or approved cooperative may employ for up to two school years, an interpreter who demonstrates the minimum competency level of 2.5 on the EIPA, NAD or QAST. The school district or approved cooperative must require that the interpreter 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 school district or approved cooperative. The school 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.

010.06E If an interpreter does not achieve the required competency levels within the time periods as specified in 92 NAC 51-010.06D, 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 51-010.06D for additional two 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, documentation of the interpreter’s progress on the professional development plan 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 or deny the waiver based on the adequacy of the documentation and assurances. If the waiver is granted, the school 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 51-010.06D. Waivers must be requested annually.

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 20 clock hours of educationally related professional development every two years.

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 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 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 electronically via the NDE website 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 personnel as per 92 NAC 51-010 and clerical personnel directly associated with special education services;

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 including assistive technology devices and 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.

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 51-003.67, 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 receives special education and related services. In calculating student special education full-time equivalency, time spent in transportation, 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 with a disability spends in the regular classroom receiving instruction as indicated in the student's IEP from special education staff.

011.01D2 Full-time equivalency (FTE) is calculated each year.

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 51-003.66.

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 51-003.66.

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 an allowable 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. Administration and supervision includes clerical costs directly associated with the supervision of special education programs.

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 personnel 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 electronically via the NDE website 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 electronically via the NDE website 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 51-003.67 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 51-012.07D. 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 student resided at the time the student became a foster child, unless it is determined under Neb. Rev. Stat. 43-1311 or 43-1312 that the student will not attend such district in which case the student shall be deemed 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 or Approved Cooperative 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 and 92 NAC 51-015.03C1b, IDEA allocations are to be used by school districts or approved cooperatives 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 electronically via the NDE website 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 or approved cooperative 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 or approved cooperative 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 or approved cooperative not meeting IDEA maintenance of efforts requirements as per federal regulations are:

012.01C3a The school district or approved cooperative has reduced special education personnel costs because staff has been replaced with qualified staff earning lower salaries;

012.01C3b The school district or approved cooperative has a decrease in enrollment of children with disabilities;

012.01C3c The school district or approved cooperative is no longer responsible for a high cost needs child(ren) with a disability; and

012.01C3d The school district or approved cooperative 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 or approved cooperative 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 or approved cooperatives 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 electronically via the NDE website 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 and approved cooperatives 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 or approved cooperative authorizes through a signed certification the release of all or a portion of the school district or approved cooperative IDEA allocation to said entity.

012.03A6 The Department of Education may make a supplemental payment to a school district or approved cooperative 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 personnel as per 92 NAC 51-010 and clerical personnel directly associated with early childhood special education programs;

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 students attending nonpublic schools who are required to leave the nonpublic school to receive special education and related services.

012.04A4b 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 including assistive technology devices and 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 or approved cooperative 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. Supervision of early childhood special education programs includes clerical costs associated with supervision of early childhood special education programs.

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 or approved cooperative, Early Intervening services pursuant to 92 NAC 51-012.07A, may be used by the school district or approved cooperative 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 or approved cooperatives 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 or approved cooperatives to achieve the annual threshold as specified in 92 NAC 51-012.03A6.

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 or approved cooperatives 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 or approved cooperative application, with subsequent approximately equal payments of the balance on a schedule established by the Department.

012.06C2 School districts or approved cooperatives electing to use funds for expanding special education services will receive funding, following approval by the Department of Education of the school district or approved cooperative 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 or approved cooperative authorizes through a signed certification the release of all or a portion of the school district or approved cooperative IDEA allocation to said entity.

012.07 Special Considerations

012.07A Except as provided in 34 CFR 300.646 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 or approved cooperative 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.

012.07B When implementing IDEA Early Intervening Services, a school district or approved cooperative may carry out activities that include:

012.07B1 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

012.07B2 Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

012.07C 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:

012.07C1 The number of students served; and

012.07C2 The number of students served who subsequently receive special education and related services during the preceding two year period.

012.07D Payments for Early Intervening Services shall be contingent upon meeting the reporting requirements of 92 NAC 51-012.07D.

012.07D1 Payments for Early Intervening Services will be made according to 92 NAC 51-012.06C2.

012.07E Nothing in this subsection shall be construed to limit or create a right to a free appropriate public education under Rule 51.

012.07F Related services for children with verified disabilities are allowable if the services are listed in the IEP or IFSP and are required to assist the child to benefit from his/her special education program.

012.07G 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.

012.07H Late submission of required forms will be subject to the procedures specified in 92 NAC 51-004.14.

012.08 Expenditures for Parentally-Placed Nonpublic School Children

012.08A To meet the requirement of 92 NAC 51-015.03C, each school district or approved cooperative must spend at least the following on providing special education and related services (including direct services) to parentally-placed nonpublic school children with disabilities:

012.08A1 For children aged 3 through 21, an amount that is the same proportion of the school district or approved cooperative's total subgrant under section 611(f) of the IDEA as the number of nonpublic school children with disabilities aged 3 through 21 who are enrolled by their parents in nonpublic including religious, elementary schools and secondary schools located in the school district served by the school district or approved cooperative is to the total number of children with disabilities in its jurisdiction aged 3 through 21.

012.08A2 For children aged three through five, an amount that is the same proportion of the school district or approved cooperative's total subgrant under section 619(g) of the IDEA as the number of parentally-placed nonpublic school children with disabilities aged three through five who are enrolled by their parents in a nonpublic, including religious, elementary school located in the school district served by the school district or approved cooperative, is to the total number of children with disabilities in its jurisdiction aged three through five.

012.08A2a Children aged three through five are considered to be parentally-placed nonpublic school children with disabilities enrolled by their parents in nonpublic, including religious, elementary schools, if they are enrolled in a nonpublic school that meets the definition of elementary school in section 34 CFR 300.13.

012.08B If a school district or approved cooperative has not expended all of the funds described in 92 NAC 51-012.08A1 and 012.08A2 by the end of the fiscal year for which Congress appropriated the funds, the school district or approved cooperative must obligate the remaining funds for special education and related services (including direct services) to parentally-placed nonpublic school children with disabilities during a carry-over period of one additional year.

012.08C In calculating the proportionate amount of Federal funds to be provided for parentally-placed nonpublic school children with disabilities, the school district or approved cooperative, after timely and meaningful consultation with representatives of nonpublic schools under 92 NAC 51-015.03D, must conduct a thorough and complete childfind process to determine the number of parentally-placed children with disabilities attending nonpublic schools located in the school district or approved cooperative.

012.08D Each school district or approved cooperative must, after timely and meaningful consultation with representatives of parentally-placed nonpublic school children with disabilities (consistent with 92 NAC 51-015.03D) determine the number of parentally-placed nonpublic school children with disabilities attending nonpublic schools located in the school district or approved cooperative. The count is conducted on December 1 of each year.

012.08D1 The count must be used to determine the amount that the school district or approved cooperative must spend on providing special education and related services to parentally-placed nonpublic school children with disabilities in the next subsequent fiscal year.

012.08E State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed nonpublic school children with disabilities under this Chapter.

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 or approved cooperative 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, the approved cooperative, 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 or approved cooperative shall be responsible for meeting the requirements of 92 NAC 51-007.12 through 92 NAC 51-007.18.

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.

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 or approved cooperative shall maintain within the school district or approved cooperative 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 or approved cooperatives 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 or approved cooperative 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 or approved cooperative when:

013.02G1 The school district or approved cooperative initiated the placement; or

013.02G2 The school district or approved cooperative has agreed to the placement; or

013.02G3 The school district or approved cooperative is party to a decision under 92 NAC 55 which requires such placement and which has not been appealed by the school district or approved cooperative; or

013.02G4 The school district or approved cooperative 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 The school district or approved cooperative shall pay an amount equal to the average per pupil cost (program per pupil cost) of the service agency of the preceding year or the cost as agreed upon pursuant to the contract to the agency providing the educational program for each student with a disability.

013.03C Service providers who request reimbursable rates exceeding 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 (for allowable costs, see Sections 011 and 012);

013.03C3 A written description of services;

013.03C4 Separation of sectarian educational costs and non-sectarian educational costs, if applicable;

013.03C5 Separation of the cost of residential care costs from the cost of the educational program, if applicable;

013.03C6 Documentation of conformance with building codes and safety requirements, if applicable; and

013.03C7 For Educational Service Units, a final report of expenditures which is due within 45 days after the service providers fiscal year end.

013.03D Service providers who request reimbursable rates at or below NDE established rates shall submit, electronically via the NDE website to the Department of Education, the following:

013.03D1 Personnel and their qualifications;

013.03D2 A cost schedule for services;

013.03D3 A written description of services; and

013.03D4 Documentation of conformance with building codes and safety requirements, if applicable.

013.03E Service providers must have on file a copy of the child's current IEP or IFSP.

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 Parentally-Placed Non-Public School Children

014.01D1 If necessary for the child to benefit from or participate in the services provided under this Chapter, a parentally-placed 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 or approved cooperatives are not required to provide transportation from the child's home to the nonpublic school.

014.01D3 The cost of transportation may be included in calculating whether the school district or approved cooperative has met the requirement of 92 NAC 51-012.08.

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 and 92.

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 or approved cooperative 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 or approved cooperative 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. Forms are available at the Nebraska Department of Education.

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 or Approved Cooperative As a Means of Providing Special Education and Related Services

015.01A School districts or approved cooperatives shall ensure 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 that apply to education provided by the school district or approved cooperative including the requirements of this Chapter except 92 NAC 51-003.69; and

015.01A3 Has all of the rights of a child with a disability who is served by a school district or approved cooperative.

015.01B 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.

015.01B1 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.

015.01B2 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.

015.01B3 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:

015.01B3a Are involved in any decision about the child's IEP; and

015.01B3b Agree to any proposed changes in the IEP before those changes are implemented.

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 or approved cooperative 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 or approved cooperative 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 or approved cooperative 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 or approved cooperative regarding the availability of a program appropriate for the child, and the question of financial reimbursement, 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 or approved cooperative, enroll the child in a nonpublic preschool, elementary or secondary school as a means of obtaining special education and related services without the consent of or referral by the school district or approved cooperative, a court or a hearing officer may require the school district or approved cooperative to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the school district or approved cooperative 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 or approved cooperative.

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 team 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 or approved cooperative 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 or approved cooperative, the parents did not give written notice to the school district of the information described in 92 NAC 51-015.02C1; or

015.02C3 If prior to the parents' removal of the child from the public school, the school district or approved cooperative informed the parents, through the notice requirements described in 92 NAC 51-009.05, 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 requirement in 92 NAC 51-015.02C1 and 015.02C2, the cost of reimbursement:

015.02D1 Must not be reduced or denied for failure to provide the notice if:

015.02D1a The school district or approved cooperative prevented the parents from providing the notice;

015.02D1b The parents had not received notice, pursuant to 92 NAC 51-009.06 of the notice requirement in 92 NAC 51-015.02C1 and 015.02C2; or

015.02D1c Compliance with paragraph 92 NAC 51-015.02C1 and 015.02C2 would likely result in physical harm to the child; and

015.02D2 May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if:

015.02D2a The parents are not literate or cannot write in English; or

015.02D2b Compliance with paragraph 92 NAC 51-015.02C1 and 015.02C2 of this section would likely result in serious emotional harm to the child.

015.03 Children Enrolled In a Nonpublic School by Parents If FAPE Is Not At Issue

015.03A Parentally-placed nonpublic school children with disabilities means children with disabilities enrolled by their parents in nonpublic, including religious schools or facilities that meet the definition of elementary or secondary school, other than children with disabilities covered in 92 NAC 51-015.01 and 015.02.

015.03A1 For purposes of providing equitable services utilizing IDEA funds described in 92 NAC 51-012.08:

015.03A1a Elementary school shall mean a school system accredited pursuant to 92 NAC 10, a nonpublic school approved pursuant to 92 NAC 14, or an interim-program school approved pursuant to 92 NAC 18 that offers instruction in any or all grades Kindergarten through eighth grade designated by the school as an elementary grades.

015.03A1b Secondary school shall mean a school system accredited pursuant to 92 NAC 10, a nonpublic school approved pursuant to 92 NAC 14 or an interim-program school approved pursuant to 92 NAC 18 that offers instruction in any or all grades seventh through twelfth designated by the school as a secondary grades.

015.03A2 For purposes of providing a Free Appropriate Public Education:

015.03A2a Elementary school shall mean a school system accredited pursuant to 92 NAC 10, a nonpublic school approved pursuant to 92 NAC 14 or an interim-program school approved pursuant to 92 NAC 18 that offers instruction in any or all grades Kindergarten through eighth grade designated by the school as an elementary grades and also includes children attending nonpublic schools that are exempt from approval or accreditation pursuant to 92 NAC 12 and 92 NAC 13.

015.03A2b Secondary school shall mean a school system accredited pursuant to 92 NAC 10, a nonpublic school approved pursuant to 92 NAC 14 or an interim-program school approved pursuant to 92 NAC 18 that offers instruction in any or all grades seventh through twelfth designated by the school as a secondary grades and also includes children attending nonpublic schools that are exempt from approval or accreditation pursuant to 92 NAC 12 and 92 NAC 13.

015.03B Childfind for Parentally-placed Nonpublic School Children with Disabilities

015.03B1 Each school district or approved cooperative must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in nonpublic, including religious, elementary schools and secondary schools located in the school district or approved cooperative, in accordance with 92 NAC 51-015.03B2 through 015.03B5.

015.03B2 The childfind process must be designed to ensure:

015.03B2a The equitable participation of parentally-placed nonpublic school children; and

015.03B2b An accurate count of those children.

015.03B3 In carrying out the childfind requirements, the school district or approved cooperative must undertake activities similar to the activities undertaken for public school children.

015.03B4 The cost of carrying out the childfind requirements in this subsection, including individual evaluations, may not be considered in determining if a school district or approved cooperative has met its obligations under 92 NAC 51-012.08.

015.03B5 The childfind process must be completed in a time period comparable to that for students attending public schools in the school district or approved cooperative consistent with 92 NAC 51-006.02.

015.03B6 Each school district or approved cooperative, in which one or more nonpublic, including religious, elementary schools and secondary schools are located must, in carrying out the childfind requirements in this subsection, include parentally-placed nonpublic school children who reside in a State other than Nebraska.

015.03C Provision of Services for Parentally-placed Nonpublic School Children

015.03C1 To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in nonpublic including religious elementary schools and secondary schools located in the school district or approved cooperative, provision must be made for the participation of those children in the program assisted or carried out under Part B of the IDEA as amended in 2004 by providing them with special education and related services.

015.03C1a Parentally-placed nonpublic school children with disabilities are eligible for the provision of a free appropriate public education from the school district or approved cooperative in which they reside. Services available under such circumstances are referred to as a Free Appropriate Public Education (FAPE).

015.03C1a(i) An IEP shall be developed and implemented in accordance with 92 NAC 51-007 for each resident nonpublic school child receiving FAPE.

015.03C1b Parentally-placed nonpublic school children with disabilities who are attending a nonpublic school located outside of their district of residence may receive special education and related services (referred to as equitable services) from the district in which the nonpublic school is located or a free appropriate public education (FAPE) from the district in which they reside, but not both. The decision on whether to receive equitable services or FAPE is at the discretion of the child's parent.

015.03C1b(i) In accordance with 92 NAC 51-015.03C1 and 92 NAC 51-015.03G through 015.03I, an equitable services plan must be developed and implemented for each nonresident nonpublic school child with a disability who has been designated by the school district or approved cooperative in which the nonpublic school is located to receive equitable services.

015.03C2 Each school district or approved cooperative must maintain in its records, and provide to the Nebraska Department of Education the following information related to parentally-placed nonpublic school children attending nonpublic schools located in the school district or approved cooperative:

015.03C2a The number of children evaluated;

015.03C2b The number of children determined to be children with disabilities; and

015.03C2c The number of children served.

015.03C3 Special education and related services (FAPE or equitable services) provided to parentally-placed nonpublic school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

015.03D Consultation

015.03D1 To ensure timely and meaningful consultation, a school district or approved cooperative must consult with representatives of nonpublic schools located in the school district or approved cooperative and representatives of parents of parentally-placed nonpublic school children with disabilities attending such schools during the design and development of special education and related services (FAPE and equitable services) for the children regarding the following:

015.03D1a The childfind process, including:

015.03D1a(i) How parentally-placed nonpublic school children suspected of having a disability can participate equitably; and

015.03D1a(ii) How parents, teachers, and nonpublic school officials will be informed of the process.

015.03D1b The determination of the proportionate share of Federal funds available to serve parentally-placed nonpublic school children with disabilities available under 34 CFR 300.133(C), including the determination of how the proportionate share of those funds was calculated.

015.03D1c The consultation process among the school district or approved cooperative, nonpublic school officials, and representatives of parents of parentally-placed nonpublic school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the childfind process can meaningfully participate in special education and related services (FAPE or equitable services).

015.03D1d How, where, and by whom special education and related services (FAPE or equitable services) will be provided for parentally-placed nonpublic school children with disabilities, including a discussion of:

015.03D1d(i) The types of services, including direct services and alternate service delivery mechanisms; and

015.03D1d(ii) How special education and related services funded by the proportionate amount of federal funds will be apportioned if such funds are insufficient to serve all parentally-placed nonpublic school children; and

015.03D1d(iii) How and when those decisions will be made.

015.03D1e How, if the school district or approved cooperative disagrees with the views of the nonpublic school officials on the provision of services or the types of services (whether provided directly or through a contract), the school district or approved cooperative will provide to the nonpublic school officials a written explanation of the reasons why the school district or approved cooperative chose not to provide services directly or through a contract.

015.03E Written Affirmation

015.03E1 When timely and meaningful consultation, as required by 92 NAC 51-015.03D has occurred, the school district or approved cooperative must obtain a written affirmation signed by the representatives of participating nonpublic schools.

015.03E2 If the representatives do not provide the affirmation within a reasonable period of time, the school district or approved cooperative must forward the documentation of the consultation process to the Nebraska Department of Education.

015.03F Compliance

015.03F1 A nonpublic school official has the right to submit a complaint to the Nebraska Department of Education that the school district or approved cooperative:

015.03F1a Did not engage in consultation that was meaningful and timely; or

015.03F1b Did not give due consideration to the views of the nonpublic school official.

015.03F2 If the nonpublic school official wishes to submit a complaint, the official must provide to the Nebraska Department of Education the basis of the noncompliance by the school district or approved cooperative with the applicable school provisions in this Chapter; and

015.03F2a The school district or approved cooperative must forward the appropriate documentation to the Nebraska Department of Education. If the nonpublic school official is dissatisfied with the decision of the Nebraska Department of Education, the official may submit a complaint to the United States Secretary of Education by providing the information on noncompliance described in 92 NAC 51-015.03F2. The Nebraska Department of Education must forward the appropriate documentation to the United States Secretary of Education.

015.03G Equitable Services for Nonresident Nonpublic School Children Determined

015.03G1 No parentally-placed nonresident nonpublic school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

015.03G2 Decisions about the equitable services that will be provided to parentally-placed nonresident nonpublic school children with disabilities must be made in accordance with 92 NAC 51-015.03G3 and 015.03D1c.

015.03G2a The school district or approved cooperative must make the final decisions with respect to the equitable services to be provided to eligible parentally-placed nonresident nonpublic school children with disabilities.

015.03G3 If a nonresident nonpublic school child with a disability is enrolled in a religious or other nonpublic school by the child's parents and will receive equitable services from a school district or approved cooperative, the school district or approved cooperative must:

015.03G3a Initiate and conduct meetings to develop, review, and revise an equitable services plan for the child, in accordance with 92 NAC 51-015.03H; and

015.03G3b Ensure that a representative of the religious or other nonpublic school attends each meeting. If the representative cannot attend, the school district or approved cooperative shall use other methods to ensure participation by the religious or other nonpublic school, including individual or conference telephone calls.

015.03H Equitable Services Provided to Nonresident Nonpublic School Children with Disabilities

015.03H1 The equitable services provided to parentally-placed nonresident nonpublic school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that nonpublic elementary school and secondary school teachers who are providing equitable services to parentally-placed nonresident nonpublic school children with disabilities do not have to meet the special education teacher requirements of Section 003.69.

015.03H2 Parentally-placed nonresident nonpublic school children with disabilities may receive a different amount of services than resident public and nonpublic school children with disabilities.

015.03H3 Each parentally-placed nonresident nonpublic school child with a disability who has been designated to receive equitable services under 92 NAC 51-015.03C1b must have an equitable services plan that describes the specific special education and related services that the school district or approved cooperative will provide to the child in light of the services that the school district or approved cooperative has determined, through the process described in 92 NAC 51-015.03C and 015.03G, it will make available to parentally-placed nonresident nonpublic school children with disabilities.

015.03H4 The equitable services plan must, to the extent appropriate:

015.03H4a Meet the requirements of 92 NAC 51-007.07A or for a child ages three through five, meet the requirements of 92 NAC 51-007.02A1 with respect to the services provided; and

015.03H4b Be developed, reviewed, and revised consistent with 92 NAC 51-007.

015.03H5 Equitable services must be provided:

015.03H5a By employees of a public school district or approved cooperative; or

015.03H5b Through contract by the school district or approved cooperative with an individual, association, agency, organization, or other entity.

015.03I Location of Services and Transportation

015.03I1 Services (equitable or FAPE) to parentally-placed nonpublic school children with disabilities may be provided on the premises of nonpublic, including religious, schools, to the extent consistent with law.

015.03I1a A school district or approved cooperative 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.

015.03J Due Process and State Compliance

015.03J1 Except as provided in 92 NAC 51-015.03J2, the procedures in 92 NAC 51-009.06, 009.07, 009.10, 009.12, 009.13, 009.14 and 92 NAC 55 do not apply to complaints that a school district or approved cooperative has failed to meet the requirements of 92 NAC 51-015.03C1 through 015.03I and 92 NAC 51-014.01D and 012.08 including the provision of services indicated on the child's equitable services plan.

015.03J2 The procedures in 92 NAC 51-009.06, 009.07, 009.10, 009.12 through 009.14 and 92 NAC 55 apply to complaints that a school district or approved cooperative has failed to meet the childfind requirements in 92 NAC 015.03B1, including the requirements in 92 NAC 51-009.08 and 006.

015.03J3 Any due process complaint regarding the childfind requirements (as described in 92 NAC 51-015.03J2) must be served on the school district or approved cooperative in which the nonpublic school is located and filed with the Nebraska Department of Education.

015.03J4 Any complaint that the Nebraska Department of Education or school district or approved cooperative has failed to meet the requirements in 92 NAC 51-015.03C through 015.03E and 012.08 and 92 NAC 51-015.03G through 015.07 must be filed in accordance with the procedures described in 92 NAC 51-009.11.

015.03J5 A complaint filed by a nonpublic school official under 92 NAC 51-015.03F1 must be filed with the Nebraska Department of Education in accordance with the procedures in 92 NAC 51-015.03F2.

015.04 A school district or approved cooperative may not use special education funds for classes that are organized separately on the basis of school enrollment or religion of the children if:

015.04A The classes are at the same site; and

015.04B The classes include children enrolled in public schools and children enrolled in nonpublic schools.

015.05 A school district or approved cooperative may not use special education funds to finance the existing level of instruction in a nonpublic school or to otherwise benefit the nonpublic school.

015.05A A school district or approved cooperative shall use the special education funds provided to meet the special education and related services (FAPE or equitable services) needs of parentally-placed nonpublic school children with disabilities but not for meeting:

015.05A1 The needs of a nonpublic school; or

015.05A2 The general needs of the children enrolled in a nonpublic school.

015.06 A school district or approved cooperative may use special education funds to make public school personnel available in other than public facilities:

015.06A To the extent necessary to provide services designed for parentally-placed nonpublic school children with disabilities; and

015.06B If those services are not normally provided by the nonpublic school.

015.07 A school district or approved cooperative may use special education funds to pay for the services of an employee of a nonpublic school to provide special education and related services (FAPE or equitable services) if:

015.07A The employee performs the services outside of his or her regular hours of duty; and

015.07B The employee performs the services under public supervision and control.

015.08 A school district or approved cooperative may place equipment and supplies in a nonpublic school for the period of time needed for the provision of special education and related services.

015.08A The school district or approved cooperative shall ensure that the equipment and supplies placed in a nonpublic school:

015.08A1 Are used only for the purpose of providing special education and related services; and

015.08A2 Can be removed from the nonpublic school without remodeling the nonpublic school facilities.

015.08B The school district or approved cooperative shall remove equipment or supplies from a nonpublic school if:

015.08B1 The equipment and supplies are no longer needed for the purpose of providing special education and related services; or

015.08B2 Removal is necessary to avoid unauthorized use of the equipment and supplies for other than special education purposes.

015.08C No special education funds may be used for repairs, minor remodeling or the construction of nonpublic school facilities.

015.09 A school district or approved cooperative must control and administer the funds used to provide special education and related services under 92 NAC 51-015.03G through 92 NAC 51-015.03I, and hold title to and administer materials, equipment, and property purchased with those funds for those uses and purposes provided in this Chapter.

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:

016.01A2a Because the series of removals total more than 10 school days in a school year;

016.01A2b Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and

016.01A2c Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

016.01B The school district or approved cooperative determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

016.01B1 This determination is subject to review through due process and judicial proceedings.

016.02 Authority of School Personnel

016.02A School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of subsection 016.02 of this Chapter, is appropriate for a child with a disability who violates a code of student conduct.

016.02B School personnel under subsection 016.02 may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent these alternatives are applied to children without disabilities) and for additional removals of not more than 10 consecutive school days in the same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under 92 NAC 51-016.01).

016.02B1 After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the school district or approved cooperative must provide services to the extent required under 92 NAC 51-016.02D.

016.02C For disciplinary changes in placement that would exceed 10 consecutive school days, if 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, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures that would be applied to children without disabilities, except as provided in 92 NAC 51-016.02D.

016.02D A child with a disability who is removed from the child's current placement pursuant to 92 NAC 51-016.02C or 016.02G must:

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 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.

016.02D3 The services described in 92 NAC 51-016.02D1, 016.02D2, 016.02D4 and 016.02D5 may be provided in an interim alternative educational setting.

016.02D4 A school district or approved cooperative is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.

016.02D5 After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under 92 NAC 51-016.01, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed 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 progress toward meeting the goals set out in the child's IEP.

016.02D6 If the removal is a change of placement under 92 NAC 51-016.01, the child's IEP Team determines appropriate services under 92 NAC 51-016.02D.

016.02E Manifestation Determination

016.02E1 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 child's 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 The conduct must be determined to be a manifestation of the child's disability if the school district or approved cooperative, the parent, and relevant members of the child's IEP Team determine that a condition in either 92 NAC 51-016.02E1a or 016.02E1b was met.

016.02E3 If the school district or approved cooperative, the parent, and relevant members of the child's IEP Team determine the condition described in 92 NAC 51-016.02E1b was met, the school district or approved cooperative must take immediate steps to remedy those deficiencies.

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 must:

016.02F1 Either conduct a functional behavioral assessment, unless the school district or approved cooperative had conducted a functional behavioral assessment before the behavior that resulted in a change of placement occurred, and implement a behavioral intervention plan for the child; or if a behavioral intervention plan has already been developed, review the behavioral intervention plan and modify it, as necessary, to address the behavior; and

016.02F2 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, if the child:

016.02G1 Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the Nebraska Department of Education or a 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 the Nebraska Department of Education or a 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 the Nebraska Department of Education or a school district or approved cooperative.

016.02H On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the school district or approved cooperative shall notify the parents of that decision, and provide the parents the procedural safeguards in 92 NAC 51-009.

016.03 The interim alternative educational setting in 92 NAC 51-016.02C, 016.02D and 016.02G shall be determined by the child's 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 under 92 NAC 51-016.04B, the hearing officer may:

016.04C1 Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of 92 NAC 51-016.02 or that the child's behavior was a manifestation of the child's disability; or

016.04C2 Order a change in placement of the 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 the child is substantially likely to result in injury to the child or to others.

016.04C3 The procedures under 92 NAC 51-016.04 may be repeated, if the school district or approved cooperative believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

016.04D Whenever a hearing is requested under 92 NAC 51-016.04A, the parents or the school district or approved cooperative involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements in 92 NAC 55, except as provided in 92 NAC 51-016.04D1 through 016.04D2b.

016.04D1 The Nebraska Department of Education is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.

016.04D2 Unless the parents and school district or approved cooperative agree in writing to waive the resolution meeting described in 92 NAC 51-016.04D2a, or agree to use the mediation process described in 92 NAC 51-009.12 –

016.04D2a A resolution meeting must occur within seven days of receiving notice of the due process complaint; and

016.04D2b The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

016.04D3 The decisions on expedited due process hearings are appealable consistent with 92 NAC 55.

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.

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 92 NAC 51-016.06B 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 requested an evaluation of the child pursuant to 92 NAC 51-006.02B1; or

016.06B3 The teacher of the child, or other personnel of the school district or approved cooperative 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:

016.06C1 The parent of the child has not allowed an evaluation of the child pursuant to 92 NAC 51-006; or

016.06C2 The parent of the child has refused services under this Chapter; or

016.06C3 The child has been evaluated pursuant to 92 NAC 51-006 and was determined to not be a child with a disability under this Chapter.

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.

016.06D2a Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

016.06D2b If a 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 must provide special education and related services in accordance with this Chapter, including the requirements of 92 NAC 51-016.

016.07 Referral to and Action by law Enforcement and Judicial Authorities

016.07A Nothing in this Chapter 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.

016.07C A school district or approved cooperative reporting a crime under 92 NAC 51-016.07 may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Education Rights and Privacy Act (FERPA).

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. Scientifically based research has the meaning given the term in section 9101(37) of the ESEA.

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;